

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 LOS ANGELES REGION
3 MARY ANN LUTZ, CHAIR
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7 In the Matter of the)
8 Regional Board Meeting)

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TRANSCRIPT OF PROCEEDINGS
Simi Valley, California
Thursday, July 16, 2009

Reported By:
KIMBERLY ANTON
CSR No. 12881
Job No.:
B2650WQLA

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TRANSCRIPT OF PROCEEDINGS, taken at
City of Simi Valley, Council Chambers,
2929 Tapo Canyon Road, Simi Valley, California,
heard before the CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, commencing at 9:13 a.m.,
on Thursday, July 16, 2009, reported by
KIMBERLY ANTON, CSR No. 12881, a Certified
Shorthand Reporter in and for the State of
California.

1 APPEARANCES:

2

3 Mary Ann Lutz, Chair

4 Madelyn Glickfeld, Vice Chair

5 Steve Blois, Member

6 Francine Diamond, Member

7 Maribel Marin, Member

8 Maria Mehranian, Member

9 F.W. "Dick" Richardson, Member

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1 September 3rd meeting, and for Items 9, 10, and 11, we are
2 going to have Board questions only, no presentations from
3 Staff, and to the extent that the questions need to be
4 answered by either the dischargers or interested
5 stakeholders, it will be done at that time.

6 MS. LUTZ: Thank you very much.

7 And the approval of our minutes from May 7th and
8 8th and June 4th and June 5th, do I have a motion to approve
9 the minutes?

10 MS. DIAMOND: I'll move to accept them.

11 MS. GLICKFELD: Second.

12 MS. LUTZ: All in favor?

13 THE BOARD: Aye. (Collectively)

14 MS. LUTZ: Opposed?

15 Motion carried.

16 And next we have our Board member communication,
17 I'll start with --

18 MS. GLICKFELD: I know we're going to have a Malibu
19 report because Malcolm is here, but I'm going to give my own
20 Malibu report today.

21 I have -- I had communication with David Resnick
22 (phonetic), who is a -- represents property owners in the --
23 in the Malibu area on septic systems. I didn't know it was
24 an ex parte communication when I had it. He simply
25 mentioned to me, at one point, that the septic system for

1 the Malibu Lumber Facility was not designed to have any
2 recycled water. It was only designed to have -- to be able
3 to treat water and then have it go through groundwater.

4 I don't know whether this is true or not true, but
5 given the fact that we now have an NOV on that property, and
6 part of the NOV is the fact that this property has not yet
7 complied with the -- an essential condition that this Board
8 placed on the property, which is to provide the way of not
9 shipping 17,000 gallons a day of raw sewage to some other
10 treatment facility.

11 we -- we require them -- in order to approve the
12 permit, we required them to put in a system for irrigation
13 to other sites, specifically the park site, and as I
14 understand through the NOV that has not been done, and I
15 would like Staff to investigate whether -- the fact that the
16 system may not be designed to have them is one of the
17 reasons why.

18 I also would like the staff to investigate as to
19 whether -- to make sure, I hope that the Board -- and this
20 may be something for the Board to consider, but the Board --
21 since the property is not yet meeting that condition, I hope
22 that the staff would not go out on the property to go full
23 17,000-gallon per day use until it meets that condition, and
24 so that's my -- my report.

25 You have a response on that?

1 MS. EGOSCUE: If I may, I would like to speak to Malibu
2 in my Executive Officer report and also have Assistant
3 Chief Phillips come up at that time. I have multiple issues
4 for Malibu to report to you.

5 MS. GLICKFELD: As usual.

6 I also want to comment, we all received the data
7 books that the City of Malibu tried to give to us in June
8 and Staff decided not to give them to us and then you, I
9 guess, decided to mail them to us.

10 And I would like some of the cities here to make it
11 clear, at least as one board member, that I would like to
12 have Staff review these items, given our excerpts and I
13 would like to have your view of the particularly stance as
14 to regard whether they're complying with the M.O.U. It
15 appears to me that they have a good system, but there's no
16 data in the system.

17 MS. DIAMOND: Yes. I -- a report that -- on the 17th of
18 June I attended, as did two other of our board members, in
19 Malibu a public meeting for consideration of renegotiation
20 of the M.O.U., and that was at -- held at City Hall. It was
21 a two-hour meeting. There was lots of members of the public
22 there.

23 I did feel that there was a lot of misunderstanding
24 about the M.O.U. by the people who were elected in the city
25 of Malibu. I felt there was a lot of misunderstanding about

1 what that M.O.U. -- current M.O.U. requires, and even the
2 issue of T.M.D.L.'s, what is a T.M.D.L., the definition of
3 it, what it applies to.

4 There seemed to be a lot of misunderstanding, which
5 somewhat surprised me, but I think it's something that we
6 need to deal with within the Board in terms of making sure
7 that we're all on the same page, because I felt we're not
8 all on the same page.

9 Also, I wanted to report back, on the 11th of June
10 I attended, as did Board Member Glickfeld, the
11 ground-breaking of the South L.A. wetlands Park, which is a
12 wonderful -- going to be a wonderful amenity to an area of
13 our city -- the city of Los Angeles, I should say, not "our
14 city," but one of the cities in our region -- of a
15 tremendous asset to the community that lacks green space
16 that will do a lot towards cleaning up water quality in that
17 area.

18 So it's exciting to see a project that is going to
19 make a difference in water quality and going to make a
20 difference to the community, and I was really happy to be
21 there, and that's it for me.

22 MS. MEHRANIAN: I have a couple things to report. I was
23 the third Board Member that was with Ms. Glickfeld and
24 Ms. Diamond at the meeting with Malibu, and I agree with
25 Ms. Diamond.

1 It seemed that there was a misunderstanding about
2 the -- the reasons of the M.O.U. and the actual functions of
3 it, but what I think happened is there was a lot of
4 understanding at that point. This may be the first of other
5 sessions we have with them.

6 We still are looking at the M.O.U. with now the --
7 you know, the decisions were made at that meeting, action
8 was taken that the -- we took the action items and the
9 things that we talked about, gave them to our Executive
10 Officer and City Manager of Malibu to work closely together
11 to ferret out some of that information to then determine
12 when we can move forward with the items.

13 Also, several weeks ago, I, along with our
14 Executive Officer, Ms. Egoscue, met with Steve McGuin
15 (phonetic) from the County Sanitation Board, and
16 Frank Ferry, who is the mayor of Santa Clarita, and we sat
17 and talked primarily about the -- the sanitation district in
18 Santa Clarita was anticipating a vote of the system for an
19 increase in their rates for them to build their desalination
20 plant -- not desalination plant, but their plant to work
21 with the chloride rate than the rates that the salt issue
22 that they had in the river.

23 Some of the things that were discussed were that
24 maybe this isn't the right time for them to do that and, you
25 know, decisions made at that point. There were some

1 recommendations that will be coming back to this Board for
2 decision and back to the Board of Sanitation Office and the
3 sanitation district, but it was, I think, a good meeting of
4 the minds, and I think everybody understands what page we're
5 all on based on that, and that are -- those are my two
6 announcements.

7 UNIDENTIFIED SPEAKER: On that issue of desal -- excuse
8 me. Not desal. Of chloride. See I'm going -- I'm sorry.
9 Chloride in the Santa Clara River, you know, I just want to
10 make sure -- I think somebody from the City of Santa Clarita
11 is here for their issues and also from the san districts,
12 and, you know, I understand, and I'm sure you're well aware,
13 that there is a bill pending in the legislature of the
14 second year which would give local governments and the
15 sanitation districts better control over water softeners.

16 of course, the water softener industry is very
17 opposed to that, but I think that it's the only way that
18 we're going to be able to resolve the problems abound to
19 farmers (sic) who are worried about having their land
20 destroyed.

21 And -- and I hope that -- that you will contribute
22 information to the State Board, which will allow the
23 governor to be able to have improved information so that we
24 can -- right now we're in control on that bill, I just hope
25 that we can give as much attention to that bill as we can.

1 MS. LUTZ: We did go through ex parte communications.
2 Is there any other Board member who has anything else they
3 would like to report on that at this time?

4 Great. Moving on to our Executive Officer's
5 Report. Ms. Egoscue.

6 MS. EGOSCUE: Good morning again. I'd like to start off
7 my report by reporting to this Board and the public that we
8 are in a very challenging time at the Regional Board. This
9 month marks the third furlough day, which is equivalent to a
10 15 percent reduction in Staff time, and in response, I have
11 directed Staff to bring me a plan for a 15 percent reduction
12 in output.

13 And as we have seen since January with the 10
14 percent reduction, they have had very real effects on our
15 production, what we bring to the Board, so I'm anticipating
16 that this 15 percent will be even more.

17 The governor has publicly stated that if a budget
18 has not passed -- and forgive me, I was up too early to see
19 if it passed this morning. No, it has not -- that he might
20 order another furlough day next month, which would be a 20
21 percent reduction in Staff.

22 I would like to say that Staff has been very
23 professional, and I've had very little complaining. They
24 have conducted themselves very well. We do have staff that
25 are taking second jobs right now to do during the Fridays.

1 So, again, we have been telling the public that this is
2 affecting our output, and we are closed three Fridays a
3 month now.

4 Following up on that, there is a lawsuit that was
5 filed by NRDC and Santa Monica Baykeeper against the County
6 of Los Angeles and the City of Malibu. Why am I talking
7 about it? Because there is a federal subpoena that our
8 office is under to produce e-mails from the last ten years
9 on multiple items, permits, all e-mails referencing permits,
10 ocean permits, et cetera.

11 This has almost completely shut down our agency in
12 the last two weeks. We have boxes of e-mails, 50 boxes, 50
13 Bankers boxes of e-mails that have been produced. It took
14 our staff -- I can tell you, it took me four days from the
15 beginning of the day until the end of the day, and I only
16 had two boxes, because I've only been here less than two
17 years. We have staff that have been here 20 years that are
18 going through their e-mails.

19 Now, it's gone on to the lawyer review, our
20 attorneys are reviewing it. We're going to have OCC review
21 them first, and then the Attorney General's office. Why am
22 I going in ad nauseam detail? Because our attorneys now are
23 not producing, they are not responding, because, of course,
24 a federal subpoena takes precedence over everything else.

25 So please be aware that we have a lot of things

1 that are on us right now, and as a result, we are not doing
2 as much work; however, we are still striving to be the
3 professional and -- and very proud agency that we have
4 always been.

5 MS. LUTZ: Ms. Egoscue, I'd like to make a comment at
6 this time. I think I speak for the entire Board.

7 To all of the members of the staff who are working
8 under these extremely difficult times, while we may not know
9 exactly what it feels like, we empathize, and we are 100
10 percent supportive of the work that you do give to this
11 community, to this region, and to this state, and we thank
12 you for sticking it out with us and for working through
13 this. The stress must be tremendous.

14 Because I know our staff. They want to give 100
15 percent. They want to do five days' work in the four days
16 they have. We understand that, and we know that the work
17 that is being done is of the highest quality, and we
18 appreciate so much everything that's given, and we do
19 understand the -- the lack of time and ability that is upon
20 us right now, particularly with the sudden imposition of the
21 subpoena.

22 And I would just ask the public to please bear with
23 us as well while we work through these very trying times
24 that are not only at our State level, but at our region
25 level and our city levels. It's a time when we all have to

1 pull together, and we all have to recognize what's possible
2 and what's not possible.

3 So I thank our Staff tremendously and I thank the
4 public for sticking with us as well.

5 MS. EGOSCUE: well, thank you for that. I know Staff
6 that are assembled really appreciate those comments, and
7 it's all about priorities now, and things that slide are
8 going to slide but our priorities will remain.

9 Okay. Moving on. The underground storage tank
10 funds ran out of money a couple of months ago, and as a
11 result, we were under increased pressure to close some
12 cases. We were also directed by the State Board to decrease
13 the amount of monitoring, and that was done. I'd like to
14 report that our tank staff, by recommendation of the State
15 Board, expeditiously closed 14 tank sites that were ready
16 for closure and we continue to work through this very
17 challenging time.

18 So Federal Stimulus money was given to try and
19 prioritize and continue to clean up some of the sites, but
20 it continues to be another challenge for us that we are
21 working through. So kudos to the tank staff.

22 I'm going to leave Malibu to last.

23 I wanted to report some good news in terms of the
24 future of our groundwater and, in particular, water supply
25 dialogue for this region.

1 There was a Cleanup and Abatement Order that was
2 written in 2007 by my predecessor to Honeywell -- this is
3 reported in Page 9 of your E.O. report. The Order stated
4 that because of Honeywell's contamination of the groundwater
5 in North Hollywood that they were to provide replacement
6 water to the Los Angeles Department of Water and Power.

7 There was some back and forth between Honeywell and
8 L.A.D.W.P. As a result, I issued a Notice of Violation on
9 March 26th, and I'm happy to report that the replacement
10 water bill, which, in this case, was a little bit in excess
11 of \$115,000, was paid by Honeywell to L.A.D.W.P. in May.

12 So I know there was some doubt about whether
13 replacement water orders are something that can be done, and
14 I'm telling you that this Board has proven to the contrary,
15 at least in that case.

16 Following, this week, in particular July 13th,
17 marks the 15th anniversary of the meltdown out at the field
18 lab. I'd like to report to this Board that the final
19 approval of the ISRA work plan has been sent, and with
20 fingers crossed, we will be seeing some remediation as early
21 as next month. So that's some good news.

22 All right. Last but not least, there are two huge
23 issues in Malibu. I'm going to let Wendy come up for
24 Malibu Lumber, and I'm going to speak very briefly about
25 La Paz because the Board should be very well aware of this.

1 La Paz is a development site that is proposed out
2 in Malibu. It's currently not built. They are awaiting
3 Coastal Commission approval. They have filed an application
4 with our office for a permit. We have not processed that
5 permit. We believe that the application is not complete.

6 They disagree with us, and they, after some back
7 and forth with myself and our attorney, Mr. Ogata, have
8 noticed the public in Malibu that we are violating the
9 Permit Streamlining Act, in their view, and therefore
10 failure to act by this Board within 90 days -- 60 days from
11 the date of their notice will result in a de facto permit.

12 So I'd like you to be aware that this is happening.
13 The public in Malibu is aware of it, we are receiving phone
14 calls, and this is a discharger who is proceeding forward
15 without the consent of the Board.

16 UNIDENTIFIED SPEAKER: Madam Chair, on that issue, I
17 want to take it before I forget, which is, have we sent out
18 letters to those surrounding landowners and to the City
19 telling them that this discharger does not have a permit?

20 And I would hope that we would ask for the City's
21 cooperation in -- this city -- this discharger does have a
22 plan that they can go forward without Coastal Commission
23 permission, and I would hope we would ask the City not to
24 proceed with the building permits on this until this Board
25 issues a permit.

1 MS. EGOSCUE: I confess that we have not notified the
2 surrounding landowners. This has been something that has
3 just recently happened, but I will take your points, I think
4 they are good ones, and we'll follow-up on both
5 communications with the City and with public notice of what
6 we're doing.

7 I believe we've placed it on the web site, our
8 response and the back and forth, so if the public wanted to
9 research it from our web site, they can see what's going on.

10 Okay. Malibu Lumber. I'm going to have Wendy
11 update you on what exactly is going on with Malibu Lumber.
12 You noted from Page 3 of the E.O. Report that they had a
13 deliverable that was due yesterday, and she'll talk about
14 that.

15 MS. PHILLIPS: Wendy Phillips, Section Chief,
16 Groundwater Permitting.

17 On June 15th we did issue a Notice of Violation to
18 Malibu Lumber. Most seriously, we were disappointed that
19 during the first month of operation in April, the plant
20 failed to achieve some very important permit levels for
21 nitrogen and phosphorus on several days. We're hoping that
22 that's just a function of the startup and that they will
23 quickly correct that.

24 The permittee has submitted a monitoring report for
25 May that came in at the beginning of the week. I haven't

1 looked at that yet. Staff is in the process of looking at
2 that.

3 I will also say that the Notice of Violation
4 contained a citation for failing to submit the report with
5 an authorized signature and perjury statement, and that has
6 been corrected. We got a letter from Mr. Sean Trough
7 (phonetic) authorizing -- designating his authority to
8 certify and monitor reports. And I've just spoken to the
9 City, they're going to give something similar very shortly.

10 The important report is due at the end of the
11 month, and that's a report on the corrective actions that
12 the discharger is taking, so we should be receiving that in
13 about a week-and-a-half.

14 I heard a couple of other Malibu issues, and if you
15 don't mind, I'll go into that, too.

16 MS. LUTZ: I just -- wait. wait. wait. I'm sorry. If
17 you're going to move on, I'd like to ask a question about
18 what you just reported.

19 MS. PHILLIPS: Sure.

20 MS. LUTZ: I remember very clearly when the issue of
21 Malibu Lumber came before us, and I think all of us remember
22 that because it was a very -- very difficult meeting.

23 We had a lawyer representing Malibu Lumber tell us
24 that this was a state-of-the-art incredible system that was
25 being put in, and that -- and we relied on the fact that

1 that was so and yet, now, this very soon after this is
2 operating we're hearing that it's problematic to the point
3 where we had to issue an NOV.

4 So I just -- I guess maybe it's more of a statement
5 more than a question, because I guess I should be asking the
6 question to the lawyer who made the comments to us that we
7 relied upon, that, in fact, it's very -- of great concern to
8 me, as a Board member, that we relied on that.

9 And a lawyer takes an oath, like everyone else, to
10 tell us what, at the -- at that time they believe to be
11 truthful, and very quickly thereafter we find out that this
12 is not necessarily a state-of-the-art plant and that we made
13 a decision based on testimony that it was and that we were
14 going to be seeing some real progress here and this would be
15 a model for future operations in Malibu.

16 And so I'm -- I'm putting on the record that I'm
17 very upset to hear this, and I'm -- I'm sure that you're not
18 surprised, but I think it needs to be stated that this was a
19 short time ago and votes were taken on the record. My vote
20 might have been different had I been able to understand that
21 this was, in fact, not such a state-of-the-art facility.

22 MS. PHILLIPS: Well, I'll respond by saying that I'm not
23 surprised to hear you make such a statement. Staff is very
24 cognizant of the concerns that the Board expressed at the
25 December Board meeting, and we had made a point of trying to

1 be as prompt as possible with this particular discharger.

2 In fact, I would venture to say, we've had more
3 meetings, more e-mails, more teleconferences with this
4 discharger than, perhaps, any other discharger.

5 MS. LUTZ: And I want to be clear, this is not a comment
6 about the staff at all. I am very pleased with the work of
7 staff. You have been very, very on top of this, and -- and
8 that's why I'm concerned, because we -- you and -- under our
9 orders, put trust into this and they're acting on that trust
10 and on our orders, and so I appreciate the work that you're
11 doing. I'm just surprised and disappointed.

12 MS. PHILLIPS: Well, I'll share that with Rebecca and
13 Elizabeth who really did the bulk of the work here.

14 And also move on to --
15 Yes?

16 MS. LUTZ: Just another issue, which is, I asked earlier
17 about this great irrigation system and why they're out of
18 compliance with that? When are they going to come into
19 compliance with that?

20 You know, I would also note that was a commitment
21 made by the City and made by the developer that that would
22 happen within six months. That condition was added by this
23 Board and, again, I don't think I would have voted for the
24 permit had I known that they were going to ask for a
25 six-month extension and that the system might not be

1 designed to accommodate that, so I'm very concerned about
2 this.

3 MS. PHILLIPS: Right. As is Staff, and the discharger
4 has requested, first orally back in a meeting in May, I
5 believe, to -- for a six-month extension on that. Staff
6 cannot support that. We've informed the discharger of that.
7 The discharger is now asking that this be agendized so they
8 can go directly to the Board, and we're in the process of
9 working on that.

10 MS. LUTZ: Is there a Cease and Desist Order in place?

11 MS. PHILLIPS: No, there is not. No.

12 MS. LUTZ: I -- I would ask of the Board, is that going
13 to be before the Board as well at the same time?

14 MS. PHILLIPS: Let me -- if I could just add, in our
15 Notice of Violation, we did make sure that we captured that
16 concern.

17 And another thing is we had expected when the --
18 when the request of the six-month extension was made, the
19 discharger did say that they were discharging at minimal
20 flows, and I recollect that they stated to us 2,000 to
21 2,500 gallons and that -- that hasn't turned out to be the
22 case and that has escalated our concern.

23 I did have a couple of other items -- related items
24 that I think that you might be interested in. One of
25 them -- well, also in that Notice of Violation, we

1 acknowledged that there are problems with the groundwater
2 monitoring plant establishing the baseline water table
3 making sure that we have a tight groundwater monitoring
4 network that will detect problems as promptly as possible.

5 we have not been able to resolve that so far, and
6 we are trying to issue a second Notice of Violation to
7 Malibu Lumber that will be specifically focussed on the
8 groundwater monitoring. Furloughs, the federal subpoena
9 have delayed our ability to get that out. I hoped it would
10 go out two weeks ago, it's going to take us at least another
11 two weeks to get that out.

12 And then, finally, the fourth item I wanted to
13 cover, I wanted to add on to something Tracy said about the
14 notebooks.

15 You probably put through them, and while the design
16 of the database, as evidenced by some of your entries in the
17 notebooks, is commendable, we had expressed concern about
18 the accuracy of the data and also the extent to which the
19 database is populated.

20 And just by way of example, you may recall that
21 back in April we had a big enforcement push and we sent out,
22 I think, 20 or 30 directives to unpermitted dischargers
23 telling them they had to submit a Report of Waste Discharge,
24 and we used information from the city of Malibu and we had
25 problems with many of those contacts and addresses.

1 So that's an example of a concern that we have with
2 the City's inventory. Thank you.

3 MS. EGOSCUE: You would think that we were the Regional
4 Water Quality Control Board for the Malibu Region.
5 Sometimes it feels like it.

6 Two last things -- well, actually three. I didn't
7 want to give the Board the notebooks until Staff had a time
8 to analyze them and report to you so that you would see the
9 Staff report; however, due to what's going on internally and
10 because the City was so upset, I figured I would just send
11 it to you and let you know that we will analyze it in due
12 time. So I appreciate the Board Members' comments about
13 that.

14 I will end on a high note, I promise. And you have
15 a question for me?

16 UNIDENTIFIED SPEAKER: I just had a question regarding
17 the course of action in terms violation an issue so -- and
18 also you know (unintelligible) -- and wouldn't a course of
19 action be different in this case?

20 MS. EGOSCUE: We will wait to see how they respond to
21 the Notice of Violation and -- and follow up with subsequent
22 notices if that's necessary.

23 Once that stage is finished, then it goes to
24 enforcement, and as I noted to you when Mr. Unger (phonetic)
25 was promoted, he is now the chief prosecutor, so it will go

1 to him, and the Board and myself will no longer have
2 direction for further enforcement on this item.

3 UNIDENTIFIED SPEAKER: You wouldn't have input?

4 MS. EGOSCUE: No. I have input with you when it appears
5 to you -- if it appears to you as a complaint.

6 UNIDENTIFIED SPEAKER: So, just as a further up on that,
7 if this Board wants a Cease and Desist issued -- order
8 issued, what do we do?

9 MS. EGOSCUE: If you direct Staff as a Board, then you
10 will have the development of the Cease and Desist Order.

11 UNIDENTIFIED SPEAKER: Okay.

12 MS. EGOSCUE: Okay. I'd like to note for the public
13 that we do not have contracts right now with the State of
14 California, so we have no court reporter.

15 We are taping this digitally, and then once we have
16 the ability to contract again, we will have someone
17 transcribe it. So just to note that you are being recorded
18 by a machine not a human being today.

19 And the last but not least, good news, bright
20 point. The -- the Washington, D.C. Department of the
21 Environment will be visiting our staff next week to talk to
22 us about how we did our trash T.M.D.L., because they are
23 developing one within the Anacostia River.

24 They actually have one, but they would like to
25 start implementing it through their permits, and they are

1 going to be visiting the City of Los Angeles first in the
2 day at 1:00 o'clock, and then they're coming to speak with
3 us about lessons learned, things that we have done and not
4 done.

5 And, as you are well aware, we will be reopening
6 the Los Angeles MS4 to incorporate the trash T.M.D.L. later
7 this year, which is one of the priorities that is not going
8 to slip for this Board.

9 Any questions, comments?

10 UNIDENTIFIED SPEAKER: Just one comment that I think
11 that you and Staff are doing a great job, and I can clearly
12 see that you are, basically, triaging and listening to those
13 items or addressing those items that are most important to
14 our board and to the region, so I just want to tell you how
15 much I appreciate that and all of the staff's efforts. It's
16 quite incredible.

17 MS. EGOSCUE: Thank you. It's meatball surgery at its
18 finest.

19 MS. LUTZ: Just to follow up on Ms. Egoscue's point
20 about a stenographer/reporter in the room. The -- for all
21 of us that are here, us here and speakers for today, please
22 make sure, as we should always do, that microphones are on,
23 we speak clearly into our microphone, and that we have been
24 -- you make sure that you identify yourself for the record.

25 I have no fear that the transcript that will be

1 produced will be of the highest quality. Normally, when
2 recording is conducted through digital recording, there is
3 also a reporter there who -- who does identify the speakers.

4 So it will be very helpful if everybody would make
5 sure to identify themselves when they speak, and what I
6 would like to do with the Board is let me direct, and I will
7 call on you by name and -- so that we can --

8 UNIDENTIFIED SPEAKER: One question before we move on
9 for Ms. Egoscue, in light of all the times and furlough and
10 all that and the case order, is there going to be a point
11 where you would like us to provide, if we could, in terms of
12 priorities and stuff that, you know, or reprioritizing
13 things so the cases that we get to or the cases you don't so
14 we're all clear on what can and cannot be done?

15 MS. EGOSCUE: Yes, I -- I would like to do that. We're
16 going to try and do a Fall emergency retreat where I do
17 that. Right now, I'm just trying to get us through 2009,
18 and because our agendas are full, we're starting to populate
19 2010's agendas and things are slipping into 2010. I think
20 having kind of a September/October meeting with you with a
21 consensus is appropriate.

22 UNIDENTIFIED SPEAKER: Sure. Please take this as
23 something that was trying to help, just, you know, wanting
24 to be mindful of if you need help with us. If don't now and
25 would later, I understand.

1 MS. EGOSCUE: It actually will help because then when
2 you don't have something you're expecting, you can be aware.

3 MS. LUTZ: Okay. Thank you.

4 Next is our Board Checklist. Do any Board members
5 have questions or comments regarding the Board Checklist?

6 Hearing none, we'll move on to our update from the
7 State Board, Ms. Vice chair, Fran Spivy-Weber, but before
8 she speaks, I have exciting news about Ms. Fran Spivy-Weber.

9 She has been honored by the West Basin Municipal
10 Water District for her work in water over these many years,
11 and I just -- I want you to read some of the comments that
12 they made about you, because I think they are very on point.

13 The one comment they made was that, "On behalf of
14 the West Basin Board of Directors, I'd like to recognize
15 Fran Spivy-Weber for her extraordinary service to the
16 residents of California and her outstanding achievement in
17 the water industry," and that was by the Board President,
18 Edward Little.

19 He also continues, "We applaud her continued
20 steadfast dedication to resolving environment and water
21 issues for our state," and I think we concur and
22 congratulate you.

23 MS. SPIVY-WEBER: Thank you and thank West Basin. I
24 have been hearing from a few people, so it's really quite
25 wonderful. But as you've heard from Tracy's report, there

1 is a lot to do, and we're doing it in very tough times.

2 I want to start with something very positive,
3 however. Today in Sacramento at the State Board, there is a
4 meeting of all staff, and it's not to discuss furloughs and
5 budget issues, it's actually to celebrate the birthday of
6 Porter Cologne.

7 This month -- this week, actually, was when the
8 bill passed and was signed by Governor Ronald Reagan
9 40 years ago. So it's a law that -- that formed the basis
10 of the Clean Water Act. At the federal level it has a lot
11 of resiliency, and after 40 years, I think -- and our -- and
12 Michael Lauffer, who's our Chief Counsel, concluded that it
13 has held up very well.

14 And one of the key elements to it is planning,
15 long-term planning, and I think as we move forward over the
16 next several years, particularly in these -- in these tough
17 economic times, planning is going to be even more essential,
18 because it's the only way we can make it, make choices
19 for -- for where we're going to put our time.

20 So happy birthday, Porter Cologne, and all of you,
21 to the staff and the boards who were put in your positions
22 because of Porter Cologne, I think we can celebrate, and I'm
23 quite pleased to do so.

24 Tracy said it all, this is the -- we are having
25 three-day furloughs now, furlough Fridays, and that's

1 continuing until we hear further.

2 I -- I do think there will be a budget at some
3 point, but I want to try to --

4 MS. LUTZ: That is such -- I'm positive of it.

5 MS. SPIVY-WEBER: But I do want to caution you that when
6 there is a budget, it will not be the end of the story, and
7 so we are going to have to be -- be prepared for -- for
8 items that we're going to have to work through.

9 They will be coming up with the big numbers, the
10 legislature and the governor will be coming up with the big
11 numbers that will help to balance the budget, but future
12 budgets and adjustments, changes in -- in the structures
13 that we have -- that we know and enjoy, I think will -- will
14 change.

15 I have no clue as to how -- which ones, how, and
16 where, but I'm quite sure that we're going to have months
17 and months of adjustments to make when -- when this does
18 happen. And there is some optimism, not a lot, that it
19 could happen this week, but I've said that before, so I
20 won't say it again.

21 And -- and Staff at all the Regional Boards and at
22 the State level are doing, as your staff is doing, they are
23 working extremely hard, very professionally, and are, you
24 know, do -- it's just amazing to me, getting a lot done. So
25 I -- I've been just impressed on and really humbled by

1 what's going on. That is a call into act in ways that
2 they've probably never been called on to act before and
3 people are rising to the occasion.

4 We, at the State Board, have released our
5 Once-Through Cooling Policy. It is out for public comment.
6 We will be hearing -- having a hearing on it in September.
7 It was developed -- and for those of you who, since there
8 are a number of once-through cooling facilities in your
9 region, it was developed in -- in collaboration with the
10 State power agencies and land use agencies that are
11 associated with -- with power production.

12 But in a positive -- not that we gave up our
13 authority over clean water. We kept the water issues
14 clearly in our jurisdiction, but we asked for help from
15 the -- from the power agencies in terms of timing and -- and
16 areas that -- that should come first in making changes to
17 the once-through cooling proposals so that there would be no
18 chance whatsoever that we would threaten the grid
19 inadvertently in our actions, and it has, I think, worked
20 extremely well.

21 And, of course, we'll hear more as we seek
22 comments, but it has been done in a quite different way from
23 many of the other policies that we've done, and I think -- I
24 see it as a positive one.

25 We also adopted, in our early July meeting, the

1 Landscape Irrigation Permit, state-wide permit for landscape
2 irrigation with recycled water. I can't say that everyone
3 was as positive about that as -- as with the -- the recycled
4 water permit in February, but the good news is that probably
5 not too many people will use it at the beginning.

6 And then we will -- and we're going to have -- and
7 this is an online permit that's being done collaboratively
8 with the Department of Public Health, and so we're going to
9 be working with those agencies that do decide to use it at
10 the beginning to help us, essentially, get the kinks out of
11 the system, and we can make some adjustments in it.

12 So I'm pleading with those who are skeptical of it
13 to work with us and -- and the staff is ready to make sure
14 this works, because if it does work, it could save everyone
15 a lot of time, money, and heartache, actually.

16 Finally, I think most -- the five of you and your
17 colleagues have been told that there will be a WQCC meeting
18 in Sacramento October 26th and 27. I hope all of you will
19 be there. It's going to be focussed -- we will have someone
20 from EPA there to speak and talk about the new EPA and what
21 they have in store for us.

22 We'll also be focussing on funding, budget issues,
23 enforcement, and sustainability, so I hope you will be there
24 and that your colleagues will be joining me. And if you
25 have any questions, don't hesitate to ask me now, but don't

1 hesitate to contact me at a later time.

2 MS. LUTZ: Questions?

3 UNIDENTIFIED SPEAKER: Yes.

4 Thank you, again, for being here. On the
5 once-through cooling issue, have you -- we have today before
6 us issues of desal plants that are using once-through
7 cooling and are you going to be giving instructions to the
8 Regional Boards on how to handle that with your -- with the
9 -- within the policy that you're developing?

10 MS. SPIVY-WEBER: The -- the once-through cooling policy
11 is about -- is for power plants. We expect to be having a
12 hearing on this and voting on it very soon. The outcome of
13 the policy is likely to be applied to -- to desalination
14 plants, ocean-based desalination plants.

15 UNIDENTIFIED SPEAKER: But it's -- we have -- also in
16 this region we have ocean once-through cooling systems at
17 power plants being used for desal and so --

18 MS. SPIVY-WEBER: This policy applies just to power
19 plants. It's not for those stand-alone desal plants or
20 desal plants -- it applies to the power plants side, but it
21 will -- once the power -- the rules have been adopted, we
22 will move quickly to seek what adjustments need to be made
23 to apply these to -- to desal plants.

24 UNIDENTIFIED SPEAKER: All right. And then my other
25 question comes to, it's probably an issue that ought to be

1 discussed within the WQCC, I'm interested in knowing, given
2 the draft that we have, what the Board is doing to
3 investigate, designate, and redesignate potential water
4 sources to actual water resources that -- in terms of
5 beneficial uses.

6 So we're -- we're getting input from -- in our
7 tri-annual review that some of these potential uses ought to
8 be protected because they're not very potential, they're not
9 going to be used.

10 And the question I have is, does the Board, as the
11 State agency governing water supply and also the State
12 agency, ultimately, governing beneficial uses, do you see
13 the Board taking a roll in -- in identifying new sources of
14 water that have been potentially designated that ought to be
15 put into the actual, or is that something totally up to
16 local governments?

17 MS. SPIVY-WEBER: I don't know. I will check on it.
18 Thank you.

19 MS. LUTZ: Thank you very much. We're very fortunate
20 that our Vice Chair, Fran Spivy-Weber, is here at almost
21 every meeting to give us great information. Thank you very
22 much.

23 Okay. I have quite a few speaker cards here for
24 our Public Forum. And what I'm going to ask is that you
25 hold to three minutes, because we do have so many. I think

1 this is more than we -- I know this is more than we usually
2 have for Public Forum.

3 This is a point where any person may address the
4 Board regarding a matter within the Board's jurisdiction
5 that does not appear in the agenda, and our first speaker
6 will be John Davis followed by Patirica McFurson.

7 MR. DAVIS: Honorable Chair Lutz and Vice Chair
8 Glickfeld and distinguished commissioners, I'm here
9 requesting enforcement of Cleanup and Abatement Order
10 98-125. You should all have a letter in front of you that I
11 transmitted to the Board before this meeting that has
12 attachments.

13 I will -- I will read the letter once you have it
14 in front of you.

15 MS. LUTZ: Did you state your name?

16 MR. DAVIS: John Davis.

17 Ms. Harris has the letters. Yes. Those are the
18 ones. Those are the ones. If I may begin, I hope I won't
19 be penalized for the wait, but, essentially, I'll read my
20 short letter as quickly as possible.

21 "On December 16th, the Board's Executive Officer
22 signed a document entitled, "Peer Review." This Board may
23 only, by law, conduct a peer review in accordance with the
24 State Health and Safety Code.

25 "On February 26th, Dr. Heath (phonetic) of this

1 Board indicated to me in an e-mail that no peer review was
2 conducted under the Health and Safety Code even though this
3 Board led other reviewing agencies to believe it had.

4 "I hereby request to forward and inform the same
5 agencies that no peer review took place as it may affect the
6 concurrence with agencies such as DCSC."

7 The supposed peer review is included in the first
8 two pages. The third page is the e-mail from Dr. Heath
9 stating that no peer review occurred.

10 "I hereby request enforcement of Cleanup and
11 Abatement Order 98-125 Condition 9 on Page 11 because
12 parties ordered have failed to inform the Board of planned
13 physical changes in the facility's activities which may
14 affect the order.

15 "Changes consist of partial construction of
16 Phase II of the project which has now been halted by
17 California Court of Appeals. I hereby request enforcement
18 of the order Condition 10 on Page 11 because the parties
19 have failed to comply with CWC Sections 5001, 5002, 13751,
20 and 13752 including request and enforcement of CWC 13752 in
21 this respect.

22 "I hereby request enforcement of the order and that
23 Condition 11 on Page 12 requires the parties to notify the
24 Board of any change in name, ownership, or control of the
25 project.

1 "The State of California has purchased a large
2 section of the project and the -- and currently the State
3 Lands Commission and State Fish and Game now exercise
4 control. Furthermore, many other similar changes have taken
5 place as properties have been sold at the facility.

6 "The Board is hereby notified of these changes and,
7 also, that permits issued to extract, discharge, and divert
8 waters of the State of California for post-construction
9 purposes that are not consistent with beneficial use as
10 established by this Board shown on Page 7, Items 17 and 18."

11 MS. LUTZ: Thank you very much.

12 MR. DAVIS: And, lastly, I would like to say that I
13 requested records of compliance with this order through a
14 public records request.

15 The Board Staff, Mr. King, has not complied with
16 that request in that he has indicated to me ambiguously that
17 some of the records may or may not be available for my
18 review.

19 So I'm taking it up with the State Board's
20 attorneys and ask that specifically this Board say exactly
21 which documents are relevant to my public records request.
22 Thank you very much and good day.

23 MS. LUTZ: Patirica McFurson followed by Trevor Smith.

24 MS. MC FURSON: If I may, Dan Cohen is here, also as one
25 of the public speakers, if he could speak, because we're on

1 the same topic as John Davis.

2 MS. LUTZ: Has he turned in a speaker card?

3 MR. COHEN: Yes.

4 MS. LUTZ: Then your opportunity will be coming.

5 MR. COHEN: All right.

6 MS. MC FURSON: I would like to back up then. My name
7 is Patirica McFurson, I'm from the Grass Roots Coalition,
8 and while I appreciate, also, along the cutbacks that are
9 occurring, I'd like to remind you that we are here as
10 volunteers and have given a great deal of our own lives
11 under great hardship to be here to provide accountability
12 for the health and safety of the public.

13 The site that John Davis had just discussed is the
14 Playa Vista site, which is in Los Angeles in the coastal
15 Ballona wetlands area. The underlying waters of the site
16 are classified as potential drinking water.

17 The water Board is the lead agency for the
18 environmental protection of that site under Cleanup and
19 Abatement Order 98-125, and that Order does not reflect the
20 changes that have occurred regarding the site.

21 Tracy had mentioned a lawsuit regarding the County.
22 I know with regard to the Playa Vista site, it has never
23 been brought to the attention, other than us, regarding the
24 2005 Appellate Court decision, which involves the dewatering
25 aspects of the site as it pertains to the methane mitigation

1 system.

2 The problem with this site, in a nutshell, is that
3 we have thousands of gallons or more, much more, water that
4 is being dewatered that is classified as potential drinking
5 water that is simply being thrown down into a sewer. We
6 have absolutely no accountability.

7 The water Board -- the peer review that John
8 discussed that the water Board should have done if they were
9 involved, which we believe they should have been involved in
10 the review of these issues, because the EIR for the site did
11 not deal with these issues as corroborated by the Appellate
12 Court that the dewatering issues of this site have never
13 been dealt with.

14 We asked for the water Board's involvement in a
15 proper study of the cumulative dewatering needs across the
16 site and how that may create potential negative
17 environmental impact. None of that has been studied.

18 The water Board, I know, has also brought up the
19 Department of Sanitation. What the developer,
20 Playa Capital, regarding this site has not done, has not
21 disclosed all the dewatering elements that we have uncovered
22 from the Department of Sanitation for the methane mitigation
23 systems for instance.

24 The -- the review that was done that the water
25 Board participated in a very cursory way, which they did not

1 look at the actual raw data to legitimize the data that was
2 involved, and they have not made that clear to the City,
3 they have not made that clear to any agency regarding this.

4 So what we have here is actually the water Board
5 clouding an issue that we are trying to get accountability
6 on, and that's what we're asking for is help with that
7 accountability and to, in effect, stop dodging the idea of
8 knowing what is the water table underneath the Playa Vista
9 site. We know from the Water Board, 8 to 12 feet of
10 dewatering has occurred just from the remediation alone.

11 And if I may quote from part of our lawsuit, "Data
12 from the Department as" -- well, I'll start with this.

13 "Sanitation demonstrates that the modelling that
14 was done for this quote unquote study period" -- if I may
15 take -- I would like to take Dan Cohen's three minutes of
16 time.

17 MS. LUTZ: Mr. Cohen?

18 MR. COHEN: Fine with me.

19 MS. LUTZ: Okay.

20 MS. MC FURSON: "Estimates that the modelling was off by
21 400 percent." Now, this is data that I had to public record
22 act request from the Department of Sanitation who put this
23 information together to show what the developer was not
24 disclosing to the public, not disclosing to the water Board,
25 but mind you, the water Board was not asking.

1 They were asked to simply look at a very narrow
2 seven issues, which the City and Playa -- the developer,
3 actually, has used to in -- to make it appear that is much
4 more meaningful than what it is. And what we are ultimately
5 left with is that there is no independent data collected to
6 review for this peer review study.

7 The independent data is not verifiable because it
8 was not even provided to the public. It was provided in a
9 binary format, which even the water Board itself admits they
10 were unable to review or did not review because of time
11 constraints and money and so forth.

12 I'm sorry. I just don't have time to -- if
13 dewatering was not occurring for the purpose of groundwater
14 remediation, then it must be dewatering for the purpose of
15 lowering the groundwater table and, therefore, in connection
16 with the methane mitigation measures.

17 In addition, the permit requires Playa Vista to
18 maintain a settling tank, bag filters, zeolite treatment in
19 case the company encounters contamination.

20 In other words, the water Board is concerned about
21 the expansion of groundwater contamination. This is the
22 same -- is a same impact identified by the Appellate Court,
23 and we cannot get to the bottom of this.

24 And even though it is part of the Cleanup and
25 Abatement Order for this site, we are not having the

1 assistance of the water Board in looking at this site in a
2 cumulative fashion that we actually know what -- as I heard
3 someone else say today -- what is the actual lowering of the
4 groundwater at this site? what is occurring at this site?

5 But, meanwhile, and because there is no monitoring,
6 there is no actual metering going on of the water that is
7 being thrown away in the Department's sanitation, but this
8 is water that's classified as potential drinking water and
9 it is also Ballona Wetlands, which the public has spent
10 hundreds of thousands of dollars to purchase this land,
11 which we've been involved in, to save it and preserve it as
12 a wetland.

13 So how is this dewatering affecting the
14 environmental aspects of the site as well? we don't know,
15 and we can't get to the bottom of this. It seems so simple
16 and yet we have no tools here, certainly not from the water
17 Board in this instance, and we would like assistance from
18 the local Board and from the State in -- in -- in dealing
19 with the laws that are on the books that they can assist us
20 with, including the Cleanup and Abatement Order, which does
21 need to be amended to reflect the changes that have occurred
22 regarding the site including the lawsuit.

23 The -- the order relies on the EIR for Phase I. It
24 no longer makes any sense because, as the High Court said,
25 they have not dealt with the dewatering aspects, and it

1 needs to be still done.

2 MS. LUTZ: Thank you very much.

3 MS. MC FURSON: Thank you.

4 MS. LUTZ: Trevor Smith followed by Jim Hensley.

5 MR. SMITH: Good morning, Madam Chair, Vice Chair, and
6 Board members. My name is Trevor Smith, I reside in Oxnard,
7 I'm the Conservation Chair of the Los Padres Chapter of the
8 Sierra Club, and I'm a member of the Ormond Beach Task Force
9 for the past decade.

10 And our primary focus of the Sierra Club that
11 encompasses Santa Barbara and Ventura Counties, our number
12 one priority is the restoration/cleanup of the Ormond Beach
13 watershed and wetland area, which is very similar to the
14 Playa Vista area, Ballona wetlands.

15 And we've been aware for a decade of the -- of the
16 poor water quality in the Ormond Beach lagoon just from
17 going down there. Visually, it's littered with trash, dead
18 animals. There is wildlife present in this lagoon, but it's
19 not as populated with young breeding animals as one would
20 think of a lagoon that's half a mile long, 600 feet wide,
21 ten feet deep.

22 Our concern is that there's three tributaries, the
23 Hueneme Drain, the J-Street Drain, and the Oxnard Industrial
24 Drain, and they all drain into this water body, the -- the
25 lagoon, and it doesn't have an outlet to the ocean, so

1 whatever comes downstream stagnates, and the only two
2 obvious forms of runoff is -- is leakage through the sand
3 berm into the ocean and evaporation.

4 And I've read two studies conducted by
5 Ventura County and Oxnard that states that the lagoon
6 reaches the ocean, on average, of every two years. Which
7 means when it's dry, it could be three to five years, so
8 there's no flow or discharge or conveyance of the pollution
9 to the ocean so we have a buildup.

10 I wrote a letter a month ago, I made the deadline,
11 to ask that this poor watershed be put on the 303(d) list,
12 because we were surprised that it already wasn't because we
13 had already knew that it's polluted. And after I wrote the
14 letter to meet the deadline, because I just found out, I
15 think you may have my letter --

16 MS. LUTZ: The one thing I do need to caution you about
17 is the item on the 303(d) list is a separate item today, so
18 please do not address that during your public comment.

19 MR. SMITH: Which item?

20 MS. LUTZ: Anything regarding the 303(d) list.

21 MR. SMITH: My problem is I don't believe that we've
22 been put on --

23 MS. LUTZ: That's an issue for that item, so if you
24 speak at that item, which is still --

25 MR. SMITH: Well, what I've been told is that we're not

1 being considered for at least two years, so I assume that
2 I'm not on the agenda.

3 MS. LUTZ: That is exactly that item. I have to ask
4 you, please, anything you would like to speak about the
5 303(d) list, if you're on it, not on it, want to be on it,
6 that has to be addressed during Item Number 13, so just --
7 just complete another blue card saying you want to speak on
8 Item Number 13.

9 MR. SMITH: Okay. How long -- when will that be?

10 MS. LUTZ: It will be -- I'm hoping we can get to it
11 before lunch.

12 MR. SMITH: Okay. Now, my following speaker came with
13 me, he represents LULAC.

14 MS. LUTZ: Has he filled out a speaker card?

15 MR. SMITH: Yes. And I just want to know -- all we're
16 trying to do is submit additional data that I tried to
17 submit three days after the third day cutoff.

18 MS. LUTZ: Okay. Is that regarding the 303(d) list or
19 Item Number 13?

20 MR. SMITH: You know, I don't really know. Let me just
21 say one thing. Okay. Let's forget the 303(d) list. After
22 I wrote my letter, I had time to research, and I found out
23 that there was extensive water quality data --

24 MS. LUTZ: Okay. You are getting into that item, so
25 what I'm going to do is I'm going to ask you and your

1 colleague if they would please speak to Mr. King, who -- who
2 will be back shortly, and verify with him and then fill out
3 a speaker card for that item, not public comment. We want
4 to hear you, we just want to hear you in the right order.

5 MR. SMITH: Will it be possible to submit all the data?

6 MS. LUTZ: That Mr. King will be able to help you with
7 all of that.

8 MR. SMITH: Thank you.

9 MR. LUTZ: Okay. Jim Hensley and followed by
10 Cathy Knight.

11 MR. HENSLEY: Madam Chair, I'm part of this. I'm a
12 member of the League of United Latin American Citizens, the
13 coalition for protecting, preserving, and restoring --

14 MS. LUTZ: Okay. Mr. Hensley, if you would speak to
15 Mr. King as well and -- and up here we will have him.

16 MR. HENSLEY: I really appreciate it.

17 MS. LUTZ: We will have that continued.

18 Let's see, Cathy Knight and then Craig George,
19 please.

20 MS. KNIGHT: Hi, I'd like to take two minutes and
21 give --

22 MS. LUTZ: Okay. Wait.

23 Ms. Harris, are we able to do a two-minute if --
24 okay. Let's do a two-minute. I'm going to ask that -- we
25 need to continue on.

1 MS. MC FURSON: I would just like to say, also, that
2 these are waters of the State. They are classified as
3 potential drinking water, and they are waters of the State.
4 So under the Cleanup and Abatement Order there is no listing
5 for the beneficial use for waters of the State that is
6 public water to be simply dumped into the sewer, which is
7 what is occurring.

8 MS. LUTZ: Okay. And I'm sorry, could you please state
9 your name?

10 MS. MC FURSON: Patirica MCFurson, President, Grass
11 Roots Coalition.

12 MS. LUTZ: Thank you.

13 Now, if you would please state your name and --
14 would you just double-check, three minutes' time, how much
15 was left, Ms. Harris?

16 MS. HARRIS: One -- one-fifty.

17 MS. LUTZ: Okay. That's how much time you have left.

18 MS. KNIGHT: Okay. Thank you. My name is Cathy Knight,
19 I'm Conservation Chair of the Sierra Club's Airport Marina
20 Group, and I'm here to support the issues that were raised
21 before by Grass Roots Coalition.

22 Also, I gave you a handout, and one of them is a
23 front page picture of the "Los Angeles Times" "Don't Have
24 Enough Water Left in Order to Grow Food to Eat." And we're
25 suffering, in other words, from that.

1 And I also gave you a picture of the Playa Vista
2 site, in one lifetime, 80 years ago. It's the second page
3 there and the Ballona wetlands had a huge amount of water
4 stored there, and we basically destroyed it piece by piece
5 by piece of development.

6 What we're concerned of is Playa Vista already has
7 destroyed a lot of that water area, but they want to build
8 Phase II of Playa Vista, and we're very concerned about that
9 because of what is raised here before.

10 So there's a lot of dewatering going on at that
11 site, a huge amount, because it's one of the worst gas leaks
12 in the world, so we have to constantly dewater to keep those
13 irrigation measures from clogging.

14 And so they want to build, now, this 111 acres of
15 more development that's going to require more dewatering and
16 the current dewatering isn't fully accounted for.

17 So we're asking for your help to please support
18 this and oppose any further development on Phase II until --
19 there's a DIR going on right now -- until the dewatering
20 situation is clarified, because this is incredibly important
21 to us.

22 The third page I gave you was, people are saying no
23 more development in West L.A. until we figure out what to do
24 with this drought and the lack of water going on here. So
25 it's a huge resource under this project, huge resource, so

1 we ask for your help in clarifying what is going on clearly
2 on the dewatering. Thank you very much.

3 MS. LUTZ: Thank you.

4 Okay. George -- I'm sorry. Craig George followed
5 by Jennifer Voccola.

6 MR. GEORGE: Madam Chair, Board, I think I'm glad to be
7 here this morning. I'm not sure. The -- my intention first
8 this morning in coming here was to present another thing of
9 what Malibu is doing in regards to illicit discharges, but
10 there were a couple of questions that were raised that I
11 would like to respond to. The city manager, Mr. Thorsen is
12 here as well, and I think he's going to answer a few
13 questions.

14 In regards -- I'd like to back up and respond to in
15 regards to Malibu Lumber. That system is fully capable of
16 producing Title 22 effluent. We guaranteed that by having a
17 third-party reviewer look at that, that was
18 Carollo Engineering. Carollo Engineering is responsible for
19 a number of Title 22 plants throughout the state of
20 California.

21 They went through a very thorough extensive review.
22 We're still in the process, because there is some data and
23 some operations and maintenance manuals that are still being
24 turned in. They will also be reviewed by
25 Carollo Engineering. So that plant is very capable of

1 producing Title 22 effluent. We are working with
2 Malibu Lumber and your staff to make sure that that
3 disbursement does occur and as quickly as possible.

4 I noticed that there was some mention about some
5 violations of that, we are also concerned about that. I
6 think you not only have to look at the violations, and we do
7 acknowledge those, but you also have to look at the success.
8 They've had some huge successes with that.

9 So along with the problems and those hiccups are
10 expected during the start-up, there are some anticipated
11 time when everything will have to come into balance.

12 This is -- the name of the system is a membrane
13 bioreactor. It's a bioreactor, this is kind of a living
14 organism. It does take a little bit of time to get that
15 into balance, so we are working to make sure that that does
16 happen.

17 In regards to La Paz, they are a long, long ways to
18 getting any kind of building permits, and we do recognize
19 and we've made that promise to the Board in the past with a
20 number of projects that are coming forward, we will not
21 issue building permits until the WDR has been approved, if
22 and when a WDR is approved. So we're all on the same page
23 with that part, but I just want to reassure you on that.

24 In regards to -- as I say, we're just working
25 forward with Malibu Lumber. We're going to come forward

1 with some other information at another meeting. We weren't
2 anticipating having this today, but just to let you know
3 that we are working with them. We're trying to get
4 everything into compliance. We believe we can. We will
5 work with your staff in regards to that as well.

6 Today -- one other thing I want to mention is about
7 the notebooks. The notebooks were provided, I came in on a
8 number of occasions and talked to you about the Island
9 System, the information system that we currently have.

10 The notebooks were provided as just informational
11 only. There was no other intention. I think we heard about
12 in relation to the M.O.U., I could have presented these
13 months and months ago before even talking about the M.O.U.
14 or renegotiation. It had nothing whatsoever to do with
15 that.

16 There wasn't really any data contained in there
17 that was meant to be informational to the Board. It was
18 just to show you what is on those web pages. So the
19 information was really chosen randomly by one of my staff
20 members. I said to pick out ten streets within the city and
21 randomly pick out ten sites on there.

22 So this is just to tell you that Island is no
23 information, no data, the accuracy isn't even intentional or
24 unintentional, it's not relevant to what you're looking at.

25 MS. LUTZ: Thank you, Mr. George.

1 MR. GEORGE: You're welcome.

2 MS. LUTZ: Jennifer Voccola followed by James Thorsen.

3 MS. VOCCOLA: Good morning, Madam Chair, Board members,
4 and Staff, thank you for this opportunity to speak. I'm
5 Jennifer Voccola, the Environmental Programs Coordinator for
6 the City of Malibu.

7 I was going to piggyback on some of Mr. George's
8 comments. We were going to discuss some of our internal
9 enforcement and improved communication forms and
10 documentation. We'll save that for another meeting.

11 what I'd like to talk to you about today is that
12 enforcement is only as effective as it can be. If you're
13 willing to, as an enforcer, provide the correct resources
14 and tools to prevent the need for enforcement as well as
15 correcting any issues. So I'd like to introduce some of
16 those resources today.

17 We've formed, within Malibu, a Malibu Water
18 Conservation Partners Group. This came out of the record
19 drought as well as the city of Malibu realizing that often
20 times many of the complaints that we receive from the
21 community about runoff and illicit discharges ended up being
22 irrigation related.

23 And so we find out that they're not people washing
24 things outside, it's not industrial discharges, it's not
25 major sewage spills, it's often times irrigation runoff.

1 This Water Conservation Partners Group, this
2 couldn't have come at a better time. I could mention the
3 extreme drought, but, also, the City is struggling with
4 making sure that we eliminate and prohibit all dry weather
5 discharges in our area of special biological significance as
6 well as throughout the city, because we realize that one
7 area of the coastline is not separated from the rest.

8 Therefore, we found the fabulous synergy in
9 promoting each others' programs in our shared messages.
10 We're really exposing the message to the community that
11 wasting water is wasting energy.

12 So it also has the benefit of conserving water,
13 we're reducing some of the flow that's going to on-site
14 based water treatment systems.

15 With limited resources in our climate, we found
16 this partnership to be especially beneficial, and a lot of
17 the programs that I'm going to briefly mentioned are
18 thankfully from the help of the State funding as well as
19 generous sponsorship from the water districts that we're
20 working with.

21 This partnership group does include West Basin
22 Municipal Water District, L.A. County Water Works
23 District 29, representatives from Zev Yaroslavsky's office,
24 as well as interdepartmental staff from the city of Malibu.

25 Our current priority focus is producing and

1 eliminating runoff from large landscapes that have excessive
2 water use. As I mentioned, we're doing this throughout the
3 city. We're looking to eliminate the drainage that's going
4 to our MS4 drains as well as those discharges that need to
5 come directly from properties to our gullies and to the
6 coastline that may not even reach our MS4.

7 We're focussing first on the properties that are in
8 the area of special biological significance. Some of the
9 programs that we do have as tools are wide reuse evaluation
10 surveys that focus on outdoor water use, Ocean Friendly
11 Watering Program with West Basin, outreach education, and we
12 did have a landscape gardener training.

13 MS. LUTZ: Thank you.

14 Jim Thorsen followed by Dr. Mark Gold.

15 MR. THORSEN: Thank you. Good morning, Chair and the
16 Board. My name is Jim Thorsen, I'm the City Manager for the
17 City of Malibu, and as I'm sure your Executive Officer is
18 aware, at times it does feel like the Regional Water Quality
19 Board of Malibu, and I'm sure that they don't want that nor
20 do we want to become the city of the Regional Water Quality
21 Board, either.

22 So real quickly, Craig George talked about the two
23 issues that were really of importance to the Board, but I
24 just want to highlight some of the things that have been
25 accomplished over the last three years since I've been with

1 the city, but the city purchased 20 acres in our civic
2 center and, in fact, eliminating 150,000 square feet of
3 commercial development in our city. We did that, it cost
4 the city \$20 million and we're in debt for that, and we're
5 continuing to pay that debt.

6 We also constructed a \$6 million stormwater
7 treatment facility that has treated every stormwater event
8 that we've had since 2007.

9 We spent 3 million on the design of Legacy Park.
10 That project will capture over 330 acres in our civic
11 center, and we will treat all of the bacteria to T.M.D.L.
12 standards 100 percent of the time for every rainstorm in
13 every year. The bids are actually being opened this
14 afternoon on that project, and we look to begin construction
15 on that project as soon as we can.

16 Las Flores Creek Park, we spent 11.5 million on a
17 bank stabilization that had erosion going down into the
18 ocean. We spent -- are in the process of spending
19 2.5 million dollars on a centralized wastewater treatment
20 facility.

21 We spent \$350,000 on a groundwater treatment that's
22 being conducted currently. We're also spending \$220,000 on
23 a U.S.G.S. groundwater study. We're cooperating with the
24 U.C.L.A. Bacterial Study as well as the SCCWRP Epidemiology
25 Study.

1 We're coordinating with the County on Ramirez Creek
2 and Escondido Source I.D. Study as well as we assisted them
3 with the Marie Canyon Stormwater Treatment Plant that's been
4 constructed.

5 We're ready to begin construction on the \$1 million
6 Paradise Cove Stormwater Treatment Project. The plants have
7 been ready, we're just waiting for State funding on that.

8 And then finally, I would just say that that's
9 roughly about \$45 million and we've got a lot more to do.
10 Our annual budget is \$20 million. Of that, we have to take
11 out shares, other things, we've got, really, a couple
12 million dollars to spend a year.

13 For a city to accomplish all of these items I think
14 is a tremendous achievement, and something I think all of
15 our council is proud of, I'm proud of, and I think the Board
16 should also be pleased with that.

17 Thank you.

18 MS. LUTZ: Thank you, Mr. Thorsen.

19 Dr. Mark Gold followed by Shahram Kharaghani. I
20 apologize.

21 DR. GOLD: Good morning, everyone. I think in this
22 room, I think we know the cause of the climate change.

23 MS. LUTZ: Identify yourself.

24 DR. GOLD: This is Mark Gold -- well, you introduced me,
25 but, Mark Gold, President of Heal the Bay, and I'm going to

1 bring up an issue that in light of Tracy's presentation on
2 resource constraints, it -- it doesn't really fit from the
3 standpoint of, you know, more work is probably the last
4 thing that you're looking for, but I do want to bring up
5 this particular issue.

6 And I also want, for point of clarification, on --
7 and I wish NRDC and Baykeeper were here for this discussion
8 of the lawsuit. I'm pretty sure it wasn't them that was
9 subpoenaing all the e-mails, and so just keep that in mind
10 from the standpoint of where that request came from.

11 what I really want to talk to you about briefly was
12 the issue of water-effect ratios, and it's very critical
13 that the Regional Board move forward with the WER policy for
14 consistent and creation of WER's within the Region.

15 There's been a big movement in L.A. and
16 Ventura County for a lot of different water bodies to move
17 forward with these WER's.

18 And I don't know how much you really follow
19 water-effects ratios, but it's basically a factor that
20 compares pollutant toxicity observed in water taken from a
21 specific site to toxicity observed in laboratory water
22 taken -- that's one definition of it -- and then they're
23 multiplied by a CTR standard in order to develop a site
24 specific objective.

25 The key thing is, nobody ever does a WER to make

1 sure that we have tougher water quality standards. Everyone
2 does WER's because they want weakening of water quality
3 standards.

4 And so you've seen a couple of these kind of eek
5 forward and get approved by you guys. A lot of discussion
6 that we had in the last couple years on some of the ones
7 that have occurred in Ventura. The Copper WER has been
8 discussed at length with the L.A. River, that was a
9 \$2 million effort, I think, that's been going on.

10 And really all we're asking for at Heal the Bay is
11 that we need some guidance from the Regional Board on what
12 you guys determine is an adequate WER. How much data should
13 go into it? What sorts of hardness situations? What are
14 the critical conditions that you should be looking at before
15 you actually determine what those WER's are?

16 Because, realize that this decision itself has huge
17 impact on human health and aquatic life if you're really
18 going to be weakening the California Toxic Rules Standards
19 that apply within those areas.

20 And so we strongly, strongly urge you to move
21 forward with that effort before you approve any other WER's
22 from this point forward.

23 I think that sort of policy and guidance is needed
24 so that we don't have very, very different ones that are
25 coming out from all the various different water bodies that

1 are being investigated right now.

2 And so that's -- that's our strong request. We're
3 seeing a lot more work in this arena, and, you know, the
4 next WER that comes out, we will strongly oppose it if you
5 guys cannot come up with a policy as you guys promised a
6 couple years ago. Thank you so much.

7 MS. LUTZ: Thank you.

8 After we'll have Richard Watson.

9 MR. KHARAGHANI: Good morning, Madam Chair, Board
10 Members, Water Board Staff. My name is Shahram Kharaghani,
11 I'm the Watershed Protection Manager for the City of
12 Los Angeles, and I represent the Bureau of Sanitation.

13 I have a brief presentation, five slide, that I'd
14 like to bring to your attention, one of many initiatives
15 that the City of Los Angeles -- it is called "CREST," and it
16 stands for "Cleaner Rivers through Effective Stakeholder-Led
17 T.M.D.L. approach."

18 This has been the (unintelligible) of so much
19 resource and education. This is one effort that the City
20 has taken and spent a lot of money for the past few years in
21 coordination with U.S. EPA, Regional Board, and other NGO's
22 and also stakeholders.

23 The mission statement is that the (unintelligible)
24 that collaborative partnership to create T.M.D.L.'s that are
25 cost effective and (unintelligible).

1 We selected two (unintelligible) the City of
2 Los Angeles is discharging in as it formed hydrology
3 (unintelligible) to upstream plants (unintelligible) waters
4 (unintelligible) and we selected 31 T.M.D.L.'s that
5 (unintelligible) have this year.

6 The background correlates was that U.S. EPA
7 guidance back in 2003, and they supported the stakeholder
8 driven process in order for us to create T.M.D.L.'s that are
9 scientifically based (unintelligible) put that initiative
10 into water resources in collaboration of others.

11 The named stakeholders are, obviously, U.S. EPA,
12 Regional Board, and the regulated communities, we have
13 municipalities, MS4 municipalities, corporate entities that
14 participate in the city of Los Angeles, and, of course, some
15 of the NGO's and Mr. Gold and others.

16 The unique contribution for this bacterial
17 (unintelligible) irregular number of studies, these are
18 state of art studies and (unintelligible) key
19 (unintelligible) not only Los Angeles River but other
20 watershed as well.

21 Because these studies are scientifically based and
22 I only have three minutes, I would like -- this was just a
23 teaser. In future meeting, I will have, you know, the key
24 findings of those studies report. Thank you so much.

25 MS. LUTZ: Thank you.

1 Mr. Watson followed by Tito Haes.

2 MR. WATSON: Richard Watson, Richard Watson and
3 Associates, today representing the Coalition for Practical
4 Regulation, and I do have some slides.

5 Don't start the timer until I get the slide in. I
6 just want to -- I'll put the first one in. You want to go
7 back one for just a second?

8 So I'm representing the Coalition for Practical
9 Regulation, and I was really -- as a planner, I was really
10 pleased to hear Fran Spivy-Weber talk about the importance
11 of long-term planning in Porter-Cologne, and that's one of
12 the things I want to talk about today.

13 One of the things that we're concerned about is
14 true source control that we really think that's needed if
15 we're going to solve our water quality problems. And CPR is
16 already actively an initiative by the California Stormwater
17 Quality Coalition -- or Association, CASQA, and that's a
18 true source control initiative. You see the definition
19 "true source control" up there.

20 There are a number of things that can be done.
21 Some agencies, you know, public sector or industrial
22 activities, government, are somewhat regulated. There's
23 some questions there, some misunderstandings, but the
24 consumer side of things, not very well regulated, and we
25 have a lot of sources coming from the consumer side. There

1 are some things listed there to be done, and we'll talk more
2 about that.

3 One of the things that we've emphasized for some
4 time is regulating sources of atmospheric deposition. One
5 of the things that you may be familiar with right now is
6 SB 346. It's a bill that's now a two-year bill to reduce
7 copper in brake pads, has support of the brake pad friction
8 industry, has support of the environmental community,
9 regulative community, some opposition in the auto industry,
10 but we hope it will get through.

11 Another bill that's in the legislature right now,
12 SB 757, will help us with lead wheel weights. That came out
13 of a lawsuit in the Bay Area and legislation went with that.

14 One of the things that we're going to need to work
15 on collectively is zinc. It's a significant problem, and
16 we've got to get to those sources and how to control that at
17 the source so we don't have to spend a lot of money treating
18 it in the pike.

19 One of the things that I'd like to suggest is that
20 we need your help. We need to get cooperation from some of
21 the other State agencies. We don't -- I've listed UPSC,
22 DPR, and the Air Boards, but who knows what they're going to
23 be like after government reorganization comes down, but the
24 entities that do those same things, we need your help on.

25 One of the ways that this can be done is that you

1 actually have some authorities in -- and there was this
2 historic meeting with the Air Board with State Water Board
3 and CAR (phonetic) back in 2006, but not a lot has happened
4 since then, and that's one of the things we had hoped that
5 this Board would be encouraging the State Board to pursue.

6 One of the things that -- that -- next bullet on
7 there is way that you can help prevent future water quality
8 problems.

9 There are two parts of Porter-Cologne that -- or
10 the California Water Code that the State Board and the
11 Regional Board really need to use, sections 13146 and 13247.
12 247 really applies to you because you actually have the
13 authority to require other State agencies to -- to help you
14 out unless there's some reason that they can't.

15 So we would ask you to make use of this
16 recommendations on the last slide, just incorporate stuff
17 into the basin plan and support legislation that is
18 appropriate to help control sources. Thank you.

19 MS. LUTZ: Thank you, Mr. Watson.

20 Tito Haes followed by Aaron Miller.

21 MR. HAES: Good morning, Madam Chair, members of the
22 Board. I promise not to take up all my full three minutes
23 with these slides.

24 I'm the Public Works Director for the City of
25 Azusa, and the City of Azusa has been doing some --

1 Los Angeles Stormwater Quality Partnership. We're very
2 excited to become part of this partnership. The main reason
3 we joined was we were tired of some cities constantly
4 fighting stormwater quality, and we all agree that that's an
5 important issue. The City Council from the city is very
6 excited about this as well.

7 They -- twice a year, they organize a trip to go
8 down to the beach cities to help clean up their beaches.
9 They invite residents from the city and students from Azusa
10 Pacific University to help clean up. This kind of
11 reinforces the behavior that anything they put down the
12 storm drain does lead down to the beaches and affects those
13 beaches that we all try and enjoy.

14 Since May, LASQP reached out to new cities
15 including Santa Clarita, Torrance, and Pico Rivera. They
16 continue to work with L.A. County on the Stormwater Bond
17 issue.

18 We held our June All Cities Meeting where we
19 discussed compliance for the remainder of the year and we
20 met with Renee Purvey (phonetic) to introduce her to our
21 group and discuss specific initiatives we could work
22 together on with her as we're all trying to get together and
23 help each other out with the -- the particular crisis that
24 we all have to deal with at the State and city levels.

25 Appreciate your time and welcome you to let us know

1 of anything we can do to help the Board out.

2 MS. LUTZ: Thank you.

3 Aron Miller followed by Dan Hirsch.

4 MR. MILLER: Good morning, Madam Chair, members of the
5 Board. My name is Aron Miller, I'm a field representative
6 for State Senator Fran Pavley.

7 And on behalf of Senator Pavley and
8 (unintelligible), I wanted to express some concern about
9 some of the input that you received after your May meeting
10 pertaining to Outfalls 8 and 9 at the Santa Susana Field
11 Lab.

12 Before you voted on that matter, you heard sworn
13 testimony from Boeing Company officials that made reference
14 to the Department of Toxic Substances Control, and nobody
15 from DCSC attended that meeting, so those statements could
16 not be rebutted.

17 On June 12th, acting DTSC Director
18 Maziar Movassaghi wrote a letter to the Board strongly
19 rebuking some of the testimony you heard from Boeing, and I
20 don't know if you've seen that letter. If you haven't, then
21 I'd like to read it into the record. Either way I'd like to
22 make sure it's part of the official record.

23 MS. LUTZ: I believe all Board members received a copy.

24 MR. MILLER: I still would like to read it if that's
25 okay.

1 MS. LUTZ: It's your three minutes.

2 MR. MILLER: Okay. Thank you. I'd like to just provide
3 extra copies in case you haven't seen it.

4 Mr. Movassaghi wanted to be here to read the letter
5 himself, but because of State budget cuts that have been
6 referenced many times today, they've restricted all travel.

7 The letter reads as follows:

8 "Dear Chair Lutz, as you know, the Department
9 of Toxic Substances Control is the lead agency
10 overseeing the investigation and cleanup of the
11 Santa Susana Field Laboratory.

12 "We are writing to correct the record
13 regarding comments made at the May 8th, 2009, RWQCB
14 public meeting.

15 "During the Board Item for Waste
16 Discharge Requirement and Proposed Cease and Desist
17 Order for the Boeing Company Santa Susana Field
18 Laboratory, testimony was provided by a representative
19 of the Boeing Company who alleged Boeing had been,
20 quote, 'hamstrung' in terms of taking removal action
21 because DTSC said, quote, 'No, you're not going to do
22 anything until we've done all of our investigations and
23 we're ready to say yes.'

24 The quote continues from Boeing, "And it
25 (unintelligible) not by issuing a 13304 Order that

1 intervened and allowed us and allowed you to get source
2 removal. Otherwise we weren't allowed to do it by DTSC" end
3 quote.

4 The RWQCB also heard from representatives of Boeing
5 that, quote, "Boeing welcomed the 13304 Order. We could
6 have appealed it, we didn't, and we didn't because we think
7 it's the right thing to do. We think it's right to finally
8 dig up some of the dirt. We've been stopped from doing that
9 by DTSC. This Board came forth and issued us an order to do
10 so, but to be blunt, we couldn't have done it voluntarily
11 because DTSC wouldn't have let us," end quote.

12 "The remarks alleging DTSC was an impediment to the
13 progress of the site were not only inaccurate but are also
14 offensive. In fact, Boeing has never asked for DTSC's
15 approval to undertake the removals contemplated by the RWQCB
16 and DTSC has never prevented Boeing or its partners of the
17 SSFL from undertaking removal actions at the SSFL.

18 "To the contrary, DTSC has strongly supported
19 removal actions as a way to address immediate and pressing
20 problems at the site.

21 "Since 1999 DTSC has approved and overseen six
22 different removal actions at the SSFL and is ready to work
23 with the RWQCB and Boeing to implement the interim source
24 removals from -- contemplated by the RWQCB's 13304 order,
25 i.e., Cleanup and Abatement Order. DTSC fully supports the

1 RWQCB's Cleanup and Abatement Order.

2 "Boeing is fully aware of the facts in this matter,
3 and we hope that the company will issue a retraction and
4 correction of the misleading testimony provided to the
5 RWQCB.

6 "DTSC has worked and will continue to work in close
7 cooperation with the RWQCB on this and other matters to
8 address the cleanup of the SSFL. We are in the process of
9 finalizing a revised order for this site to fully implement
10 the requirements of SB 990.

11 "My staff will ensure that the RWQCB is aware of
12 the revised order and ask for comments during our public
13 comment period. The complexity of contamination in the
14 natural environment at SSFL require our departments to work
15 in a cooperative fashion to protect the health and safety of
16 citizens living at this site."

17 And then it just says, "If you have any questions
18 regarding about this, contact me. Sincerely,
19 Maziar Movassaghi, Acting Director of DTSC."

20 Thank you.

21 MS. LUTZ: Thank you.

22 Dan Hirsch followed by Marie Mason.

23 MR. HIRSCH: My name is Dan Hirsch, I'm president of the
24 Committee to Bridge the Gap.

25 Fifty years ago this week, a few miles in back of

1 you a meltdown occurred. The company responsible for that
2 meltdown lied about it at that time. Fifty years later, the
3 lies continue.

4 You have just heard an extraordinary letter from
5 the head of a State agency informing you that the sworn
6 testimony under oath by an attorney for one of your
7 permittees, the Boeing Company, on which you relied two
8 months ago in a controversial vote to relieve them of some
9 of their obligations for another year, was based, in fact,
10 upon material false statements.

11 During that hearing, the Chair and Vice Chair both
12 said repeatedly then that their votes were difficult and
13 were done part because of trust towards the company and that
14 if anything came forward in the subsequent year to indicate
15 that that trust had been misplaced, there would be serious
16 consequences.

17 Mr. Floys (phonetic) made numerous statements on
18 the record indicating he didn't believe the statements made
19 by Boeing and that seemed to be influential in your eyes in
20 determining that it was not Boeing's responsibility
21 exclusively for these violations, but due to the impediments
22 placed by the Department of Toxic Substances Control, and in
23 particular, it claims that DTSC had forbidden Boeing from
24 undertaking any indirect soil removals.

25 You've now heard from the Acting Director of DTSC

1 that it never happened, that every single request for
2 interim removal has been approved and that there has never
3 been one turned down.

4 Vice Chair Glickfeld took a tour of the site a few
5 weeks after the vote and was shown yourself the two
6 locations for Outfalls 8 and 9 where the interim soil
7 removals had already occurred under the direction of DTSC.

8 when someone comes before you as a permittee,
9 swears an oath to tell the truth, and makes representations,
10 not just once, but repeatedly, and then you discover that
11 those were false, this Board has an ironclad obligation to
12 revisit this decision, to investigate the allegations made
13 by a sister agency of false statements, and to take actions
14 against the party that made those.

15 I'm submitting to you here today a formal request
16 that you place on your agenda for a subsequent meeting to
17 determine whether you will reconsider that vote, whether you
18 will investigate the false statements and take action.

19 The credibility of this Board and the entire
20 regulatory structure will fall apart if you permit the
21 powerful pollutant to come before you and to lie and to be
22 able to get relief from your regulations because of those
23 lies and then when you learn about it to not even include it
24 in the record, statements by your sister agency, rejected by
25 your Executive Officer, and even fail to consider what are

1 you going to do about that new information.

2 I'm submitting to you today the transcript in which
3 the statements that are allegedly falsely made and other
4 documents submitted under oath by Boeing, which in back
5 identifies numerous source removals, and I ask you to place
6 on the agenda and to reconsider as you did. Thank you.

7 MS. LUTZ: Thank you, Mr. Hirsch.

8 Marie Mason followed by Barbara Johnson.

9 MS. MASON: My name is Marie Mason, and I live in the
10 Santa Susana Knolls community site, and I am here to back
11 up -- to say I was so disappointed when you -- your last
12 party you ordered at that meeting were to trust them.

13 This is a company not to be trusted. They've been
14 lying to us. I have water probably running down and through
15 my creeks for years. I've been working on the cleanup for
16 20 years, so I urge you to reopen this, because we knew it
17 was a lie when you were sitting there, because I -- were
18 involved with DTSC, and you knew they never asked for it and
19 we didn't get the opportunity to stand up and shout out and
20 say wait a minute. They're not being truthful.

21 So we urge you as a community to please not trust
22 this company. They're not to be trusted. They haven't been
23 trusted for 50 years, and they haven't been trusted for the
24 20 that I have been dealing with them. Thank you.

25 MS. LUTZ: Thank you.

1 Barbara Johnson followed by Holly Huff.

2 MS. JOHNSON: Barbara Johnson, and I live in the
3 Susana Knolls directly below this facility that we're
4 talking about, and I've been a member of the work group
5 cleanup over -- having oversight on the cleanup of this
6 facility for the past 20 years.

7 And in those past 20 years, we have been lied to
8 numerous times, and this is just another lie that has come
9 down, and I would urge your Board to certainly reconsider
10 and take into account the statements made by Dan Hirsch, and
11 I certainly endorse those.

12 Please do reconsider, rescind this order in the
13 interest of the health and safety of the nearby community.
14 Thank you.

15 MS. LUTZ: Thank you.

16 Holly Huff followed by Christina walsh.

17 MS. HUFF: Good morning. My name is Holly Huff. I'm
18 just a -- I live down in my community in the knolls. I'd
19 like to speak back on the agenda in July and it needs to be
20 looked at again because it's another year. So any ways.
21 Thank you.

22 MS. LUTZ: Thank you.

23 Christina walsh followed by william Bowling.

24 MS. WALSH: Good morning. My name is Christina walsh.
25 I am co-founder of Aerospace Cancer Museum of Education and

1 the founder of cleanuprocketdyne.org.

2 I, too, am very, very disappointed in what has
3 happened. The decision that was made at that meeting was,
4 essentially, (unintelligible) and -- and the staff attorney
5 said, "I don't think you understood what you did."

6 And during those discussions and the ultimate
7 change then of the vote that essentially allowed Venture
8 (phonetic) to continue, you must have found out that day
9 that Venture was designed to never be triggered because they
10 required two consecutive findings, two consecutive ranges
11 (unintelligible) right in the same location. So they were
12 not designed to be found.

13 These were false statements. It was refused to be
14 received to be entered into the record here. This is -- we
15 all stood up here and said we have to tell the truth, and
16 then further, I have to say, the most upsetting thing about
17 this was the fact that the response, you know, Ms. Egoscue
18 had said you really didn't expect them to tell the truth.
19 It was sort of taken -- it should be taken as a grain of
20 salt.

21 This Board should be expecting the truth out of
22 every testimony and certainly the Boeing Company, the
23 largest defense contractor in the world. We need protection
24 from that and that is the purview, that is the mission of
25 this Board.

1 And I support that this be put on the agenda and
2 become light and -- and, you know, the first time -- when I
3 first got involved, we called it bigger than Bill. We found
4 a dump in a creek, that's your Outfall 9. Okay? That was
5 over there. Okay? We found a dump that was bigger than he
6 was. That's why we framed it.

7 It's been over 11,000 cubic meters of contaminated
8 materials have been (unintelligible) as a result of that
9 finding and the additional lead. They called it a shooting
10 range. (Unintelligible) wasn't from the shooting range.
11 (Unintelligible) are not from the shooting range.

12 It was also a wash down area where they washed down
13 contaminated pollutant and let it run down the creek. The
14 creek, which is -- should be protected by the Clean water
15 Act.

16 So I ask that you please take our concerns very,
17 very seriously here, because we are right and we know what
18 is happening. You know they have lied before, and now you
19 are saying that it is okay for them to do it but not for
20 everyone else.

21 We heard this morning how hard you're coming down
22 on Malibu. We would like to see you do the same where 50
23 years ago this week a meltdown occurred.

24 Thank you very much. I appreciate it.

25 MS. LUTZ: Thank you.

1 William Bowling followed by Gerry Greene.

2 MR. BOWLING: Hi. Good morning, Madam Chair and members
3 of the Board. I'm William Bowling, I'm co-founder of
4 Aerospace Cancer Museum of Education located right below the
5 field lab.

6 I overheard someone sitting next to me, and they
7 were saying, I hear the same thing five years ago when I
8 came to these meetings, and it's sad that this issue is
9 going on and going on.

10 We're concerned about the Boeing Company Outfalls 8
11 and 9 and how it drains into Simi Valley at Outfall 9. Here
12 we are in Simi Valley, Outfall 9, contaminating the
13 Brandeis-Bardin Jewish University right below and then on
14 into the arroyo streaming into the ocean.

15 Here we are giving Malibu Lumber a strong-arm and
16 giving a free pass to a nuclear field lab. It doesn't make
17 sense, and we wish you would revisit this issue. Thank you.

18 MS. LUTZ: Thank you.

19 Gerry Greene followed by Kirsten James. Oh, I'm
20 sorry. Kirsten James is on another item. Jason Weiner will
21 follow.

22 MR. GREENE: Hello, my name is Gerry Greene. I'm a
23 principal engineer with the City of Downey, and I'm going to
24 change the subject entirely. I'd like to talk to you a
25 little bit about some good stuff and success, except, we all

1 share the triage issue. All of us are having to deal with
2 the agency triage.

3 Go ahead. This was a little problem we had in the
4 City of Downey, and I want to tell you about something that
5 we did that is an example of where we can go beyond and try
6 to do the right thing even with constraints.

7 Our Downey P.D. needed a safe place to park their
8 personal vehicles after hours. Vehicles get damaged, funny
9 thing, at night, and police vehicles in particular, and
10 since they're the only things in the lot, guess what's easy
11 to do.

12 Existing parking lot, classically designed, rapid
13 and complete drainage, less than 5,000 square feet of land
14 disturbance, so we didn't need SUSA (phonetic), we weren't
15 under any requirements to do this. Minimal budget, priority
16 resurfacing restoring sealant, so the P.D. was unconvinced
17 of a water quality project.

18 Next. Our nexus of things, this is the way the lot
19 looked beforehand. Gives you a feeling for what it is.

20 Next. So how did we deal with this? Engineering
21 donated our time. We're in at night. You call your staff,
22 they'll tell you, we can send e-mails out at 6:00, 7:00,
23 8:00 o'clock, weekends, you never know when they're going to
24 get an e-mail from us.

25 Maintenance services donated landscaping services.

1 We got the vendor to give us some infiltration systems.
2 knowing that I talk too much, you can probably see call tech
3 in the slide somewhere. They're not completely denied in
4 this. They know a little sale is going on. We walk the
5 walk. Another example of a SUSA-type quality, but we didn't
6 deal with the paperwork. This was not a requirement.

7 Next slide. Thank you. Here we are. We're
8 installing those call tech systems in there. Essentially,
9 what was going on, we were going to be putting a locked gate
10 over here, so we had to tear up the existing pavement in
11 that area.

12 So as long as we're going to have to disturb the
13 surface, let's put in these devices, and you'll note if you
14 move beyond that, move fast, don't worry about it, if you
15 would look beyond those pictures, you would see the parking
16 lot is basically not disturbed. We're only talking about a
17 few dozen, few hundred square feet at most right here at the
18 gate area.

19 And now you should have -- that one we need to go
20 back to -- and so here is the final result. You can see up
21 in the top right hand, we've got water moving into an
22 infiltration -- well, it's a ground area, so it will settle
23 there.

24 The middle picture at the bottom, the infiltration
25 system is under that area, we have water move in from the

1 right-hand side, and it goes through a little rocky swale,
2 it goes into an inlet into an underground infiltration
3 system.

4 The last bit, and this is always one of the
5 challenges with these sites is when you have to retrofit a
6 little drainage. It often goes in many directions at once,
7 so trying to get all those little pieces, you have to think
8 about each of them and modify for each of them.

9 So same thing happens, we've got a break in the
10 curb over in the top left, comes through to a pipe and goes
11 to the bottom back over to this area over here back into the
12 ground. So this is something that we did. It's a triage
13 issue, though.

14 Go ahead and kill the rest of the slides because
15 we've run out of time. Thank you so much.

16 MS. LUTZ: Thank you.

17 I, again, Mr. Weiner had wanted to speak under
18 Item 13, so our final speaker is at this time Tatiana -- and
19 I think it's Gaur?

20 MS. GAUR: Gaur.

21 MS. LUTZ: Gaur.

22 MS. GAUR: Good morning, Chair Lutz and members of the
23 Board. My name is Tatiana Gaur, I'm a staff attorney with
24 the Santa Monica Baykeeper, and I sure am not going to lie
25 today even though I'm an attorney.

1 So what (unintelligible) I actually came here not
2 to talk about Malibu, and what I'm going to talk to you
3 about is Malibu Lumber Yard, and my personal disappointment
4 that I (unintelligible) disappointment with the fact that
5 they are violating their WDR.

6 Because back in the day when the Board adopted the
7 WDR, we supported it because of the assurances we had seen
8 at the yard facility, and it's going to have significant
9 improvement in water quality and reduce pollution to
10 groundwater and surface waters in Malibu.

11 Now, as we all have heard, when this happened, at
12 least for now, that didn't quite work out the way they had
13 promised, and the reason why I'm concerned is because of the
14 La Paz development, another allegedly state-of-the-art
15 wastewater treatment facility for that development that will
16 eventually come up before the Board.

17 And what I'm here to ask you for is to, basically,
18 when you hear the application WDR, the tentative permit,
19 too, really pay close attention because -- so as to ensure
20 that we don't face another situation as this, where we are
21 assured that, you know, state-of-the-art facility, won't
22 have any discharges (unintelligible), and yet at the end of
23 the day in the Malibu Civic Center, we have another
24 violation. We have -- we continue to exceed water quality
25 standards and so forth.

1 So either La Paz, you know, should truly -- the
2 permit should contain all the requirements to make sure that
3 no such thing occurs or the system and the development
4 should wait until the wastewater treatment plant for the
5 entire area is built so La Paz can actually get approved.

6 And I also want to take this opportunity to thank
7 the Regional Board Staff for their really hard work in
8 responding to our (unintelligible), which, as Dr. Gold
9 mentioned, weren't as massive as the County's, but
10 nonetheless, we appreciate your hard work and thank you for
11 your timely responses to us. Thank you.

12 MS. LUTZ: Thank you.

13 MS. HARRIS: I believe we still have questions?

14 MS. LUTZ: Well, first, Ms. Egoscue, can you, in your
15 next Executive Officer's report, explain to us what the
16 Playa Vista issues are?

17 We, in looking at the written materials that we've
18 issued a Cease and Desist Order that required the developer
19 to -- and I believe the City as well -- to dewater and treat
20 that the -- the waste -- the contaminated water.

21 Do we have a requirement or authority to say how
22 that water ought to be used after it's treated, or does our
23 Cease and Desist authority simply deal with the issue of
24 contamination?

25 I also wanted to know whether or not we have any

1 obligation to deal with any groundwater impacts on the -- on
2 the wetlands system itself or lower the groundwater table
3 that has a problem.

4 Overall, though, I think what the comments were for
5 us was to not -- for us not to allow any further development
6 and, of course, that is not within in our authority.

7 The other issue I want to ask you about is that
8 we've now received a formal request from Senator Pavley's
9 office and from the Committee to Bridge the Gap and other
10 testifiers to reconsider our decision on Boeing. What is
11 the appropriate thing for this Board to do at this point?

12 MS. EGOSCUE: Can I have Staff Counsel Fordyce answer
13 you because --

14 MS. FORDYCE: If the Board wants to reconsider their
15 decision, it may do so.

16 MS. LUTZ: We could vote at this point to reconsider or
17 should we have a hearing so that we can reconsider?

18 MS. FORDYCE: If you want to set it for another Board
19 meeting, you can do that so you can have a discussion on
20 that.

21 MS. LUTZ: Here's the problems that I have, which is
22 that I have a problem in that the testimony put before us by
23 very credible sources that we were misinformed by the Boeing
24 Company.

25 My vote on this didn't rely on the Boeing Company.

1 It relied on what the staff told us that DTSC's position
2 was, that's what my vote was on. I don't know what anybody
3 else's vote was on, but the fact remains that if Boeing
4 misled us in any way, that is some -- that is a
5 consideration in whether or not the whole Board was in some
6 way misled.

7 And I hate to ask this at this point, but I think
8 that -- I think that we need to have some instruction from
9 our staff and our attorneys on this.

10 I don't feel that I am capable at this point of
11 asking the staff at this point, given our situation, to redo
12 something when I'm not yet convinced that we were misled and
13 that I was relying on -- on the staff who told us basically
14 the same thing that Boeing told us.

15 MS. EGOSCUE: Boeing Field Lab continues to be quite a
16 challenge, and although I would be tempted to say that
17 perhaps we postpone this to a future Board meeting and have
18 briefing on both sides, that is, essentially, the equivalent
19 of reopening the permit.

20 So, at this point, I will reiterate to you that we
21 have worked and continue to work very closely with DTSC on
22 the site.

23 As I updated during my Executive Officer report,
24 they are beginning the ISRA out at Outfalls 8 and 9. They
25 have a final approval letter from this Board. You know,

1 barring any unforeseen circumstance, they will begin soil
2 remediation next month, and if the Board at this point in
3 open session would like to discuss among itself whether or
4 not to reconsider, I think it's appropriate.

5 UNIDENTIFIED SPEAKER: My question to you is mostly if
6 there is -- if in your opinion there is new information that
7 we did not have at the time, then, you know, then I would
8 want to reopen and discuss at some point, but if it's not,
9 you know, considering what we already knew, that's the same
10 info and all that, then, you know --

11 MS. EGOSCUE: I find myself not able to answer that
12 question. There's always new information. There is --
13 there were data gaps when we started when we had the permit
14 hearing. They've been out there sampling, our staff has
15 been out there. There's new information about what we have
16 in the ground now, so there is new information about the
17 site.

18 MS. DIAMOND: Yes. I -- I think that when we have a
19 State senator representing the area and the -- the head of
20 DTSC basically saying that information -- well, one, a state
21 senator requesting that we reopen and reconsider, and the
22 head of the State agency saying that, in fact,
23 misinformation was given to us and that they did not do what
24 they were charged with doing, that this calls for us to have
25 a agendized meet -- item for reconsideration just based on

1 that alone.

2 I think that some votes may have been taken by
3 Board members that might have been different had they had
4 the correct information and that there -- there was clear
5 intention to mislead us by representatives of the
6 dischargers and the dischargers themselves. So I would ask
7 that we agendaize for reconsideration of the Boeing matter.

8 MR. BLOIS: I think that would be a huge mistake. I
9 think that the message that would send to Boeing is to stop
10 whatever progress they've made so far, and I'm heartened to
11 hear from Ms. Egoscue that there is progress. I recognize
12 that it's, you know, hasn't actually happened yet, and so
13 let's give them enough rope to hang themselves is --
14 paraphrase myself, I guess.

15 I think that -- with all due respect to, you know,
16 Senator Brawley (phonetic) and Senator Pavley, I know
17 they're concerned and, believe me, I am concerned as are the
18 rest of our Board, but I think that we're moving in the
19 right direction.

20 I think that our staff and DTSC is out there,
21 they're working on the thing, they're not going to find new
22 information unless things are happening. My sense is that
23 things are happening. We allowed them to proceed by
24 breaking the knot, I'm not sure who said that, that's a
25 phrase that I remember saying.

1 UNIDENTIFIED SPEAKER: I believe Ace said it. I'm
2 sorry.

3 MS. DIAMOND: Can I just respond to that? Because
4 Boeing is under orders to clean up Outfalls 8 and 9, and our
5 reconsideration of the items before us does not stop them
6 from the order that was given by our Executive Officer.

7 It is not a reconsideration of whether they're to
8 clean up Outfalls 8 and 9. That's an order. If they choose
9 to do that, they would be out of compliance with an order of
10 our Executive Officer, which was authorized by our own
11 directives.

12 So the reconsideration has nothing do with the
13 order to clean up Outfalls 8 and 9.

14 MS. LUTZ: Ms. Egoscue or Ms. Fordyce, I'm not sure who
15 should answer this question. When we talk about
16 reconsideration, what are the issues that we would be
17 discussing should we put this on the agenda?

18 MS. FORDYCE: Whatever issue that you want to put on the
19 agenda.

20 MS. LUTZ: So what I'm hearing is that we could put
21 whatever we want on the agenda, but what I'm not -- what I'm
22 a little confused about, and most of my colleagues are, what
23 are we reconsidering exactly?

24 I think that if that is the -- the position that we
25 want to go with, I think we need to be very, very specific

1 and if should this occur, it needs to be a very narrow issue
2 that we maintain not only with our discussions with the
3 Board and with our staff, but also request that commenters
4 maintain that, otherwise, our fear is that we start at
5 square one.

6 So, Ms. Glickfeld and Ms. Diamond, since I'm
7 hearing the questions that -- do you have specifics that
8 you're thinking about?

9 MS. GLICKFELD: Well, this is my dilemma, which is that
10 if I had relied -- the issue is that when and if a -- a
11 party to a case, in this case, the party that's responsible
12 for cleanup gives us information about an agency that the
13 agency then says is untrue, is that in itself a legal issue
14 that we are obligated to consider in terms of deciding
15 whether there should be reconsideration? I think that's the
16 main issue here before us.

17 Then, if that's the issue, that we're obligated
18 under the law when someone tells us something that is untrue
19 to -- to rehear the matter, but on the other hand, the same
20 thing that Boeing told us was the same thing our staff told
21 us based on their communications with DTSC.

22 So the problem seems to be that our staff got one
23 set of communications from DTSC, and the Committee to Bridge
24 the Gap got another set of communications from DTSC. That
25 further confuses me, because I don't believe we are

1 obligated to reconsider the -- the action based on
2 communications that may have been conflicting from our own
3 staff and from other agencies. So I need legal help in even
4 making this decision.

5 MS. FORDYCE: Jennifer Fordyce. If you think that the
6 decision would have been different had you known that -- had
7 Boeing made a different statement, you can reconsider the
8 permit.

9 You can -- you can also reopen the permit and do a
10 very limited scope and just address possibly this one issue.
11 So it's up to you what you want to do. You may say that
12 that -- you don't think your decision would have changed. I
13 don't know how the other Board members would feel, you think
14 the decision would be different, you could reopen the
15 permit.

16 MS. EGOSCUE: At this point, I'd like to also interject
17 the earliest we can bring anything back to you is
18 February 2010.

19 MS. DIAMOND: I'm sorry.

20 MS. LUTZ: No. Ms. Diamond, go ahead.

21 MS. DIAMOND: And we also will be getting new
22 information from you prior to that on the public -- how that
23 cleanup is going because that was one of the things that we
24 talked about at the hearing was that we'd be getting updated
25 reports on how it was going.

1 As I recall that long and difficult meeting that
2 only the issue that the -- the item that was voted on and
3 passed by this Board was the permit, the Cease and Desist
4 Order did not -- was not changed. They're under the same
5 Cease and Desist Order that they were at the time. We did
6 not change that.

7 So I guess we -- I think it needs to be
8 reconsidered, but I can't really tell you at this point
9 whether it's the entire permit that we should be looking at,
10 but perhaps it is, and that's why, I guess, we're looking to
11 our counsel to guide us in this.

12 Because, again, I'll say, we have a head of another
13 agency saying that -- that what we were told was, in fact,
14 untrue, and a State senator saying we want it -- also we
15 would like this to be reconsidered.

16 So I guess I would like to see exactly what they're
17 asking to be reconsidered and maybe that would inform what
18 we would reconsider.

19 MS. EGOSCUE: My understanding is that the
20 representatives want the entire permit to be reconsidered
21 and, in particular, the benchmarks versus the numeric limits
22 for Outfalls 8 and 9.

23 And I'd also like to clarify, Board Member Diamond,
24 it wasn't a Cease and Desist Order, it was a Cleanup and
25 Abatement Order that was under your deliberations at that

1 time.

2 MS. DIAMOND: Thank you.

3 Well, I certainly felt very strongly at the time
4 that the benchmarks were inappropriate, but, again, that --
5 that was the way I voted.

6 So my vote probably would not change, but I do
7 believe that that -- there are other Board members that
8 aren't here today who were here then that relied on that
9 information.

10 I can't speak for them, whether it would have
11 changed their vote or not, and there are even -- I believe
12 Ms. Mehranian wasn't here at that meeting, so she didn't
13 have the benefit of hearing it, but now she's hearing it
14 today.

15 So I can see the reasons why, which I stated
16 before, why I think we should reconsider the permit, in
17 particular, the benchmarks for outfalls 8 and 9.

18 UNIDENTIFIED SPEAKER: (Unintelligible) to vote and,
19 however, in my mind now, the Board is here and we all have
20 concerns about this issue and we have probably reviewed with
21 the Staff the benchmarks and the decision was made on the
22 basis of (unintelligible), and I am at least reopening the
23 issue as of land going back to square one.

24 I'm just thinking that it will be smarter at some
25 point to -- when there is time, and I understand your

1 workload and the situation that we're working in our
2 universe today, but I would like to probably hear the
3 complete -- we started a process. The Board made a decision
4 to start a process. The staff was directed to work with
5 them, and I believe that's a development, and I don't want
6 to just undo everything and go back.

7 But I -- if we are going to reopen this at whatever
8 time, I would like this to get knowledge for report of
9 sorts, summary, what has happened, what progress have we
10 made and re-assess the issue in that light, and not open for
11 undoing everything we've done so far. I believe that we've
12 started a process and there's a lot of concern going into
13 that process.

14 MS. EGOSCUE: well, quite frankly, if I may, this is not
15 a typical permit for a typical site, so I would advise you
16 that it's been appropriate to assume that we can just
17 narrowly reopen or narrowly limit a discussion of this
18 magnitude, either reconsider and reopen in its entirety or
19 you don't, and that's my advice to you.

20 The second point I'd like to make is that it is
21 going to be reopened in June because that is when,
22 essentially, the benchmarks that you set in this permit
23 expire in June of 2010.

24 So we can, under Board direction, given the gravity
25 of this situation, bring it to you as soon as possible,

1 which looks like February, and it can be a reopener, or
2 directive reopener, and revisit it at that time knowing it's
3 going to be another hearing, another full day, another
4 notice and comment period, but with the added benefit of
5 months of ISRA a compliance, which is so critical.

6 UNIDENTIFIED SPEAKER: Thank you.

7 MS. GLICKFELD: I would suggest that given the fact that
8 our staff is not able to bring this to bear until February
9 as a reconsideration hearing and we'll have it before us in
10 full in June any way, that we express our -- the fact that
11 we are going to be looking at the whole issue over again.

12 we're going to be looking at the performance of
13 Boeing under the benchmarks. We're going to be determining
14 whether or not the benchmarks stay there or we go back to
15 numeric limits, and I think that we should do it in June
16 given our -- this is not business as usual right now.

17 I don't think we can afford -- every time we choose
18 to do something like this we choose to do a lot of other
19 things and although this is incredibly important, I'd like
20 to have our staff and Boeing have the full year so we can
21 see if they can perform.

22 MS. LUTZ: I would agree with Ms. Glickfeld, and it is
23 coming back in June, and I think everybody is right. We
24 need to see where we are and -- and get status reports from
25 Boeing.

1 The goal -- and that's where I -- sometimes I think
2 we've lost sight of what the goal is here. The goal is to
3 clean up the site. The goal may be for some people to have
4 Boeing pay major fines, but major fines don't necessarily
5 clean up the site.

6 What we put in place was a program to clean up the
7 site at the source. That's a huge, huge goal, and it's the
8 best of clean up, so I -- I concur. I would like us to move
9 forward, get periodic reviews as we move along, and then in
10 June, when we have the reopener, we look very carefully at
11 where it's at.

12 That's an opportune time for us to say, you know,
13 Boeing, you've either done a great job and we'll move
14 forward with you, or you've not and we need to take a
15 different direction. That would be my recommendation.

16 MS. DIAMOND: I'd like to just ask on -- Staff what
17 is -- what is it exactly that you intend to bring back to us
18 in June? Is it the entire reopener of the permit?

19 MS. EGOSCUE: June is the reopener of this permit. It
20 was placed in the permit during the hearing by this Board, a
21 mandatory reopener. It's the entire permit.

22 MS. DIAMOND: Okay. And I -- I can see by the comments
23 of my Board members that there is be not going to be a
24 complete consideration prior to that, but I would like to
25 make sure, because we've also heard because of the

1 unbelievable budget cuts and furlough days that some things
2 are going to slide.

3 I'm sure that this will not be one of those things,
4 but I'd also like to know, when -- when will we be getting
5 the first update or can you anticipate on how the outfall 8
6 and 9 source removal is going?

7 MS. EGOSCUE: Boeing submits monthly updates, and I have
8 the one for this meeting in front of me. I intend to
9 transmit these updates to the full Board after I speak with
10 you during the -- during the E.O. report each month.

11 I also would like to offer that if something seems
12 to not be moving as planned, that this Board will know, as I
13 indicated at this hearing in May, on a monthly basis. If
14 it's not proceeding at that time, I think you can revisit
15 your decision that you appear to be making today or not
16 making.

17 MS. DIAMOND: And I think it is appropriate that we
18 respond to the -- the letter and the -- that was -- the
19 comments that were presented today by Senator Pavley.

20 It seems to me there was a request made in those
21 comments, and although it was in a written letter, I think
22 out of due respect we owe a response to that, and I would
23 ask that our Board Chair in working with the Staff would do
24 that letter and -- and explain what we are doing, what steps
25 we are taking in response to her comments, and that they

1 were taken very seriously by the Board.

2 MS. LUTZ: I think that's a great idea, and I would be
3 more than happy to do that.

4 Mr. Blois?

5 MR. BLOIS: Yes. I agree with that. I think that's the
6 least we could do.

7 Don't forget, put this in perspective that two
8 months ago when we took our vote, we basically accepted
9 Staff's recommendation that made it much more stringent.

10 They had recommended that we give Boeing three
11 years, and we reduced that down to one year knowing full
12 well that it would come back to us in a year's time when we
13 had a little bit more record on how Boeing would do and how
14 they would react. So I think we're doing the right thing
15 here.

16 MS. GLICKFELD: Just one last thing. Because this whole
17 confusion and dispute surrounds the position of DTSC, please
18 make sure that they are at our hearing next time so that we
19 can hear directly from them.

20 MS. EGOSCUE: I can inform you that the project manager,
21 Norm Riley, is under orders that every time this item is on
22 our agenda, he must appear in front of you, so that's
23 assuming that that standing order will not change.

24 MS. LUTZ: To conclude, the consensus appears to be that
25 we will have our normal reopener in June, and we will -- we

1 will proceed then, but until that time, we will have updates
2 from our Executive Officer as to what the status is of
3 Boeing.

4 Does that conclude it for everyone? And I also
5 will be writing a letter to Ms. Pavley and explaining the
6 decision that we made with regard -- and when we will be
7 meeting at the reopener.

8 Okay. Very good. I'm going to move on now to our
9 Uncontested Items, those are Items 7 and 8. Do we have a
10 motion to approve the Uncontested Items?

11 UNIDENTIFIED SPEAKER: Second.

12 MS. LUTZ: All in favor?

13 THE BOARD: Aye (collectively).

14 MS. LUTZ: Oppose?

15 Motion carries.

16 UNIDENTIFIED SPEAKER: Madam Chair, could we please have
17 a break?

18 MS. LUTZ: You know, I'm hesitating on that only because
19 it is 11:20, and I'm thinking if we can get through Items 9,
20 10 and 11 -- let's take a five-minute break. Really, five
21 minutes, though.

22 (Recess)

23 MS. LUTZ: Okay. We will reconvene at this time.

24 As previously stated, Item 9, which is the west
25 Basin Municipal Water District Item, we will -- we have

1 questions from our Board, and so we will -- we will begin
2 with that, the questions from our Board rather than having a
3 staff report first, but I do need to swear in all of the
4 parties regarding it, because some of the questions may be
5 directed to you.

6 So if you are with that item, if you would please
7 stand to be sworn.

8 (Whereupon the Board Chair collectively swore
9 in all prospective speakers)

10 MS. EGOSCUE: Chair, we should open the item.

11 MR. LUTZ: Okay.

12 MS. EGOSCUE: Ronji's not here, so I'll try and be Ronji
13 for a minute.

14 MS. LUTZ: Do you have to change chairs?

15 MS. EGOSCUE: Unfortunately, I don't know this step by
16 heart.

17 This is a public hearing to consider Adoption by
18 this Board in accordance with State and Federal legislation
19 of National Pollutant Discharge Elimination System Permits
20 and Waste Discharge Requirements for discharges to navigable
21 waters or tributaries thereto.

22 A notice of this hearing and of the Board's intent
23 to prescribe waste discharge requirements was published in a
24 daily newspaper of general circulation in the geographical
25 area of the discharge as prescribed by law.

1 Copies of the tentative orders were sent to the
2 dischargers, the Environmental Protection Agency, the State
3 Water Resources Control Board, and all known interested
4 agencies, persons, and organizations, and the Chair has
5 already administered the oath.

6 MS. LUTZ: Okay. Without a Staff report beginning, we
7 will ask if there are questions. I believe Ms. Glickfeld
8 has questions on this item?

9 MS. GLICKFELD: Thank you all for giving me the
10 opportunity to ask these questions.

11 Usually, the Board, when we have all the parties
12 agreed, when Staff agrees, but I think the desalinization
13 parts are really important, and I have some prior history
14 with intakes -- cooling water intakes. I spent 10 years on
15 the Coastal Commission reviewing the San Onofre intake
16 (unintelligible) plant. And so this is just -- it raises
17 many of the same issues.

18 The issues with that plant were that a significant
19 portion of all the juvenile fish in the Southern California
20 region were impacted by that plant. So it really -- that
21 does inform my feeling about these intake systems. And,
22 also, that while they were intake, they were chopped up and
23 they were spewed out and they covered algae marine base.

24 So my questions are very specific to those issues.
25 What is the District doing, and I think this is a very --

1 you're trying to address that very issue in this permit. By
2 both avoiding the intake, by slowing the level of the intake
3 and streaming it, and, secondly, by avoiding the same
4 problem of spewing out into -- that's going to smother the
5 reefs in that area.

6 So I want to know what you're doing to measure it
7 and -- and how are we going to see the results ourselves?
8 How are we going to see the results, because this is very
9 important under the test project. And I want to know
10 what -- I want to know that in terms of how you're going to
11 determine the impact on juvenile fish and other fisheries,
12 and I want to know how you will be able to measure the
13 impact on the fish.

14 And then I sort of -- I looked at the back here on
15 the list of parameters, and there are some parameters that
16 we don't always see, which is feno (phonetic) -- is that how
17 you say it? And then the one below that I'm not even going
18 to begin to pronounce the bids to -- I'm going to just
19 murder it. I'm going to murder it. That's it.

20 So we don't really see limits like that, and I
21 wanted to know why those were so long in an area of
22 pollutants in an area that we're going to try to make
23 drinking water from.

24 MS. LUTZ: Well, can I just ask who you're addressing
25 your question to?

1 MS. GLICKFELD: Well, that last question was to the
2 staff and any of the other questions that you want to answer
3 that I asked about, what you think they're going to be able
4 to report, how we're going to get back on both the issues of
5 the effects on juvenile fisheries and on several of the
6 swallows, but I'd be happy to hear from the District or
7 anyone else that wants to comment on that.

8 MS. LUTZ: And just a reminder to please state your
9 name.

10 MS. OWENS: My name is Cassandra Owens, and I'm the Unit
11 Chief in the Industrial Permitting in the Regional Board.

12 Now, with regard to the list of contaminants,
13 because this facility is a new facility, we always err on
14 the side of conservatism when we are establishing effluent
15 limits for a facility that is not yet in operation.

16 We, of course, look at the pollutants of concern,
17 as an Ocean Plan discharge, so we looked at the Ocean Plan,
18 both Tables A and B and implemented those that are
19 applicable to similar discharges.

20 In many cases for analysis the -- the
21 (unintelligible) will show up, and that's one reason why we
22 put that in for similar discharges. But typically we use
23 BPJ for the most part to develop the effluent limits that
24 are included in this permit.

25 MS. GLICKFELD: So do you have any evidence to think

1 that this is -- this water in this general area, the water
2 that's being intaken for desalinization is otherwise
3 significantly polluted, or are these just parameters that
4 you put in for whatever reason? I don't understand.

5 Is it because the water that you're intaking is
6 polluted or is it because you suspect that the process
7 itself is going to create these kind of pollutants?

8 MS. OWENS: We look at both, what's in the receiving
9 water and what is -- what potentially could be in the
10 discharge, and we do that by looking at similar discharges,
11 like I said.

12 For instance, also, today, we're going to look at a
13 prototype facility for the Long Beach area, and they have a
14 facility that's been operating that is a desal facility, and
15 if you look at the constituents of concern, they're very
16 similar for the two plants, and that's typically the way
17 that we do that.

18 MS. GLICKFELD: And then what about the issue of the
19 output of the system and whether it's going to -- how are we
20 going to measure the effect on the fishery population,
21 because this is an experiment to see if we can reduce that,
22 how is that going to be measured and how is it going to be
23 reported back to the Board itself? I consider this a very
24 significant experiment.

25 MS. OWENS: Well, one thing that we're requiring is an

1 intake effects assessment monitoring study -- and what page
2 is this? 9108.

3 In the monitoring and reporting program, they have
4 to go in and look at the impingement and entrainment effects
5 as well as -- I don't -- I don't believe this one
6 specifically addresses turbidity, but it does look at
7 plankton and larvae entrainments.

8 MS. GLICKFELD: So do they have standards of what
9 typical entrainments in from, let's say, once-through
10 cooling systems for power plants where we would have not
11 only the baseline for what they are doing, but how it
12 compares to systems that are not designed like theirs?

13 well, in the requirements that you put forth, when
14 you get the reports that come out with the impacts on the
15 fisheries are and what the settleable solubles are that are
16 coming out, you're going to get both of those; right?

17 MS. OWENS: Uh-huh.

18 MS. GLICKFELD: What are you going to use as the
19 baseline for comparison if the idea is to reduce the
20 impingement impacts or what are you going to use for the
21 baseline comparison?

22 MR. NAGEL: It still is good morning. Good morning,
23 Madam Chair, members of the Board. My name is Rich Nagel,
24 I'm the general manager of West Basin Municipal Water
25 District, and it truly is a pleasure to be before your

1 Board. I will answer any policy-type questions. I have my
2 sidekick here who is our project manager, Phil Lauri, I'd
3 lying to introduce. He will address any technical issues.

4 I did want to take one -- 15 seconds of your time
5 and let you know, I know in these very trying times with
6 these furloughs and State budget crisis, I want to publicly
7 commend your staff, Cassandra in particular, for their
8 professionalism in development of this permit. My staff has
9 only come back with rave reviews, and I think it's important
10 for us to publicly commend staff especially in these very
11 trying times. So I did want to make that statement.

12 I do want to say that all this -- and Board
13 Member Glickfeld, we -- we are looking at -- at all these
14 issues very carefully from a baseline standpoint. This is
15 an experiment to do due diligence to do desalination in a
16 responsible fashion, and I'm going to have Phil speak
17 specifically to your question. I'm happy to answer any
18 policy-type questions that the Board has.

19 MR. LAURI: Morning, Madam Chair and fellow Board
20 members. I'm going to -- I'm the project manager for the
21 demonstration project, but I think your questions that
22 you're asking about, impingement and entrainment and just
23 the effects study could be better addressed by the marine
24 biologist, so I'm going to offer up Dave Mayer. It all
25 rolls downhill.

1 So I'm going to offer Dave up, but he really is the
2 expert. He's the one who authored the assessment study, and
3 he can specifically answer the questions that you're asking.

4 MS. GLICKFELD: So my last question, which they referred
5 to you, was the question of when you measure the juvenile
6 fish or other fishery impacts and the settleable solid
7 impacts on marine habitat, what are you going to use as
8 comparison to tell us whether or not this is an improvement
9 over a standard desal project?

10 MR. MAYER: Or power plant?

11 MS. GLICKFELD: Or a power plant? We have another
12 project that's right after yours that doesn't have any of
13 these characteristics.

14 MR. MAYER: The -- the --

15 MS. GLICKFELD: State your name for the record.

16 MR. MAYER: David Mayer from Mayer and Mayer -- excuse
17 me -- and we're as a consultant working for West Basin and
18 the study is designed to look at new intake screen
19 technology.

20 It is just as you said, an experiment. We think
21 it's an important one, because it's going to help advance
22 our use of sea water and still, at the same time, provide
23 the kind of marine life protection we're looking for when
24 we, you know, find ways to use sea water through
25 desalinization and other means.

1 So the test is somewhat a simple one in that we
2 have screen devices that will be coupled into the systems
3 that can be withdrawing sea water for the desalination
4 process testing, and those screens are designed to keep out
5 our fish.

6 So right from the start I can tell you the screens
7 we're testing absolutely eliminate the impingement which you
8 were familiar with at San Onofre, totally eliminating
9 impingement of juvenile and adult fish. So we start --

10 MS. GLICKFELD: I think they're going to --

11 MR. MAYER: They will. They're passive screens, and the
12 reason -- at San Onofre, not to go into a lot of detail, but
13 at San Onofre they were onshore/offshore intakes and the
14 fish came in and they couldn't really get back out.

15 In the simple terms, our screens are stationary in
16 the ocean that we're testing and the fish simply swim by if
17 we keep the (unintelligible) of the screens really low, so
18 we already know --

19 MS. GLICKFELD: Fish were already hanging around the
20 outtake because all the sediment was coming out and they eat
21 it.

22 MR. MAYER: They were feeding there.

23 MS. GLICKFELD: Yeah. They were feeding there. So you
24 don't think that's going to be an attractive --

25 MR. MAYER: No. And -- and the -- so what we're trying

1 to do now in terms of testing the effectiveness of these
2 screens, when we determine what the percent of effectiveness
3 would be in removing or screening out juvenile -- excuse me,
4 waterable fish, we're going to sample the concentrations of
5 them in the sourcewater, the water that's providing the flow
6 to the screen, and then we'll sample behind the screen,
7 compare the number of all fish coming through, and that
8 gives us our screen efficiency.

9 MS. GLICKFELD: Okay.

10 MR. MAYER: And then the screen efficiency at your
11 normal power plant for waterable fish is zero.

12 MS. GLICKFELD: So what are you going to be doing to
13 measure turbidity effects coming out of --

14 MR. MAYER: I don't have a turbidity sticker on my lapel
15 so my understanding is we're reblending it, but I'll let
16 Phil describe that.

17 MS. GLICKFELD: So could you state your name for the
18 record.

19 MR. LAURI: Yes. Phil Lauri with West Basin Municipal
20 Water District. The monitoring protocol that we have for
21 the effluent of the plant is standard in our process, but I
22 think it better to address your question, the Pacific Ocean
23 has such low turbidity traditionally to begin with, it's
24 typically around 1 NTU, typically, and a lot of it is less
25 than that.

1 So turbidity really isn't an issue. It hasn't been
2 in our pilot plant or we don't perceive it to be our
3 demonstration project, either. Sometimes storm events will
4 increase intake turbidity, but other than that --

5 MS. GLICKFELD: In your -- excuse me. In your -- on
6 Page 9-6 your standards are quite high. You have an average
7 monthly NTU of 75, average weekly of 100, instantaneous
8 maximum 225, so those are considerably above what you just
9 stated for us was the ocean average.

10 MR. LAURI: Okay.

11 MS. GLICKFELD: So I'm saying --

12 MR. LAURI: Yeah. I mean, traditionally we have not
13 seen large turbidities. I don't have that paper in front of
14 me, so I'm not sure. Are you referring to the effluent
15 limitations or --

16 MS. GLICKFELD: It's summary of effluent limitations.
17 If maybe our staff can clarify that? Because it does sound
18 like you're allowing there to be a considerable increase in
19 turbidity.

20 MS. OWENS: I'm Cassandra Owens and those limits --
21 those -- those limits came directly from the Ocean Plan, and
22 that's what governs what we can put in for a limit.

23 MS. GLICKFELD: Even though they're trying to attain
24 something better than that?

25 MS. OWENS: Well, then that means that they will be in

1 compliance with the limits.

2 MR. LAURI: Yeah. We'll definitely be in compliance
3 with the Ocean Plan and all constituents.

4 MS. GLICKFELD: Okay. But if there are settleable
5 solids that come out and do attract fish, are they going to
6 be monitored?

7 MR. LAURI: We don't expect -- this project is set up,
8 we're basically taking sea water and testing it and --

9 MS. GLICKFELD: I get it.

10 MR. LAURI: Yeah. So we don't anticipate any settleable
11 solids.

12 MS. GLICKFELD: So you're assuming that your fish
13 screens are going to work perfectly and that you're not
14 going to be spewing any solids at all out?

15 MR. LAURI: The screens are set up more for entrainment
16 effects not necessarily turbidity effects. Turbidity will
17 actually most likely -- well, the majority of the turbidity
18 will actually take on during the treatment process --

19 MS. GLICKFELD: And what will you be monitoring, where
20 will you be monitoring to determine the level of turbidity?

21 MR. LAURI: We have influent turbidity meters on the
22 intake system and we also have on the down (unintelligible)
23 processing plant.

24 MS. GLICKFELD: All right. And then the last thing is
25 the quality of the water that you're taking in and whether

1 or not -- I've always wondered whether we have highly
2 polluted ocean water with all of these chemicals in it, why
3 are we using it? We don't have this much problem with some
4 of our groundwater. So why are we using this as a source
5 and are we going to be safely treating it so that it's safe
6 for people to use?

7 MR. LAURI: That's a very valid question. I can tell
8 you, we take much, much, much worse quality water today and
9 treat it to drinking water standards. We take wastewater,
10 secondary wastewater, with these same processes and meet
11 drinking water standards. And so this is actually, frankly,
12 a much better source of water than wastewater is to convert
13 to drinking water.

14 So we have absolutely no concern. We have pilot
15 tested a desal -- smaller, smaller scale desal facility for
16 about six years with your support, and we have shown in
17 every instance we can take that quality of water and produce
18 extremely high quality of drinking water.

19 One other point I did want to make mention to the
20 questions that Board Member Glickfeld has raised is there is
21 another feature that's not contained in the permit that
22 we're doing on our own in addition to better finding out the
23 interest and concerns there may be with the brine discharge.

24 We're actually going to set up an aquarium
25 environment that the brine itself from the ocean

1 desalination will be present in that aquarium with various
2 native aquatic species in that aquarium. We'll be observing
3 that for a couple years to begin further ascertain if
4 there's any effect of direct, if you will, presence of those
5 species to a brine quality itself. So --

6 MS. GLICKFELD: Thank you. You know, just a suggestion
7 or a request, which is, our staff is not going to be able to
8 be out there looking at what's going on. They're going to
9 see the reports that you're going to come in with, but I
10 think what you're doing is quite important.

11 Desal is very controversial, and, frankly, the
12 reason I'm willing to support this is because you do so much
13 recycling. It's not your first choice. You're not going
14 out there, like San Diego is, going out there to suck in
15 ocean water before you decide to use all the other
16 resources.

17 So I think that this Board is really -- has been
18 committed by State Board to really push recycling and reuse,
19 I think you've done that, and I think you deserve the chance
20 to try this.

21 It's not going to be your main source of water, but
22 I do still think that it's still tremendously controversial,
23 and I would wish that you would engage some of the outside
24 stakeholders that are concerned with desal and get them
25 regularly involved in this issue.

1 MR. LAURI: In fact, I would like to take that one step
2 further. We do. We have a program called, "Water Liability
3 2020" that we go out and make about three presentations a
4 week to all of our community leaders and environmental
5 groups in our service area, and it's simple.

6 Our plan is to reduce our dependence on
7 metropolitan water district water by one-half by the year
8 2020, so it would be over 66 percent dependent in our
9 service area down to 33. That may not seem like a big
10 number, but that is huge, massive.

11 And the way we're going to do that is double our
12 water recycling. We just achieved 100 billion gallons of
13 recycled water in December. In fact, I have some things
14 that I will send to you, which is enough water to serve
15 2.4 million people for one year, 101 hundred billion gallons
16 of recycled water we just recently served.

17 We're also going to double our conservation and
18 clearly exceed the governor's goal by 2020, and we're
19 looking at adding to our portfolio desalination and
20 groundwater storage and any other feasible and practical
21 means to add water supplies to our local regions, which we
22 need.

23 I would also like make an offer to any Board member
24 or all the Board members to come visit this site when it is
25 built. It is housed at the SEA Lab site, which is a

1 conservatory that actually rescues imperiled sea life and
2 brings them back to healthy states and releases them. It's
3 located within that. We are going to have an educational
4 element assigned with that to learn about the ocean
5 environment and ocean desalination.

6 So I would encourage and make an offer any time to
7 any Board member and staff to join us at any time to visit
8 our facilities. We do appreciate this time. Thank you.

9 MS. LUTZ: Thank you. Any other questions?

10 MS. GLICKFELD: I think there's somebody else who wanted
11 to respond to my questions.

12 Mr. Gold, would you like to come forward?

13 And I'm finished.

14 DR. GOLD: Thank you. On -- Mark Gold, Heal the Bay.

15 I wanted to echo what Madelyn just said. I think
16 the fact that West Basin has such an exemplary record on
17 water recycling makes this a project, I can tell you, that
18 Heal the Bay is not opposing. I'm not going to say we're
19 here supporting the project, because that's a substantial
20 difference, but we-- we don't oppose it.

21 We have met numerous times with their staff. I
22 just met with Rich for a couple hours just the other day on
23 this issue and a bunch of other issues, and they're very,
24 very open to hearing our concerns.

25 Some of the things that have been brought up

1 before, and there's a difference between what's before you
2 here today from the standpoint of a couple pilot projects
3 versus what happens when you start scaling up, and that's
4 really the big concern.

5 which is, brine disposal isn't really that much of
6 an issue when the amount of brine isn't a huge amount, and,
7 you know, you're going to be discharging through an outfall
8 because 160 to 1 dilution.

9 That's different then if all of a sudden it's going
10 to be to water quality standards exceedances in the ocean
11 because it's impacting the permit. We're not anywhere near
12 that threshold and so that's why it doesn't really matter
13 that much here.

14 Impingement, that was never the concern in the
15 environmental communities. It's entrainment is really the
16 big issue, and so that's the really, really, really small
17 larval organisms that aren't easily caught or prevented from
18 getting into once-through cooling systems or desal systems,
19 that's the reason why you saw the 316(b) decisions.

20 It's been in -- you know, obviously it was up to
21 the Supreme Court. You heard about that earlier in the
22 year. You have a draft once-through cooling policy that you
23 heard earlier from Board Member Weber, Spivy-Weber, and so
24 that's another concern that we have is that what -- as you
25 heard, they're separate.

1 Once-through cooling, the way it's being dealt with
2 in the policy is completely ignoring the issue of desal.
3 It's been talked about from the very beginning of these
4 discussions the last two years, but to be quite candid,
5 because once-through cooling is a difficult enough issue to
6 deal with on its own.

7 It's sort of been punted for a later time because,
8 as you can see by this unique recommendation on once-through
9 cooling which you're going to hear more about in the coming
10 weeks, is that it's not every day where you get the
11 California Energy Commission and those agencies basically
12 agreeing with the State Water Board on a policy, you bring
13 in desal, and they're not the appropriate agency to deal
14 with it.

15 And so that's another thing going on that's sort of
16 a difficult overlay, but we're sort of wary of moving from
17 pilot to full scale in those sorts of issues.

18 So I was -- Heal the Bay was perfectly happy to let
19 this go through calendar, and then it got pulled off, to
20 have these sorts of discussions, and so that's why I'm
21 taking the opportunity to speak, but really this gives you
22 an opportunity to think about what happens for the region's
23 water future and where does desal fit in the equation?

24 You can imagine the environmental community, until
25 you maximize water recycling, until you maximize water

1 conservation and maybe even look at desal in another way,
2 can you basically pull the water and sediment from the ocean
3 from the subsurface, you know, because that obviously would
4 get rid of the fisheries impacts, is that even feasible?
5 These are the sorts of things that need to be investigated
6 before we go into full scale on -- approach on desal.

7 And let's not forget, one last thing, I'll leave
8 you with this is, we -- there was a discussion earlier from
9 CPR on their concerns about cross-contamination issues on --
10 on what's going to happen from the standpoint of aerial
11 deposition.

12 I'm not a climate change expert, although I'm
13 causing it clearly in this room, but -- but -- but obviously
14 the issue of energy use in the equation on what our -- our
15 water future is is very, very critical, and that's another
16 concern that sooner or later this Board is going to have to
17 get into working with the other Cal EPA agencies like DTSC
18 and those sorts of things that we've heard about throughout
19 the course of the day, but that's one of the other reasons
20 why you see the environmental community very, very concerned
21 about desal.

22 Thank you so much.

23 MS. GLICKFELD: Thank you.

24 And I appreciate my Board's patience with my asking
25 these questions. I hope that it's been as beneficial to you

1 as it has been to me.

2 I do want to say that my job at UCI, there are some
3 incredibly exciting things going on where there's work in
4 our Institute of Nano Technology that is experimenting with
5 systems that are very, very fine screen and produce energy
6 as they pull sea water in.

7 So that -- I think that we all have to work
8 together on this. We can't be close-minded, but we have to
9 work together.

10 Thank you, and I'll move approval.

11 MS. LUTZ: Is there a second?

12 UNIDENTIFIED SPEAKER: Second.

13 MS. LUTZ: Further discussion?

14 All in favor?

15 THE BOARD: Aye (collectively).

16 MS. LUTZ: Opposed?

17 Motion carried, and we'll move on to

18 Item Number 10.

19 MS. HARRIS: This is for the Long Beach Water Department
20 Prototype Seawater Desalination Research Facility. This is
21 the public hearing to consider adoption by this Board in
22 accordance with State legislation of National Pollutant
23 Discharge Elimination System permits. Excuse me.

24 A notice of this hearing and of the Board's intent
25 to prescribe waste discharge requirements was published in a

1 daily newspaper of general circulation in the geographical
2 area of the discharge as prescribed by law.

3 Madam Chair, will you now please open the hearing
4 and administer the oath?

5 MS. LUTZ: As with the last hearing, anybody who thinks
6 they may be called or is a party, please stand and be sworn.

7 (Whereupon the Board Chair collectively swore in
8 all potential speakers)

9 MS. GLICKFELD: Okay. I guess I'm the questioner in
10 this case, too. I guess my first question is, is this
11 application using similar technology and similar
12 experiments? Are they --

13 I know this is a re-extension of a -- also a pilot
14 study, but are they using any kind of technology to deal
15 with the -- the issue of larval and juvenile fish and
16 otherwise dealing with sediment?

17 UNIDENTIFIED SPEAKER: This particular study is not
18 focused on that. The study with West Basin definitely is
19 focused on it, but this one, they are looking at
20 addressing optimizing the technologies that they're using
21 for -- for desalination.

22 MS. GLICKFELD: So what are they getting -- what are
23 they doing in this five-year period that they haven't
24 already done? Why should we continue this pilot project and
25 what benefit do they see coming from it?

1 UNIDENTIFIED SPEAKER: Now, the last permit when it was
2 issued, the facility was -- had not been constructed, so
3 even though the permit has been in --

4 MS. GLICKFELD: Okay. That doesn't say that in here.

5 UNIDENTIFIED SPEAKER: Okay.

6 MS. GLICKFELD: So they never actually --

7 UNIDENTIFIED SPEAKER: They didn't start actual
8 discharging until the first quarter of 2007. So they --
9 they got the permit before the facility was built, and the
10 next step in their -- and during this permit cycle they plan
11 to optimize their operational activities and to complete
12 testing on ultraviolet disinfection as a pretreatment option
13 for control.

14 MS. GLICKFELD: Are they requiring another permit to
15 monitor their intake of marine life?

16 UNIDENTIFIED SPEAKER: No. Because what they're doing
17 is pulling -- they are pulling -- after the water goes into
18 the intake structure, they're pulling their water out, so
19 they're inside the actual intake structure. They're pulling
20 out --

21 MS. GLICKFELD: So this is the same water that's being
22 pulled in from the power plant and the power plant isn't
23 required to do this?

24 UNIDENTIFIED SPEAKER: That's right.

25 MS. GLICKFELD: The issues were raised in the Staff

1 Report about what happens if this power plant reaches the
2 intake for the desal plant. What happens if this power
3 plant is subject to the new policies, and what will happen
4 if it happens during the five-year period of this permit?
5 How will that affect the desal facility?

6 UNIDENTIFIED SPEAKER: Okay. We've spoken with the
7 discharger, and they indicated that if the power plant is no
8 longer pulling through once-through cooling water that the
9 desal facility will stop operation. So that's it.

10 And that was one of the reasons why our Staff's
11 response to the issue with Heal the Bay where they asked
12 that we put in a specific reopener, we responded that we
13 really didn't need one because if there is no once-through
14 cooling water to desal facility, that this pilot project
15 desal facility will stop operation.

16 MS. GLICKFELD: Okay. My last comment has to do with, I
17 guess this is -- will this facility heat the water anymore
18 than the water is being heated by the power plant? I took
19 my students to the discharge area for this plant and you
20 could bathe in it, it was so warm.

21 It was really -- there really are -- I think their
22 heat standards are more than generous, and I would be
23 concerned if there was more heat coming in.

24 UNIDENTIFIED SPEAKER: As far as Staff is aware, no, it
25 won't heat it at all. We do have a representative from the

1 Long Beach Water Department.

2 MS. GLICKFELD: Well, I'm asking these questions today,
3 obviously, since we opened this hearing, if anyone else
4 wants to testify on these questions that I'm questioning,
5 you can do it, but if not, I'm satisfied with what you had
6 to say.

7 UNIDENTIFIED SPEAKER: Okay.

8 MS. GLICKFELD: Thank you.

9 Move approval.

10 UNIDENTIFIED SPEAKER: Second.

11 MS. LUTZ: Further discussion?

12 All in favor?

13 THE BOARD: Aye (collectively).

14 MS. LUTZ: Oppose?

15 Motion carries. And we'll move on to Item 11.

16 Ms. Harris, would you please open?

17 MS. HARRIS: Yes.

18 This is the public hearing to consider adoption by
19 this Board in accordance with State Law Waste Discharge
20 Requirements for Discharges to waters of the State for
21 Item 11, County Sanitation Districts of Los Angeles County,
22 Calabasas Landfill.

23 Notice of this hearing and of the Board's intent to
24 prescribe waste discharge requirements was duly noticed.
25 Copies of the orders were sent to all known interested

1 parties. All persons appearing before the Board today
2 should be reading copies of their testimony. The Board will
3 consider all testimony, however, in the interest of time, it
4 is requested that all repetitive and redundant statements be
5 avoided.

6 Madam Chair, will you now please open the hearing
7 and administer the oath?

8 MS. LUTZ: Will all those connected to this item please
9 stand?

10 (Whereupon the Board Chair collectively swore in
11 all potential speakers)

12 MS. LUTZ: Questions, I think, Ms. Diamond, you had
13 questions regarding this item?

14 MS. DIAMOND: I just had a couple questions, and I was
15 just -- I was happy to hear that -- I think I understand
16 that -- that -- that the changes that were made in the
17 permit as a result of some of the stakeholders' input, many
18 of the stakeholders' input, have been acceptable, and so
19 I -- but I just wanted to -- to ask if that were true, were
20 there still -- were there any outstanding issues that some
21 of the stakeholders suggest?

22 Save Open Space, and others, were they -- did they
23 indicate they were satisfied with the changes, and then I
24 guess I would ask if they are here and if they would testify
25 to that?

1 MR. CASAS: Madam Chair, Board Members, Enrique Casas,
2 Landfill Disposal Unit.

3 Yes, there were two -- a couple of changes,
4 significant changes -- responding to comments from Save Open
5 Space.

6 One, the biggest issue is the deep bedrock
7 groundwater pathway and historic (unintelligible) deep
8 bedrock pathway, and during -- during the review process,
9 one of the things that we did was to work with the
10 dischargers and look at some of the historic data that have
11 been collected for that pathway.

12 We saw some elevated pH wells indicating that it is
13 possible that there have been impacts -- there has been flow
14 to the deeper portions of -- of the meter at that landfill
15 such that it was advisable to have a relook at that pathway.

16 There's a technical report that's required 90
17 days -- within 90 days of the adoption of the order that
18 requires the dischargers specifically to look at that.

19 There is -- another issue was radioactivity or
20 radionuclide testing at the landfill in 2002. The
21 State Board asked Regional Board to look at radioactivity
22 levels in groundwater at active landfills and to do a
23 screen, if you will, to try to get a handle on that issue.
24 Calabasas was one of the 50 landfills in the state that was
25 looked at.

1 In terms of groundwater, the results indicate that
2 they are -- that the radionuclides were detected were at
3 background levels if you will. Staff accepts that
4 determination. Save Open Space may -- feels that there was
5 some issues with respect to what else were selected for
6 that -- for that screening.

7 Nonetheless -- and that's one other -- one other
8 aspect of their concern is that they are concerned that
9 historically hazardous wastes that were legally accepted in
10 the landfill when it was permitted as a Class I landfill,
11 that there were wastes that came from Rocketdyne
12 Santa Susana Field Laboratory.

13 Not -- as some of the earlier testimony, you know,
14 a site that obviously has a marred history if you will, that
15 it's not completely uncertain that maybe some of those
16 wastes could have ended up at area landfills including
17 Calabasas to be -- to be careful that we have added
18 radionuclides as constituents of concern to the monitoring
19 program.

20 Marie Wiesbrack from Save Open Space is here today,
21 and she has indicated, I think, that Save Open Space is
22 supportive of the changes made, but I'll let her address
23 that.

24 MS. DIAMOND: I wanted to just also ask you about the --
25 the technical plan that is going to be required in 90 days.

1 Now, is -- it's -- it doesn't, obviously, it says
2 it's a technical plan, so I guess what I'm asking, are
3 there -- what -- what would that technical plan include?
4 Not, you know, the specifics, but, generally, what would we
5 expect to see in the technical plan in 90 days?

6 MR. CASAS: Specifically, what I would presume you to
7 see would, one, be a reassessment of the water quality in
8 those historic deep wells as a starting point.

9 Like I said, the historic data indicated that there
10 were at least three wells with elevated pH that implied that
11 there was an impact from a leech to groundwater. But that
12 data is now -- if I remember correctly, based on the
13 mid-'90's.

14 Obviously, we have to start with a current
15 assessment of deep bedrock groundwater if we're seeing those
16 levels at those same three wells, are we seeing impacts
17 to -- to additional wells, are we seeing any -- and I said,
18 there was one constituent, pH.

19 If you look at some of the other constituents,
20 there does not seem to be any related impact.

21 Obviously, we would want to do a much more careful
22 analysis of -- of all of the data, physical analysis and try
23 to assess whether there was more than just the one
24 constituent, more than just the pH that that bill should
25 pass from.

1 You know, obviously, test all of the available
2 wells throughout the site that said look for -- look for
3 specifically deep bedrock pathway. I think there are some
4 other monumental control systems. There are some examples
5 of some subdrains that are -- that subsequently developed as
6 the landfill has expanded away from the underlying portions
7 of the landfill, and we would look for those constituents,
8 you know, in -- in those subdrain systems, also.

9 Those are basically the -- the types of -- I would
10 expect to see.

11 MS. DIAMOND: Okay. So then 90 days passes, you get the
12 technical report, and I guess what I'm wondering is what --
13 what's the -- are we missing a step, or do you bring it back
14 to the Board and do we look at it and if we see that there's
15 some radioactivity that is higher than it should be where
16 health standards are impacted what then would happen?

17 Or -- and that's why I wanted to hear this because
18 I wanted to make sure that we're not just accepting a report
19 in 90 days that if there's something in it that raises
20 concerns about health or, you know, water quality impact and
21 groundwater impacts that we should be able to then move to
22 the next step.

23 MR. CASAS: The state -- State and Federal legislations
24 have prescriptive strategies if you will for responding to
25 a -- to a known release, so that if the deep bedrock pathway

1 is determined to be impacted, (unintelligible) release from
2 a line of deep bedrock pathway included already within the
3 monitoring report program (unintelligible) if you will for
4 responding to that -- that potential release in terms of
5 (unintelligible) feasibility study that ultimately could
6 develop towards a retroaction program if necessary.

7 So I do believe that is -- that there is already
8 the mechanisms in -- in the permit to respond based on the
9 results of that technical study that they're -- that there
10 is -- that if there were any indication into the deep
11 bedrock pathway.

12 MS. DIAMOND: So there's nothing in the permit that --
13 that -- I mean, there's nothing additional that could be
14 done in the permit now. We would see that, and then we
15 would take the next step if we see a report that raises
16 concerns.

17 MR. CASAS: If we see a report that raises concerns,
18 then the discharger would be required per existing
19 regulations and requirements of the permit to take the next
20 step, which would be to respond to -- to that potential
21 release.

22 And, like I said, would trigger elements such as
23 (unintelligible) study evaluation monitoring program to
24 evaluate to the extent that that possible release if -- if
25 existing -- if the release is determined ultimately going

1 forward towards like indirect fashion permit.

2 MS. DIAMOND: And the reason why I didn't want to just
3 go through this, this is a -- not -- I mean, have it on
4 consent, this is an area where we know there was an
5 underlying hazardous waste coming from Rocketdyne, so it is
6 of great concern to our Board.

7 I guess that's -- that's all that I have in terms
8 of staff. I just wanted to ask Mary Wiesbrock if she might
9 come forward. Please state your name.

10 MS. WIESBROCK: Mary Wiesbrock, Chair, Save Open Space.

11 MS. DIAMOND: And do you feel that your concerns were --
12 have been addressed by the changes -- the changes in this
13 permit?

14 MS. WIESBROCK: Yes. I wanted to thank you for
15 (unintelligible) the deep groundwater monitoring and the
16 radionuclide testing and hope that this will be continuous
17 for the -- forever, because the 300 tons of liquid hazardous
18 waste were put in the area and it was put into dirt wells or
19 barrels that can rust through time, so we ask you for
20 continually monitoring of the deep groundwater.

21 MS. DIAMOND: And I want to thank you for your efforts
22 on behalf of your community.

23 MS. WIESBROCK: Thank you. Oh, and I wanted to submit
24 that the -- we were able to get a record of wastes that were
25 sent there from the 1970's, ten years' worth. I wanted to

1 submit that into the record, and then a geologist's letter
2 that says that the groundwater is moving through the bedrock
3 among the joint fractured --

4 MS. DIAMOND: I'm not sure whether that can be submitted
5 today because it doesn't meet the requirements of when
6 things can be submitted.

7 MS. LUTZ: Correct. Correct. There was an open period
8 to submit information, and that period is closed, but your
9 testimony has been helpful.

10 MS. DIAMOND: That's all the questions that I have.

11 MS. LUTZ: Do we have a motion to approve?

12 UNIDENTIFIED SPEAKER: Okay.

13 UNIDENTIFIED SPEAKER: Second.

14 MS. LUTZ: Any further discussion?

15 All in favor?

16 THE BOARD: Aye (collectively).

17 MS. LUTZ: Opposed?

18 Motion carries.

19 MS. GLICKFELD: Madam Chair, if I could, I don't really
20 relish making this comment -- I think our staff is doing an
21 amazing job in -- in consideration of all the obstacles they
22 are facing right now, but I have to say that this is the
23 third month in a row where reports from the Staff from
24 different sections -- different sections where we have
25 commenters, usually dischargers, doing an extensive,

1 basically, edit and proofreading of the -- of the -- of the
2 Staff Report.

3 In this case, pages 11-146 through 150 are full of
4 factual corrections, typographical errors. I feel,
5 Ms. Egoscue, that you're trying to meter the -- where our --
6 the agenda to allow your staff to do the job they're
7 supposed to do, but, perhaps -- and I hate to say that we
8 should slow anything down further, I think you're going to
9 have to take into consideration that your staff is really
10 trying hard, very hard, to bring these things to us, but we
11 have to be able to assure ourselves as the Board, and the
12 discharger and stakeholder community that when our Staff
13 Reports go out that there's quality control on them and that
14 the section heads are having the opportunity to do that.

15 I feel satisfied with the Calabasas report because
16 the discharger did an excellent job of doing the proofing
17 and we had State Board reviewing it, and I feel good about
18 that, but I think that you're going to have to still
19 continue to struggle with this. And I hate to be the one
20 saying slow down further, but that may, in fact, be the only
21 option we have.

22 MS. EGOSCUE: Thank you for those comments. The next
23 management meeting I will make it clear to the section
24 chiefs that this has been noted by the Board, and we'll do
25 our best to make sure that it gets better.

1 MS. LUTZ: Okay. We will adjourn for the lunch hour.
2 During the lunch hour, we will have closed session.

3 MS. Fordyce, if you could tell me approximately how
4 much time you think we will need.

5 MS. FORDYCE: We're going to discuss Items 16.6, 16.7,
6 16.8 subdivision a, 16.8 subdivision c, and 16.9. We think
7 probably about 30 minutes max.

8 MS. LUTZ: Okay. So I think an hour will be sufficient.
9 It is quarter after 12:00, we will plan to be back at a
10 quarter after 1:00. Thank you all very much.

11 (Lunch recess)

12 MS. LUTZ: I'm sorry. Our closed session items ran a
13 little longer than we anticipated, but we are now at
14 Item 13.

15 MS. Harris, would you please?

16 MS. HARRIS: Yes. This is the public hearing for
17 consideration of a proposed revision to the list of impaired
18 water bodies developed pursuant to Section 303(d) of the
19 Federal Clean Water Act.

20 Copies of the proposed revision were sent to the
21 Environmental Protection Agency, the State Water Resources
22 Control Board, and other interested persons and
23 organizations.

24 Madam Chair, will you now please open the hearing
25 and administer the oath?

1 MS. LUTZ: Will those of you who will be testifying
2 please stand?

3 (Whereupon the Board Chair collectively swore in
4 all potential speakers)

5 MS. LUTZ: Okay. The order that we will proceed, we
6 have three items still left on our agenda, and we truly,
7 truly would like to get them all completed today, so we will
8 have Staff presentation of 20 minutes. I have 14 speaker
9 cards of which we will have five minutes each. So each
10 speaker card will be five minutes and our Staff will be 20
11 minutes and we will go from there.

12 And LB Nye will be giving us the Staff Report.
13 Thank you.

14 MS. NYE: Yes. Good afternoon, Chair Lutz, members of
15 the Board. My name is LB Nye, and I'm a Chief at the
16 Regional Board.

17 With me today is Mr. Man Voong and Mr. Tom Siebels,
18 who are the principal staff people who worked on this report
19 for you, and several other members of the T.M.D.L. staff,
20 because, in fact, it did take the entire -- the extra piece
21 of the entire T.M.D.L. staff, 16 people, to put together
22 this report.

23 I'm also joined by Renee Purdy, who's the Acting
24 Chief of the Regional Sections Program -- Regional Programs
25 Section at the Regional Board.

1 Today I'm presenting for your consideration the
2 Los Angeles Integrated Report, Including Clean Water Act
3 305(b) Report and Clean Water Act 303(d) List of Impaired
4 Waters. A change sheet was issued and has been sent to all
5 the interested parties on the 15th of July and is made part
6 of the record.

7 So the Clean Water Act under Section 305(b)
8 requires the State to assess the status of water quality in
9 the state. The 305(b) assessment is an overall look at all
10 of the assessed waters.

11 Clean water Act under Section 303(d) requires each
12 state to provide a list of impaired water bodies. The
13 report in the list are to be provided to the U.S.
14 Environmental Protection Agency every two years. The report
15 sent in this year is an integrated report and that includes
16 both the 305(b) information and the 303(d) list of impaired
17 waters.

18 The list of impaired waters, the 303(d) list,
19 requires public review and approval by the Regional Boards
20 before approval by State Board and then finally approval by
21 the U.S. EPA.

22 In 2004, the State Board developed a water quality
23 control policy for developing California's Clean water Act
24 Section 303(d) list, a listing policy, and the purpose of
25 the listing policy was to develop a standardized approach to

1 developing a 303(d) list in California.

2 The last review and update of the state's 303(d)
3 list occurred in 2006, and that review and update was
4 conducted by State Board using a listing policy, and it was
5 the first review to use a listing policy.

6 The final approval of the 2006 list was in 2008.
7 So for the 2008 update, which is this update, each week the
8 Water Board is conducting their own assessments and review
9 of the existing and new data and updated the list of
10 impaired waters using the listing policy.

11 In previous years' reports, the 305(b) and 3030(d)
12 lists were prepared separately, and this is the first year
13 that we have integrated reports to look at all of the
14 assessed water bodies in the region and the state.

15 This is also the first year that California has
16 used a California Water Quality Assessment Database for the
17 303(d) list, and this is a database that tracks all the
18 listing decisions, it keeps track of all the data files, and
19 references for the entire state.

20 This is a significant development, because it will
21 be a very useful tool to track updates to the 303(d) list
22 over multiple listing cycles, and because it's already in
23 the process more transparent for stakeholders.

24 The supporting analysis for the lists, which is the
25 facts sheets including data and references are now more

1 readily available to the public via the water Board web
2 sites than they have been in the past.

3 So, this is a 305(b) report. The 305(b) report
4 organizes all the assessed waters in categories as defined
5 by U.S. EPA, and Category 1 is a water quality which we know
6 supports all of its beneficial uses because we have data
7 that demonstrates that it's supporting all of its beneficial
8 uses. The Los Angeles Region has no water bodies in
9 Category 1.

10 Category 2 is a water body that we know supports at
11 least one of its beneficial uses and we have the data to
12 support that, and for the other beneficial uses, we know we
13 are not (unintelligible) impairment. So those two
14 categories, Categories 1 and 2, are the waters that have
15 been assessed as unimpaired or clean.

16 Category 3 is a water body which has assessed data
17 but for data insufficiency or no evaluation guideline, staff
18 couldn't make a conclusion, and for a water body that has an
19 impairment or multiple impairments but all of the
20 impairments are being addressed by U.S. EPA approved
21 T.M.D.L. or our action to address the impairment.

22 And Category 5 is a water that has an impairment or
23 multiple impairments and at least one of the impairments is
24 not yet being addressed. So Categories 4 and 5 then make up
25 the water bodies which are on the 303(d) list.

1 In this report, there are 238 assessed water
2 bodies, and 189 of those are in Categories 4 and 5.

3 Those water bodies which are unassessed for which
4 we have no data at all, remain outside 305(b) report.

5 So the state of California uses a cyclic approach
6 to 303(d) listing. The State and the Regional Boards assess
7 available after a certain time and then process the new
8 proposed list for approval by the Regional Boards and the
9 State Board. California does not use a continuous process
10 of data evaluation and updates to the 303(d) list.

11 The list is expected to be updated and changed to
12 reflect changed water conditions, new standards or new
13 policies, but this does happen in a cyclic manner.

14 So the approved list, which is current right now,
15 the 2006 list, is based on data from earlier than 2006. And
16 the listing policy that was developed in 2004 is designed to
17 be environmentally conservative in that it takes -- more
18 data is required to remove an impairment from the list than
19 is required to put an impairment on the list.

20 This proposed update to the 303(d) list that staff
21 had followed listing policy.

22 So on this proposed 303(d) list, the 189 water
23 bodies in Categories 4 and 5 make up the 303(d) list, but
24 many of those have more than one impairment.

25 On the proposed 303(d) list, there are, in fact,

1 822 water body impairments, and that is Appendix F in your
2 package. This is the 303(d) list and the document that most
3 interests stakeholders.

4 MS. GLICKFELD: Do we have a copy of this report?

5 MS. NYE: I don't know.

6 MS. GLICKFELD: Okay. If you don't know, that's okay.

7 MS. NYE: I'm sure we can get -- that's okay.

8 Okay. So 822 water body impairments and on the
9 303(d) list, and on the 303(d) list, each impairment is
10 labeled as needing a T.M.D.L., being addressed by a
11 T.M.D.L., or being addressed by an action other than a
12 T.M.D.L.

13 So on this list, about 54 percent of the listings
14 are labeled needing T.M.D.L. -- still require a T.M.D.L. or
15 other action to address the impairment and 46 percent are
16 being addressed by a U.S. EPA approved T.M.D.L. or other.

17 To prepare this year's list, staff developed 328
18 fact sheets to support the new listings and key listings and
19 assessments of the water bodies that were in Categories 2
20 and 3 that you didn't have on the list.

21 And there are 61 proposed new listings and 30
22 proposed delistings. There were also 93 listings where we
23 really just changed the category from "needing a T.M.D.L."
24 to "being addressed by a T.M.D.L." because this Regional
25 Board has developed and EPA has approved those T.M.D.L.'s

1 since the last listing cycle.

2 I also want to point out that there are five
3 delistings of water body impairments for which T.M.D.L.'s
4 were developed, and these are five water bodies which are
5 now achieving, in this case, ammonia and nitrate standards
6 based on implementations of a T.M.D.L. developed in this
7 region.

8 The report was released for public comment on
9 30 April of 2009 and written comment period ended on
10 17 June, 2009. We received 22 letters from municipalities,
11 other organizations, and all the letters we received were on
12 the 303(d) list, not on the 305(b) assessment report.

13 Some of the comments were about approaches in
14 general to the 303(d) list, but many were very specific
15 concerning specific water body impairments. So -- I'll
16 discuss a number of the general issues brought up by the
17 comment letters.

18 Several commenters, the City of Los Angeles,
19 Los Angeles County Sanitation District, and the Las Virgenes
20 Municipal Water District, and the parties that implemented
21 the Calleguas T.M.D.L.'s positively noted the increase in
22 transparency, the easier availability of data from the
23 existing cycle and fact sheets.

24 Coalition for Practical Regulation and Newhall Land
25 and Farming noticed -- noted the use of the listing policy

1 and how that had improved the 303(d) listing process.

2 Both the Lake Sherwood Joint Advisory Committee and
3 the City of Santa Clarita submitted comments, asked us to
4 consider more recent data, data from 2008 and 2009; however,
5 data from 2008 and 2009 will be considered in the next
6 listing cycle.

7 In addition, the most populace chapters of the
8 Sierra Club, the Nature Conservancy, and Ormond Beach
9 wetlands Environmental Coalition expressed concerns about
10 the water qualities in the water bodies near the
11 Ormond Beach wetlands.

12 Staff is aware that there are water quality
13 sampling that is being conducted in that area, but none of
14 the data is yet available. So these are possible
15 impairments that Staff can consider during the next listing
16 cycle.

17 In the meantime, Staff will work with the
18 stakeholders to evaluate what actions need to be taken
19 outside of the 303(d) listing process.

20 Staff also received several comments on potential
21 new standards. For instance, the State Board is developing
22 sediment quality guidelines and has published drafts of the
23 guidelines, but because these guidelines are draft, they're
24 not yet approved by EPA, Staff has not made listing or
25 delisting recommendations on those guidelines.

1 The City of Los Angeles commented that there was a
2 need to re-evaluate listings from prior listing cycles,
3 especially listings made prior to the 2004 listing policy.

4 The prior listings were made about -- included made
5 prior to that new policy. The listings were made from
6 scientific rationale. We have been approved by the
7 Regional Board, State Board, and U.S. EPA, and the City does
8 not provide evidence that any of the listings were not
9 valid.

10 The City of Los Angeles also commented that it is
11 inappropriate to list for observed conditions in a water
12 body as opposed to listing for an evaluation of numeric
13 data, and conditions can include things like conservations
14 of excessive algae or trash.

15 However, listings can be based on both numeric and
16 narrative guidelines and a listing policy specifically
17 includes provisions for listing for conditions.

18 In a proposed 303(d) list which was released for
19 public comment in April, Staff had proposed a number of
20 listings for water bodies to protect conditional, municipal
21 water supply beneficial use.

22 And a number of commenters, City of Los Angeles,
23 Santa Clarita, Los Angeles County, the County Sanitation
24 Districts, and Newhall Land commented that these listings --
25 oh, and U.S. EPA commented that these listings were

1 inappropriate because the (unintelligible) is conditional
2 and response to comments, Staff is no longer proposing to
3 include these listings.

4 Staff received more comments on the biostimulatory
5 substances than any other, and the comments we received were
6 thoughtful and recognized the importance of appropriately
7 identifying the biostimulatory substance inherence and
8 explored many options towards listing revocations of those.

9 In addition, Heal the Bay commented that we should
10 not delay listing for biostimulatory substances in
11 recognizing the significant negative effects that these
12 kinds of impairments could have on our waterways.

13 Among other evaluations of impairment, however,
14 evaluating biostimulatory substances and their related
15 effects are complex, and in the Staff Report for this
16 action, we discussed a new framework for identifying those
17 water bodies which are impaired.

18 Currently, assessment for biostimulus substances
19 require linked data sets between nutrient concentrations and
20 biological responses, and we don't have sufficient linked
21 data sets at this time, therefore, Staff did not do listings
22 using this tool in the 2008 update.

23 On the 303(d) list, a water body impairment, as I
24 said before, can be labeled as being addressed at action
25 other than T.M.D.L., and this is reserved for cases where

1 there is another regulatory program or other action which
2 will fully address the impairment and generally only where
3 there's one source of the impairment to the water body and
4 the actions to address the impairment has a specified
5 timeline.

6 During this listing cycle, we are proposing to --
7 Staff is proposing to move two water body impairments from
8 the category of T.M.D.L. needed to being addressed by action
9 other than a T.M.D.L.

10 In Port Hueneme, the sediments are contaminated
11 with metals, but this Board is removing all the
12 (unintelligible) under a sediment regimen program. We
13 discuss a specific timeline to be completed by
14 (unintelligible).

15 The impairment stays on the list just like when a
16 water body is being addressed by a T.M.D.L. until monitoring
17 data demonstrates that the impairment has been resolved.

18 In Malibu Lagoon, the impairment is for
19 (unintelligible) community effects. The plan of restoration
20 at Malibu Lagoon to take place this summer will restore
21 circulation in a manner that the impairments will be
22 resolved.

23 EPA has expressed support for both these changes
24 and, however, Heal the Bay is opposed to the change for --
25 in the case of Malibu Lagoon.

1 In contrast, the parties implementing the
2 T.M.D.L.'s in Calleguas Creek watershed and the City of
3 Simi Valley recommended that trash in various beaches of the
4 bay also be categorized, those listings, trash listings, be
5 categorized as being addressed by an action other than a
6 T.M.D.L. due to the new Ventura MS4 permit, because that
7 permit contains a number of actions to control trash
8 discharges.

9 Staff is not proposing to categorize these reaches
10 in that way, however. These actions in addition to the MS4
11 permit action made it necessary to resolve the impairment
12 fully, and because the permit does not provide a timeline
13 for resolution of the trash impairment.

14 In addition, the cities of Santa Clarita and
15 Simi Valley similarly recommended that the listing for the
16 pesticides Copiracose (phonetic) and Diazinon be categorized
17 as being addressed by an action other than a T.M.D.L.
18 because both Copiracose and Diazinon have been banned for
19 residential use.

20 However, Staff is not proposing to categorize the
21 pesticides listing this way. The Federal ban addresses
22 fails, it does not address use in community use for some
23 time and there is no timeline for the continuation of these
24 pesticides.

25 So this proposed 303(d) list includes new listings

1 for invasive species, the New Zealand Mud Snail found in the
2 Malibu Creek watershed and the nearby Solstice Creek.

3 The New Zealand Mud Snail is very small, as you can
4 see, but when they are present in extremely high numbers,
5 the mud snails can completely cover up a streambed and
6 massive colonies out-compete native invertebrates, which are
7 what the fish and amphibians rely on for food.

8 They spread easily between streams, attaching
9 themselves to shoes. Mud snails were first identified in
10 Malibu Creek in 2005, and they've been increasing in numbers
11 quickly and are a significant impairment to our waters for
12 our Region.

13 The city of Calabasas and the County of Los Angeles
14 opposed including this invasive species in the 303(d) list
15 because of the difficulty of developing a T.M.D.L. which
16 would be successful in addressing mud snails and because
17 they assert that mud snails are not pollutants.

18 while -- those that could be addressed by the
19 development of the T.M.D.L., it could also be addressed by
20 an action other than T.M.D.L. if appropriate, and, in
21 addition, the State's 303(d) list currently includes the
22 invasive species European Green Crab in Region 1 and the
23 sebaceous (phonetic) species in general in Region 2.

24 Heal the Bay and the Las Virgenes Municipal Water District
25 both support these listings.

1 In the proposed 303(d) list, Staff has included ten
2 listings for impairment of benthic macroinvertebrate
3 community.

4 These ten listings were not initially included in
5 the April 2009 public notice; however, Staff reevaluated
6 bio-assessment data after reviewing a letter from
7 Heal the Bay in which they advocated for approximately 40
8 listings for benthic community and based on that
9 reevaluation, Staff is proposing these ten listings.

10 Macroinvertebrates include insects in their larval
11 form, plants, snails, and worms. They are an integral part
12 of the food chain and essential to a healthy Eco and
13 necessary to the support of any aquatic life beneficial use.
14 This is a (unintelligible) larvae.

15 For these listings, Staff evaluated data which
16 included information on the diversity, abundance, and
17 structure of the macroinvertebrate community and compared
18 the data against the Southern California Index for Biotic
19 Integrity or SoCal IBI.

20 The IBI is a multi-measured score that can be used
21 to evaluate the health of the benthic community from very
22 poor to very good. And the Southern California IBI was
23 developed into 88 reference sites from all over Southern
24 California.

25 The State listing policy requires listing the water

1 body of bio-assessment data which shows an impaired benthic
2 community.

3 The ten sites proposed for listing are among the --
4 are the most impaired in the region based on IBI scores, and
5 furthermore, these ten proposed listings for benthic
6 community impairment correspond other pollutant listings in
7 the same water bodies and the other pollutant listings may
8 be the cause of the benthic community impairment.

9 Two T.M.D.L.'s developed in 2005, the
10 Marina del Rey Harbor Toxics T.M.D.L. and the Ballona Creek
11 Metals T.M.D.L.

12 During the development of the T.M.D.L., Staff and
13 stakeholders determined that certain water bodies no longer
14 showed impairment, and they defined T.M.D.L. that no
15 T.M.D.L. could be developed for those specific listings and
16 that the impairment ought to be removed from the 303(d)
17 list, and both the U.S. EPA and the City of Los Angeles
18 recommended that these particular listings be taken off the
19 303(d) list.

20 The listing policy requires a certain amount of
21 data to remove an impairment from the list, and Staff cannot
22 make the delisting policy despite the times of the
23 T.M.D.L.'s. We have, however, included as a comment in the
24 303(d) list a statement that a finding of non-impairment has
25 been made.

1 I'd like to take a moment to make one further
2 change for the -- the benthic matter invertebrate listings,
3 we've got ten listings and based on some work this
4 morning -- yes. We'd like to remove San Jose Creek
5 (unintelligible) one as a --

6 MS. GLICKFELD: Can you tell us where?

7 MS. NYE: Yes, I can. The changes would be to
8 Page 13-110, 13-164 and 13-178.

9 MS. GLICKFELD: 1310?

10 MS. NYE: The first one is 13-10 (sic), and this is
11 changes because we've become aware that the protocol used to
12 sample the benthic matter invertebrates was not followed
13 completely --

14 UNIDENTIFIED SPEAKER: That's the --

15 MS. NYE: So the bottom of page 13-110.

16 UNIDENTIFIED SPEAKER: Oh, 110?

17 MS. NYE: Yes. So we're now in Appendix E, which is the
18 list of -- list of the category of impaired water bodies,
19 and on the bottom of the page is San Jose Creek 1, and that
20 includes benthic macroinvertebrate bio-assessment, and we
21 will just line that out.

22 And the next one is 13-164, which is the 303(d)
23 list itself, and it's the middle of the page under San Jose
24 Creek is also a listing for macroinvertebrates, and we will
25 just line that one out, also.

1 And Page 13-178 at the top of the page you see
2 San Jose Creek 1, benthic macroinvertebrate bio-assessment,
3 and then also just line that out, so there's no longer
4 (unintelligible) as impaired fashion.

5 UNIDENTIFIED SPEAKER: 178?

6 MS. NYE: Yeah. 13-178. And the reason that we want to
7 make this change is -- is because we've become aware that
8 the sampling protocol used in -- at this site was not
9 followed properly, so that we're -- not -- we don't believe
10 that -- that has sufficient quality and you should put it on
11 the 303(d) list.

12 So based on -- that concludes my -- my review of
13 the 305(b) report and changes to the 303(d) list, so the
14 Board staff recommends approval of the 303(d) list as
15 proposed with this additional deletion of this one listing,
16 and I'd be glad to answer any questions.

17 MS. LUTZ: Okay. What we'll do now is we'll go to our
18 speaker cards.

19 Thank you.

20 Our first speaker is Kirsten James, and I believe
21 with Dr. Gold or --

22 MS. JAMES: Yes.

23 MS. LUTZ: And following that will be Dr. Gerald Greene.

24 MS. JAMES: Good afternoon. Kirsten James, Water
25 Quality Director at Heal the Bay, and, Madam Chair, we had

1 requested and gotten an approval of ten minutes if that's
2 still okay for Mr. Gold and I to speak?

3 MS. LUTZ: Unfortunately, when we approved the ten
4 minutes, we really didn't have an idea that we would have so
5 many people requesting to speak on this item, and we
6 would --

7 MS. JAMES: Okay. I just have some slides I want to
8 make sure you see.

9 MS. LUTZ: How about we split it?

10 MS. JAMES: Okay. I'll try my best. Okay. Thank you.

11 So in general, Heal the Bay is supportive of
12 Staff's proposal for the 303(d) list, especially the 61
13 water body pollutant accommodations that were added to the
14 less.

15 So today I'm going to focus my comments on two
16 listings in particular, the invasive species and the benthic
17 macroinvertebrate listings that we really see as critical
18 and I'm going to talk a little bit about why we support
19 those and why we see that those are so critical, and then
20 I'm going to focus on what we see as sort of the three big
21 remaining deficiencies in the 303 list, and talk a little
22 bit about those.

23 So the first listing is the invasive species
24 listing, and we're in very strong support of this listing
25 for the numerous water bodies in the Malibu Creek watershed.

1 We think that staff has correctly identified the negative
2 trend in water quality in association with the proliferation
3 of these species and the associated degradation of the
4 aquatic life support for beneficial use.

5 Heal the Bay's Stream Team and Santa Monica
6 Baykeeper have been documenting the snail and diminished
7 water quality since 2005.

8 And as you can see in this next slide, this is from
9 2006, all the red dots are locations where the mud snails
10 have been identified, and if you go to the next slide, you
11 see that a year-and-a-half later this list has expanded to
12 several other beaches.

13 So, unfortunately, we're just seeing a
14 proliferation and a degradation of water quality, so we
15 really support your staff's work on that listing.

16 Next slide. Next slide. And just, you know, EPA's
17 here today, so they can speak for themselves, but this is
18 just a quote from Alexis Strauss on the last listing round
19 supporting the idea of invasive species listing.

20 The next issue that we wanted to support strongly
21 is your staff's recommendation for benthic macroinvertebrate
22 bio-assessment listings. We strongly support the diversity
23 and sensitivity of the various species within a stream
24 environment are extremely important indicators of stream
25 health, and we think that the IBI, which was developed by

1 your sister agency, California Department of Fish and Game,
2 is a methodology that is appropriate for being used in these
3 listing decisions.

4 And just so you know, the IBI has been accepted by
5 the State Board and EPA as part of their swamp protocol, so
6 it's definitely something that has benefitted strongly. And
7 just of note, there are a lot of sites within our region
8 that were actually used in developing that Southern
9 California IBI.

10 Back to the slide, please. So Heal the Bay has
11 been looking at IBI listings and scores since back in 2000,
12 so for quite a long time. And what California Department of
13 Fish and Game found was that if you have a score below 39,
14 you're going to have an impairment of your benthic
15 communities.

16 And as you can see, unfortunately, in this slide,
17 the region is having a lot of trouble with their benthic
18 communities based on the reference condition which you see
19 to the far right.

20 So Heal the Bay really supports Staff's decision
21 for benthic communities. We think this is really a critical
22 listing to get our region on the right track.

23 So one of the things that LB mentioned is that
24 Heal the Bay still is concerned with Staff not addressing
25 biostimulatory substances in this round of listings.

1 They've acknowledged that it's important and that
2 they need to look at nutrient concentrations and the effects
3 of the nutrient levels, and as you see by this picture, our
4 region is having some major issues with the effects of
5 biostimulatory substances.

6 So we really think that this is critical to address
7 sooner rather than later and we urge your staff to do so
8 with this listing.

9 So with that, I'm going to turn it over to
10 Mark Gold to finish some of our comments. Thank you.

11 DR. GOLD: Hello again, the next issue is on the
12 Regional Board, I mean, the fact that they should be using
13 the rolling 30-day geometric mean when evaluating indicator
14 bacterial impairments.

15 The following standard, 14 metric mean is from the
16 State Water Resources Control Board. You can see these have
17 actually been in place for quite some time and -- and were
18 dry from, actually, the Santa Monica Bay Epidemiology Study
19 as well as from the efforts from AB 411 and the EPA
20 criteria. And so you see geometric mean is obviously very,
21 very critical in our own Ocean Plan right now.

22 So Staff evaluates exceedances of bacterial limits
23 by using a calendar month approach as opposed to a rolling
24 30-day sample approach, and we really believe this is to
25 minimize liability for the actual regulated community.

1 In other words, in looking at the data, only one
2 geometric mean was calculated per month as opposed to four
3 or five results one would produce when using a rolling
4 calculation.

5 So if you use a static time frame, like a calendar
6 month, to assess a very dynamic system, and remember, these
7 bacteria densities change from day to day, and in some cases
8 even from hour to hour, it's completely inappropriate,
9 statistically unsound, and not protective of public health,
10 which is by far the most important issue.

11 In fact, as you can see, the State Ocean Plan
12 includes the standards already talked about before. And in
13 response to comments, staff mistakenly said that the Ocean
14 Plan doesn't have this requirement but, as you can see, it's
15 right up there.

16 The Regional Board failed to provide any sound
17 justification for taking a different approach and does not
18 discuss how this could possibly be statistically superior to
19 and more protective of public health than a rolling average
20 when dealing with indicated bacteria. Again, it leads us to
21 believe that it's more of a liability issue than anything
22 else.

23 The end result of this approach will be far fewer
24 beaches listed, far fewer T.M.D.L. violations, and much more
25 importantly, far more beach-goer illness. Thus, we urge the

1 Regional Board to evaluate indicator bacteria data using the
2 rolling 30-day geometric mean.

3 As you know, Compton Creek trash. As you know,
4 Compton Creek is probably the most trashed water body in
5 maybe even the entire state, but definitely within the
6 Los Angeles Region.

7 Your staff proposes to include moving the
8 Compton Creek trash listing to the "being addressed
9 category," and while we agree that Compton Creek trash
10 should be covered under the L.A. River Trash T.M.D.L. and
11 its implementation, we're concerned that the implementation
12 plan is not treating Compton Creek as part of the impaired
13 water bodies.

14 So there's nothing in writing that says
15 Compton Creek is part of the L.A. River Trash T.M.D.L., and
16 this is an issue that, actually, Heal the Bay has brought up
17 probably the last two or three listing cycles, and so we're
18 very, very concerned about that.

19 So as a result, other than the City of Los Angeles,
20 there's not a heck of a lot going on to prevent trash from
21 entering Compton Creek.

22 Is that the end of the seven?

23 MS. LUTZ: I think so.

24 Seven, Ms. Harris?

25 MS. HARRIS: Yes.

1 DR. GOLD: All right. Well, let me just wrap up the
2 Compton thing, then I'll leave, which is -- so you have a
3 recommendation to leave on -- is that we strongly recommend
4 that the Regional Board either ensure that the L.A. River
5 Trash T.M.D.L. Implementation Plan is covering Compton Creek
6 and state that compliance and enforcement measures will also
7 apply to Compton Creek and clarify that through your MS4
8 reopener for the trash T.M.D.L. that you're going to be
9 dealing with in the next couple of months, and so make it
10 clear that that deals with Compton Creek.

11 Or clarify the tributary rule to make sure that,
12 hey, all tributaries that drain into the L.A. River have to
13 comply with the trash T.M.D.L.

14 And, lastly, or maintain the Compton Creek trash
15 listing on the main 303(d) list.

16 So those are the options that are before you here
17 and thank you for the opportunity to comment.

18 MS. LUTZ: Thank you.

19 MS. GLICKFELD: Madam Chair, before we call the next
20 person, we got -- is your ruling at this point that five
21 minutes per organization or five minutes per --

22 MS. LUTZ: Per speaker card.

23 MS. GLICKFELD: Per speaker card. Okay. So if they had
24 two speaker cards for two people -- okay.

25 MS. LUTZ: Dr. Greene followed by Richard Watson.

1 DR. GREENE: Hello again. My -- welcome. Good
2 afternoon, this is a -- my name is Dr. Gerry Greene, I'm
3 with the City of Downey, speaking on their behalf today.
4 Thank you for the opportunity for allowing me to speak.

5 I want to first comment that we appreciate that the
6 Board Staff has taken into the consideration the may -- the
7 much -- the data that had been provided by agencies,
8 especially the County Sanitation District.

9 They've made a lot of changes to the list that
10 arrived very recently, unfortunately, but at least they've
11 taken those things in and we appreciate the triage challenge
12 at least to getting the final listing out yesterday.

13 We'd like to support comments that come from the
14 Sanitation District as well as CPR. Having noted that,
15 there are some pretty significant changes that occurred
16 yesterday with the macroinvertebrate benthic listing, and we
17 appreciate more time being allowed to consider that. I
18 appreciate what a challenge that is.

19 In general, we're very nervous about the 303(d)
20 listings that come up and how they will impact our
21 communities for some of these items that have come up in
22 this particular 303(d) listing cycle, such as toxicity,
23 which impacts a very real (unintelligible).

24 We don't know what that is, what is causing this
25 toxicity. We don't know what we're controlling, and it

1 leaves us in a lurch to try to do anything about it. We're
2 blind.

3 Invasive species, again, we don't know how this is
4 going to impact the city, so, rightfully, we're very nervous
5 of it. The existing listings and T.M.D.L.'s have left us in
6 a very, very tenuous fiscal condition as I'm sure any city
7 manager can appreciate.

8 Benthic macroinvertebrates. Appreciate it and the
9 Board Staff have made a good effort to try to consider that
10 some of these channels are very different from natural
11 conditions, but it is very important to remember that the
12 referenced situation is very different than many of the
13 listed water bodies.

14 It's an upper watershed, very steep. The ecology
15 of organisms in there are very different than, as an
16 example, some of the channels that are down on the flat
17 bottom that have been modified in one way or another.

18 So it's not surprising that the IBI scores come in
19 different, and, frankly, lower, and not all of these are
20 (unintelligible), by that I mean other studies going on for
21 monitoring.

22 In conclusion, I think especially these things that
23 are characteristic of conditions rather than a pollutant, it
24 is too early to include these things. We'd rather see them
25 get on a watch list or at least, hopefully, develop some

1 idea so that cities can better understand how the Board will
2 eventually implement these things so that we are less
3 concerned about how they are going to impact our financial
4 bottom line and better reflect that there are multiple
5 agencies, including the federal government, as an example,
6 who may have some responsibilities in invasive species.

7 It's a big, big topic and very, very scary to us
8 little guys and right now we're very scared with a lot of
9 the other issues that we've been asked to help address.

10 In conclusion, I notice LB made a very true comment
11 to the way we look at things. It's much easier to list than
12 to delist and, unfortunately, most of the delisting effort
13 falls on us, and our budgets are hurt and we're triaging
14 just like the state agencies are.

15 So we hope that you'll find and make an effort to
16 make sure that these listing efforts are based on things
17 that we can really have an approach and deal with,
18 otherwise, we're basically making more long lists for people
19 not to have the ability to spend time on where we just end
20 up passing pieces of paper around one to another rather than
21 curing and developing real answers.

22 Thank you for your time today.

23 MS. LUTZ: Thank you.

24 Richard Watson followed by Ray Tromblay.

25 MR. WATSON: Thank you, Chair Lutz and members of the

1 Board. Richard Watson, representing the Coalition For
2 Practical Regulation.

3 Few comments. I was really pleased to see that the
4 use of the integrated report approach, vast improvement, I
5 think, with one exception. Dr. Greene just mentioned it,
6 actually, and that's the idea of a watch list.

7 When you were talking about the structure a few
8 years ago, particularly in 2004 with the policy, one of the
9 issues came up then was like a watch list where you then try
10 to figure out what the pollutants are that are causing the
11 condition.

12 Many of us have a problem, as Dr. Greene just
13 mentioned, with listings for conditions because we don't
14 know what the pollutants are, and I'll address that
15 specifically in just a moment.

16 The Staff noted we were quite impressed with the
17 improved procedures, quite a bit better than the pre-2002
18 list. 2002 being when the State took over the process and
19 in 2004 when the policy came out.

20 I actually testified against returning this
21 practice to the Regional Boards at the 2006 list, because I
22 didn't think you'd be able to do what you've done. There's
23 still improvements to be made, but you've made a great deal
24 of improvement.

25 One of the things that surprised me greatly was

1 this addition of -- I had actually counted 11 benthic
2 macroinvertebrate bio-assessment listings for L.A. County,
3 asking for the ones taken off, I didn't count for
4 Ventura County. That one really surprised me.

5 we haven't had much time to take a look at that,
6 just really got them, I guess two or three days to have a
7 chance to look at, and it's based on the application of the
8 IBI as LB mentioned, but I'm not sure that the IBI has yet
9 been proven the tool we want to use for actual listing.

10 It's a really good tool for doing some assessment,
11 and it's a critical tool to look at the critics, but until
12 you know what's causing that problem, there could be other
13 critics, there could be all kinds of conditions.

14 I don't think that that is a really good tool for
15 listing, particularly not a last minute set of listings that
16 we're faced with today, and it's definitely not appropriate
17 for channelized streams, modified channels, because we don't
18 know, you know, all this stuff that was done up in the upper
19 part of the watershed.

20 we would ask that this whole thing be delayed, that
21 you defer the benthic macroinvertebrate listings until the
22 next cycle and treat it like a watch list so we can find out
23 what the heck is happening out there and whether this tool
24 is really applicable in places where being proposed for
25 actual listings.

1 One other concern was with the way, I think, fact
2 sheet that Los Rios Channel, I couldn't find it initially
3 and now there is one, for the Do Not D List for ammonia.

4 I've done just a quick look at it and one of the
5 points in the supporting information is that there's no
6 additional data or information available indicating the
7 standards are being met.

8 Actually, there is, I'm not sure why the City of
9 Long Beach hasn't submitted it yet, but this cites that
10 there are 22 samples. I've seen data where there are 29
11 samples and still only one exceedance, and so I think if
12 staff were to ask the City of Long Beach for the current
13 data, it would have the data.

14 And when you look at the listing discussion for
15 toxicity in Policy 3.6, it says, "waters -- the segment
16 shall be listed if the observed toxicity is associated with
17 a pollutant or pollutants." And then, "waters may also be
18 listed for toxicity alone."

19 You do have ammonia there, but, you know, we do now
20 have 29 samples which show only one exceedance. So we would
21 ask this would be relooked at, and maybe you can't do it
22 until the next listing cycle.

23 If that's the case, then maybe like was mentioned
24 by LB for some other listings, there should be a finding
25 that it's not toxic -- I mean, that it's not causing --

1 should not be listed. They're not -- it's not an
2 impairment.

3 And we got indication of this, actually, from U.S.
4 EPA that said, basically, they thought it was going to be
5 delisted. So that's one that concerns me, we got the fact
6 sheets rather late on that.

7 And then, finally, just a reiteration, you really
8 should be looking at pollutants, not conditions where
9 pollutants haven't been identified. It's very difficult to
10 try to come to grips with how to handle a problem when you
11 don't know what the problem is.

12 So we'd ask you to perhaps make some
13 recommendations to State Board for improvement of the
14 listing/delisting policy so we can be more focused on what
15 we know are problems.

16 Thank you.

17 MS. LUTZ: Thank you.

18 Ray Tromblay followed by Alvin Cruz.

19 MR. TROMBLAY: Good afternoon, members of the Board. My
20 name is Ray Tromblay, on staff for the L.A. County
21 Sanitation Districts, and we've submitted written comments
22 in detail, so I'll skip most of the technical jargon.

23 But I did want to thank Staff. The amount of work
24 that goes into the 303(d) list in terms of organizing data
25 and storing it and reviewing it is just incredible. That

1 and just the sheer detail in the review that we saw in
2 responses to every single comment that was made.

3 We -- our agency supports the changes that were
4 made this week in the change sheet and the small change that
5 was made this afternoon.

6 We really just have one other issue, just to
7 highlight, which is the discussion that's already taken
8 place about the biological (unintelligible). This was a
9 late addition, we sent a comment letter yesterday, on this
10 late addition, we ask that you accept that to make our
11 technical arguments.

12 But that notwithstanding, I heard from a few of the
13 earlier speakers that there are reference sites for this
14 type of index in L.A. County, but we believe those reference
15 sites are for a totally different type of water body.

16 They're mountain streams at high gradients versus
17 the -- the water bodies that you're discussing listing today
18 are for flat areas down in the urban environment, and we
19 would expect that the aquatic life there would be quite a
20 bit different.

21 And then the other issue being just the fact that
22 we're not sure that all the other agencies and the
23 scientific community has fully vetted these IBI's. We think
24 it's a powerful tool, it has promise, we urge you to wait in
25 the interest of good policy and make sure that this is good

1 science before we make regulatory decisions based on this
2 science. With that, we thank you very much.

3 MS. LUTZ: Thank you.

4 Alvin Cruz followed by Dennis Mak.

5 MR. CRUZ: Good afternoon, Madam Chair, members of the
6 Board, and Staff members. My name is Alvin Cruz, I'm an
7 associate civil engineer with the County of Los Angeles,
8 Department of Public works.

9 I'm here today representing the County of
10 Los Angeles and the Los Angeles County Flood Control
11 District. We appreciate your staff's work today on the
12 303(d) listing. We also appreciate your considerations for
13 our June comment letter.

14 Today I'd like to address the benthic
15 macroinvertebrate listings added in the revised listing
16 dated July 7th.

17 First of all, these additions are a substantial
18 change which require more time for a complete review, but in
19 a nutshell, our concern is under the essence of bio-criteria
20 for urban streams. These listings are premature.

21 These -- the referenced streams to which these
22 urban streams are being compared to (unintelligible) support
23 little or no urban development. It is unreasonable to
24 expect biological conditions in urban streams to be
25 comparable to natural streams with little or no urban

1 development.

2 In its draft report dated October 2008, Assessing
3 Urban Stormwater Management in the United States, the
4 National Research Council concluded that there is a direct
5 relationship between land cover and the biological condition
6 of downstream receiving waters.

7 with current technology, including structural and
8 low impact development and best management practices, it is
9 not possible to completely revert the facts of urban
10 development and its effects on downstream water bodies.

11 Also, insufficient science currently exists to
12 definitely link water quality impairments to benthic
13 macroinvertebrate community impairments.

14 According to the NRC report, there are numerous
15 stressors other than water quality that impact the benthic
16 communities. Therefore, we urge you -- we urge your Board
17 to not list benthic macroinvertebrate impairments until
18 sufficient science exists to establish reasonable
19 (unintelligible) for urban streams.

20 Once again, on behalf of the County and Flood
21 Control District, I appreciate the opportunity to comment
22 here today. The County Board of Supervisors and the Flood
23 Control District are committed to finding successful and
24 cost-effective ways to improve water quality throughout the
25 greater L.A. basin. We do this not because it is mandated

1 but because it is the right thing to do.

2 We recognize the significant effort your staff has
3 put forward in this effort and appreciate the excellent
4 relationship we share with your staff. Once again, thank
5 you for your time.

6 MS. LUTZ: Thank you.

7 Dennis Mak followed by Gus Dembegiotes. Excuse me.
8 I know you'll correct me when you get up here.

9 MR. MAK: Good afternoon Madam Chair, members of the
10 Board. My name is Dennis Mak representing the Newhall Land
11 and Farming Company. We appreciate the opportunity to come
12 in on the 2008 update of the Clean Water Act, Section 303(d)
13 List of Impaired Waters.

14 The Newhall Land and Farming Company provided
15 comments on June 17th regarding the draft list that was
16 composed for the upper Santa Clara River at Reaches 5 and 6.

17 We support that the Board listed ammonia plus
18 nitrate in the Reaches 5 and 6 and did not list EDT and
19 PCB's in Reach 5. In addition, Newhall supports the Board's
20 decision not to list BHP, THM's, and specific connectivity
21 in the reaches of the Santa Clara River.

22 However, our review of the July 2009 by Staff
23 Report and the response to comments reviewed a substantial
24 unit listing that was not included on the draft list and has
25 not been available for adequate public review or comment,

1 specifically, benthic macroinvertebrate, BMI, bio-assessment
2 has not been added to the revised list; however, it was not
3 proposed on the draft list in any of the water bodies.

4 Effectively, this new information has only been
5 available for review on the Board's web site since Monday of
6 this week or July 13th, because the web site was down
7 shortly after the revised listing was posted on Thursday
8 afternoon, July 9th.

9 The additional BMI (unintelligible) pollutant to
10 the revised list is significant new information, and the
11 Board's adoption to include BMI on the revised list
12 contradicts the intent of the process to encourage public
13 involvement and allow for substantial public review and
14 comment.

15 We also disagree with the technical rationale for
16 the BMI listing based on the associations and certain
17 pollutant impairments and poor IBI scores to biological
18 community impairments at Reach 6 of the Santa Clara River.

19 It has long been recognized that the Southern
20 California IBI did not include a (unintelligible) reference
21 condition that is now with low gradient higher order scheme
22 such as the upper Santa Clara River, therefore, its
23 application to support this new regulation is inappropriate
24 at this time and should be delayed until a scientifically
25 defensible index for the upper Santa Clara River is

1 developed.

2 we support the collaborative development of a more
3 representative index that better reflects the overall
4 aquatic community structure including the benthic species as
5 a whole since BMI index has not been studied or tested in
6 this watershed.

7 In conclusion, Newhall does not support the listing
8 of BMI at Reach 6 because of procedural and technical
9 shortcomings.

10 Thank you again for the opportunity to comment.

11 MS. LUTZ: Thank you.

12 Gus, and I'm going to let you tell me.

13 MR. DEMBEGIOTES: Good afternoon Madam Chair, Board
14 members. My name is Gus Dembegiotes representing the City
15 of Los Angeles and its Bureau of Sanitation.

16 First, I would like as -- well, as LB noted in her
17 presentation -- well, first of all, I would like to thank
18 the Staff for putting together this proposed 2008 list.
19 I -- I know it was a lot of work. I know it was a lot of
20 work for us to go through and also do our own evaluation, so
21 I can appreciate the effort that they put forward.

22 Basically, we believe that the -- that where
23 sufficient information was provided in the fact sheets that,
24 in essence, this did improve the transparency of the policy
25 as LB noted in her presentation.

1 And also as LB noted in several of her comments,
2 I'll go through them quickly, as they've been covered by
3 other speakers, too. Yes, we did request that the
4 Regional Board Staff reevaluate legacy listings using the
5 2004 State Listing Policy. We also made that request in
6 2006 to the State Board.

7 We believe that the legacy listings were placed on
8 the list prior to 2002 and should be reevaluated using the
9 listing policy.

10 You know, our principal concern about those legacy
11 pollutant legacy listings are that it may require the
12 development of T.M.D.L.'s in the future for water bodies
13 that may not really be impaired.

14 Also, the other issue with that was that if -- in
15 many cases, we couldn't find the data for those legacy
16 listings, and we couldn't really make our own determination
17 whether they were done appropriately or not, and I was
18 hoping that we thought that the data could be made available
19 for public evaluation that would have helped us in our
20 determinations.

21 Another comment that was made by another speaker
22 that we agree with is that we also believe that the
23 Regional Board should move away from listing water bodies
24 based on conditions such as algae, odor, debris, because we
25 don't believe they're pollutants and they're not in line

1 with 40 CFR Section 130.7 or the 2004 listing policy.

2 Also, I think that what the other speakers have
3 said about the 11 or 10 new listings for benthic
4 macroinvertebrate bio-assessments, I think we need more time
5 for that. I don't think there was enough time for us to
6 really, you know, review those listings. We would suggest
7 either additional time or defer it to the next listing
8 cycle.

9 And, lastly, this is a general comment again, which
10 LB noted in her presentation was that we -- one of our
11 concerns is that if you're going to go forward with listing
12 biostimulatory substances, we're concerned about the
13 proposed use of guidelines.

14 what we would prefer is to see the development of
15 the numerical criteria using the Water Quality Standard
16 Setting Process in which all factors required by the State
17 Water Code are considered and the public process is
18 followed.

19 With that, I thank you very much.

20 MS. LUTZ: Thank you.

21 Tatiana Gaur and then Alex Farassati.

22 MS. GAUR: Good afternoon again. Tatiana Gaur on behalf
23 of the Santa Monica Baykeeper. Our comments are very much
24 in line with what Heal the Bay said earlier. We are here to
25 support the Staff's efforts and the listings for benthic

1 macroinvertebrates' assessment and for invasive species. We
2 are supporting those two new listings on behalf of our
3 members and the organization who is intimately involved with
4 some of those issues.

5 And to address the benthic macroinvertebrate
6 bio-assessment and the Index of Biological Integrity, I just
7 want to clarify that this tool has been -- the -- the Index
8 of Biological Integrity has been developed some time ago and
9 was peer reviewed.

10 In fact, it was developed to assess specifically
11 for standing, arid, and populace Southern California coastal
12 region, so it's specific to the L.A. area. It's not for,
13 you know, so that you don't have any question that it's for
14 some other state that's completely different geographically,
15 hydrologically, and otherwise from our Southern California
16 waters.

17 And moreover, it's -- as I said, has been peer
18 reviewed, widely accepted, and scientifically based so just
19 in line with the policy -- listing policy it's supported by
20 scientific evidence.

21 And more specifically, benthic macroinvertebrate
22 bio-assessment are a true method for determining impairment
23 in stream health and that's exactly what we're interested in
24 to see what -- after all is said and done, what exactly is
25 happening with this treatment, is it getting better, is it

1 improving its overall condition, and that's just the --
2 the -- the amount of pollution or each constituent
3 concentration in the stream.

4 Many pollution events go undetected, as you know,
5 and with conventional water (unintelligible) techniques we
6 can't determine if the health of the stream is improving.

7 Benthic macroinvertebrates are in constant contact
8 just by their nature in the stream and changes in water
9 affect them, and we can -- we can observe those changes
10 easily through that -- through the index.

11 Macroinvertebrates are extensive to pollution and
12 will be replaced with more pollution tolerant species as
13 water quality degrades. That's what happens if you don't --
14 if you don't focus on that part of stream health, but in
15 measuring the numbers and types of BMI's, it can be
16 determined whether stream health has improved or degraded by
17 the number of pollution sensitive species at any given
18 location.

19 You know, we speak of good bugs and bad bugs, which
20 means bugs that live in conditions that are clean and others
21 that are there, but they're really a sign that the stream is
22 polluted.

23 Additionally, BMI's can be easily and
24 cost-effectively used to monitor progress and remove
25 impaired water bodies from the 303(d) list after they have

1 (unintelligible). So it's actually a tool to
2 (unintelligible) the effect (unintelligible) and the stream
3 as a whole.

4 So in light of that, the IBI is the perfect tool
5 for determining the success of projects assigned to fix
6 impairments.

7 And really, when you see streams such as -- and
8 reaches in Santa Clara, we share IBI scores less than ten,
9 that's a cause for alarm, and we shouldn't -- and I don't
10 think the Board shouldn't be side-tracked by comments that
11 this is not specific to our area. It is. The tools were
12 developed for our area.

13 And we also support the invasive species listing
14 for the same reasons that Heal the Bay expressed earlier.
15 Santa Monica Baykeeper does a lot of work on that and we
16 know firsthand how traumatic and disastrous the effects of
17 invasive species are in our streams all over Malibu.

18 And as you saw from the slides shown by
19 Kirsten James, each year the condition gets worse and worse,
20 and those species out-compete needed species and basically
21 degrade the whole ecosystem in our streams.

22 Finally, I want to quickly address the decision to
23 change the T.M.D.L. requirement status of the Malibu Lagoon
24 Benthic Community Effect and, again, I'm speaking here on
25 behalf of the Baykeeper. We're (unintelligible)

1 organizations involved in this, so I just wanted to say that
2 even though there's a program, there is no assurance that
3 this program will truly address all effects in a timely
4 manner.

5 The restoration is led by us, and it consists of
6 redirecting the channels in the Lagoon, but it doesn't
7 really address water quality problems.

8 MS. LUTZ: Thank you very much.

9 MS. GAUR: Thank you.

10 MS. LUTZ: Jason Weiner followed by Dr. Randal Orton.

11 MR. FARASSATI: Good afternoon. My name is
12 Alex Farassati, I'm the (unintelligible) manager for the
13 City of --

14 MS. LUTZ: I'm sorry?

15 UNIDENTIFIED SPEAKER: Did I say something?

16 MS. LUTZ: I did. I'm sorry. Go ahead.

17 MR. FARASSATI: (Unintelligible) discovery of the
18 New Zealand Mud Snail in the Malibu Creek watershed, the
19 City of Calabasas has engaged in rigorous best management
20 practices to ridding the stream of this non-native snail.

21 These BMP's included suspending water quality
22 monitoring programs while locating and researching the
23 New Zealand Mud Snail in each tributary of Malibu Creek.

24 To prevent the unintentional spread of mud snails
25 given the subsequent water quality monitoring

1 (unintelligible) at each (unintelligible) location.

2 Additionally, (unintelligible) were placed in
3 freezer (unintelligible) 48 hours after each use and all
4 equipment was washed and inspected.

5 City of Calabasas participated in mud snail
6 (unintelligible) hosted by the Santa Monica Bay Restoration
7 Commission. To promote awareness of this issue, the City
8 also closely (unintelligible) at various locations around
9 Las Virgenes Creek.

10 In a survey conducted by Heal the Bay and the
11 Santa Monica Bay Restoration Commission, it was stated that
12 numbers of mud snails (unintelligible) Las Virgenes Creek
13 (unintelligible) was substantially lower than those
14 (unintelligible) areas of Malibu Creek.

15 This survey also observed native snails
16 (unintelligible) nearly identical in size and color to the
17 New Zealand Mud Snail.

18 Additional survey described that the New Zealand
19 Mud Snail has been established in (unintelligible) streams
20 within Malibu Creek watershed and shows no evidence of
21 (unintelligible) into other streams.

22 One we understand is that the snail is not native
23 and is present in Las Virgenes Creek, there is currently no
24 form or precision known for (unintelligible) eradication of
25 this species.

1 Calabajas has taken all necessary steps to prevent
2 the spread of this non-native snail. Given the existing
3 science and technology, establishing and complying with a
4 new T.M.D.L. would only (unintelligible) side-track efforts
5 and (unintelligible) on other (unintelligible) T.M.D.L.'s.

6 We therefore request that the Board not approve the
7 New Zealand Mud Snail for the proposed 303(d) listing at
8 Las Virgenes Creek (unintelligible) for different actions
9 other T.M.D.L.'s.

10 Thank you.

11 MS. LUTZ: Thank you.

12 Jason Weiner, and then Dr. Randal Orton.

13 MS. GLICKFELD: Madam Chair, if I could ask, I really
14 appreciate all the testimony, but please could not -- you
15 don't have to read the letters that are already in our
16 packet. We really do read everything, and I -- it would be
17 great if somebody else has already said what you said, if
18 you could just reiterate as quickly. That's all.

19 And not particularly to this person, but to the
20 rest of the speakers.

21 MS. LUTZ: Thank you.

22 MR. WEINER: Good afternoon, Madam Chair, Members of the
23 Board. My name is Jason Weiner, I'm a member of the Ventura
24 Coastkeeper and Wishtoyo Foundation.

25 In general, the Ventura Coastkeeper is supportive

1 of the 303(d) listings and supportive of the proposed
2 benthic macroinvertebrate listing for the same reasons as
3 Heal the Bay and Santa Monica Baykeeper, but we would like
4 to emphasize the peer review indicates the composition and
5 abundance of benthic macroinvertebrates are reliable
6 indicators of water quality and, secondly, that IBI was
7 developed specifically for Southern California streams.

8 while we're here today to ask you to add
9 Calleguas Creek Reach 2 to the 303(d) list for trash
10 impairment, because Ventura Coastkeeper's 2006 Stream Team
11 data submitted to the Board in accordance with the Board
12 procedures indicates applicable water quality standards for
13 trash are exceeded and that trash in the streams causes or
14 contributes to the problem.

15 First, we would like to commend the Board and Board
16 Staff for its diligent and dedicated working the 303(d)
17 listing processes, proposal process, and we feel this
18 omission was merely an oversight as there reach -- as there
19 are other Calleguas Creek reaches that the Staff is
20 recommending for the 303(d) listing for trash impairment
21 should be listed for the 303(d) listing policy.

22 To give you a good idea about that reach,
23 Ventura Coastkeeper Stream Team has a sampling point at
24 Calleguas Creek CL 1, which we submitted data on in our
25 comment letter for 2006.

1 This monitoring point is just below -- just at PCH
2 where Calleguas Creek crosses PCH. It's identified as --
3 for the Regional Board Water Staff as Calleguas Creek
4 Reach 2, that estuary to Potrero Road.

5 So this data -- submitted data used by the Board
6 staff, this is the same data that was submitted that was
7 used by the Board staff for the other trash listings on the
8 Calleguas Creek reaches.

9 And there was three occurrence of trash
10 impairments. The first was 6/11/2006 where there was 1 to
11 10 items of trash. The second was September 30th, 2006,
12 there was 10 to 50 items of trash observed by our
13 Stream Team, observed and recorded, and there was on
14 December 10th, 2006, 1 to 10 items of trash.

15 And I'd just like you to note that this trash was
16 observed in the water or on the stream base and was recorded
17 in our records.

18 So, in conclusion, we feel that Calleguas Creek
19 Reach 2 should be added to the 303(d) list as impaired per
20 trash, because the point is the trash in Calleguas Creek
21 Reach 2 violate the numeric (unintelligible) zero trash in
22 the Los Angeles River Trash T.M.D.L. and other regional
23 trash T.M.D.L.'s, which is the evaluation guideline used by
24 this Staff, and the presence of trash in a consistent
25 frequency is a warrantable listing.

1 If we had -- how much more time do I have?

2 MS. LUTZ: Two minutes.

3 MR. WEINER: Just to give you an idea of why it's
4 important -- we feel it's important for trash to be listed
5 is because, as quoted and as stated in the revised draft of
6 July 27, 2007, Los Angeles River Watershed Trash T.M.D.L.,
7 trash in the waterways causes significant water quality
8 problems. Stormwater (unintelligible) vegetation decreasing
9 (unintelligible) and habitats of fish and other living
10 organisms. wildlife living in rivers and (unintelligible)
11 areas can be (unintelligible) with trash.

12 Except for the large items, such as shopping carts,
13 settleables, (unintelligible) they include glass, cigarette
14 butts, which, by the way, tossed (unintelligible), railroad
15 construction debris and more.

16 Settleables can be a problem for bottom feeders and
17 can contribute to sediment contamination, some of the debris
18 including diapers and medical and household waste and
19 chemicals are a source of bacteria and toxic substances.

20 Furthermore, floating debris that is not
21 (unintelligible) will eventually end up in the beaches or in
22 the open ocean (unintelligible) coastal waters.

23 Thank you for your time.

24 MS. LUTZ: Thank you.

25 Dr. Randal Orton followed by Ashli Desai.

1 DR. ORTON: Good afternoon, Madam Chair. Last name's
2 Orton.

3 You know, my comments -- I walked through the door
4 with some comments today, which are primarily trying to
5 reiterate things which are already available in the packet,
6 and the two areas I'll address are exactly the areas where
7 we had the most detailed written comments, so I don't wish
8 to repeat this.

9 Also, there were some items that came up today
10 which I would like to address with the BMI's, and my notes
11 here from the materials out on the table were on the new
12 listings for that was just (unintelligible) with a question
13 mark for every one of those. My understanding is those were
14 on a Monday.

15 We're in a water shortage in our water district.
16 The first part of this week our customers are just getting
17 the first bills with the water budgets, and so we're very
18 busy, so that's very good information for us.

19 It's important -- and I think in terms of just go
20 over here, I'll start with when I walked in the door. Kudos
21 to the transparency. You've heard it now several times, and
22 I think you've gotten it.

23 What did we see when you had the transparency?
24 What did it reveal? A lot of data, and I've been through
25 this cycle now, three times, and I'm here to tell you that

1 both the amount of data available because of this
2 transparency is a lot more than our previous cycles.

3 In addition to that, even if that hadn't happened,
4 there's a lot of data out there, there's a lot of monitoring
5 efforts that are just -- are done now, and we -- we analyzed
6 30 megabytes of data by the time the dust settled, not just
7 for the 303(d) listing, but the tri-annual review.

8 Comments that I'll be making today are just
9 (unintelligible) and it's all been submitted to your staff
10 who has certainly kudos for just the analytical horsepower
11 to do this.

12 So the transparency. What did we see when we saw
13 the -- and so the transparency for this listing cycle. Two
14 of the other agencies and comment letters that I reviewed
15 this morning, I'd like to reiterate their points about
16 legacy listings.

17 If the same sort of approach was brought to your
18 legacy listings, I think that we -- you all (unintelligible)
19 understand that it can't be done. If I were in their shoes,
20 I'd say, we just got done with this, now the legacies, which
21 is something I put on there as a reminder.

22 And to kind of highlight a point, we rarely -- as
23 an agency, our time is limited and we drill into the
24 schedule (unintelligible). We've done it twice in about
25 15 years, and both times that we've drilled into this we've

1 found problems, and there are problems (unintelligible)
2 which are problems which are understandable.

3 In both cases, the drilling listing to this to the
4 basin plan objective, we had to actually drill all the way
5 into the objective to find out, and it was so vague, why
6 (unintelligible), when we know the natural waters are here.

7 when we drilled there we found out that the
8 Regional Board at that time, we're now talking about contact
9 in the '70's, went out and checked. It was just the timing
10 of the season, various season. It wasn't known that well at
11 that time.

12 So it was good logical information for these gaps,
13 and you don't get that logical an explanation until you
14 (unintelligible). So a systematic approach of legacy
15 listings is probably overdue some time in the next listing
16 cycle.

17 The other issue had to do with the invasive
18 species. We've already made our comments. It's one of
19 those pleasurable times when we line up with Heal the Bay on
20 recommendations for this organization.

21 Having to do with the decision (unintelligible)
22 creek mud snails. In a previous life, I was a wildlife
23 biologist of sorts, have some experience with invasive
24 species, worked in Australia once.

25 The reason why we listed it and -- asked you to

1 list it (unintelligible) was because the decision not to
2 list it was because the numbers there, first off, aren't
3 quite as high as they are elsewhere, and, secondly, it looks
4 like they've got down a little bit.

5 This is a species that arrived here a couple years
6 ago and went through about a third of the watershed in two
7 years. We don't know if things will change next year, so at
8 a minimum, till it is fixed, at least it's there.

9 And I realize that this position is contrary to
10 some of the other public agencies, and I fully appreciate
11 that. What do we do about it if we list it? If I had the
12 answer to that, I would probably be hired a welcome man at
13 this point. You know, how do you get rid of these things?
14 Should we even get rid of them? Were they naturally
15 transported from wildlife? (Unintelligible) all the time.

16 I'll leave invasive species with one last comment.
17 It's not the only invasive species you have out there.
18 Frankly, I wish that if we knew what to do about crayfish,
19 I'd like to see those go away.

20 If you go out there at certain times and the creek
21 is getting dry, it's a crayfish banquet. As the pools get
22 shallower, they come out and just basically eat all the
23 aquatic life in the pool that can't get away. And then you
24 have the herons eat the crayfish, but you have invasive
25 species. There's more on your plate than just

1 (unintelligible).

2 with that, those are the comments about the
3 (unintelligible) I wanted to address. There's some
4 uncertainty about which way to go here, so I'll try to
5 explore both fast.

6 Because Malibu Creek, the examples given on the
7 data for Malibu Creek, I'm intimately aware of this data.
8 We had to sample for macroinvertebrates. I saw the data and
9 over a time (unintelligible) for several seasons and the
10 very first thing I checked and got involved with was --

11 MS. LUTZ: Thanks.

12 DR. ORTON: Any way, if I may close with our position on
13 that, we strongly encourage that you -- and with respect to
14 other speakers, strongly encourage that you do not move
15 to -- to include that on the listing without some further
16 (unintelligible). We'd like to have more opportunity to
17 look at that, whether that's three years or two months.
18 That's where we are. Thank you.

19 MS. LUTZ: Thank you very much.

20 Ashli Desai followed by Peter Kozelka.

21 MS. DESAI: Hello, Madam Chair, members of the Board.
22 My name is Ashli Desai, and I'm here today representing the
23 Parties Implementing T.M.D.L.'s in Calleguas Creek
24 watershed.

25 As many of the speakers have said today, we really

1 appreciate the effort put forth by the Staff. It was a much
2 easier process to review this time around, and we really
3 commend and support the changes that were made by the Staff
4 in response to the comments that were submitted, but we do
5 have one remaining concern that we'd like to present today.

6 On the proposed list that came out for everybody's
7 review for public comments, there was one new trash listing
8 in the Calleguas Creek watershed, and in reviewing the data
9 for that trash listing, we identified that there were some
10 errors in that data submission.

11 We worked with Ventura Coastkeeper who had
12 submitted the data who you had heard from earlier to correct
13 that data, and that was subsequently resubmitted during the
14 comment period.

15 On the list that then came out a few days ago,
16 there was four additional listings for trash on the
17 Calleguas Creek -- in the Calleguas Creek watershed.

18 Because of the concerns we had -- the stakeholders
19 did not have an opportunity to review the revised data set
20 that was submitted, and we can only assume that the listings
21 were made on that revised data set or else they were made
22 based off the data set that contained errors, and so we were
23 concerned about the validity of the data that was used for
24 the trash listings.

25 Additionally, when we reviewed the revised data

1 that was submitted, we noticed that there was changes while
2 the original data set had included specific numbers of trash
3 observed.

4 This revised data set included ranges of trash, 1
5 to 10 pieces, 10 to 50 pieces, and we don't feel that this
6 is verifiable data that should be used for listing.

7 Our concerns are that without any additional
8 documentation where it's just statements like it's a light
9 amount of trash with a range of number of pieces that it's
10 not possible to tell whether or not that trash is the same
11 trash that was observed during the last monitoring period.

12 There wasn't any collection of the trash, so you
13 could be seeing the same amount of trash that sits there.
14 We've done some trash monitoring. We know that sometimes
15 trash can sit there for months at a time.

16 So we're concerned that this data is not verifiable
17 and it shouldn't be used to list trash especially additional
18 regions that were listed in this period of time after the
19 comments -- the original list was proposed.

20 Additionally, as was mentioned by LB, the newly
21 adopted MS4 permit for Ventura County contains a number of
22 provisions to address trash that aren't just in the
23 Calleguas Creek watershed.

24 These aren't all new trash requirements. They have
25 specific time frames, trash excluders, and various other

1 BMP's that are required to be put into place within two
2 years, and we feel that the level of trash we demonstrated
3 in this watershed generally pretty light except for the
4 reach that was originally listed, 1 to 10 pieces as was
5 discussed, will be addressed through this new MS4 permit.

6 The -- it should be noted that the listing policy
7 specifically talks about the recommendations for addressing
8 trash to be, identifying trash as a problem using numerical
9 data and non-numeric information but allow existing programs
10 to address any identified water-related trash problems,
11 therefore we feel that given the MS4 permit existence we
12 should not -- that this should be addressed through this
13 existing permit.

14 So, in conclusion, we feel that the Regional Board,
15 we're asking the Regional Board to consider not listing
16 trash at this time for Reaches 3, 7, 9A, 9B, and 10 in the
17 Calleguas Creek watershed based on our concerns about the
18 validity of the data and the lack of the review time for all
19 the new listings.

20 And we also feel that the MS4 permit implementation
21 will address these potential impairments, which, should you
22 decide to maintain listings, we request that they be
23 categorized as, C, being addressed by an alternative
24 regulatory program needing an MS4 permit.

25 Thank you for your consideration.

1 MS. LUTZ: Thank you.

2 Excuse me, the last card I have is from the City of
3 Ventura and there is no name on the card.

4 MR. KOZELKA: Hi, folks. I'm Peter Kozelka from EPA,
5 Region 9. I'm the T.M.D.L. coordinator for the region. I'm
6 here, basically, to support the staff efforts. As you've
7 heard, they've been quite massive and quite thorough.

8 I just wanted to give you guys a little bit of an
9 idea of what happens once it goes from your hands into the
10 State Board hands and into our hands, point of education.

11 EPA actually reviewed what's on the list and what's
12 not on the list. What we don't review or we don't actually
13 approve, so to speak, are the assessment efforts. So you've
14 heard a lot about the listing policy --

15 (Interruption in the proceedings)

16 MS. LUTZ: I don't think that was five minutes.

17 MR. KOZELKA: I was at the point, we don't actually
18 approve the methods, we just approve the decisions, so I
19 want to make sure that you understand that.

20 We look at what's on the list and what's not on the
21 list. So my comments today basically deal with, we support
22 things that are on the list.

23 We are actually, at this time, not indicating that
24 you are leaving things off the list inappropriately. If you
25 did leave things off the list, we do have the ability to put

1 them on, as has happened repeatedly in the past, although
2 I'm not anticipating that at this time, although there is a
3 possibility.

4 One of the decisions before you today is a thing
5 called a data record, a data window. Your staff has
6 basically said, here's the public comments period, submit
7 your data, we're going to evaluate all that data and no
8 more, and I believe the end time was February 2007.

9 Almost two years has gone -- a little more than two
10 years has gone by. Other people have submitted data, so the
11 question is, are you going to move the targets so to speak
12 on that? My recommendation is no. It's cleaner for you
13 all, it's cleaner for everybody. This report, integrated
14 report, comes up every two years, potentially sometimes four
15 years, and so it will get fixed.

16 The other most important thing to consider is that
17 right before any T.M.D.L. is written, somebody stands around
18 and relooks at the data, not only the data that's part of
19 the 303(d) list but also the newer data to evaluate whether
20 or not it should be in the T.M.D.L. to be prepared.

21 So in your packets is a comment from me about
22 Los Cerritos ammonia, and when I looked at the data, there
23 were 22 samples and I was going to recommend delisting, in
24 fact, we did recommend delisting. The State listing policy
25 has its own numbers. I'll not get into details of them, but

1 they're higher than what I would recommend.

2 As I was just trying to describe, instead of
3 actually doing a T.M.D.L., we make a finding on looking at
4 all the data from wherever the City of Long Beach started to
5 the present time, we can say looking at all this data, we
6 make a decision that there is not an apparent mass. If you
7 feel like you're missing something, you're not, because the
8 data window sort of separates us from the data.

9 (Unintelligible) benthic macroinvertebrates, you've
10 heard several different ideas on that. I just want to say
11 that it's scientifically sound. It is possible to miss
12 based upon condition, but mind you, everybody in the room,
13 everybody who knows about water quality, dissolved oxygen is
14 a condition, it's not a pollutant.

15 And you are evaluating something known as a
16 narrative water quality objective which is appropriate as
17 well as a numeric water quality objective. So you are
18 required -- in the 303(d) list, people are required to make
19 assessments based upon all water quality standards,
20 narratives, and nutrients.

21 Another thing that's included that's actually not
22 on the list but is something that we evaluate, are these
23 things that are called other regulatory actions or other
24 actions and T.M.D.L.'s.

25 The reason why we look at them is because they're

1 not on the list. So if you've been paying attention to the
2 idea of five categories, Category 5 is our major looking
3 standpoint.

4 The other things that are off of it we also
5 evaluate. We're trying to say if it's not on the list, but
6 it should be on the list, let's get it into Category 5. But
7 if another program is dealing with it, we can support that.

8 In the case of Port Hueneme, the dredge cleanup, as
9 well as Malibu Lagoon Restoration, we can support that.
10 There are federal powers as well as State powers involved in
11 the Malibu Restoration Project.

12 So I want to encourage you to adopt today, if you
13 feel like you can, you feel like you can make a
14 (unintelligible) recommended. Your staff has worked very
15 hard, it will take a long time to get through things if you
16 want to open up another data window, and I thank you for the
17 opportunity to comment. And if you wish to ask for any
18 clarifying questions, I'll be here.

19 MS. LUTZ: Thank you.

20 Dan Phiffer, City of Ventura. That's the last
21 speaker card.

22 MR. PHIFFER: As previously announced, I'm Dan Phiffer.
23 Good afternoon, I, too, am appreciative of all the work that
24 staff put into it and the ability to comment today and
25 supplement our comment letter.

1 The listing I'd like to speak to is Number 8872 on
2 Page 13-178. We feel it's an appropriate data set or the
3 data set is flawed and that this is not appropriate to be
4 listed at this time. It is for toxicity in the
5 Santa Clara River estuary.

6 Now, the estuary, is well documented as a brackish
7 water and the test species used for the listing was for
8 freshwater species, therefore they're not saltwater
9 tolerant.

10 The only conclusion by having freshwater test
11 species with brackish water is that the freshwater species
12 do not always tolerate salinity concentrations following the
13 brackish water.

14 So for these reasons we would recommend that we do
15 not list 8872, toxicity for the Santa Clara River estuary at
16 this time and maybe we should move forward with working with
17 staff to swing our receiving water monitoring sites for a
18 saltwater tolerant species or (unintelligible) species and
19 then reevaluate the data at the next listing process.
20 That's it.

21 MS. LUTZ: Thank you. Can I just ask one -- when you
22 referred us to Page 178, you were referring to the Ventura
23 Reach?

24 MR. PHIFFER: The estuary.

25 MS. LUTZ: The estuary. Okay. Great.

1 MS. GLICKFELD: Just for further clarification, it's
2 easier for me to look at the response to comments, do you
3 have that available to you?

4 MR. PHIFFER: No, I don't have that available.

5 MS. GLICKFELD: Okay. Well, I'm talking about our staff
6 developed a response to every comment that was received in
7 the comment letter, and it's -- and so I hope that -- I was
8 hoping that you would be able to comment on their response
9 to you, but I guess you can't.

10 MR. PHIFFER: Okay.

11 MS. GLICKFELD: Thank you.

12 MS. LUTZ: Thank you.

13 MS. FORDYCE: Yes. I just wanted to respond to, so you
14 heard a lot of statements that some of the -- the new
15 changes in regards to IBI (unintelligible) and some people
16 didn't know (unintelligible). I just wanted to clarify the
17 record that those changes were made in (unintelligible) of
18 the comments that were received by Staff, and those were
19 timely comments from Heal the Bay.

20 MS. LUTZ: So in other words, the changes that were made
21 earlier this week came from comments that Staff received?

22 MS. FORDYCE: Yes.

23 MS. GLICKFELD: So --

24 MS. FORDYCE: And these were timely comments.

25 MS. GLICKFELD: So these were comments received by

1 June 17th but not addressed before the final staff report
2 went out?

3 MS. FORDYCE: Yes. What I understand happened is the
4 response to comments were issued and the Staff did a
5 reassessment on the letters and the conditions.

6 MS. GLICKFELD: And Staff has the ability under the law
7 to do that?

8 MS. FORDYCE: They're allowed to --

9 MS. GLICKFELD: Thank you.

10 MS. LUTZ: Thank you, Ms. Fordyce.

11 Okay. Let's start with questions from the Board
12 and start with Mr. Blois.

13 MR. BLOIS: I have very few.

14 The question for Staff, there was a lot of comments
15 about the, you know, (unintelligible) outfall, somebody
16 mentioned that if there's (unintelligible) those that score
17 less than 10; is that accurate?

18 MS. NYE: Staff included those that scored very poor or
19 poor, which, I don't remember the exact number right
20 off-hand, but -- 39. Most of them were very low. There's
21 some that were 6 and 4, in that range.

22 MR. BLOIS: Okay. So the 10 number or less than 10 --

23 MS. NYE: It's not --

24 MR. BLOIS: Accurate?

25 MS. NYE: Yeah. That was -- there were some that were

1 less than 10 but not all of them. They were all either poor
2 or very poor.

3 MR. BLOIS: Okay. There was another comment made, I
4 believe, by Coastkeeper that the IBI index is a reliable
5 indicator for water quality, that's a general statement,
6 would you agree or disagree with that?

7 MS. NYE: Yes. Many things can affect the IBI score,
8 but as a general statement, yes. It's a reliable indicator
9 of water quality in general.

10 MR. BLOIS: Actually, one last question. I might have
11 another one, too, but for now just one last question, and
12 that's actually EPA fellow, you mentioned that you could
13 list stuff if we miss them, could you also delist?

14 MR. KOZELKA: Sorry, I had to walk up here.

15 MS. LUTZ: State your name.

16 MR. KOZELKA: Peter Kozelka. You might notice I'm
17 taking my time. We defer to State and their listing
18 decisions typically. So if their decision is to put it on
19 the list, we often let them, you know, have that decision,
20 and very few cases do we not take action on a State proposed
21 list decision. Does that answer your question?

22 MR. BLOIS: What about delisting?

23 MR. KOZELKA: We defer to the State.

24 MR. BLOIS: Got it. Thanks.

25 That's all for now. Thanks.

1 MS. LUTZ: Ms. Diamond?

2 MS. DIAMOND: I have a couple of questions.

3 I would like to say to Staff that the work that you
4 did was truly amazing, and even though we do this every two
5 or three years, it -- it -- there's so much information, and
6 I learn every time so much about the state of the water --
7 the watersheds in our region, and so -- and it really is the
8 basis of everything that we do, and I'm reminded about that
9 whenever I see this information.

10 It's incredibly well done, based on science, and
11 it's a good education for all of us. It's the -- what --
12 what's going on, what's improved, and we're hearing that
13 T.M.D.L.'s have improved water bodies. That -- you know,
14 that speaks volumes.

15 There were a few things that came up that I wanted
16 to just ask you about, and I'm just going to go in order of
17 my notes not importance, but the issue of the 30-day
18 geometric means for bacteria, could you just comment on
19 that?

20 MS. NYE: Sure. The -- well, the permits are between
21 the 30-day geometric -- the 30-day mean and -- geometric
22 mean and rolling geometric mean, and this Board has used
23 rolling geometric means in the development of T.M.D.L.'s.

24 But the listing policy is very specific in that it
25 does not allow any use of data which is not independent of

1 each other -- and if you're rolling, you know, you're
2 reusing a lot of data as you move through the months, so
3 those data are not independent of each other. So to follow
4 the listing policy carefully, we use a calendar month.

5 A large data set, you know, that is -- that is a
6 fully adequate method of -- fully adequate to assess for
7 something that is impaired.

8 MS. PURDY: I just wanted to add, also, that the beach
9 actual, which was promulgated by EPA several years ago also
10 does give the discretion to choose how they do the
11 calculation, whether geometric mean, and that rule actually
12 indicates alternatives including either a calendar month or
13 30-day geometric mean basis.

14 MS. DIAMOND: And so the basis of this selection of
15 staff for the way that you choose to do it is --

16 MS. PURDY: Is consistent with EPA's accrual State
17 policy rule as well as within the State Board's listing
18 policy.

19 MS. LUTZ: Can I just stop you for a moment? That was
20 Renee Purdy for the record.

21 MS. PURDY: Excuse me. Yes. I'm sorry.

22 MS. DIAMOND: Okay. I -- I just have a couple of
23 questions, and they're by several people -- several people
24 who commented about trash.

25 The first comment about trash was from Dr. Gold on

1 the Compton Creek Trash L.A. River T.M.D.L., and -- and we
2 listened to those comments. What -- how would you address
3 his concerns on that?

4 MS. NYE: In terms of the 303(d) list, the -- listing it
5 as the bacterial T.M.D.L. is appropriate. That T.M.D.L.
6 divided up the whole watershed for Los Angeles County, and,
7 you know, gave responsibility including the watershed of
8 Compton Creek. That was part of those calculations, so that
9 is part of the T.M.D.L.

10 The other recommendations that we should do, but
11 that's, you know, not part of the 303(d) list.

12 MS. DIAMOND: There were other -- whether it should be
13 addressed by tributary rule, I believe?

14 MS. NYE: Well --

15 MS. DIAMOND: I mean, are there some -- are there any
16 ways that you think that we should address the Compton Creek
17 Trash T.M.D.L. or is that -- today or in the listing in the
18 future or are there better ways to do that?

19 MS. NYE: I think the listing recommendation today makes
20 a lot of sense because the T.M.D.L. covered that area.

21 The other -- the other -- something else I would
22 like to speak to, because that's, you know --

23 MS. PURDY: I would -- this is Renee Purdy again. I
24 just would clarify that I think, one, as LB said, that it is
25 appropriately considered as if a -- in the T.M.D.L.

1 addressed category because it's part of the larger
2 Los Angeles River Watershed.

3 I think that we'll also have the opportunity to
4 clarify that, which Dr. Gold suggested, during the MS4
5 reopener, which you'll hear later this year and possibly
6 through other mechanisms which we can discuss with
7 management and how we can make that clarification that it is
8 Regional Board's staff's intent that it is covered as part
9 of the L.A. River Trash T.M.D.L.

10 MS. DIAMOND: Right. And I think that coming up with
11 the reopener on that MS4 is also -- is something that I
12 think is the appropriate place to do that.

13 Then there were -- there was a comment dealing --
14 two comments by the Ventura Coastkeeper on the
15 Calleguas Creek Reach 2 Trash, and if you want to also
16 consider with answer and your comments in response to that,
17 Ashli Desai's comments about -- or maybe that somebody
18 separate, because she asked several different things, but on
19 the Ventura Coastkeeper, Calleguas Creek Reach 2, there was
20 a discussion about, you know, how -- whether that should be
21 on the 303(d) listing.

22 MS. NYE: So for Calleguas Creek Reach 2, we looked,
23 again, at all that data that we evaluated, and we could see
24 that we used the wrong listing policy unlike the other
25 listings in Calleguas Creek, so we can agree with

1 Ventura Coastkeeper. It's like it is in Calleguas Creek and
2 we can list it -- we can add it to the proposed listings if
3 the Board wants.

4 MS. DIAMOND: Well, would this be something that you
5 would want to do, you would agree? would that be part of
6 the -- in addition to the change sheet?

7 MS. NYE: Yes. That would be in addition to the change
8 sheet. That would be in addition to the change sheet.

9 MS. DIAMOND: Okay. And then the other comments
10 concerning trash by Ashli Desai, she talked about
11 Calleguas Creek, which is 3, 7, 9A, 9B, and 10, and she
12 talked about there was trash listing errors and questioned
13 whether the data was good, because there were two different
14 times where there was different information.

15 And so I'd like you to address that and whether you
16 think that requires any change or not.

17 MS. NYE: I don't think that requires change. The first
18 set of data we evaluated and made only one listed
19 recommendation, and then a number of people reviewed the
20 data, both the Calleguas Creek parties and then
21 Ventura Coastkeeper realized that the data was flawed, so it
22 gave us a second database, which we evaluated, it was
23 slightly different, but it -- it resulted in a
24 recommendation that those reaches be listed.

25 MS. DIAMOND: So you don't think there's anything that

1 needs to be done?

2 MS. NYE: No. I don't think there's anything that needs
3 to be done. There were a number of people that were looking
4 at that second database to be sure it was the correct
5 database.

6 MS. DIAMOND: Okay. That's all that I have right now,
7 and, again, I just want to say it was a lot of good
8 information, very well organized, and extremely interesting
9 and informative and helpful, so thank you.

10 MS. LUTZ: Ms. Glickfeld?

11 MS. GLICKFELD: Thank you.

12 And I also want to thank the staff, all of the
13 staff. I saw the long listing of Staff people involved in
14 this and how much work it took all of you to do this.

15 I'm also really excited that the State's database
16 is finally active, and I wanted to ask, first of all,
17 whether or not that database is something that is on the
18 web?

19 MS. NYE: That database -- some use of the database is
20 on the web.

21 MS. GLICKFELD: And is it geocoded?

22 MS. NYE: It is not geocoded. It is not geocoded, but
23 you can look at a listing and click on the fact sheet and
24 then from the fact sheet get all of the data that was used
25 and all of the references.

1 MS. GLICKFELD: So it literally -- not anticipating,
2 when this listing is finalized, creating --

3 MS. NYE: No.

4 MS. GLICKFELD: I'll comment on that later.

5 The second thing is that is there any kind of
6 automatic procedure basis at the State level people would
7 (unintelligible) to have it recorded as action forms that
8 they can download and electronically submit and add in some
9 data, is that available right now --

10 MS. NYE: That is not.

11 MS. GLICKFELD: -- by hand to the Regional Board?

12 MS. NYE: It has to go by hand, or e-mail it to Staff,
13 but it does not go through the kind of process you're
14 describing.

15 MS. GLICKFELD: All right. Those are general questions.

16 So I wanted to ask you, it was interesting, because
17 we got a lot of comments on how late the benthic
18 invertebrate stuff was but nothing about the fact that we
19 made very similar late change deleting or delisting all of
20 the (unintelligible), which I raised earlier this morning an
21 issue, did -- what is the Staff's basis for not -- given our
22 recycled water policy, given the fact that we're
23 infiltrating water and storing it in basins, given the fact
24 that we really are in a drought and we are facing permanent
25 climate change, why are we not protecting the potential

1 municipal beneficial use?

2 MS. PURDY: This is Renee Purdy again.

3 I just want to respond to that in particular,
4 because what we've done here is related to a certain
5 category of our potential end line use. We have some end
6 releases in our Basin Plan that will identify with an
7 asterisk.

8 A lot of those were added back in the late '80's
9 when the State adopted its sources of draining water policy,
10 and then we incorporated that policy into the Basin Plan,
11 but some of those uses were identified as an asterisk as
12 uses that we wanted to go back and do a further evaluation
13 of.

14 And when EPA then took its action to approve our
15 Basin Plan, because we hadn't yet done that evaluation, EPA
16 basically identified those as conditional uses. In other
17 words, uses that they didn't view as fully designated at
18 that point until we did the additional evaluation.

19 The sources of drinking water policy allows some
20 sections to identify in the water body as a municipal
21 supply, and the Regional Board at that time recognized that
22 there may be some exceptions and some of those are
23 identified as the P asterisk end line uses.

24 So most of our end line uses -- the ones that do
25 not have that asterisk we do fully protect with the

1 appropriate Basin Plan criteria and CTR criteria, but these
2 in particular, because they have not been approved at this
3 point as full designated beneficial uses, were not included
4 in this 303(d) list.

5 MS. GLICKFELD: So I have the impression, and maybe now
6 I'm going to clarify, I got the impression that we
7 eliminated all P potential end lines, but you're saying just
8 particular ones, yet there are a lot of others where we're
9 protecting those uses?

10 MS. PURDY: That is exactly right.

11 MS. GLICKFELD: Thank you so much.

12 I'm going to ask you -- your response to Heal the
13 Bay's comments and I want to ask you why, other than the
14 fact that we have no resources, no people resources, is
15 there another reason why we're not acting to implement
16 impaired status for biostimulatory --

17 MS. NYE: It's because -- it's really because we feel we
18 need more specific data for our engine because of all the
19 things we evaluated for, that's probably the most complex.
20 You have to consider both the levels of concentrations for
21 nutrients and for biological responses whether it's algae
22 or, you know, dissolved oxygen.

23 MS. GLICKFELD: We don't have -- we don't have good BOD
24 data? We don't have good algal data?

25 MS. NYE: We have a lot of algae data that's off on its

1 own and a lot of chemistry data and nutrient data and
2 dissolved oxygen data that's off on its own, but we don't
3 have a database to relate those two things, which is really
4 what we need. We only have that in a few places.

5 MS. GLICKFELD: All right. That helps as well.

6 On the Malibu Lagoon, the issue was raised that the
7 plan of restoration was going to improve circulation but, in
8 fact, did nothing in particular other than improve
9 circulation in terms of removing pollutants that were --
10 that are now affecting benthics.

11 I -- I'm uncomfortable with the idea of relying on
12 circulation while this morning and every morning we talk
13 about the extensive pollutants around Malibu Lagoon.

14 MS. NYE: In this case, it's because the original
15 listing for benthic polluting effects was -- was actually
16 based on a study done by U.C.L.A. where they identified
17 really high numbers, in particular, polykete (phonetic) that
18 is tolerant of low dissolved oxygen conditions.

19 So improved circulation would improve the dissolved
20 oxygen situation and it would affect that particular kind of
21 species.

22 MS. GLICKFELD: Could I ask a Baykeeper to come up and
23 comment on that whether that is something that you would
24 agree with, Staff's response on that issue? Either the
25 Baykeeper or Heal the Bay.

1 MS. GAUR: This is Tatiana Gaur, I'm with the Baykeeper.
2 I am not the scientist.

3 MS. GLICKFELD: Okay.

4 MS. GAUR: I know quite a lot about our restoration
5 project, and I -- as I said, circulation of the water and up
6 the channel so that it can flow properly, but I know
7 Dr. Gold is more --

8 MS. GLICKFELD: So, Dr. Gold, did you hear the response
9 that LB gave, are you going to be able to -- does that
10 satisfy the issues that you raised?

11 DR. GOLD: Not surprisingly, no. So I'm aware of the
12 study, it's actually a (unintelligible) study. I think it
13 was done in the early '90's, that there was some parties at
14 U.C.L.A. looking at macroinvertebrates.

15 The reality is, much has changed in the lagoon over
16 time not -- and none of it's been an improvement, and so
17 we -- we -- actually, Mark Abramson (phonetic) used to work
18 for Heal the Bay and Craig Schuman (phonetic) used to work
19 with Heal the Bay in working with the Coast Conservancy and
20 Dave Parks (phonetic) did the design for the actual
21 restoration working with (unintelligible) down in the
22 Long Beach area and, you know, from that standpoint, in
23 trying to tie the design to improvements in
24 macroinvertebrate ecology, there was no linkage whatsoever.

25 And what we were trying to do in that restoration

1 to actually improving the benthos that actually lives within
2 the lagoon. So to make that scientific leap to assume that
3 the restoration plan is going to do anything other than
4 improve water circulation and we hope improve --

5 MS. GLICKFELD: Okay. I --

6 DR. GOLD: -- dissolved oxygen is a giant, giant leap
7 scientifically and something we're not comfortable with.

8 MS. GLICKFELD: So what would you recommend if the Board
9 approves the idea that the benthic -- this is an inherent
10 here, what would you recommend that we do? Go back and do
11 a -- we already have a nutrient T.M.D.L., we already have a
12 bacteria T.M.D.L., those are suspect. What would you ask
13 that we do as a response to the not listing (unintelligible)
14 of impairment without relying on the source?

15 DR. GOLD: Now, there's a big difference between putting
16 a water body on the 303(d) list, and it's not like the
17 T.M.D.L. comes out overnight, so obviously your staff would
18 have a significant amount of time to observe what's going on
19 within the Malibu Lagoon area and based on those
20 observations determine what the appropriate course of action
21 would be in T.M.D.L. development.

22 I think for me to guess --

23 MS. GLICKFELD: So what you're saying, if I could cut
24 you short a little bit --

25 DR. GOLD: Sure.

1 MS. GLICKFELD: -- what you're saying is that you just
2 want to have this removed as the solution. You don't
3 necessarily want a T.M.D.L. in replacement, but you want the
4 staff to say this is not -- this is not going to be the
5 solution in lieu of the T.M.D.L.

6 DR. GOLD: Correct. And to maintain its listing until
7 such time as we have enough information to determine that it
8 should be removed as opposed to guessing that that may
9 indeed be the case.

10 MS. GLICKFELD: Okay. Given that testimony, LB --

11 DR. GOLD: Right. Maintain it on the list. Right.

12 MS. GLICKFELD: Yeah. Would you -- are you -- would you
13 consider making a change in your recommendation given the
14 testimony about the limits of the restoration plan?

15 MS. NYE: Well, I just want to point out that all that
16 we were proposing to do was to label it differently. It
17 would remain on the list like anything, you know, any
18 T.M.D.L. that is developed, until it's demonstrated that the
19 impairment has been resolved. So I want to make that
20 clarification.

21 In terms of --

22 DR. GOLD: It's on the main list, though --

23 MS. NYE: It's on the main list with a "C" next to it
24 instead of a "P."

25 MS. GLICKFELD: So you're saying remove the "C"?

1 MS. NYE: They're saying remove the "C."

2 DR. GOLD: Yeah.

3 MS. NYE: Renee -- because it keeps it on the list.

4 MS. GLICKFELD: Because -- this is LB.

5 MS. NYE: I'm sorry. Yeah. This is LB Nye, and in
6 terms of in the direct question, would it be okay actually
7 not making that change, and Staff would be able to make that
8 recommendation.

9 MS. GLICKFELD: So you're not going to make a document
10 that --

11 MS. NYE: He would make it. Yes.

12 MS. GLICKFELD: Thank you. All right.

13 MS. DIAMOND: That would be another change?

14 MS. NYE: That would be another change.

15 MS. GLICKFELD: Okay. And then on the invasive species,
16 I totally -- I have a different view of the impairments
17 issue versus the T.M.D.L. issue that I want to talk about
18 later, but if you're listing the New Zealand Mud Snail and
19 why aren't you listing things like Arundo, which we know
20 even more about than the -- and which we know how to get rid
21 of sort of?

22 MS. NYE: This is really because of the type of data
23 that we have and the listing policy. The listing policy has
24 very specific requirements for listing invasive species,
25 requiring at least three years of data, requiring increasing

1 numbers, and we don't have that kind of data for Arundo.

2 MS. GLICKFELD: The Department of -- whatever our --
3 Department of Agriculture resources, whatever that group
4 does actually keeps an ongoing database on those issues, so
5 maybe even our next cycle -- on all kinds of invasives -- so
6 I think that would be helpful.

7 And let's see, I already asked that question. And
8 I want to go back to the rolling 30-day mean issue, which is
9 that I noticed that there was a discharger that said -- I
10 think it was the County San. District, but don't feel bad if
11 I'm blaming you for something, but they said, basically, you
12 shouldn't use what you're currently using, which is the
13 calendar month, you should go by season and so -- and
14 Heal the Bay said you should use rolling 30-day mean, which
15 I assume would mean multiple samples within a 30-day period.

16 So you've got people asking for more and for less,
17 one thing that I ask is that Mark Gold mentioned that the
18 actual 30-day mean is within the Ocean Plan, so why aren't
19 we using it for that reason alone?

20 MS. PURDY: This is Renee Purdy again. The -- the
21 30-day mean is in the Ocean Plan. I think the distinction
22 that Dr. Gold was making was indicating that the Ocean Plan
23 suggested a 30-day rolling geometric mean. The Ocean Plan
24 nor our Basin Plan objectives explicitly state that needs to
25 be calculated as a rolling 30-day geometric mean, it just

1 indicates that it needs to be calculated as a 30-day
2 geometric mean. So I wanted to clarify that first.

3 The second thing is is that regarding a seasonal
4 geometric mean, I'd refer to the EPA SPETAC Rule (phonetic)
5 and the fact that the SPETAC, EPA does give states the
6 flexibility to select how they calculate that 30-day
7 geometric mean as either a calendar, rolling, or they do
8 also suggest as a seasonal geometric mean.

9 We feel that in Southern California where we have
10 year-round recreational use of our water bodies, it would be
11 very inappropriate to use the seasonal geometric mean
12 because it would be insufficiently protective of public
13 health.

14 MS. GLICKFELD: Thank you.

15 Okay. My next question has got to do with the
16 Ventura County Coastkeeper's -- I apologize. That's the
17 wrong --

18 MS. DIAMOND: Can I just follow up on the rolling mean
19 thing again, because I -- I think I didn't understand even
20 though I asked it before and then Board Member Glickfeld
21 asked it again.

22 You said that under the Ocean Plan you could do
23 either the rolling -- rolling geometric mean or the -- the
24 calendar geometric mean, but not the season, why do you
25 choose -- help me out again. Why do you choose one or the

1 other if they're both okay under the Ocean Plan?

2 MS. PURDY: What I was trying to say was that neither
3 the Ocean Plan nor our Basin Plan bacteria objectives are
4 specific regarding the -- whether we use rolling, which is
5 taking, you know, basically taking 30 days of data, so if
6 you have Days 1 through 30, you calculate a geometric mean
7 on that, then you move to Day 2, and you take Day 2 through
8 31 and you calculate a geometric mean like that, on a
9 rolling basis versus just taking all the data within a
10 calendar month and calculating one geometric mean for the
11 month.

12 So both the Ocean Plan and the Basin Plan are
13 essentially silent on which of those you do, it just says it
14 needs to be a 30-day geometric mean.

15 MS. DIAMOND: So how did you decide on the one that you
16 did?

17 MS. PURDY: Because the one that we did was consistent
18 as -- as Dr. Nye pointed out initially with the listing
19 policy and this issue of data independence.

20 So if you have a rolling 30-day geometric mean, you
21 actually don't have data independence, whereas with the
22 calendar month, you do.

23 So for that reason and for the reasons that EPA
24 does allow us the flexibility to select, we wanted to be
25 consistent with the listing policy provisions for how we do

1 that statistical calculation and, also, it was consistent,
2 as I mentioned, with EPA's SPETAC which allows us the
3 flexibility to select between the two.

4 MS. DIAMOND: Is one or the other more protective?

5 MS. PURDY: We feel as though both of those are equally
6 protective. As I said, we don't feel like the seasonal
7 geometric mean would be adequately protective.

8 MS. DIAMOND: I would -- just to help me, I would like
9 to understand why Heal the Bay feels it's more protective to
10 do the rolling geometric mean. So could -- could I ask them
11 to --

12 DR. GOLD: Hello again. Mark Gold. On this specific
13 issue, just to clarify where the -- I think to narrow the
14 disagreement, because I think it's being talked about as
15 wider than it actually is. It really is about kelp
16 protection.

17 It is not about what your staff is legally able to
18 do or not, and anyone -- no one would say that the Federal
19 Beach Act is one-tenth as protective as California's Beach
20 Water Quality Laws, so let's just throw that out of it
21 completely.

22 So the issue is is that in the Ocean Plan itself,
23 to quote, it says, "The following standards are based on the
24 geometric mean of the five most recent samples from each
25 site."

1 Now, if you sample on a weekly basis, then, really,
2 we're almost arguing over nothing on -- although, you know,
3 it may vary from week to week, and if you look at -- if
4 you're familiar with our Beach Report, our (unintelligible)
5 Beach Report Card each and every week, and we do that on a
6 rolling basis.

7 So if you just artificially to say, okay. We're
8 only going to look at January, we're only going to look at
9 February, you know, you're missing the fact that there could
10 be a four-week period that's half in January or half in
11 February or half of July and half of August that you're not
12 being protective of. Where you have poor water quality
13 within that time period, and that's a problem.

14 The other thing is, there's a lot of beaches that
15 are actually sampled on a daily basis or five times a week,
16 and so this effect can even be -- can even be greater
17 compounded within that specific situation as well.

18 So I'm not -- I'm not saying that what Staff's
19 recommending isn't providing any public health protection,
20 what I'm saying is that a rolling basis is far more
21 protective than basically just arbitrarily saying -- picking
22 a month in the calendar and choosing that way.

23 And so I'm not saying it's illegal, I'm just saying
24 what's more protective for public health.

25 MS. DIAMOND: That's my question.

1 DR. GOLD: Okay.

2 MS. DIAMOND: Thank you.

3 MS. GLICKFELD: I'm ready to finish up. Oh, I have a
4 question of the gentlemen that were here during public
5 comment, raised the issue about the Long Beach area and
6 recommending a T.M.D.L. for trash -- excuse me. An
7 impairment for trash in that area. That area is extremely
8 important for wetlands, and the (unintelligible) site is in
9 addition, upstream of that.

10 We had comments in here from Sierra Club and lots
11 of others that we ought to be identifying the impairments
12 that are tributaries for those wetlands. Any comment on
13 that by the staff?

14 MS. NYE: In terms of putting on the 303(d) list, we did
15 not have to have review, so we were unable to do that. You
16 know, that couldn't be considered that we're not able to do
17 anything. It's that's only this one label we're unable to
18 put on those wetlands.

19 MS. GLICKFELD: Certainly you could put it on the list
20 for -- for -- in the next cycle and what else can you do?

21 MS. NYE: We have a staff member who's very active in
22 the environmental coalition that's there, so, you know,
23 we're tracking the -- the actions of the (unintelligible),
24 and I haven't -- all the actions that are open to us as the
25 Regional Board are still open to us for those -- those

1 watersheds just because it's not on the list it doesn't
2 prevent it.

3 MS. GLICKFELD: Okay. Thank you, LB. Thank you.

4 I have one more question for our EPA
5 representative. I'm so excited that you're here.
6 Peter Kozelka? Is that right? So I just wanted to know if
7 you brought your checkbook with you today, you know, the
8 great stimulatory effect of the Federal government.

9 You heard -- and I think the staff can sit down, as
10 least for me.

11 You heard our staff talk about the fact that -- how
12 important and you recognize how important this impairment
13 process is, and yet we don't have the ability to geocode
14 this so that we can use the impairment of our watersheds to
15 educate people and have -- have a common language with the
16 dischargers and municipalities and cities and counties and
17 special districts so that they understand what the state of
18 our lakes and rivers are.

19 And I also am thinking in this data age that we
20 should have a way of inputting data into our systems better
21 than what we've got right now, which is has to go by hand
22 and people's hands and we have -- it's difficult and
23 cumbersome to get data from our monitoring reports into our
24 NPDES reports.

25 As a T.M.D.L. person at EPA, do you -- does EPA

1 provide funding to improve these processes so we can improve
2 the impaired watersheds listings, the 303(d) watershed
3 listings, and make it more transparent, make it more usable,
4 give people a better opportunity.

5 Although we're doing a great job, I think we could
6 do better at getting more data in and being able to make
7 that if we had that kind of information, and you're
8 (unintelligible) checkbook out right now and help us with
9 that.

10 But we're really, at this point, as you know, in
11 California, not going to be able to do as much as we have
12 done up until now, but it seems like we're on the edge of
13 being able to do a really terrific job on this.

14 MR. KOZELKA: It's Peter Kozelka, EPA. Happily, I can
15 say, yes, we have supplied money in the past, we will
16 continue to supply money this year for continued updates and
17 improvements to this thing called the database system.

18 And so I know that my colleagues are working with
19 State colleagues as well as Regional Board colleagues to try
20 and make sure that each and every step of this continues
21 along the way.

22 I believe this past go-round there was as much as
23 \$900,000 offered up by EPA which is -- through two different
24 combinations and programs, but this go-round, I could be
25 wrong, but maybe even in the neighborhood of \$300,000. So

1 your goal of trying to get things geocoded, if I can
2 translate, it's going to happen bit by bit, but it is going
3 to happen at some point in the future, not for this listing
4 cycle unfortunately.

5 MS. GLICKFELD: well, not for this listing cycle, but we
6 can look forward to that for the next listing cycle is what
7 we're trying to do.

8 MR. KOZELKA: Hopefully my pockets stay full of money.

9 MS. GLICKFELD: Okay. The second question I have has to
10 do with, I think what -- we have problem here because
11 this -- this 303(d) list, in my experience, is used for a
12 huge number of entities only if the -- it's the only listing
13 in the State of California that describes the state of our
14 waters, basically, in terms of rivers and streams and
15 watersheds.

16 It is used, when I was at resources agency, we used
17 it for grants. We used it to seek grants. We used it to
18 allocate grants. We used it for a whole lot of purposes.
19 So it's really, really important to get as much information
20 about the health of these streams and rivers and water
21 bodies as we possibly can in.

22 At the same time, our dischargers, municipalities
23 are terrified of describing these things adequately, because
24 they think they are going to be having the sole
25 responsibility for -- for implementing the improvements that

1 T.M.D.L.'s -- or set the tone that maximum daily loads are
2 set, we at the Board are going to turn to them and make them
3 responsible for everything from invasive species to
4 biostimulatory effects to -- and et cetera.

5 So one of the things that's been unclear to me as a
6 board member is when you delegate the Clean Water Act
7 responsibilities for these things to our Boards, what kinds
8 of authority do you delegate to us and what kinds of
9 assistance do you delegate to us to then decide how to
10 allocate the responsibilities when the responsible parties
11 may not be municipalities, it's going to be brake pad
12 manufacturers, things like that, or air polluters?

13 MR. KOZELKA: I'm not sure I can answer your question
14 directly. I'm going to offer a few things. This is a very,
15 very important list, and this is the only State produced
16 water quality report. There are other water quality reports
17 that exist out there --

18 MS. GLICKFELD: This is like the census of rivers in
19 California.

20 MR. KOZELKA: I just want to clarify, that there are
21 other types of water quality reports out there, and I
22 definitely understand the sensitivity of various
23 stakeholders about being on the list.

24 And as a reminder, being on the list doesn't
25 necessarily start anything automatically. It basically is

1 an identification process, and then things get further
2 involved and more research.

3 So you're right, people get very reactive, and yet
4 at the same time, as I've tried to describe, there is a
5 post-process that will come along, Board of T.M.D.L. comes
6 along. I'm trying to come back to your question, and, you
7 know, we do offer assistance to various different types
8 of --

9 MS. GLICKFELD: The delegation of authority. So if EPA
10 can decide they don't want to have any more brake pad
11 exhausts on the road, you can decide to go out and
12 promulgate a rule nationally if you wanted to, but can we do
13 that in your stead in California?

14 MR. KOZELKA: well, as an example, just to bring it down
15 to reality, I think the idea of copper in anti-fouling
16 paints is currently within the State of California's
17 discussion on the Department of (unintelligible)
18 Regulations, so there is an example of where you do have
19 authority.

20 MS. GLICKFELD: Right. So we have --

21 MR. KOZELKA: -- versed in all of those different types
22 of things.

23 MS. GLICKFELD: If we list invasive species, would we
24 have the authority to work with the federal agencies who are
25 responsible for controlling the invasive species and hold

1 them responsible for -- for implementing controls?

2 MR. KOZELKA: You always have the ability to work with
3 us.

4 MS. GLICKFELD: But not make you do anything.

5 MR. KOZELKA: I don't know that it's a single individual
6 agency or group of agencies, but this thing about invasive
7 species is, you know, getting a lot of air time, getting a
8 lot of attention, and a lot of different types of people,
9 both individual citizens, volunteers, all the way up to, you
10 know, municipal and county, state, and federal agencies are
11 trying to work against it. I mean, we're all very much
12 aware of it.

13 MS. GLICKFELD: So is it EPA's position then that it's
14 not all local municipalities and dischargers and stormwater
15 that's going to be responsible for addressing some of these
16 impairments, that there will be other ways that T.M.D.L.'s
17 can be allocated to actual sources?

18 MR. KOZELKA: I think it's safe to say there are a
19 myriad of ways to get out.

20 MS. GLICKFELD: Okay. Well, I think this is part of an
21 ongoing discussion. I'm really glad you're here. I hope my
22 questions have not caused you to not ever want to come back
23 again, but I think that these issues are really based on all
24 of the dialogue, that people are afraid that they're going
25 to be responsible for controlling sources that they can't or

1 not -- they didn't cause and that may not be -- may not be
2 responsible to -- to clean up and abatement sources control.
3 Thank you.

4 MR. KOZELKA: Madam Chair, if there are any questions
5 that can be -- that can be put together, I'm going to step
6 out.

7 MS. LUTZ: We have two people left. I have no questions
8 for you. Ms. Mehranian is our next speaker.

9 MS. MEHRANIAN: Most of my questions are -- I just
10 wanted to -- the way the staff presented the information, I
11 know it was really complicated information, it was presented
12 very clear, so I had no problems following you, so thank you
13 for that.

14 Just two issues that I want clarification. One of
15 the speakers talked about Compton Creek and the trash and
16 how that might compromise the data.

17 And then second one is the whole idea of going back
18 to geometric mean in terms of calendar versus rolling, I
19 just wanted to hear your reaction to that, and that's all I
20 want to know.

21 MS. NYE: Okay. The first question was on
22 Compton Creek?

23 MS. MEHRANIAN: Compton Creek. One of the speakers had
24 a concern about Compton Creek and how the trash stays there
25 and how that might compromise the data because -- I can't

1 explain better, because I'm not clear. There was a concern
2 that I didn't get, and I was hoping you did.

3 MS. NYE: Compton Creek should be part of the L.A. Trash
4 or not part, that one?

5 MS. MEHRANIAN: Uh-huh. That's it.

6 MS. NYE: Yeah. As we discussed before, we think that
7 the L.A. Trash T.M.D.L. does cover Compton Creek because,
8 you know, the Compton Creek watershed, all that area was
9 used in the calculations, and there are responsible parties
10 for that area.

11 And Mark Gold from Heal the Bay also listed a
12 number of other things that -- in addition to -- and actions
13 that the Regional Board can take in addition to issuing the
14 T.M.D.L. -- issue whether or not it's considered part of the
15 T.M.D.L. or not, and, you know --

16 MS. MEHRANIAN: Thank you.

17 MS. DIAMOND: And I think you said that was a change
18 that you would add --

19 MS. NYE: No. That one is -- is -- no. The
20 Compton Creek Trash is labeled as part of the T.M.D.L. or
21 not. It is that way now, so we're not proposing a change to
22 that.

23 MS. MEHRANIAN: And my second question was, after
24 hearing Heal the Bay, I just want to know what your reaction
25 was to rolling versus calendar (unintelligible).

1 MS. PURDY: Yes, this is Renee Purdy again. I just want
2 to restate that we believe that the approach that we've
3 taken using the calendar month is protective of public
4 health.

5 And additionally, I just want to make it clear that
6 in addition to those 30-day geometric mean that we use for
7 our assessment purposes, we also have a set of single sample
8 objectives that we use as well, which are very protective of
9 public health.

10 So we actually have a total of seven different
11 objectives that we're looking at when we evaluate water
12 bodies in terms of what (unintelligible) objectives and
13 whether they're protective of public health, and I feel like
14 we have, you know, very sound and protective -- when we're
15 doing our assessment.

16 Additionally, as LB pointed out in an earlier
17 discussion, when we get to the T.M.D.L. stage, we have in
18 other cases used a rolling -- been more specific about how
19 we calculate the geometric mean and specified rolling
20 geometric mean once we get to the stage of developing
21 T.M.D.L.'s.

22 MS. MEHRANIAN: Thank you.

23 I have no more questions.

24 MS. LUTZ: Thank you.

25 I just have one question. LB, thank you for a

1 great presentation. Everybody who was involved in the
2 report, very thorough, very easy to go through. I
3 understand that everybody has said that, I would just like
4 to echo that.

5 I do want to make sure I understand a little
6 nuance. The 305(b) are items that are non-impaired, the
7 categories 1, 2, and 3; correct?

8 MS. NYE: The 305(b) really refers to the whole report.
9 Here's our report. We've got, you know, non-impaired,
10 impaired in different ways, you know, 4 and 5, so that's --
11 the 305(b) refers to that assessment.

12 MS. LUTZ: So it refers to the -- the impaired bodies as
13 well?

14 MS. NYE: Yes.

15 MS. LUTZ: The culmination?

16 MS. NYE: Yes.

17 MS. LUTZ: Okay. There is another part of -- of
18 assessing the water bodies where we didn't really do at this
19 point, but where there's some water bodies that had we had
20 more time maybe or more information we would have not
21 necessarily delisted them because they -- they weren't
22 impaired and -- and they corrected themselves, but I kind of
23 think of like unlisting them. They're -- they're just --
24 they don't meet -- they're not any more at the criteria
25 because the criteria has changed a little bit.

1 MS. NYE: I think you're really talking about the thing
2 the City of Los Angeles brought up, where we have a lot of
3 listings that we carry over cycle to cycle, and we review
4 them as we get new data or our attention is drawn to -- or
5 we're aware of some issue that somebody's brought up about
6 them or, you know, Staff is aware of an issue that needs to
7 be reassessed. So there are a lot of listings that did
8 carry over year to year.

9 We know that they were out when they were promised,
10 so we don't want -- we're not going to -- we certainly
11 wouldn't propose just clearing that way or, you know, doing
12 a wholesale change to those kinds of carryover, the previous
13 cycle listings, but you're right, they don't always get,
14 with every cycle not every listing get reevaluated.

15 MS. LUTZ: So my question is, did we keep a separate
16 list of those that we want to make sure that we hit or did
17 we depend upon the stakeholders to come back and say, you
18 know, it's changed, we'd like you to evaluate this or
19 reevaluate it compared to that?

20 MS. NYE: A combination of things. Largely the
21 stakeholders, because, you know, we have -- the stakeholders
22 are keeping an eye on their watersheds, and they keep us
23 well informed if they have a concern like that, but also
24 just, you know, data that the staff has gathered or studies
25 that they're aware of or, you know, situations that they

1 become aware of over time or sometimes stakeholders will --
2 will give us feedback or direction on something they want us
3 to examine carefully. So a lot of different sources for
4 that, but the stakeholders are a large part.

5 MS. LUTZ: Great. Thank you. Thank you very much.
6 Pardon?

7 MR. BLOIS: I forgot -- I forgot one question. One more
8 question.

9 MS. LUTZ: He has one more question.
10 You need to move as quickly as possible.

11 MR. BLOIS: It will be a quick one.

12 MS. LUTZ: Thank you.

13 MR. BLOIS: For Staff. City of Ventura brought up an
14 issue, I guess it was the last speaker about using the wrong
15 species to test for toxicity in the Ventura estuary, would
16 you agree with that?

17 MS. NYE: well, (unintelligible) didn't provide us with
18 data to demonstrate that was the case. We had the toxicity
19 data that we evaluated for the listing, and then there was a
20 letter saying it was, you know, the salinities were wrong
21 for a lot of those individual toxicity tests. They did not
22 provide data that we could review. So, no, I guess.

23 MR. BLOIS: Thanks.

24 MS. GLICKFELD: Motion?

25 MS. LUTZ: Yeah.

1 MS. MEHRANIAN: Approval of Clean Water Act Section
2 303(d) List of Impaired Water Bodies.

3 MS. LUTZ: Did you want to add the change list -- the
4 change orders that would be --

5 MS. GLICKFELD: Sure.

6 MS. NYE: Two -- the one that we introduced at the end
7 of the presentation and the Calleguas Creek Reach 2 Trash
8 line.

9 MS. LUTZ: And those were ones that came up during our
10 discussion?

11 MS. NYE: Yes. Yes. So those two -- I can read them if
12 you want me to.

13 MS. LUTZ: Sure.

14 MS. NYE: The Malibu Lagoon --

15 MS. LUTZ: You know what, let me get a second first, and
16 then we'll go.

17 MS. GLICKFELD: Second.

18 MS. LUTZ: Please go now.

19 MS. NYE: Okay. So the first change was to -- the
20 original -- the San Jose Creek no longer be listed for --
21 San Jose Creek Reach 1 no longer be listed for benthic
22 macroinvertebrate bio-assessments with the corrections to, I
23 think, it's G, F, and E.

24 And the second one was -- refer back to page
25 numbers, yes. Page 13-110, 13-164, and 13-178, to line out

1 the San Jose Creek Reach 1 benthic macroinvertebrates.

2 MS. LUTZ: Did that answer your question, Ms. Fordyce?

3 MS. FORDYCE: Yes.

4 MS. NYE: The second one was Calleguas Creek Reach 2, to
5 add it to the list of T.M.D.L.'s required for trash, and
6 that would include adding to Appendix G, F, and E, I don't
7 have specific page numbers, but I can tell you where -- what
8 page number it would fall between other things.

9 It would be 13-176 for Appendix G, Page 13-127 for
10 Appendix F, and 13-66 for Appendix E and that would be on to
11 the list T.M.D.L. required, late list T.M.D.L. required.

12 And the third was Malibu Lagoon if the Board's
13 decision is to change that from T.M.D.L. -- being addressed
14 by an action other than a T.M.D.L. back to T.M.D.L.
15 required.

16 MS. LUTZ: Let me ask (unintelligible) Malibu Lagoon?

17 UNIDENTIFIED SPEAKER: (Unintelligible)

18 UNIDENTIFIED SPEAKER: Well, I would offer that isn't --

19 MS. LUTZ: Okay. So we've got a motion by
20 Ms. Mehranian, a second by Ms. Glickfeld (unintelligible).

21 MS. DIAMOND: And I have an amendment with it.

22 MS. NYE: So the impaired change then is Malibu Lagoon
23 benthic effects listing no longer labeled TM -- being
24 addressed by --

25 UNIDENTIFIED SPEAKER: would you like the page numbers

1 where that change would be reflected, though?

2 MS. NYE: So that would be Appendix G, this is
3 Page 13-182, Appendix F Page 13-154, and Appendix E
4 Page 13-98.

5 MS. LUTZ: And I believe Ms. Diamond also has a --

6 MS. DIAMOND: Yes. I would like to amend this item by
7 having the Regional Board use a rolling 30-day geometric
8 mean when evaluating indicator bacteria impairments, because
9 I do believe -- I'm convinced that it is more protective of
10 public health and beach water quality standards are improved
11 and the public is more protected when we have a 30-day
12 rolling mean because we're not missing any times. I really
13 do think that that would be important.

14 MS. EGOSCUE: Board Member Diamond and the Board, we are
15 unable to do that. We did the analysis of the bacteria
16 listings under the -- the way the staff has its current
17 listing.

18 what we can do is do that for the next listing
19 cycle, what you're proposing is we would have to start the
20 bacteria listings when we do them with the new analysis.

21 MS. DIAMOND: You know, that would have been a very
22 interesting comment also to have been stated at the time
23 that the question was asked originally.

24 MS. EGOSCUE: -- policy change. We always knew --

25 MS. DIAMOND: I understand that's the answer I'm hearing

1 now, but that's not the answer that we got when we -- when I
2 brought it up and then you brought it up, that wasn't a
3 reason for not using it. It was stated these are two very
4 good ways of doing it. This is the way we chose to do it.

5 I heard testimony today that indicated it was
6 better. Now I understand that we'd have to go back and redo
7 everything so perhaps it wouldn't be a good idea, and I
8 wouldn't have made this amendment, but it would have been
9 helpful if I had known that in the first place that it would
10 require going back and assessing everything that's --

11 MS. EGOSCUE: Okay. Well, I'm going to take the blame,
12 and I apologize. It wasn't clear to me that you were
13 directing that we should make that amendment.

14 My understanding from your questions was trying to
15 understand what the difference was. I did not understand --

16 UNIDENTIFIED SPEAKER: Mine was and Staff responded to
17 me and I was satisfied, because I asked that question, too,
18 and their answer was satisfying that was --

19 MS. EGOSCUE: Well, I apologize to Board Member Diamond
20 for not understanding that you were directing us in that
21 direction.

22 MS. DIAMOND: I -- I think Board Member Glickfeld also
23 had --

24 MS. GLICKFELD: Yeah. I -- I actually asked you --

25 MS. DIAMOND: -- apology. I'm just saying that I

1 wouldn't have made the amendment had I understood that it
2 couldn't be done given the methodology that was used. I
3 thought it was one -- they were both protective and not --

4 MS. LUTZ: I think that Staff understands their
5 concerns.

6 MS. MEHRANIAN: Would you like us to revisit the
7 motion --

8 MS. LUTZ: That's what I was going to suggest that we
9 have the motion (unintelligible) briefly and then we can
10 call for a vote.

11 MS. MEHRANIAN: Move the approval of the Clean Water Act
12 Section 303(d) List Impaired Waters with the two changes
13 amendment; correct? Three changes amended.

14 MS. LUTZ: Okay. We have called a vote. All in favor?

15 THE BOARD: Aye (collectively).

16 MS. LUTZ: Opposed?

17 Motion carried.

18 Thank you very much for a great report and great
19 discussion. Thank you everybody for that. We need to take
20 a very quick five-minute break, I really mean five minutes.
21 We have two more items and we are going to get them
22 completed today.

23 (Recess)

24 MR. YANG: Madam Chair, Board Members, my name is
25 Wen Yang. I'm an engineer geologist with the Land Disposal

1 Unit for the Regional Board. Today I will be presenting
2 Item Number 15 (sic), this is a (unintelligible) Revised
3 Monitoring and Reporting Program for the Sunshine Canyon
4 Landfill which is owned and operated by the Browning Ferris
5 Industries of California (unintelligible).

6 The purpose of this item is to inform the Board
7 about the (unintelligible) of the requirement
8 (unintelligible) that were adopted on October 2nd, 2009 for
9 the landfill.

10 The Sunshine Canyon Landfill is located in the west
11 of the intersection of the 5 and the 14 freeways. The
12 yellow line is the landfill's property limit, while the
13 brown line is the permitted waste disposal footprint.

14 The landfill is (unintelligible) within the City of
15 Los Angeles and unincorporated Los Angeles County. It used
16 to be regulated through separate landfill units. The former
17 (unintelligible) is to the south of the border, while the
18 (unintelligible) is to the north of the border.

19 while (unintelligible) 2008, the Board adopted the
20 (unintelligible) that approved the (unintelligible) of the
21 landfill. The (unintelligible) landfill refers to the
22 City/County landfill.

23 The Board significantly increased the life of the
24 landfill by allowing the landfill development in the
25 (unintelligible) area (unintelligible) existing landfill

1 units.

2 At the October 7th, 2008, Board meeting, the Board
3 required they apply to propose additional deep groundwater
4 monitoring wells to sufficiently categorize the groundwater
5 quality underneath the landfill.

6 The proposed revision of the monitoring and
7 reporting program is to meet this requirement. The
8 tentative monitoring and reporting program was sent out for
9 public comment on March 19th, 2009, and the deadline for
10 submitting comments was April 14th, 2009. No comments were
11 received during the public comment period.

12 The Sunshine Canyon is surrounded by
13 (unintelligible) mountain area to the southeast.
14 (Unintelligible) from the surrounding reaches to the canyon
15 bottom and (unintelligible) through the canyon mouth area.
16 The flow of groundwater generally follows the pattern.

17 Currently, there are 15 groundwater monitoring
18 wells at this site that are required in the existing
19 monitoring and reporting program including seven shallow
20 wells and eight deep wells. The three wells with the
21 (unintelligible) monitoring wells, and then the rest are
22 (unintelligible) monitoring wells.

23 The light blue dots represent shallow wells while
24 the dark blue dots represent deep wells. Monitoring wells
25 are concentrated in the mouth of the canyon area because it

1 is downgraded of the entire landfill.

2 To explain the difference between shallow and deep
3 wells, I would like to show a (unintelligible) cross-section
4 through the mouth (unintelligible).

5 In this slide, the dark brown area represents
6 bedrock, while the light brown area represents rough
7 sediment (unintelligible). The blue line is the groundwater
8 table. Alluvium refers to shallow groundwater. Groundwater
9 in bedrock is referred to as deep groundwater.

10 Accordingly, monitoring wells (unintelligible)
11 alluvium are called shallow wells. while (unintelligible)
12 wells in bedrock are called deep wells. However, there's
13 not a clear boundary that separates the shallow and deep
14 groundwater (unintelligible).

15 Groundwater can flow from alluvium to bedrock or
16 from bedrock to alluvium. Generally, groundwater flows much
17 faster in alluvium than in bedrock because the hydrological
18 activity on alluvium are much higher than those on bedrock.

19 To meet the requirements of the Board,
20 (unintelligible) proposed to construct new monitoring wells
21 at the (unintelligible) property boundary labeled here as
22 GW5 (unintelligible) to existing (unintelligible) labeled
23 here as PZ2 and PZ4 monitoring wells. All three wells will
24 be screening bedrock and (unintelligible) deep wells.

25 These will be sampling (unintelligible) and testing

1 for all 92 chemicals that are currently required for the
2 landfill.

3 In addition to the other (unintelligible) also
4 screening bedrock in the markings here as yellow dots, we'll
5 be adding to the groundwater monitoring network groundwater
6 (unintelligible).

7 The water level taken (unintelligible) from these
8 (unintelligible) will be -- will improve the
9 (unintelligible) of groundwater flow direction and velocity.

10 Tentative monitoring and reporting program
11 (unintelligible) all of these proposed wells and
12 (unintelligible).

13 This is a map that is included in (unintelligible)
14 package, which is placed existing (unintelligible) proposed
15 groundwater monitoring wells into the landfill.

16 The (unintelligible) wells (unintelligible) septic
17 system as marked by green lines in this map. That is the
18 use for directly beneath the landfill's (unintelligible)
19 system to collect groundwater seepage.

20 (Unintelligible) are monitored the same way as
21 groundwater monitoring wells. They assemble at least
22 quarterly and test for all the 92 chemicals that are
23 required for the landfill.

24 In conclusion, Staff believes that the proposed
25 groundwater monitoring network will sufficiently monitor

1 both the shallow and deep groundwater (unintelligible) at
2 this site, capture any future release of proteins to the
3 deep groundwater and therefore address the concerns of the
4 Board and the public.

5 The Executive Officer intends to issue the revised
6 monitoring and reporting program as proposed unless the
7 Board requires full (unintelligible) on this matter.

8 That concludes Staff's presentation.
9 (Unintelligible) and I will be happy to answer any questions
10 you may have.

11 MS. LUTZ: Thank you.

12 I do have one speaker card. Wayde Hunter?

13 MR. HUNTER: Thank you, Madam Chair, members of the
14 Board, my name is Wayde Hunter. I'm president of the
15 North Valley Coalition for Concerned Citizens, Inc., I'm
16 also a regular with Granada Hills North Neighborhood Council
17 Committee.

18 I'd like to thank the Board for allowing the
19 additional monitoring and -- of the groundwater underneath
20 the landfill, which was in response to the community's
21 concerns that you've added it for us.

22 While cooling my heels for at least two days in
23 Ventura last May, I had an opportunity to speak with Staff
24 and, again, I would like to thank them on behalf of
25 (unintelligible) and their efforts on their behalf.

1 (Unintelligible).

2 That being said and for the record, we continue to
3 have concerns as to whether or not these additional levels
4 will be able to detect and sufficiently capture (sic)
5 contamination of the groundwater underneath the landfill
6 early enough to prevent and/or remediate any life
7 contamination of the waters of the State.

8 I or we have this concern because only one new well
9 is to be constructed, the others are existing wells
10 converted from another use, and these existing wells may or
11 may not be in the best location and appear to be chosen
12 basically more to avoiding any additional costs of drawing
13 new wells.

14 So what we would ask from the Board and Staff is
15 their assurance that this is indeed the best monitoring
16 system that we can get and all that we can hope for and that
17 it will do the job intended. Thank you.

18 MS. LUTZ: Thank you.

19 Does Staff have any questions -- or does Board have
20 any questions of Staff?

21 Okay. This is an item for information, and what we
22 would need is a motion to receive and file.

23 MS. GLICKFELD: Motion to receive and file.

24 MS. MEHRANIAN: Second.

25 MS. LUTZ: Further discussion?

1 All in favor?

2 THE BOARD: Aye (collectively).

3 MS. LUTZ: So moved, and we will move on to Item
4 Number 15, Conditional Waiver of Waste Discharge
5 Requirements for Discharge from Irrigated Lands from
6 Los Angeles Region, and our Staff Report will be by
7 Becky --

8 MS. VEIGA NASCIMENTO: Veiga Nascimento.

9 MS. LUTZ: Say that again.

10 MS. VEIGA NASCIMENTO: Veiga Nascimento.

11 MS. LUTZ: Thank you.

12 MS. VEIGA NASCIMENTO: So good afternoon, Chair Lutz and
13 Members of the Board. I'm Rebecca Veiga Nascimento. I'm an
14 environmental scientist in the T.M.D.L. Unit 3, and I'm the
15 Program Manager for the Conditional Waiver for Irrigated
16 Lands.

17 Item 15 that we've prepared for you today is an
18 information item on the conditional waiver of waste
19 discharge requirements for discharges from irrigated land.

20 This item has been prepared to update you on this
21 program. It's a requirement of the waiver that we
22 periodically update the Board, and it is also in response to
23 Board Member Glickfeld's request at the May 7th Board
24 meeting.

25 MS. GLICKFELD: Actually, that was Board Member

1 Richardson.

2 MS. VEIGA NASCIMENTO: Oh, Board Member Richardson. I
3 apologize.

4 As you recall at that Board meeting, John Chris,
5 Executive Director of the Ventura County Farm Bureau came to
6 the Board during public comment period and spoke on the need
7 for enforcement of the Conditional Waiver Program, and
8 today's presentation will include information for you on our
9 enforcement efforts.

10 I would also like to take this time to introduce
11 some of my Conditional Waiver Program Staff. Jenny Newman
12 is the Unit Chief of T.M.D.L. Unit 3, and that T.M.D.L. unit
13 houses the conditional waiver program and Dr. Yanjie Chu is
14 a fellow staff member who works on the program with me, and
15 I would also like to remind the Board that this program was
16 originally developed under the leadership of Sam Unger who's
17 now our principal engineer and AEO.

18 So to just to kind of review the program in
19 general, water quality monitoring within our region has
20 shown that we do have impairments which come from
21 agricultural areas.

22 Agricultural activities can cause pollutants such
23 as sediments, pesticides, and nutrients to be discharged
24 into our water bodies, and in response to that, this
25 Regional Board adopted the Conditional Waiver Program on

1 November 3rd of 2005 to address this issue. The objectives
2 of the program are to monitor runoff from irrigated
3 agricultural operations and to mitigate the impacts of that
4 runoff on our receiving water bodies and to also implement
5 T.M.D.L. load allocations.

6 In general, the program has four requirements for
7 agricultural dischargers. The first is enrollment in the
8 program, the second is water quality monitoring, the third
9 is implementation of B.M.P.'s, and the fourth is education
10 focused on water quality and B.M.P.

11 The water quality monitoring and the B.M.P.
12 implementation of this program are really the heart of the
13 program. The monitoring results that we obtain are compared
14 to water quality benchmarks that are established into the
15 conditional waiver.

16 These water quality benchmarks are based on
17 existing water quality standards and include T.M.D.L. load
18 allocation. If the water quality monitoring shows that the
19 benchmarks have been exceeded, that triggers the need for a
20 water quality management plan to be developed under the
21 program. The water quality management plan will direct the
22 implementation of B.M.P.'s to protect water quality and
23 mitigate the exceedances.

24 The majority of growers in our region who have
25 elected to enroll in this program through membership in a

1 discharger group. We have two approved discharger groups.
2 In Ventura County, the group that represents growers is the
3 Ventura County Agriculture Irrigated Lands Group. The
4 nickname for this group is VCAILG. Currently, we have
5 85,000 irrigated acres enrolled through VCAILG membership.
6 That represents about 90 percent of the irrigated acreage in
7 Ventura County.

8 On this figure here -- I'm sorry, can you go back?
9 That figure shows the outline of Ventura County and it shows
10 the irrigated acres enrolled in each watershed.

11 For Los Angeles County the discharger group
12 representing growers is the Los Angeles County Nursery
13 Growers Association Irrigated Lands Group. We have 2,000
14 irrigated acres enrolled through the Nursery Growers
15 Association Group, and this represents 40 percent of the
16 irrigated acreage under the Los Angeles Regional Board
17 portion of the county.

18 So far the Conditional Waiver Program we have
19 completed two years of water quality monitoring. VCAILG
20 conducts water quality monitoring at 22 sites throughout
21 Ventura County. These sites were selected to characterize
22 agricultural discharges.

23 So if we take a look at this graph, it is showing
24 the number of VCAILG sites that have exceeded water quality
25 benchmarks in 2008. So if we look at the first bar there,

1 we can see that 73 percent of the sites have had exceedances
2 for organic chlorine pesticides. Most of those were caused
3 by DDT compounds.

4 If we look at the middle two bars, we can see that
5 about half the sites have exceedances for nitrogen, and
6 about half the sites have exceedances for organophosphate
7 pesticides, and the last bar shows that chronic toxicity has
8 been reported at 32 percent of the sites.

9 This graph represents the same information, but for
10 the Nursery Growers Association Group, which conducts
11 monitoring in Los Angeles County. We see a similar trend in
12 that organic chlorine pesticides caused the greatest number
13 of exceedances, this was followed by nitrogen, causing 56
14 percent of the exceedances, organophosphate pesticides, 40
15 percent of the sites exceeded, and finally for chronic
16 toxicity, we have exceedance at 33 percent of the sites in
17 Los Angeles County.

18 As I mentioned earlier, the water quality
19 monitoring results are compared to the benchmarks and then
20 if those benchmarks are exceeded, the groups develop a water
21 quality management plan.

22 As you just saw, we have exceedances in all of
23 those benchmarks, so both of the groups have developed a
24 water quality management plan.

25 The water quality management plan identifies

1 specific B.M.P.'s and an implementation timeline for when
2 those B.M.P.'s will be put in place on the ground. The type
3 of B.M.P.'s that we're talking about to address these
4 exceedances include things like improving irrigation
5 efficiency in the fields and using runoff controls like
6 bumper strips.

7 The B.M.P.'s are going to be implemented in a
8 prioritized fashion. For example, in Ventura County,
9 priority areas were selected on the number of water quality
10 benchmark exceedances and areas that have approved
11 T.M.D.L.'s, and those areas were selected as the first tier
12 priority groups.

13 We have five first tier priority groups in
14 Ventura County, three of them are located in the
15 Santa Clara River Watershed, one is near the estuary, one is
16 in Reach 3, and one is in Reach 4. We also have two
17 priority areas in the Calleguas Creek watershed, and they're
18 both located in areas that drain to (unintelligible).

19 In Los Angeles County, the B.M.P.'s are being
20 implemented first universally across all group members are
21 going to be implementing basic housekeeping B.M.P.'s and
22 then additional B.M.P.'s will be implemented based on the
23 size of the operation.

24 So we're starting B.M.P. implementation this year,
25 it's already kicked off and will be ongoing through 2010.

1 We also have water quality monitoring that is continuing,
2 and it's expected that the monitoring reports in 2009 and
3 2010 will show improvements in water quality due to B.M.P.
4 implementation. We'll also be continuing the cycle B.M.P.
5 implementation until the water quality benchmarks are
6 attained.

7 Full compliance and enrollment in the program is
8 essential to the success of the conditional waiver. Since
9 the adoption of the program, Staff has sent multiple general
10 notices to non-enrolled growers to alert them to the
11 requirement of the Conditional Waiver Program.

12 Growers who did not respond to the general notices
13 were sent Notices of Violation. On November 15th, 2007, 400
14 N.O.V.'s were sent to growers in Ventura County, and on
15 March 13th, 2008, 700 N.O.V.'s were sent to growers in
16 Los Angeles County.

17 Many growers responded to these N.O.V.'s in a
18 productive manner. In Ventura County, an additional
19 12,000 acres were enrolled, and in Los Angeles County, we
20 saw a 33 percent increase in enrollment.

21 Unfortunately, we still have some growers who are
22 not complying with the program and have still not enrolled
23 and Regional Board Staff has moved forward with issuing
24 administrative civil liabilities for non-enrollment in the
25 Conditional Waiver Program.

1 On May 5th, 2009, we issued five ACL's to growers
2 in Ventura County. The recommended penalty was \$3,759. So
3 far, of those five ACL's, one has been completed. The
4 grower paid the recommended penalty, and the settlement was
5 approved. The four remaining ACL's are still in settlement
6 discussions.

7 Through the combined efforts of Regional Board
8 staff and the agricultural community, this program has been
9 very successful in regulating non-point source discharges
10 from irrigated agriculture.

11 The Conditional waiver Program was adopted for a
12 five-year period, which will be expiring in November
13 of 2010, so in the Fall of 2010, Regional Board Staff plans
14 to bring back the waiver program for your reconsideration
15 and your renewal.

16 We will be meeting with stakeholders in the
17 preparation for the renewal, and we will consider any
18 changes to the waiver program that are necessary, and thank
19 you very much and if you guys have any questions, I would be
20 happy to answer them.

21 MS. LUTZ: Thank you.

22 We do have two speaker cards. The first one is
23 John Schoustra.

24 MR. SCHOUSTRAS: Schoustra.

25 MS. LUTZ: Not getting that right, am I?

1 MR. SCHOUSTRA: That's okay. Good afternoon. I'm
2 John Schoustra, a nursery grower and a Board Member of the
3 Nursery Growers Association.

4 I have to echo many other speakers' remarks about
5 the professionalism shown by Regional Board Staff, and I'm
6 particularly proud of the Best Management Practices in the
7 educational component that we've come up with in our water
8 quality management plan. I think it's going to make a huge
9 difference; however, I'm not sure it's ever going to happen.

10 And based on the complete absence of any penalties
11 for anybody, 60 percent non-compliance in L.A. County, our
12 Board, the Nursery Growers Association is reevaluating its
13 commitment to enabling a program that is based on a
14 fundamentally flawed premise and has the effect of,
15 essentially, penalizing mostly very small minority owned
16 businesses in L.A. County while giving mostly large well
17 connected businesses a free ride, and that probably requires
18 an explanation.

19 Agriculture in L.A. County is essentially nurseries
20 under power lines, mostly Edison power lines. It's a really
21 important part of the agricultural economy of California
22 where the incubator for nurseries that eventually grows
23 about \$2 billion throughout the state, often starting in
24 L.A. County in small plots of land, people who have other
25 jobs and then rent these little bits of land, start

1 nurseries, and then move on.

2 what we've seen on one side is a company like
3 Public Storage that for 20 years has hired Edison employees
4 and lobbied to evict agriculture from under the power lines
5 and pave over chunks five acres at a time and put in RV
6 parking or metal roof public storage facilities.

7 Those people have not had to put in one detention
8 basin or do anything about all of the flash runoff they're
9 causing, whereas our members are -- are now fleeing
10 L.A. County.

11 we've lost hundreds of acres or nurseries in the
12 last year due to this program. It's problem is that --
13 well, I mentioned a flawed premise. The flawed premise for
14 both L.A. and Ventura County is irrigated lands.

15 Our problem is runoff from storms. There's almost
16 no runoff from irrigation in the summer. Statistically,
17 it's irrelevant. Yes, you can find problems, but the runoff
18 from irrigated lands in a storm is just the same as runoff
19 from equestrian facilities or from range land, and
20 equestrian facilities not -- mainly in the minority small
21 businesses, but non-minority leisure activities have a free
22 ride.

23 The main crop in L.A. County, if you looked at an
24 aerial photo, is grass clippings. Golf courses use way more
25 chemicals than our nursery members and way more water, way

1 more runoff. If you sample a green in a golf course, it
2 would probably be classified as a hazardous waste site.
3 Those folks don't have to do anything.

4 So we have a real problem in L.A. County. We just
5 lost 65 acres of a tree nursery within the Port of
6 Long Beach surrounded by rail yards. You know what that is
7 worth as a mitigation?

8 Nurseries basically inhabit right of ways, create
9 little ribbons of green, wildlife corridors, almost
10 exclusively in industrial or low income areas, because
11 that's where the power lines are and we need that.

12 Additionally, we've got a problem with -- no. Let
13 me step back. The nurseries in L.A. County, as I say,
14 eventually move on to greater and greater success, and
15 they're like the bottom rung on the ladder to success in
16 agriculture. Theoretically, people could even grow food in
17 L.A. County and sell it at farmer's markets, there's lots of
18 people that say they do, but none of them are in our group.

19 MS. LUTZ: I need to apologize to you. I did not give
20 you a time frame, but can I ask you to wrap it up for us?

21 MR. SCHOUSTRA: I am. Yes.

22 You get the basic fundamentals, environmental
23 injustice. Our Board is going to consider suspending all
24 activity with our consultant doing sampling, because
25 60 percent of the people who are supposed to enroll have

1 not. Forty percent of the people who have spent thousands
2 of dollars to be members of our all volunteer group are not
3 reupping because nobody has paid any consequences, and so we
4 have spent hundreds of thousands of dollars from a nonprofit
5 volunteer run group to pay consultants to comply with this
6 and we're not getting that money back.

7 we can't afford to subsidize this scheme. We need
8 you to, A, probably come up with some way of exempting the
9 very smallest growers so people can get a little start in
10 L.A. County and actually grow food and plants without having
11 to spend thousands of dollars; B, fine somebody. The minute
12 a few people get fined for not being in this, maybe we'll
13 get some people reupping; and, C, stop taking it easy on
14 golf courses and equestrians, and all agriculture should be
15 under the same umbrella. We all have the same runoff
16 characteristics.

17 The DDT that you're finding everywhere is in dust,
18 so it's on range land, and I sure appreciate you taking the
19 time to listen. Thank you.

20 MS. LUTZ: Thank you.

21 John Krist. Could I just ask you to --

22 MR. KRIST: Yeah. I was going to say, I'm the last
23 thing between you and your ride home, so I'll keep my
24 comments really quick. Good afternoon, Members of the
25 Board. My name is John Krist. I'm the Chief Executive

1 Officer of Farm Bureau of Ventura County, (unintelligible)
2 as CEO to oversee the program activities of Ventura County
3 Agricultural Irrigated Lands Group.

4 And I really appreciate your interest in the
5 conditional waiver and our group's efforts to comply with
6 it. Your staff, Becky and Jenny and Sam and the rest have
7 established a very productive working relationship providing
8 you a very good summary of our compliance program and our
9 successful effort to enlist the cooperation of Ventura
10 County's agricultural community.

11 I'll give you a little update on Becky's numbers.
12 Currently we show we have a 94 percent of the irrigated
13 acreage in our county enrolled in our program.

14 At the moment, we are particularly interested, as
15 John mentioned, in your staff's efforts to take enforcement
16 action against those landowners who have just not complied
17 with the waiver. We've been urging such action for more
18 than two years since it is necessary to ensure the integrity
19 of our program.

20 Participation in our program or John's carries with
21 it a steep price tag and with each go-round of billing, we
22 hear from more growers angry about the fact that they have
23 spent thousands of dollars while some of these others pay
24 nothing and suffered no consequences.

25 So we're very glad today when you ordered your

1 staff to issue administrative civil liability fines to
2 non-complying landowners. We were a bit disappointed,
3 however, that the initial enforcement action targeted only
4 four owners of the properties out of the approximately 230
5 that we believe are in violation.

6 We were also a little dismayed that they were very,
7 very small operations, which meant that they were avoiding
8 costs were concurrently low and that meant that your staff
9 could have justifiably lowered the small fines.

10 We understand the ACL process is very complicated
11 and that it places very heavy burdens on your staff at a
12 time when resources are stretched extremely thin, but we
13 hope that additional enforcement action is forthcoming and
14 sooner rather than later.

15 We respectfully recommend that such action target
16 larger property owners and that consideration be given to
17 property under corporate ownership and management, which
18 would lessen the chance that personal hardship could be
19 offered as an excuse for their failure to comply.

20 We also suggest that more be done to publicize the
21 enforcement action and know that this will get the attention
22 of the non-compliant property owners and perhaps persuade
23 them to comply voluntarily.

24 We know your staff understands the importance of
25 this issue and shares our sense of urgency. We ask this

1 Board to make this enforcement the top priority and that it
2 provide whatever resources and guidance it can to expedite
3 the process.

4 Thank you very much.

5 MS. LUTZ: Thank you.

6 Do we have any questions of Staff while --
7 Ms. Glickfeld?

8 MS. GLICKFELD: Yeah. I have a couple questions. So
9 the issue of -- have we tied any of the exceedances that you
10 showed on your charts to actual impairments that were
11 described earlier today? Do we have any connection between
12 saying we have pesticides, we're exceeding on pesticides,
13 for instance DDT, which is mainly legacy?

14 I noted that -- I didn't say anything about it, but
15 almost every beach in the Santa Monica Mountains or just
16 south of the Ventura plain is impaired with DDT. Is there
17 any way of connecting down flows of DDT from the -- from the
18 Ventura plain from agriculture to the impairments that we're
19 seeing in the ocean?

20 MS. VEIGA NASCIMENTO: I don't know if I could speak
21 directly to--

22 MS. GLICKFELD: Maybe somebody else from staff can
23 answer that question.

24 MS. EGOSCUE: This is the language between the load
25 allocations and T.M.D.L.'s.

1 MS. VEIGA NASCIMENTO: Right. Right.

2 MS. EGOSCUE: You want to speak to that a little bit
3 since it was --

4 MS. VEIGA NASCIMENTO: Sure. I was going to use
5 Calleguas Creek.

6 MS. EGOSCUE: Okay. Perfect.

7 MS. VEIGA NASCIMENTO: So, yes, there is a linkage, and
8 to sort of draw some connections between what we've done
9 previously today, we established the new 2008 303(d) list,
10 which was our list of impaired water bodies. That will
11 direct staff to be complete T.M.D.L.'s.

12 And in Calleguas Creek watershed, we have numerous
13 T.M.D.L.'s, that are already done and approved and in place,
14 and they do include T.M.D.L.'s for constituents such as DDT.

15 The T.M.D.L. process includes a source assessment
16 where we have identified that agricultural sources are
17 contributing to the DDT exceedances throughout the
18 Calleguas Creek watershed, which flows down and enters the
19 ocean at Mugu Lagoon.

20 So we do have a comprehensive look at how these
21 agricultural sources are contributing to impairments in our
22 water bodies throughout the watershed.

23 MS. GLICKFELD: Thank you.

24 And so ADD (phonetic) is going to be responsible
25 for some of these T.M.D.L.'s?

1 MS. VEIGA NASCIMENTO: Yes. I'm sorry. Yes. Add is
2 specifically assigned a load allocation in the T.M.D.L. for
3 their portion and that load allocation is being implemented
4 through the Conditional Waiver Program.

5 MS. GLICKFELD: And so the B.M.P. plans that these
6 groups are developing, are -- how do they -- how once they
7 do these B.M.P. plans does it get down to the individual
8 landowner who's responsible for implementing them especially
9 when we don't have everybody involved, and we don't have a
10 lot of the big people involved?

11 MS. VEIGA NASCIMENTO: Right. So we have, as John just
12 said, a 94 percent enrollment, so that's almost everybody.
13 I'm working really hard on the last six percent. I promise.

14 And we do have numerous landowners and lots of big
15 landowners and the program is designed for B.M.P.'s to be
16 implemented on individual land owned properties, and the
17 individual landowners are responsible for implementing and
18 maintaining B.M.P.'s to be in compliance with the waiver, to
19 meet the requirements of the T.M.D.L., and to be a member in
20 good standing of VCAILG.

21 So we are working at having on farm B.M.P.'s, and
22 we really believe that once we have on farm B.M.P.'s
23 throughout the watershed that are implemented and
24 maintained, we will be attaining water quality standards.

25 MS. EGOSCUE: And I'd also add, this is a program

1 essentially in its infancy. This is the first iteration of
2 this waiver. In other aspects of waivers that we're seeing
3 both statewide and nationwide, we do not have the similar
4 success that we've seen here in Ventura and Los Angeles
5 County.

6 So it's important to note that it took awhile to
7 get it going. We're just now entering the enforcement
8 phase. We registered as many as we can and are continuing
9 to follow up and get everyone in, but it's taking some time
10 and that's to be expected.

11 MS. GLICKFELD: I want to address some of the other
12 questions from past presenters, so one of the presenters
13 indicated that they're not on a level playing field because
14 in some way these golf courses, equestrian facilities,
15 storage facilities are not subject to permits. Can you
16 address that question for us?

17 MS. EGOSCUE: I would say that golf course facilities
18 and equestrian facilities are subject to the MS4 permit and
19 are regulated as such. We are seeing now T.M.D.L.'s and
20 numerics in those T.M.D.L.'s and increased awareness of the
21 impacts of these areas to the MS4 system by municipalities
22 that receive these flows. So I would say that's incorrect
23 to assert to you that those are not regulated.

24 MS. GLICKFELD: Do we know for a fact that the
25 municipalities are regulating and enrolling golf courses

1 in -- in implementation plans and requiring detention basins
2 and things like that as a result of the MS4 permit?

3 MS. EGOSCUE: No. We do not know for a fact, but what
4 we do know for an absolute fact is that if that golf course
5 discharges into the system and results in exceedance that
6 the city will be held liable for said exceedance.

7 MS. GLICKFELD: The city will be held liable not --

8 MS. EGOSCUE: The golf course owner.

9 MS. GLICKFELD: Okay. And, you know, there's
10 recommendations made today which is that we ought to be
11 enforcing on the largest property owners or possibly
12 exempting the smallest property owners.

13 Do you have any recommendations to -- to even out
14 the playing field to make sure that if we're directly
15 enforcing on agricultural landowners that we now have this
16 indirect way of enforcing through the MS4 permit on the
17 others how -- how can we even out the field?

18 I think publicizing the enforcement, I would hope
19 that the two groups would participate in that, you said if
20 you can -- enforcement. It seems to me every time we do an
21 enforcement process word gets around that we're going to do
22 it.

23 And the last question I have is, I noted that our
24 ACL's were at about \$3,200, \$3,500?

25 MS. VEIGA NASCIMENTO: \$3,200.

1 MS. GLICKFELD: What is the cost of -- of enrolling?

2 MS. VEIGA NASCIMENTO: For the ACL's --

3 MS. GLICKFELD: No. If you -- if I was a farmer and I
4 had to enroll, what would it cost me as opposed to what it
5 was costing me to pay my fine?

6 MS. VEIGA NASCIMENTO: I think the current cost of
7 enrollment would be best answered by the group directors.

8 UNIDENTIFIED SPEAKER: Stand up here?

9 MS. LUTZ: Yes, please. Thank you.

10 MR. UNGER: Sam Unger. Engineer for the Regional Board.
11 I just wanted to add that the ACL's that have been issued,
12 all recipients of the ACL's have enrolled in the program as
13 well as paid the --

14 MS. GLICKFELD: But I'm just saying if we haven't -- are
15 we, in fact, fining people so that it's worthwhile for them
16 to enroll and what are the enrollment costs? That's what I
17 wanted to know. If it's \$3,000 for enrollment and it's
18 \$3,200 for a fine, it's not really going to be very --

19 MS. VEIGA NASCIMENTO: For the five ACL's we issued in
20 Ventura County, we estimated the costs saved by not
21 enrolling for those members was \$1,000 approximately, and
22 the other portion of the fine was a condition for penalty.

23 MS. GLICKFELD: Okay. And I would say for the larger
24 corporate owners that \$3,000 would be no incentive at all
25 and that I would recommend --

1 UNIDENTIFIED SPEAKER: I'm sorry. I do apologize. But
2 I think -- if this is of any matter more -- your comments
3 about the amount of penalty should be reserved --

4 MS. GLICKFELD: I apologize. I'm sorry. I'm just
5 saying, I'm not talking about in general. I should be
6 talking in general that I'm concerned that the amount of the
7 penalty ought to be set up so that it gives incentives to
8 larger property owners that we should not be focussing our
9 efforts first on small property owners so that small guys
10 and large guys can follow afterwards and that will fund our
11 two groups that are supposed to be developing the monitoring
12 and B.M.P.

13 So that would be something that I would ask as a
14 Regional Board member that the staff consider as you go
15 along with this program.

16 And then since commissioner -- Board Member
17 Richardson was the person that asked about this, I'd hope
18 that since he couldn't be here today that you would make
19 sure he gets a copy.

20 MS. VEIGA NASCIMENTO: we'll definitely do that, and
21 thank you for your comments. They're well taken.

22 MS. LUTZ: Ms. Diamond?

23 MS. DIAMOND: I think this has been a very successful
24 program in the fact that it is a new program and the fact
25 that 94 percent of the growers are enrolled quite -- I mean,

1 just speaks to how successful it is.

2 And I would just say to the -- to the members of
3 the community that testified that it's -- it's really part
4 of your responsibility to let others know when enforcement
5 takes place.

6 We aren't -- we aren't able to issue press
7 releases. That's not part of what we do. When we do that,
8 word of mouth, and I'm assuming you have newsletters and
9 other ways of communicating with people in your community
10 that that would be very effective.

11 So my comments are really related to the success of
12 the program and to the responsibility of letting the
13 community know through the representatives who testified
14 today what will happen if they don't and --

15 MS. VEIGA NASCIMENTO: Just for your information,
16 Board Member Diamond, the Farm Bureau did present an
17 information item about this in their newsletter when the
18 enforcement actions went out.

19 MS. DIAMOND: Great. Thank you.

20 MR. LUTZ: Mr. Blois.

21 MR. BLOIS: Two comments. I learned a lot today. I
22 appreciate John Schoustra. I didn't think about it, but you
23 are absolutely correct, it makes no difference -- it makes
24 no sense to me to characterize a nursery operation
25 underneath some Edison power lines as being irrigated

1 agriculture. You guys mostly do hydroponic and you have
2 very little runoff and absolutely, you are correct, I agree
3 with you.

4 what runoff we do have is overwhelmingly
5 stormwater, and I think the stormwater, you're covered -- I
6 don't think there is an Ag waiver for stormwater.

7 MS. VEIGA NASCIMENTO: This Ag waiver includes
8 irrigation and stormwater runoff.

9 MR. BLOIS: Oh, it does?

10 MS. VEIGA NASCIMENTO: Yes.

11 MR. BLOIS: well, I think that that is a problem that we
12 need to fix and fix quickly, because I think it's a totally
13 different characterization of what we're trying to regulate
14 or fix here as compared to the irrigated lands that are
15 predominant in Ventura County, and we've got to fix that
16 quickly because that explains to me, at least I suspect
17 strongly anyway, why only 40 percent of those guys have
18 bothered to enroll.

19 And I think that that speaks to the problem that
20 this program, be it new, young, however you want to
21 characterize that, it's going to die quickly, at least in
22 Los Angeles County, unless we do fix that, because it's
23 very, very clear to me that we are providing a disincentive
24 not an incentive for these guys to participate. We've got
25 to fix that.

1 And I think that we should have discussions
2 specifically with the Los Angeles group to see how they do
3 that and meet their needs, because I think that if you
4 polled each one of those guys individually, they would agree
5 with us that they're -- they're farmers. They want to
6 protect the earth and protect our water quality just as
7 badly as we all do, and we've just got to figure out how to
8 make that work practically because it's -- we're on
9 different wave lengths.

10 MS. EGOSCUE: May I -- may I respond?

11 First of all, there is a distinction between the
12 percentage for Los Angeles and Ventura County that is
13 explainable and is something that we had discussed.
14 Los Angeles growers tend to be more disparate and not as
15 well connected as the Ventura growers. That would be the
16 first comment I had in terms of explaining why we have
17 different percentages.

18 The second issue is that, I just want to be clear,
19 that if we're -- if we're comparing, let's say, for example,
20 the golf course and there's an exceedance and the -- and we
21 have an enforcement and the city follows up and finds that
22 it's a grower under an Edison power line, if they are
23 enrolled in this waiver, they have, essentially, protection
24 from the enforcement proceeding because they have this
25 waiver and they are part of the program.

1 So what we're trying to do here is, in fact, give
2 them a different approach to the Clean Water Act in this
3 region than we would say, for example, a golf course or an
4 equestrian facility.

5 MR. BLOIS: Okay. Well, that's -- that's helpful. I
6 really don't have any other comments in regard to that. We
7 have -- it's a matter of priorities. Agriculture is a huge
8 part of, well, our water quality issues and part of our
9 local industry. We try to balance all of their needs and
10 make sure that we meet our needs and I think we should be
11 able to do a better job.

12 How that translates into our current economic
13 crisis, you know, I'm not sure, but I would like to see a
14 high priority done to see if we can fix or get our
15 objectives in line with their objectives so that we're all
16 working together in this or as we might as well put all of
17 our money together and do something else.

18 MS. VEIGA NASCIMENTO: Thank you for that advice, and we
19 will be meeting with NGA, and we have met with them
20 frequently and will continue to work with them.

21 MS. LUTZ: I have just -- my comments echo everything
22 you've heard. I think that that's -- but one of the things
23 I would like to say, because as this was going on, I
24 realized that I think there are just two of us here who were
25 actually on the Board when we started the Ag waiver and so

1 for some of our Board members this is a fairly new item for
2 them.

3 The one thing I would like to say about this is all
4 of my experience on the Board I have never seen such a great
5 collaboration. In planning for the Ag waiver, the
6 agricultural environment and their -- the parties were very
7 much on board from Day 1, and their -- their willingness to
8 take this on has been phenomenal.

9 I think that I -- the plan to have it in their
10 groups and with their colleagues is probably the brilliance
11 of the whole thing, and I know that that was done through a
12 collaborative effort that was -- that was something that
13 came out of the discussions with the agricultural community.

14 So I want to applaud the agriculture community for
15 what has been done at this part -- up to this point. We do
16 have a ways to go, we have places to go, we have -- it is
17 still in its infancy, and -- and we need to still look at
18 some of the things that we talked about today, but overall I
19 think that's it's very exciting to see this progress.

20 It is a new baby and a new concept, and we are on
21 the leading edge of it. I think there's only one other
22 region to my knowledge in California that is doing this at
23 all. Oh, there is more now?

24 UNIDENTIFIED SPEAKER: Region 5 and Region 3 also have
25 well established programs.

1 MS. LUTZ: Okay. Great. Well, that's -- we just need
2 to keep moving ahead, and I appreciate all the work that you
3 and the staff are doing, and I give the agricultural
4 community kudos.

5 My next -- I just have a quick question. What is
6 the next -- the next trigger that brings this back to us at
7 the Board? Is there a reopener scheduled?

8 MS. VEIGA NASCIMENTO: The program will actually sunset
9 in November of 2010. Waivers are only adopted for a
10 five-year period under Porter-Cologne and so before this
11 waiver ends we will bring it back to you to adopt it so we
12 have a continuous program.

13 MS. LUTZ: Okay. So some of these items that we have
14 discussed, within a year's time we should be discussing
15 again and looking into more depth with them.

16 MS. VEIGA NASCIMENTO: Yes. Exactly.

17 MS. GLICKFELD: Madam Chair, is there a way, as you make
18 progress in this, if you bring the large landowners into the
19 process if you -- if we -- you get the reports from these
20 groups that things are better or things are worse, that you
21 could give that information to the Executive Officer to put
22 into her report, it would be very useful to us and serve as
23 a minimum cost to you at the same time.

24 MS. VEIGA NASCIMENTO: Definitely we can do that.

25 MS. LUTZ: Thank you. And I think it -- it might go

1 without saying, but we do want fair playing fields for all
2 stakeholders that's -- that's really a goal that we need to
3 have. Everybody should have their oar in the water and
4 going the same direction. Anything we can do to keep an
5 even playing field is -- is a good move.

6 MS. VEIGA NASCIMENTO: We'll work towards that.

7 MS. LUTZ: Thank you very much.

8 Unless there's anything from Staff, I will
9 entertain a motion to adjourn.

10 MR. BLOIS: Move.

11 MS. GLICKFELD: Second.

12 MS. LUTZ: Without objection, so ordered.

13 (Hearing adjourned at 4:58 p.m.)

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