

EXHIBIT “11”

STATE WATER RESOURCES CONTROL BOARD

- BOARD MEETING

CONSIDERATION OF A RESOLUTION APPROVING AN AMENDMENT TO THE
WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION TO
REVISE BACTERIA OBJECTIVES FOR WATERS DESIGNATED FOR
WATER CONTACT RECREATION.

THURSDAY, JULY 18, 2002
9:00 A.M.

COPY

CAL EPA BUILDING
COASTAL HEARING ROOM
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR 1564

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
PETER SILVA
RICHARD KATZ
GARY CARLTON

STAFF:

GREG FRANTZ

COUNSEL:

CRAIG WILSON

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD:

JON BISHOP

COUNSEL:

MICHAEL LAUFFER

AUDIENCE:

DAVID BURHENN
DAVID MONTAGNE
ADAM ARIKI
BILL BUSATH
EDWARD DILKES
LESLIE MINTZ
MITZY TAGGART
STEVE FLEISCHLI
GERRY GREENE

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SACRAMENTO, CALIFORNIA

THURSDAY, JULY 18, 2002, 9:00 A.M.

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CHAIRMAN BAGGETT: Item 14.

MR. LAUFFER: Good morning, Chairman Baggett, Mr. Carlton.

Greg Frantz with the Division of Water Quality basically handed off to me to present to the Board on present this particular item since we have intimate familiarity with the item that is before you today.

Thank you very much for hearing us today. I want to emphasize that I am speaking on behalf of the Los Angeles Regional Water Quality Control Board. The presentation that I will be giving today, which will be a joint presentation with Jon Bishop and Renee DeShazo, was in substance run past our Board Chair, Francine Diamond, yesterday, and Ms. Diamond is fully supportive of the presentation and fully supportive of the resolution approving the Basin Plan amendment that had previously been adopted by the Los Angeles Regional Water Quality Board last year.

The Regional Board in unanimously adopting this particular Basin Plan amendment had recognized that the bacteria objectives for water contact recreation really are the linchpin of protecting our beaches and protecting the various Rec-1 uses throughout the region. The State Board

1 has already held a workshop on this particular item as well
2 as a Board meeting.

3 You will recall that nobody had attended the Board's
4 workshop at the Board's meeting. LADWP had appeared -- that
5 is Los Angeles Department of Public Works -- and had
6 presented several comments. And at that particular Board
7 meeting the Board Member Katz and Chairman Baggett had
8 expressed some concern based on issues raised by the Los
9 Angeles Department of Public Works concerning the
10 designation of certain concrete fenced, limited access
11 waterways within the Los Angeles region, and their
12 designation was Rec-1. In other words, they were designated
13 for water contact recreation.

14 Chairman Baggett and Mr. Katz both strongly emphasized
15 that they thought it was important for the Board to go back
16 and look at some of those issues. Although at that
17 particular point in time, I had emphasized that the matter
18 before the State Board at this point in time is an update of
19 bacteria objectives based on more recent epidemiological
20 studies, synchronization of the bacterial objectives in the
21 Los Angeles Region with AB 411 beach protective measures and
22 that the designation issue was a separate Basin Plan
23 amendment. At that particular time I emphasized to Chairman
24 Baggett that I would take back to the Regional Board the
25 message from Board Members Katz and Baggett that the Rec-1

1 issues really need to be evaluated. That was my
2 understanding at least based on the State Board meeting was
3 that was the fairly narrow issue that the Board members were
4 interested in hearing about, and it is an ancillary issue to
5 the Basin Plan amendment.

6 On July 10th a letter was sent from Dennis Dickerson,
7 the Executive Officer for the Los Angeles Regional Board, to
8 Chairman Baggett outlining the steps that the staff of the
9 Los Angeles Regional Board intends to take so that it can
10 reconsider the Rec-1, the full body water contact recreation
11 designations in the Los Angeles region. We believe that
12 that letter fully comports with what the State Board had
13 asked at that particular Board meeting, and I won't go
14 through the details of that letter.

15 In essence what it initiates and recognizes that the
16 staff within the next year will start to look at the issue
17 and get to the Region Board an appropriate Basin Plan
18 amendment if it is regularly justifiable and could be
19 justified on cost grounds, we think it can at this point to
20 remove the Rec-1 designation during certain events when it
21 is not an existing use. Those cases would be, for example,
22 safety concerns related to flooding and so forth. Mr.
23 Dickerson's letter also emphasizes the Board will go back
24 and reconsider potentially -- or staff will recommend to the
25 Board subcategory designations to recognize that certain

1 water bodies may have more infrequent use because of either
2 their limited access or otherwise, and those will be time
3 consuming activities that the Regional Board will engage
4 in.

5 As I indicated, I think that July 10th letter addressed
6 concerns of State Board Members. However, in the wake of
7 that particular Board meeting and this Board's interest in
8 that particular issue, the State Board has received numerous
9 comments in the last week. As a matter of fact, there have
10 been more comments in the last 24 hours on this item than
11 had been submitted in the 60-day comment period that
12 Regional Board provided and so forth. We have prepared and
13 shared with the Division of Water Quality because of the
14 late nature of the comments -- the responsive documents
15 just prepared within the last day.

16 That responsive document details point by point all the
17 issues raised in the letter submitted. Most of them had
18 been soundly refuted before. Renee and Jon can talk about a
19 couple of the most important ones briefly. That letter, I
20 think, or that responsive document really clears the air on
21 a lot of these matters.

22 I think it is important for the State Board Members to
23 appreciate, though, how some of these commenters have
24 stretched so far from what the State Board had talked about
25 at that May 16th meeting. We now have the County department

1 of Public Works up here saying that Los Angeles beaches
2 should not be protected in wet weather because one-fourth as
3 many people go there in the wet weather. I think it is
4 beyond the pale to make that kind of an argument when you
5 are talking about updating objectives that are designed to
6 prevent people from getting sick.

7 Those issues are addressed. I don't think they are
8 really relevant to this particular Basin Plan amendment as
9 proposed, and they weren't relevant to the concerns of the
10 State Board Members. But if you are interested in our
11 response, the responsive document can address them or Renee
12 or Jon can address them in more detail.

13 At this point in time I will turn it over to Jon Bishop
14 who can provide the full presentation if the Board is
15 interested in that or can just hit any particular key issues
16 that the Board may have, for example, co-occurrence which is
17 fundamental to the issue of economics. As I hand it off to
18 Jon, I just want to emphasize that the Regional Board fully
19 supports the State Board approving this Basin Plan
20 amendment. The Regional Board will reevaluate, based on the
21 staff recommendations, the Rec-1 use designations for inland
22 surface waters. We don't think it is appropriate at all to
23 revisit this for Santa Monica Bay and to propose that you
24 shouldn't be swimming in Santa Monica Bay.

25 One thing I want to emphasize too is that the Regional

1 Board reconsiders these items. Keep in mind, in California
2 our Rec-1 designations aren't just about full body water
3 contact recreation. That is also where our fishing goal,
4 which reflects the fishable goal of the Clean Water Act
5 appears, and so to reevaluate some of these subcategory
6 designations. Of course, the Regional Board will have to
7 keep its eye on that ball, and I think perhaps it might
8 behoove the State Board to limit the direction it gives the
9 Regional Board to make it clear that you are only
10 interested in the water contact recreation and the fishing
11 and swimming issue at this particular point in time.

12 Thank you.

13 CHAIRMAN BAGGETT: Thank you.

14 MEMBER SILVA: I don't know if we want to hear the
15 other comments first.

16 CHAIRMAN BAGGETT: It might be better. Let's go
17 through the other -- we have a number of cards here. Maybe
18 let the Regional Board come back and --

19 MEMBER SILVA: Let us have the benefit of hearing what
20 the other people say, and you can structure your response.

21 MR. BISHOP: Thank you.

22 CHAIRMAN BAGGETT: Thank you.

23 We've all got the written responses. We have all these
24 letters, albeit some of them very recently. We understand
25 the issue.

1 MEMBER SILVA: We understand the issues.

2 CHAIRMAN BAGGETT: We did spend quite a bit of time on
3 this item last time.

4 With that, let's start out with L.A. County DPW. I
5 think we have two cards, or three it appears. I don't know
6 what order. You all assume it is an orchestrated
7 discussion.

8 MR. BURHENN: Mr. Baggett, I was sort of hoping you
9 would hear us last. Unfortunately our speaker had some
10 airline problems this morning in Burbank. He is in a cab
11 right now headed towards us, speeding toward us.

12 CHAIRMAN BAGGETT: We will put you last. That is the
13 County. We have Dr. Kim and --

14 MR. BURHENN: Burhenn and Kim will be silent partners
15 if Mr. Ariki arrives.

16 CHAIRMAN BAGGETT: We've got then the County San
17 District.

18 MR. MONTAGNE: Mr. Chairman, I anticipated talking
19 after the Department of Public Works. That doesn't seem to
20 be happening. I will go ahead and proceed.

21 Good morning. My name is Dave Montagne. I am with the
22 L.A. County Sanitation Districts.

23 MEMBER KATZ: For the benefit of the Court Reporter,
24 talk closer to the mike.

25 MR. MONTAGNE: The Sanitation Districts own and

1 operates 11 wastewater treatment plants within the County of
2 Los Angeles. We have previously provided written comment on
3 the proposed amendment to the Basin Plan, both to the L.A.
4 Regional Water Quality Control Board and to the State
5 Board. I won't get into the specific details of our
6 comments, but I will let you know that we share concerns
7 raised by L.A. County Department of Public Works in their
8 previous comments and those that they will make today I
9 anticipate regarding the appropriateness of the proposed
10 objectives for application for all uses, all cases of Rec-1
11 use.

12 We support the protection of the beneficial uses, in
13 this case Rec-1 use. However, we are concerned that the
14 proposed objectives do not appropriate to the actual level
15 of use occurring in many of the inland waters within the
16 L.A. Region. For the reasons explained in our written
17 comments we recommend that the amendment before you today be
18 remanded to the Regional Board with the instruction to
19 complete the following actions:

20 Complete the process identified by the Regional Board
21 in their July 10th letter as Approach No. 2 of evaluating
22 subcategories of Rec-1 uses for inland waters to assure that
23 the water contact objectives adopted reflect the actual
24 levels of use taking place, water contact use, taking place
25 within those water bodies, and in the level of use and river

1 segments where access is restricted and/or prohibited.
2 Extend this approach to coastal waters during wet weather
3 periods where levels of use are much reduced. And fully
4 consider the cost of implementation of any proposed
5 objectives so that the information may be considered in
6 setting objectives as required under the California Water
7 Code, Section 13241 (b).

8 The actions recommended by the Sanitation Districts are
9 consistent with the May 2002 USEPA implementation guidance
10 for ambient criteria for bacteria. Adoption today of this
11 amendment, as currently drafted, will set in place
12 objectives that do not reflect the actual level of the
13 actual range of use that occurs within the water bodies
14 covered and are, therefore, inappropriate to many of the
15 settings to which they will be applied. We are especially
16 concerned that while the amendment would instruct the
17 Regional Board to review its qualified Rec-1 use
18 designations for some settings, the action will take place
19 after the objectives have been approved rather than before
20 as should be the case.

21 Because the Regional Board's review of Rec-1 beneficial
22 use designations would take a considerable period of time,
23 probably anywhere from six months to over a year, and the
24 outcome of that review is uncertain, resulting management
25 and economic consequences could not be fully anticipated.

1 This puts at risk economic and societal costs or in excess
2 of that which would be required to protect the beneficial
3 use, potentially wasting valuable and limited public
4 resources.

5 We commend the Regional Board for stating their intent
6 to revisit the applicability of water quality standards
7 during high wet weather flows. This was a step in the right
8 direction. We are asking that the Regional Board take the
9 next step which is basically the option identified as
10 Approach No. 2 in their July 10th letter. Even though they
11 have described this task as complex and time consuming, we
12 feel it is a very appropriate step.

13 We are confident that the regulation community will
14 assist them in developing -- in any effort of this type,
15 providing information, et cetera. Given the potential
16 consequences, the Regional Board must do the work necessary
17 to establish water quality objectives are commensurate with
18 the actual levels of use that are occurring in the water
19 body to which the standards would be applied.

20 We appreciate the opportunity to provide these comments
21 on behalf of the Sanitation Districts and look forward to
22 working cooperatively with the Regional Board and other
23 stakeholders to develop appropriate recreational
24 subcategories, designations and appropriate bacteriological
25 objectives to assure protection of the beneficial uses.

1 Thank you.

2 MEMBER SILVA: Thank you.

3 Is the County ready? You want to go ahead. Everybody
4 is waiting for your comments.

5 MR. ARIKI: Good morning. My name is Adam Ariki. I am
6 with the Los Angeles County Department of Public Works. I
7 am the storm water quality manager, and I'm here obviously
8 to speak on the Basin Plan amendment for bacteria.

9 MEMBER KATZ: Adam, speak into the mike.

10 MR. ARIKI: I'm sorry I'm running. I missed my flight
11 here.

12 What I'm going to do, I'm going to focus on two areas.
13 One on the indicated levels themselves and then on the
14 threshold. We have testified before you here in the past
15 and many of the issues that I am going to bring up are
16 similar. I'm not going to labor over them. I'm just going
17 to skim over them real quick so that I won't waste your
18 time.

19 But the first issue that I want to speak to is the use
20 of the four indicators as opposed to one indicator as the
21 current Basin Plan. We testified in the past and our
22 written comments have stated so, that the use of four
23 indicators is basically based on one study that was done by
24 the Santa Monica Bay Institute Project. That study was done
25 during the summertime. That study was reviewed by the EPA,

1 and the EPA concluded that there is a weak link between
2 fecal coliform, which is one of the indicators which is
3 supposed to be used, and the illness symptoms. EPA further
4 reviewed many epidemiologic studies over the county and
5 concluded that the only indicator that is appropriate to use
6 at this time, based on the existing science, is
7 enterococcus. So we are abdicating and asking that the
8 Regional Water Quality Control Board look into that and use
9 only enterococcus as an indicator as indicated by the EPA.

10 The other issue that I want to bring up is this is all
11 for rainwater. For freshwater, again, there are two
12 indicators being proposed, the fecal coliform and the
13 E.coli. The current indicator is fecal coliform. The EPA
14 recommends that we use only one indicator, either
15 enterococcus or E.coli. They don't mention the fecal
16 coliform. Where the fecal coliform comes from we do not
17 know. There is no science, nothing supporting the fecal
18 coliform. We recommend to the State and your Board to ask
19 the Regional Water Quality Control Board to consider the use
20 of one indicator as recommended by the EPA, either
21 enterococcus or E.coli.

22 The second area that I want to focus on is the
23 threshold. What that is, that has a lot to do with our
24 flood control channels, which I brought up in the past.
25 Like I said earlier, I am not going to labor over that a

1 lot. It has to do with when they use or the attainability
2 of a designated beneficial use is not possible, such as
3 during high flow, wet weather along the beach. So I am
4 going to focus in here, first of all, the flood control
5 channels.

6 There is 72 inland freshwater that function as flood
7 control channels that are designated for Rec-1 use. And we
8 all know what Rec-1 use, full body contact, swimming,
9 fishing, surfing. These are concrete channels that are
10 prohibited -- they have restricted public access. In fact,
11 it is prohibited by the County code for people to enter
12 these flood control channels. You will see from the photos
13 that I am going to show you that there are clear signs that
14 says if you enter this channel you are going to be thrown in
15 prison, you are going to be fined \$500. So these are Rec-1
16 designations.

17 What the EPA has recommended that when you have manmade
18 channels like that that has been altered, you should go into
19 uses such as Rec-2. Now we do recognize that Rec-2 will
20 have to be done through the Basin Planning, triennial Basin
21 Plan. Meanwhile what we will recommend that the State Board
22 ask the Regional Water Quality Control Board, and the
23 Regional Water Control Board has already indicated their
24 willingness to do that, to look into subcategories of Rec-1
25 use. These subcategories like not full body contact,

1 infrequent use and things like that, in the interim, until
2 the designated use from Rec-1 and to Rec-2 is changed.

3 Again, that is another issue you can look at the
4 pictures, but the use limitation based water quality
5 objective. We have argued and our written comments said
6 that Rec-1 beneficial use, if it is applied for both summer
7 and winter, there are problems with it. The EPA has
8 indicated that when the use attainability, the designated
9 attainability, is not possible or there would be a high cost
10 to the society, a high impact, you could look at
11 subcategories of Rec-1.

12 We are not asking let's go and dedesignate the Santa
13 Monica Beach from Rec-1 to Rec-2. What we are asking for is
14 subcategories of Rec-1 that are allowed under EPA and that
15 has been included in Basin Plans for Region 2 and 9. There
16 are only 54 days in the rain -- we looked at over 54 years'
17 worth of data, and we found on average you only have about
18 53 days that are wet days. Let's look at those days and
19 let's use less stringent water quality standard because of
20 the beneficial use, like I said, is not attainable.

21 We looked at data from the beach attendance. We looked
22 at 19 beaches, and we found or we were told that there is
23 one-quarter people that attend the beach during the wet
24 weather than during the dry weather. Of those, very small
25 portion actually go into water contact recreation. Do you

1 want to spend \$1.5 billion as the Regional Water Quality
2 Control Board has estimated for that beneficial use? I
3 think we need to be a little bit more responsible and look
4 at the numbers and make sure that we do the right decision
5 by society.

6 The other issue that we have a concern about is, I
7 failed to mention earlier, has to do with the cost of all
8 this. Water Code requires that there should be a cost
9 estimate when the standard becomes stringent. We made those
10 comments in our written comments. The response that we got
11 from the Regional Water Quality Control Board is that if we
12 go from one indicator, which is the existing indicator, that
13 is the fecal coliform, for marine water, four indicators
14 which is fecal, total, the ratio of fecal and total and
15 enterococcus, really there wouldn't be any difference.

16 It didn't make sense to us, so what we did we went and
17 we looked at tons of data that was collected between 1996
18 and 2000 from L.A. County Department of Health Services,
19 from the City of Los Angeles and from the San District. And
20 we found quite the contrary. What we found, and there is a
21 graphical representation of the data, we found that only 5
22 percent of the data exceeded the existing Basin Plan
23 standard. And you can look at it. It is tabulated in
24 graphical format. And 14 percent of the data that we looked
25 at exceeded either one of the four indicators, either fecal,

1 total, ratio and enterococcus. If I do the math correctly,
2 that is three times as stringent as the current standard.
3 And if I can make a correct conclusion, that requires a cost
4 estimate as the 13142 section of the Water Code requires
5 that we do.

6 So for a response to be, well, all these indicators
7 co-exist, that doesn't hold water. It doesn't make sense to
8 us.

9 We also looked at -- we said, well, let's look at just
10 one indicator, enterococcus, and let's look at the fecal
11 coliform. And we noticed that only 2 percent of the samples
12 exceed these single limit of the total coliform while 12
13 percent of the sample exceed enterococcus. Again, you get
14 six false in there. So the fact that they do not co-occur
15 and the fact there is such huge discrepancy require that the
16 Regional Water Quality Control Board do a cost estimate to
17 change the bacteria indicators from one to four. That was
18 not done.

19 So to summarize again, our concerns are the flood
20 control channels and their application of Rec-1. Our
21 concern, the use of four indicators without any cost
22 estimate. And also our concern is the use or when Rec-1 is
23 not attainable we request that subcategory of Rec-1
24 beneficial use be considered.

25 Thank you.

1 CHAIRMAN BAGGETT: Thank you.

2 MR. ARIKI: Do you have any questions?

3 CHAIRMAN BAGGETT: Any question?

4 Any other L.A. County speakers?

5 That's it.

6 We have two other ones from L.A. County.

7 MR. BURHENN: They were standbys, Mr. Baggett.

8 CHAIRMAN BAGGETT: All standbys. We will proceed to
9 the next.

10 Bill Busath from the City of Sacramento treatment
11 facility.

12 MR. BUSATH: I'm going to go ahead and read a statement
13 that has been provided for you.

14 CHAIRMAN BAGGETT: We already have it in the record.
15 If you summarize, that would certainly help us.

16 MR. BUSATH: It is not that long. I can read it in
17 less than five minutes.

18 My name is Bill Busath. I am the City of Sacramento
19 storm water manger. I am here today representing the
20 California Storm Water Quality Task Force. The Task Force
21 appreciates this opportunity to provide comments on the
22 resolution before you today to approve the amendment to the
23 Water Quality Control Plan and basically I will summarize
24 this.

25 We make two main points in this. Basically, we are

1 encouraging the Board to move away from the fecal coliform,
2 total and fecal coliform and the ratio as indicators and
3 move towards the enterococcus and E.coli as has been
4 recommended by USEPA in their 1986 document and also in
5 their 2002 draft implementation guidance.

6 We'd also like to point out that Regional Boards,
7 Regional Board 3 and 5, in their draft Basin Plan amendment
8 is moving -- has recommended a move away from fecal coliform
9 as an indicator to E.coli. The science is definitely in
10 that direction and supports the use of E.coli and
11 enterococcus as indicators and move away from fecal and
12 total coliform.

13 The other point that we would like to make is that
14 though we won't argue with the designation of Rec-1
15 objective, we would ask the Board to consider some of the
16 subcategories that are within Rec-1 such as the moderate
17 full body contact recreation, lightly used full body contact
18 recreation or infrequent used full body recreation as
19 appropriate designations for certain water bodies within
20 L.A. County.

21 I'll just go ahead and read our conclusion.

22 In conclusion, since the California municipalities
23 continue to face complex challenges in attempting to control
24 these indicative pollutions from storm water systems, we
25 would request that great consideration be given to use of

1 the most appropriate indicators during both wet and dry
2 weather since they form the foundation for the development
3 of policies and strategies for protecting -- for the
4 protection of receiving waters.

5 And I would like to thank you for this opportunity, and
6 I am open for questions. I wouldn't be hurt if you didn't
7 ask any.

8 CHAIRMAN BAGGETT: Thank you.

9 We have a copy of your --

10 MR. BUSATH: Yeah, I gave you about three copies.

11 CHAIRMAN BAGGETT: Edward Dilkes, City of Bradbury.

12 MR. DILKES: Good morning, gentlemen. Thank you for
13 this opportunity.

14 I submitted some stuff in writing. It unfortunately
15 did not get to you until yesterday. I brought,
16 unfortunately, only seven copies with me this morning, but
17 we will fax up some additional ones.

18 CHAIRMAN BAGGETT: We've all got copies.

19 MR. DILKES: What I would like to do is go a little
20 beyond that, to see if I can bright line a couple things.
21 Take perhaps three minutes at most.

22 This is a TMDL for which there really isn't enough
23 known to nail down standards that people can enforce. That
24 is the reason that I am here today. I am the city manager
25 in a very, very small city that has a large number of

1 equestrian uses. In fact, we are kind of proud of the fact
2 that War Emblem, the horse that ran one, two in the three
3 events of the Triple Crown was bred and trained in
4 Bradbury.

5 If, in fact, this TMDL is adopted and enforced, we have
6 concerns that it will make the operation of equestrian uses
7 in Bradbury and cities like it everywhere else virtually
8 impossible. We also think it is going to complicate the
9 life of the city in ways that are of just no benefit to
10 anybody. It is going to create a whole lot of work without
11 any consequent benefit to anyone at all.

12 Let me just quickly go through that.

13 The truth is that the bacterial contamination is not
14 like chemical contamination. It is not static. When you
15 have copper in the water, when you have pesticides in the
16 water, you have a chemical which is relatively stable and
17 reasonably easy to analyze, and it doesn't propagate, it
18 doesn't develop more of itself.

19 The bacteria are a different category. The truth of
20 the matter is that the populations are as much dependent
21 upon the nutrient content in the water, the temperature of
22 the water, its turbidity and a whole lot of other factors as
23 they are the initial contributions of the bacteria
24 themselves. So regulating the contributions itself may not,
25 in fact, be successful at all. It may turn out that

1 regulating nutrient levels and things like that or the rates
2 of flow or a whole bunch of other factors are really a much
3 better way to deal with it.

4 All those are going to be completely beyond me as a
5 city manager. All I'm going to be able to do is hand people
6 tickets that say you left some horse manure sitting on your
7 stable today and that is a felony. That is just not going
8 to be an effective enforcement policy.

9 Also, pretty much unknown in all of this is anything
10 that vaguely resembles the baseline. We have no idea what
11 the natural conditions of use. I was riding in the plane
12 today with somebody else who commented that there are
13 canyons where there is no development at all. And during
14 wet weather storms those canyons test for higher bacterial
15 levels than are permitted. Those are areas where there
16 isn't urbanization and there isn't any development. And
17 apparently we are setting standards that exceed whatever the
18 natural condition was back whenever it is we think we are
19 focusing on.

20 We just really need to send this thing back and have
21 them rethink it because the fact is we are setting standards
22 that have no connection to reality.

23 The third is that we need a whole lot more information
24 on sources. There are some disagreement about whether you
25 can DNA-type canine bacterial contamination as opposed to

1 equine as opposed to bovine as opposed to humans. In fact,
2 you can do it. It is expensive and it is not completely and
3 totally accurate, but it is worth doing because it would
4 then give us some idea of what we really do have to
5 regulate. At the moment we are talking about just putting
6 buttons on everything, from sanitation districts to people
7 who own horses, presumably to people who walk their dogs
8 without having any clue which of those contributes what
9 proportion to the problem and without any clue of what
10 enforcement methods will really be helpful in dealing with
11 it.

12 I think it is really a mistake to just look at bacteria
13 and say we want to get rid of bacteria without having some
14 really precise understanding of where those bacteria come
15 from. Again, it is just a matter of science, but it is
16 important.

17 The last is the source testing that the standards for
18 -- and other people have talked about this. But the
19 standards and ratios and the counts of coliform as opposed
20 to E.coli or enterococcus, we really ought to be dealing
21 with standards that everybody will accept instead of
22 standards that everybody will fight. You can use standards
23 that have been adopted and used by everyone, and people will
24 use.

25 I make a point in my letter, and I would like the Board

1 to really seriously consider it. To the extent this will
2 very quickly focus on people with equestrian uses, you're
3 talking about the absolutely classic regulatory
4 taking. There is substantial profitability that this
5 regulation creates liability, not only for the entities
6 opposing the regulation but the municipalities that have to
7 enforce it. Exactly how all of that is going to get sorted
8 out ought to be thought through before we do this.

9 I might add by way of -- to the extent my credentials
10 matter one way or the other, I practiced eminent domain law
11 for the preceding 30 years, and it is an area that I am very
12 comfortable with. I'm quite comfortable that this has
13 significant regulatory taking aspects to it that has not
14 been thought about.

15 The letter also points out, and I really want to bright
16 line. There is an economic effect on low wage equestrian
17 workers that is not even being thought about. Most of the
18 people who work in the equestrian industry are people who
19 are immigrants. They have limited skill sets available to
20 get them jobs outside of horse management in one kind or
21 another, and when we put them out of business, which much of
22 this will do, you are really putting them out of business
23 for good. These are not people who are going to go out and
24 find jobs as computer consultants. These are people who now
25 have meaningful employment and who support their family with

1 the wages they earn and who will pretty much just be out of
2 work when this is over.

3 Lastly, I'm not really sure what I am supposed to do as
4 a city manager. We saw this coming years ago and Bradbury
5 began a policy that requires everybody to see to it that all
6 of the manure is carried away. We required that chips be
7 cleaned. We require that grading be created so runoff does
8 not occur except under the most extreme rains. We've really
9 gone out of our way.

10 I was instructed last Tuesday by the City Council to
11 see to it that there are plastic bags available for people
12 walking theirs dogs along our trial on Royal Oaks, and the
13 reality, when all those things are done, is there will still
14 be coliform and enterococcal and other bacteria in the San
15 Gabriel River. And I don't even know if they come out of
16 the city that I manage. But I imagine that I will be in a
17 position where I will be enforcing standards, having not a
18 clue in the world whether they benefit anybody or not, and
19 will be hearing from a Regional Water Quality Control Board
20 which has not bothered to include us in its rulemaking
21 process in any meaningful way and it's just a very
22 frustrating experience because I'm going to have to enforce
23 all this stuff, and I don't think it's going to do anybody
24 any good. I don't think there is any science that documents
25 that it will. And I think it is going to cost a small

1 fortune, and I think its major impact is going to give a
2 whole bunch of low wage workers, none of whom deserve to be
3 punished this way as there is no good public purpose behind
4 it.

5 I really ask that you send this back to the Regional
6 Board and let them rethink it in considerable detail. I
7 just, as a source of amusement, having appeared here on
8 trash TMDLs and talked to all of you about it before, do you
9 realize there is no trash can anywhere in this room?

10 MEMBER KATZ: Go ahead, try it.

11 MR. DILKES: I used to know a man named Richard Katz
12 who didn't have any gray on his beard at all. If the one I
13 knew had gray now, that would make me 60, and that can't
14 possibly be.

15 Thank you very much.

16 CHAIRMAN BAGGETT: Thank you.

17 Leslie Mintz, Heal the Bay, and Mitzy Taggart, Heal the
18 Bay.

19 MS. MINTZ: Good morning, Board Members, and a special
20 good morning to Mr. Carlton as the newest State Board
21 Member.

22 You are going to hear after me from Heal the Bay staff
23 scientist, Mitzy Taggart, as to the scientific reasons we
24 feel you should adopt the proposed Regional Board Basin Plan
25 amendment. One of the most fundamental points of Mitzy's

1 testimony is one that I wanted to punch up for you, which is
2 that it is important that the State Board be consistent with
3 the state law. The California Code of Regulations already
4 sets forth acceptable level of risk to marine swimmers. And
5 the proposed objective is in accord with these standards.

6 When the County requests changing the current Rec-1 use
7 by imposition of use limited objectives, we feel it is
8 potentially illegal, and I say that because the Basin Plan
9 process, OAL must look at the fact of consistency in
10 adopting a Basin Plan amendment. But more importantly we
11 feel it would be impractical and inefficient for the State
12 Board to be consistent with its sister agency, the health
13 department.

14 Finally, it is questionable, in my mind at least,
15 whether the imposition of use limited objectives in this
16 situation would so significantly change the beneficial use
17 that might in and of itself rise to the level of illegal
18 dedesignation.

19 We encourage you to adopt the proposed objective
20 without engaging in any discussion about reevaluation of
21 beneficial uses, and I believe our letter documents the
22 legal reasons for that. If, however, you are going to
23 direct the Regional Board to legally reevaluate the
24 beneficial uses, we ask you to use some proposed language
25 that I believe Mr. Fleischli will be showing you and

1 distributing to you. We look to you to improve our waters,
2 not downgrade uses.

3 Our proposed language is superior because I believe
4 that in distinction to the language in the current
5 resolution, we emphasize the fact that preceding any
6 dedesignation this Board has a duty to see if it can fix
7 the problem. The hallmark of this particular administration
8 is clean beaches, and the Legislature has seen fit to give
9 money for restoration of rivers. This administration
10 clearly recognizes that clean water equals a healthy
11 economy. And we believe your action should be commensurate
12 with that vision.

13 If restoration is not a possibility, then reevaluation
14 nonetheless needs to be narrowly tailored. In this respect
15 our proposed language does focus on the only relevant
16 beneficial use which is swimming. As a matter of precedent,
17 we think it is critical to set out this qualifier in any
18 proposed State Board language in conjunction with
19 reconsideration of beneficial uses because fish don't
20 respect laws. They move and they bioaccumulate. And there
21 are people relying upon fish for sustenance from these
22 waters irrespective of seasonality.

23 Lastly, I want to point out that the discharger's
24 arguments focus on the exception of concrete channels,
25 where the issue of appropriate uses resonates well. In

1 order to draw you, the State Board, into protracted
2 discussions about the objective. The dischargers do not,
3 however, point you to the rule which is that the bacteria
4 objective is the bacteria objective for all other Rec-1
5 waters, not just concrete-lined channels. The vast majority
6 of the waters effected are ones where people legally have
7 the right to swim and do and need to be protected.

8 The dischargers also do not point you to the fact that
9 this objective is a necessary building block for the Santa
10 Monica Bay TMDLs. Derailing this amendment will further
11 derail the TMDLs. The dry weather beaches TMDL was not -- I
12 guess it was supported by the City of Los Angeles, which in
13 my experience is unusual for a TMDL. We urge the state to
14 move forward with this TMDL.

15 Thank you.

16 CHAIRMAN BAGGETT: Thank you.

17 MS. TAGGART: Good morning. My name is Mitzy Taggart.
18 I'm staff scientist at Heal the Bay. Heal the Bay over the
19 past 15 years has developed a wealth of experience and
20 expertise in the area of fecal pollution at marine beaches.
21 We co-authored the 1996 Santa Monica Bay epidemiological
22 studies and with Assemblyman Howard Wayne, AB 411, which set
23 the state health standard, and we currently grade water
24 quality at beaches, at over 425 beaches in Southern
25 California. I personally, as Heal the Bay representative,

1 actively participated the last three years in the state's
2 beach water quality work group and I sit on the USEPA
3 Stakeholder Advisory Committee to set national performance
4 criteria for marine waters. And finally I am currently just
5 wrapping up my doctoral research at UCLA School of Public
6 Health. My research topic has been the dispersion of fecal
7 bacteria from storm drains in the surf zone.

8 I wanted to come here today to do a couple things.
9 First of all. We fully support the proposed amendment, and
10 I wanted to address two specific things that the County and
11 other stakeholders have brought to the Board's attention.
12 The first issue is that many of the stakeholders, including
13 the County, are asking the Board consider an amendment that
14 only includes enterococcus. In other words, get rid of the
15 other bacteria indicators. And they are continually
16 referring to an EPA document. And I want to clear the air
17 on this. That EPA document only addresses gastrointestinal
18 illnesses. The 1996 epidemiological study done in Santa
19 Monica Bay was an improvement over the study that the EPA
20 did over 20 years ago that support their criteria.

21 Those improvements include looking at other illnesses,
22 aside from gastrointestinal illnesses. So the total fecal
23 ratio was the best indicator found in the Santa Monica Bay
24 epidemiologic studies. It indicated many other health
25 risks, including significant respiratory disease. I think

1 that was the number one health risk found in the
2 epidemiologic study.

3 USEPA has not yet looked at the total fecal ratio. In
4 addition, the Santa Monica Bay studies the source of
5 bacteria was urban runoff, which is our number one source
6 of pollution in our coastal waters in California for
7 bacteria. The EPA studies were based on primarily sewage
8 treatment outfall plumes.

9 Finally, because of the Santa Monica Bay study was done
10 in California, we don't need to extrapolate results from
11 other studies here. We have our own data with our coastal
12 waters under our ocean conditions. For these reasons and
13 many others reasons the Santa Monica Bay epidemiological
14 study is actually an improvement. It goes beyond what the
15 USEPA studies have found. And actually, currently the USEPA
16 is planning to conduct more epidemiological studies during
17 this design phase right now to address some of these
18 limitations.

19 So in summary, the Santa Monica Bay study was directed
20 by Dr. Robert Merrill, a reputable epidemiologist from USC.
21 It was peer reviewed by the USEPA and it was published in a
22 Journal of Epidemiology. So it is a solid piece of
23 scientific work, and it does support the standards and
24 proposed amendment before you today.

25 The second issue I want to quickly address is some of

1 the stakeholders have been asking you to apply different
2 bacteria objectives to waters based on the frequency of use.
3 Basically, what they are essentially asking for is for
4 different acceptable risk levels to be established based on
5 different levels of use. Now, the acceptable health risk
6 levels have already been set for us by the State Health
7 Department when they adopted AB 411. Their risk management
8 experts and microbiologists spent several months discussing
9 what would be the appropriate standards and what would be
10 acceptable health standards to put in place for marine
11 waters.

12 They ultimately chose standards that we have in place
13 today. Those standards correspond with the USEPA criteria
14 for high use beaches. They went further in that they
15 applied those standards year-round. So those standards are
16 applied year-round, not just in dry weather. And actually,
17 even though the AB 411 requirements for monitoring and
18 public notification only apply in the dry season. The
19 county health department of Los Angeles, Orange, Ventura,
20 Santa Barbara and Santa Cruz all monitor and public notify
21 during the wet weather as well as the dry weather. They
22 believe there is a significant health risk in the standards
23 that they have set even during the wet weather to endeavor
24 monitoring and public notifying during that time of year.

25 So, in summary, we request that the State Board uphold

1 the public health decisions that our state health department
2 have already made and to go ahead and adopt the proposed
3 Basin Plan amendment as currently drafted.

4 Thank you.

5 MEMBER SILVA: Most of your comments are related to
6 beach contamination, right, and sampling? It is not
7 instream?

8 MS. TAGGART: That's correct.

9 MEMBER SILVA: The other question, I don't understand.
10 You mentioned about pulmonary disease and indicators and the
11 ratio between total and fecal.

12 How does that -- I thought those were more for
13 gastrointestinal. How does the ratio do any better for
14 pulmonary?

15 MS. TAGGART: The result of the epi study, Santa Monica
16 Bay 1998 epi study, showed that different indicators are
17 associated with -- better associated with different health
18 effects. So some of the health effects that the Santa
19 Monica Bay study looked at was significant respiratory
20 disease, which is basically coughing, wheezing, that kind of
21 thing. Total fecal ratio was the least fact indicator for
22 that. And actually, if you look at the state health
23 department, they have a statement for purpose. It was
24 completed in 1999 where they discuss why they chose the
25 standards that they did. They state there that the total to

1 fecal ration was a better indicator of all health risks, not
2 just significant indicator for enterococcus.

3 Does that answer your question?

4 MEMBER SILVA: Yes. But I still don't understand
5 it. I thought fecal and total were more for
6 gastrointestinal. I don't want to make that link between
7 that and pulmonary. That is on my mind.

8 MS. TAGGART: I think traditionally everyone has
9 focused on gastrointestinal. There have been other studies,
10 not just the Santa Monica Bay epi study, done around the
11 world that has shown that swimming in fecal contaminated
12 waters are associated with other illnesses aside from
13 gastrointestinal illnesses.

14 MEMBER SILVA: I understand the more samples, the more
15 indicators you do, the better it is going to be. Okay.

16 MEMBER KATZ: Question for you. Could you respond to
17 the comment of Mr. Bill Dilkes, or Grandpa Dilkes as we call
18 him now, on the equestrian issue?

19 MS. TAGGART: Yeah.

20 MEMBER KATZ: As I understand, Bradbury is up Santa
21 Anita way, is that what we are talking about?

22 MR. DILKES: It's adjacent to National Forest, up above
23 -- north of Monrovia.

24 MEMBER KATZ: So a long way from the ocean. I assume
25 the transportation vehicle is the San Gabriel River?

1 MR. DILKES: Yes, sir.

2 MEMBER KATZ: I am trying to figure out how that
3 relates to ocean standards and equestrian issues that he
4 raised, just as an example.

5 MS. TAGGART: The health risk associated with nonhuman
6 sources of fecal matter are unknown right now. USEPA in
7 their current implementation guidance document that
8 everybody keeps referring to has a section in there about
9 how they recommend that people deal with animal sources
10 right now while we have this gap in our data knowledge.

11 What they say is that because there is increasing
12 number of cases in which animal sources have been linked to
13 human health risk, in other words fecal contamination from
14 animals causing people to get sick, that they recommend that
15 you use the current standards. You can't change the
16 standard because it is a human or nonhuman health risk
17 source. So there is a section in there that addresses that.

18 MEMBER SILVA: If I can, Richard, I was echoing that.
19 I think you were referring more to the TMDL issue. Because
20 I was out in Orange County last week. They have the same
21 concern, looking at equestrian facilities and potential
22 impact on actually nonpoint source TMDL storm water
23 permits.

24 MR. DILKES: For the record, I am referring to both,
25 and you just have to read all this stuff together.

1 MEMBER SILVA: I think the bigger impact to them,
2 though, is the TMDLs.

3 MS. TAGGART: Bacteria that is discharged by these
4 facilities further up in the watershed survives. It is
5 transported to the ocean. And viruses actually have a
6 longer survival rate. So any viruses or other pathogens
7 associated with horses could impact the beach. Also, a lot
8 of --

9 MEMBER KATZ: What is the survival rate? How far or
10 how long do they travel?

11 MS. TAGGART: Viruses or bacteria indicators? Viruses
12 are the pathogens that can cause illness. There is an
13 enormous amount of scientific data out. There is a very
14 wide range because there is over a hundred different human
15 viruses in human fecal waste. So if you look at those, that
16 range, it can be on the order of hours to several months for
17 survival, is what I read in literature. So those virus
18 particles can remain viable for a long time.

19 CHAIRMAN BAGGETT: Any other questions?

20 Thank you.

21 MS. TAGGART: Thank you.

22 CHAIRMAN BAGGETT: Steve Fleischli.

23 MR. FLEISCHLI: Good morning, Members of the Board,
24 Mr. Chair. Steve Fleischli, Executive Director of the Santa
25 Monica BayKeeper. I'm also here today to testify on behalf

1 of the Natural Resources Defense Council.

2 I want to step back a little bit on the issue of why we
3 are here today. I think it is probably pretty clear to most
4 Members of the Board, based on the testimony I heard from
5 the cities and the dischargers, there is some confusion I
6 think as to why and what this Board is supposed to be doing
7 today. Today you are obviously considering the bacteria
8 standards, the bacteria water quality criteria for
9 swimming. That is what this is about.

10 Mr. Silva, I think you were very keen in recognizing
11 that some of the testimony seems to be focused on TMDLs and
12 when those may come down. And, in fact, the only TMDL that
13 are in the process in the L.A. Regional Board for their
14 consideration are the bay bacteria TMDL. Inland water
15 bacteria TMDL are sometime down the road. Also the storm
16 water permit, as you know, is another issue you are dealing
17 with separately.

18 I was very intrigued the L.A. County Sanitation
19 District is here today. Because I think if you asked their
20 representatives whether or not their discharges to inland
21 waters are in jeopardy of noncompliance with the bacteria
22 standard that you are adopting, I don't think there would be
23 any indication that they are going to have a problem meeting
24 the bacteria standards. Their motivation I believe based on
25 the testimony I heard today as well as at the Regional Board

1 last week with some of the permits of theirs, are based on
2 fishing issues, toxic fish, contamination of seafood. Of
3 course, they would be delighted to see this Board throw out
4 Rec-1 or require the Regional Board to go back through a
5 whole process of reevaluation Rec-1, not because of the
6 bacteria indicators, but because of the toxicity issues and
7 those sorts of things.

8 I want to caution you against that. I think the record
9 is very clear and, as you know, this is really about
10 bacteria.

11 In terms of the beaches versus the rivers, I think Heal
12 the Bay did a very good job of explaining the beaches. You
13 all know that the governor's clean beach initiative has been
14 enormously successful. It's a wonderful project. The
15 governor is very concerned about cleaning up our beaches. I
16 don't think for an area like Los Angeles it makes a whole
17 lot of sense to say that we should have one standard in the
18 winter and one standard in the summertime.

19 When the county puts up its data, you will note that it
20 is all in relative terms. They suggest that we have 20
21 percent of the use in the wintertime that we have in the
22 summertime. When you consider the magnitude of what that is
23 in Los Angeles, that is an enormous use. It is still a high
24 use relative to many states around the country. I think
25 that is very important, and I am sure many, many surfers

1 would tell you that that is when they like to go to the
2 water. Yes, it is polluted, but that is when you have good
3 swell.

4 With regard to the rivers issues, I can understand some
5 of the concerns that were expressed previously by several
6 members of this Board with regard to concrete lined channels
7 in Los Angeles and the viability of those channels for wet
8 weather recreation. I think if you look at the record you
9 will see that there are existing uses in these waterways
10 during the summertime and during low flow conditions where
11 people are recreating in the streams. I don't think really
12 that creates a significant public safety risk. I think the
13 County and others have tried to preclude access to these
14 waterways under the guise of safety, but the reality of what
15 we are talking about here, these are waters of the United
16 States, and as such they deserve the protection of the Clean
17 Water Act and the legal protections of dedesignation.

18 So when you have an existing use, whether it is
19 recreation or any other kind of use, you cannot remove that
20 use from the waters of the United States because the Clean
21 Water Act is all about let's keep it the way it is and let's
22 try to make it better. Let's not set up impediments and
23 obstacles to restoring our waterways.

24 In the wintertime certainly there are high flow
25 conditions. I appreciate the comments of the Regional Board

1 letter and I want to hand out what we propose sort of as a
2 compromise to recognize the opportunity that we have here to
3 reevaluate some of the wet weather uses of these
4 concrete-lined channels and yet also at the same time
5 recognize that we can't wholesale dedesignate.

6 Also with regard to options two and three, I think
7 those are very dangerous. You set up a scenario whereby
8 essentially you are telling the public we are going to
9 protect the beaches at a certain level, we are not going to
10 protect concrete-lined channels and the people who recreate
11 in those concrete channels at the same level. That is a
12 real significant problem particularly from an environmental
13 justice standpoint. And I am probably not the most
14 qualified person to say those sorts of things. But I think
15 you would have a public relations nightmare on your hands.

16 But I want to hand this out and maybe I can take a
17 couple of seconds to walk you through just this one little
18 paragraph.

19 In terms of our proposal, and I apologize to the
20 audience. I brought an overhead, not realizing that they
21 all switched over to Power Point. I didn't want Maureen to
22 have to go scrambling at 9:00. In terms of what this says,
23 in the first sentence, we are trying to identify that this
24 is really about swimming during wet weather where there is a
25 significant public safety concern, particularly in waterways

1 where there are no trespassing signs or fencing.

2 So it would say: The State Water Board directs the
3 Regional Board to review its Rec-1 beneficial use
4 designation for swimming during wet weather in freshwaters,
5 specifically those to which public entries are prohibited
6 for health and safety reasons during no trespassing posting
7 and fencing.

8 The next sentence: In this connection the Regional
9 Board should assess how enhanced restoration of watercourses
10 that have been the subject of previous alterations for flood
11 control purposes can be accomplished to alleviate these
12 restrictions and beneficially affect other uses of these
13 waters.

14 The whole purpose of that statement, and you have many
15 efforts at both state and local level to try to restore
16 these waterways, to try to take out some of the concrete and
17 try to make more active uses in these waterways. That is
18 what this Board should be focused on because that is what
19 gets to restoring the beneficial uses. We should be
20 exploring those opportunities before we come out and
21 wholesale say, "Look, we just have to get rid of these
22 uses," and before we go through that use attainability
23 analysis.

24 The next sentence reads: If enhancement and
25 restoration is not possible, the Regional Board, and then I

1 have stricken the reference to the draft EPA Implementation
2 guidance.

3 I feel if you want to start directing the Regional
4 Boards to what document they should be looking at, the
5 critical documents, in my mind, are not draft documents by
6 EPA. They are formal, final documents by the Department of
7 Health Services through their AB 411 process. And Mitzy
8 Taggart mentioned that Santa Monica Bay Restoration Project
9 Study at length. When you look at the initial statements of
10 reasons for the AB 411 standards that have been adopted in
11 the California codes which these water quality criteria are
12 based on, you will see other studies in there as well.

13 And just to finish that thought, Mr. Chairman, that
14 they should consider variability in likelihood or frequency
15 of recreational use in seasonality as well.

16 So I think you see the reason the environmental
17 community, although we are not happy about it, are trying to
18 recognize that there are opportunities in the law to address
19 these issues, but that we should not take a wholesale look
20 at this.

21 CHAIRMAN BAGGETT: I do have -- I understand the
22 concept and at least I don't have a problem with it. I
23 think it makes sense. The challenge I've got is in the very
24 beginning of your -- in this connection the Regional Board
25 should assess how enhancement or restoration, I guess I

1 concur if there was -- if there was enhancements or
2 restoration projects ongoing.

3 I assume that is what you mean, if there is intent or
4 Department of Conservation or if L.A. City or County is in
5 the middle of a restoration project using Prop 13 funds. I
6 understand that makes absolute sense to me. But to put our
7 Regional Board and give them the next burden of going out,
8 the way I could read this and also say, it is their
9 obligation now to go out and figure out what sections are
10 available for enhancement restoration. I don't know that we
11 want to get in enhancement. Other agencies take a lead or
12 the city, like in L.A. River as I understand they are doing
13 some restoration parks along the rivers, tearing up
14 concrete.

15 MR. FLEISCHLI: I appreciate your comment. What I am
16 suggesting is I think you're right that they have to look at
17 what other agencies are doing, what other conservancies and
18 things like that. But I also think if you are going to go
19 through the dedesignation process, even if it is just for
20 wet weather, under 40 CFR 131.10, you have to look at
21 whether or not it is feasible to restore these waterways.
22 The question becomes, you've got representatives from the
23 county and others up here saying this is completely
24 infeasible, and then they will provide their examples. But
25 I think the Regional Board needs to take an objective look

1 and say, "Look, the Regional Board knows an awful lot about
2 these waterways. Is this feasible or not?"

3 MEMBER SILVA: Just a couple thoughts. One, the first
4 sentence, swimming during wet weather in freshwaters, that
5 is how we were looking at both storm water issues on the
6 beaches and then during any season.

7 MR. FLEISCHLI: I think what you're hearing from the
8 environmental community today is we are --

9 MEMBER SILVA: You want to limit it to that specific --

10 MR. FLEISCHLI: We are trying to limit this debate to
11 the inland streams. We don't think there is any credibility
12 in changing anything for wet weather on the beaches.

13 MEMBER SILVA: I'd like to listen to the rest of the
14 comments.

15 CHAIRMAN BAGGETT: We can ask Regional Board what they
16 think, I guess, but I still do have some concern that it
17 puts Regional Board in the position of having to go out and
18 evaluate what sections of what rivers are priorities for
19 restoration and enhancements. I don't know that that is the
20 role of this Board or the Regional Boards, is to work with
21 agencies. It is our role to go in and make a decision that
22 this section should be --

23 MR. FLEISCHLI: Maybe the best way to look at it is if
24 a use is going to be taken away that is not an existing use
25 you would want to consider whether or not restoration is

1 possible.

2 CHAIRMAN BAGGETT: I would like to, I guess, if there
3 was some mechanism to defer that decision to some agency
4 that has primacy over that. I can see the scenario when you
5 go back and forth as many people know in the Coastal
6 Commission with authority and --

7 MR. FLEISCHLI: I totally see your point and maybe --

8 CHAIRMAN BAGGETT: I hate to -- I can see an absolute
9 war, another. All we need is another conflict between other
10 state agencies over who has primacy over restoration efforts
11 now. I think there are some people in the resource agency
12 that might have some concerns here. I'm just trying to
13 anticipate what they would be.

14 MR. FLEISCHLI: I think the critical issue in the
15 language is to make sure you focus on swimming in wet
16 weather. That is really what this is about. That is really
17 I think the legitimate concerns that you hear are with
18 regard to that. I think they have to go through the
19 appropriate legal process to make that happen through use
20 attainability analysis or some other mechanism for ease of
21 use and maybe not simply -- more easily resolved by striking
22 that language and --

23 CHAIRMAN BAGGETT: I don't think that we need to strike
24 it. I'm just saying something to the effect that Regional
25 Board upon consultation with, who they would consult with.

1 That is all I'm looking for, with appropriate state and
2 local agencies.

3 MR. FLEISCHLI: I don't have a problem.

4 CHAIRMAN BAGGETT: Park district; there is a lot of
5 people.

6 MR. FLEISCHLI: I don't have a problem with that at
7 all.

8 CHAIRMAN BAGGETT: Any other questions?

9 MEMBER KATZ: You are okay with that?

10 MR. FLEISCHLI: Yes, I am okay with the consultation.
11 Thank you.

12 CHAIRMAN BAGGETT: Regional Board.

13 MR. BISHOP: Chairman, Members of the Board. We have
14 two choices. I can give you a one-minute rebuttal trying to
15 hit the highlights or we have a little bit more, like three
16 or four minutes which goes into the details. If you want to
17 hear the details, I would refer you to Renee.

18 MEMBER KATZ: I'd rather have the four minutes, but Art
19 wants the one minute.

20 MEMBER SILVA: One minute.

21 CHAIRMAN BAGGETT: I think we can probably ask some
22 questions.

23 MEMBER SILVA: Let's do your one minute. I have a lot
24 of questions.

25 CHAIRMAN BAGGETT: I have questions. I do know Pete

1 has a few.

2 MR. BISHOP: So essentially three issues here. The
3 first is that the proposed new objective will increase the
4 number of exceedances, which will lead to an increase in
5 cost for implementation when the TMDLs come down the line.
6 Detailed response to that is in your response to comments
7 that you have. But in summary the analysis conducted by
8 County is flawed. The analysis lumped all the data
9 together, which makes it impossible to determine if there
10 would be more impairments without doing beach-by-beach
11 analysis.

12 Secondly, the analysis compared one objective to the
13 existing and proposed objectives. There are two
14 objectives, and they co-occur. So the difference between
15 what the analysis showed and what we have now, the
16 comparison between existing and future, that is what we
17 would need to look at to see if there is going to be
18 increase in costs, not a comparison of one of the objectives
19 towards all four of them.

20 In contrast, the Regional Board relied on the 1998
21 study conducted by SCWRP and a multitude of agencies. That
22 study was peer reviewed and showed that in summer the 74
23 percent co-occurrence and in winter 76 percent co-occurrence
24 of existing and future proposed standards:

25 Two, the second issue is there should be a relaxation

1 of the objectives during wet weather on the beaches. This
2 was discussed at the Regional Board meeting when it was
3 brought up, and the Board was very clear with us and has
4 been clear numerous times that they don't think it is at all
5 appropriate to remove uses on our beaches any time of the
6 year. They should be fully protected.

7 And then third issue was the appropriateness of Rec-1
8 in a channelized area. At the last hearing you made it
9 pretty clear that you wanted to address this. We feel the
10 letter by Dennis Dickerson tries to address that as best we
11 can. There are a couple of other minor issues, but I think
12 those cover the main ones.

13 CHAIRMAN BAGGETT: Any questions?

14 MEMBER KATZ: Any reaction to the language, BayKeeper's
15 language?

16 MR. BISHOP: I have a similar concern that Chairman
17 Baggett had.

18 MEMBER KATZ: Was it addressed by the --

19 MR. BISHOP: I think addressing that with consultation
20 takes care of that.

21 CHAIRMAN BAGGETT: I thought about that. I guess the
22 language I would put in, something that the Regional Board
23 should upon consultation with appropriate state, regional
24 and local flood control and resource agencies.

25 MEMBER KATZ: Should be or, not and.

1 CHAIRMAN BAGGETT: They are whoever is appropriate,
2 and/or.

3 MEMBER SILVA: A few questions. One is process. If we
4 -- first of all, sounds like the Regional Board is willing
5 to go back and at least do some studies as requested by the
6 County on use limited objectives.

7 MR. BISHOP: Yeah. I hope it was clear in the letter.
8 We already plan to come back with a high use, high flow
9 Basin Plan amendment, to bring to our Board a Basin Plan
10 amendment to restrict use, restrict beneficial use during
11 high flow in preparation for inland water TMDLs.

12 We also want to look at the appropriateness of
13 dedesignation of the channels that don't have any existing
14 use. And then we agree to evaluate the appropriateness of
15 different use levels. But I will be honest, the first two
16 are the ones that seem to us to make the most sense. If we
17 are using the water, then let's fully protect it. If we're
18 not using it, let's dedesignate it.

19 MEMBER SILVA: So you are not as amenable to doing some
20 kind of a tiered approach?

21 MR. BISHOP: Well, I am concerned that the people that
22 use the water in the unlined portions of the L.A. River, the
23 San Gabriel River, some of these other places, are not --
24 are the folks that are of less economic viable -- people
25 that can't get to other places to recreate. They are

1 families with small kids. I am not sure that is where we
2 want to reduce use. But where there is an inch water in
3 square concrete channel I think it makes sense to look at
4 removing the swimming use from that. But I think we should
5 do that in a proper way, which is to go back and do a use
6 attainability analysis. That is the only way you can.

7 MEMBER SILVA: The only other question, I guess
8 politically for the County, because we had this problem in
9 San Diego. I guess if you don't change the designation
10 during storm events at the beaches, the other option is to
11 close the beach when you have a storm event, which is not
12 politically sometimes viable. That is the other option the
13 County has. I am just talking strictly from a health
14 perspective.

15 MR. BISHOP: That is what happens now; it gets posted
16 now based on a storm event.

17 MEMBER SILVA: Assume they have to post it either way,
18 whether we change the --

19 MR. BISHOP: This objective is not going to change the
20 fact that all of our beaches for the most part are impaired
21 during wet weather. This is not changing that. That would
22 be dealt with under a TMDL which is what is being
23 implemented, some sort of reduction in the bacteria coming
24 out of it.

25 MEMBER SILVA: Actually, earlier asking about the

1 tiered approach, I was thinking maybe tying a tiered
2 approach for use also to a tiered approach for sampling
3 where you have a lesser use also go down to a lesser amount
4 of sampling, but that might be too complicated, anyway.

5 Those are my questions.

6 MEMBER KATZ: He was impressed with the Office of
7 Homeland Security multiple color impression and that is what
8 he is proposing for the beaches.

9 MEMBER SILVA: Actually more the river.

10 MEMBER CARLTON: One question on this issue of whether
11 the proposed standards are more restrictive than the
12 existing standards. You indicated in your comments here
13 that you analyzed historic data differently than the County
14 indicated that they had. That 74 percent, 76 percent of the
15 time there was co-occurrence.

16 Does that mean that 25 percent of the time there wasn't
17 and new standards are more restrictive than we are saying?

18 MR. BISHOP: Yeah. I think you can say there is an
19 increase when you have multiple indicators that sometimes
20 you don't have a co-occurrence. Majority of the time you
21 have a co-occurrence.

22 The other thing that we need to keep in mind is that
23 these are already the health standards for the beach. So
24 even if we don't change them in ours, the Department of
25 Health Services already has these standards which are

1 exactly the same to indicate that the beach is safe or not.
2 So essentially, if we say we are going to go back to our
3 existing, which is right now fecal and total, then they are
4 still going to post based on the four indicators. They are
5 still going to indicate when a beach is exceeding the health
6 standards.

7 MEMBER CARLTON: It leads to the issue of the cost of
8 compliance with more stringent standards and the need to
9 analyze that.

10 Is it your position that cost is already on the table
11 because of the need to comply with the health department
12 standards?

13 MR. BISHOP: That's correct. Also because of the
14 issue with the -- we are talking about complying essentially
15 is when you have an impairment of the use. You have to meet
16 that use. We have multiple indicators. Yes, there may be a
17 few more days that it would show an exceedance, but you
18 still need to address that exceedance in the same way.

19 MEMBER CARLTON: Thank you.

20 MEMBER KATZ: Gary, I want to add in terms of the cost
21 issue it is a valid issue. But one of the frustrations with
22 the County historically has been the County sort of leads
23 the charge to not choose to impose stricter standards and
24 complains about the cost, but never factors in the benefits
25 of cleaner beaches from a dollar standpoint. We hear that

1 one side of the argument. The beaches in Southern
2 California and all of California are a major tourist
3 attraction and it is a major boost to the economy and that
4 is the other factor that never gets factored in.

5 MEMBER CARLTON: To say it another way is the cost of
6 having the beaches closed.

7 MEMBER KATZ: Exactly.

8 MEMBER CARLTON: Is significant.

9 CHAIRMAN BAGGETT: Any other questions?

10 Thank you.

11 MR. BISHOP: Thank you.

12 MEMBER KATZ: To add the language in -- move it with
13 the language that was submitted as modified the Chair.

14 CHAIRMAN BAGGETT: Which would be upon consultation
15 with the appropriate state, regional and local flood control
16 and resource agencies, I think that covers.

17 MR. WILSON: Just a point of clarification. Are you
18 talking about amending the staff recommendation or the
19 proposal presented by Mr. Fleischli?

20 CHAIRMAN BAGGETT: Mr. Fleischli.

21 MEMBER KATZ: Changing the language in Mr. Fleischli
22 and adding that to the staff recommendation. So the motion
23 does both things, it accepts the motion to pass the staff
24 recommendation with the amendment proposed by Mr. Fleischli
25 as modified by the Chair.

1 MR. WILSON: That is good.

2 MEMBER KATZ: And somebody is on second.

3 MR. GREENE: Is that possibly all of the L.A. County
4 cards, L.A. County Executive Advisory Committee? I suspect
5 -- I'm sorry, I apologize.

6 Is it possible I can address the Board?

7 CHAIRMAN BAGGETT: Sure.

8 MEMBER KATZ: Before you address the Board, that was --
9 just to make it clear, the motion that was being made on
10 this, so everybody is clear on that. Just to be clear, I
11 don't know if everybody has a copy of it, but just so the
12 County knows it.

13 MEMBER SILVA: Limit to the freshwater, basically we
14 are leaving out the ocean water issue.

15 MEMBER KATZ: Right.

16 MR. GREENE: I apologize for the confusion.

17 Thank you, Board. Appreciate having the opportunity to
18 make a presentation. My name is Gerry Greene. I am a civil
19 -- senior civil engineer for the City of Downey and I am
20 here speaking as a representative of the Executive Advisory
21 Committee for Los Angeles County MS4 permit. I apologize
22 for the confusion.

23 MEMBER SILVA: Is your mike on?

24 MR. GREENE: Try talking into it. My apologies.

25 You have received a letter today from the Executive

1 Advisory Committee as well as a Power Point presentation. I
2 apologize to the audience, the computer found my disk
3 unusable, so I will move directly into it.

4 I am new to the L.A. scene. I had a hiatus for the
5 last nine years. But I would comment that although it has
6 been pointed out that you have had -- municipal has had a
7 chance to comment on this amendment before, there have been
8 changes. I think the guidance from the EPA is a valuable
9 tool for helping us make the right scientific decision. And
10 that was not available a few months ago when most of these
11 previous opportunities to address either our Regional Board
12 or you were available.

13 I would encourage you to consider what is said in that
14 EPA guidance. I have understood that you considered AB 411,
15 that is law, an important law locally. It does designate
16 bacterial standards to be used, but it's political basis.
17 It is laws based on a few years ago and where we were at
18 that time.

19 The data that is in the EPA report is based on the most
20 recent reviews and includes all the data that went into AB
21 411. So it is more of a composite of scientific studies
22 across the nation. I think it is still worth considering
23 and remanding to the Board to consider this new document
24 which was not available when the resolution was passed or
25 when the resolution was previously heard at this level.

1 We think that having as many standards that are
2 proposed to be very problematic. When you have multiple
3 standards, you have a difficult time if you are trying to
4 defend them. And that you have perhaps one that says there
5 is a problem and four others or three others that say there
6 is not a problem. Then you are in a situation of
7 disagreement.

8 Nobody likes to go into litigation or regulatory
9 decisions with a disagreement on what the results are
10 telling you. One says there is an issue and the other says
11 there is not.

12 I will move quickly and get on to the issue of the
13 coliform, total coliform and fecal coliform. As you know,
14 they represent many other things. The Hale study is very
15 important and valuable. It is a good scientific study.
16 Part of the job of the scientist is to point out where there
17 are trends, where there are correlations that may exist and
18 may need to be further investigated, but not necessarily
19 have been fully investigated, fully recognized.

20 I find it very interesting that in some of the
21 supporting documents that go there did go with this
22 amendment to the Board, that when you have things that are
23 correlated, such as fecal coliform and E.coli, most fecal
24 coliform are in E.coli, they did not get the same resulting
25 health study -- health results, excuse me. One gave skin

1 rash, another gave as an example pulmonary symptoms. You
2 would have expected if those two were indeed correlating,
3 give the same results, that you would end up seeing the same
4 type of health symptoms.

5 The same could be said for total coliform and total
6 coliform and fecal coliform ratio. Again, total coliform
7 being skin rashes, total coliform and fecal coliform ratio
8 should also be correlated, was more along the line of
9 intestinal disease.

10 So, again, these are more results. These are important
11 studies. But they are not the end point of where we need to
12 go. For that reason I would encourage the Board to remand
13 this back to the L.A. Region and consider the studies that
14 have come out within the last two months and their impact on
15 this proposal, this resolution.

16 Thank you.

17 CHAIRMAN BAGGETT: Thank you.

18 MR. BURHENN: Mr. Chairman, my name is David Burhenn,
19 counsel for the County. I would like to speak to one issue,
20 we didn't speak to because we didn't have Heal the Bay
21 comments on the directive back to the Regional Board.

22 May I be heard on that for just a few minutes?

23 CHAIRMAN BAGGETT: Sure.

24 MR. BURHENN: Thank you.

25 We take issue with the addition of the language

1 swimming during wet weather in reconsideration of Rec-1
2 use. Our concerns with these channels is not simply
3 swimming, but also fishing and other uses where people are
4 in or directly adjacent to very dangerous structures. We
5 also feel that specifying swimming creates a regulatory
6 problem in terms of trying to decide, well, swimming would
7 be not good but fishing is okay and canoeing is fine, but
8 something else isn't.

9 We should give the Regional Board the flexibility to
10 make those determinations. So I would respectfully request
11 that the language "swimming during wet weather" be stricken
12 from the proposed amendment to the staff resolution. We
13 don't have a problem with their suggestion of exploring
14 enhancement restoration for watercourses. I do think that
15 is covered by 40 CFR as part of that process, but certainly
16 something that they will be consulting with us since the
17 flood control has jurisdiction over most of these channels.
18 We also have no problem with the deletion of the reference
19 to the implementation as guidance. So that with that one
20 change we could live with that language.

21 CHAIRMAN BAGGETT: So your proposal is just the first
22 swimming during wet weather?

23 MR. BURHENN: Yes, sir.

24 CHAIRMAN BAGGETT: Mr. Fleischli.

25 MR. FLEISCHLI: Mr. Chairman, no.

1 MEMBER KATZ: Your response?

2 MR. FLEISCHLI: My response? I hope my comments were
3 very, very clear that the big deal to us is that this be
4 limited to swimming during wet weather because that is what
5 this bacteria standard is all about. You don't have a toxic
6 standard in front of you to talk about fishing and whether
7 we can have toxic fish in the L.A. River and other
8 waterways. What you have is a bacteria standard for human
9 contact recreation, swimming, bathing water standards is
10 what they are known as. So to me that is the critical
11 language in this. I would strongly be opposed to taking
12 that out.

13 CHAIRMAN BAGGETT: If that is the case, why do we need
14 to reiterate it here? You argued it is already by
15 definition in there.

16 MR. FLEISCHLI: What you are seeing and I think if you
17 look over the history of what has been happening, you see
18 the attack of MUN issue. You see the attack of the Rec-1 in
19 its entirety. And I think the fact that L.A. County San is
20 here really highlights the fact that dischargers in this
21 context are not viewing this as an opportunity to throw out
22 -- not an opportunity just to throw out the TMDLs that are
23 coming down for bacteria standards. People like L.A. County
24 San are looking at this as an opportunity to throw out toxic
25 pollutants and other sources of --

1 CHAIRMAN BAGGETT: Didn't you open just a minute ago,
2 Steve, by saying that by definition this is what the bathing
3 water standard is?

4 MR. FLEISCHLI: Right.

5 CHAIRMAN BAGGETT: So why do we need language in that
6 sentence to say that if it is by definition already that is
7 what it means?

8 MR. FLEISCHLI: Because by definition that is what you
9 are considering. By definition what was stated and what the
10 County would agree to is we want to review Rec-1 beneficial
11 uses. We have as a State Board a bacteria standard in front
12 of us but we want to look at Rec-1 in its entirety. That is
13 what the language on its face says if you delete the
14 swimming during wet weather. And it opens up that world of
15 fishing and other things that are captured under Rec-1.

16 MEMBER SILVA: I have a compromise. Just take out
17 swimming. You have to keep your wet weather in there?

18 MR. FLEISCHLI: It doesn't address my concerns or
19 NRDC's concerns. I'm fairly certain that it doesn't address
20 the Heal the Bay's concerns.

21 It is not about what -- if you take out the word
22 "swimming," what you are telling the Regional Board on its
23 face is go back, look at all of Rec-1. And all have Rec-1
24 is not just swimming.

25 MEMBER SILVA: But Regional Board says they are going

1 to concentrate mostly on swimming, anyways.

2 MR. FLEISCHLI: Let me put it in different context.
3 When we had the MUN drinking water issues on these
4 waterways, there is a footnote in the Basin Plan that said
5 potentially that the Regional Board shouldn't put limits in
6 permits based on MUN until such time as they review them. I
7 can almost guarantee that at least if county council is
8 intelligent, and I think they are, that they are going to
9 stand up in front of Regional Board, and so is L.A. County
10 San, and say, "Hey, State Board has directed you to
11 reevaluate all Rec-1 uses. You got to stop moving forward
12 with all your current ones that implement the California
13 Toxics Rule and other things that are designed to protect
14 fish."

15 I guarantee you they are going to say that, and that's
16 why you have to be very explicit here.

17 CHAIRMAN BAGGETT: Michael, Regional Board. He is
18 getting thoughts.

19 MR. LAUFFER: On behalf of my client, it is always
20 nice the direction we get from the State Board, in other
21 words, where we can potentially be slapped around a little
22 bit if we are unable to go so far, is more narrowly
23 tailored.

24 I think Mr. Fleischli raised an excellent point about
25 the way this issue got before the State Board on the

1 bacteria objective change. I also want to be clean, in
2 Dennis' letter, Mr. Dickerson's letter, speaks for itself.
3 The Regional Board has discretion on its own to consider
4 variable use levels and so forth. And in tailoring the
5 State Board direction and my preference would be that it be
6 more narrow, that is not going to preclude the Regional
7 Board from doing anything. It is just clear what the State
8 Board is directing.

9 I would keep Mr. Fleischli's language in there for now
10 with the understanding that you all recognize Dennis has a
11 letter out there. There will be broader stakeholder
12 discussions about these issues.

13 MEMBER KATZ: You feel keeping swimming in, is a more
14 appropriate way to proceed?

15 MR. LAUFFER: Correct.

16 MEMBER SILVA: By definition --

17 CHAIRMAN BAGGETT: That is what we are going around
18 with.

19 MR. LAUFFER: I think Mr. Fleischli made a point that I
20 started to make during my opening point, and that was there
21 are a lot more issues in Rec-1. Part of what Mr.
22 Fleischli's recommendation, I guess also NRDC
23 recommendation, is that it at least makes it tailored that,
24 hey, Regional Board, pay attention to this particular issue.
25 State Board isn't telling that you have to write off Rec-1

1 entirely. You've got to go through the 40 CFR 131.10
2 issues.

3 CHAIRMAN BAGGETT: Thank you.

4 One last --

5 MR. BURHENN: I know it is a great response. Rare for
6 us to probably be telling the State Board to give the
7 Regional Board more discretion, but I think that is what we
8 are prepared to do here. I do really feel that the intent
9 -- I went to the Board --

10 MEMBER KATZ: That of itself should make us all very
11 nervous.

12 MR. BURHENN: I want to make one important point, and
13 again I disclaim all the political attributions by Mr.
14 Fleischli, but we will live with that. We have been making
15 this comment consistently, not simply making it with the
16 trash. It is an issue of safety. It is an issue of people
17 boating, fishing and recreating in dangerous flood control
18 channels. That is one of our major concerns. I want that
19 to be clear for the record.

20 Focusing on swimming during wet weather in our view
21 simply opens these up for potentially dry weather fun, which
22 is not something that these intended to do. Mr. Katz
23 indicated and Mr. Baggett as well at the last meeting, that
24 is what I thought the thrust of your concerns were.
25 Swimming obviously is the biggest single health issue.

1 MEMBER KATZ: David, if you were speaking 24/7 for
2 County San and County of L.A. and all the other folks down
3 there, we might -- I would certainly be comfortable with
4 that representation. I understand and I think that, without
5 you saying, your clients are among the more difficult people
6 to control, would be a wrong word, at least to hold
7 accountable from day to day.

8 I feel having spent significant time working with L.A.
9 County on a variety of issues, I understand Mr. Fleischli's
10 concern. It would not be the first time there has been a
11 narrow window that they sort of trump through. We have seen
12 that. In the 20 years I have been up here, I have seen L.A.
13 County do that time and time again. And that is part of my
14 concern.

15 MR. BURHENN: I can't speak to that..

16 MEMBER KATZ: I understand. I won't hold you
17 responsible for them.

18 CHAIRMAN BAGGETT: Any other comments?

19 MEMBER KATZ: And I won't hold you responsible for them
20 either.

21 MEMBER SILVA: I'd rather leave it without the swimming
22 and just leave it Rec-1. I think swimming is the most
23 stringent anyway. By definition you are going to be
24 affecting all the other uses if you protect swimming. I
25 think it is redundant, quite frankly. If you attack it from

1 the swimming standpoint, I think you already covered all the
2 other fishing and other rec uses you have.

3 CHAIRMAN BAGGETT: What is your proposal?

4 MEMBER SILVA: I would take swimming out.

5 CHAIRMAN BAGGETT: We would leave it for designation
6 during wet weather?

7 MEMBER SILVA: Yeah, I'm okay with that.

8 CHAIRMAN BAGGETT: Take the one word out, swimming.

9 MR. FLEISCHLI: If I might. The idea that the swimming
10 is most stringent may be correct for bacteria.

11 MEMBER SILVA: That is what we are talking about.

12 MR. FLEISCHLI: Right, that is what we are talking
13 about. But the truck being driven through that narrow
14 opening, the idea of opening up the rivers, the concern of
15 the County that you are going to invite dry weather use of
16 these waterways, to me that is what the clean water is all
17 about. You have existing uses.

18 The standards that I am concerned about, I don't have a
19 problem, and I think why I am here today is to say, "Look,
20 we think there is some flexibility here for bacteria in wet
21 weather. We do not feel that there is any flexibility for
22 toxics and other pollutants." But you can't -- the way it
23 is written, it says directs the Regional Board to review its
24 beneficial use. It doesn't direct them to review it
25 specifically related to bacteria and it doesn't limit in any

1 way. I think the only way to limit it is the pollutant we
2 are all talking about today, is to recognize that it is
3 swimming that we are concerned about.

4 MEMBER SILVA: What about if we put bacteria in there?
5 I would rather do that than -- I would rather take swimming
6 out and put bacteria in.

7 MR. WILSON: I think you would be mixing apples and
8 oranges a little bit because the direction is talking about
9 the use designation which is different from the water
10 quality objectives.

11 MR. FLEISCHLI: I think that is where the tension is.

12 MEMBER KATZ: So in order to get to where we are going,
13 you need to leave swimming in, particularly for that reason.

14 MEMBER SILVA: I don't agree because I think, again,
15 you just go to Rec-1 and you make it protective. It is
16 going to protect swimming ultimately. I don't see what you
17 gain by putting swimming in. I think you restrict it too
18 much. That is my opinion.

19 MEMBER CARLTON: If I may, I'm concerned with the
20 County's -- what I perceive, the County's concern to be
21 about safety issues. I am familiar with these types of
22 facilities. Use downstream of a structure that has a gate
23 that could open and give the people a way to a recreating
24 area is a safety issue. And it seems like that -- in
25 evaluation of the Rec-1 beneficial use the safety issues

1 should be looked at. I don't know what the answer is.
2 Perhaps it can be engineered so the safety threat goes
3 away. Perhaps it can't.

4 MR. FLEISCHLI: I do appreciate that. Maybe the nuance
5 of what I am trying to suggest is I don't think people
6 should be standing on the banks of the river fishing when
7 the floods are coming. What I am suggesting, though, is
8 once you make a change to the beneficial use, the process
9 that it triggers and legally required to trigger for the
10 Basin Plan and everything else essentially says, "Look, if
11 you are discharging something other than bacteria, we are
12 going to let you off the hook." Even though, as Mitzy
13 Taggart pointed out, the fish don't care about the laws.
14 They're still going to get contaminated whether somebody is
15 fishing that day or not. But they are going to remove those
16 water quality objectives and criteria for toxic pollutants
17 and other things that can accumulate in the fish that people
18 will be catching on dry days and other times when it is
19 appropriate for them to be in the channels.

20 MR. WILSON: Maybe I can suggest a middle ground here.
21 Something to the effect, similar to the language that Mr.
22 Fleischli has right now. The review is on Rec-1 beneficial
23 use designation, focusing on swimming during wet weather in
24 freshwaters.

25 MEMBER SILVA: Too many attorneys in the room.

1 CHAIRMAN BAGGETT: Focusing on?

2 MEMBER KATZ: Swim instead of swimming. Bathing not
3 swimming.

4 CHAIRMAN BAGGETT: Focusing on swimming.

5 MEMBER KATZ: I am happy with the language as Mr.
6 Fleischli submitted, with Art's comment. That is fine. It
7 is not like no matter what we do L.A. County is not going to
8 sue us over it.

9 MR. FLEISCHLI: That is what I was going to suggest.
10 If they agree not to sue, I can probably live with that
11 language.

12 MR. BURHENN: I don't know about that.

13 CHAIRMAN BAGGETT: I guess the --

14 MEMBER KATZ: I'm going to get the commitment about not
15 to the sue.

16 CHAIRMAN BAGGETT: I don't know if it matters, either
17 by the very letter that is into the hearing by the Regional
18 Board Executive Officer recognizes they have the discretion
19 to go beyond this. And there is going to be incredible
20 debate, shall we say, at the local level for them to examine
21 broader purposes. We aren't limited. We are suggesting. I
22 think the word "focus" may be --

23 MEMBER KATZ: If we have swimming in there, and they
24 have the ability to go broader than that, then we have
25 accomplished what we want and what the County wants.

1 CHAIRMAN BAGGETT: This is what we asked them to look
2 at. They always had discretion, I think, as --

3 MEMBER SILVA: Mr. Chairman, I think I will agree with
4 our counsel's advice and just put "focusing on swimming."
5 I'll agree.

6 MEMBER KATZ: Have the County's policy not to sue?
7 Where are you going? I never got an answer to my question?
8 Is it the County's policy not to sue?

9 MR. FLEISCHLI: BayKeeper will promise not to sue, in
10 the spirit of cooperation.

11 MEMBER KATZ: Thank you.

12 MR. BURHENN: We will get back to you on that.

13 MEMBER KATZ: With or without the red?

14 CHAIRMAN BAGGETT: So there is a motion. Is there a
15 second changing --

16 MEMBER SILVA: The motion is --

17 MEMBER KATZ: I will write it up, don't worry.

18 CHAIRMAN BAGGETT: This is not like they do things over
19 there, Richard. You don't write motions after we vote.

20 MEMBER KATZ: You want your budget?

21 This is using counsel's advice on the wording.

22 CHAIRMAN BAGGETT: Focusing on swimming. Insert the
23 words "focusing on swimming during wet weather" as in the
24 text, and the second part in this connection the new
25 language, the Regional Board should upon consultation with

1 appropriate state, regional and/or local flood control and
2 resource agencies and continue on.

3 MEMBER KATZ: Mr. Fleischli's, plus our counsel into
4 the staff recommendation, that is the motion.

5 MEMBER SILVA: That is the motion.

6 CHAIRMAN BAGGETT: Is there a second?

7 MEMBER CARLTON: I would second.

8 CHAIRMAN BAGGETT: I guess we -- I got a couple
9 comments. Let's vote.

10 All in favor.

11 Motion carries.

12 I guess one thing that is frustrating to me about all
13 these debates from a larger -- it is a much larger issue
14 than just this issue before the Board today on bacteria. We
15 are getting petitions. We are getting incredible rhetoric
16 on both sides coming from the Los Angeles area. Obviously
17 this is much bigger than this. It is much bigger than this
18 one bacteria standard here. I don't know -- we've all
19 obviously got MS4 petition already before us. Who knows
20 what else is in the stacks. I haven't looked at the
21 petition filed lately, but I am sure there are at least four
22 or five other ones from this particular area. I don't know
23 how -- if there is any way we can help negotiate. I guess I
24 encourage the parties down there, just sit down and talk as
25 much as you can because this isn't going to go away.

1 There's got to be -- the law is where it is. We can be
2 forced into some places by the law and by policy and
3 previous actions. That isn't necessarily the best solution
4 to the problem. But they are the legal solution and that is
5 what we are bound by, regulations, as many of you know in
6 the codes.

7 But I think a lot can be accomplished by some serious
8 good faith discussions down there. I guess I see 20 years
9 from now the scene in L.A., you are going to tertiary treat
10 every drop of storm water. There is not going to be a drop
11 of water in the L.A. River going to the ocean that is going
12 to be used for groundwater recharge. That is what I see as
13 the long term -- what this is driving things for, which
14 isn't a benefit, in my opinion, to the fish, to the
15 citizens, to those who recreate or anybody else. We will
16 certainly have clean water going to the beach because there
17 won't be any. When the price gets to the point it is
18 starting to move to, I guess whatever we can do to assist, I
19 know my colleagues --

20 MEMBER SILVA: I agree. I was down in Orange County
21 all last week looking at MS4 issues and stream flow issues.
22 I agree, we are headed for a train wreck. A lot of these
23 things aren't compatible and some of the solutions people
24 are looking at are going to come against strict requirements
25 from bacteria, for example. I agree. I'm frustrated.

1 If you could perhaps suggest hearings down there -- not
2 hearings, workshops, working with the locals down there. I
3 agree, something has to change just in the dialogue.

4 MEMBER CARLTON: If I may, Mr. Chair. I'll draw on my
5 five years of experience with the Regional Board. I would
6 like to expand on your comment.

7 I think that these great controversies that we are
8 facing now are going to get more intense because of the
9 Basin Plan. I think this is a Basin Planning problem.
10 Certainly when I was Executive Officer in the Central Valley
11 Region we were driven to many solutions which were required
12 by the Basin Plan that did not necessarily seem plausible to
13 Board Members, and I think that is where it has to happen.
14 I think all the stakeholders are aware that the Boards are
15 not well funded on their own to evaluate the Basin Plans. I
16 think that what has happened in the Central Valley is those
17 stakeholders impacted by provisions of the Basin Plan which
18 need reexamination have come forward and put the right foot
19 forward with funding and unbiased objective efforts to go
20 ahead and make these evaluations. I think that is what has
21 to happen around the state.

22 CHAIRMAN BAGGETT: Whatever you can do. I think the
23 difference between us and our Regional colleagues is we also
24 deal with water rights. I just spent 22 days of the last
25 two months on a transfer between Imperial and San Diego.

1 And you see things from a different perspective. You see
2 the cost of water, the cost of reclamation, what people are
3 starting to pay to deal with water supply issues. I would
4 agree this is a train wreck. We probably -- none of us will
5 be here very likely when this wreck occurs. I think
6 somebody has to start looking ten and 20 years out. What is
7 the long-term solution? I don't know that it is going to
8 benefit anybody or at least the people in the wildlife that
9 live there.

10 So with that, let's take five minutes and come back
11 with Chevron.

12 (Break taken.)

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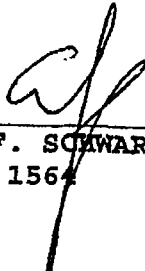
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO) ss.

I, ESTHER F. SCHWARTZ, certify that I was the
official Court Reporter for the proceedings named herein,
and that as such reporter, I reported in verbatim shorthand
writing those proceedings;

That I thereafter caused my shorthand writing to be
reduced to typewriting, and the pages numbered 3 through 74
herein constitute a complete, true and correct record of the
proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate
at Sacramento, California, on this 25th day of July 2002.



ESTHER F. SCHWARTZ
CSR NO. 1564