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MEETING

STATE OF CALIFORNIA

SAN DIEGO REGIONAL WATER QUALITY BOARD

PARTIAL TRANSCRIPT

SAN DIEGO REGIONAL

WATER QUALITY CONTROL BOARD

2375 NORTHSIDE DRIVE, SUITE 100

SAN DIEGO, CALIFORNIA

REPORTED BY: KASEY L. MOBLEY, CSR 13407

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APPEARANCES

BOARD MEMBERS:

- Henry Abarbanel, Chair
- Gary Strawn, Vice Chair
- Betty Olson
- Stefanie Warren
- Eric Andersen
- Tomas Morales

OTHER STAFF PRESENT:

- David W. Gibson, Executive Officer
- James G. Smith, Assistant Executive Officer
- Catherine Hagan, Regional Board Attorney
- Wayne Chiu, Water Resource Control Engineer
- Christina Arias, Water Resource Control Engineer
- Julie Chan, Supervising Engineering Geologist

1 NOVEMBER 18, 2015, SAN DIEGO, CALIFORNIA

2 9:03 A.M.

3

4 CHAIRMAN ABARBANEL: Good morning.

5 I'd like to call to order the regular meeting of
6 the San Diego Regional Water Quality Control Board
7 on November 18th, 2015.

8 May we have a roll call.

9 (Roll call done.)

10 CHAIRMAN ABARBANEL: The first item on
11 the agenda after being here is our public forum.
12 Anybody can address the Board on any issue that is
13 not on the agenda. So plenty of time to speak to
14 the agenda items as they arise, but very often,
15 the public has important and interesting things to
16 say that I didn't get -- manage to get on the
17 agenda.

18 Did anybody wish to speak to items not
19 on the agenda?

20 And you've given Gary a blue card or
21 whatever?

22 You've given him four?

23 JIM WHALEN: Yeah, that's how
24 entrenched it is.

25 CHAIRMAN ABARBANEL: Okay.

1 JIM WHALEN: Thank you very much. Is
2 this thing on?

3 Good morning, Mr. Chair, members of
4 the Board. My name is Jim Whalen of J. Whalen
5 Associates, 1660 Hotel Circle, here in Mission
6 Valley. I'm the president of J. Whalen
7 Associates, a land use consulting firm, and chair
8 of the Building associations Legislative
9 Committee.

10 I've been monitoring the progress of
11 the MS4 permit implications, and I'm concerned
12 that the biological consequences of reducing
13 runoff into certain water bodies, especially the
14 Otay River --

15 CHAIRMAN ABARBANEL: Excuse me. I
16 believe that is the subject of Item No. 11.

17 MR. WHALEN: We did talk to your
18 counsel about this is the greatest level of detail
19 you're going to get. I'm done in one second.

20 MS. HAGAN: Mr. Whalen is talking
21 about the water quality improvement plan process,
22 but he's not going to talk about any details of
23 the specific water quality improvement plan.

24 CHAIRMAN ABARBANEL: I'm sorry for
25 interrupting, but I --

1 MR. WHALEN: That's okay. We were
2 careful to make sure we talked to folks in
3 advance, to make sure we didn't --

4 CHAIRMAN ABARBANEL: Okay. You can
5 start from the beginning, but I think we know who
6 you are now.

7 MR. WHALEN: I think you do. I've
8 been monitoring the progress of the MS4 permit
9 implication, and I am concerned that the
10 consequences of reducing runoff into certain water
11 bodies for biological reasons may have been
12 overlooked during the permitting process, and I'm
13 simply requesting that the Executive Officer
14 Gibson schedule a public hearing on the San Diego
15 Bay Water Quality Improvement Plan to consider
16 this issue before the full Board. Thank you.
17 That's it.

18 CHAIRMAN ABARBANEL: Do you have
19 specific requests of the executive officer?

20 MR. WHALEN: Simply to calendar it.
21 We can't do specific requests. Simply to
22 calendar.

23 CHAIRMAN ABARBANEL: Okay.

24 Please. I wouldn't interrupt you.

25 TORY WALKER: Good morning, Chair and

1 board members. My name is Tory Walker. I'm at
2 2559 Vista de Palomar, Fallbrook, California. I'm
3 the principal of Tory R. Walker Engineering, a
4 water resources firm, and I prepared a hydro
5 modification study for the Otay River.

6 I believe the San Diego Bay Water
7 Quality Improvement Plan does not take into
8 account all the available science --

9 MS. HAGAN: Excuse me. You need to
10 limit this to no details whatsoever. I was under
11 the impression that folks would be asking for a
12 hearing, but getting into any details is not
13 appropriate today. That's a process for the water
14 quality improvement plan.

15 MR. WALKER: All right. Thank you.
16 So I would like it to be vetted at a public
17 hearing before the Board.

18 CHAIRMAN ABARBANEL: Is that enough
19 details?

20 BOARD MEMBER STRAWN: I think the next
21 one is Nick Dangus.

22 NICK DANGUS: Good morning, Chair,
23 Board members and Executive Officer. My name is
24 Nick Dangus, 1660 Hotel Circle North, J. Whalen
25 Associates, land use consultants.

1 I believe there are significant issues
2 with San Diego Bay Water Quality Improvement Plan,
3 and I request that Extensive Officer Gibson
4 schedule a public hearing before this Board to
5 address these issues.

6 Thank you.

7 BOARD MEMBER STRAWN: Mr. O'Connor?

8 JEFF O'CONNOR: Good morning Chair,
9 Board members and staff. My name is Jeff
10 O'Connor. I work for Home Fed Corporation in
11 Carlsbad. We have significant property holdings
12 in Otay Mesa. I've been working with staff over
13 the past several years over the storm water permit
14 and will continue to do so. We believe that San
15 Diego Bay Water Quality Improvement Plan has
16 unresolved issues and should be subject to a
17 public hearing before this Board.

18 Thank you.

19 BOARD MEMBER STRAWN: Next, Laura, I
20 have a card from somebody that says they want to
21 follow you, but I have your card for Item 11.

22 MS. HUNTER: I had to take my card out
23 because I was advised not to speak.

24 BOARD MEMBER STRAWN: That explains
25 the other mystery of what happened to your card.

1 Come up to the microphone. Identify
2 yourself.

3 BOARD MEMBER WARREN: Can I step down
4 before you go.

5 MS. HAGAN: The matter is a pending
6 matter. It's a 401 certification that's pending.
7 Ms. Hunter wanted to talk about some of the
8 details at the site, and it's not proper for this
9 forum, so I told her that.

10 CHAIRMAN ABARBANEL: Before we go on,
11 I want to ask Dave if the requests of the first
12 four speakers are sufficient for you to put
13 together a public forum that would meet their
14 various --

15 EXECUTIVE OFFICER GIBSON:
16 Mr. Chairman, members of the Board, good morning.

17 Their requests are sufficient for me
18 to look at the issues, the Watershed Water Quality
19 Improvement Plan for San Diego Bay, and to make a
20 determinate, as you have delegated me to do, as to
21 whether or not to schedule that, and I would do so
22 in conference with you, Mr. Chairman, and look at
23 the calendar when that would happen.

24 Optimistically, it would be into next
25 year, and I think there should be some concerns as

1 to certain aspects of the permit that would not
2 come into play until that happened.

3 So I think it would be best to look at
4 this issue and discuss it before making this
5 decision.

6 CHAIRMAN ABARBANEL: I wanted to
7 ensure the people who were present that it was
8 clear enough.

9
10 BOARD MEMBER MORALES: Out of
11 curiosity -- maybe we don't know yet -- is it
12 something that would be scheduled in a regular
13 meeting or.

14 CHAIRMAN ABARBANEL: Board Member
15 Morales, if we determine the best course of action
16 is to consider it, we would plan it for a
17 regularly scheduled Board meeting in 2016.

18 CHAIRMAN ABARBANEL: That would be
19 February?

20 EXECUTIVE OFFICER GIBSON: That would
21 be the earliest it could be.

22 CHAIRMAN ABARBANEL: Okay. Sorry for
23 keeping you waiting. I wanted to make sure --

24 MR. MODIANO: That's fine. Ed
25 Modiano, project coordinator for Chatham site, PRP

1 Group.

2 BOARD MEMBER WARREN: I need to recuse
3 myself if we're going to talk about the Chatham
4 site.

5 MR. MODIANO: We're not. Essentially,
6 we're here -- we have a humble relationship with
7 Escondido Neighbors United. I've always been
8 directed to attend these meetings in case the
9 Chatham site does come up. Apparently, Laura is
10 not going to be talking about the Chatham site, so
11 I remove my card.

12 MS. HUNTER: I put my card back in.
13 From now on, I'm going to put in a request to be
14 after Ed.

15 Anyway, I'm just going to be asking
16 for a request for a public hearing on the 401
17 certification for the Oak Creek development
18 project. Thank you.

19 CHAIRMAN ABARBANEL: Now, we've had
20 several public hearings here on that issue. Are
21 there additional issues that would merit having a
22 hearing of the Board, or would it be a separate
23 occasion?

24 EXECUTIVE OFFICER GIBSON: Mr.
25 Chairman, this concerns a water quality

1 certification under Section 401 that's a pending
2 project right now. I will confer with staff to
3 determine whether I should act on that
4 ministerially, as you have delegated me to do, or
5 if indeed it does rise to the occasion where the
6 Board should consider it.

7 As you know, I have two basic metrics
8 for making that determination, independent of
9 public forum. One is that the impacts are
10 significant, and the other is that there's
11 significant public interest.

12 We've heard perhaps two requests, if I
13 can interpret it that way, and I'll take that
14 under advisement.

15 CHAIRMAN ABARBANEL: Thank you.

16 Anyone else wish to speak on an item
17 that is not on the agenda?

18 Thank you. We will move on to Item 3.

19 (Minutes of Board meeting
20 approved.)

21 CHAIRMAN ABARBANEL: Move on to Item
22 No. 4, which are comments by the Board members.

23 I guess Fran is not with us today.

24 EXECUTIVE OFFICER GIBSON: Correct,
25 Mr. Chairman. She is attending a State Board

1 meeting today.

2 CHAIRMAN ABARBANEL: She will not have
3 any comments.

4 Board members and executive officer --
5 Board members have any comments, reports?

6 BOARD MEMBER WARREN: I just had a
7 question on the executive officer's report. On
8 Item No. 2, the public meeting at Magnolia
9 Elementary School, if we could take a few minutes
10 to share more details.

11 Is it our impression that the parents
12 and teachers are getting the answers that they
13 want, and they're feeling that they're in the
14 loop?

15 CHAIRMAN ABARBANEL: Thank you, Board
16 Member Warren. I will ask if Craig Carlisle or
17 Sean McClain is available -- or Julie Chan. I see
18 Julie is closer to the microphone.

19 Julie, would you please?

20 MS. CHAN: Hi. Julie Chan with the
21 Groundwater Protection Unit. I did attend the
22 meeting. I believe the parents and teachers of
23 the school are getting the information that
24 they're looking for, and another public meeting is
25 scheduled for January. DTSC presented -- the DTSC

1 schools group has installed a pilot remediation
2 system in one of the classrooms, and based on the
3 outcome of the pilot study, they will expand it to
4 the entire school.

5 Then we continue to work aggressively
6 with Amitech to get the groundwater cleaned up. I
7 would say the discussion at the meeting quickly
8 moved away from the school and to the residents'
9 down gradient of the plume. So at that meeting,
10 it was arranged that we would beef up our public
11 information plan, and since then, we met with
12 Amitech and directed them to prepare a public
13 information plan that deals with the residents not
14 just the school.

15 Are there any other questions?

16 BOARD MEMBER WARREN: Will you come
17 back to us and let us know how the January meeting
18 goes.

19 MS. CHAN: Absolutely.

20 CHAIRMAN ABARBANEL: Thank you.

21 BOARD MEMBER STRAWN: As you know, I
22 represent this Board on the San Diego River
23 Conservancy, and we had a really interesting
24 meeting here last week where we began to allocate
25 some of the Prop 1 money for various projects

1 along the San Diego River. The first increments
2 that's designated for the San Diego River will be
3 \$3 million out of a total of 17 for this
4 watershed. This is exclusive of the area-wide
5 money that's being administrated by Coastal
6 Keepers.

7 The three projects that were presented
8 are worthy of some discussion here. The first one
9 is Mass Park. The City has had a plan, been
10 working on a plan for several years to restore
11 that park. Under Prop 1, they added to that and
12 divided out a section that's going to specifically
13 restore -- I think it's about nine and a half
14 acres of repairing habitat, wetland restoration.

15 They're moving the old asphalt trail.
16 They're tearing that up and moving it back away
17 from the bank of the river, restoring that bank
18 and adding to the flood plan, replacing the trail
19 with a permeable surface. And they're planting
20 some native grasses and flowers. It's going to be
21 a really nice project.

22 I was particularly mindful of the idea
23 that that can be a good example of some of the
24 urban projects that can be done under Prop 1,
25 where they take some urban city parks and, at

1 least, modify them or add to them in such a way
2 we're also taking care of the watershed.

3 This particular park is surrounded by
4 a lot of high-density, low-income housing. All
5 those parking lots have drained down into the
6 park. So they're building a big bioswale, and
7 they take that and duct it into a gravel bed that
8 actually augments the playground. It will be a
9 big boulder field for the kids to play on when
10 it's dry, and it helps act as an attachment that
11 can recharge the groundwater.

12 The other project was the County of
13 San Diego had a trash removal pilot project. I
14 think it was 12 sites, and they're -- they worked
15 with some of the other cities in the state to look
16 at some of the other projects that are going on to
17 remove trash from the storm water. In these 12
18 sites, they'll put a high-tech catchment down in
19 the storm drain catchment area to filter out
20 anything bigger than a cigarette butt, or
21 including a cigarette butt, I guess.

22 Then they'll pick that up and analyze
23 it, and they're going to match this with some
24 public outreach and education BMPs to look at --
25 and volunteer cleanups to see how do you decide

1 where to put these things, what are you catching,
2 what are the big concerns, and how does this
3 physical trap work compared to the other
4 alternatives, which is volunteer cleanups and
5 education.

6 That one was particularly of interest
7 because the areas of interest are probably the
8 most low-income high-density urban areas that the
9 county's got responsibility for: out in Lakeside,
10 Bostonia, and I don't remember; a couple other
11 sites.

12 It's going to be an interesting
13 project. It wasn't a whole lot of money but we
14 would hope to expand there, and I think it's safe
15 to say that the impetece behind that is the new
16 State Board mandate on trash removal and going
17 forward with the idea that will probably become
18 incorporated in the MS4 at some future point.

19 So they're doing a pilot project that
20 I think can be beneficial to all the cities in our
21 area to look at methods of removing trash from the
22 storm water.

23 San Diego state put in a request to --
24 for watershed restoration along Alvarado Creek
25 adjacent to Interstate 8 and alongside the new

1 student housing areas in there. That's kind of a
2 bad area of the stream, so just the physical work
3 of clearing that out, removing some concrete and
4 invasive plants and improving that whole wetland
5 area and watershed is important from a flood
6 avoidance aspect, but the really cool part about
7 that project is Prop 1 has some serious mandates
8 in there that it's targeted for shovel-ready
9 dirt-moving projects, physical restoration
10 projects, and there's not a lot of allowance for
11 data collection and evaluations and studies of the
12 long-range effects. This particular project,
13 because it's sponsored by San Diego State, there's
14 a consortium of four or five professors and their
15 graduate students that doing water monitoring in
16 there, hydrology, absorption studies, bio
17 assessments, and I think they're already working
18 with Chad's team, if that's correct -- or we're
19 providing historical data in there.

20 So we should, in addition to fixing up
21 a bad part of that watershed, I think we're going
22 to gain a lot of data out of that and be useful in
23 evaluating and selecting future projects like
24 that.

25 The one thing at this -- going

1 forward, they've got the another half of that 3
2 million will probably come up in the next couple
3 months. One of those projects had to do with
4 irrigation in some of the urban ponds along the San
5 Diego river, to try to raise the DO levels. I had
6 previously asked that to be a future agenda item
7 and information item. I suggest we hold that in
8 abeyance a little bit until we see how this
9 project pans out. Maybe we can get a briefing on
10 what they're doing and how they expect it to work.
11 I want to tie that in with the rigging issue.

12 I've kind of segued into the next
13 agenda item. I'll leave it at that.

14 CHAIRMAN ABARBANEL: In a modest break
15 with tradition, the State Board has agreed to
16 consult with the regions on the disposition of the
17 resources that the State gives to the water boards
18 as a whole. And to discuss priorities, as seen by
19 the regions in consultation with the State Board.

20 That is going to happen three times in
21 three sessions during the coming year, 2016, and
22 the agreement was the chair and one other Board
23 member, as well as the executive officer, and, if
24 available, the assistant executive officer, be in
25 these discussions. We will have, in January, a

1 staff-and-Board-only discussion of how we will
2 present ourselves in that occasion. And we will
3 also have a public discussion of what is important
4 to the public that you would like us to bring
5 forward with discussion with the regions. That
6 will probably be in February.

7 Everything is open to discussion. I
8 have no idea what the experiment will result in,
9 but it's an opportunity for everybody, with
10 whatever views you hold on whatever issues are
11 important to you, to come forward and see what we
12 can do statewide.

13 In particular, cooperation with other
14 regions, I think, should be strongly encouraged.
15 We have many, many overlapping issues. Gary has
16 talked often about the homeless issue. It's a
17 complicated issue. It's not just the water
18 quality issue. It's an ethical issue. It's a
19 legal issue. We don't expect the State Board to
20 solve it. But the other regions, San Francisco
21 and L.A. in particular, probably have a much more
22 severe problem than we, so we'll talk to them
23 about a cooperative activity. There may be many,
24 many others. We don't in any way claim to have
25 figured them out yet.

1 Anyway, we're going to do that. I
2 think that's all I wanted to say for myself.

3 Dave, do you want to say anything more
4 about the executive officer's report?

5 EXECUTIVE OFFICER GIBSON: Thank you,
6 Mr. Chairman. I'd be very happy to. First of
7 all, are there any other questions on this month's
8 report? It is a rather extensive report.

9 Seeing none at this time, I have a
10 couple of updates for you. First of all, I'm
11 happy to announce that yesterday, the State Water
12 Resources Control Board did act on and approve the
13 basin plan amendment this Board adopted this year
14 for the on-site waste treatment system and
15 groundwater nitrate concentration water quality
16 objectives. That was approved. It's on its way
17 not to EPA and OAL. I think it will ultimately be
18 approved.

19 We have several new staff. Erica
20 Ryan.

21 Erica, will you please stand up.

22 Erica joins us as a water resource
23 control engineer, in the topic du jour. Welcome,
24 Erica. Baptism by fire, as they say -- or ice
25 water bucket, maybe.

1 We have two new scientific aids with
2 us Anayeli Picasso and Kate Moore. I know Kate is
3 at a class today.

4 Anayeli, are you here?

5 She's not here either. Probably hard
6 at work, no doubt.

7 Today the Commissioner Drusina is
8 convening with Commissioner Salmon at a Minute 320
9 Binational Corps Group, this afternoon, of course,
10 from 2:00 to 5:00 p.m. If it pleases the Board, I
11 will excuse myself at 1 o'clock to attend on its
12 behalf on that work group to discuss how we're
13 going to manage water quality, sediment and trash
14 bi-nationally under that treaty. That runs today
15 from 2:00 to 5:00 p.m., and I will update you
16 periodically in the executive officer's report.

17 The operations plan and budget for our
18 office for our next calendar year is under
19 preparation, and I plan to bring that to you for
20 discussion on the plan, the priorities, and indeed
21 our budget, as we did this year, in February of
22 next year.

23 Just a reminder, Item No. 10 on the
24 San Ysidro point of entry wastewater treatment and
25 reuse, we decided to have that with the recycled

1 wastewater item on December 16th at Padre Dam
2 Municipal Water District.

3 I'm very happy to also report, no
4 doubt you know, the City of San Diego approved the
5 significant rate increase, which is very important
6 for the recycled water efforts. So we will be
7 able to count on the City of San Diego to
8 participate in that very important discussion next
9 month.

10 That concludes my report unless there
11 are any follow-up questions.

12 Thank you very much.

13 CHAIRMAN ABARBANEL: Item 5 is the
14 opportunity for Board members to request or
15 suggest future agenda items. Gary is ahead of us
16 by an item or two.

17 Tom?

18 CHAIRMAN ABARBANEL: I have one, which
19 is kind of a recycled item. I'm pretty sure it
20 was in 2013 that the executive officer and Board
21 members made many visits to water districts,
22 municipalities, the three counties. I don't know
23 if we got to Riverside county.

24 BOARD MEMBER ANDERSON: We did indeed.
25 Mr. Strawn and I went several times.

1 CHAIRMAN ABARBANEL: Good. I would
2 like to suggest that we do that again in 2016.
3 It's been three years. We've had multiple very
4 significant permit modifications and new permits.

5 By the end of the day, we will
6 possibly -- I think it's time to go back and see
7 how things are going. I personally found those
8 visits to be very productive. And I had a sense
9 that the municipalities, surprised as they were
10 that we showed up on their doorstep, found it
11 productive.

12 EXECUTIVE OFFICER GIBSON: Yes,
13 indeed, Mr. Chairman, I agree. Debra Jane, our
14 outreach coordinator, and I are working up a plan
15 for next year for that. I am going to suggest
16 that we perhaps have several small group meetings
17 rather than individual meetings, as far as
18 practical for those, in Riverside and Orange
19 Counties to make use of our travel time and of
20 their time to be available. Small groups rather
21 than large groups and emphasis on discussion and
22 listening rather than lecturing.

23 CHAIRMAN ABARBANEL: That sounds like
24 a good start.

25 We're now going to move on to Item 6.

1 (2016 meeting schedule
2 approved.)

3 CHAIRMAN ABARBANEL: We're going to
4 move on to the consent calendar. I have a
5 potential conflict of interest with Item No. 8.
6 I'm going to turn it over to Vice Chair Strawn and
7 step aside.

8 BOARD MEMBER STRAWN: First we ask if
9 there's any comments from the Board about the
10 consent item. If not, I would entertain a motion
11 to approve the consent calendar.

12
13 BOARD MEMBER MORALES: I move that we
14 approve the consent calendar for Items 7 through
15 9.

16 BOARD MEMBER STRAWN: We have a motion
17 and a second.

18 MS. HAGAN: May I ask a question? Mr.
19 Abarbanel, because you've stepped aside for Item
20 8, you're not participating in the vote for Items
21 7 or 9, either?

22 CHAIRMAN ABARBANEL: That is correct.

23 MS. HAGAN: Okay.

24 Ms. Warren?

25 BOARD MEMBER WARREN: Aye.

1 MS. HAGAN: Ms. Olson?

2 BOARD MEMBER OLSON: Aye.

3 MS. HAGAN: Mr. Anderson?

4 BOARD MEMBER ANDERSON: Aye.

5 MS. HAGAN: Mr. Morales?

6

7 BOARD MEMBER MORALES: Aye.

8 MS. HAGAN: Mr. Strawn?

9 BOARD MEMBER STRAWN: Aye.

10 MS. HAGAN: Chairman Abarbanel --

11 excuse me.

12 BOARD MEMBER STRAWN: Did you get your

13 coffee, Mr. Chairman?

14 EXECUTIVE OFFICER GIBSON: Mr. Vice

15 Chairman, if I could, I would like to thank and

16 acknowledge the U.S. Navy for coming today and

17 being prepared to engage on Item No. 9, had there

18 been any discussion. And I'd like to observe this

19 is a nice bookend in terms of our relationship

20 with the Navy as to how this permit was handled in

21 2008 and where we got today. Their assistance was

22 very much appreciated, as was the staff's

23 preparation for this item today, which was not

24 insignificant.

25 BOARD MEMBER STRAWN: Thank you. I'll

1 add it's good to see the Navy was here and
2 prepared, as usual. Thank you.

3 CHAIRMAN ABARBANEL: Okay. We'll now
4 move on to Item 11. As mentioned, Item 10 has
5 been postponed until next month.

6 I have a formal statement I will read:
7 Now is the time and place for a public hearing on
8 tentative order R92015-0100. If adopted, the
9 tentative order will amend Order NO. R92013 --
10 0001. The NPDES permit and waste discharge
11 requirements for discharges in municipal separate
12 storm sewer systems -- that's why we call them
13 "MS4" -- draining the watersheds within the San
14 Diego region, also known as Regional MS4.

15 The purpose of this hearing is for the
16 Board to hear testimony and comments about the
17 tentative order from staff, the co-electees and
18 their elected officials, the environmental
19 organizations, the building industry and other
20 interested persons.

21 At this time, I want to allow any
22 Board member to make any disclosures if they have
23 received any ex parte communications or disclose
24 if they have a conflict of interest.

25 BOARD MEMBER WARREN: Thank you. I

1 will not be participating in this matter based on
2 work that my firm conducts.

3 CHAIRMAN ABARBANEL: All right. I do
4 want to clarify, this is a tentative order to
5 amend the existing permit, the regional MS4
6 permit. The regional MS4 permit was adopted after
7 two days of public hearing with extensive public
8 comment and testimony. The Board also held a
9 public hearing in February of this year to amend
10 the regional MS4 permit to incorporate
11 Copermittees. For the most part, the parties have
12 incorporated their comments from the 2013 comments
13 into this action. And the staff prepared
14 responsive comments that also incorporate the
15 Board's 2013 responses.

16 Given that, I want to make sure people
17 know that comments and responses to comments from
18 the initial adoption of the regional MS4 permit
19 from 2013 and the February amendment from this
20 year are part of the record, and they don't have
21 to reargue all the points they made earlier to
22 make them part of the record.

23 Procedures will be the following: The
24 Board will conduct this hearing in a relatively
25 informal matter. We have received several

1 advanced requests for blocks of presentation time,
2 which we plan to allow, and I will indicate at the
3 end of this formal presentation today. Although,
4 due to time constraints, we will not give Orange
5 County Copermittees all of the time they
6 requested, they will have time to address their
7 issues.

8 We will consider requests for more
9 time as the hearing moves forward. Interested
10 persons will generally have three minutes each.
11 As noted below, we have set a time for elected
12 officials to speak. Do we have any elected
13 officials that are here?

14 Then we will have a specific time for
15 that. Elected officials wishing to address the
16 Board, if so, at about 10 o'clock. It may happen
17 before that. Please don't leave.

18 We also received a request from Orange
19 County and Orange County Flood Control District to
20 ask clarifying questions of staff. We will
21 accommodate the request within their 30-minute
22 block of time.

23 If other parties want to ask questions
24 of staff or other parties, they may do so within
25 their time of allotment. If any speaker wants to

1 reserve time for closing arguments or rebuttal,
2 they should indicate the request at the beginning
3 of their presentation.

4 As always, Board members and counsel
5 can ask questions at any time. Questions and
6 responses won't count against the speaker's time.

7 Finishing up the formal structure, if
8 you haven't already, all persons wishing to the
9 address the Board must fill out a speaker card.

10 Either color?

11 We're colorblind as to the cards
12 today. Speaker cards are available on the table
13 at the back of the room. And as a reminder, if
14 you're using an electronic presentation, be sure
15 to give the board's executive assistant a copy so
16 it can be included in the record.

17 General order of presentations will be
18 as follows: The staff will begin in about 25
19 minutes.

20 Wayne, are you leading the staff
21 discussion?

22 MR. CHIU: I am.

23 CHAIRMAN ABARBANEL: As the EPA could
24 not attend today, a staff member will speak, in
25 effect, in their place. Elected officials will

1 get three minutes each, and then we will move on
2 to Riverside County Copermittees, then Orange
3 County Copermittees. The cities of Laguna Beach
4 and Dana Point will have 20 minutes out of the San
5 Diego County time, and San Diego County will have
6 10 minutes. The Building Association will have 15
7 minutes. The Coast Keeper and Coast Environmental
8 Rights Foundation, 30 minutes, and additional
9 interested persons not associated with any of the
10 organizations will have three minutes each after
11 about 1 o'clock.

12 Somewhere in there, we are likely to
13 need a lunch break, and at about 10:30 or so,
14 we'll also have a biological break.

15 MS. HAGAN: Mr. Chair, I want to
16 clarify. I may have misheard you. The San Diego
17 County Copermittees have 20 minutes. I think you
18 might have said 10.

19 CHAIRMAN ABARBANEL: I thought 10
20 minutes of their time went to Laguna Beach and
21 Dana Point.

22 MS. HAGAN: And then they have the
23 remaining 20.

24 CHAIRMAN ABARBANEL: All right.
25 Apologies to the County of San Diego.

1 information, I will have the time there.

2 MR. CHIU: You're only going to give
3 me only 25 minutes?

4 BOARD MEMBER STRAWN: I just want you
5 to be able to know how you're doing.

6 MR. CHIU: Okay.

7 Good morning, Chair Abarbanel, members
8 of the Board. My name is Wayne Chiu. I'm a water
9 resource control engineer in the storm water
10 management unit, and on the regional MS4 permit
11 team.

12 On the team with me are Christina
13 Arias -- she's not here right now. She'll come
14 back shortly. Our newest member, Erica Ryan, and,
15 of course, our supervisor, Laurie Walsh.

16 Today we bring to you for your
17 consideration, tentative order No. R9-2015-0100,
18 an order amending the regional MS4 permit to
19 incorporate the Riverside County Copermittees, and
20 the last piece in an effort that began in 2011 to
21 cover all the Copermittees in the San Diego region
22 under one MS4 permit.

23 At this time, I'd like to enter the
24 files into the record. Before I go over what
25 you'll be considering today, I'd like to go over

1 where we came from to get here.

2 To start, let's review what the
3 regional MS4 permit is regulating. "MS4" is short
4 for municipal separate storm sewer system. It's a
5 mouthful. For most people, the only part of the
6 MS4 they see are the roads, the curbs and gutters
7 and the storm drain inlets. But the storm water
8 and the liquids and materials that go into these
9 storm drain inlets contain pollutants that
10 discharge into creeks, streams and rivers. Those
11 discharges can have a significant impact on the
12 physical, biological and chemical integrity of
13 those waters. Like the trash, that can have -- or
14 an impact on the chemical and biological integrity
15 of the water in the Tijuana River watershed or the
16 impacts that hydro modification can have on these
17 creeks in Temecula and Murrieta in Riverside
18 County.

19 These creeks, streams and rivers
20 convey and transport the pollutants to downstream
21 water bodies like reservoirs, lakes, estuaries and
22 the ocean. And those pollutants can also have a
23 significant impact on the physical, biological and
24 chemical integrity of the downstream water bodies,
25 which impacts the quality of those downstream

1 waters for our use and the environment's health.

2 Now, because these pollutants in the
3 discharges from the MS4s are recognized as a
4 significant source of pollutants, the Federal
5 Clean Water Act requires that the discharges be
6 regulated under the National Pollutant Discharge
7 Elimination.

8 So MS4 discharges are regulated by an
9 NPS permit, and in California, the state water
10 board and regional water boards issue NPS permits
11 for MS4 discharges. In the San Diego region,
12 we've been issuing MS4 NPS permits since 1990.

13 So here's an overview of our region:
14 Our region consists of a large watershed that
15 drains the western part of San Diego county, the
16 southern part of Orange County and the
17 southwestern part of Riverside County. The areas
18 in yellow are areas with the highest
19 concentrations of developed areas and MS4s. Red
20 shows the water bodies that have been identified
21 as impaired by pollutants like bacteria, heavy
22 metals, pesticides and trash, among others.

23 As you can see, most of these impaired
24 water bodies are located within or downstream of
25 these developed areas, where there is the highest

1 concentration of MS4 discharges.

2 So there's a strong link between
3 discharges from the MS4s and the impaired water in
4 our region. The MS4 permitting program is one of
5 our most important regulatory programs to address
6 a significant source of pollutants causing our
7 contributing to these impairments.

8 Beginning in 1990, the San Diego Water
9 Board began issuing MS4 permits, which were based
10 on county and political boundaries. MS4 permits
11 are issued on five-year terms and are supposed to
12 be renewed every five years. The last MS4
13 permits, based on the political boundaries, were
14 the fourth term MS4 permits issued between 2007
15 and 2010.

16 After the renewal of the fourth term
17 Riverside County MS4 permit in November of 2010,
18 we are about to begin the cycle again with renewal
19 of the fifth term of San Diego County MS4 permits.
20 However, we decided at that time it was time to
21 try a new approach to regulating MS4 discharges
22 and water equality improvements faster.

23 Around the time the fourth term
24 Riverside County MS4 permit was being completed,
25 the San Diego Water Board staff started forming

1 its practical vision. During the formation of our
2 practical vision, as an organization, we realized
3 we were only focused on the work we were doing
4 today, like the numbers of inspections we had to
5 do, the numbers of reports we had to review or the
6 number of permits we had to issue, but not really
7 knowing if those actions were going to result in
8 improvements to water quality.

9 So our practical vision focuses our
10 work on water outcomes. We want to achieve
11 through our actions. We want to utilize our
12 resources in the best way possible to improve
13 water quality where it's needed most. We want all
14 the monitoring in our region to be coordinated to
15 allow us to better assess the conditions in our
16 receiving waters, in the most cost-effect possible
17 way for us. We want to recover lost and degraded
18 streams, wetlands and riparian habitats. We want
19 sustainable local water supply, and we want to
20 reach out and better communicate with public about
21 the water quality in our regions so people
22 understand improving water quality improves our
23 future. We believe if we can achieve these
24 outcomes, we will have healthy waters and healthy
25 people.

1 So while we were forming that
2 practical vision, we began the process of
3 developing the regional MS4 permit. The regional
4 MS4 permit is the embodiment of our practical
5 vision. We shifted the MS4 paradigm from
6 requiring implementation of actions like minimum
7 numbers of inspections and miles of streets swept.

8 On a jurisdictional scale, to
9 prioritize water quality conditions of concern,
10 require the coordination and implementation
11 strategies on a watershed scale to achieve
12 outcomes that will improve water quality. By
13 threat to obtain areas that are sources of
14 pollutants with BMPs that can remove those
15 pollutants before they get in our waters or
16 restoring and rehabilitating channels and
17 habitats, or implementing projects that can
18 capture storm water to be used as a local water
19 supply resource.

20 And finally, the watershed base
21 monitoring assessment program to determine if the
22 strategies are working to improve water quality
23 over time. This paradigm shift was supported by
24 San Diego County, Orange County and Riverside
25 County Copermittees, as well as the environmental

1 counsel.

2 To transition from regulating MS4
3 discharges primarily on a jurisdictional scale,
4 under three separate MS4 permits based on county
5 and political boundaries, we began the paradigm
6 shift in May 2013, we got another regional MS4
7 permit, which superceded the fourth term San Diego
8 County MS4 permit.

9 Next, the Board amended the regional
10 MS4 permit in February of this year to the extend
11 coverage to the Orange County Copermittees and
12 superceded their regional MS4 permit. Today,
13 we're proposing to amend the MS4 permit to extend
14 coverage to the Riverside County Copermittees and
15 supercede their fourth term MS4 permit and
16 complete the process of having one MS4 discharges
17 in the San Diego region.

18 This is a portion of Riverside county
19 and the San Diego region that will be covered by
20 the MS4 permit if you adopt the tentative order
21 today. This map is provided, Supporting Document
22 No. 2, in your agenda package.

23 There are four incorporated cities in
24 Riverside County with all or part of their
25 boundaries within the San Diego region: Temecula,

1 Murrieta, Wildomar and Menifee.

2 The remaining area in blue is the
3 unincorporated area in our region. And the creeks
4 shown in that dark blue area are operated and
5 maintained by the Riverside County Flood Control
6 and Water Conservation District.

7 The cities of Wildomar, Murrieta and
8 Menifee also have parts of their jurisdictions in
9 the Santa Ana region, regulated by our neighboring
10 water boards to the north.

11 During the development of the fourth
12 term MS4 permit, the San Diego Water Board and the
13 Santa Ana Water Board entered into an agreement to
14 have a single water board regulate the MS4
15 discharges in the cities. So the tentative order
16 will continue that agreement for the cities of
17 Murrieta and Wildomar to be regulated by the San
18 Diego Water Board, and for the city of Menifee to
19 be regulated by the Santa Ana Water Board. So
20 this is the part of the Menifee that will be
21 regulated by the Santa Ana region, and these are
22 the parts that will be regulated by San Diego
23 Water Board.

24 At the Orange County amendment
25 adoption hearing in February, the Board requested

1 we investigate two issues and consider including
2 them as amendments to the regional MS4 permit
3 during the proceedings to extend coverage to the
4 Riverside County Copermittees.

5 The first issue was language that will
6 define when a development project will be subject
7 to the development planning requirements for the
8 regional MS4 permit or the fourth term MS4
9 permits, known as prior lawful approval language.

10 The second issue was including an
11 alternative compliance pathway option that a
12 Copermittee could implement to be deemed in
13 compliance with water prohibitions and limitations
14 in the permit, even if they are actually not in
15 compliance. We held three workshops to discuss
16 these issues of key stakeholders, the
17 Copermittees, the environmental community and the
18 development community.

19 Board Member Olson attended the
20 workshop in April. Board Member Morales attended
21 the workshop in May, and in June, we provided a
22 final draft for the proposed amendments to the
23 stakeholders.

24 In May, the Riverside County
25 Copermittees submitted their reported waste

1 discharge to apply for renewal of their fourth
2 term MS4 permit. We released the tentative order
3 on July 31st for public comment, and that
4 tentative order and attachments are included as
5 supporting Document 1 in your agenda package.

6 The comment period closed September 14
7 for a 40 day comment period. We received 18
8 comment letters before the end of the comment
9 period, included as supporting document three in
10 your agenda package, and one late comment letter
11 which we provided in your supplemental package as
12 supporting document 11. We released a response to
13 comments report and errata sheet on November four,
14 included as supporting documents four and five in
15 your agenda package, and we released a revised
16 responses to comments report and revised errata
17 sheet on November 10 provided in your supplemental
18 agenda package as supporting documents 12 and 13.

19 Today we are ready for you to consider
20 options of the tentative order. When we released
21 the tentative order in July, the proposed
22 amendments to the MS4 permit can be categorized in
23 five areas. The primary reason for the tentative
24 order was to amend the regional MS4 permits to
25 include the Riverside County Copermittees as well

1 as continuing the agreement to allow the cities of
2 measure yet, which will do mar and men fee to be
3 regulated by one single water board. The
4 tentative order also proposes to include the prior
5 lawful approval language and alternative
6 compliance pathway option, developed as a result
7 of the public workshops we conducted, and I'll
8 discuss those in a little more detail, and finally
9 we amendment to see make corrections updates and
10 clarifications in the permit, which I'll summarize
11 later for you.

12 So let's start with the prior lawful
13 approval language. This language was requested by
14 the San Diego Copermittees and the development
15 community. We discussed this topic at length it
16 at the public workshops everyone freeze the permit
17 language should provide a clear understanding for
18 when a development project should be subject to
19 the development requirements of the regional MS4
20 permit. The project that meets the conditions of
21 prior lawful approval would not be subject to the
22 conditions of the regional MS4 permit but would be
23 allowed to implement the development requirements
24 of the fourth term MS4 permit.

25 After we released the tentative order

1 in July, we received two comment letters about
2 this issue. The City of San Diego supported
3 inclusion of the language but requested a
4 significant change that would remove the
5 requirement for the commencement of construction
6 activities as a condition for a project to have
7 prior lawful approval.

8 San Diego Coast Keeper and the Coastal
9 Environmental Rights Foundation expressed some
10 reservations with the language, and they also
11 requested some significant changes which would
12 remove prior lawful approval for projects that had
13 not begun construction activities -- or have --
14 for projects that have begun construction
15 activities after the effective date of the BMP
16 design manual and also require a development
17 project to have all approvals and permits in hand
18 to complete a project prior to the effective date.
19 We doesn't receive any comments from the
20 development community on this.

21 After carefully considering the
22 comments, we decided the conditions for the
23 project to have prior lawful approval developed
24 from the public workshops were reasonable and the
25 language was clear and easy to enforce, so we

1 didn't make any changes
2 Next I'll cover the proposed
3 alternative compliance pathway options. This
4 issue is related to an optional compliance pathway
5 that would allow a key to be deemed in compliance
6 with the receiving water prohibitions and
7 limitations of the permit. This is not part of
8 the offsite alternative compliance program that is
9 applicable to development projects; it's part of a
10 completely different discussion. Now, at this
11 point in time the Copermittees are not in
12 compliance with the receiving water prohibitions
13 and limitations and the or at least nobody thinks
14 they are. San Diego County, Riverside County and
15 Orange County Copermittees have repeatedly
16 requested the inclusion of an alternative
17 compliance pathway option they can implement to be
18 deemed in compliance of the receiving water
19 prohibitions and limitations. And even if they
20 are actually not in compliance with those
21 prohibitions and limitations. In contrast, the
22 the environmental community strongly opposes the
23 alternative compliance pathway because their
24 concern that it removes the potential for
25 enforcement for existing violations of receiving

1 water prohibitions. The version of the
2 alternative compliance pathway was considered by
3 this board at the may 2013 regional MS4 permit
4 adoption hearing. At the Orange County adoption
5 hearing, amendment adoption hearing, the board was
6 very interested in adding the optional compliance
7 pathway to the permit but agreed the issue
8 required additional discussion before it could be
9 included, so we thoroughly discussed topic at the
10 public workshops held in April, May and June of
11 this year with the Copermittees and the
12 environmental community.

13 At the workshops, the discussions
14 began based on the version of the optional
15 compliance pathway that was considered in May
16 2013. At the workshop, the Copermittees strongly
17 supported incorporating the optional compliance
18 pathway, but also wanted compliance during the
19 pathway process as well as more language that
20 would clearly state they were in compliance with
21 receiving water prohibitions and limitations.

22 At the workshop, the environmental
23 community was strongly opposed to putting the
24 optional compliance pathway in the permit, but for
25 discussion, if it had to be included, they wanted

1 provisions that clearly specified when a
2 Copermittee was no longer in compliance and they
3 were strongly opposed to the pathway preparation
4 process because they believe that compliance
5 during the preparation process would remove the
6 intention to propose a rigorous and comprehensive
7 alternative optional compliance pathway.

8 Based on the information we received
9 at the workshops, we chose to include the optional
10 compliance pathway into the regional MS4 permit
11 but not to include compliance during the
12 preparation process. As it so happens, on June
13 15th, the state water board adopted an order,
14 2015-00075, a presidential order which directs all
15 the regional water boards to consider including an
16 optional compliance pathway in all MS4 permits
17 going forward.

18 Now, if a regional water board chooses
19 not to include an optional compliance pathway,
20 then they would have to provide findings in the
21 permit that support not including it. If a
22 regional water board chooses to include an
23 optional compliance pathway in the permit, then
24 the optional compliance pathway is expected
25 incorporate certain principals in the order.

1 Fortunately the requirements of the regional MS4
2 permit and the optional compliance pathway option
3 we developed as a result of those public workshops
4 are consistent with the state water board's order
5 and incorporates the seven principals. The fact
6 sheet, which is attachment two to the tentative
7 order provided as supporting document one in your
8 agenda package have the requirements of the
9 regional MS4 permit and the optional compliance
10 pathway that incorporated seven principles of the
11 state water board's order starting on page F60 on
12 the fact sheet.

13 On this topic we received the most
14 written comments. We received comments from the
15 San Diego county, Orange County and Riverside
16 County Copermittees as groups as well as from
17 several individual Copermittees. The Copermittees
18 requested several modifications that, generally,
19 from our point of view, affect the rigor and
20 transparency of the alternative compliance pathway
21 options and would make the conditions much easier
22 to be able to have the privilege of being deemed
23 in compliance with the receiving water
24 prohibitions and limitations.

25 In particular, the Copermittees

1 requested a reduction in the number of milestones
2 that were required to be proposed for the
3 alternative compliance pathway schedules from one
4 milestone per year until a numeric goal is
5 achieved to just one or two milestones in a
6 five-year permit term. And they requested
7 language that would deem them to be in compliance
8 during the pathway preparation process.

9 The environmental community, again,
10 objected to the inclusion of the alternative
11 compliance pathway and asserted there were several
12 legal issues as well as the inconsistencies with
13 the state water board order that justified the
14 removal of the alternative compliance pathway
15 option from the regional MS4 permit.

16 There were no comments from the
17 development community.

18 So after carefully considering the
19 comments, they made a few minor modifications to
20 the alternative compliance pathway, but the most
21 significant change was reducing the number of
22 annual milestones required to be included in the
23 alternative compliance pathway schedules from one
24 milestone per year until a final numeric goal was
25 achieved, which we agreed was difficult to project

1 for 10 or 20 years, to just having five annual
2 milestones per permit term, to be revised and
3 updated with each permit term.

4 Now, the tentative order also includes
5 several amendments, corrections, updates, and
6 clarifications to the permit language.

7 CHAIRMAN ABARBANEL: Will you review
8 as well as you can the thought process of the
9 State Board in requiring alternative compliance
10 pathways?

11 MR. CHIU: Well, okay. The State
12 Board's order doesn't actually require us to have
13 an alternative compliance pathway. It requires
14 that we consider including an alternative
15 compliance pathway into the permit. Now, it is a
16 very strong encouragement that we include it in
17 the permit, and that's why, if we don't include it
18 in the permit, we have to provide good reason for
19 not including it in the permit. That's why we
20 have to provide findings in the permit that say
21 this is why we are not including it in the permit.

22 Now, on the flip side, for reasons
23 including it in the permit, I think they --
24 there's a recognition that -- it's unlikely that
25 the dischargers are going to be able to achieve

1 within our limitations within a five-year period,
2 and there's a recognition that it's probably going
3 to take multiple permit terms in order to get to
4 that end point.

5 But, you know, I think they wanted to
6 have some fairly rigorous and controlled process
7 in which the regional boards can oversee
8 implementation of some sort of process that will
9 provide some assurance that we can achieve those
10 limitations within a limited period of time, not
11 an unknown period of time.

12 EXECUTIVE OFFICER GIBSON: Mr. Chair,
13 if I could also offer a point of view another way
14 of looking, I think, at the state board's approach
15 at this is putting some meat on the bones of the
16 process the State Board set out in 1998 and 1999
17 for achieving water quality objectives through the
18 municipal separate storm sewer system permits and
19 program. That process was open-ended. It had not
20 been exactly clear the across the spectrum of the
21 environmental advocates and municipalities exactly
22 how the process was to be structured, where it
23 starts and stops, et cetera. Our approach in this
24 region permit is for that order and the order
25 itself I believe is to put structure to that

1 iterative process and to identify a particular
2 target or goals and achieve those.

3 In this case, with the alternative
4 compliance, we would be looking at all of the
5 outstanding water quality objectives that are not
6 being met that we have impaired water bodies for.
7 It's an option. Not every watershed or
8 municipality may take that approach, but that is
9 the basis for the State Board's approach in the
10 regional permit itself.

11 CHAIRMAN ABARBANEL: What are the
12 impediments for achieving those water quality
13 objectives in a five-year period?

14 EXECUTIVE OFFICER GIBSON: Mr.
15 Chairman, I think you will hear there are many
16 reasons why those are hard impediments. Number
17 one will be cost.

18 CHAIRMAN ABARBANEL: So there's no --
19 it doesn't violate the laws of physics?

20 EXECUTIVE OFFICER GIBSON: Not being a
21 physicist --

22 CHAIRMAN ABARBANEL: They don't have
23 to invent new physical laws in order to make
24 miracles happen. It's a matter of implementing
25 what they know how to do?

1 EXECUTIVE OFFICER GIBSON: It is a
2 question of technology and function.

3 BOARD MEMBER MORALES: Maybe to put it
4 in different terms, it's not a matter of
5 impossibility, it's impracticability.

6 EXECUTIVE OFFICER GIBSON: I am nodding
7 my head in agreement.

8 CHAIRMAN ABARBANEL: Well, you
9 mentioned technology. If we are unable to
10 implement something that remediates the water
11 quality issue, then it doesn't matter how much
12 money we spend on it, it's not possible. It may
13 be possible in 50 years with different equipment,
14 I don't know. Is that a kind of technical issue?

15 EXECUTIVE OFFICER GIBSON: I think
16 that's pushing it out to the edge of the envelope,
17 Mr. Chairman. I do think it's practical for us to
18 achieve our water quality objectives. In some
19 cases you may want to consider how those
20 objectives have been set historically in the basin
21 plan, and our permitting approach allows us and
22 the Copermittees to address that question while
23 working on the attainable goals.

24 The alternative compliance is an
25 option wherein, perhaps, a particular watershed or

1 with a particular storm water Copermittee, we
2 might actually be able to define the process for
3 getting there, know we've gotten there, and be
4 able to do so in such a way as to merit the
5 significant increase of the costs among one or
6 more Copermittees to achieve that.

7 And as a evaluation or approach for
8 that, municipalities would like to see some
9 assurance that they would not be held in violation
10 of water quality objectives while they are
11 undertaking that effort both in terms of the
12 implementation of the plan, which will certainly
13 take many years in some cases, and the development
14 of that plan, as you will hear testimony today,
15 what they want in terms of assurances on those.

16 I will simply point out in summation
17 that this issue has been with us for over 25
18 years. The federal regulations were issued in
19 1990, and if there was any ambiguity about the
20 obligation to comply with water quality
21 objectives, those were erased in late 1990s,
22 certainly with state board's order of 9801 to
23 9805.

24 Going forward, we have significantly
25 improved our capacity to manage our storm water

1 systems, far above and beyond what they were 15
2 years ago. It's now taking those tools and
3 applying them in the watershed and obtaining those
4 goals we are here to talk about today again.

5 Moving forward with that in a
6 practical way is our next step, whether or not the
7 Board considers the alternative compliance, you
8 have significant testimony on that, and I will be
9 glad to provide a recommendation during the course
10 of the day, but I'd invite you to hear the
11 testimony first.

12 CHAIRMAN ABARBANEL: I have one more
13 question.

14 EXECUTIVE OFFICER GIBSON: I hope that
15 I am not stealing Mr. Chiu's thunder for the rest
16 of his presentation.

17 CHAIRMAN ABARBANEL: Repetition will
18 not be harmful.

19 In assessing costs of achieving the
20 water quality, is the benefit of having achieved
21 it republic in many dimensions, including health
22 accounted for.

23 EXECUTIVE OFFICER GIBSON: At the
24 present time, I'm going to say that is an
25 imperfect science an incomplete science.

1 CHAIRMAN ABARBANEL: So I'll take that
2 as a no.

3 BOARD MEMBER OLSON: I'd like to ask
4 you, in terms of these milestones, how
5 prescriptive are they?

6 MR. CHIU: Certainly. The way it's
7 laid out in the permit, a milestone can be almost
8 anything. It's just a way to mark progress. So
9 it could be as simple as saying we need to develop
10 some sort of program. As part of that program, we
11 need to have, you know, a plan developed by
12 such-and-such time.

13 It could consist of some sort of
14 numeric interim goal for the final goal. It could
15 be implementation of a certain number of BMPs by a
16 certain date.

17 BOARD MEMBER OLSON: Can it be part of
18 a program that has alternatives?

19 MR. CHIU: The milestones are simply a
20 way for us and the public to be able to see what
21 the Copermittees are proposing to implement, if
22 they implement it within the time period they have
23 proposed, and then if that implementation is going
24 to move the needle towards achieving the final
25 goal.

1 BOARD MEMBER OLSON: Well, if you try
2 something, and it doesn't work, then is that
3 allowable, or do you try things that you're
4 guaranteed a success?

5 MR. CHIU: With the water quality
6 improvement plan, there is an aspect to have
7 adaptive management. If things change, you have
8 the ability to adaptively manage the program and
9 your milestones. That's why we changed the
10 milestones from, you know, one milestone per every
11 year until you achieve your goal, which, like I
12 said, 20 years down, you have 20 annual milestones
13 for one goal, it could get a little bit hard to
14 project 20 years out.

15 So we reduced it down to a five-year
16 period, which, then every five years, they
17 re-evaluate their milestones and then project the
18 milestones they plan to achieve within the next
19 five-year period.

20 BOARD MEMBER OLSON: If I understood
21 your language, they still need a milestone a year?

22 MR. CHIU: Correct.

23 BOARD MEMBER OLSON: So it's 20 in a
24 20-year period?

25 MR. CHIU: No, five. They only have

1 to propose five that they will try to achieve.

2 BOARD MEMBER OLSON: Five milestones?

3 MR. CHIU: Within a permit term.

4 BOARD MEMBER OLSON: So there's one
5 milestone per five years?

6 MR. CHIU: No, there's five milestones
7 per five years.

8 BOARD MEMBER OLSON: I'm confused.
9 Maybe you can repeat it one more time.

10 MR. CHIU: Initially, the language says
11 you must have an annual milestone for each annual
12 period until you achieve your numeric goal, and
13 you set up a numeric goal that you plan on
14 achieving, say, 25 years from now, you would have
15 to have 25 annual milestones. Now, what we
16 changed it to is instead of saying you have to
17 have 25 annual milestones, you have to have five
18 annual milestones and that final goal.

19 BOARD MEMBER OLSON: So you still have
20 to have -- I don't see what the difference is.

21 MR. CHIU: You start out with five, and
22 then as you learn something during those five,
23 when you submit your next five with your report of
24 waste discharge, you have learned something with
25 the first five, hopefully, and then you can

1 project your next five.

2 BOARD MEMBER OLSON: But you still
3 require the same number of milestones. What
4 you're saying is different in that you don't have
5 to lay out all 25 milestones.

6 MR. CHIU: Correct.

7 BOARD MEMBER OLSON: So -- I'm
8 struggling with this. So we are learning as we
9 go. So we have more knowledge at the end of five
10 years.

11 MR. CHIU: Hopefully.

12 BOARD MEMBER OLSON: Hopefully. So it
13 may be just as difficult to obtain an objective
14 after five years even with more knowledge, we may
15 realize there is more natural influence, and there
16 may be issues that we find out, too.

17 So what is the advantage -- I mean, I
18 can understand, but you could have three
19 milestones for five years. I'm not quite sure
20 exactly what the difference is except you think if
21 you have one milestone every two years, people
22 will not be working toward that milestone?

23 MR. CHIU: Well, I think, you know,
24 most of our permits -- I should say, the regional
25 permit has an annual reporting cycle, and I think

1 when it comes to showing progress, they want to
2 have something each year to show the Copermittee
3 or Copermittees as a group are implementing things
4 that are progress. That's why there is some
5 flexibility in what those annual milestones can
6 be, because we understand that implementing some
7 of these projects can take some time. But that
8 doesn't mean that, you know, we should wait five
9 years to hear whether or not it was completed.
10 There are interim steps in any project, so we
11 would like to see that there are ways to see how
12 things are moving along.

13 BOARD MEMBER OLSON: We all agree the
14 most important outcome is to achieve the
15 objective.

16 MR. CHIU: I agree.

17 BOARD MEMBER OLSON: And I want to
18 make sure that what we do doesn't become over
19 burdensome because you would like, and I would
20 like, and I believe the public would like money
21 spent to review the problems, and not hiring a
22 consultant to write a report that you have to --

23 MR. CHIU: I agree with that. That
24 speaks to the permit that we have tried to change
25 relative to previous permits. We have one annual

1 report per year now for the entire watershed
2 versus, you know, 50 annual reports that we had
3 the previous permits. So we reduced the amount of
4 paperwork that is necessary in order to record
5 everything.

6 BOARD MEMBER OLSON: Didn't you just
7 make a larger report? So in that report, you get
8 one big report instead of 60 little reports?

9 MR. CHIU: I would say we reduced the
10 areas that are unnecessary and increased the areas
11 that are necessary. So what we had in the past
12 was a lot of reports that were provided, a lot of
13 unnecessary information that was very difficult to
14 boil down into useful information. What we've
15 done with the reports now is we've reduced a lot
16 of the jurisdictional reporting requirements such
17 as a set of numbers and focused a lot of the
18 reporting on the monitoring data that is collected
19 and how the information from those assessments can
20 be used to improve the jurisdictional programs and
21 the strategies that are being implemented.

22 In the past we had a lot of
23 monitoring, but it wasn't really connected to the
24 programs and outcomes, and the programs and
25 outcomes were reporting a lot of the action they

1 were implementing without seeing how they would
2 improve water quality or contribute towards the
3 improvement of water quality.

4 We try to strike a balance between
5 what's necessary to report and what's unnecessary.

6 BOARD MEMBER OLSON: And we'll be
7 evaluating ourselves during this period?

8 MR. CHIU: Absolutely. This whole
9 process is intended to get everybody involved on
10 trying to achieve outcomes, not just the
11 dischargers, but us as well. We have to figure
12 out how to make our programs more effective, how
13 to make the permit more effective, because we have
14 permits in the past that, while they did move the
15 needle a little bit to improve water quality, it's
16 really hard for us to tell how or where they
17 improved or what actually did the improvements.
18 With what we've done with this permit, we've
19 really tried to change it so that we can figure
20 out what is working and what is not working, and
21 where things work, expand on that, where things
22 don't work, let's decrease that. It's trying to
23 maximize the efficiency that we all want with our
24 resources and our time. That's really what we're
25 trying to do with this permit.

1 The milestones are part of that. It's
2 hard to track how things are moving if you don't
3 have a way to track. That's partially why we
4 recognize that 25 years of milestones all upfront
5 is difficult. So let's break it down into smaller
6 chunks that are a little more manageable, but
7 let's really use that to think about how that can
8 help us in the future. That's why it's a
9 five-year process can spring from.

10

11 BOARD MEMBER MORALES: Staff, anybody
12 out in the audience, feel free to correct me if
13 you think I'm wrong, but in terms of what may have
14 been going through the State Board's head, I
15 wasn't in there, but as I see it, what they may
16 have been thinking is "Regional boards, we are not
17 going to micromanage you. An alternative
18 compliance pathway is something that you don't
19 have to have, but if you do not, it's incumbent
20 upon you to explain to us why you didn't include
21 one. We're not going to give you the benefit of
22 the doubt.

23 "On the other hand, if you get people
24 together and you adopt an alternative compliance
25 pathway, we'll give the benefit of the doubt."

1 That's kind of what I took from it.
2 So if anybody disagrees with that, please tell me
3 when you all speak.

4 MR. CHIU: I'll agree with you.

5 BOARD MEMBER STRAWN: I stopped the
6 clock when they started asking questions.

7 MR. CHIU: Thank you.

8 CHAIRMAN ABARBANEL: The Copermittees
9 that are going to be speaking later, I'm going to
10 ask you -- you heard staff's intentions of
11 reducing the paperwork load and making the
12 reporting more meaningful -- is that a good way to
13 describe it?

14 I would be very interested in hearing
15 your comment to that, specifically what you think
16 we put here, what we're putting together is going
17 to, in fact, reduce your paperwork load, or are we
18 still dumping some rather useless requirements
19 onto you?

20 We're not trying to kill trees or burn
21 up ink here. So please let us know your honest
22 belief on how we're doing. I think the proper
23 goal that Wayne stressed, let us know if we're
24 going in the right direction.

25 MR. CHIU: Can I make a comment on

1 that particular aspect?

2 At least for the last two years, we've
3 had these transitional jurisdictional runoff
4 management program annual reports. In the past,
5 we used to get 20 binders about that this thick
6 that we would have a hard time really
7 understanding what's in there. And now each
8 Copermittee has provided to us a two-page annual
9 report.

10 Going into the future -- we've also
11 been receiving their monitoring reports for the
12 watershed. And where we had one monitoring report
13 for the entire region, we now have eight
14 monitoring reports that are broken up by
15 watershed. So it's a little more watershed
16 specific. Like I said, we've increased some
17 reporting but decreased some reporting, as well.

18 CHAIRMAN ABARBANEL: It appears to me
19 you have about three minutes left.

20 MR. CHIU: That should be plenty.

21 BOARD MEMBER STRAWN: Take what you
22 need up to three minutes.

23 MR. CHIU: I will. I think I should
24 get three minutes and 14 seconds.

25 CHAIRMAN ABARBANEL: Take three

1 minutes and fifteen seconds.

2 MR. CHIU: Thank you for your
3 generosity.

4 BOARD MEMBER STRAWN: You're welcome.

5 MR. CHIU: The amendments included
6 several corrections, updates and clarifications to
7 the permit language. I'll summarize those for
8 you.

9 The amendments included revisions to
10 the requirements for two TMDLs in the permit. We
11 identified an inadvertent omission of an option to
12 develop a bacterial load reduction plan instead of
13 a comprehensive load reduction plan for the
14 beaches and creeks bacteria TMDLs. So we
15 corrected those TMDL requirements to allow for
16 bacteria load reduction plan to be developed. And
17 then we added some language to the Los Penasquitos
18 lagoon present TMDLs to help compliance.

19 We also amended the permit to update
20 the requirements for non-storm-water discharges to
21 reference a recently-adopted State Water Board
22 permit which regulates discharges from water line
23 flushing and water main breaks, and then, also,
24 change a reference to a San Diego Water Board
25 permit to a more recently adopted permit for

1 discharges for groundwater extraction.

2 And then we also added some language
3 to the fact sheet and response to comment to
4 clarify that if a Copermittee is in compliance
5 with the elicit discharge, detection and
6 elimination requirements, then the Copermittee
7 would be deemed in compliance with the effective
8 prohibition of non-storm-water discharges to the
9 MS4.

10 Finally, we will made a few amendments
11 to the development and planning requirements.
12 After the amendment to incorporate the Orange
13 County Copermittees into the MS4 permit, we
14 identified an inconsistency in the definition of
15 priority development projects compared to the
16 fourth term Orange County and Riverside County MS4
17 permits. So we corrected the definition to be
18 consistent with those previous definitions.

19 And as a result of those corrections,
20 we needed to include some clarifications on how a
21 Copermittee was expected to update their BMP
22 design manual with the corrected definitions.
23 After reviewing the written comments we received,
24 we decided a few initial revisions were warranted,
25 including language to clarify the effective date

1 of the BMP design manual and the definitions of
2 construction activities and redevelopment. So
3 those revisions we made in response to the
4 comments, along with the other revisions made to
5 the tentative order included in your revised
6 errata sheet provided in Supporting Document 13.

7 So to conclude, we recommend that you
8 adopt Tentative Order R9-2015-0100 with the
9 revised errata and Supporting Document 13 of the
10 MS4 permit to incorporate the Riverside County
11 Copermittees, as well as incorporate the prior
12 lawful approval language and the alternative
13 compliance pathway option.

14 BOARD MEMBER STRAWN: 26 seconds.

15 MR. CHIU: I'm available to answer any
16 questions you may have now.

17 BOARD MEMBER MORALES: No.

18 CHAIRMAN ABARBANEL: Thanks to
19 Mr. Chiu and staff for all of their hard work. I
20 really hope that the public -- I know a lot of you
21 that were part of the process will understand what
22 they've done. It's a lot of work that went into
23 this. A lot of effort.

24 MR. CHIU: Thank you.

25 Christina is going to read into the

1 record a statement from the EPA.

2 CHAIRMAN ABARBANEL: In a second.

3 Because of the time, and the mission of the Water
4 Board, physical, chemical, and biological
5 improvements, I'm going to declare a seven-minute
6 physical, chemical and biological break, after
7 which we will hear from elected officials and
8 Christina. Thank you.

9 (Recess taken.)

10 CHAIRMAN ABARBANEL: Are there any
11 elected officials who wish to speak to the
12 information discussion of Item 11?

13 BOARD MEMBER STRAWN: We have two
14 cards. Mr. Olvera, Mayor of Dana Point.

15 MR. OLVERA: Thank you very much.
16 Good morning. Carlos Olvera, Mayor of the City of
17 Dana Point, registered mechanical engineer with
18 the state of California.

19 We are trying to solve a problem, all
20 of us going in the same direction. I would ask
21 you not to give me a box wrench that you do not
22 know the size of the nut that has to be turned.
23 If you give me an adjustable wrench, I can use
24 that and get the job done. So give me the tools
25 that I can do and accomplish the job you want me

1 to do.

2 Thank you very much.

3 BOARD MEMBER STRAWN: Mr. Green.

4 MR. GREEN: South Coast Water

5 District, Bill Green.

6 BOARD MEMBER STRAWN: I recognize that

7 face.

8 MR. GREEN: Good morning, honorable

9 Board. It's good to be here once again.

10 As a resident of Dana Point, we live
11 in very water-conscious community, and we focus
12 and pride ourselves on water quality. To remind
13 the Board, I started surfing over 50 years ago. I
14 love clean water.

15 However, I have five unique
16 dimensional perspectives on water quality in
17 California. The first is, my vantage point was
18 from your position. As the governors of the
19 appointed water quality member of this Board,
20 serving with Gary and Eric to establish just
21 policies for the citizens of California.

22 My perspective has also been when the
23 USA EPA dictates to the state, CAL EPA lawyers
24 interprets them and renders opinions to the
25 regional staff, and the regional staff further

1 finds and recommends and interprets to your view
2 of the body to set policy and water quality
3 issues.

4 However, not all regions are setting
5 like policies. If not, why not are all regions
6 not the same in one state? Perhaps all counties
7 are not the same, as well, in one region. No
8 matter, it is a difficult question and a complex
9 answer.

10 As a second dimension, as a
11 supervisorial appointed commissioner to the
12 Riverside County Flood and Water Conservation
13 District, I have the privilege of implementing
14 policies and mandates and/or CIP programs.

15 As a third dimension, being an elected
16 official for the South Coast Water District by the
17 people representing them, and having to explain
18 why their taxes and fees are increasing as a
19 result of those mandates.

20 Four, as a state president for the
21 American Counsel of Engineering Companies, working
22 with the State Water Board to develop water
23 quality certifications for professional engineers.

24 My fifth dimension of water quality is
25 33 years as an avocado farmer, a member of the

1 Riverside County Farm Bureau, and a member of the
2 San Bernardino Irrigated Land where I personally
3 managed BMPs and do reports.

4 As a coastal community and entity of
5 the water district, water quality is our top
6 priority. Many beach cities work together to
7 implement water quality. Clean beaches mean happy
8 visitors to our community; therefore, we are
9 motivated to keep our constituents satisfied.

10 The South Coast Water District has
11 reduced water usage by 30 percent this summer,
12 well above the 20 percent target mandated by the
13 state. Aggressive sewer line inspections, as a
14 result of numerous sewer line (inaudible) have
15 included the state park at Doheny and the Dana
16 Point Harbor. We've done our fair share in our
17 community to preserve water quality.

18 Thank you very much for your time.

19 BOARD MEMBER STRAWN: Do we have any
20 other elected officials that I missed cards to?

21 Thank you. We'll go to San Diego
22 County.

23 CHAIRMAN ABARBANEL: No, we're going to
24 hear from Christina appearing for the EPA.

25 MS. ARIAS: Good morning, members of

1 the Board. My name is Christina Arias. I
2 actually stepped out of the room when you were
3 issuing the oath, so I believe I need to take the
4 oath.

5 CHAIRMAN ABARBANEL: Do you swear the
6 testimony you provide is true and correct. If so,
7 say "I do."

8 MS. ARIAS: I do.

9 We've been in contact with U.S. EPA
10 region 9 over the last several weeks, and,
11 specifically, David Smith has sent his regrets
12 he's not able to be here today, but he did ask us
13 to share some thoughts for you to consider.
14 There's two main items.

15 Number one, alternative compliance
16 pathway. Consistent with our prior comments on
17 proposed MS4 permits developed by the San Diego,
18 Los Angeles and Santa Ana region, EPA strongly
19 supports the proposed provision that permittees
20 would not be considered in compliance with the
21 water quality improvement plan provisions prior to
22 plan approval. Prior to a determination by the
23 regional board that the submitted plan contains
24 specific implementation commitments that are
25 sufficient to provide reasonable assurance that

1 TMDL and other relevant water quality based
2 requirements will be met. There is insufficient
3 basis to conclude that the permittees are or will
4 be in compliance.

5 Number two, this has to do with
6 clarifying expectations for the analysis and
7 planning under the alternative compliance pathway.
8 The proposed permit modifications include
9 additional language recognizing the availability
10 of an alternative compliance pathway based on
11 reasonable assurance analysis but provide only
12 limited direction concerning the regional board's
13 technical, analytical inclined expectations that
14 must be met by permittees pursuing this
15 alternative compliance pathway.

16 We have learned through our
17 observation of other regional board's experiences
18 with implementing this approach that more detailed
19 explanation of the regional board's expectations
20 greatly assists development of analyses and plans
21 that meet permit requirements.

22 If the Board adopts the proposed
23 language providing for this alternative compliance
24 pathway, we recommend you commit to promptly
25 develop a follow-up guidance to assist permittees

1 and other stakeholders in interpreting the
2 permit's provisions concerning this pathway.

3 It will best serve everyone's interest
4 if there are clear understandings about the level
5 of technical rigor necessary to demonstrate
6 reasonable assurance and the specificity of
7 implementation commitment necessary in the
8 associated implementation plans to secure
9 approval.

10 As EPA is currently working with the
11 state board on reasonable assurance analysis
12 guidance, we may be able to help the regional
13 board in developing guidelines to assist in
14 consistent, effective implementation of the
15 proposed permit alternative compliance pathway.

16 Thank you for considering these
17 comments. David Smith, manager NPDES, permit
18 section, U.S. EPA, Region 9.

19 CHAIRMAN ABARBANEL: Thank you. The
20 next speakers listed are the Riverside County
21 Copermittees. You'll have 15 minutes.

22 MR. MCKIBBON: Thanks. I won't need
23 that long.

24 Good morning, Mr. Chairman, fellow
25 Board members, I'm Stewart McKibbon with the

1 Riverside County Flood Control Conservation
2 District.

3 Our district is the lead permittee for
4 the Riverside County Copermittees, which consist
5 of the cities of Murrieta, Wildomar, Temecula and
6 the unincorporated county.

7 The first thing I want to do is say
8 we're pleased the staff and the board took this
9 opportunity of our enrollment in the regional
10 permit to include the alternative compliance
11 pathway. It's something we've been asking for for
12 many years, and to see it now is a very good
13 thing.

14 I also want to say, we are very
15 pleased with how staff has conducted the
16 introduction of the language to the community. I
17 want to say that Lorry Walsh and Wayne Chiu and
18 Mr. Gibson have been extremely helpful in
19 clarifying things that we -- we were trying to
20 understand, and they helped straighten us out a
21 little bit.

22 We have written comments on the
23 record, but what I want to take this 15 minutes to
24 do is just to focus on three issues that mean
25 quite a bit to our Copermittees. And you also

1 find out that it may mean something to our other
2 permittee friends in Orange County and San Diego.

3 The first thing, we believe the permit
4 should include compliance language for receiving
5 waters during the time the WQIP is being
6 developed. I'll be calling this "interim
7 compliance" while developing our plan.

8 In our conversations with the
9 executive officer and staff, they let us know that
10 they had concerns about it, and we just heard from
11 the EPA know that they had a concern that they
12 don't know people are going to follow through and
13 actually commit to improving water quality.

14 What I want to propose today, and I
15 provided this in writing to staff, but in more
16 detail is an approach that would provide for rigor
17 and accountability to the Copermittees during that
18 preparation phase. In short, what it is, is
19 simply -- you already have milestones for the WQIP
20 development in the permit. What we propose is
21 simply add deadlines for each one of those
22 milestones. If they're natural check-in points
23 that are already in the permit -- for example, we
24 have to start a public process or public
25 participation process to develop the model. We

1 have to have a committee, the consultation
2 committee. We have to submit an interim WQIP to
3 the regional board.

4 What we suggest is that we give
5 specific timeframes for when that has to be done.
6 And consistent with what's in the rest of the
7 permit, if we miss those timeframes and we're not
8 able to provide a rationale why we missed it, for
9 example, "We didn't have the meeting because
10 people were on vacation," instead of day 60, we
11 had it on day 72, that the regional board can say,
12 "That's a good rationale, and you're okay," and we
13 also have to provide some sort of plan to get back
14 on track if we're off track.

15 But if we don't make it on track, we
16 would recommend that the regional board can look
17 at this and then take away our compliance, because
18 we haven't performed like we said we would. What
19 we want to do is increase our accountability. We
20 want to increase our transparency, and we want to
21 increase our rigor during that formation process.

22 So like I said earlier, I provided
23 draft language to regional staff. I don't want to
24 go through it now and bog down the hearing, but
25 it's there if this Board is interested in

1 providing interim compliance to Copermittees.

2 The second issue I want to bring up is
3 a major issue. We did not include it in our
4 written comments, although I did bring it up in
5 our workshops, and that's the time available to
6 prepare the water quality improvement plan. Right
7 now, it's two years from the time of this adoption
8 that we have to complete the plan.

9 What I do for a living is I prepare
10 master drainage plans. That's what I do for a
11 living. I've done it six times in my life. Never
12 done one in two years. Never happened. We just
13 did one recently near Lake Elsinore. They only
14 covered 13 square miles. We ended up proposing
15 nine miles of channel and, probably, the total
16 cost of improvements was 50 million dollars. That
17 took us several years, like five, including
18 environment review, and over 9,000 hours of staff.

19 To try to compress that into two
20 years, my experience says that's going to be
21 really, really tough; it's not practical.

22 The second thing on why we want more
23 time and we should get more time is we want to
24 have a good plan. The best way to have a good
25 plan is community involvement, public

1 participation. If we have more time, then there
2 can actually be give and take. They can make a
3 suggestion; we can look at different alternatives.

4 If you only have two years, you have
5 to be very focused on getting to the finish line.
6 You can't look at better options. You might have
7 already made up your mind or you don't have the
8 time to really investigate what other people are
9 suggesting to you. So as a matter of having a
10 better plan, we recommend more time.

11 Third just another issue that -- this
12 permit originally came out in 2013. It was
13 recently readopted with our friends in Orange
14 County. This permit adds a public participation
15 process for the modeling, but there was no
16 additional time given. There was two years
17 before, now even more you have to do, you still
18 have two years. It simply was probably not fair,
19 is the right way to put it.

20 What we think would be a good time
21 period -- it would be tough but 36 to 40 months
22 from the adoption of this permit. That's similar
23 to what L.A. has; I think they have 40 months in
24 their permit. But we think 36- to 40-month,
25 something like that, will give that time

1 particularly for the interaction with the public,
2 get their input, incorporate their, ideas give it
3 a real shot, real alternative analysis.

4 The last thing I had is, Mr. Chiu,
5 when he was talking during the presentation talked
6 about the City of Menifee, and that the City of
7 Menifee is going to be governed by Region 8. They
8 need to participate in the process. The City of
9 Menifee has 1.3 square miles that is in the
10 watershed, and has no MS4 major outfalls. We have
11 the only one that's in the city. We control it
12 already.

13 They do have some curb and gutter, but
14 for the vast majority of the land that is in the
15 city, that is owned by private hands. So it makes
16 senses to us as a practical matter to excuse the
17 City from participation in the WQIP preparation
18 process. They really have nothing to do. They
19 don't even have an MS4 outfall. There's nothing
20 going on, really.

21 So the City of Menifee wrote a letter
22 that's in your written comments. We support their
23 letter. Also, support the -- there's discussion
24 earlier about milestones. We support having five
25 when we adopt our WQIP -- having the next five

1 years of milestones laid out. That's something,
2 as public works agencies, we have capital
3 improvement plans, which normally apply to
4 horizons. Those can be easily foretold. Trying
5 to predict something, year 15, year 20, 10, you're
6 going to end up changing it anyway. It's better
7 if you keep it close where you really have a good
8 control and can protect it better.

9 Finally, whether the actual reporting
10 increases our load, that was your question. That
11 came up, Ms. Olson. We believe there's some
12 consolidation, and there's a benefit from having
13 all of the information in one watershed and one
14 report. As far as the burden, Riverside county
15 permittees are only in one watershed.

16 We can definitely see if some of our
17 friends in San Diego -- the county has six or
18 seven watersheds -- this could be a burden on
19 them. For our own particular purposes, it
20 wouldn't be that much.

21 So I don't know. I've got six minutes
22 left. I can reserve that time for later in case
23 something comes up. I'd like to reserve that time
24 if there's any questions you have, I'm available.

25 BOARD MEMBER MORALES: Unfortunately,

1 you're the first speaker from the Copermittees so
2 I'm cutting right to it. Is the reason that the
3 Copermittees want, basically, to be deemed in
4 compliance while they're working on the WQIP so
5 they feel they're shielded from attack or
6 litigation or something like that? Are there
7 other reasons besides that?

8 MR. MCKIBBON: That's one reason.
9 Another reason is there is going to be a
10 substantial expense. We're talking a million
11 dollars to prepare a model and do all the meetings
12 that are necessary and all the alternatives that
13 we might have to accomplish. To have coverage --
14 that's real money; real commitment. Since we're
15 making that real commitment, there should be
16 coverage at the same time.

17 BOARD MEMBER MORALES: This will be a
18 question for everybody. You gave an estimate of
19 36 to 40 months as the timeframe for Riverside. I
20 am assuming that estimate is based on your
21 understanding for the availability of staff to put
22 into the process, and that will differ from
23 Riverside to San Diego to Orange County. So their
24 window timeframe may be different, may be the
25 same, may be wildly -- they may come in and say

1 "We can do it in two years." Some may say, "We
2 can't do it for eight. We don't have the
3 resources to get it done." That's a tough one for
4 me.

5 But I guess the last question I ha?ve
6 -- again, this will be for everybody is, having
7 anticipated that we were going to reach this point
8 today, have you all done any advanced work on the
9 WQIP process? Have any of your staff --

10 MR. MCKIBBON: Absolutely. We've
11 already gotten inventories, we're working on our
12 outfalls, determining whether they're persistent
13 flows or not; staff is working on that. They're
14 working to have a scope ready so I can go by
15 Thursday to consultants to do the modeling and do
16 the support work for the WQIP. We developed this
17 scope. We developed timelines. We've done a lot
18 of work already.

19 I've been talking to people that would
20 sit on the consultation panel. What we would like
21 to have is a public works director for the City of
22 Wildomar on this panel, and the city engineer for
23 Temecula on this panel. Why is that? Because we
24 have to make commitments to spending real dollars.
25 You need people to make decisions to do that.

1 That's not lower-level staff. Nothing against
2 lower-level staff, but they don't have the
3 authority and these people do.

4 So we have been doing work to do that.
5 We've also been talking to the water districts
6 here at the same time that we're doing this
7 regional planning effort, we should be doing
8 something that's not in the permit, which is storm
9 water recharge. I want to invite the Rancho
10 California Water District and Western Municipal
11 Water District to sit on the consultation panel so
12 we can examine and do storm water recharge at the
13 same time. It may not be in the WQIP, but it
14 would be in an adopted plan that's going to be
15 adopted by our Board.

16 And then going back to your middle
17 question, which was -- it's not just the fact that
18 the resources -- money is not the only resource;
19 time is an important resource. To have
20 interaction with people, you can't throw money at
21 them and think that's interaction. You have to
22 talk to them; you have to analyze what they
23 propose and have some give-and-take. You can't
24 sit there and say "I know what's best." It won't
25 fly. We want a plan that has community buy-in.

1 You won't get community buy-in if you stiff-arm
2 them on this process.

3 BOARD MEMBER MORALES: Maybe it was
4 inartfully phrased but I equated money with staff
5 positions.

6 MR. MCKIBBON: Right now I've got --
7 anticipating five people in house, working on it,
8 plus two consultants on the outside. It's going
9 to be a substantial investment in money for
10 Riverside County.

11 BOARD MEMBER MORALES: Thank you.

12 BOARD MEMBER STRAWN: I was going to --
13 with your permission, I'm going to add 30 seconds.
14 I don't want to charge people for answering the
15 question about the paperwork. I want to encourage
16 you.

17 CHAIRMAN ABARBANEL: Just for the
18 public's information, we bought Gary an atomic
19 clock.

20 MR. MCKIBBON: Appreciate your
21 consideration.

22 CHAIRMAN ABARBANEL: I have a
23 question. I understand your argument for
24 extending the time fully creating -- creating a
25 full-blown WQIP. Would an interesting or

1 acceptable middle position be that in a two-year
2 period, you have to come up with a draft of where
3 you're going but not come up -- that you may still
4 be working, but a final plan would come 12 to 14
5 months later.

6 MR. MCKIBBON: That's workable. I
7 want to point out there's no mention of getting
8 SEQA approval in the permit. That takes time as
9 well.

10 I want to say yes to your middle
11 ground -- I also want to say if you want the
12 permittees, you want them to build BMPs to
13 actually impact water quality, go to places that
14 have been hydromodified, if that's a word, we're
15 going to need a SEQA document, and you're going to
16 have to consider all these things together because
17 one of those SEQA things is the cumulative impact.
18 What is the cumulative impact do in all this?

19 You don't know until you have that
20 whole plan. And then we can go adopt it. That
21 plan, once adopted, is our Board authority to go
22 get right of way, to build these things, for us to
23 spend funds. So the SEQA is an important element
24 of this plan for the way it's being envisioned.

25 At no timeframe has been accounted

1 for. Some of these facilities may come later
2 because we need to do the SEQA, as well.

3 Thank you.

4 BOARD MEMBER OLSON: I just wanted to
5 understand this a little better. You have
6 submitted to the staff a plan that would have
7 certain requirements, but would give you -- but
8 would put the agency in compliance during the time
9 period that they're developing the water quality
10 plan.

11 MR. MCKIBBON: Yes, we developed
12 specific language, looks just like your permit,
13 that can be inserted to the permit. Here are the
14 check-in points. Here are the time frames when
15 we'll check in. We have to have a rationale and
16 plan to get back on track. Then the executive
17 officer can say you're out or whatever. I imagine
18 the executive officer would recommend to this
19 board our compliance be terminated until we adopt
20 a WQIP.

21 BOARD MEMBER OLSON: So I guess the
22 end of the time for comments was on September
23 14th. So you -- can you give me a timeframe about
24 when --

25 MR. MCKIBBON: I submitted it to Lorry

1 on Monday, and we developed it last week because
2 we knew that -- I don't know how this Board feels
3 about compliance during this time period, but we
4 wanted to have, if this board thought it was
5 acceptable, an option, something you could choose
6 from. "Heres something that's already been
7 thought about to incorporate into the permit." So
8 that's the idea.

9 We've always been asking for interim
10 compliance, but this is specific language that
11 could make that work, more than just saying: "We
12 want interim compliance," something more.
13 Something more accountable.

14 BOARD MEMBER OLSON: Thank you.

15 CHAIRMAN ABARBANEL: The next group of
16 speakers or individual speakers is the Orange
17 County Copermittees. You'll have 30 minutes.
18 Given the time, we will follow that with the
19 cities of Laguna Beach and Dana Point and the San
20 Diego County Copermittees, and then we will have a
21 lunch break.

22 MS. CORPANICH: Good morning,
23 Mr. Chair, members of the Board. I'm Mary Anne
24 Skorpanich from the County of Orange. I want to
25 thank you for the opportunity to speak with you

1 once again today and thank you in advance for
2 consideration of our comments and the kickoff for
3 a three-part presentation, to be followed by Ryan
4 Baron, County Counsel, and Jeremy Jungreis,
5 representing some of the city Copermittees. And I
6 did want to make note that our comments are on
7 behalf of all the permittees in South Orange
8 County, and that we would like to save whatever
9 remainder of time we have at the end for questions
10 and answers that may come later.

11 You may have noticed, but I did the
12 green card today because I'm here to say "Yay for
13 alternative compliance options and thank you."
14 Let me just -- I should also note you won't have
15 the pleasure of hearing from Richard Boon from our
16 staff today. He usually presents many witty
17 insights into the issues that we're talking about,
18 and always ends with quotes. I did begin with a
19 quote from one of my personal heroes.

20 So I've addressed your Board a number
21 of times asking that we have a permit with which
22 we can be in compliance. This has been a big
23 issue for us over the years. It's something that
24 we take as a point of pride in our careers that we
25 are operating a program, and we have a permit with

1 which we are in compliance. So we very much do
2 appreciate what you have included in the permit
3 today.

4 For as much as there's been progress
5 by the Orange County permittees improving water
6 quality in south Orange County, what we have
7 achieved over the years, even if we could achieve
8 a hundred times more than that, we would not be in
9 compliance if there was a single excuse in a
10 single water body on a single day, coming from any
11 discharge, whether it's our own MS4 system or
12 otherwise.

13 This issue of having a pathway to
14 compliance to extremely important to us. No other
15 area of environmental regulation, to my knowledge,
16 imposes new requirements where the onus is to be
17 in compliance upon adoption. Air quality
18 regulations, for example, there are always targets
19 out in the future are saying "You need to change
20 vehicle fleets by this year. You need to reduce
21 vehicle emissions by this source out in the
22 future." I think this may be unique in the realm
23 of environmental regulations. I think it's a big
24 step forward that permits today are being
25 processed and adopted that have a means by which

1 we can achieve compliance.

2 The amendments before you are critical
3 for the regulated community for a number of
4 reasons. First, this permit establishes a paradigm
5 shift, and it places the permittees in the
6 position of being responsible and being stewards
7 of the entire watershed, including not only our
8 own discharges but the discharges from other
9 parties, and also naturally-occurring conditions.

10 We do have instances that I think you
11 may be aware of where we have reference streams in
12 the region where numbers are higher than what the
13 basin plan objectives are. There are
14 naturally-occurring conditions or things that come
15 from non-anthropogenic sources that cause
16 exceedances that have nothing to do with what the
17 MS4s do or do not do, or how fast they do it, or
18 how well they do it.

19 In some cases, the solutions are
20 exceptionally long-term, and you were asked
21 earlier about impediments. We fundamentally need
22 to remake the structure of our communities that
23 have been developed over a hundred years and more
24 including the very patterns that underlie those
25 communities, and that's not something we can

1 achieve.

2 I think logistics is probably the
3 biggest impediment. Cost, of course, goes along
4 with that, but we couldn't achieve that in a day
5 or year or permit term. So having that pathway to
6 compliance helps us work around that type of
7 impediment. I would also say it's a long-term
8 process to achieve water quality standards,
9 complicated by vagueries in the science, lack of
10 technology, with some of the issues like
11 wet-weather bacteria, for example, what technology
12 we can use and logistics we can employ getting
13 back to the pure physics of how do you deal with
14 that volume and velocity of water that comes with
15 a storm. We don't have the means to achieve that
16 today. There's also shortfalls in funding and
17 education and development and so on.

18 You heard us say before the current
19 state of the environmental conditions was not
20 reflected in the permit, which we see as a
21 necessary starting point for what the permit
22 should have in it. Fortunately, with the water
23 quality improvement plan, with alternative
24 pathways we can now use those current conditions
25 going forward as the basis for the water quality

1 improvement plan. I think we achieved a great
2 deal of progress in that.

3 Finally, the Clean Water Act does not
4 require MS4s to meet effluent limits, and there
5 are many numbers that I mentioned earlier from
6 naturally-occurring or non-anthropogenic sources
7 that we cannot meet. If we're going to be
8 required to do so under this permit, then we need
9 to have a way to be in compliance.

10 This watershed planning, the water
11 quality improvement plan now provides the means to
12 achieve this, and the permit finally provides this
13 pathway for us, and is generally supported by the
14 permittees from South Orange County. It provides
15 a measurable profit for attaining compliance with
16 numeric standards, and it allows us permittees to
17 focus our resources on implementation rather than
18 checklists and, potentially, third-party lawsuits.

19 I'm going to be followed up today by
20 Ryan Baron from County Counsel to talk some more
21 about how we think we can make this better.

22 Thank you.

23 CHAIRMAN ABARBANEL: Any questions of
24 Mary?

25 BOARD MEMBER MORALES: What is Orange

1 County's response to, say, if somebody were to ask
2 that question, "If you're given this field during
3 that period you're developing the WQIP, what's the
4 incentive for you all to hurry or get it right?"

5 You know, in fact it could also be
6 phrased as if there's no downside to not hurrying
7 up or not doing it, what's the disincentive to
8 doing very little?

9 MS. CORPANICH: As I understand it,
10 you have two parts of your question; one is the
11 time urgency, and the one is the level of effort
12 or the degree of effort that we put into it, the
13 rigor with which we approach.

14 I would say in terms of the timeline,
15 you already have that built into the permits. You
16 already have a deadline for us to prepare this and
17 submit it to your staff.

18 BOARD MEMBER MORALES: Could Orange
19 County do it in two years?

20 MS. CORPANICH: We are are going to
21 make every effort to do that in two years. I will
22 say that my colleagues from Riverside County made
23 a very good point that you have better engagement
24 with the public, if you have a little bit more
25 time. I don't know that we would be asking for

1 more time if we aren't going to have an interim
2 compliance. It just stretches out the amount of
3 time that we are out there.

4 The other is the rigor with which we
5 prepare these WQIPs. I would say there the
6 incentive is already built in for us. We need to
7 submit something to your staff that your staff
8 will accept, so we also are having to submit
9 something that we believe that we can implement
10 and that we believe from our best analysis that
11 will get us to the finish line. So I really think
12 that incentive is already built into what you have
13 in the permit today.

14 BOARD MEMBER MORALES: I'm trying to
15 play on all the scenarios.

16 MS. CORPANICH: In fact, we've had our
17 permit now since February, I believe it was.
18 We've already started our public process. We've
19 already sort of laid out how we're going to attack
20 the work. We are well underway because we know
21 two years is not a lot of time. But I will tell
22 you that, probably, the most criticism we hear
23 from the public is that we're having these public
24 meetings, we're asking for their input, but we're
25 rushing to the next step because we don't have a

1 lot of time to grind through alternatives, as
2 Mr. McKibbon was pointing out, and to consider
3 that for more discussion and things of that
4 nature.

5 So we do hear that complaint a lot
6 from the public when we're on a timeline, as with
7 the water quality management plan, as well. We
8 had, I believe it was, two years to do that, and
9 it was a very aggressive schedule, but we did it.

10 CHAIRMAN ABARBANEL: May I ask you the
11 same question I asked Mr. McKibbon. I have never
12 prepared a WQIP, neither have you, yet there are
13 many things one might be able to do with a longer
14 time period. I think 40 months might be a good
15 time. What would be your response to having a
16 draft of the WQIP in two years to be discussed
17 with the staff but a final a year later, in which
18 you could respond to that, have more public input,
19 whatever you deem.

20 MS. CORPANICH: I think that would be
21 preferable. I think that would be good, and I
22 think, based on the -- from what I know, the
23 experience with the San Diego permittees has been,
24 it takes some time once they're submitted, until
25 we can get to final approval.

1 CHAIRMAN ABARBANEL: I wonder if I can
2 ask Mr. Chiu a question in that regard.

3 MR. CHIU: Yes.

4 CHAIRMAN ABARBANEL: Suppose the
5 County of Orange came in in two years with a WQIP
6 and came in with a modification, is there a
7 provision to accept that modification in place of
8 the two-year WQIP?

9 MR. CHIU: The way the process is set
10 up, they are provided up to two years to develop
11 the water quality improvement plan. The water
12 quality improvement plans are given two years to
13 be developed. The permit also allows those water
14 quality improvement plans to be updated on an
15 annual basis, so there's every opportunity to make
16 improvements to the plan itself, on an annual
17 basis, but they have to do it at least once every
18 five years in a report of waste discharge.

19 CHAIRMAN ABARBANEL: So there's a path
20 to do what I've been trying to explore. Come to
21 you in two years, "This is where we've gotten, but
22 we're not yet satisfied. We want more public
23 input. We want more time for new ideas and so
24 forth," and choose on their own to proceed for
25 another year, for example, and come back and say

1 "This is where we are after three years."

2 MR. CHIU: There's -- with the water
3 quality improvement plans, there's the water
4 quality improvement plan process, which has
5 elements that are required be included in the
6 plan, elements that need to be discussed, vetted
7 through the public participation process. There
8 are submittal requirements for us to review and
9 for the public to review along the way, and at the
10 end of the process, we have to determine whether
11 or not they're in compliance with the permit.

12 The plans themselves, I don't know
13 that we ever call them final plans, right, because
14 they're meant to be adapted over time, and they're
15 intended to be living documents, essentially. So
16 the first plan that they submit may be considered
17 final in terms of what we would accept as a
18 starting point, but it is never considered the end
19 point until water quality has been fully restored
20 and achieved in the watershed and/or region,
21 relevant to MS4 discharges, of course.

22 If you are looking to have some
23 opportunity for the Copermittees to submit a draft
24 plan of some sort, which we can then allow them to
25 begin implements or -- I'm not exactly sure how we

1 would transition from planning to implementation.
2 The way we have permits set up, again, once we
3 accept the plan, that is the starting point for
4 implementation. We've seen enough in the plan to
5 understand how they intend to implement their
6 program to achieve their goals.

7 Now, a plan does not necessarily have
8 to have every single water body combination under
9 the sun be part of the plan in order for it to be
10 accepted. At least for the water quality
11 improvement plan, only under the alternative
12 compliance pathway, there is a certain subset of
13 pollutants that need to be incorporated in the
14 plan, namely that is not every pollutant under the
15 sun, but it is a fairly large set of pollutants.

16 I understand there are other
17 pollutants that are currently in exceedance of
18 water quality objectives that are not on the 303
19 list, and they would also like to have coverage
20 for those pollutants, as well. The permit allows
21 for that, or the alternative pathway compliance
22 language allows for that. But that doesn't
23 require them to have every pollutant under the sun
24 under their water quality improvement plan.

25 They can focus a lot of their work on

1 those 303 listed to begin with and then adapt
2 their plan in the future to incorporate the other
3 pollutants that they are concerned with, as well,
4 in future generations of the plan.

5 We need to have someplace where they
6 begin implementation, and that is the part I'm not
7 quite will clear how we would do that if we had a
8 draft plan that would have some additional time
9 for a final plan.

10 CHAIRMAN ABARBANEL: Lest it leak out
11 that we're looking to the Los Angeles region for
12 leadership, do you understand why they have a
13 longer period than 24 months, as I understand one
14 of the speakers to say.

15 MR. CHIU: My recollection of their
16 language was that they had 24 months to develop
17 the plan, but it could have been because of their
18 rather long review period, and they had, I guess,
19 some back and forth with the plan developers as to
20 how the final plan should look. May have been
21 extended to 36 to 40 months, but my understanding
22 is they were given 24 months to begin with. And
23 similarly with the Santa Ana region, they've
24 proposed an alternative compliance pathway, as
25 well in their draft permit. That similarly

1 provides 18 months with an option to extend it an
2 additional 6 months for their plan. I think we
3 are right in there in terms of the amount of time
4 we're allotting to the development of a plan.

5 If you think about a permit term being
6 five years, if we were to have 40 months of plan
7 development, you would only have you know 20-some
8 months of actual implementation before you would
9 have to start relooking at a plan. I'm a firm
10 believer that planning has its place but
11 implementation is where you get results. I would
12 much rather have a plan that may have been rushed
13 a little bit but has great potential to improve
14 water quality and begin the implementation and
15 start learning from implementation and the
16 mistakes that you may make along the way.

17 MS. SKORPANICH: If I could just
18 elaborate on what Mr. Chiu said, our permit
19 expires in 2018. So we won't be talking to you
20 next year but it's not going to be a full five
21 years.

22 CHAIRMAN ABARBANEL: I understand the
23 transition to incorporating all three counties in
24 the same permit, but we'll see you in 2018.

25 BOARD MEMBER OLSON: I just had one

1 question. So if you had to say the greatest
2 hardship with meeting what the staff has proposed
3 and what the negatives are for you, can you sort
4 of elaborate on that for us.

5 MS. SKORPANICH: I think not having
6 that compliance option, and you'll hear more from
7 my fellow speakers on this presentation about what
8 not only can happen but what has happened when we
9 don't have some means of being in compliance with
10 the permit.

11 BOARD MEMBER OLSON: Do you also have
12 CEQA requirements.

13 MS. SKORPANICH: We're still sorting
14 out how exactly that would happen. While you're
15 the ones approving the plan, we're the ones
16 implementing it. Who's the lead agency? There's
17 some finite details we need to work out on that.

18 BOARD MEMBER OLSON: Have you had a
19 chance to look at what Riverside has proposed for
20 an interim compliance where you go -- where you
21 have coverage over the interim compliance which,
22 right now, the proposal before the Board is no
23 interim compliance.

24 MS. SKORPANICH: Right. So the three
25 counties actually met with your executive officer

1 two weeks ago or so, two to three weeks ago, and
2 talked about this very point. What we heard from
3 the staff at the time was that they had nothing --
4 no means by which they could enforce compliance
5 during the period of time the WQIP was being
6 developed, and we suggested that if there were
7 sort of reporting in milestones, deadlines that we
8 had to meet during the development process, that
9 they would then have a clear enforceability built
10 in.

11 We would agree that milestones during
12 development of the water quality improvement plan
13 should meet the needs of what your staff is
14 looking for.

15 BOARD MEMBER OLSON: Mr. Chiu, could
16 you comment?

17 MR. CHIU: I'm sorry, exactly what was
18 the topic we were talking about?

19 BOARD MEMBER OLSON: What we were
20 talking about was there was a proposal brought
21 forward by, as I understand it, by Riverside and
22 the three counties met with our executive director
23 and it was said that you couldn't have interim
24 compliance because there would be no way to
25 enforce it. They're saying if you had certain

1 things built into the interim compliance...

2 I'd like to hear your view on that or
3 what the staff concluded.

4 MR. CHIU: So we received a proposed
5 set of language from Mr. McKibbon early this week.
6 We reviewed it. The way they have structured
7 their compliance pathway during the plan
8 preparation process essentially boils down to
9 document submittals or process completions. It's
10 not really having to do with improvements to water
11 quality. It is all about process, and as long as
12 they have met some process requirements in the
13 interim time between those processes being
14 completed, they would be deemed in compliance.
15 But compliance would being, essentially, with
16 their submittal of a notice of intent to develop a
17 plan.

18 For us, at least in this region, we
19 didn't think it was appropriate to be granting the
20 Copermittees -- what we consider a real privilege.
21 I mean, this compliance pathway is not a right.
22 This ability to be deemed in compliance is not a
23 right; it is a privilege. We strongly believe
24 that in order to have a privilege like this, to be
25 deemed in compliance, there has to be something to

1 show us compliance with receiving water
2 limitations will, in fact, be achieved at some
3 point in the future.

4 Until we can see a plan and the
5 content of that plan, it's very difficult for us
6 to make that determination. So, you know, in a
7 lot of ways, what we consider as a compliance
8 pathway, it's kind of like a real -- it's kind of
9 like a club. It's a club of very special
10 Copermittees that have made a real commitment to
11 improve water quality.

12 The way we formed our club is to have
13 some things that need to be completed before you
14 can actually enter the club. In other regions,
15 they make their club a little less exclusive than
16 our club, and we think that to earn a place in our
17 club, you have to show us that you deserve that
18 spot. And for us to say that anybody can be in
19 the club as long as you hand in a slip of paper,
20 we just don't think that rises to the level of an
21 exclusive club that we want.

22 BOARD MEMBER OLSON: I get confused.
23 Do you not -- do you think people are somehow not
24 serious about trying to improve the water quality?
25 If they meet their goal, continue to meet their

1 goal, make the environment better, their lives are
2 much easier to deal with. So I understand that
3 you want people to be very serious about what they
4 do. It's my intention or my belief people are
5 serious.

6 So maybe I'm missing something, and
7 you'll have time to speak, and maybe you can
8 explain it a little better to me because I really
9 would like to be able to be able to understand
10 your viewpoint.

11 MR. CHIU: I understand how it seems a
12 little odd that we keep on making it seem like
13 there's no real dedication to improving water
14 quality. We see the efforts the Copermittees have
15 gone to in order to improve water quality. At the
16 same time, we have also seen the Copermittees have
17 not taken the opportunity that they've already had
18 to improve water quality. We've had this interim
19 process in place since our 2001 permit, the third
20 term permits.

21 That interim process was intended to
22 be self-implementing by the Copermittees. They
23 were supposed to tell us when there were
24 exceedances caused by their MS4 discharges, and
25 they were to prepare a plan to tell us how they

1 would address those exceedances.

2 Since we've put that language into the
3 permit, not one Copermittee has come forward to
4 say "We are causing this." In fact, it was always
5 the opposite. It is -- there are problems in the
6 receiving water, we acknowledge that. But we
7 don't have data to show we are causing it. We
8 don't believe we should be doing much more than
9 what we're doing today.

10 It's hard for us, at this point in
11 time, to really believe that they have a true
12 commitment to improving water quality to the level
13 we believe is necessary, because this board has
14 been mandated and given the great responsibility
15 of protecting the waters of this state -- not just
16 protecting, preserving, restoring and enhancing
17 the waters of this state.

18 We're not just trying to make it was
19 good as it was today. We want to make it as great
20 as it was before and we want to make it better for
21 tomorrow. So it's not that we want to keep the
22 status quo. That's our mission. So in a lot of
23 ways, what we've seen and heard from the
24 Copermittees is they agree with our mission, but
25 they don't agree that they have to help us in our

1 mission.

2 The water quality improvement plan was
3 our way of saying, "Well, we've heard from you on
4 many occasions that you know a better way. That
5 can happen, but you need to give us the
6 flexibility to do it because these permit
7 requirements are tying our hands. It's making us
8 do things that are not necessary."

9 So we changed it. We said, "Here's
10 the flexibility you're looking for, but we want
11 the outcomes."

12 We've tried to align our objectives as
13 much as possible but the water quality improvement
14 plan and the alternative compliance pathway,
15 again -- the alternative compliance pathway is, in
16 our mind, a privilege. It is something that is
17 going to say you are in compliance. We will
18 consider you in compliance knowing full well that
19 your discharges are actually causing or
20 contributing to impairments, right?

21 So we need to have some assurance that
22 we will get credible plans, durable plans,
23 rigorous and transparent plans that everybody,
24 including the public, can understand how we will
25 get from today's water quality conditions to water

1 quality conditions we say we want, and what this
2 Board wants.

3 I think we're getting a lot by
4 including this alternative compliance pathway to
5 begin with. To actually offer compliance during
6 the preparation process, I think that is asking a
7 little much when we have not seen a record.

8 BOARD MEMBER OLSON: Thank you very
9 much.

10 *Mr. Chairman, members of the Board,
11 we're going to hear a range of discussions on this
12 today, and this is a good opportunity to hear from
13 other folks on this very different subject.

14 CHAIRMAN ABARBANEL: Moving on with
15 Orange County.

16 MR. BARON: Good morning, Chairman
17 Abarbanel, honorable Board members, Ryan Baron,
18 County Counsel's Office, County of Orange. I
19 think the shot clock is at 25:30, for the record,
20 but who is counting. I'll try to be brief.

21 I want to begin by saying that we join
22 in the comments of Riverside and San Diego County,
23 but we come with one issue today on behalf of the
24 Orange County permittees. That's been the biggest
25 issue for us since 2013, when the regional permit

1 was adopted. It's been the biggest issue up and
2 down the state that was dealt with by the state
3 Board order this summer; that is compliance during
4 development and during implementation.

5 Just to give you a little road map
6 where I'm going. First I'll talk about the
7 background for development and implementation in
8 Orange County. Some of the assumptions and
9 implications about the WQIP planning and
10 development process. A little background on the
11 State Board order on the LA permit, and then some
12 response on EPAs comments, and then Mr. Youngrice
13 is going to follow up with some of the recent
14 litigation of an MS4 permit in South Orange
15 County.

16 In order to understand our request --
17 I'm going to refer to as "full compliance" --
18 compliance during the development process, I want
19 to first talk about the process that's going on
20 right now. Orange County enrolled in the regional
21 permit in February of 2015. It began the WQIP
22 process in August 2015 to, as you'll see there
23 from the first arrow, to determine an approach,
24 identify existing data sources, obtain public
25 input and form a consultation panel.

1 Under the tentative order, this is
2 over a two-, two-and-a-half-year process from
3 February 2015 or August 2015 when it began to the
4 fall of 2017. The next few years, spent
5 developing a detailed and rigorous implementation
6 plan with the input of 12 Copermittees, various
7 stakeholders and the public. It's a fairly
8 significant effort, which I'll talk about in a
9 second.

10 The technical consultant costs alone
11 are estimated to be about \$500,000 for this
12 two-year period. That does not include internal
13 staff costs, which are usually from 20 to 50
14 percent of a project, CEQA review and the need for
15 negative declaration or programatic EIR. Those
16 can cost a half million dollars by themselves.
17 And attorney review of the WQIP, looking for
18 compliance, which is going on in L.A., and all the
19 cooperative agreements that both sides might have
20 in house get involved in, trying to put together,
21 multi-party contracts, take them to the 12 city
22 councils and and district boards to enter into
23 these agreements and change scopes of work and
24 consultant contracts and so forth.

25 So it's a fairly significant effort in

1 this two-and-a-half-year process. This is a list
2 of the pollutants of concern from 303 impairment
3 that Orange County will be dealing with and south
4 Orange County, that will be preparing final
5 numeric goals for, compliance schedules, other
6 implementation strategies and control measures.

7 So without compliance during the
8 two-and-a-half-year period of development, the
9 Orange County permittees will need to strictly
10 comply with the numeric limits for each of these
11 pollutants during this development period.

12 Now, normally when a pollutant has --
13 or a water body is on the 303D list, the state is
14 required to prepare or establish a total maximum
15 daily load, TMDL. If the state does not do that,
16 they can be sued to be establish the TMDL. If the
17 state fails to do so, the EPA must establish one.

18 In my opinion, when a county and the
19 permittees are putting together interim and final
20 numeric goals, implementation plans, control other
21 strategies, these are the things that typically go
22 into a TMDL, and it's accompanied by an
23 implementation plan that goes into the permit
24 later on when it's adopted.

25 Essentially, the permittees through

1 the WQIP process are preparing TMDLs, time
2 schedule, orders compliance schedules on behalf of
3 the state during this time. TMDLs typically take
4 several years to develop. They can take a decade
5 or more to implement. And we are sort of taking
6 on this responsibility in order to improve water
7 quality and hopefully obtain full compliance
8 during development and during implementation.

9 Now, most what I'm going to focus on
10 is development, but I will touch briefly on
11 projected implementation costs for coliform in
12 south Orange County. Geo Syntech, the county's
13 consultant, did a rough analysis including that.
14 Implementation costs alone will be somewhere
15 between 1.6 billion to 2.1 billion for the south
16 Orange County watershed. This will include some
17 other combinations as well, but it's primarily
18 looking at coliform bacteria.

19 CHAIRMAN ABARBANEL: These are five
20 year costs or annual costs?

21 MR. BARON: I believe this is the
22 total projected cost for a 10, 20 or 30-year
23 period.

24 BOARD MEMBER MORALES: That makes a
25 difference.

1 BOARD MEMBER OLSON: That makes a big
2 difference.

3 BOARD MEMBER MORALES: Could you give
4 us the background on one of those numbers so we
5 know what went into the reason.

6 MR. BARON: If I could call up Richard
7 Moon.

8 MR. MOON: Richard Moon with the
9 County of Orange. I've not taken the oath.

10 CHAIRMAN ABARBANEL: We can fix that.
11 Do you swear the testimony you will
12 provide is true and correct. If so, say "I do."

13 MR. MOON: I do.

14 So we had we asked Geo Syntech to look
15 at the cost projections prepared for Los Angeles
16 County, and the costs that were available for the
17 WQIPs that have been prepared for San Diego
18 county. And this, as Ryan said, focused
19 principally on bacteria, but they calculated a
20 range of cost for meeting water quality
21 objectives, standardized on impervious areas. So
22 the costs have been pulled from all of these
23 different plans, and I think they looked at
24 between nine and 12 of these watershed management
25 plans.

1 From those, we arrived at a range, so
2 at the low end, 1.6 billion. The top end of the
3 range, 2 billion, based on figures called from
4 these other plans.

5 CHAIRMAN ABARBANEL: Did those plans
6 take into account the financial benefits from
7 having implemented the plans?

8 MR. MOON: No.

9 CHAIRMAN ABARBANEL: So one can assume
10 there will be benefits, and the numbers will be
11 comensurably smaller.

12 MR. MOON: That's correct.

13 BOARD MEMBER MORALES: Again, is it
14 based on per year? Per 10 years? Per 100 years?

15 MR. MONN: It's the total projected
16 cost. So we would need to spend if we --
17 regardless, whether you do it over one year or 40
18 years or 20 years, yes.

19 CHAIRMAN ABARBANEL: Other questions?

20 BOARD MEMBER STRAWN: Now year
21 dollars?

22 MR. MOON: Yes.

23 MR. BARON: The second issue I wanted
24 to bring up before I get to the punch line, I want
25 to discuss some of the assumptions and legal

1 issues involving the WQIP process. It's been said
2 compliance is not a right, but, in fact, the way
3 environmental law works, you're deemed to be in
4 compliance until you're out of compliance, and
5 when you're out of compliance there come
6 significant civil penalties and even criminal
7 sanctions under the Clean Water Act. We take
8 compliance as a big deal, and it's sort of my job
9 to worry about it.

10 By way of legal background, Courts
11 have held that MS4s are not required by the Clean
12 Water Act to strictly comply with the numeric
13 effluent limitations, and the State Board order
14 went through a thorough analysis in this case. It
15 came to the same conclusion. That was also
16 reiterated in an opinion in a circuit court in
17 Maryland, that federal law does not require MS4s
18 to meet strict numeric standards.

19 Now, EPA has not promulgated any
20 binding regulations to that effect. When EPS has
21 encouraged states to require strict compliance for
22 numeric limits, where feasible, it has been
23 through guidance documents; the most significant
24 of which was 2014 EPA storm water memo on the
25 establishment of TMDL waste load allocations where

1 it said "This memorandum is guidance and does not
2 impose legally binding requirements on EPA or the
3 states.

4 The state boards also analyzed this
5 particular memo and came to the same conclusion
6 that I'm articulating today. However, the State
7 Water Board clarified its prior order on receiving
8 water limitations, and it said that regional water
9 boards should require strict compliance with water
10 quality standards.

11 So, in essence, what I'm trying to say
12 is, it's not a federal issue; it's a state law and
13 policy issue to basically go through the WQIP
14 process, which is premised on meeting numeric
15 limitations at the end of that process. The third
16 point I'd like to discuss is the implications of
17 alternative compliance pathway. The permittees
18 are required to develop watershed improvement
19 plans. They have the option under the tentative
20 order to develop interim compliance and final
21 numeric goals, strategies, compliance schedules,
22 annual milestones, if they choose in order to
23 obtain compliance at the Executive Officer
24 approval of the implementation plan.

25 So, again, we've talked about this

1 many times in the workshops last summer: This
2 effectively requires permittees to not just to put
3 together a plan, but to put together a very
4 rigorous, expensive development implementation
5 plan, that is almost identical to developing a
6 TMDL, compliance schedules, time schedule orders
7 by the permittees in this two to
8 two-and-a-half-year period.

9 Those are typically obligations of the
10 state. The state typically has the responsibility
11 with collaboration of the permittee to establish
12 those.

13 In this case, the permittees will be
14 taking on all of those costs and responsibilities
15 and submitting it to executive officer, hopefully
16 for approval of these TMDL compliant-schedule-like
17 improvement plans. So we feel, and as Richard
18 Moon has said, you're becoming the ultimate
19 stewards of the watershed in taking on a lot of
20 these obligations.

21 So I guess with a fear of sounding
22 like my 5-year-old kindergarten daughter, we feel
23 there's a fundamental fairness that should be with
24 being deemed in compliance at the time we tender a
25 notice of intent to develop one of these plans.

1 This is the path followed in LA. It's also the
2 path being proposed in Santa Ana, and I believe
3 it's the path being heard today in the Bay Area,
4 as well.

5 If there's extensive planning to deal
6 with state requirements and taking on a lot of the
7 state's obligations, in costs and resources, there
8 should be an incentive to have full compliance
9 from the start of the development process to the
10 end of implementation, so long as the permittee is
11 diligently and rigorously adhering by that
12 development schedule and meeting all those
13 milestones.

14 Planning and development is
15 fundamental to implementation. I don't believe it
16 can be bifurcated or sort of have this line drawn
17 as to where that approval should be. The planning
18 and development process will include prioritizing
19 pollutants, extensive modeling, setting interim
20 goals, assessing strategies, et cetera.

21 I wanted to give some background on
22 the State Board order, because that came up early
23 on. The State Board, on page 15 of the order,
24 started out, "We are sympathetic that receiving
25 water limitations may result in many years of

1 noncompliance."

2 So the State Board rightfully
3 understood the position that the MS4s were in as
4 transporters of water and not actual dischargers
5 -- industrial dischargers discharge pollutants in
6 their chemical manufacturing process.

7 But as transporters of water, it would
8 take years, many years of technical efforts to
9 comply with receiving water limitations. It said
10 it was reasonable to provide for an alternative
11 compliance process if seven principles were
12 followed.

13 The fact sheet states the regional
14 water board is to consider an alternative
15 compliance option. But actually, in my
16 interpretation of the State Board order, which I
17 think is probably with Mr. Morales's
18 interpretation, is Principal 3 says phase 1
19 permits should provide for a compliance
20 alternative that allows permittees to achieve
21 compliance with receiving water limitations over a
22 period of time. Consider is used on page 51, as
23 part of that "should implement."

24 To consider the L.A. WMP, EWMP pathway
25 as a potential option. In a footnote, the State

1 Board order also says you can look at (inaudible)
2 options, so long as those meet the several
3 principles set out.

4 The idea is that an alternative
5 compliance pathway should be implemented to
6 achieve compliance over a period of time, and if
7 one is not, or one of the other principles aren't
8 followed the region specific or permit specific,
9 the reason should be articulated. The
10 regional board found that compliance during the
11 development period was sufficiently constraint and
12 reasonable because the permittees were still
13 having to meet the relevant deadlines for
14 watershed management, planning and development.
15 They were still having to implement low-impact
16 development, green streets policies, and other
17 watershed control measures. Those measures were
18 not allowed to be put on hold during that 18-month
19 or 24-month period.

20 In fact, the initial version of the LA
21 permit was so stringent that if a permittee did
22 not hit one of those development milestones, it
23 was found out of compliance and could not come
24 back into compliance until the implementation plan
25 was approved by the executive officer at the end

1 of the period.

2 The State Board found that was too
3 stringent and changed the L.A. permit and allowed
4 dead lines to be adjusted or extended for good
5 cause.

6 So we believe the tentative order, as
7 written, does not follow their principle 3.
8 Instead of allowing compliance to (inaudible) over
9 time, it requires permittees to strictly comply
10 with the prohibitions and limitations immediately
11 upon enrollment and throughout the two,
12 two-and-a-half-year planning period, or four
13 years, whatever this Board decides to set.

14 There's no ability right now to
15 prioritize pollutants. WQIPs are premised on
16 prioritizing pollutants so that you are chasing
17 the biggest pollutants of concern. However, that
18 prioritization doesn't come into affect until the
19 WQIP is approved by the executive officer. So
20 there really is a status quo period during this
21 two to two-and-a-half-year time period where we
22 have to worry about each and every one.

23 We also believe that there's no permit
24 specific or region specific finding for this
25 partial compliance option that's being offered in

1 the permit and would ask that if the Board chooses
2 not to, then we would need to amend the fact sheet
3 or permit to articulate that reason, consistent
4 with Principle 3 and 4.

5 I'm going to talk a little bit about
6 the EPA's comment letters. They were mentioned in
7 the response to comments EPA filed --

8 CHAIRMAN ABARBANEL: Before you go
9 into that, I want to ask you a question.

10 It seems to me we've been struggling
11 -- I've heard today that we as concerned citizens
12 about water quality, have been struggling for at
13 least 25 years to find a way to achieve what we
14 have in mind as far as water quality. It hasn't
15 worked really well so we're trying different ways.
16 Region 4, Los Angeles, is trying one way. Our MS4
17 permit gives a lot of responsibility to the
18 individual Copermittees and asks them to develop
19 water quality improvement plans.

20 In 2018, do you anticipate that the
21 board -- I don't know what the Board composition
22 will be then -- are going to ask you for new water
23 quality improvement plans or relatively simple
24 modifications, which will not be on a new path but
25 a step along that path?

1 I'm trying to understand whether you
2 see this as a long-term issue in which you will be
3 deemed out of compliance or whether it's a
4 short-term issue from transition to a new method
5 that that we hope is much more effective.

6 MR. BARON: I think it's definitely a
7 long-term problem. I'm not a scientist, but I
8 believe that there have been improvements in the
9 water quality. And I think there have been
10 significant improvements in dry-weather
11 conditions. The problems still remain with
12 pollutants like bacteria and other wet-weather
13 conditions.

14 I think that there will be one
15 implementation plan -- now to the WQIP, that will
16 be hopefully approved in 2017, when the permit is
17 renewed, and it will be subject to modification as
18 folks go through an adaptive management process
19 and monitoring gives them the data they need to
20 adjust their programs.

21 So I think the problem itself is
22 long-term, based on science, technology, funding.
23 Municipalities like Orange County talk about
24 funding because we have to look at budgets. But I
25 think the real issue -- not the real issue but

1 subsequent to that is also how do you tackle
2 things like bacteria? What types of technology
3 are there for selenium when it's naturally
4 occurring?

5 So I think the problem is long-term.
6 The compliance issue is definitely short term in
7 the sense that this is a two, two-and-a-half-year
8 period that we fear we will be out of compliance
9 for. If we develop a rigorous plan, we'll be
10 deemed in compliance.

11 Overall I think it's a long-term
12 issue. I don't for foresee a new plan being
13 developed in 2018 unless they're so poorly
14 fashioned.

15 BOARD MEMBER MORALES: I hear it's
16 going to be a two, two-and-a-half-year period in
17 which you all will be out of compliance. You're
18 probably, today, not in compliance, correct?

19 MR. BARON: It was said on the record
20 at the May 2013 hearing that we were out of
21 compliance.

22 BOARD MEMBER MORALES: And how long
23 has that been?

24 MR. BARON: I would argue under the
25 federal Clean Water Act, you go through the best

1 management practice and that is NEP. So to the
2 extent that we're not meeting numeric numbers,
3 yes, that is a compliance issue. I see where
4 you're going. It's not necessarily --

5 BOARD MEMBER MORALES: Is this
6 anything new, is the basic question. It's being
7 pitched as "Going forward, we're going to be out
8 of compliance for two years." We're just
9 continuing what it is until compliance or the
10 government WQIP is --

11 MR. BARON: But there --

12 BOARD MEMBER MORALES: I don't want us
13 to fall into the trap of it being so easy to talk
14 about it in those terms. We all want the same
15 thing; I truly believe that.

16 MR. BARON: I think that -- I think
17 there was a perception in the storm water
18 community that if you were going through the
19 process and you were implementing your program,
20 the water boards would not enforce against you.

21 And then NRGCC versus L.A. County
22 litigation came about and turned that on its head.
23 It said the permits have receiving water
24 limitations in there, and therefore, the state has
25 determined that you're strictly liable with that

1 language and you view the permit like a contract.

2 From that point on, the storm water
3 community woke up and said "We thought we had sort
4 of compliance if we were making reasonable
5 progress."

6 I don't know if the question has been
7 "You're still out of compliance. You've been out
8 of compliance all this time." It's sort of a
9 pathway forward, and we can articulate that it is
10 impracticable to meet numbers. In some cases,
11 right now it is impossible to do so. So it isn't
12 reasonable under federal or even state law that
13 there shouldn't be some kind of alternative
14 compliance pathway built into that, to light a
15 fire underneath MS4s but also incentivize them to
16 continue these plans and programs.

17 So I think that strict liability -- I
18 don't mean to sound like a broken record after two
19 years -- but it doesn't really exist anywhere in
20 other parts of the law except with oil spills and
21 things of that nature.

22 The Clean Air Act and Clean Water Act,
23 that's not the way it was set up to be. I think
24 that's the aftermath of the L.A. litigation, and,
25 sort of, the storm water community is struggling

1 with that. And Jeremy is going to talk about some
2 of these issues. It is a very real issue for us.

3 I don't want to be perceived as
4 Chicken Little or "The sky is falling." "We're
5 gonna get sued." We're a very large county. We
6 get sued every other day. But in terms of its
7 impact on the storm water programs, I think --

8 CHAIRMAN ABARBANEL: You were here in
9 May 2013, and by what you said, you said you
10 weren't in compliance? What happened to you in
11 the last two-and-a-half years because of that?

12 MR. BARON: Jeremy is going to talk
13 about that after this.

14 CHAIRMAN ABARBANEL: I wasn't asking
15 for a review of lawsuits every other day. I
16 assume that's just business.

17 All right. Let's hear the answer.
18 Are you ready to turn over?

19 MR. BARON: I've got 30 more seconds.

20 So the major premise as to why not to
21 provide a compliance option, the way I read the
22 response to comments to letters from EPA
23 disapproving of this notion of compliance during
24 the development process. In my opinion, it's sort
25 of a ball conclusion. That bright line should be

1 drawn there. There's no citation to any federal
2 regulations because there aren't any. So EPA is
3 commenting as a federal preference. It's a state
4 issue, not a federal mandate. I want to point out
5 the State Board did not adopt the EPA's position.
6 It disregarded it. And EPA did not disapprove of
7 the L.A. permit.

8 So these letters carry a lot of weight
9 because it is the EPA, but at the same time,
10 legally speaking, this Board does not have to give
11 deference to them.

12 With that, I will conclude. Thank
13 you.

14 MR. JUNGREIS: Honorable chair, I'm
15 going to go quickly because I know you folks want
16 to go to lunch.

17 I think Ryan already covered it: The
18 EPA, one of the reasons they would have trouble
19 objecting is because fundamentally, you're still
20 operating under the MEP standard, and you've got
21 the case law Ryan pointed to.

22 EPA doesn't necessarily have to worry
23 about costs; they don't have to worry about
24 attainability. What they do worry about is "We
25 want to see massive improvements in water

1 quality." And that's great. We get that. We do,
2 too. But just take the EPA's guidance for what it
3 is. It's guidance; not a requirement.

4 So the question that's been asked by a
5 couple board members just now is, you've been out
6 of compliance for awhile, and the world has not
7 ended. Big deal. In fact, it really has been,
8 and it started to be a real (inaudible), and the
9 big issue is are we worried about getting sued?
10 Is a Clean Water Act lawsuit that big a deal?
11 The answer is yes. It's not just a Clean Water
12 Act lawsuit. The fact is that being out of
13 compliance is not something -- I represent Laguna
14 Beach and Dana Point. They care deeply about
15 water quality. It's part of their livelihoods.
16 The idea of being out of compliance, of
17 potentially criminal responsibility for not being
18 in compliance, that's a big deal. But the
19 specific issue of lawsuits -- so Laguna Beach was
20 sued by River Watch. Seems like they're picking
21 up the pace of their lawsuits. One of the things
22 they included in their amended complaint was
23 illegal discharges into the MS4 and discharges
24 from the MS4. So they have now brought storm
25 water and storm water compliance into the realm.

1 So what did that do? Strict liability
2 for non-storm-water discharges, demanded a
3 substantial infrastructure overhaul.

4 Now why is that significant? Each
5 city is going to have its own capital improvements
6 plan. They're going to prioritize. Does the
7 police department need new police cars? They
8 wanted every pipe over age four years, or whatever
9 it was, they've all got to be replaced within "X"
10 number of years. It gets into -- rather than the
11 regional board, who in many cases understands the
12 systems they're regulating, citizen's groups don't
13 necessarily.

14 If you look at the River Watch
15 complaints, they all tend to be cookie cutter.
16 Same approach. There's attorneys' fees. The
17 whole thing cost the City about \$400,000 for 16
18 months to settle it.

19 The bigger issues were staff time.
20 Tracey Inglebrits, who is here today from Laguna
21 Beach, it's practically all she did for a year.
22 Daycia, who you'll hear from later, it was half
23 the stuff she did. She's the water quality
24 administrator. It's a huge amount of staff time.

25 Not only that, the other issue is with

1 the regional board, you work things out. Regional
2 boards understand how to interface with cities.
3 Environmental groups, one of the risks with River
4 Watch or others is that you wind up having an
5 environmental group who doesn't understand your
6 city and is not accountability to the voters
7 running your public works department.

8 So that is the kind of thing that
9 troubles cities. It's one of the things the Board
10 should think about.

11 Other examples -- as I said, River
12 Watch is one group that seems to be getting more
13 advanced in their tactics. They're not going after
14 bad actors. They're going after cities that
15 presumably have a reputation of being pretty
16 conscientious: Monterey, Carlsbad, Laguna Beach.
17 They're not the top of the list of being bad
18 actors. They're all they serious about their
19 storm water programs.

20 And lately, the last three permits,
21 Laguna Beach, San Luis Obispo, in the last month,
22 alleging storm water violations and Whittier.
23 It's not just sewage spills.

24 So is it a risk? Absolutely. Maybe
25 from the regional board's perspective, you figure

1 out it's another enforcement. I think it's worked
2 really well historically over time, but in this
3 circumstance where everyone is deemed out of
4 compliance, it can cause some problems. Let me
5 talk about that.

6 I will say right now, the word
7 wrongful should be taken out. Lawsuits, there's a
8 time and place for citizens using the Clean Water
9 Act, no doubt.

10 Why is it bad for the regional board
11 not to provide interim compliance? One,
12 potentially, the settlement -- each individual
13 settlement is individual. You can have one
14 federal district judges who are very conservative,
15 some who are very liberal. You can go to the same
16 watershed and have very different results and it
17 makes it very tough to implement a water quality
18 improvement plan, to have the kind of synergistic
19 effect that gets you to water quality.

20 For Laguna Beach, it took up so much
21 time in order to deal with the lawsuit. With the
22 regional board, there's a set program. If you get
23 an NOV, you deal with it; it's a process. You
24 have to go to federal district court. The
25 \$400,000, that was one motion. If they had gone

1 to trial, who knows.

2 So it's incongruent with the
3 watershed-based approach that the board's
4 practical vision talks about.

5 One of the things that came up as well
6 as and I've heard suggested is a citizen's suit
7 comes up, the regional board can jump in and
8 intervene and -- because there is a provision in
9 the Clean Water Act that says if there is a
10 current enforced action, that a citizen's suit
11 cannot proceed. Unfortunately, it's not a good
12 fit here. What the regional board would need to
13 do is go to federal court and file a lawsuit.
14 There's case law, the California Sportsfishers
15 Association, which limits what regional boards can
16 do. Does a regional board, a state agency, want
17 to go to federal court and subject itself to the
18 authority of a federal court to begin with. So
19 could it work under some circumstances,
20 potentially. But it's definitely not a clean-cut
21 way of doing business.

22 What should the regional board do?
23 This regional board, by providing interim
24 compliance, you talk about a hammer hanging over
25 permittees' heads. "You're in compliance now, but

1 if you don't make that milestone, if you don't
2 provide everything in good faith you've suggested
3 you're going to do, it will be taken away from
4 you." And everybody is out of compliance right
5 now already. Everybody.

6 So I would suggest to the Board that,
7 one, this provides the Board with much greater
8 control and is a much greater incentive for people
9 to giddy up. "Hey, let's get this thing going.
10 We don't want to lose compliance."

11 One thing Ryan mentioned, and we
12 believe this to be true -- we checked through
13 other parts of the state. It appears the only
14 region not providing interim compliance, at least
15 considering it, is San Diego. It's really a
16 fairness issue. So I'd ask you to consider that.
17 If there was a particularly compelling reason to
18 do it differently here, I understand, but there
19 really isn't. It's a great incentive.

20 The idea of losing compliance if you
21 don't do everything you're supposed to do is a
22 huge disincentive to wait around and not do the
23 things we should be doing.

24 I talked about that incentivizing
25 planning. What the Board should do is what it's

1 already requiring, requiring data, requiring
2 deadlines, review prior quality water conditions
3 to the consultation panel, draft agreements with
4 watershed partners. Be part of the process.

5 So I will leave you with our proposed
6 language. We would also be amenable to the
7 proposed language Riverside County has provided.
8 Bottom line is, while we're going through this
9 process that shifts the burden to do what would
10 essentially be done with TMDLs by the state to the
11 Copermittees, allow us to be in compliance while
12 going through that process. If we fail, if we
13 don't do it properly, take it away from us.
14 That's the language we would propose.

15 With that, I will give one minute back
16 to Mary Anne.

17 BOARD MEMBER MORALES: Just a few
18 questions. Let me see if I have this correct:
19 Right now you're not in compliance. So what
20 you're asking is "Please revise this and deem us
21 in compliance while we were doing whatever we do
22 to come up with a WQIP."

23 So it's a change in status that you're
24 requesting to obtain -- one of the reasons is a
25 protection from -- of suits of this type. I think

1 as you mentioned, somebody presented those facts
2 to me, was that settlement. Was it -- what was
3 the main allegations? Did an attorney just throw
4 in an MS4 violation as one of 50 allegations?

5 So I'm not going to read into that
6 there was a lawsuit against Laguna Beach for a
7 sewage spill or something that came out of their
8 MS4 system, and they paid \$400,000 without more
9 facts.

10 MR. JUNGREIS: The actual payments
11 were several million dollars. I don't know what
12 the prime claims were.

13 BOARD MEMBER MORALES: Finally at
14 least there is one lawsuit that you all can point
15 to. I've been asking. Are you claiming this is
16 the sort of data breach (inaudible). But there
17 isn't this rush of lawsuits that have been filed
18 that I'm aware of. It's been years where -- I
19 wouldn't say years -- where conceivably you have
20 not been in compliance and they could have filed
21 these lawsuits.

22 I also, personally, think it would be
23 a risk for anybody that wanted to file a lawsuit
24 for -- against any of you all because it appears
25 to me that he you're diligently working at

1 developing (inaudible). And if they had to claim
2 to a judge -- it would be either declaratory
3 relief where they might say "change out all their
4 pipes." Basically, they'd be asking the judge
5 "Make them fix." You all could go to the judge
6 and say, "We have been diligently" -- before they
7 file their 60-day whatever -- "been in the process
8 of fixing this and quite likely there's a
9 possibility it gets fixed during dependency of
10 this lawsuit."

11 If there are organizations or
12 attorneys out there that are simply interested in
13 making a quick buck, they're going to think long
14 and hard because the judge will have the
15 discretion to tell them "Thank you, but you didn't
16 cause the cities to do what they are doing. It is
17 because of their own nature, their better angles.
18 They're in process. They're doing what everybody
19 would like them do."

20 And I believe that. I believe you all
21 are -- that's why I asked the question. I was not
22 surprised to hear you've been diligently starting
23 the process in advance.

24 Am I wrong that what you're requesting
25 is, basically, for us to vote and give a

1 protection that you don't currently have?

2 MR. JUNGREIS: I would couch it
3 somewhat differently, Mr. Morales -- Board Member
4 Morales. I'm sorry.

5 Two things, one is in 2013 --
6 certainly the cities I represent, Dana Point and
7 Laguna Beach, they've had all sorts of systems --
8 they thought they were in compliance. We all did.
9 It was certainly a surprise when we found out that
10 the receiving water limitations, the numbers that
11 were in -- from the basin plan of the permit --
12 that we were going to be held liable and deemed
13 out of compliance.

14 That's a real seat change for us.
15 We've been following this interim process, and we
16 thought we were improving. I can tell you what
17 we've done in the meantime. At least in the
18 cities of Laguna Beach and Dana Point, they've put
19 in massive amounts of dry weather diversions.
20 They're diverting 80, 90 percent of their nuisance
21 flows. They're all going to the sanitary sewer at
22 very large cost.

23 Are they doing things? Absolutely.
24 And I think a lot of cities are the same way. The
25 current approach seems troubling because it treats

1 everyone the same. It treats everyone as if
2 they're bad actors; they're all out of compliance.
3 Whereas, you've got some cities who really went
4 for it, and you have some who have done very
5 little.

6 In answer to your direct question, I
7 would say I don't think we thought we were out of
8 compliance, and we certainly want to be deemed in
9 compliance. If we're going to go forward and
10 spend, as a region, up to 2 billion dollars, we
11 should be doing it in partnership with the
12 regional board, and we should be doing it without
13 worrying about people suing us.

14 Just another point: And that was you
15 mentioned the complaints that were seen. I don't
16 know what drives River Watch. I can't speak to
17 their motivation. I can tell you their complaints
18 are nearly identical. So are there cities who
19 probably are legitimately sued? Absolutely. I
20 don't doubt it. I'm not sure that the ones I just
21 listed are legitimately sued. If you look at any
22 city or department, you're always going to find
23 noncompliance somewhere.

24 Anyway, I hope I answered your
25 question, sir.

1 CHAIRMAN ABARBANEL: It seems to me
2 that one conclusion, logical but not necessarily
3 practical discussion that we've heard from you and
4 others is that you're out of compliance, you ought
5 to take your water quality improvement plan, work
6 on it really hard and submit it in four months,
7 and not expose yourself for two years. Why don't
8 you do that?

9 MR. JUNGREIS: That goes back to a
10 point that Mr. McKibbon made from Riverside
11 County. These are the equivalent of TMDLs except
12 you're doing them for multiple pollutants. I sat
13 on a water quality improvement plan. The level of
14 complexity associated with trying to figure out
15 what are the sources and how do you reduce them
16 all? What are the projects you can actually
17 achieve without having undesirable environmental
18 effects? If you can do that in four months, I'd
19 say hire that consultant right away. But if you
20 want to do it right where you can actually
21 implement it, at the end you're confident you can
22 get the numbers you're told to hit, I would be
23 inclined to agree with Mr. McKibbon.

24 So your point is well taken. We
25 should hustle. We should go as fast as we can.

1 At the end of that plan, if we don't have
2 something scientifically defensible, what did we
3 achieve?

4 CHAIRMAN ABARBANEL: And my other is a
5 semi-question. If you're asking the board to
6 identify something as being compliant, when
7 everybody agrees no one is compliant, doesn't that
8 undercut the moral authority of this Board.

9 MR. JUNGREIS: I would argue it
10 doesn't because I would argue that we -- at least
11 municipalities because the way we are treated
12 under the Clean Water Act, we shouldn't be -- I
13 noticed we would be deemed out of compliance. We
14 heard Mr. Gibson acknowledge he feels differently
15 about different watersheds, but at least in some
16 there's places where of re-evaluation of numbers
17 may be appropriate.

18 Do I think you lose moral authority?
19 I don't. The state board didn't seem to think so.
20 The other regional boards don't seem to think so.
21 Fundamentally, I don't think you lose moral
22 authority because what you gain in the process is
23 the ability to ensure with about as great a
24 leverage tool as you could ever get by ensuring
25 people have the chance of losing that compliance.

1 I don't think you loss any moral authority. I
2 understand where you're coming from, but I don't
3 think you do. I don't think the public would
4 perceive it that way.

5 MS. SKORPANICH: Could I add to that
6 answer very quickly?

7 How to define compliance is a policy
8 matter that's in your hands. So it is within your
9 purview and your judgment to decide how to define
10 compliance, just as the State Board did with the
11 precedential order. I don't think you lose any
12 moral authority by how you choose to resolve that
13 policy question.

14 CHAIRMAN ABARBANEL: Thank you.

15 It's 12:25. We're going to break for
16 lunch and come back with the cities of Laguna
17 Beach and and Dana Point.

18 (Lunch recess taken.)

19 CHAIRMAN ABARBANEL: The regional
20 Board's permit is a matter of great importance to
21 the City. Specifically, we are concerned the
22 permit, as currently drafted, will provide no
23 compliance to the City during the interim period
24 prior the adoption of the water quality
25 improvement plan.

1 The Laguna Beach city council is fully
2 committed to pursuing improvements in water
3 quality. As one of the many examples of the
4 City's strong commitment to improving water
5 quality, will the City has installed 25 water
6 diversion units that divert approximately 83
7 percent of our entire watershed of the city's
8 drainage area.

9 This program has consistently earned
10 the City a summer dry weather report card of a
11 grade of A by Heal The Bay at all of our beaches
12 within the City. We are proud of that
13 accomplishment; however, we're concerned the
14 permit proposed for approval today will actually
15 frustrate others improvement programs in the
16 future. Our specific concerns and recommendations
17 are as follows:

18 Number one, the permit should provide
19 for interim compliance while the City develops a
20 water quality improvement plan for southern Orange
21 County. We think the regional board's mandate to
22 develop the WQIP has positive attributes. To be
23 successful in improving water quality to the
24 maximum extent practicable within the city, the
25 WQIP needs to be a deliberate, scientifically

1 rigorous collaborative effort between all parties
2 and interested stakeholders that recognize the
3 need for interim compliance and for long-term
4 compliance.

5 Secondly, the permit should clarify
6 that implementation of the City's elicit
7 prevention and detection program constitutes
8 compliance even when unauthorized discharges enter
9 the City's MS4. As Orange County presented, they
10 illustrated perhaps River Watch and other
11 environmental organizations are going after cities
12 for discharges into the MS4 that may occur
13 notwithstanding a city's full and rigorous
14 implementation of its elicit discharge and
15 protection program. The proposed errata changes
16 in the staff report gave a response to the City's
17 prior comments are a step in the right direction
18 but she should be given the force of the law by
19 placement in Section E.2 of the permit itself.

20 Accordingly the City asks the Board
21 revise the regional permit to eliminate any
22 inference of strict liability where the City fully
23 implements it's elicit program by adding the
24 clarifying language requested by our legal counsel
25 to Section E.2 of the permit.

1 Thank you for your consideration of
2 the City's comments. We know the regional board's
3 task is not easy, and the city of Laguna Beach
4 appreciates what this board is doing a balanced
5 need -- is doing to balance needed water quality
6 improvement with the realities of managing a
7 complex municipal storm drain program.

8 To that, I conclude and state that our
9 city is extremely comitted to water quality. I
10 think no one can argue that as our community
11 demands it. Our city council expects it, and we
12 work every single day to the maximum extent
13 practical.

14 CHAIRMAN ABARBANEL: Do you agree with
15 an earlier speaker that you are out of compliance?

16 UNIDENTIFIED SPEAKER: I agree with
17 Mary Ann Skorpanich's response. I think that's a
18 bigger picture. I think we run under a maximum
19 extent practical on a daily basis. From a
20 boots-on-the-ground perspective, which is where we
21 are from a very small community, that's all we
22 have.

23 If I carry over my six minutes, it's
24 going to be Dana Point and Laguna Beach together,
25 if that's okay.

1 BOARD MEMBER STRAWN: Together you
2 have 20 minutes. We will not stand at the
3 boundary between your cities and tell you how to
4 do it.

5 MR. FALLER: My name is Brad Faller.
6 I'm the director of public works for the City of
7 Dana Point. Thank you very much for allowing us
8 to speak today. Both our Dana Point mayor and our
9 South Coast Water District board member that does
10 our water sewer district, Mr. Bill Green spoke
11 this morning. We are a team. Many cities have
12 those entities in one city, but we have both
13 different entities working together.

14 Many beach cities are working hard to
15 improve water quality. Clean beaches equals happy
16 citizens and visitors. So we're already motivated
17 to meet the needs of our constituents Dana Point
18 has invested heavily in storm water catch basin
19 filters on public streets, we installed 18
20 diversions to help control dry-weather runoff, and
21 we're the first to use ozone treatment to kill
22 pathogens at Salt Creek and North Creek. The only
23 place where we have untreated runoff during the
24 dry season that goes into the ocean is San Juan
25 Creek. We've banned Styrofoam and plastic bags in

1 town. We have reduced the cities potable water
2 consumption by 40 percent this summer, well above
3 the 20 percent goal. Three beaches in South
4 Orange County have been delisted through our
5 efforts. We haven't met the final goal yet, it's
6 in the basin plan. Hopefully this tells you we're
7 working hard, and we are making progress.

8 Moving forward with your concern of
9 the possible lack of interim compliance during the
10 WQIP development and the initial cost between 1.6
11 and 2.1 billion to reach effective compliance,
12 you're really talking a difference between us
13 spending, over the last 20 years, 20 billion or 30
14 billion, you're really taking a magnitude up as we
15 move forward to hundreds of millions of dollars.
16 It's daunting for us. It's got everyone's
17 attention.

18 Regarding interim compliance, what
19 happened in Laguna Beach has been a wakeup call
20 for all of us. Laguna also takes its
21 environmental responsibilities very seriously and
22 has a robust water quality program, so when they
23 were sued by River Watch, it surprised us, and it
24 is great cause for concern. If you look at River
25 Watch's website, they have 8 cities in 2015 that

1 they're litigating or bringing suit against.

2 So what we see that's happened, the
3 change that start with the NRDC has now made it
4 relatively easy to say "You're not in compliance."

5 When we see great cities getting hit,
6 that's a source of concern. We're trying very
7 hard to meet the goals of the Board as well as the
8 requirements of our citizens?

9 Please give us the opportunity to
10 develop a water quality improvement plan without
11 having to worry about being sued while developing
12 that plan. We think the focus needs to be on
13 developing the water quality improvement plans,
14 not fighting lawsuits. So why penalize the good
15 performers with opportunistic lawsuits.

16 I'm asking for your help in making
17 sure our taxpayers' dollars are going to effective
18 and beneficial water quality improvements.

19 We understand the Board's need for
20 leveraging bad performers. But what we're saying
21 is, try and realize that you don't penalize the
22 good with the bad. You have to make that
23 distinction. Where you have bad performers, we're
24 suggesting that you put into the permit that says,
25 "If you aren't producing the plan, and you aren't

1 making progress over the next few years, then you
2 aren't meeting those requirements."

3 And remember that this compliance
4 protection does not include compliance enforcement
5 for other areas, such as new development,
6 construction and existing development. The Board
7 staff still has the ability to enforce compliance
8 there. And, also, we're not asking that you take
9 out, for example, A.3(a) in the permit, which
10 still requires, and I quote, "pollutants in storm
11 water discharged from MS4s must be reduced to the
12 maximum extent practicable."

13 So we're not given a pass. What we're
14 asking you to do is make the choices. Help us
15 that are trying to help you, and you still have
16 the stick if you need it for somebody who's not
17 meeting the requirements.

18 So we're appealing to the Board to
19 adjust the permit interim compliance protection
20 for both storm water and non-storm-water
21 discharges similar to what the L.A. Board and
22 Santa Ana Board are doing.

23 Thank you very much for allowing me
24 the time to comment. And to Mr. Strawn's query
25 earlier, we very much think that the

1 administrative requirements in the permit have
2 been reduced, and that's been helpful.

3 BOARD MEMBER STRAWN: Can I get a card
4 from you when you get a chance? Just for the
5 record, to make sure she gets your name spelled
6 right.

7 CHAIRMAN ABARBANEL: Mr. Green from
8 South Coast Water District.

9 MR. GREEN: Well, thank you. This
10 morning I had to rush through my three minutes'
11 presentation, and I felt a little like the Federal
12 Express presenter this morning. So I'm here.
13 This will be short. I appreciate your time.

14 We really feel at South Coast Water
15 District, as well as at the City worked very hard
16 in the area to do our best for water quality. In
17 fact, South Coast Water District adopted, a few
18 years ago, a zero tolerance for any kind of spills
19 in your district, and I want to believe we've done
20 a very good job of maintaining that goal.

21 My message here is, please consider
22 providing -- or providing for the interim
23 compliance, which seems to be reasonable and fair.
24 Make it more like the other regions in the area.

25 So with this closing, I ask,

1 respectfully, the Board would be mindful of
2 setting the water quality improvement policies,
3 and do the right thing for the tentative order.

4 Thank you so much.

5 CHAIRMAN ABARBANEL: Mr. Green, may I
6 ask you a question?

7 We've learned this morning that there
8 are really two times where the water quality
9 improvement plans have deadlines: One is their
10 submission, and one is their acceptance by the
11 Board. Which period do you have in mind for what
12 you call "interim compliance"?

13 MR. GREEN: I would say from now until
14 the final completion of the -- the final WQIP is
15 completed; that would be the period. I can't
16 dictate the timeframe I heard Mr. McKibbon mention
17 up to 40 months might be a reasonable time.

18 CHAIRMAN ABARBANEL: I thought that
19 was actually an extension of the first submission
20 of the plan, additional time.

21 MR. GREEN: I can't answer that
22 question for him. Sorry about that.

23 CHAIRMAN ABARBANEL: Thank you.

24 MR. GREEN: But I think perhaps Jerry
25 might have an answer for you.

1 I'd be happy to answer. I think the
2 Board has a great deal of discretion as to when
3 they would want to start interim compliance. I
4 think, as of today -- you don't have to start from
5 scratch. You can look at other models from around
6 the state and see how they've done it.

7 I think from the approval of the
8 permit would be fair, but I think look at the
9 other processes that have been put out there by
10 the other Boards, and that may provide some
11 guidance, as well.

12 Does that answer your question, sir?

13 CHAIRMAN ABARBANEL: Not really, but
14 it's okay.

15 UNIDENTIFIED SPEAKER: Okay. At this
16 point, we have a short presentation, a short
17 PowerPoint, if we can -- I'm going to go through
18 this very quickly. Just a couple quick points.

19 So just for a technical comment, this
20 was raised by Dana Point: They've been pretty
21 active participants because it is so important.
22 This slide is meant to illustrate the importance
23 of why it's important to have clear language in
24 the permit itself in 2010, so there's an issue
25 about -- apparently the response to comments, and

1 this wasn't originally an issue, but in response
2 to comments, it indicates d-listed water bodies
3 are still going to have to have these BLRPs and
4 CLRPs.

5 That was contrary to what had been the
6 Board's direction in 2010, and there was some
7 ambiguity that might be problematic. We'd like
8 the Board to address that. It should be a pretty
9 minor issue and just clarify -- we can look at the
10 transcript from 2010 as to what the Board's
11 direction was. But also, it illustrates the
12 importance of why the next thing I'm going to ask
13 for for Laguna Beach is so important. The issue
14 for Laguna Beach, one of the allegations that
15 River Watch made in their complaint is,
16 essentially, that if third-party spills or your
17 own spills make it's into your MS4, you own it and
18 you're liable.

19 So it would be helpful to have some
20 clarification that is not the case. With the
21 language we requested would provide that. Now,
22 staff has been helpful, and has met with Laguna
23 Beach and tried to address some of the concerns.
24 So it just needs to be tweaked a little bit. I'm
25 asking to change the language of the -- it would

1 be as amended it would read "where a Copermittee
2 is implementing requirements" it would clarify if
3 you're implementing your program fully, you're in
4 compliance. If something gets in it, and you're
5 doing everything reasonable under the permit to
6 prevent spills, you're in compliance and shouldn't
7 be held liable. Otherwise it requires a prior
8 finding by the Board that make it's more
9 difficult.

10 BOARD MEMBER MORALES: Who gets to
11 decide?

12 UNIDENTIFIED SPEAKER: Well, it's
13 unclear at this point. You have a requirement
14 under E.2 to do a variety of things under Section
15 E.2 to carry out the requirements of your elicited
16 detection.

17 BOARD MEMBER MORALES: If the San
18 Diego Water Board -- currently it's the water
19 board or probably staff that makes the finding,
20 the determination. If we revise it to say "when
21 you're in compliance," that's fine, but who
22 decides when you're in compliance or when you're
23 not in compliance.

24 UNIDENTIFIED SPEAKER: Under the
25 approach we've asked for, staff would essentially

1 make the finding. They would be deeming you in
2 compliance. Arguably -- this is in the staff
3 report, so it's meant to provide guidance. It
4 provides additional verification you don't need
5 the Board to actually find someone is fully
6 implementing their program. That's one area where
7 clarification would be helpful.

8 CHAIRMAN ABARBANEL: I was going to
9 ask you about a historical example in this region.
10 The City of San Diego runs a pump station at the
11 edge of Penasquitos Lagoon, which is near Torrey
12 Pines Beach State Park. That pump station is runs
13 when electricity is delivered to it by SDG&E.
14 There was a ground out or power outage in which
15 SDG&E did not deliver power and there was a spill.
16 Everybody was in compliance, but there was a spill
17 and somebody was held responsible.

18 UNIDENTIFIED SPEAKER: That's a great
19 point. I guess my response to that would be did
20 they have backup generators in place? Did they
21 have a system in place to prevent spills? I don't
22 know anything about the scenario.

23 CHAIRMAN ABARBANEL: Of course. Only
24 to suggest the unexpected may happen. You could
25 be trying your best and still this went into the

1 lagoon rather than the MS4 system. These things
2 happen. And I only throw that into the
3 conversation.

4 UNIDENTIFIED SPEAKER: It's a good
5 point. The point is raised because of the issue.
6 Laguna Beach wasn't frequently appearing before
7 this Board before because they were busy trying to
8 improve water quality. It's been a seat change.
9 They haven't wanted to get into this business
10 they've been dragged into it. Now that they're
11 here, it makes sense to -- to the extent they do
12 what they're supposed to do in the future, they
13 don't wind up in court again. That's what this
14 effort is, an effort to make minor tweaks to help
15 address the concerns. Pleasure of the board,
16 obviously, but that would be our recommendation.
17 The staff report is helpful but I think that
18 clarification would be beneficial. Also similar
19 clarification to the permit itself.

20 I wanted -- I'm not going to spend
21 much time -- good, my time is back on.

22 This is the question raised by Board
23 Member Morales about aren't you already out of
24 compliance? Haven't you been out of compliance
25 for a couple years? This summarizes the responses

1 that Mr. Baron. It's really a question of are we
2 out of compliance and we wish for the privilege of
3 being in compliance, or are we already
4 implementing programs trying to do our best with
5 the interim process and then a regulatory change
6 to put us in a posture where everybody is deemed
7 to be out of compliance. If everybody is in
8 violation of the Clean Water Act, how do you tell
9 the good from the bad?

10 Anyway, so I think those are just the
11 points I wanted to make. I think Ryan made most
12 of them. It's very expensive. Dana Point,
13 regardless of what you do today, Dana Point,
14 Laguna Beach, the people I'm here on behalf of,
15 they're going to pull out the stops to improve
16 water quality. It's important to them, and it
17 will continue to be. Their citizens demand it.
18 But I think it will -- first of all, it's the fair
19 thing to do but also not having to worry about
20 "are we going to have to devote one person here to
21 dealing with" -- I don't want to malign
22 environmental groups here, either. They're good
23 people. They're trying to do the right thing,
24 too. I get that. But it does make it difficult
25 to try to get the mission accomplished when you

1 had things that went down in Laguna Beach.

2 I think that interim compliance -- the
3 task you've given us is very steep. We've got to
4 come up with a lot of money. It will be a big
5 step in the right direction if we have interim.
6 If I could reserve my time -- if you'll permit me
7 to do that.

8 CHAIRMAN ABARBANEL: Does that end the
9 presentations by the cities of Laguna Beach and
10 Dana Point?

11 MR. BARON: Yes. We're good to go.

12 CHAIRMAN ABARBANEL: Before we move
13 on, then, to the San Diego county permittees who
14 have three minutes, I would like to ask a question
15 of Mr. Chiu.

16 CHAIRMAN ABARBANEL: We have heard
17 that the Copermittees have two years to submit for
18 the inspection of the board, water quality
19 improvement plans. When does that two years
20 begin?

21 MR. CHIU: Well, it varies, depending
22 on the group, so depends on when they come into
23 the permit, but we set an effective date that is
24 50 days after you adopt the permit or adopt the
25 amendment to the permit. Orange County when they

1 came in February, their effective date became two
2 years from April 1st.

3 CHAIRMAN ABARBANEL: April 1st, 2017.

4 MR. CHIU: For Riverside county
5 Copermittees, the effective date would be January
6 7.

7 CHAIRMAN ABARBANEL: 2018.

8 MR. CHIU: January 7, 2018.

9 CHAIRMAN ABARBANEL: San Diego?

10 MR. CHIU: San Diego went through
11 their water quality improvement plan, and they
12 submitted theirs back in June 26th of this year.

13 CHAIRMAN ABARBANEL: San Diego county.

14 MR. VAN RYAN: Good afternoon, members
15 of the Board. I'm John van Ryan. I'm with the
16 County of San Diego. I'm here to represent the 21
17 Copermittees of the San Diego region portion of
18 the permit. I'm going to be speaking exclusively
19 to the land development requirements of the permit
20 that are in Section E.4.

21 CHAIRMAN ABARBANEL: Before you do
22 that and without loss of time, your time San Diego
23 county Copermittees went through a two-year
24 process to develop the water quality improvement
25 plans. During that time, you had no alternative

1 compliance capabilities; is that right -- interim
2 compliance protection; is that correct?

3 MR. VAN RYAN: That's my
4 understanding.

5 CHAIRMAN ABARBANEL: What happened?

6 MR. VAN RYAN: I'm not the best person
7 to ask. I don't deal with that portion of the
8 program.

9 CHAIRMAN ABARBANEL: Is there somebody
10 who can answer?

11 UNIDENTIFIED SPEAKER: John is dealing
12 with the development issues.

13 CHAIRMAN ABARBANEL: Is it a long
14 answer, or is it nothing?

15 UNIDENTIFIED SPEAKER: We were very
16 busy at work trying to meet the requirements of
17 the permit. We were doing several plans at the
18 same time. I think we worked very hard and
19 diligently.

20 CHAIRMAN ABARBANEL: During that time
21 when you were exposed and potentially not in
22 compliance with the new MS4 permit, did anything
23 unusual happen to you?

24 UNIDENTIFIED SPEAKER: We continued
25 running our program, sir.

1 MR. VAN RYAN: So behind you is a
2 summary of the issues I'll be speaking to. I have
3 a handout that summarizes what we'll be asking
4 for.

5 So basically, we've got three issues I
6 want to address. First are essentially support.
7 Issue A was support for the fact that staff in the
8 November 4th errata clarified an inconsistency in
9 the dates for the effective date of the BMP design
10 manual, and the updates to that. Thanks to staff
11 for fixing that. We agree with the fix.

12 B, we also support staff's stated
13 intent to further extend the date of the BMP
14 design manual for San Diego County permittees by
15 90 days from the current effective date of
16 December 24th of this year.

17 As I'll talk about in a little while,
18 that's something that's only in the response to
19 comment. That's not part of this permit and
20 that's not part of this adoption. We'll have some
21 thoughts how we prefer to see that move forward.
22 The rest of these are the issues I'll be
23 concentrating on for the rest of this
24 presentation. They primarily deal with time, and
25 the time needed to complete updates.

1 The first is the permit should
2 generally allow the extension of BMP design manual
3 effective date by 180 days instead of 90 days
4 anytime new or modified land development
5 requirements are adopted, which would be the case
6 today.

7 We specifically would like to see the
8 proposed extensions that are in the tentative
9 order today. The effective dates for those to
10 actually be June 21st, so in other words, 180 days
11 on top of what's already being suggested by staff
12 in response to the comments.

13 So it would give us a full 180 days
14 beyond the existing December 24th effective date.

15 So number one, first of all, we just
16 want to see when new requirements are brought in
17 after the initial permit, which is the case now,
18 that we have enough time to do what we need to do
19 to bring those into our programs and implement
20 them. What we're suggesting here is a full 180
21 days when new requirements come in, instead of 90,
22 which is currently in the draft. The simple edit
23 we're suggesting is the bottom of the slide.
24 Simply change F.2(b)(4) to be 180 days instead of
25 90 days. Simple edit.

1 So anytime we have to make
2 modifications to our BMP design manual, a whole
3 lot of other things have to go along with that.
4 This slide breaks it up into three major pieces.
5 We have updates we have to complete. We have a
6 public process we have to go through, and that's
7 fairly well defined. And then we have to actually
8 work with applicants to identify where those
9 changes are going to be applicable, whether it's
10 new applicants or applicants with projects in the
11 pipeline, to work with them to make sure the
12 correct requirements are being applied.

13 Under the completion of updates, the
14 critical things for us are updates to the BMP
15 design manual. The lion's share of BMP design
16 manual updates have been completed over the last
17 two years.

18 So, arguably, the new things that are
19 being brought in under this tentative order are,
20 in comparison, not a lot. Keep in mind we have to
21 go through the same process. The critical thing
22 here -- any of these things can take months,
23 sometimes years depending on what it is. We can
24 try to keep the timeframes as collapsed as
25 possible, but for the county of San Diego, as I'm

1 used to illustrate, our board updates take at a
2 minimum, if all the dates lined up, for us to
3 basically do our administrative process, get an
4 ordinance update through our administrative
5 process to our board, for the first hearing,
6 second hearing and then 30 days for that to be
7 effective. In the best of all possible scenarios,
8 that is 90 days, which is currently provided for
9 updates.

10 We have to update our watershed
11 protection ordinance to implement the requirements
12 of the BMP design manual. I can't speak for all
13 Copermittees, but some will have the same process,
14 some will have more process. Realistically, if
15 we're being given 90 days to do it all, and this
16 one piece of it ignores the fact we need to reach
17 out to industry, work with people, develop the
18 requirements up front, it's just enough to get us
19 to squeak in.

20 We're certainly not concerned if we're
21 a few weeks behind the deadline, staff is going to
22 come after us. That's not the case. But we're
23 really concerned this isn't a realistic timeframe.
24 We're not going to be squeaking in. We're going
25 to be much behind it. But that's generally what

1 we have to go through.

2 Our second request is -- so in
3 addition to making the general extension of design
4 manual effective dates to 180 days, in this
5 particular case, for the changes that are imposed
6 through today's hearing, we would like the
7 extension date to be 90 days, in addition to what
8 staff suggested in the response to comments. An
9 additional 90 days to what they're suggesting
10 would be a total of 180 days from the current
11 December 24 date. That would take it to June 21,
12 2016.

13 I'm providing specific edits at the
14 bottom of this slide. All you would really be
15 doing here is putting a sentence at the end that
16 says "For these specific updates, San Diego
17 Copermittes, the effective date for these
18 requirements will be June 21, 2016" and this
19 slight edit up in the previous sentence to clarify
20 you have the authority to do that. We think
21 that's fair. Let me go through why that's
22 necessary at this point.

23 So these are the major things -- I'm
24 not going to go through -- these are the major
25 things in the land development requirements right

1 now that effect what we have to implement. PDP
2 categories have been modified. The definition of
3 redevelopment has been modified, and more
4 importantly, grandfathering or prior lawful
5 approval provisions have been added.

6 Going back to the timeline I just
7 described, we need that 90-plus days to get
8 through the minimum administrative and adoptive
9 process for our ordinances.

10 I want to go back to grandfathering
11 provisions here. These are important provisions.
12 We're very happy with staff for where we got with
13 these. We got a reasonable set of provisions
14 moving forward. These are much more useful to the
15 Riverside and Orange County Copermittees. We have
16 very little time to work with applicants to
17 utilize them.

18 When I worked on this process, Board
19 Member Morales was there, and I think you'll
20 recall one of the things you said when we brought
21 up the issue of timing was you'd have staff look
22 into it. I think staff did will look into it, but
23 unfortunately we didn't come up with anything
24 other than the current schedule. It's not enough
25 to take advantage of these new grandfather

1 provisions. If we were provided the additional 90
2 days that are we're suggesting on top of what
3 staff is suggesting, we would be satisfied that's
4 enough to do that. I won't belabor that issue
5 except that was an outstanding issue for us.

6 CHAIRMAN ABARBANEL: Pardon me. I
7 have a question.

8 These changes to your ordinances and
9 the design manual must occur every time the MS4
10 permit changes?

11 MR. VAN RYAN: Yes.

12 CHAIRMAN ABARBANEL: The MS4 permit,
13 as we learned from executive officer, has been
14 issued since 1990. And this is the fifth. You've
15 done this four times before in the past?

16 MR. VAN RYAN: This is the second
17 time. The BMP design manual revision was called
18 Sue Sump and Lass [phonetic] manual, and why
19 bother spelling it out.

20 It was basically a change in title.
21 What the permit required this time because there
22 were significant changes in the land development
23 requirements you said you guys have a certain
24 period of time to update those after the board
25 accepts those updates, you have half a year to

1 implement them.

2 CHAIRMAN ABARBANEL: Under the
3 assumption that the 2018 MS4 permit will be less
4 of a big change from the previous permit --
5 present one, would you accept the fact that this
6 is a necessity only this time and not in the
7 future?

8 MR. VAN RYAN: If I agreed with that
9 assumption. We've assumed it every time the
10 permit has been reissued and we've been wrong.
11 I'm not sure that would be the case.

12 So, again, going back to where we are
13 right now with this particular iteration of the
14 land development requirements, you saw the things
15 that are changing. To go back to the slide you
16 saw a minute ago, the updates are relevant, so we
17 need at least the 90 days plus to get the
18 ordinance updates and all these other things that
19 need to be done.

20 In addition, there are other
21 outstanding issues that we haven't completed yet
22 at this point. I want to talk about critical
23 coarse sediment yield. These are requirements
24 that were in the 2013 permit when it was adopted.

25 They think we are hot and heavy into

1 really trying to come up with reasonable
2 guidelines for developers to implement. As it
3 turns out, they're much, much harder than what we
4 had anticipated. I know the first reaction to
5 this particular thing is, "you had two years."
6 But keep in mind for the first year of this
7 permit, we were doing something called the
8 Watershed Management Area Analysis, where we were
9 figuring out even how these things applied. We
10 didn't know until a year into it the gravity of
11 what these requirements were going to be imposing.

12 In addition to that, the second year,
13 we were doing things like starting to develop
14 offsite alternative compliance programs. We
15 updated our terms. We updated all of our
16 programs. There's a lot of stuff going on here.
17 The reality is this is where we are right now:
18 We're getting closer, but we're not there yet, and
19 if we don't extend the effective date on these,
20 we're going to be in a position of not having the
21 right requirements in place to be able to
22 implement them.

23 What I want to point out to you is,
24 we're committed and well into the process of
25 developing these requirements. The county and the

1 city of San Diego are working cooperatively right
2 now to develop guidance.

3 Keep in mind, this is not straight
4 engineering; this is environmental science. We're
5 being asked to do really new stuff and it's more
6 than you can simply rely on the applicants to turn
7 in a proposed design and review it to see if we
8 got it right.

9 The major issues on the left side of
10 this slide, these are the things we will have to
11 develop. I purposely blurred that diagram so it
12 wouldn't evoke any discussion. It's a flowchart
13 to illustrate what the process is applicants will
14 go through once we figure out how to guide them
15 through all these decision points.

16 We are making progress. I wanted you
17 to see that. It shows we've done something. What
18 we are committing to right now, what we've already
19 started to initiate, the city and county together
20 are taking the draft content that we developed so
21 far, we're are going to put it through a public
22 process. First, we're putting together a
23 technical advisory committee that will include
24 your staff, will include somebody from the
25 industry, NGOs. It will include secular people

1 that need to be okay with this stuff.

2 We're thinking two to three tack
3 meetings, and we're thinking a public workshop
4 sometime in April. This, I think, is a fairly
5 aggressive schedule, but we think that we can do
6 it. If we were to do that, we would basically be
7 final guidance by late May. What we asked for is
8 an extension of the effective date that would take
9 us a little bit into June. So with that, we feel
10 like we could be there. It's not going to be
11 perfect but realize what we need to do before we
12 start releasing guidelines and requirements on
13 developers is, we have to have methods that are
14 fully baked. They have to be basically
15 technically and legally defensible.

16 And to come back to Mr. Chiu's point
17 from earlier, they have to be able to support not
18 action-oriented implementation but
19 results-oriented implementation. And the danger
20 we run if we don't work out these methodologies
21 and they're not scientifically valid, is that all
22 we're doing is basically putting people through a
23 routine of generating results rather than what the
24 permit asked for, which is no-net impact to
25 receiving waters.

1 That's what we're asking for.

2 What we would prefer, in terms of how
3 to get the extension, would be that you just make
4 the amendments to the tentative order today. Just
5 put that date in there as we're asking for it. So
6 we provided the language so the staff doesn't have
7 to write it.

8 If you can't do that or disagree, but
9 you do agree that the effective date should be
10 extended to some date, whatever you agree with,
11 then please, as part of the public record for this
12 proceeding, direct your executive officer to make
13 that change so that we know in leaving this area
14 what we're working with.

15 That's all. Thank you.

16 CHAIRMAN ABARBANEL: San Diego has
17 six-and-a-half more minutes.

18 MS. WEBER: I do have a question.

19 CHAIRMAN ABARBANEL: Go ahead.

20 MS. WEBER: Thank you. I'm JoAnn
21 Weber, planning and project manager for the County
22 of San Diego, and I also speak on behalf the San
23 Diego's Copermittees.

24 The Copermittees, we appreciate the
25 Regional Board has included additional language to

1 have the ability to have this alternative
2 compliance option. We thank the staff for several
3 changes made in the errata sheet, which make it a
4 more implemental option. Despite these
5 (unintelligible), the San Diego Copermittees are
6 concerned that the specific requirements for
7 annual milestones will still be overly
8 constrictive and burdensome. Each Copermittee
9 could potentially need to establish and track
10 annual milestones for multiple goals within
11 multiple water bodies in each of their Watershed
12 Management areas which could result in dozens of
13 annual milestones.

14 The Copermittees recognize that
15 milestones would benefit accountability for
16 working toward their goals. These specific
17 milestones would be more meaningful if they would
18 focus on priority water quality conditions and
19 were actually based on a permit cycle, as they
20 currently are in our water quality statement plan,
21 so that would be one milestone per five-year
22 permit term, period, from each water body,
23 including combinations to be covered under the
24 alternative compliance pathway.

25 The San Diego Copermittees are

1 requesting the Regional Board to consider
2 modifications to the language to restructure this
3 annual milestone requirement to make it more
4 meaningful. And I have a draft errata sheet that
5 I can hand out to your staff, and it's exactly the
6 same thing that they proposed in our September 14
7 comment letter.

8 Thank you.

9 BOARD MEMBER OLSON: I just wanted to
10 ask a question.

11 So for your group, the interim
12 compliance is not an issue?

13 UNIDENTIFIED SPEAKER: We did not have
14 that option on the table when we did our water
15 quality improvement plans. That's just something
16 we're coming in now.

17 BOARD MEMBER OLSON: So you didn't
18 have any suits or -- I mean, that's what I kind of
19 understood you to say in relationship to the
20 Chair's question.

21 UNIDENTIFIED SPEAKER: That's correct.

22 BOARD MEMBER OLSON: You said, well,
23 you were out of compliance, or you --

24 UNIDENTIFIED SPEAKER: None that I
25 know of.

1 BOARD MEMBER OLSON: Okay. Thank you
2 very much.

3 MR. WILE: Good afternoon, Board
4 Chairman, Board member. My name is Clint Wile.
5 I'm with the City of San Diego Transportation and
6 Storm Water Department. I'm the program manager
7 for our Watershed Planning Group. We oversaw the
8 development and took over the lead for three of
9 the new water quality improvement plans here in
10 San Diego, and we participated in another three.
11 So the last two-and-a-half years I have the scars
12 to show putting these plans together. But I think
13 they're good plans.

14 Let me say for the record that the
15 city of San Diego, our overall goal is
16 improvements to water quality, and we think the
17 WQIPs are going to be our roadmap on how we are
18 collectively here going to get there down the
19 road.

20 I also want to speak here, generally,
21 in support of the permit amendment but offer a few
22 suggestions for some modifications that I think
23 and the City thinks will make implementation of
24 water quality plant more effective, more
25 achievable and will result in faster and better

1 improvements to water quality.

2 I'd also like to quickly thank Board
3 staff for their efforts in working with the
4 Copermittees over the past two years on the
5 development of the of Water Quality Improvement
6 Plans and through this entire permit amendment
7 process.

8 First, the City of San Diego supports
9 inclusion of the prior lawful approval definition
10 in the permit. Again, we want to acknowledge and
11 thank Board staff efforts in working with us, and
12 other stakeholders, through a public participation
13 workshop that led to developing this definition.

14 We support the San Diego program
15 chief's comments as presented by the County of San
16 Diego related to changing prohibition and
17 limitations compliance option in the annual
18 milestone requirement to one milestone per permit
19 term.

20 I wanted to further elaborate on what
21 JoAnn mentioned about why I think that's important
22 from a planner in a city that has to implement
23 these water quality improvement plans and I think
24 with the importance we can see here. The City
25 supports the concept of milestones. It's never

1 that we didn't agree with them, and we support
2 that for many reasons. They provide opportunity
3 to achieve the outcomes, and they also provide
4 accountability and transparency. They also help
5 me communicate to my management and city leaders
6 budget requests that we need more funding to
7 improve water quality. And so to have milestones
8 and numerical provides that accountability and
9 that justification for increased budget requests
10 that we all know we need to meet these challenging
11 water quality requirements.

12 However, the annual milestones do not
13 allow the City and the other Copermittees and the
14 MS4s in this room enough time to reprogram
15 activities and secure those necessary fundamental
16 resources that you make program adaptation. So
17 what I mean is, these active management process,
18 cities are just too big to be able to do that on
19 an annual basis. We do our budgeting process a
20 year in advance, so if we find that we don't make
21 annual milestone, it takes us a year to request
22 the necessary resources to make that correction.
23 And that's why during the permit workshops we had
24 advocated for a less frequent annual milestone
25 whether or not we were against milestones, an

1 annual is just not practical for how cities' --
2 their budget process works and how we reprogram
3 and implement.

4 CHAIRMAN ABARBANEL: City of San Diego
5 does not carry a reserve for unexpected expenses?

6 UNIDENTIFIED SPEAKER: We certainly
7 do. But as far as for the Water Quality
8 Improvement Plans and we're talking about the
9 compliance option that's on the table right, now
10 we are trying new BMPs all the time and we have
11 forecasted out what we think we need to do to meet
12 those numeric goals.

13 CHAIRMAN ABARBANEL: No, I understood
14 what you said, and I appreciate the answer to the
15 question.

16 MR. WILE: Okay. The City also
17 supports the San Diego Copermittees' comments
18 about the six-month extension for the effective
19 date of the BMPs design.

20 Now, as a followup to our written
21 comments, the City of San Diego requests that
22 Board staff amend the permit to allow for
23 individual jurisdictional compliance with TMDLs.
24 Let me elaborate that really quickly because I
25 only have a minute left.

1 Specifically, language and attachments
2 of the permit precludes any Copermittee from using
3 the WQIP implementation compliance pathway for
4 that TMDLs unless all Copermittees in that
5 watershed are effectively implementing their Water
6 Quality Improvement Plan commitments. This is
7 problematic for two reasons: One, individual
8 Copermittees, or MS4s, have no authority to compel
9 other Copermittees to comply with these
10 requirements.

11 And second, and more important in my
12 mind as an implementer, is in order to justify and
13 clearly defend requests for additional budget and
14 the resources necessary to implement these BMPs,
15 we, I, the City, Copermittees, need assurance that
16 our compliance is not going to be determined by
17 the actions or inactions of other agencies.

18 So in closing, I want to thank again
19 Board staff for working with us and the
20 stakeholders during this long process, and we, and
21 I particularly, look forward to transitioning from
22 Water Quality Improvement Plan planning to
23 implementation so that we can start to move toward
24 our collective goal of improving water quality.

25 Thank you.

1 CHAIRMAN ABARBANEL: So I note -- are
2 there any questions of Mr. Brown? I know -- this
3 is a question -- the City of the San Diego -- all
4 the San Diego Copermittees are now two and a bit,
5 almost two-and-a-half years into the process of
6 the WQIP's process.

7 I think this Board, and I think the
8 staff, were very pleased with the idea of Fiori,
9 that allowing the Copermittees to figure out how
10 to achieve the goals was a good one, rather than
11 our sitting up here and telling you what to do.
12 You've been through six out of the seven, 84
13 percent of the WQIPs. Is that happening? Were we
14 simply too optimistic? Are you and the other on
15 Copermittees happy that you get to decide how to
16 do it?

17 UNIDENTIFIED SPEAKER: I think it was
18 a -- at the end of the day, at the end of the two
19 years, it was a compromised approach. I think
20 most guys have issues that they can be happy with,
21 and then these plans are not perfect. And I think
22 Mr. Chiu talked about that earlier, about their
23 dynamic documents. We look to improve them and
24 work on the things that maybe didn't work so well
25 for the first two years, we're going to have an

1 opportunity to do that.

2 But to specifically answer your
3 question, I think the Copermittees appreciated the
4 flexibility to establish numeric goals, but we had
5 to work in tandem with our stakeholders and with
6 the Regional Board and they pushed back on us and
7 it was a collaborative process.

8 CHAIRMAN ABARBANEL: If in the future
9 we decide the plans must be perfect, these meeting
10 would be much shorter.

11 Okay. Mr. Brown, I think there's a
12 question for you.

13 BOARD MEMBER OLSON: Could you tell
14 me, then, since you're asking that the milestones
15 be changed, so you were happy you didn't have to
16 do them all up front, correct?

17 MR. BROWN: Yes. So I actually didn't
18 even acknowledge. I agreed with JoAnn's comment
19 that we do appreciate the change in the errata
20 sheet, that we don't have to extrapolate annual
21 milestones out 20, 25 years.

22 BOARD MEMBER OLSON: But you found it
23 burdensome that you have to do them?

24 MR. BROWN: My personal feeling, or
25 the City's, I don't know if I would use

1 "burdensome." The point I was trying to make is
2 simply if we don't attain an annual milestone, the
3 City's internal adaptive management approach --
4 we're not able to turn on a dime, and doing that
5 on an annual basis is difficult for a large city.
6 And so we were hoping that there could be a little
7 bit longer time between milestones with better
8 alignment with our internal budgeting process.

9 BOARD MEMBER OLSON: So meeting them
10 doesn't slow down the process, or it doesn't
11 coincide with your budget process, but overtime
12 would you --

13 MR. BROWN: If we don't meet an annual
14 milestone and we realize that we need to retool or
15 reprogram our storm water program to meet that
16 next annual milestone. We need a longer time to
17 do -- we need more time to do that. That that was
18 the point I was trying to make.

19 BOARD MEMBER OLSON: Or you need a
20 designated reserve to allow you to you meet those?

21 MR. BROWN: Yeah.

22 CHAIRMAN ABARBANEL: So if the City of
23 San Diego decided that they would form a five-year
24 budget and let the city council have four years of
25 vacation, would you be asking us for one milestone

1 every 25 years?

2 MR. BROWN: I don't know if I can
3 answer that question. I don't think the San Diego
4 city counsel can either.

5 CHAIRMAN ABARBANEL: Do you have a
6 question you wanted to ask?

7 BOARD MEMBER MORALES: I have a
8 question for staff, actually.

9 On the request that we push out a 180
10 days -- and I think originally, and correct me if
11 I'm wrong, we had said 30 days, and then there was
12 some back and forth, and currently what we've got
13 in the tentative order and recommendation is 90
14 days. I understand the argument 180 days gives
15 them opportunity to go through public process and
16 that takes set amount of time, 25 years, even the
17 best-case scenario. What does that do to the
18 grandfathering?

19 BOARD MEMBER MORALES: So we're
20 basically -- they're saying give the
21 grandfathering (intelligible) three more months?

22 UNIDENTIFIED SPEAKER: That would be
23 how the process would work out, yes.

24 CHAIRMAN ABARBANEL: Thank you very
25 much.

1 The next set of speakers are the
2 Building Association, 15 minutes. We understand
3 that there's been a request on the part of some of
4 the speakers in Group 9, the environmentalist
5 group, to speak earlier because of time. In
6 fairness, we set the schedule and we're going to
7 try to keep to it. So if you can please ask other
8 people to make their remarks, that would be
9 helpful.

10 MR. STRAWN: We can add your time to
11 the other speakers and make a record that you were
12 here, but we really prefer to not change the
13 schedule around.

14 MR. MCSWEENEY: Before we proceed,
15 Mr. Chairman, I need to be sworn.

16 CHAIRMAN ABARBANEL: Oh, my goodness.
17 Anybody else not yet sworn in?

18 Okay. Do you swear that the testimony
19 you will provide is true and correct? If so, say
20 "I do."

21 MR. MCSWEENEY: I do.

22 CHAIRMAN ABARBANEL: Thank you.

23 MR. MCSWEENEY: I'm Michael McSweeney.
24 I'm senior policy advisor to the BIA representing
25 the coalition --

1 CHAIRMAN ABARBANEL: Is the mic on? I
2 just want to make sure everybody hears you and the
3 record hears you.

4 MICHAEL MCSWEENEY: I'm Michael
5 McSweeney. I'm senior policy advisor to the BIA.
6 I'm representing the coalition.

7 Right off the bat I wanted to correct
8 one thing that my friend Wayne Chiu said. When
9 you pointed out about the watershed approach, that
10 is something we also bought into.

11 MR. CHIU: My omission. I apologize.

12 MICHAEL MCSWEENEY: Okay. So Board
13 members, I want to use a cultural reference as we
14 start. And I want you to join me, if you could
15 look at the slide. And we'll go back to
16 Mr. Peabody's way-back machine, and we'll go back
17 to 2007.

18 In 2007, the relationship between my
19 industry and the board was nonexistent. We really
20 didn't engage each other. We opposed the permit
21 in 2007. I didn't work for the BIA at that time,
22 but my understanding was we felt we were singled
23 out; most the requirements were on us. There
24 wasn't any dialogue. It was, "Here's the permit.
25 We're going to do this."

1 We felt it was unfair. We sued. We
2 spent a million and a half dollars. We lost.

3 I want to contrast that to what we've
4 done in this permit cycle. At the very beginning,
5 we overcame our fear and decided we wanted to
6 commit to collaborate with all the stakeholders.
7 We decided to help solve this problem by utilizing
8 the engineering skills of our members. We worked
9 collaboratively with the Copermittees, your staff,
10 and the environmentalists. That was a first. We
11 worked closely with Regional Board staff to make
12 specific changes to the plan, and we've spent over
13 a million dollars in hard cash and hours donated
14 to help try and make this permit better and
15 comply.

16 Well, I talked about the fear. The
17 next thing that comes up is trust. And the first
18 example I think you saw of that is our joint
19 letter with Coast Keeper. And if you look at No.
20 3, the point there, the one thing that I think
21 both our organizations feared. And you heard it
22 today from two sets of Copermittees that had one
23 watershed they were talking about. We were in
24 fear of doing eight of these plans simultaneously.
25 And why were we in fear of that? Because eight

1 WQIPs in 24 months -- I'm going to use "WQIPs"
2 because I only have so much time.

3 There's a limited pool of experts and
4 consultants. So it's hard enough to do one really
5 well, but if you've got a limited pool of
6 brainpower, to do eight simultaneously is a huge
7 challenge. This had never been done before, so
8 there was no template to follow. This was a
9 learn-as-you-went-along. The interesting thing
10 is, each component builds on the next. So in
11 building terms, the first thing is the foundation,
12 and then you set up the walls, and you set the
13 floor joints. That's how you build a building.
14 So each one of these had to be completed.

15 If there was any hiccup in that
16 schedule, then you're under that much more
17 pressure to try to get it done.

18 And as technical problems arose, it
19 took additional time to figure those out, and that
20 put already more demands on a tight timeframe.

21 We agree with your practical vision.
22 And I'm not going to read it to you because you
23 all memorized. So I want you to know that we
24 spent, as of yesterday, \$1,059,000. The first
25 line there is actual hard dollars spent on

1 consultant studies, reviews, policy work. The
2 rest is the people at work at the BIA, and the
3 other two are what our members have donated.
4 Basically, we've put our money on the table behind
5 what it is that your executive officer and your
6 Board is behind.

7 We're requesting 90 days beyond what
8 the staff had asked you to consider, to do some of
9 the following things:

10 The BMP Design Manuals, we spent a lot
11 of time on this. We're about 95 percent of the
12 way there. We need a little more time to work out
13 a few bugs, including how coarse sediment plays
14 into that.

15 The coarse sediment yield, we're
16 working on tools that will give us the ability to
17 practically comply with the requirements in the
18 permit.

19 The Water Quality Improvement Plans,
20 there's additional science data that is coming
21 online that hasn't been included in those plans,
22 and we want to see that included in those plans.

23 Public education. There are so many
24 misconceptions out there of when, who, and what
25 takes place where, so much so that I will

1 illustrate this. The City of Oceanside, we have
2 developers building houses, under construction,
3 and they're being told that if those houses aren't
4 done by the end of December, you're going to have
5 to comply with the new permits. That's completely
6 factually false. But there's so much that nobody
7 really knows what's happening, and so there needs
8 to be more time to educate through both the
9 industry and the city and, basically, all your
10 stakeholders to know when will things go live.

11 Finally, in 180 days we're not going
12 to get alternative compliance figured out, but we
13 need more time to get that up and running because
14 that's going to be, I feel -- I don't want to say
15 the "silver bullet," but that's what's going to
16 help get us to where we want to end up.

17 So when you look at the design manual,
18 we want to make sure -- and what we've been
19 working on -- is to make sure that it's easily
20 understood. This is the Bible, the how-to
21 document in each city of how you will comply, what
22 you have to do to comply, development staffs of
23 the cities.

24 Now, these aren't the storm water
25 managers. These are the people that actually

1 process plans. They need to understand and get
2 trained on what does all this mean. Because right
3 now they have something of an understanding, but
4 they don't know the specifics. Once complete, we
5 need to make sure that all the people on our side
6 of the table are trained and understand now
7 whatever is basically in cement, codified, going
8 forward.

9 Most of the work is 95 percent
10 complete, and we need -- and Wayne touched on this
11 in his presentation -- we need a clear procedure
12 so that when problems come up stakeholders and
13 Copermittees can get together with Regional board
14 staff and get it fixed, which brings us to coarse
15 sediment yield.

16 This area was not well-understood
17 going in. There's not much in the permit about
18 it; it talks about avoidance. Even after the
19 watershed mapping analysis was done, we really
20 didn't understand what that was. And in one of
21 the forums they passed around an
22 8-and-a-half-by-11 piece of paper with where we
23 think sediment is, and it all looked like it was
24 in east county and everybody figured out, "Ed,
25 we're not building there."

1 So once we understood where the
2 sediment is -- and if I could just show you, this
3 is the map that came out in June of this year.
4 It's a GIS map. So once we were able to actually
5 see it, it became nicknamed "The Rash Map" because
6 it looks like the county has a rash. So once you
7 started looking at it, it's hard to see -- you can
8 see all in east county, but even down in here
9 there's still pieces of red. So when we start to
10 blow this up -- now, here's a perfect example.
11 Can you see this is Fanita Ranch down here in
12 Otay. So how do you comply?

13 And so needless to say, when this map
14 came up and property owners and developers looked
15 at it and they honed in on where their red dot
16 was, it was an "Oh, my God" moment. You talk
17 about the anxiety level, my phone and my e-mail
18 blew up.

19 We have compliance challenges. How
20 are you, meaning an applicant or a Copermittee,
21 going to document the permit so that permit
22 requirements are met? There's practicality on
23 doing this.

24 So we're suggesting -- and I think
25 John talked about it -- we should have some sort

1 of a workshop similar to what they did for
2 Hydromodification in 2007 so everybody gets on the
3 same page and we all know what it means.

4 The other thing is drainage
5 boundaries. Sediment transport is based on
6 drainage boundaries not project boundaries. So
7 your project could be in the middle of something
8 and you gotta figure out on two pieces of
9 property, upstream and downstream of yours, how
10 are you going to get your sediment to the
11 tributary?

12 So why did this become an issue so
13 late in the process? Well, there was a lack of
14 transparency. And it's not anybody's fault, but
15 when there wasn't an understanding where they
16 talked about there was a small map that went
17 around. And you can see if you reduced that to an
18 8-and-a-half-by-11 slide, you couldn't see any of
19 those small mounds. All you saw was what looked
20 like the mountains.

21 The original link that was released,
22 if you had GIS software on your computer and you
23 tried to download the map, it crashed. It was so
24 large a file.

25 We asked, after three or four weeks of

1 the map being on the site, for the County to
2 figure out a better way to make it more
3 user-friendly, maybe put in Google Earth, so if
4 you had Google Earth then you could see it. The
5 public couldn't find it easily.

6 And so what did that do at our end?
7 As soon as we figured it out, my phone blew up.
8 People started to panic. Everybody assumed the
9 worst, which extremed the panic. And then
10 finally, once you factor in the permit timeline,
11 now it's maximum panic. And this is what happens:
12 The engineers freaked out. The hydrologists
13 started sweating profusely. The developers are
14 pulling their hair out, and even our children were
15 stressed because we became overstressed all of a
16 sudden.

17 So what do we do next? On the left is
18 pretty much what our industry looked like. We
19 freaked out. I called Laurie. Laurie put
20 together a meeting with Wayne and Christina. And
21 their message to us was, "Look, don't panic."

22 What we were looking for from the
23 permit -- and this is the benefit of the
24 collaboration. I will say right now, a year and a
25 half, two years ago, there was a lot of anxiety.

1 We've been working with your staff. Whenever we
2 have a question, they answer it. My boss meets
3 with the executive officer on a regular basis.
4 And so what they told us was, "Look, this is what
5 our intent was, was no net impact."

6 So then what we did was we went to
7 work. We had the meeting with them, then we
8 helped, and we were at other stakeholder meetings.
9 We met at Coastkeeper Inn. We met a couple times
10 with Copermittees. How are we going to get this
11 to work? One of our academics put together a
12 white paper on sediment yield. He developed a
13 dimensional index. I know that the County's
14 consultant was developing something. We went to
15 work. We freaked out, but we got some
16 clarification and we went to work because the time
17 is ticking. And we worked collaboratively because
18 at the end of the day what we want is, we want to
19 have the tools in the toolbox so that we can
20 comply with the permit.

21 So the Copermittees need additional
22 time to do the following things:

23 They've got to do public work
24 workshops to educate, solicit input on this
25 particular topic.

1 We need to coordinate the solutions
2 and then get them into the BMP Design Manuals.
3 Remember, each city has one of these.

4 Then we've got to review all available
5 sudden since that was not given during
6 consideration on the Water Quality Improvement
7 Plans and include that where applicable.

8 They've got to have time to schedule
9 counsel meeting and counsel approval, and then we
10 have to conduct concurrent training for
11 development industry staff, as well as the people
12 that work for the different Copermittees.

13 So how do we get to the goal? We
14 think by adding 180 days total -- the 90 that
15 staff said that they will give, plus an additional
16 90 -- starting up the December 24th due date, that
17 we can come together and agree on standards and
18 get the course sediment yield figured out,
19 codified, and into the BMP Design Manuals.

20 We also think that we can get some
21 additional work done on the Water Quality
22 Improvement Plans where they've been deficient.

23 We can incorporate a fully developed
24 workable model into all the manuals, and we can
25 allow the various jurisdictions to have the time

1 to adopt what they need to adopt. At the end of
2 the day, this is what we're looking for.

3 The staff agreed that with sediment
4 with no net impact there's not, like, one answer.
5 There can be other options proposed that
6 demonstrate no impact. We want to have as many of
7 those tools in our toolbox as possible. And it's
8 important and necessary for you as the Board to
9 understand that there is a need to have your staff
10 available to answer questions as we move forward,
11 not to play referee, but there are legitimate
12 questions. "Okay. How are we going to figure
13 this out?" Sometimes they come from us.
14 Sometimes they come from the Copermittee.
15 Sometimes they come from the environmental
16 community. Because at the end of the day, this is
17 what we want: We want a permit that works for
18 everybody. Not necessarily everybody is going to
19 be happy, but we want something that works for
20 everybody. And by doing that, at the end of the
21 day we want results.

22 Finally, I think that our Copermittees
23 in both Riverside and Orange County touched upon
24 CEQA, and I know that with doing eight of these
25 plans at the same time the City of San Diego

1 adopted an approach that they said they had a
2 mitigated negative declaration. But most of the
3 other Copermittees have it, and there are definite
4 CEQA requirements, and nobody calculated that into
5 their timeframes as well. So I just wanted to put
6 that out there.

7 But I appreciate your time. If you
8 have any questions, I'd answer them.

9 BOARD MEMBER MORALES: Mike, one very
10 quick question.

11 When you suggested that you would want
12 staff or it's necessary to have staff available to
13 answer questions, were you envisioning something
14 along the lines of the folks on your end designate
15 one person to contact staff? Or are you
16 suggesting that they take calls from everybody who
17 has a question?

18 No. Typically -- let's use the coarse
19 sediment as the example. That's exactly what
20 we've been doing.

21 As we've had problems, typically it
22 falls to me. People call me and then I usually
23 call Laurie or one of the staff members. And
24 that's what I do. I think I called you and said,
25 "Hey, we've got a problem with this. We need to

1 meet with you. How soon can we get in to talk?"

2 BOARD MEMBER MORALES: Okay. So
3 you're just asking to continue the --

4 MR. MCSWEENY: Collaborative
5 relationship.

6 BOARD MEMBER MORALES: -- working
7 relationship that we appear to have now, as
8 opposed to something more.

9 MR. MCSWEENY: Right, yeah. No, the
10 intent was never to have project applicants
11 calling them, saying "Can we do this? What about
12 this?" Not at all. Not at all. Not at all.

13 What we're really trying to do is work
14 and have them as a resource. Let's work with the
15 Copermittees to make sure that everybody's on the
16 same page, that we understand what's required in
17 the BMP Design Manual, and then we sell that and
18 educate our folks.

19 On the other hand, they've got a job
20 of making sure that everybody on their end knows
21 what does all this mean. And it is extremely --
22 coarse sediment is unbelievably technical. And so
23 at the end of the day when somebody is trying to
24 get a project processed at the City, if they don't
25 understand, they just kind of throw their hands

1 up, "No," or they go do a study and spend \$25,000,
2 which may or may not answer a question, and they
3 don't even know the right question to ask.

4 So that's why it's important to have
5 time to educate both groups of people.

6 BOARD MEMBER MORALES: Okay.

7 CHAIRMAN ABARBANEL: We will move on
8 to the next group.

9 Mr. O'Malley?

10 MR. O'MALLEY: Thank you. I also have
11 presentations I'd like to make.

12 CHAIRMAN ABARBANEL: And you organized
13 it in groups of people?

14 MR. O'MALLEY: Yeah, actually just one
15 other in our 30-minute time slot. And I'll
16 hopefully cover about 20 minutes.

17 CHAIRMAN ABARBANEL: You have 30
18 minutes. You have somebody who will be very
19 friendly until 29.9 minutes.

20 MR. O'MALLEY: Actually, I would
21 request that Board members shall perhaps give me
22 30 seconds to respond to Board Member Morales'
23 question up front before we begin.

24 CHAIRMAN ABARBANEL: Anytime you
25 respond to questions, I try to turn the clock off.

1 MR. MORALES: I asked a lot of
2 questions.

3 CHAIRMAN ABARBANEL: Go ahead.

4 MR. O'MALLEY: This is the -- Excuse
5 me. Matt O'Malley, legal and policy director of
6 San Diego Coastkeeper. First, thank you for
7 having me today.

8 I want to kind of respond because it
9 seemed like from staff and what you spoke to this
10 morning as far as the interpretation of the
11 State's Board and Order, I want to read the
12 language specific to that you talked about because
13 I interpret it as a very different sort of
14 instruction.

15 The idea, it seems like --

16 CHAIRMAN ABARBANEL: The State Board
17 and Order and Alternative Compliance?

18 MR. O'MALLEY: Correct, yes. And I
19 will be addressing just alternative compliance.

20 BOARD MEMBER STRAWN: May I ask you --
21 when you know you have a tendency --

22 MR. O'MALLEY: Okay. And I'm sorry.

23 BOARD MEMBER STRAWN: We have a
24 recorder, that if you get ahead of her --

25 MR. O'MALLEY: I have a tendency, and

1 I apologize. I have a lot to say, and I'm trying
2 to cover it all.

3 So the idea was that -- the thinking
4 was that the State Board says you should consider
5 this, but if you don't do it, we need you to
6 justify why.

7 And obviously, if you read the
8 language, it's pretty clear that that's not
9 exactly what they meant. So I think instead what
10 they're saying is -- and I can read it to you --
11 but they say, "We direct all Regional Water Boards
12 to consider our approach to receiving water
13 limitations compliance when issuing these permits.

14 "In doing so, we acknowledge that
15 reasonable differences may dictate a variation in
16 this approach but believe that such variations
17 must nevertheless be guided by a few principles.
18 We expect the Regional Boards to follow these
19 principles, unless a Regional Water Board makes a
20 specific showing that application of a given
21 principle is not appropriate for a region-
22 specific permit."

23 So instead of saying, "Do this or show
24 us why not," they're saying, "Follow these
25 principles, and if they're not applicable to your

1 region, then tell us why not."

2 That's, I think, a very different
3 interpretation. It's very much -- it's a
4 direction or tell us why you're not going to do
5 it. Or, "If you don't follow each these seven
6 principles, if you decide to do it, explain why
7 not," because they want you to follow those
8 principles. And I'll go through some of those
9 later in my presentation. But hopefully, that's
10 just a different take on what the State Board is
11 saying and how he interpreted it versus sort of
12 what I've heard thus far.

13 So again, I'm going to just cover the
14 alternative compliances. You know we called on
15 Safe Harbors, which is most of us, and our groups,
16 our lawyers, and we get that right from the Ninth
17 Circuit. But this general idea is that this is a
18 provision that gives some sort of out or, you
19 know, compliance of certain provisions or plans,
20 forgive noncompliance and discharge. And that's
21 essentially -- in fact, that's exactly what it
22 says, and that's why the Copermittees are
23 supportive of it. You know, once your compliance
24 has been processed, you're deemed as compliant.

25 I know that we are looking for

1 outcomes based permanently. In our opinion, this
2 very much goes back to the model-something plan,
3 get a plan approved and now you're in compliance.
4 It's sort of the opposite. It's sort of more of a
5 process-based approach.

6 But that's kind of just to sort of
7 give a start-out where I may intend to go here.

8 And I want to hit two main points in
9 the brief time I have here, but the first is that
10 -- for those of you who were here in 2013, we
11 discussed this, that we do believe that the Safe
12 Harbor approach violates anti-backsliding
13 requirements of the Clean Water Act and federal
14 regulations.

15 The second is that the tentative order
16 -- and this is something that L.A. didn't have to
17 go through -- the tentative order here, we
18 believe, is fairly inconsistent, if not very
19 inconsistent, with State Board's order and
20 directives. I want to hit each these sort of
21 together here.

22 The first, again, it goes back to
23 basically the idea of what is anti-backsliding?
24 I've thrown out a lot of language here, but the
25 idea is that federal regulations and Clean Water

1 Act prohibits backsliding, where we can have
2 permits from previous permits.

3 The way we look at the Safe Harbors is
4 -- because they no longer require an actual
5 meeting of water quality standards, they are less
6 stringent than existing permits and previous
7 permits, and in fact, they violent this.

8 Now, Reason 3 has actually spoken to
9 this, especially with time constraints when they
10 say backsliding is permitted, allowing additional
11 time to complete a task that was required in the
12 previous permit constitutes a less stringent
13 condition to violate the provision against
14 anti-backsliding.

15 So I don't want to go too far into the
16 legalities here because what the L.A. board order
17 did, as well as the San Diego board, what it's
18 saying is, "You know, we're not actually sure if
19 we're violating this or not. But even if we are,
20 there's an exception here and we're going to claim
21 the exception."

22 So they give this sort of
23 justification as to why they're not violating
24 anti-backsliding, "They do this in L.A., and we're
25 doing it here."

1 So I really want to talk about more of
2 what those claims exceptions are. I believe that
3 this issue is probably going to be dealt with in
4 court. I think it's already being petitioned up
5 to courts in L.A. on that very issue. And so I
6 really want to talk about the justifications here,
7 what we're claiming here in San Diego, and why, in
8 L.A., what worked in L.A., what's claimed in L.A.
9 is not applicable to us one way or the other.

10 There is two sort of ways it's not.
11 It's either what exists there on the ground
12 doesn't exist here and so we can't claim this is
13 this new information, or, of course, substantial
14 change, or we've already been doing these things
15 for a while so we can't claim they're new.

16 But essentially what they're saying is
17 the justification for backsliding there was this
18 new information for the previous permit. But you
19 can imagine they waited 11 years between permits.
20 Of course there's going to be plenty of new
21 information. So you're correct in assuming that,
22 oh, one or seven or 13 and several amendments in
23 between.

24 But the idea was that we have these
25 paradigm shifts that they want to treat storm

1 water as an asset rather than a liability. There
2 was a lot they've learned in TMDL. They have
3 something like I think totals about 40-something
4 plus in L.A. region, actual TMDL which serve as
5 sort of a backstop incorporated. So then as far
6 as permit, really will get at the gist of water
7 quality issues. Then the large sort of planning
8 of regional solutions which we've already
9 implemented, and LID benefits, which we've already
10 implemented.

11 So for a number of reasons, I don't
12 think those exceptions at all apply to San Diego.

13 The response to comments here
14 basically says, you know, the circumstances have
15 changed here materially substantially, so that
16 should allow us to get around the
17 anti-backsliding.

18 I would say very clearly the only
19 material change here is that we're adopting a safe
20 harbor. All the rest of the provisions have
21 already been in place, some of them since 2007.
22 And the main justification for what has been in
23 play -- and I'll go through those right now --
24 really don't apply here either. So I think
25 claiming this new information it just doesn't

1 apply.

2 And I'll say this numerous times: We
3 sort of copy and paste justifications sometimes,
4 but we didn't then look to see if those
5 justifications apply here, nor did we copy the
6 methods on the permits, and there are some
7 specifics things I'll address there.

8 So what are the main things that were
9 said, Look, we expect the L.A. orders TMDL
10 requirements, they're going to be the means to
11 achieve water quality standards for the majority.
12 They have -- I know some places state 33,
13 depending on how you look at it, over 40 I heard
14 the other day. The L.A. board said the exact same
15 thing. They said the majority of pollutants
16 concerned are addressed by 33 TMDLs that are
17 included in the permit. So the whole idea here of
18 part of the justification of doing this up there,
19 we have an enormous amount of TMDL. It wasn't
20 just the fact that they learned lessons from the
21 TMDLs, but that they have them as a backstop to
22 incorporate them. Just to contrast, we have five
23 of them here, right? And then more and more we're
24 looking toward alternatives to TMDLs here, and
25 some of those alternatives are expressly this MS4

1 permanent, like we're doing in Loma Alta slew and
2 up in Oceanside.

3 (Court reporter interrupts to slow down the
4 speaker.)

5 MR. O'MALLEY: So like we're doing in
6 Loma Alta slew, we're looking at the MS4 permits
7 as an implementation measure rather than the TMDL.
8 So we really need that rigorous accountability
9 that we were talking about earlier.

10 The second justification -- one of the
11 main justifications is, in terms of water supply
12 -- and we all would agree to this -- there's
13 really been this paradigm shift. Look to water as
14 a water supply as an asset rather than a
15 liability. But practically and legally there's a
16 couple of problems with part of that justification
17 here.

18 One, we just do not have underground
19 basins and recharge basins like we have up north.
20 I would love it if we do. I think we have some
21 great projects here. So it may be that we're
22 instead relying on more traditional storm water
23 measures to deal with storm water. They're saying
24 lack of availability of ground water recharge
25 storage capacity.

1 The legal problem with that is that
2 our MS4 permit -- and actually, the gentleman from
3 Riverside said this earlier -- it doesn't require
4 the analysis like L.A. permit does, to look into
5 the multi-benefit regional water supply for water
6 supply. There's actually provisions in the L.A.
7 permit that have that. We don't have that. Maybe
8 we should. I would argue we definitely should.
9 But again, that's a problem with copying the
10 justification but not actually having the means in
11 place to deal with that.

12 And the last two that I think were
13 major justification changes were for
14 anti-backsliding exceptions was that we should
15 adopt this watershed approach. And we also agreed
16 that that is the right approach. And we agreed,
17 actually, in 2007 and took that approach. And
18 this is language from the 2007 permit that says,
19 "The Copermittees within a watershed; there are
20 two developed watershed-based management
21 strategies."

22 So it was not new information, not
23 anything that's materially and substantially
24 changed here. We've actually been doing this
25 since 2007. And I would say to some degree we've

1 been doing it with LID, as well. And those really
2 were the main justifications for anti-backsliding.

3 So I think before I go on, I just want
4 to say, you know, you have -- I think this is the
5 example of where we're copying the justifications
6 from L.A., getting around anti-backsliding, if we
7 do agree that's a problem. And the permit
8 actually doesn't say it is or not. It admits it
9 may be a problem, but we're not actually moving
10 forward with the measures that either exists in
11 L.A. or were recommended in the State Board order.

12 And I'll get to those next.

13 So then we're asserting at this point
14 that this order as it stands -- and I'll go
15 through, really, three main ways that it is.

16 I'm going to go through what the RA
17 is. It's pretty important. It's actually sort of
18 the lynchpin of what the State Board agreed to in
19 the L.A. permit.

20 There is also, as I mentioned, none of
21 these regional multi-benefit capture and use
22 compliance provisions. We may see them with
23 alternative compliance. But as far as just
24 complying, out there they have an 86 percentile,
25 24-hour storm capture use and provision, which we

1 don't have.

2 And then because of these lack of
3 extensive standards, we want to be able to go back
4 and tweak it, amend it. That's kind of what we
5 have now, and now they're asking for protection of
6 that.

7 So I just want to go through -- again,
8 I'll reiterate this, that State Board really lays
9 out a very specific pathway to these safe harbors.
10 But what does is it bars the justification in ours
11 but not the approach and methodology, which is
12 RAA, and I'll talk about that moving forward.

13 It lays out the principles, which
14 you've heard. These are those seven principles
15 which I talked about that says if you're not going
16 to follow these, explain why you didn't, so more
17 specific. What it says is, these things have to
18 be ambitious, rigorous, transparent. Again, they
19 want to encourage multi-benefit water supply
20 projects, compliance projects. There must be
21 rigor and accountability, which I think we all
22 agree, and there really shouldn't deem good-faith
23 engagement from the process as compliance.

24 So what's the backbone of that whole
25 program is something called the "Reasonable

1 Assurance Analysis," or RAA. This is really a
2 point of contention in L.A., and in a very big way
3 for anybody following it. I've become much more
4 familiar with the L.A. permit process than I've
5 ever wanted to. My jurisdiction pretty much ends
6 in San Diego, but not anymore, I guess.

7 So what they -- the people who
8 approved it said, "Look. We need a well-defined
9 transparent way of moving forward."

10 And we actually heard earlier John van
11 Ryan saying, Look. We're critical. We need the
12 sort of time-tested -- we need ways of moving
13 forward.

14 All we're saying is the same thing
15 here. There is some groundwork laid for us in the
16 L.A. permit which we did not copy. And really the
17 State Board order gets it and says, Look. The
18 requirement for these things is really just to
19 show that when Copermittees choose a pathway, that
20 the way they site them, the way they design them,
21 their the BMPs, it's just going to work. We have
22 a really good idea that it's going to work that
23 way.

24 Besides that -- oh, and I will not
25 raise this, but I want you to know this is just

1 one section of the L.A. permit that talks about
2 what this safe harbor looks like out there. It
3 goes about which models are accessible, all data
4 collected the last 10 years. This is actually not
5 even the whole entire section, but it's very
6 specific in the permit itself saying, "If we're
7 going to accept this, this is the level of rigor
8 that we want to see, at the bare minimum."

9 On top of that, they have something
10 like 37 to 50 pages of guidelines that were
11 developed. "Now as you're moving forward, these
12 are the detailed, objective criteria that you need
13 to follow moving forward."

14 Again, this adds to this level of
15 rigor, transparency, and accountability that this
16 State Board order saying we need to see. I'll
17 just read from this section as well: "It must be
18 adequate to identify the required reduction of
19 each water body combination at each compliance
20 deadline and analyze the BMP scenario to achieve
21 that deadline."

22 So these are guidelines that are very
23 strict, very rigid in moving forward. We just
24 don't have something like that.

25 The guidelines here, again, this is

1 really just to show you. And the point of this
2 slide -- I'm not going to read it -- shows some of
3 the type of things that are considered in
4 developing these plans. But the idea is that with
5 this type of guidance anyone in this group,
6 whether it's myself or the consultant, or anyone
7 in this room, or your staff or even you, could
8 look at this stuff and say, "This is what is
9 expected of you. These are the objective,
10 rigorous transparent criteria. Move forward using
11 those," and then you might be okay. But we at
12 least have some sort of criteria with which to
13 gauge that compliance is on, not just "show us
14 what you got," which I'll contrast with our
15 language, "an analysis with clearly stated
16 assumption."

17 So we go from this, with something of
18 50 pages of guidance, to this. And I think it's,
19 by argument, very clearly this is not rigorous,
20 it's not transparent. We are trying to be
21 flexible, and I get that. But we're taking
22 flexibility and sacrificing transparency and
23 accountability. Because transparency doesn't just
24 mean at some point the public gets to look at this
25 plan. It means there are objective criteria up

1 front with which we can then review it together.
2 Your job and my job are not that dissimilar at
3 times, to see our water is safe and clean for
4 people.

5 The other lack of objective measure
6 here is if they're not in compliance -- the only
7 thing that won't -- I mean, they won't get kicked
8 out right away. They just need to give what's
9 called "acceptable rationale." I don't know what
10 that means. I've got staff that won't know what
11 that means. I don't know that you know what that
12 means, what that "acceptable rationale" would be.

13 So I think what's happening here is
14 because there's no RAA or guidance we just don't
15 have this objective criteria. We don't have this
16 rigor or transparency or accountability that the
17 State Board order saying we need to have if we're
18 going to do this.

19 Despite all the problems, at the very
20 least, we need some of these processes. Also,
21 because there is this sort of acceptable
22 rationale, how do we know, then, are we compliant
23 or are just in this inner loop?

24 I mean, I don't know at what point I
25 will then be able to come up here and say that's

1 not really acceptable. That's not really a
2 standard that I can point to. I can point to
3 standards in the CFR or Clean Water Act, but
4 "acceptable rationale" or an analysis without more
5 is difficult.

6 The EPA has actually spoke about this
7 specific issue, and they did so Monday. I know
8 Christina represented their letter earlier. But
9 what they said is, "Look. These proposed permit
10 modifications provide only limited direction
11 concerning specific technical, analytical, and
12 planning expectations. They didn't recommend
13 prompt development of guidance," since what I'm
14 also recommending, "built into the permit." And
15 they say, "It best serves everyone's interest if
16 there's clear understanding about the level of
17 technical rigor necessary to demonstrate
18 reasonable assurance."

19 And they go on to say, "Look. You
20 guys need to come up with a way -- we all need to
21 come up with a way in this permit, if we're taking
22 this approach -- despite this problem -- that has
23 this rigor and accountability, these guidelines
24 and guidance built in to moving forward."

25 So just to kind of recap what I very

1 quickly breezed through -- sorry. We see this as,
2 if not rigorous, transparent, or well-defined
3 without either RAA or upfront guidance built into
4 this permit that we can point to. You know, it
5 allows for non-achievement of PWLs based on what
6 I'm seeing as this nebulous, sensible rationale.
7 And as long as there's acceptable rationale, which
8 I don't know what that is, and I don't know
9 anybody in this room that can clearly tell me what
10 that is.

11 And then we see this not as ambitious.
12 I think we all agree. But let's put something in
13 the permit that actually is like L.A. that says,
14 "Look, we want to get towards them and so we want
15 to actually have that be part of the analysis.
16 Can you capture, infiltrate, or somehow or other
17 make this water supply as part of this permit?"

18 We'd love to see it. And I think the
19 gentleman from Riverside said earlier the same
20 thing; they'd love to see it. It might be
21 available in certain parts of north county, as
22 well.

23 Just the background again. Some of
24 the main justifications is where this has been
25 implemented there's numerous, numerous TMDLs as

1 backstops to ensure water supply standards will be
2 met. And they also have this much more rigorous
3 RAA requirement moving forward, and neither of
4 those exist here.

5 You know, this is something from
6 earlier this year -- and they sort of shared the
7 interpretation that I have. That Water Quality
8 Board directs all regional boards to consider the
9 approach but does not require its use. We believe
10 that it would be premature and inappropriate to
11 require the L.A. permit approach throughout the
12 state."

13 I am mimicking their language and
14 saying the exact same thing.

15 Now, I want to have a couple proposals
16 here for you. We can remove the safe harbor
17 language and come up with something like a time
18 schedule order and compliance list.

19 Now, as I understand it, earlier today
20 you guys adopted a time schedule order for the
21 Navy without any, you know, any discussion, kind
22 of went through it. And it's way that -- because
23 the Navy says, you know, "We can't comply with
24 this in this timeframe." You do have mechanisms
25 to deal with that.

1 You can actually have a couple come up
2 and say, "Look. Yes, we are not in compliance."
3 You can actually have one of them admit, "We are
4 not in compliance. We want to get into
5 compliance. Let's work this out. We have
6 protection from third party lawsuits," if that
7 really is the position that they're worried about,
8 is myself or someone else in this room coming
9 after them.

10 You can do it another way, and it
11 still lays out the same, you know, protections and
12 methodology forward, if that is what they want.

13 If you're dead-set on adopting this,
14 what I would say is, I know that the San Diego
15 Water Board are working on statewide guidance
16 issues on the RAA, essentially to say what really
17 is reasonable assurance, what are the basic
18 criteria, how do we calibrate these models.
19 They're working on it right now, and I expect it
20 will probably be done within a year or two.

21 Why don't we wait until someone
22 actually has developed all of the guidance and
23 methodology first. Or we can look at L.A. and
24 say, "Yes, that's the method we want to do moving
25 forward."

1 By then, you'll probably have the L.A.
2 lawsuits panned out to determine if this
3 backsliding data is important or not. But it
4 actually gives us a very clear way.

5 Lastly, and this is not a proposal;
6 this is just if you're going to move forward it's
7 sort of a "Look. Let's add in this RAA language
8 into the permit." We have this L.A. language we
9 can pretty much cut and paste, as we've done that
10 with the justification. And since the whole idea
11 that sort of annual milestones came up, partly in
12 the workshops because I asked for them, but what I
13 asked for, let's say they are not meeting two
14 years in a row, let's just bring them back to
15 status quo. They don't need protection anymore.
16 Well, that language wasn't excessive, for whatever
17 reason. But I'm just calling it the hard out.

18 If we're going to move forward without
19 guidance, if we're going to move forward giving us
20 protection in any sort of scheme, at least let's
21 have something that says, "But if you keep blowing
22 it, you're out." And it's now out of the permit,
23 it's just out to where we are today, which is not
24 such a bad place. We have these W2 MPs which are
25 moving forward. They are going to be implemented.

1 On top of that, I would just say, if we are going
2 to move forward that way, we should add the water
3 supply provisions, as well as ramp up some of our
4 allocations in TMDLs, if they really are the
5 backstop in L.A.

6 I knew that this issue would come up
7 so I just kind of let the EPA speak for myself and
8 my organization. We call this the grace period.
9 Essentially, they want the safe harbor to develop
10 a phase.

11 Establishing a safe harbor during this
12 phase is not warranted. That's from January this
13 year of Jay Smith, the head of NCDS permits up in
14 San Francisco. And two days ago, "There is
15 insufficient basis to conclude that permit fees
16 are or will be in compliance." I share those
17 sentiments. I echo them. I very certainly agree
18 with them. I just see no reason why, if we are --
19 you know, it's one of those things where the gift
20 horse is in front of us, seeing how we want to put
21 teeth whitening on it. It just doesn't make sense
22 at this point.

23 So where are we? We've seen the
24 WQIPs, and I've reviewed all of them on this, as
25 close as I can. You know, I think our permit is

1 pretty good, as far as laying out this path
2 forward. It had some good stuff there, but there
3 was differences in things on how it read. I think
4 we've seen -- and I think you heard recently, and
5 I think you probably heard from your own staff how
6 happy they were with the first draft and the
7 submitted draft of the water quality improvement
8 plan. Without the clear sort of strict guidelines
9 upfront, you're going to get woefully inadequate
10 plans, especially if you're giving people
11 protection. That becomes a main problem. I also
12 want to remind us since 2013 what you have done
13 and what your staff has done.

14 Since 2013, there have been multiple
15 MS enforcement actions against the City of San
16 Diego, multiple against the City of Escondido,
17 Carlsbad, Chula Vista and Lemon Grove. So now
18 we're talking about having protection when you're
19 still issuing them enforcement actions under MS4.

20 Since we're considering new
21 information since 2013, these are pictures I took
22 recreating in our water bodies two months ago, any
23 given day. I didn't even pick a special day.
24 This is what we're still looking at. These were
25 pictures sent to me -- on the left, Escondido

1 Creek Conservancy called me furious after their
2 water check looked this way. These are fish kills
3 up in Oceanside, I think, due to up to nutrient
4 pollution earlier this year in January.

5 So this is just to point out this is
6 still ongoing. This is since the 2013 permit has
7 been implemented. There's a huge gamble we're
8 taking if you pass this. These guys are going to
9 do everything they need to, and they're going to
10 do it with this level of protection, but they're
11 not going to have the strict guidance that they
12 need moving forward.

13 I think, you know -- I mentioned the
14 legal issues. We think they're very serious. We
15 don't think there's exceptions to backsliding that
16 apply here. But, also, we think the way moving
17 forward, we're going to copy the justifications,
18 we absolutely have to copy the kind of guidance
19 that's moving forward in L.A.

20 With that, I think I'm finished, other
21 than just to say, obviously, this tentative order,
22 we cannot and will not support it without at least
23 some of the changes made. I think regardless,
24 there are issues. If you are dead set on passing
25 this sort of alternative compliance, let's put it

1 off until 2018 when there is statewide guidance on
2 this.

3 Thank you. Appreciate it.

4 CHAIRMAN ABARBANEL: Questions?

5 BOARD MEMBER MORALES: I have just
6 one. You've seen the QWIPs that have been
7 prepared over the last several months here. Are
8 any of them woefully inadequate?

9 UNIDENTIFIED SPEAKER: I think upon
10 first submittal, yes. I don't know that staff --
11 I'm not going to point fingers, but I will say I
12 think some of them failed to meet even the minimum
13 requirements of the permit, absolutely.

14 I don't know that staff or even other
15 Copermittees would disagree with me. There was a
16 period to go back and do some adjustments. I've
17 started looking at those, as well. Some of them
18 are bad and some of them are a way moving forward.

19 MS. HAGAN: We really need to try not
20 to talk about the separate water qualities. It's
21 a little hard to divorce but there are separate
22 proceedings that are going to be coming before the
23 Board, in terms of the detail. The general
24 question --

25 CHAIRMAN ABARBANEL: What is that

1 procedure? Once a QWIP is submitted for
2 consideration by the staff, does it come back to
3 the Board to be approved?

4 MS. HAGAN: I believe the permit
5 language roughly reads that if "After a process
6 and they have been submitted, if there don't
7 appear to be significant unresolved issues, the
8 executive officer can go ahead and approve them.
9 If there appear to be significant unresolved
10 issues, in his determination, he'll schedule them
11 for a Board hearing.

12 CHAIRMAN ABARBANEL: Thank you.

13 MR. GONZALEZ: Mr. Chair, members of
14 the Board, Marco Gonzales of Coast Law Group on
15 behalf Coastal Environmental Rights Foundation.

16 I've been before this Board a lot over
17 the last 20 years on storm water. It's somewhat
18 interesting to see some of the same players making
19 the arguments that have evolved but come down to
20 the same thing "Don't make me do it or don't make
21 me do it right now."

22 I'm going to be talking about -- I
23 took the oath earlier. So I'm going to be talking
24 about prior lawful approval. This notion that an
25 applicant, a developer, has done something such

1 that these equities would result in us giving them
2 the ability to take advantage of the 2007 BMP
3 manual or the storm water control and not require
4 them to comply with the new BMP manual.

5 That notion of equity is interesting
6 because I heard John Van Ryan, one of those guys
7 who has been doing this as long as I have, come up
8 here and say, "I want even more time" I'm jumping
9 ahead on my comments. "I want more time because
10 we need time to work with the applicants to
11 utilize this."

12 That's not the point of the prior
13 lawful approval. It's not to say "Give us six
14 more months so we can jam as many people into the
15 pipeline and get them to that point of compliance
16 and get them out of having to comply with the 2013
17 permit."

18 Now, fundamentally, before we even
19 start talking about this, we ask ourselves "Why
20 are we doing this? Why are we doing a new permit?
21 Why are we amending our permit? Why did we
22 require, in 2013, the hydromodification changes
23 and new BMP handbook?" Because we said 2007
24 wasn't good enough.

25 We know that because we're not in

1 compliance with the Basin Plan. We haven't done
2 our TMDL. We're still violating water quality
3 standards every single day in every single
4 jurisdiction after 20 years of trying to regulate
5 storm water.

6 And so at the base, what Mr. Van Ryan
7 is up here saying, "Give us a chance to not have
8 to do more, to not have to do what we already know
9 is required to meet the basic standards."

10 If you read the language starting at
11 page 102 of the tentative order dealing with the
12 prior lawful approval, we could actually end up
13 five years down the road even more. So we're
14 talking 2007 to the summer of 2013 to the summer
15 of 2018. We're talking 2007 to 2018 before we
16 finally implement the 2013 BMP manual? You've got
17 to be kidding me.

18 Another interesting comment today,
19 when Wayne got up early on and did his
20 presentation, he said, "We think this is a great
21 change to the permit because it makes it clear and
22 easy to enforce."

23 Go back and read what the prior lawful
24 approval standard looks like now compared to what
25 it was before. When you look at the footnote in

1 the 2013 permit that talks about what qualifies as
2 a prior lawful approval, it tracks directly on
3 what the status of the law is.

4 There's one case that controls this.
5 It's very clear. It says you need two things:
6 You need a permit, and you need to break ground.
7 That's easy. There's nothing easier. As a matter
8 of fact, when I'm not up here representing
9 environmental groups, do you know who I represent?
10 Developers.

11 And for over a year now, those
12 developers have been asking me -- that's what they
13 do when they get these crazy regulations coming
14 down through the Board to the City. They come to
15 me and say, "What do I need to do?" Since January
16 of last year I've been saying, "You need to comply
17 with the 2013 manual. It's being devised. Here's
18 a draft of it. Design your project to comply with
19 that."

20 The manual was approved in June of
21 this year. Let's talk about -- anybody that
22 hasn't planned their project to comply with that
23 manual, the price should be paid by that applicant
24 not by the community, who should be able to rely
25 on these ratcheted-down standards that just bring

1 us to swimmable and fishable waters.

2 So these clients that I have, they
3 design their projects not knowing for sure when
4 they're going to get final grading approval. I'll
5 tell you what, we just finished a year-and-a-half
6 lawsuit on one of them. We got the ruling last
7 month. We can finally pull a grading permit, and
8 they're saying "Are we going to get our grading
9 permit by December 31st?"

10 I said, "Go back and look at your
11 engineering. We designed the project to comply
12 with the new manual. We don't even have to worry
13 about it." That's what a prudent, responsible
14 developer would have been doing for the last year
15 that we've been talking about this.

16 Instead, it's not just December 24th.
17 It's an additional 90 days, as per staff. And if
18 we give into the BIA and the County, we're talking
19 another 180 days so they can shoe-horn as many
20 development projects as possible into a standard
21 that we know doesn't protect water quality
22 standards.

23 Mr. McSweeny got up here and talked
24 about the BIA folks who call him up, who blow up
25 his phone, people up in Oceanside who don't know

1 what the standard is.

2 I'm sorry, but the developers I
3 represent aren't part of the BIA, and maybe we've
4 identified the problem. When they call me up, and
5 they say "What's the standard," I say, "Do you
6 have your grading permit? Have you broken
7 ground?"

8 Afco is a very clear legal standard.
9 It's a very bright-line standard that gives us all
10 certainty. The reality is, there are very few
11 projects, but they are very big, who really need
12 this prior lawful approval language.

13 During the workshops, we had a very
14 simple request from the environmental community.
15 We said, "You know what, you guys are the best to
16 tell us how many projects you have in the pipeline
17 who might potentially take advantage of the prior
18 lawful approval language." "Just give us a
19 database so that we can talk apples and oranges.
20 Big projects, small projects, 10 projects, 100
21 projects. Give us some answers."

22 How many months later are we still
23 saying we don't even know how many projects would
24 be affected by this. And per the County's
25 representation today, the next six months or

1 actually the next nine months -- seven, eight,
2 nine months, we're going to shoehorn as many
3 projects as we can in there. That is not what
4 this was intended to do. The notion of prior
5 lawful approval is to say, "If you've contributed
6 significant dollars and you have diligently
7 pursued your project, we're not going to pull the
8 rug out from under you."

9 But the fact that the 2013 permit had
10 such a huge tail to produce this BMP manual, and
11 we had so much time after approval in June of this
12 year to vet it and bring it to effective date in
13 December, I'm sorry but we have given you enough
14 time.

15 So I would leave you with the simple
16 notion that the easiest, most simple, most
17 legally-viable solution to this is to go back to
18 Afco and tell the world "If you've got your
19 grading permit, and if you've broken ground by
20 December, you can take advantage of the 2007
21 hydromod BMP requirements." "If not, it's on you.
22 Redesign your project."

23 We all went through the recession. My
24 clients did. A lot of the people who are trying
25 to take advantage of this, the law changes

1 sometimes. Planning changes and regulations
2 change.

3 This is not a circumstance where we're
4 can say we're protecting water quality standards
5 by allowing an untold number of applicants to take
6 advantage of a standard that, coming up on 10
7 years now, we've already decided isn't good
8 enough.

9 CHAIRMAN ABARBANEL: I've heard what
10 you said, and I'd like you, if you would, to
11 repeat your suggestion of what in the tentative
12 order, putting aside the typos and changes, do you
13 recommend that we do not approve?

14 MR. GONZALEZ: Section big E(3)e
15 1(a)12. It's entitled structural BMP approval
16 process under priority --

17 CHAIRMAN ABARBANEL: These are the two
18 items that Mr. Chiu recommended approval of, or
19 his staff did in addition to the time --

20 MR. GONZALEZ: It's the prior lawful
21 approval language. It's the generic, easy way to
22 describe it.

23 CHAIRMAN ABARBANEL: I have to say,
24 I've gotten a little bit of cross-talk between
25 prior lawful approval and the alternative

1 compliance.

2 Are you speaking to both of those?

3 MR. GONZALEZ: The alternative
4 compliance has to do with your development of an
5 alternative to meeting water quality standards.
6 That is the big picture. I'm talking about
7 individual projects being able to take advantage
8 of the old BMP manual.

9 CHAIRMAN ABARBANEL: Okay. Thank you.

10 Last but absolutely not least, we have
11 interested persons, and I would say tenacious
12 persons, having waited all this time. For each of
13 those persons who have submitted a card, we would
14 offer you three minutes to speak.

15 Unless there's a particular order
16 here, I was going to start with Ms. Hunter.

17 MR. MCSWEENY: I have a question. For
18 those of us that had a little bit of time left for
19 rebuttal, when would we be able to do that?

20 MS. HUNTER: Good late afternoon.

21 Laura Hunter representing Escondido Neighbors
22 United, and yes, I did take the oath. I have a
23 couple points I wanted to mention today.

24 I agree with my cohorts at Coast
25 Keeper and would urge you to adopt their

1 recommendation. First thing I want to touch on, I
2 want to offer a realty check on this really
3 ridiculous letter that you received about Safari
4 Highlands Ranch. It basically was a not-so-veiled
5 threat, completely inappropriate attempt to
6 intimidate you out of doing a lot of your job.

7 CHAIRMAN ABARBANEL: This is not on
8 the specific item that they're discussing?

9 MS. HAGAN: It refers to a comment
10 letter.

11 MS. HUNTER: Yeah, and I do think it's
12 instructive.

13 So first of all, they don't have a
14 project approved of 550 units. It doesn't have a
15 value of 500 million dollars, which they're
16 threatening you have to pay them back. They don't
17 have an annexation approval. They don't have an
18 environment document. They have nothing. They
19 have ink on a piece of paper, really. And they
20 own the land.

21 They don't even have the entitlement
22 for the 26 homes they could build under their
23 current zoning, which is the County's general
24 plan. They have a lot of fantasy based on pure
25 speculation. But I think it's very instructive

1 because if you want an example -- one of the
2 reasons you should abandon this whole safe harbor
3 situation, here's Exhibit A. This is how they
4 view it.

5 I want to say that, in this case,
6 anyway, a short leash with clear direction is the
7 way to deal with these kinds of entities. The
8 second thing I wanted to speak to is, I have been
9 a member of the San Diego River Water Quality
10 Improvement Consultation Committee, and I would
11 like to touch on a couple things.

12 Regional Board Member Olson, I would
13 like to speak to your request of "Do you think
14 people aren't serious about it?" I've got to tell
15 you, there's a whole lot of RBA, a lot of really
16 bad attitude about it. Up in Escondido, you need
17 to know a majority of the City Council directed
18 their staff to deliberately weaken their
19 recommendation for the water quality improvement
20 plan to make them the minimum to get by for
21 compliance.

22 One of them said, "Let's just not even
23 comply and see what happens." Another one of them
24 says "Mother nature will take care of it."
25 Bunches of name calling and that kind of thing.

1 Not everybody is serious about doing it, I'm
2 telling you.

3 More flexibility is not going to help
4 us get to where we need to go. We really have to
5 say focused on those water quality improvement
6 plans. We need to focus on that. This safe
7 harbor business is a distraction. It's confusing.
8 It betrays the promise of what we were trying to
9 get.

10 I've been around a long time, too, and
11 I think it's probably bad news, but the entities
12 are not innocent victims that are being
13 promulgated on. These are the entities with land
14 use authority. They make the decisions about
15 whether they should put these developments here,
16 should they issue business licenses again and
17 again to companies that don't comply. They have a
18 responsibility here, and it's not just, you know,
19 something that they're bystanders to.

20 Thank you very much and please remove
21 the safe harbor.

22 BOARD MEMBER STRAWN: Mark West. And
23 that will be followed with Jennifer Olm.

24 MS. SACKETT: Hi. My name is Mandy
25 Sackett. I'm here to speak on behalf of Mark

1 West. He fractured his C-4 and had to go get an
2 X-ray today. I also have a speaker card. I don't
3 know if you want to add my time here, as well, to
4 do my own. I'll start with Mark's comments here.
5 "Esteemed Board members, ladies and gentlemen of
6 the public, good afternoon. My name is Mark West.
7 I'm a retired naval officer, chair of Surfrider
8 San Diego and resident of Imperial Beach.

9 "I appreciate the opportunity to speak
10 with you today on behalf of SurfriderSan Diego.
11 Surfrider is dedicated to the protection and
12 enjoyment of oceans, waves and beaches through a
13 powerful activist network. When I say 'activist,'
14 I mean people who take the time off to miss work
15 and to miss time with their family to be here
16 today.

17 "Our membership is served by
18 volunteers who dedicate their free time to
19 continue to voice their approval of the 2014 MS4
20 storm water permit as it was originally designed.
21 Our members do not support an alterative
22 compliance without specific time limits and hard
23 outs. We need more guidance and we need it in the
24 permit. Clean water compliance, in our eyes and
25 through the eyes of water users throughout San

1 Diego, means water safe to swim, fish in and
2 recreate in and on.

3 "Our members are comitted to
4 preserving water in San Diego. Surfrider
5 encourages people to get involved with projects
6 like these because we believe in the promise of
7 the democratic process.

8 "The permit and inclusion of
9 alternative compliance which you are discussing
10 today is one that will receive taxpayer money and
11 the public input needs to be respected throughout
12 the process.

13 "In 2013, we passed a landmark permit.
14 Please do not allow us to backslide on it.
15 Surfrider San Diego enjoys our working
16 relationship with staff from the city and counties
17 associated with managing our coastline and
18 multitude of issues associated with clean water in
19 iconic the San Diego coastline.

20 "I've participated in conferences that
21 have attracted people from all over the world to
22 discuss items that threaten waves. One very
23 interesting topic that is continually discussed is
24 surfonomics. It's a funny word but a growing area
25 of study relating to economic impact surfing has

1 on surfing communities. Studies being conducted
2 worldwide found the industry associated with
3 surfing are the biggest on local economy.

4 "Do we want to jeopardize the water
5 quality of San Diego? I think not. Surfrider San
6 Diego objects to any situation where Copermittees
7 are allowed to come up with a plan, implement and
8 adopt it, and be deemed in compliance with water
9 quality standards. Clean water is clean water and
10 nothing less. We take protection of the ocean
11 waves and beaches seriously.

12 "Lastly, as a resident of IB, where
13 clean water is a constant battle, please do not
14 take the teeth out of this permit. Our waterways
15 are dirty, and they will get dirtier if we do not
16 hold Copermittees accountable. So thank you very
17 much and have a great day."

18 BOARD MEMBER STRAWN: Do you want to
19 take your time now?

20 MS. SACKETT: My name is Mandy
21 Sackett. I am a resident of the City of San
22 Diego. I live in Point Loma. I'm the chapter
23 manager at Surfrider San Diego and also an avid
24 and recreational of the coast -- should I start
25 over? I know the clock hasn't started?

1 I spend the vast majority of my free
2 time in the ocean. I spend all my time in the
3 water at Sunset Cliffs every possible chance that
4 I get. So I'm always very well aware of the water
5 quality at any given time, especially in Point
6 Loma. As someone with continual health problems.
7 I consider myself a canary in a coma. Because I'm
8 sick immediately. So thank you very much for your
9 time and for listening to me today.

10 I have four main points I want to make
11 here. I'd like to applaud the regional board for
12 their wisdom and prudent decision-making regarding
13 the 2013 storm water permit and the elimination of
14 safe harbor clause. If you do feel like the State
15 is mandating a means for alternative compliance, I
16 would also encourage you to stand firm and please
17 acknowledge the differences between San Diego and
18 the Los Angeles region. We don't have the same
19 level of TMDLs. Please make sure there are strong
20 limits and automatic outs in the alternative
21 compliance methods so applicants cannot hang out
22 in this interim process forever.

23 My second point is, we object to any
24 situation where simply coming up with a plan and
25 implementing and adopting it is deemed in

1 compliance with water quality compliance.
2 Compliance means water are safe and clean to
3 recreate in, period.

4 Copermittees continue to have the same
5 complaints they have had for the last permit
6 cycles. Including things like cost considerations
7 and difficulty yet we're still not in compliance
8 with the Clean Water Act. There's no room for
9 leeway and we do not see any real water quality
10 improvements. We, the public, are here demanding
11 protection and actual improvement of our water
12 quality.

13 As the agency is tasked with
14 protecting the use of our water, I urge you to
15 please hold the line in protecting water quality.
16 Lastly, as I mentioned, I rely quite heavily on
17 the coast. I surf, swim kayak, eat fish, and we
18 need strong controls to protect our water bodies
19 and to make sure the water quality standards are
20 (inaudible), not a plan in place to kick the can
21 further down the road.

22 Hold the line today and amend the
23 alternative compliance to make sure it's not a
24 safe harbor. We need strict guidance and hard
25 outs. Thank you very much.

1 BOARD MEMBER STRAWN: Jennifer Olm.

2 UNIDENTIFIED SPEAKER: I will read
3 Jennifer Olm's comments. Jennifer Olm is a
4 resident of Rancho Penasquitos, a Surfrider
5 volunteer, and also a mom. She was here to ask
6 that you make sure alternative compliance is not a
7 safe harbor, while a Surfrider volunteer, I am
8 first a mother. My family likes to swim at to
9 Torrey Pines, kayak in mission bay and care very
10 much about all of our beaches.

11 I congratulate the Board on developing
12 a watershed permit that allows for focus, time,
13 enforcement and education. We need to ensure that
14 any alternative means of compliance specific,
15 measurable and transparent. Trying isn't enough.
16 We are capable of rigorously ensuring our quality.
17 Don't take the back bone out of this permit.

18 She's also a volunteer who has read
19 her local water quality improvement plan in detail
20 and has comments for that. That's it for her.

21 BOARD MEMBER STRAWN: Next I think I
22 have Sam Blick.

23 MR. BLICK: My name is Sam Blick. I'm
24 the author of the letter Laura was referencing. I
25 didn't mean to offend you. I had about an hour to

1 get that letter in. The situation I was presented
2 with was "what happens if you can't build at all
3 on the property?" And my engineer was telling me
4 you can't build at all. It's not a matter of
5 complying with the law. That's what our rash map
6 look like on this property. You get nothing. I
7 think if someone told Laura she couldn't use her
8 house at all, she wouldn't like it. The law says
9 it's not fair if you take it all.

10 All right. I bought this property
11 with my partner, and our approach was simply
12 "We're going to comply with the law, whatever it
13 is." We're envisioning a house that might cost 5-
14 or \$600,000. We know if we comply with all the
15 provisions -- the house might cost a million; who
16 knows after it's all done. But that's all right.
17 We're going to comply with the law whatever it is.

18 We looked at the general plan, what
19 does it allow. We looked at the specific plan,
20 what does it allow. We're about three years into
21 our process with the City. Our tentative map and
22 our EIR process is being considered. It's not
23 approved; it's true. But the project is virtually
24 designed by the City, everything they want, every
25 curb, the way it's designed is what they want. We

1 did what they want. We took 70 percent of the
2 property and gave it to the public. We're left
3 with 30.

4 It's all right. We still get to build
5 the houses. People still get to buy those houses;
6 they're just going to cost more. That's how I've
7 approached it. That's the way we have to approach
8 it. So we run across this condition. We look at
9 this. I submitted a letter to you. That's the
10 rash map. That condition says if you abide by
11 those coarse sediment standards, you get to build
12 nothing. Nothing is very different than a
13 500,000-dollar house. We can live that. If the
14 conditions are so bad it doubles the price of the
15 house, we can deal with that. People will buy it.
16 They need the housing. If it's worth nothing, you
17 can't build. So I had to submit a letter. I'm
18 sorry it was so rough, but it's kind of a rough
19 statement because it's a rough result.

20 I know you don't want to do that.
21 I've been here all day. Nobody is thinking
22 anything but clear water. You're not thinking of
23 destroying property value. You're not thinking
24 anything along that line. You're doing your job.
25 That's how we designed it, too. I'll say, in

1 closing, we've contemplated all the water gets
2 reused, each house gets its own water recycling.
3 We've tried everything. It's expensive, but we've
4 done it all. We've done it with water quality in
5 mind. So I would urge you to consider that and
6 not deny any use of the property whatsoever.
7 That's not right. Thank you.

8 BOARD MEMBER STRAWN: Scott Graves.

9 MR. GRAVES: Thank you, Board members,
10 for allowing me to speak. I'm a resident that
11 lives in Sanpas Falls, speaking as a concerned
12 citizen who would like to respond to Mr. Blick's
13 late submission. I found it ironic he said he
14 only had an hour to compose his letter when there
15 was a 45-day comment period. I think that theme
16 of "too little, too late" or "I want more time.
17 Want more time" has been seen throughout the day.
18 In my opinion, the veiled threat of litigation has
19 no merit. Sifting through the data of looking up
20 parcel numbers and previous sales and assessor tax
21 information available to the public, Concordia
22 purchased over 1,000 acres for approximately \$7
23 million, based on the tax assessor's taxable
24 values.

25 When they purchased this property, and

1 as it currently stands, they're entitled to build
2 26 or 27 homes. The property has not been annexed
3 by the City of Escondido. The final EIR has not
4 been completed, so their claims of work based on
5 Safari Highlands Ranch completed value, in his
6 words, \$500 million are quite a stretch,
7 especially in the light of the exorbitant number
8 of exceptions in hopes of getting approval.

9 Mr. Blick said they're in compliance.
10 The City hasn't looked at their plans. The City's
11 regs are you can't build anything on a grade
12 steeper than 12 percent. They're asking to do it
13 on a 15-percent grade, which is extremely steep.
14 There's all sort of waivers they're asking for,
15 grading waivers. All the different ratios of
16 grading exceptions. I find it difficult to
17 believe this is in compliance.

18 The developers' gamble was especially
19 high risk similar development on this land was
20 previously looked at and the project was withdrawn
21 because they rejected the development and the
22 general plan. The general plan and the
23 development of the general plan cost the county
24 about \$18 million with significant public input.
25 Please don't let developers intimidate best

1 practice when it comes to water.

2 BOARD MEMBER STRAWN: Next I have
3 Rebecca Andrews.

4 MS. ANDREWS: Good afternoon, Chair,
5 members of the Board. I'm an attorney with the
6 law firm of Best, Best and Krieger. We represent
7 the San Diego Airport Authority, the cities of
8 National City and Chula Vista. The cities and the
9 Airport Authority have a pending petition before
10 the State Board regarding the 2013 permit, and its
11 lack of a compliance pathway.

12 So we submitted a green card today in
13 support of the amendment and would like to thank
14 the Board and Board staff for all the effort
15 that's gone into developing the compliance
16 pathway. We believe the compliance pathway will
17 enable the Copermittees to work together and
18 develop a prioritized approach to addressing water
19 quality challenges and to coordinate their efforts
20 towards improving water quality.

21 Thorough planning is essential to
22 developing an effective water quality improvement
23 plan. Developing an effective water quality
24 improvement plan takes time. The State Water
25 Board's recent order reflects an intent to include

1 that time to develop an effective plan within the
2 compliance pathway.

3 So as you can imagine, the cities of
4 National City and Chula Vista and the Airport
5 Authority are requesting what they call an
6 "interim compliance pathway," by one of the
7 environment groups has been called a "grace
8 period," as part of the safe harbor. Whatever we
9 call it, including that period of time within the
10 compliance pathway recognizes the importance of
11 the development of the WQIP.

12 The Airport Authority, Chula Vista and
13 National City, as part of the San Diego
14 Copermittees, join with Orange County and
15 Riverside County in requesting that this Board
16 extend the compliance pathway to cover the time
17 period where the WQIP is being developed.

18 BOARD MEMBER STRAWN: Thank you. I'm
19 sorry I didn't get you in with the Copermittees
20 earlier.

21 Mr. Penzick.

22 MR. PENZICK: Good afternoon, Board
23 members. My name is Jerome Penzick, 14245
24 Dalhousie Road, San Diego California. I'm also a
25 member of the Surfrider Foundation. I would like

1 to thank the Board for your work and allowing me
2 the opportunity to address you. I recently
3 retired from the federal aviation administration.
4 I have extensive experience with methods of
5 alternative compliance. In aviation, alternative
6 compliance is a very, very serious issue.
7 Typically, a certificate holder will request
8 something like an air-worthiness directive or
9 relief from a regulation. They have to go through
10 an extremely extensive and rigorous process based
11 on two important concepts: Is the alternative
12 method of compliance in the public interest? And
13 does the alternative method of compliance
14 establish an equivalent level of safety?

15 Now, trying to stress the
16 applicability, would the equivalent level of
17 alternate pathway provide for an equivalent level
18 that the original requirements would meet. That
19 would be the task before the Board and staff.

20 I would like to compliment Mr. Chiu in
21 his earlier remarks today; it shows he's focused
22 on the issue in the work he's already established.
23 Hard criteria must exist for realistic acceptance
24 of milestones; there's no way around that.
25 Alternative methods, in order to be successful,

1 milestones must be are meaningful. They must show
2 real progress. The end result is not reports.
3 The end result is not steps to get there. The end
4 result is clean water at the beach, things that we
5 can surf in.

6 What I would offer to you is what
7 would look like failure would be for San Diego to
8 turn into New York. I lived, for a while, in Long
9 Island for work. I can't describe how poor the
10 quality of water at the beaches are at someplace
11 like Rockaway Beach in Queens, Point Lookout in
12 Nassau. My son got contact dermatitis there. We
13 came back to California, and I fulfilled a
14 longtime dream to learn to surf with my boys. And
15 I can't describe to you how pleasant it was to
16 surf in Solana Beach at Beacons in clean water
17 with good friends. So these are the tasks before
18 you.

19 I thank you for your work and thank
20 you for the opportunity to speak today.

21 BOARD MEMBER STRAWN: Next, I think I
22 have a card from Summer -- maybe it's Smith. She
23 has ceded her time to Julie Chunher.

24 MS. CHUNHER: Good afternoon. I'm
25 Julie Chunher. I'm the policy manager for

1 Surfrider San Diego. Thank you for your time.
2 And I wanted to call your attention to our 10
3 members and volunteers who took time away from
4 work to be here and show their concern for this
5 important issue.

6 I'd also like to take a minute to
7 sincerely applaud your staff. This has been
8 time-consuming. They have been professional.
9 They have been very thorough, and I've been
10 thoroughly impressed. Whatever decision is made
11 today, they deserve a round of applause. And I
12 want to applaud you for your decision in 2013.
13 That was a hard decision to come to.

14 And instead of my talking points, I'd
15 like to respond to some of the things we've heard
16 today. We heard early that the purpose of
17 alternative compliance is to provide clarification
18 and structure to this interim process to figure
19 out when it starts and stops.

20 Unfortunately, as it's currently
21 written today, I don't think that happens. I
22 think it continues that iterative process. And,
23 you know, we heard a lot about the cost of
24 compliance. I think we should all be much more
25 concerned about the cost of noncompliance.

1 I said it in 2013, and I'll say it
2 again today. Where is the number of lawsuits that
3 everybody is so afraid of? These are meaningful
4 steps in the right direction, but at the same
5 time, we need to maintain accountability to
6 increase motivation to make hard and expensive
7 steps.

8 I'm a parent now, as well. I have a
9 14-month-old, and he's starting to learn to test
10 his limits. He likes to see what he can get away
11 with. It's better for him, his safety, and my
12 sanity to have certain limits with him, set clear
13 boundaries. And I see today we're hearing a
14 little bit of limit-testing. What can we get away
15 with? So I would encourage you to hold to those
16 limits; it's better for everyone.

17 You also heard in the comments today
18 that people need more time for plans. They want
19 compliance while they're planning, and they want
20 compliance if the plan doesn't work out. Where
21 does that leave the public?

22 History is the best indicator of
23 future behavior. For history, we have to look at
24 what's happened in the previous permit cycle. We
25 have to look at what happened in the WQIP process

1 recently, and we have the tendency, as city
2 council is saying, to do the bare minimum. So we
3 need to be able to keep everyone motivated.

4 We also heard today that it's going to
5 take years to come into compliance. Guess what?
6 It hasn't been in years. We need to maintain that
7 accountability. That's exactly why there was a
8 paradigm shift in 2013, so I hope we can maintain
9 that.

10 We also heard, "Hey, don't worry about
11 it. Water quality is important to us, too. We
12 will take care of it. But we also have lots of
13 priorities, whether its police cars or other
14 things."

15 I think that's exactly the point. You
16 guys are charged with maintaining water quality.
17 We're trying to make that more of a priority.
18 Decision-makers have to make hard and expensive
19 decisions, and not just to look at storm water and
20 "Oh, well whatever is left over, that's an
21 expensive problem we have to deal with."

22 If you look at it in a different
23 context away from storm water, when you're trying
24 to protect something, the regulations and laws
25 usually increase. For protecting children, we

1 have Megan's Law. I don't see how relaxing the
2 process is going to be make water cleaner.

3 At this point, there's not enough
4 guidance in the permit to do proper analysis. We
5 need that guidance in the permit and not after the
6 fact. I ask you to remove the safe harbor
7 alternative compliance today. Postpone it until
8 the EPA has done a reasonable assurance analysis,
9 and wait until 2018.

10 If you're going to do it, I suggest it
11 be really thorough and done right. That's our
12 request.

13 Thank you for your time and
14 consideration.

15 CHAIRMAN ABARBANEL: I believe there
16 are some speakers that have some additional time.
17 If anyone would like to speak, Gary will tell you
18 how much additional time you have, if you come up
19 and you request that.

20 County of Orange had a minute. I'll
21 extend that to a 1:10 just for you.

22 MS. SKORPANICH: So it's not 7:00 p.m.
23 that's a good thing. I just wanted to close up
24 and kind of wrap up a very brief period of time.
25 Harping back to 2013, 2011 when your staff

1 undertook the initial workshops to develop this
2 permit and what they've been saying all along, and
3 what I think they actually have achieved with this
4 permit is a permit that's aspirational. It's
5 something to inspire, to motivate, to incentivize
6 the permittees to do even more, to take on even
7 more than what the Clean Water Act requires of us.

8 Along with that was a desire on your
9 part as well as your staff to allow for a permit
10 that allows creativity and innovation, but most
11 importantly for the permittees, it allows
12 prioritization. I know we touched on this
13 earlier, but I don't know that we really drew a
14 fine point with prioritization.

15 If we have the interim compliance,
16 then we have the freedom to prioritize what those
17 really important water quality objectives are we
18 need to work on and focus on. Without that, we
19 really can't sort of leave the low priority, the
20 things that we know are above natural conditions
21 and so forth.

22 So I'd like to just draw that point
23 that it ties our hands considerably on being able
24 to do that prioritization process and focus on
25 those most important objectives. It's not unlike

1 what the State of California did, actually. Back
2 two governors ago, the state set up the Clean
3 Beaches Initiative. They said we know beaches are
4 a high-priority water body. They where are people
5 recreate the most. We want to put emphasis on
6 that. They directed grant programs there. To
7 this day, the beach water quality task force is
8 meeting today. It's made tremendous difference,
9 not only in Southern California but up and down
10 the coast of California. It shows you what you
11 can achieve if you are able to do that
12 prioritization.

13 The second point I would like to make
14 is that your staff is looking to have a credible,
15 durable and transparent water quality improvement
16 plan developed. This will not be a safe harbor,
17 if you will, a get out of jail free card. The
18 permit also establishes some meritocracy. How do
19 you earn interim compliance? The permittees, they
20 have proposed some enforceable milestones during
21 the development of the water quality improvement
22 plans, but I that addresses those concerns.

23 What we really all want is one of the
24 other issues that you and your staff set out on
25 this permit, which was to make it so we could have

1 collaboration. We want to work together and begin
2 to make more progress on water quality.

3 I thank you very much for your time
4 and consideration today.

5 MR. MCKIBBON: If I didn't say it in
6 my original comments, I want to thank the staff
7 again. It's been comforting to me as the point
8 person of my industry to know if we have concerns,
9 I can get on the phone or e-mail and get an answer
10 or get an appointment. I appreciate working with
11 you folks and your professionalism.

12 Matt O'Malley talked about the water
13 quality improvement plans. Just so each you know,
14 each one of those came in between 700 and 1200
15 pages each, so that's like Warren Peace times
16 eight. I know you've got a limited number of
17 folks in your organization, same thing with us.
18 To try to go through every one of those, it's time
19 consuming.

20 Both the Copermittees and myself, we
21 laid out for you a reasonable rationale for why we
22 needed more time, to get tools finished, put them
23 in the tool box, and get the job done right. For
24 us, it's more important to get it done right than
25 to just get it done.

1 As far as the need to time, we, like
2 the environmentalists, believe in the CEQA
3 process. The environmentalists know that for
4 CEQA, you have to adopt ordinances and those take
5 time.

6 I thought John Van Ryan did a very
7 good job of laying out exactly, in the perfect
8 scenario for them, how long it takes to do that.
9 Finally, the Afco decision was mentioned here, and
10 that decision was 40 years ago, and land use has
11 gotten significantly more complex since that time
12 with development groups and grandfathering
13 provisions.

14 Again, I appreciate your time.

15 CHAIRMAN ABARBANEL: Thank you very
16 much. We now have time for staff response,
17 closing remarks. For me, it would be helpful if
18 you could put up the slide with the very specific
19 indicated changes in the tentative order. You had
20 one that addressed alternative compliance, one
21 that addressed -- and then at the bottom was
22 errors, and these are things, if I understand, are
23 in addition to the main theme of the day, about
24 which we've heard very little, which is the
25 enrolling of the County of Riverside as part of

1 the regional MS4.

2 What was in the box.

3 MR. CHIU: So this was the summary.

4 CHAIRMAN ABARBANEL: I think we have
5 heard primarily about items in the box. Riverside
6 county didn't show up here and say "we don't want
7 to play." I didn't hear any objections. I
8 thought I heard somebody say you did it right.
9 You had very specific language for these two
10 items, if you could put that up.

11 MR. CHIU: I didn't really put any
12 language more than a kind of a summary of how we
13 responded. So I think you were looking at
14 somebody else's presentation. There were a lot of
15 more dense slides than mine. In this particular
16 situation, I think you heard from both sides on
17 this: What you heard today was actually very
18 similar to what we went through during the public
19 workshops. You heard a lot of lot of positions
20 being put forward, a lot of rationale for those
21 positions, a lot of justification for making
22 specific types of changes or incorporating certain
23 provisions into the permit. We did our best to
24 try to find the proper balance between the
25 different perspectives, and what we came up with

1 during or after the workshops or as a result of
2 the workshops or for the prior lawful approval
3 language, we felt that we had done our job right.

4 It's not exactly as the environmental
5 community would like. It's not exactly like the
6 way the development community and the Copermittees
7 would like. Obviously, the Copermittees are now
8 willing to accept it, but the environmental
9 community is still asking for some of the changes
10 that they requested. Even during those workshops,
11 I think our position is still and our
12 recommendation is still to maintain the language
13 that we've put forward for you to consider for
14 adoption today.

15 I'm going to take this opportunity to
16 kind of touch upon the BMP design manual issues
17 that have been raised by the County and the
18 development community, and it touches upon the
19 prior lawful approval language, as well.

20 The Copermittees are asking for
21 additional time to make changes, and I think they
22 provided a slide that shows the justification for
23 that is they will need all this time for their
24 process, the changes that they're going to need to
25 make are fairly significant. It's because we're

1 changing the definition of prior party development
2 process. We've changes the definition of
3 redevelopment and we added prior lawful approval
4 definition language in there.

5 We informed the Copermittees of this
6 upcoming language back in June. We issued a
7 letter to them informing them of the language that
8 we knew would be incorporated into the permit, and
9 it was also at their request that we move this
10 board meeting up sooner so they could have more
11 time to make changes to their BMP design manuals.

12 The redevelopment definition was not
13 changed; it was clarified. And the prior lawful
14 approval definition, that simply gives them the
15 parameters in which they would apply the fourth
16 term or 2007 MS4 requirements for developments
17 versus the regional MS4 permit requirements for
18 developments. So they're just basically trying to
19 delay, in our estimation, the effectiveness of
20 these new requirements. I think we're being very
21 reasonable when we said we would provide them an
22 additional 90 days to make those changes, and it's
23 90 days from the date of the adoption of the
24 permit changes, not 90 days from the December
25 expected effective date. It would make it

1 February 2016 by which they would have the
2 effective date of their BMP design manuals in San
3 Diego county.

4 So I understand that everybody wants
5 more time, but we have actually provided them
6 quite a bit of time to prepare and time to get
7 things in place in order to have this adopted. So
8 simply asking for more time is, I think, a default
9 position that many people take. I think you've
10 heard it throughout most of the requests today for
11 more time for everything.

12 I think in this situation we were very
13 reasonable. We plan on issuing a letter from RGO
14 directing the Copermitttees to push back their
15 effective date for the BMP design manual to
16 February 16, which is 90 days from today and that
17 should be sufficient time to make changes to the
18 definition of prior development project. I
19 counted the words that actually is or will be.
20 They have to add 20 words to the definitions. So
21 they're not going to have to have to do a song and
22 dance and go on a road show in order to tell
23 everybody exactly what it needs to be. It's 20
24 words.

25 The redevelopment definition, I think

1 we changed, like, six words. It's not a whole
2 lot. The prior lawful approval is really just
3 giving them some parameters now to work with.

4 So that is the prior lawful approval
5 language. Let's talk about the coarse sediment
6 yield issue. The coarse sediment yield issue has
7 come to light in recent months. As you've heard,
8 we've had several discussions with the development
9 community, with Copermittees on this issue. From
10 the compliance standpoint, their BMP design
11 manuals are in compliance with out permit
12 requirements. It includes all the language
13 necessary to allow prior redevelopment projects to
14 implement measures to address coarse sediment
15 yield areas, such that there is no net impact to
16 the receiving water. Avoidance is the first and
17 preferred method of providing no net impact to the
18 receiving water, but there are alternatives, and
19 they are currently developing those. There is one
20 being proposed for the City of San Diego's BMP
21 design manual that could be used as a model for
22 other jurisdictions.

23 That doesn't mean there aren't other
24 methods that can be developed. The guidance that
25 can be developed in future months or future years,

1 is simply going to be an addition or attachment to
2 the BMP design manuals. I don't think we need to
3 delay the effective date to allow for guidance to
4 be developed, but if they're looking for
5 additional clarity and they want to delay the BMP
6 design manual for clarity, we wouldn't recommend
7 that. We believe we need to have these BMP
8 performance standards and criteria in place as
9 soon as possible and implemented on development
10 projects as soon as possible in order to be
11 protective as possible for water quality going
12 forward.

13 I will move on to the alternative
14 compliance pathway option. Again, you've heard a
15 lot of things about this particular issue, both
16 sides, and, again, it's very similar to what we've
17 heard during the workshops. I think Board Member
18 Olson heard a lot of this. Board Member Morales
19 has heard a lot of it, and now the rest of the
20 Board has heard pretty much the same things,
21 couple tweaks here and there. And you know, I
22 think there's -- this is one of those issues where
23 the stakeholders are looking to us to provide the
24 leadership on this issue and looking to us to make
25 a decision on how to move forward on this

1 particular issue.

2 In listening to what we heard today
3 and during the workshops, I think I fully agree
4 with what the environmental community says. I
5 really do. But then I also agree with a lot of
6 what the Copermittees say, and so we're trying to
7 strike a balance, again, of what we could do as a
8 board to provide a middle ground, a pathway
9 forward that could be workable. And the language
10 that we came up with was what we thought was the
11 path forward. You may have heard annual
12 milestones, the environmental community ask for
13 that. We didn't have it there before. That was
14 to provide that additional level of accountability
15 but the way they would like to see it is those
16 milestones are essentially are your ticket out of
17 the program. If you don't meet a milestone, do it
18 for two years or three years or whatever, you're
19 automatically kicked out, and you have to figure a
20 way to get back in.

21 But we agreed there needed to be some
22 additional level of accountability and a way to
23 track progress that we as regulators are given the
24 awesome responsibility of trying to make sure that
25 our water quality is going to be protected,

1 preserved, restored, and enhanced. We needed to
2 figure out how to make sure that we could keep our
3 finger on the pulse, and those annual milestones
4 were our way of doing that. Giving in a little
5 bit to what the environmental community requested,
6 and, again, every time we give something to
7 someone, somebody else doesn't want it. Trying to
8 figure out what we could do. What we have given
9 to the Copermittees is the alternative compliance
10 pathway.

11 What we have added, which they don't
12 necessarily want, is additional milestone
13 requirements that creates that additional
14 transparency and rigor. I think we've struck the
15 balance. I hope you agree.

16 And that's the milestone issue, but I
17 also want to get to this being deemed in
18 compliance during preparation. Again, this is one
19 of those things where we try to find the balance.
20 On the one hand, we have the environmental
21 community saying "We don't want it at all. It's
22 not fair to us. You put this in there. We lost
23 all ability to drive the conversation."

24 On the other hand, Copermittees are
25 telling us "We are always at risk. We need to

1 figure out a way where we reduce that risk."

2 We agree. We know there's a lot of
3 risk. We agree there has to be a middle ground.
4 So we provided an alternative compliance pathway
5 as that middle ground. We thought it was a
6 balanced approach by providing compliance during
7 plan implementation but not during plan
8 development, and so that's where we came down on
9 that issue. We thought that was the right
10 approach. And while we have other examples of
11 alternative compliance pathway options in the
12 state, I like to think we lead rather than follow.

13 So I think we need to set the pace.
14 We need to figure out what we, as a board, believe
15 is the right course, not necessarily believing
16 that other boards should dictate our way of doing
17 things. The State Board order that does not
18 dispute the path that L.A. took does not say we
19 have to use L.A.'s approach. It simply says L.A.
20 can do it in the way they want. That doesn't say
21 all boards must do it this way. I just want to
22 make sure we understand that what we do here is
23 not what L.A. does.

24 And that kind of takes me to my other
25 point about the analysis portion of it. I know

1 there's a lot -- there is some concern as to the
2 lack of specifics as what L.A. had, but I think
3 our approach also provides a more flexible
4 approach that allows the public, then, to be part
5 of the process and part of the discussion, where
6 the L.A. approach doesn't quite lend itself to
7 that as much, because of the specifics that have
8 been incorporated and the very specific methods in
9 which they are allowed to do their analyses.

10 The other aspect of that is, these
11 particular analysis methods or these models are
12 really for fluid and water body. Our permit
13 actually aspires to more. We're not talking about
14 the chemical integrity of our waters. We're
15 talking about the physical, biological and
16 chemical integrity. These water quality models
17 don't lend themselves to restoring a beneficial
18 use. A beneficial use is not just chemical.
19 There could be a physical, biological or toxicity
20 component, which is partially related to chemical
21 constituents, but there are other aspects, as
22 well.

23 We believe having an analysis with
24 clearly stated assumptions is very clear guidance
25 in that we will not accept an analysis that is

1 just high in the sky. There has to be something
2 behind it. There has to be something where we can
3 understand how they came to a conclusion and the
4 public as well. The public is part of the
5 process. L.A. does not include that aspect in
6 their particular paradigm.

7 So, you know -- and you we're not
8 opposed to developing guidance. L.A. didn't have
9 guidance in their permit. They developed guidance
10 after the permit was issued. I think you heard
11 from us and our stakeholders here that we have
12 engaged with our constituents frequently. We
13 communicate with them often. We lend them our
14 expertise on the matter, our regulatory
15 perspective. And once we issue this permit, it's
16 not like we're going to hide in our offices and
17 not engage anymore. We will continue to have
18 these conversations and make sure there's a clear
19 understanding among everyone what our expectations
20 are.

21 So guidance can be forthcoming, and if
22 you would like to see very specific guidance, we
23 can do that. But if we want to give the
24 Copermittees some flexibility in terms of how they
25 want to approach water quality improvement -- if

1 they want to go after hydromodification
2 improvements, make sure those hydromodified
3 channels are restored, you can't do it with a
4 model. If you want to improve or increase the
5 amount of wetland area, you can map it but I don't
6 know how a model is going to get you there.

7 So that brings us to the question of
8 prioritization and I wasn't quite clear how being
9 deemed in compliance during preparation of the
10 pathway would lend itself to prioritizing your
11 water quality concerns. The whole idea of the
12 water quality improvement plan is to prioritize,
13 and the idea of the alternative compliance pathway
14 is to figure out how long is it going to take to
15 get there. You don't have to have the same
16 schedule for every single constituent. It would
17 be staggered schedules for constituents.

18 So I'm not sure if I should touch on
19 the backsliding. I think we already addressed it
20 through our comments.

21 MS. HAGAN: I think the response
22 comments addresses that adequately.

23 MR. CHIU: And then the last thing I
24 want to -- there were three other issues I wanted
25 to cover that I heard that I just wanted -- there

1 seemed to be some muddling of what permit
2 requirements are and how they're being applied to
3 the alternative compliance pathway.

4 First Laguna Beach and Dana Point,
5 they were bringing up that lawsuit that was
6 brought against the City of Laguna Beach. That
7 was a lawsuit specific to dry-weather discharges
8 going into their MS4, which is very different than
9 storm water discharges. The permit has a specific
10 requirement to effectively prohibit
11 non-storm-water discharges into the MS4.

12 Then there is a provision, an effluent
13 limitation. One is a prohibition; one is an
14 effluent limitation. Effluent limitation os
15 discharges from the MS4 shall -- the pollutants
16 shall be reduced to the maximum extent
17 practicable. Those are very different. The
18 alternative compliance pathway doesn't address
19 either one of those. The alternative compliance
20 pathway is for receiving water limitations. The
21 receiving water limitations state discharges from
22 the MS4 shall not cause or contribute to
23 exceedances in the receiving water.

24 So, you know, when I heard, I think it
25 was Mr. Baron, saying the Clean Water Act -- MS4s

1 aren't required to meet numeric effluent
2 limitations, that's true. And we don't have
3 numeric effluent limitations that need to be met.
4 We have a narrative of maximum extent practicable
5 standard. But the receiving water limitation is
6 different than a effluent limitations. The
7 receiving water limitation is a condition in the
8 water that needs to be protected or restored, such
9 that the beneficial use is supported.

10 That's the ultimate end goal that
11 we're trying to achieve. That is a numeric goal
12 that can be proposed as part of the water quality
13 improvement plan but they have the option of
14 proposing effluent limits of some sort that would
15 be self-imposed, and they're not in our permit.
16 We have nothing in our permit that actually
17 requires them to be in compliance with a numeric
18 effluent imitation.

19 I think, again, it was Mr. Baron who
20 said the permit is placing upon the Copermittes
21 the responsibility of -- placing on the
22 Copermittes responsibilities typically taken by
23 the regional Board, such as developing TMDLs or
24 time schedule orders and those types of things. I
25 would agree. I think we have placed a lot of

1 these things in their realm of responsibility if
2 they so choose. And we don't require them to
3 develop these things. This is an optional
4 pathway, but the benefit of it is that they get to
5 develop it. They get to develop the model. They
6 will get to develop the numeric goal. They will
7 get to propose it to us for us to buy into it. If
8 it was all us, it would be us doing the modeling.
9 It would be us going to them and trying to
10 convince them, and, typically, it was not an easy
11 convincing process. Trying to convince them this
12 was the best thing for water quality.

13 This allows them to tell us what is
14 best for water quality, and to avoid TMDLs, which
15 then hand cuffs everybody in the process because
16 then we have things in the basin plan we cannot
17 change easily. This process, it does place a
18 little bit more on the Copermittees, but it's up
19 to them if they want to take on that challenge,
20 and there are a lot of benefits to it. To realize
21 those benefits does take more time and a few more
22 resources.

23 I think that covers, hopefully, all
24 the comments we heard. Last one: The language
25 request for changing -- if the San Diego Water

1 Board finds to where a Copermit. I think we're
2 talking semantics at this time. I don't think
3 it's a necessary change. I will leave that to the
4 Board if they would like to see that change.

5 CHAIRMAN ABARBANEL: Final question?

6 BOARD MEMBER OLSON: I just have one
7 question. It goes back to what you said. So now
8 I'm confused. It's been referred to many times
9 today that the Copermittees are out of compliance.
10 Are they out of compliance or are they in
11 compliance? The receiving waters maybe out of
12 compliance.

13 MR. CHIU: So in every permit, there's
14 a set of discharge prohibitions, receiving water
15 limitations and effluent limitations. Effluent
16 limitations are in there, typically, to achieve
17 your discharge prohibitions. In storm water
18 permits, we have what's called a maximum extent
19 practicable standard. Every permit cycle, the
20 maximum extent practical was supposed to get
21 better and better and get to the point where it
22 actually achieves the receiving water limitations
23 and prohibitions, but we're not there.

24 There is this disconnect in MS4
25 permits, in particular, where the maximum extent

1 practicable standard, where they maybe in
2 compliance with that, does not mean they are in
3 compliance with receiving water limitations. I
4 think the Copermittees are in compliance with the
5 maximum extent practicable standard but they can't
6 say they're in compliance with the receiving water
7 limitations.

8 Any other questions?

9 BOARD MEMBER STRAWN: This one has to
10 do with the questions for extra time. One part of
11 that argument that the Copermittees made that
12 struck a note with me is the desirability of more
13 public input and having hearings, having more
14 reviews, opening it up more for the public.
15 Rather than this, giving them more time blankly,
16 if, hypothetically, one of the groups had
17 diligently had their WQIP all set for some
18 watershed and came to you and said, "We've drafted
19 this document. We think it's right, but we want
20 60 days to have three sets of public hearings over
21 a certain period of time," would our Board be in a
22 position to allow that extra time if they were
23 to -- if it was a specific request like that?

24 MR. CHIU: I don't think that we would
25 be precluded from doing that. Part of the process

1 is when they submit their water quality
2 improvement plan, before we accept it, we have to
3 review it. If there are things they propose to
4 improve, we can certainly give them more time if
5 it means that we wouldn't accept it. Part of the
6 acceptance means implementation. It kind of
7 starts the implementation process, so providing
8 more time is great if you want to --

9 BOARD MEMBER STRAWN I'm just looking
10 at an alternative. If you got a specific need for
11 something you think is going to add value, come
12 talk to us.

13 MR. CHIU: We can still accept
14 something, but give them the ability to obviously
15 improve, if they feel it's necessary.

16 BOARD MEMBER STRAWN: They can always
17 come to us and ask for that too.

18 MR. CHIU: Absolutely. I think this
19 board seems to be very receptive to our community.

20 CHAIRMAN ABARBANEL: Thank you very
21 much. We will close the hearing and open this up
22 to board discussion.

23 MS. HAGAN: Your acting executive
24 officer --

25 MR. SMITH: Thank you, Chair

1 Abarbanel. Jimmy Smith, acting executive officer.
2 I won't recap what Wayne said, but I do want to
3 offer a little perspective. I'll give way my
4 recommendation. I do support staff's
5 recommendation to move forward with the permit as
6 drafted with the errata they proposed. I saw that
7 not lightly. I remind the board this is largely
8 the same permit heard in 2013 and again earlier
9 this year, and I think it's a good sign we've come
10 down to a place with a lot fewer issues. I think
11 it's a sign we are working together with the
12 Copermittees, with the environmental groups, with
13 the USEPA, and some of the other developers that
14 are out there.

15 Staff has navigated a rather
16 conscientious pathway on these issues with public
17 input and input from Copermittees. What they put
18 forth, I think is reasonable as the water code
19 calls us to be. The big issue for them is more
20 time, and time is always something that is a
21 challenge for us as a board and for the public, as
22 well. As you saw the slides, and we all know, we
23 are not achieving fishable and swimable waters in
24 many areas in our region.

25 This pathway to compliance, this

1 alternative compliance pathway, that is a very
2 high bar that staff has set forth, and one that
3 can save the Copermittees time and money and not
4 have to worry about additional TMDLs coming down
5 on them every few years, to allow us as staff to
6 work with them and the public on actual
7 improvements and BMPs that will make water quality
8 better in our region.

9 With the time issue, the term that
10 comes to mind is don't let the perfect be the
11 enemy of the good. Where we are now is an
12 opportunity to be move forward. The permit is not
13 perfect. We sometimes joke that maybe we achieve
14 a good outcome when nobody likes what we're doing.
15 But in this case I don't think that's the case. I
16 think everybody likes where we're headed but
17 they're have issues with how we're headed there.

18 This permit will be back before the
19 Board, and we may be back here again for a lengthy
20 hearing, but in the interim, time will be better
21 spent with staff not reworking the permit but
22 getting out there working with staff to make
23 improvements to water quality. The only way that
24 can happen is if we get this permit adopted.

25 So I reaffirm my recommendation that

1 the Board adopt it as originally put forth.

2 CHAIRMAN ABARBANEL: Okay. I think
3 it's time for board discussion.

4 Tom, I know you have a deadline if
5 you'd like to start here are my thoughts.

6 BOARD MEMBER MORALES: I think
7 everybody here doesn't want much, you just want
8 more, but at some point we need to move on. It's
9 really only two issues that have been talked about
10 when it comes to this permit. The first is the
11 alternative compliance pathway. That seems to be
12 the biggest of the two. And back when we issued
13 our first MS4 in 2013, that applied to the San
14 Diego folks, we had a lot of the same discussion,
15 and then there was a lot of discussion about safe
16 harbor back then. We didn't give it to the San
17 Diego folks. It wasn't because personally I had
18 anything against them. It was quite the opposite.
19 I had great faith they would do what they need to
20 do in a fairly short order, and they have.
21 They've risen to the task.

22 If there is an instance where they'll
23 get a plan, it has to pass (unintelligible). If
24 it doesn't, that's going to be another discussion
25 that we have. So I hope that allays some of the

1 fears that people are going to submit poor plans.
2 I don't expect that will be the norm at all. It
3 seemed to work okay for the San Diego folks. I'm
4 not saying you've got all these great protections
5 and while you're working on this --I think it will
6 work as well the Riverside permittees.

7 And those of you working on these
8 plans, I know you are deep in the throws of
9 working on that, and I know you're working on
10 these things diligently. So I am comfortable with
11 that portion of the tentative order. With respect
12 to the grandfathering, again, that's no surprise.
13 If it were up to me I would say December 24th.
14 It's no secret. We've been talking about this for
15 years. I will support staff in their
16 recommendation to allow another 60 days, maybe 90
17 days from the date of adoption. I will, again,
18 support the order even though my personal
19 preference would be December. But as you all did
20 in your meetings, we'll make an accommodation, and
21 that is pretty much where I come down on this
22 stuff.

23 I'll end by saying when we came up
24 with this whole notion of an outcomes-based MS4,
25 we were trying to get out of the business of

1 micromanaging you all. I think this alternative
2 compliance pathway is very much in keeping with
3 that. You're all grown ups. You know what works
4 best for you. We're giving you that opportunity.

5 I have great faith, and when I am long
6 gone from this board, I hope to be able to look
7 back and say great waters we have in Southern
8 California are in a small part due to mostly in
9 large part to the role you all played.

10 BOARD MEMBER OLSON: I wasn't here in
11 2013, so I find that there's a lot of history on
12 every Board and every position that you take. I'd
13 like to start by commending the staff. I was on
14 the Board in February when we decided we would
15 look at the alternative pathway and try to pursue
16 it. I heard in my meeting, environmentalists
17 express a viewpoint but I have a very long history
18 of looking at water quality. And so if you look
19 back to where I came in at water quality, we saw
20 our rivers were burning and there were massive
21 fish kills, and thanks to the environmental
22 community and organizations like the regional
23 board and the state board, there have been massive
24 improvements. But I also, in working on a number
25 of standards, have seen taking a little more time

1 can sometimes reap benefits for everyone.

2 In this case, I tend to believe that
3 what's been put forward by the staff is probably
4 attainable. We hear this issue of milestones
5 arising from the one group that is working on
6 their water quality improvement plan, and
7 expresses concerns, and so my concern is, if those
8 -- if we now, a year from now or two years from
9 now, see all the agencies with these concerns, how
10 can this board respond?

11 What I really don't want to see in not
12 giving interim compliance is suits that will take
13 money away from the goals and objectives that
14 everyone in this room is trying to obtain. So I
15 was given assurance from the staff that if we see
16 anything coming forward that looks like extensive
17 legal action, there will be action or this will
18 come back to the Board. I just want to ask again,
19 is that feasible within the manner that the Board
20 operates? That's one of the my biggest concerns,
21 to see money go away from our water quality
22 objectives because people are changing the
23 timetable.

24 Is there an answer to that?

25 CHAIRMAN ABARBANEL: I think you're

1 asking Jimmy.

2 JIMMY: Yes, I think we can given the
3 option to reopen the permit at any time should the
4 Board direct us to or should staff make that
5 recommendation, we could come back and change the
6 provisions there to open it back up. 2018 isn't
7 that far away. That would be five years after San
8 Diego was first enrolled, so we would be starting
9 on that in 2017 anyway, and that's a little over a
10 year away.

11 BOARD MEMBER OLSON: One of the things
12 we're trying to get away with is to have people in
13 constant permit in changing and renewals. With
14 reservation, I'm going to support. I would like
15 to see interim compliance given, but I will
16 support the -- the action of the staff in this
17 case, and I would like to thank everyone. I know
18 everyone worked really hard and I really want to
19 stress I appreciate that.

20 BOARD MEMBER ANDERSEN: I'm very happy
21 that bringing Riverside was not that
22 controversial. It's a tribute to the staff, the
23 Copermittees and the stake holders involved in the
24 process here working together and working hard on
25 it. I'm going to agree with Jimmy's

1 recommendation and it's not that I didn't
2 consider, carefully, your input on all those paths
3 to alternative compliance. I agree with the EPAs
4 comment and Jimmy's recommendation that we should
5 commit to and follow-up guidance and that would be
6 a good thing. And my only other comment is on the
7 course sediment yield. That stuff should be dealt
8 with within the BMP manuals. It was great to have
9 the input on it, but I think the Copermittees can
10 probably work that out with everybody. So with
11 that, I'm supporting your recommendation.

12 BOARD MEMBER STRAWN: I'll try to be
13 quick. I want to thank everybody. The staff, the
14 Copermittees, the NGOs. I'm not even going to get
15 into the alternative compliance. It seems to me
16 the Copermittees are all good people, just leave
17 them alone, let them do their job. The
18 environmental groups are we don't need to keep
19 threatening to sue them I don't think anybody here
20 would believe that's true. That's certainly what
21 it sounds like when you get the bickering that
22 went on here today. I want to address one comment
23 and I know it's not even really part of this
24 because it's going to be in the BMP manuals but
25 the comment that we're trying to make somebody's

1 private property worthless is offensive to me. We
2 don't want to zero out anybody's property. We
3 also don't want what you do on your property to
4 effect the property below you or somebody above
5 you to do something that affects your property.
6 Are when you're dealing with water quality, you're
7 dealing with everybody in the watershed.

8 Everybody wants to say "my private
9 property." It affects everybody up and down and
10 we have to look at it from that big picture. I'm
11 sure the Copermittees, when you get into the
12 detail of the BMP manual, can work out something
13 that, in effect, takes care of the all of the
14 property owners and all the public in each given
15 watershed. With that, I'm done talking and I will
16 go along with Mr. Smiths recommendation.

17 CHAIRMAN ABARBANEL: I come from the
18 only city in California that instead of a general
19 plan, the community is taken into account on all
20 decisions, and I see that Gary Strawn is our
21 honorary member.

22 I was convinced by Mr. Gonzales that
23 prior lawful approval issue is a trivial one. I
24 see no reason to approve it. That isn't what it
25 sounds like is the consensus of my colleagues, and

1 that's okay. I have, as indicated in one of my
2 questions, I have a moral problem with the
3 alternative compliance pathway announcing as a
4 public agency that somebody is in compliance when
5 we know and they agree they are not. I think it
6 cuts into the moral stature of an agency that is
7 supposed to speak truth.

8 Do I think those things will make
9 major impediments in the achievement of water
10 quality improvement? I actually don't, but they
11 trouble me. I think what we really heard was the
12 idea the adoption of the methodology of water
13 quality improvement plans is a way to have the
14 Copermittees who join us in a goal tell us how
15 they want to achieve the goal. I thought that was
16 a great idea in 2013. Two and a half years later,
17 it may even be a greater idea. The city of San
18 Diego has done extremely well. Sounds like the
19 County of Orange is well on its way. Laguna Beach
20 and Dana Point and Laguna Niguel, all slightly
21 differently and that's fine. That's what we
22 wanted. The fact it puts more responsibilities on
23 the Copermittees is absolutely one of the goals.
24 So I will -- having said that, I will call for
25 motion. And I will see where I am. Is there a

1 motion?

2 BOARD MEMBER MORALES: I will move to
3 adopt Tentative Order No. R9-20150-0100 with the
4 proposed errata.

5 CHAIRMAN ABARBANEL: Is there a
6 second?

7 BOARD MEMBER ANDERSEN: I'll second.

8 CHAIRMAN ABARBANEL: Is there further
9 discussion?

10 Then I will say that I'm going to vote
11 against it, not because I don't want to include
12 Riverside County Copermittees as part of the
13 overall project, but for the reasons I mentioned.
14 I find them troubling because of that one
15 triviality Mr. Gonzalez has explained, that it's
16 very easy to get a lawful approval by doing what
17 the law says.

18 I'll call for a vote -- I'm sorry. I
19 can't call for that. I'll call for a roll call
20 vote.

21 MS. HAGAN: Ms. Olson?

22 BOARD MEMBER OLSON: Aye.

23 MS. HAGAN: Mr. Andersen?

24 BOARD MEMBER ANDERSEN: Aye.

25 MS. HAGAN: Mr. Strawn?

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BOARD MEMBER STRAWN: Aye.

MS. HAGAN: Chair Abarbanel?

CHAIRMAN ABARBANEL: No.

So let me point out that actually saves us having to send our executive officer, in the next six months, off to Sacramento to explain to the State Board why we hummed our nose at them because we didn't. There's no more business before us. We are adjourned.

(Proceedings concluded at 4:39 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

KASEY L. MOBLEY
CSR NO. 13407