STATE OF CALIFORNIA

REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

In the matter of:

State of California Regional Water Quality Control Board San Diego Region Meeting Notice and Agenda for November 13, 2013

CITY OF SAN DIEGO PUBLIC UTILITIES DEPARTMENT
WASTEWATER BRANCH AUDITORIUM
9192 TOPAZ WAY
SAN DIEGO, CALIFORNIA

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

ITEM NO. 10, PUBLIC WORKSHOP: REGIONAL NPDES PERMIT - MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) - TENTATIVE ORDER NO. R9-2013-0001, NPDES NO. CAS0109266
TUESDAY, NOVEMBER 13, 2013
9:00 A.M.

Reported by: Kersten Song, CSR No. 12796

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I N D E X :

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APPEARANCES:

BOARD MEMBERS PRESENT:

Grant Destache, Chairman
Gary Strawn, Vice Chairman
Eric Anderson
George Loveland
Tomas Morales
Henry Abarbanel

EXECUTIVE STAFF:

David Gibson, Executive Officer
James Smith, Assistant Executive Officer.
Chris Witte, Executive Assistant

STATE BOARD STAFF COUNSEL:

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STATE BOARD MEMBER LIAISON:

Frances Spivy-Weber

REGIONAL BOARD STAFF:

(PRESENTERS)

CHRISTINA ARIAS, Water Resource Control Engineer-C
LAURIE WALTERS, Water Resource Control Engineer-C

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PROCEEDINGS

TUESDAY, NOVEMBER 13, 2013 10:40 A.M.

(Heretofore noted, for the record, proceedings were recorded prior to but not requested to be transcribed.)

AGENDA: ITEM NO. 10

CHAIRMAN DESTACHE: We are going to move on to the workshop.

Due to the fact that this is a workshop, I have a statement that I'm going to make that indicates the order and the schedule today so that everyone is on the same page. So I don't know if we have people that are leaving for -- oh, they're all on the consent? Okay.

All right. So at this point I'm going to read the Chair's statement and we will move on from there:

"This is a time and a place for the Public Workshop on the Tentative Order No. R9-2013-0001, the NPDES Permit for San Diego Region.

This is not a public hearing, nor will the board be hearing comments. The board is not accepting evidence or taking testimony on the tentative order at this time. The board will not

be take any action at today's workshop. The public hearing for consideration of the permit will be held at a later date, and there will be opportunities for submitting evidence and testimony at that time.

The purpose of the workshop is for the board to receive information about the tentative order from the staff, to hear from those affected by or interested in the proposed permit about the issues that concern them.

Holding the workshop during a public board meeting provides a valuable opportunity for the board to seek clarification from the staff and also from speakers, and gives the board members an opportunity to discuss the issues among themselves in a public setting prior to being asked to take action.

The board members may ask questions throughout the workshop."

We have a full schedule today so we're going to try to keep this to a pretty regimented order.

First we will hear from Regional Board Staff for 45 minutes.

Then we're going to hear from the US EPA for 15 minutes.

Who's giving the US EPA?

DR. LIN: I am.

CHAIRMAN DESTACHE: Okay, Cindy.

Apparently we have a two-hour block of time; that San Diego county co-permittees and Orange County and Riverside have pooled their time so, hopefully, that saves us an hour. We'll see. We'll probably have a lot of questions there.

The City of San Diego has a 10-minute presentation.

Environmental Group of San Diego Coast Keeper, 45 minutes.

And NRDC 15 minutes.

And then we go to interested persons, two to three minutes depending on the time and number. We'll see how many we get there. I know Gary's trying to get those organized.

We have elected officials, and we have set aside a specific time for elected officials today, between 1:00 and 1:30. That order will be the chairman of the board of supervisors, the county board members, the mayors, starting with San Diego and moving down the size of cities that are in San Diego. And I don't know how I'm going to even determine that. Then City Council members. And hopefully -- I mean, half an

hour, that's stretching that one -- but hopefully they'll keep their comments relatively quick.

But with that, we should be able to hear all the parties that have an impact on this permit going forward. So with that, we're going to go right into the Regional Board Staff presentation. And then we'll deal with the US EPA. And then we'll probably take a quick break and come back and see where we stand with the counties. All right?

MS. WALSH: Good morning, Mr. Chairman, and Members of the Board.

My name is Laurie Walsh. I'm a Water Resource Control Engineer with the Storm Water Staff. I am a part of the regional MS permit writing team. Christine Arias is on our team. Wayne Chiu is project lead on our team. David Barker is our branch chief leading us on our team. I think Eric is in the back. So Eric Becker. We were all party to on this project to write this tentative order you have before you.

It's my pleasure to introduce this item before you today, Tentative Order R9-2013-01. It is the NPDES Permit and Waste Discharge Requirements for Discharges from Municipal Separate Storm sewer systems drain watersheds within the San Diego region.

These separate storm sewer systems serve

greater than a hundred thousand people, according to the 1990 census, and we regularly refer to them as "Phase 1 MS4s."

The tentative order will be implemented on a regional scale by the co-permittees in the San Diego County, the southern Orange County and the southwestern Riverside counties in a phased manner as the current MS4 permits expire.

The purpose of this workshop is for the Water Board to receive information and to have a public discussion of the tentative order. We released this tentative order on October 31, 2012. It is your Supporting Document No. 1.

During this public workshop, it is staff's goal to highlight for you some of the most significant changes made during this fifth term of this Phase 1 MS4 permit renewal.

As Chairman Destache mentioned, we will not be making a recommendation to you today, as this is a public workshop for us to explain the contents of the tentative order.

I want to begin by going back, back to the basics about why we have this permit and why we need this permit.

Forty years ago, water quality was terrible.

We've done a good job to improve the water quality dis charges from waste water treatment plants and other point source discharges. However, the health of our receiving water bodies still remain impaired. Polluted storm water is the leading cause of that impairment and most often because it hits our receiving waters untreated. And when left uncontrolled, the water pollution can result in a degradation and a destruction of fish and wildlife, habitat, a loss of esthetic value and increase the threats to public health from food and drinking water supplies and recreational waterways. We still have to stay out of the water 72 hours after a rain event before we can go and enjoy that beneficial use.

So why do we need this permit? We need it, quite frankly, because we need to do better. We need this permit because we still have a long way to go. It's the objective of the Clean Water Act to restore and maintain the physical, chemical, and biological integrity of the waters. Therefore we need this permit because we need to improve and protect our water quality.

We also need this permit to preserve, enhance, and restore the quality of California's water resources and ensure their proper allocation and

efficient use for the present and future generations.

This is the San Diego Water Board's mission statement. And it's the last part of our mission statement that's really the driving factor behind why we need this permit and why we need to change this permit.

We need this permit to help us provide for our sustainable future, for our children and our children's children. It's what we all want and if we truly want this, then we need to do better. And we need to change this permit because we need this permit to help us get there.

We asked ourselves this question: How can we change this permit? To meet the requirements of the Clean Water Act, the mission of the water boards, and to give us a way to provide a sustainable future for our children and our children's children, we decided to get back to the basics and re-examine what the permit is required to do to be considered effective.

The Clean Water Act requires permits to include requirements to effectively limit the nonstorm water discharges and to include controls that reduce pollutants in the storm water to the maximum extent practicable. And it is these controls and requirements that we need to achieve the goal of the Clean Water Act

to restore and maintain the physical, chemical, and biological integrity of receiving waters. In order for us to reach these goals we need to change the permit; restructuring it so that we can do better.

We need the storm water program to be able to be run more efficiently. Our own storm water regulatory program as well as those of the co-permittees'.

And we also need the storm water programs to be more effective in accomplishing our goals, outcomes, namely the goals of the Clean Water Act and our Regional Board Mission.

So we expanded our bases of knowledge and we sought inputs and ideas from the co-permittees, multiple environmental groups, the buildings and industry association, US EPA and a whole host of other persons.

As recorded in your Supporting Document No. 2, it's our regional MS4 permit time line. We began speaking to the co-permittees in early 2011 asking them what in the existing requirements facilitated effective management of their storm water programs to achieve the goals of the Clean Water Act and what didn't.

We also spoke to the environmental

communities and other stakeholders to get their input on how to change the permit to increase its efficiencies and effectiveness to achieve improvements in water quality.

We spent about a year listening to ideas and inputs crafting permit language and re-drafting permit language based on innovative ideas and new perspectives we've been exposed to.

We then prepared something what we called an administrative draft of a tentative order. It's basically a draft of a draft. We sent it to EPA. We got their early input on it. And then we turned around and sent it to all the co-permittees, to anyone else that we could think of that was interested in storm water regulations.

In the spring of 2012 we began a series of facilitated Focus meetings. And took over 20 months to focus on draft requirements and we prepared after our initial solicitation. And we got more input from the co-permittees and interested persons.

The facilitated focus meetings were very effective. And we were able to further revise the administrative draft into its current form, the tentative order you have in your agenda. All of the revisions were made to address the numerous comments we

had received. And out of the original 100 pages that the permit had in the administrative draft, only five of those drafts pages were left untouched.

Based on the inputs we received and the objective to stay consistent to the Clean Water Act, we re-drafted the permit requirements as to allow the co-permittees to be more strategic, more adaptive and more synergistic.

Strategic in terms of the long-term and short-term planning to achieve goals that are strategically focused to focus their resources and their efforts, adapted for their ability to adapt their plans as new information is learned from failures, and to be able to build upon successes. And synergistic to work together with other agencies and other stakeholders toward common goals, share information, remove duplicatory efforts, and become more efficient with the use of their resources. And in order to do this, we had to be willing to let go of the top-down regulatory approach that had traditionally been incorporated into the permits, where we essentially dictated to the co-permittees what must be implemented with the "do everything everywhere" sort of approach with the constant threat and fear of noncompliance.

Current permits require the co-permittees to

comply with minimum requirements dictated by the permit which has removed any incentive to try to solve problems, and find innovative solutions to improving water quality. Therefore we decided a new approach was needed that would provide for those incentive to find solutions and solve the water quality problems.

We needed the approach that would allow the discharges to make progress and pursue success by learning from failures. Remove the fear of failure and instead create conditions of incentives and innovative solutions.

So what are we going to do to this permit to change it so it allows the co-permittees to be more strategic, adaptive, and synergistic?

This has actually become our favorite figure. It's something that the co-permittees put together and showed to us when they were preparing their report of waste discharge. And it's really very true. We struggle with it as much as they do sometimes. And it shows the complexity of the permit when the co-permittees think about how to implement its requirements. And the co-permittees, again, were driven by what the permit required them to do, and not necessarily driven by their need to improve water quality.

The current permits are action-oriented, base permits that generally measure compliance through measuring the number of actions, rather than measuring the improvements in water quality.

So we changed the way this permit was structured and provided for a clear set of expectations through strategic integrated planning. And that planning needed to be based on the goal for improving water quality, instead of just programs to achieve specific number of actions.

You're going to see this as our figure. And Christina will use this quite a bit when she goes through some of the specifics about what we changed through the permit.

But what this will illustrate is that we changed the focus and structure of the permit to try and provide for a true iterative process in the form of adaptive management framework.

And the adaptive management framework will be more transparent through each step of the planning stages of the implementation phase. And when they monitor, use the monitor data to turn around and inform the assessments, and then go ahead and change the plan, with reporting all along the way, both open to us and members of the public as well.

So what we have here is a new paradigm; a set of requirements focused on outcomes through programs that can be adaptively managed under the premise fail early, fail often. Learn from your trials and errors and reach the objective of improved water quality to create a sustainable future for our children and our children's children.

At this point, I'd like to turn the presentation over to Christina who is going to give you a highlight about more noteworthy changes we made to the permit.

MS. ARIAS: Good morning, Chairman Destache, and Members of the Board.

My name is Christine Arias, and I'm a Water Resource Control Engineer in the Southern Watershed Unit. Also part of the permit writing team.

Today I'm going to build upon what Laurie has introduced. Now, Laurie gave you sort of a global overview describing why the changes to the municipal storm water permit are needed. And I'm going to specifically talk about how the various elements work together and what important changes we've made.

To help me explain the changes, I will use Laurie's graphic, which really depicts the iterative process. I would like to stress that these elements

within the iterative process are not new, but the approach is new, and the result is the process that really embraces the adaptive management idea. So I'm going to start at the top with the plan. Obviously planning is very fundamental to everything we do, every program we administer within the San Diego Water Board. So the concept is not new, but today I'd like to introduce to you the Water Quality Improvement Plan.

The purpose is an overarching planning document unique to each watershed. It sets priorities and recognizes that co-permittees cannot effectively address all pollutants all of the time. This picture shows the standing over Water Board's jurisdiction and the breadth of coverage under the tentative order. The orange lines towards the top shows the county boundaries and each of the dark lines shows the edge of each of the 10 watershed management areas.

Within each of these watershed management areas, co-permittees will jointly develop a unique Water Quality Improvement Plan through a public process which will in turn be improved by the San Diego Water Board's executive officer.

The Water Quality Improvement Plan will describe what we are calling "the highest water quality conditions." This can include constituents or

conditions such as degraded stream habitat.

In addition, the plan will include specific goals related to the high priority water quality conditions, strategies and schedules to achieve the desired goals, monitoring and assessment to determine progress in achieving the goals which are in turn related to the highest priority water quality conditions. The strategies must also include, to some degree, identifying opportunities for retrofitting existing development and stream rehabilitation.

Moving on to the implementation mechanism for the Water Quality Improvement Plan.

If any of you have been involved in our previous municipal storm water permit reissuance process, you'll know that the JURMP component -- it's actually called Jurisdictional Runoff Management Program, we call it "JURMP" for short. You'll notice that this is a very integral part of what the co-permittees do. I think of it as sort of a standard operating procedure document, or a document associated with the program that describes how co-permittees run their jurisdictional programs with the goal of protecting water quality. And I might add at this point it will specifically address the issues that are identified in the Water Quality Improvement Plan.

In the past, whereas before the JURMP provisions were very specific and scripted, you will see that the provisions in the tentative order provide much more flexibility to the co-permittees and indeed embraces the adaptive management concept.

So the JURMPs have several components. First of all, there's an Illicit Discharge Detection and Elimination Program which strives to eliminate nonstorm water discharges.

The remaining key provisions aimed to keep storm water clean to the maximum extent practicality standard. This includes programs that address existing development, specifically municipal, industrial, commercial, and residential areas. There's a construction component and a land development planning component. Each program component requires a implementation of best management practices, or BMPs. Now, the BMPs can take the form -- can take several different forms, as I've tried to show you here in these pictures. What it really comes down to it is about preventing the generation of pollutants or treating the pollutants as close to the source as possible.

As Laurie mentioned while we were developing the concepts in the tentative order we met with the

co-permittees several times to gain input. We are really asking what parts of the JURMP programs are useful and can be improved. And we ended up learning quite a bit about the specific changes we have incorporated into the tentative order.

First of all, let's talk about the Illicit Discharge Detection and Elimination program. As I said, this is the one program that really focuses on nonstorm water. In the past, the focus has been on detecting and eliminating pollutants in the discharge. The co-permittees told us that the requirements were extremely costly and extremely ineffective because identifying sources can be difficult when the sources are very transient in nature. In this tentative order, the focus is not really on eliminating pollutants, but rather on eliminating the flows altogether.

Taking a step back, another reason why this makes so much sense is because doing so is consistent with the Clean Water Act which states that nonstorm water discharges are to be effectively eliminated. We believe strides towards eliminating nonstorm water discharges are achievable and, arguably, the most achievable aspects under the JURMP programs, because nonstorm water over-irrigation is a chronic problem in the San Diego region, as I'm sure many of us are aware

when we drive to work and see sprinklers going crazy.

Now moving on to provisions which really address storm water.

Historically we describe what BMPs were to be used where. We set the priority for construction sites based on size. And we set the minimum of inspection frequency required of the co-permittees during the rainy season.

So as I said in our previous permits, our requirements were very specific, but what ended up happening is there were some unintended consequences.

In some cases we found that the co-permittees were really sacrificing quality of inspections for quantity of inspections. They were so busy being in compliance with the number required in inspections throughout their jurisdictions that sometimes they didn't really spend the time needed to do a better job on sites.

The proposed requirements deviate from this model of specificity and instead substitute flexibility in its place. Now the co-permittees will set the minimum BMP requirements, prioritization schemes, and require minimum inspection frequencies as they see fit. The idea is that they will be able to spend more time at problem sites and use their enforcement authority to

get those sites into compliance and spend less time at sites that are minimal threats to water quality. In other words, the tentative order gives much more control to the co-permittees to design and implement an effective program and really use their resources as needed.

Moving on to existing development management.

Similarly, as with construction management program, we built much more flexibility so that the co-permittees can design their programs to be most effective and efficient.

So, in other words, if for certain co-permittee mobile business, for example, is causing problems, or that type of business, that they can spend the time chasing after the bad players. The co-permittees also gave us some useful feedback on how to change this provision, and as a result, the tentative order allows the co-permittees to utilize drive-by inspections where appropriate, and also utilize volunteer groups to complete their inspections.

We found that this is a welcome change to other stakeholders because volunteer groups have already shown an interest in partnering with co-permittees in this area.

Now on to the Land Development Planning provision.

This provision has some pretty significant changes, so I'm going to use the next four slides to really describe all the changes in detail. Historically this permit provision has included requirements for structural BMPs to be built within each priority development project. So the structural BMPs, for example, can be trash-capturing devices or filters for storm drain inlets.

The idea was to capture or treat pollutants to the NEP standard before the pollutants leave the site. In the early days of municipal storm water permitting, the focus was the treatment of chemical constituents associated with urbanized areas.

In the last two permit terms, or roughly the last 10 years or so, the permit requirements evolved to include structural BMPs on priority development projects for the control of increased flows associated with land development. Why was this needed? Because we learned that, in addition to chemical constituents, elevated peak flows and durations of these flows are highly erosive, and such flows are responsible for eroding creek beds and banks such as this one shown. And obviously this destroys sensitive habitat in our

receiving waters. This phenomenon is called "hydromodification."

As a result of a land development provision of the earlier permits, the co-permittees have either developed or are developing hydromodification management plans. Practically speaking, in order to address hydromodification, priority development projects must implement BMPs as this detention basin. Such BMPs are designed to control flows such that the flow is not erosive before leaving the site. As you can manage, implementation of such BMPs can be challenging because more often than not they require a significant amount of space. In the current storm water permits, in order to be relieved of hydromodification management requirements, a project must first establish technical unfeasibility or demonstrates that it discharges to a channel that is concrete lined from the point of discharge all the way to the ocean.

Okay, this is my sort my of grand finale slide on this provision. I'm really excited about this.

The tentative order includes a proposed approach that sidesteps the emphasis on technicality unfeasibility, and instead looks at water quality

benefits that can be achieved by examining the water quality holistically.

Recall when I first talked to you about the Water Quality Improvement Plan, I stated that part of the plan was to identify opportunities to retrofit existing development and identify streams which can possibly be rehabilitated. So these are a couple of local examples showing both of these.

So the proposal is that instead of strictly requiring flow-control BMPs on site for every priority development project where a benefit to water quality may be minimal, co-permittees may instead allow the project to utilize other options such as implementing BMPs off-site, or contributing to another project in a completely different area of the watershed where a greater water quality benefit may be achieved.

In other words, the tentative order fosters the information of the best water quality benefit for the entire watershed, instead of just the best water quality benefit for each individual site.

Okay, moving on. Let's talk about monitoring.

Monitoring establishes the means by which we can measure whether or not we've reached the outcomes we seek. It used to be a separate component of the

permit, but now it is intricately included as part of the iterative process and more closely linked to the implementation arm.

Historically storm water programs have been doing extensive monitoring that have been really useful for characterizing the health of our receiving waters, but not so useful in terms of finding sources of pollutants or deciphering whether or not the JURMP programs have been effective.

In turn, this monitoring program is question-driven, is much more geared towards locating sources of pollutants than in previous storm water monitoring programs.

There's much more emphasis on discharge or outflow monitoring, less emphasis on receiving water monitoring. The structure also includes an aggressive use of resources towards eliminating nonstorm water discharges in tandem with the Illicit Discharge Detection and Elimination Program.

There is also requirements that the co-permittees perform special studies. In the past, we have included requirements for special studies, but we really dictated what those studies should be based on what we felt were priority conditions. Now we're giving full control to the co-permittees to design

those special studies for their watersheds in however manner they see fit.

I'd also like to add that we feel that the monitoring program really reflects the epitome of the collaborative process that we saw when we began shaping the tentative order. We proposed an initial monitoring plans the co-permittees really reacted. They had a lot to recommend, and we ended up incorporating those recommendations. And that's really what you'll see in the tentative order, what the co-permittees came up with. And we agree that the result is a very strong monitoring program.

So this monitoring program includes new and important concepts, but I'd like to add that it builds upon important work initiated by our earlier pioneers.

CHAIRMAN DESTACHE: I didn't authorize that.

(Laughter)

MS. ARIAS: Finally let's talk about assessment. This is where we evaluate programs and strategies and evaluate the water quality improvement plans themselves. We've had assessment programs in the past, and they've been really focused on programmatic assessment. Counting the number of actions such as the number of inspections completed, the number of streets, the number of miles of streets swept.

Now the assessment is focused on the achievement of the goals stated in the in the Water Quality Improvement Plan. The assessment will include answering or attempting on answering the following questions:

Are the priorities and goals within the plan still appropriate or are they outdated?

Are the strategies within the plan working?

Are they including schedules appropriate, or must they be adjusted?

Are adaptations needed to the Water Quality Improvement Plan?

Or does the plan as written need more time in the implementation phase before it can be properly evaluated?

Our expectation is that the co-permittees will closely evaluate their programs to make any adaptations needed to make the programs more effective and efficient.

So as with any permit reissuance process, there are going to be some remaining outstanding issues, so I'd like to briefly give you some background on these issues. We've received three comments to date. They're in your agenda packet as supporting documents 5, 6, and 7. So I'm just going to briefly

summarize the issues.

The first one. Provision A of the Tentative Order includes discharge prohibitions and receiving waters limitation language that some co-permittees are comfortable with.

The language is consistent with State Water Board order WQ99-05 which is a precedential order that directed MS4 permits to contain separately enforceable receiving water limitation provisions requiring discharges to be controlled so as not to cause or contribute two excedences of water quality standards of receiving waters.

I'd like to point out that the language in the tentative order is consistent with all six previous municipal storm water permits issued by this board since the precedential order took effect in 1999. This issue has gotten attention recently at the State Water Board level, and, as a result, the State Board is holding a workshop on November 20th to solicit input on how or if this language should be changed. For now we believe it is appropriate to leave the language as is, and there is a reopener clause in Provision H of the Tentative Order that will allow changes to be made following suit if the State Water Board makes changes.

No. 2. The land development planning

provision includes a new framework that, instead of strictly requiring structural BMPs on-site, allows for alternative off-site solutions, which I discussed with you.

Some stakeholders object to allowing the alternative off-site options unless on-site and technical unfeasibility for meeting the design standards can be established.

Other stakeholders believe the proposed requirements circumvents exemptions specifically allowed in the San Diego County Hydromodification Management Plan, or HMP.

We believe the approach in the tentative order is sound and consistent with a watershed-based approach. The approach involves evaluating the watershed in a holistic manner and emphasizes making improvements to the watershed where water quality benefits will be achieved.

We disagree that the approach is in conflict with the San Diego County HMP, and in fact we believe the approach builds upon the findings in the San Diego County HMP.

And No. 3. The tentative order includes water quality-based effluent limits derived from total maximum daily loads. Now, in case anyone is not

familiar with a "TMDL," let me just say quickly that a TMDL is a number -- this is how I think of a TMDL -- it's a quantity or load of a pollutant that a water body can assimilate and still meet water quality standards. If loading into the water body exceeds this number, then water quality standards are not met, and all contributing sources must reign in the pollutant loading such that the TMDL is not exceeded. So water quality based effluent limits are derived from the TMDLs and are essentially the bridge from the TMDL program and the NPDES permitting program.

Water quality based effluent limits must be met for certain pollutants and receiving waters in accordance with specified compliance and water schedules.

The co-permittees are uneasy with inclusion of the effluent limitation in the tentative order, most notably those associated with the bacteria TMDLs that were adopted by this board in February 2010.

This is an area where we as permit writers have very little, if any, discretion. The Clean Water Act clearly states that water quality based effluent limits, must, must, be included, within NPDES permits.

If co-permittees would like to see changes to the TMDLs, they can request that the changes be

made, but it's not appropriate in this process. What they need to do is request changes be made, and the proper avenue is the Basin Plan Amendment process.

If a TMDL were to be changed with a Basin Plan amendment, then we could include the plan with the new TMDLs. Until then we must comply with the Clean Water Act and include them here.

Aside from the remaining outstanding issues, I'd like to thank you for your attention. I know I've given you a lot of information, but I just would like to finish by stating that, on behalf of the permit team, we're really excited about this project. And we've been really inspired by the collaborative process.

Really, we hope that Laurie and I have convinced you that the tentative order really represents an innovative and important tool for the San Diego Water Board in achieving its mission, which is, again, to preserve, enhance, and restore the quality of our water resources, and ensure the proper allocation and efficient use for the benefit of present and future generations.

So, thank you. And we would be happy to answer any questions.

CHAIRMAN DESTACHE: We'll start on my right,

I guess, with you.

MR. ABARBANEL: Sure. Thank you. Very nice presentation from both of you. I have really only one question.

It's my understanding that under the present structure of the permit, that each co-permittee must make separate reports of their compliance. Is that correct?

MS. ARIAS: Yes. We didn't really discuss the reporting requirement, but the way we've set it up is there will be annual reports, and there's also -- there will be annual reports related to the water quality permit plan, but also annual reports on behalf of each of the jurisdictions.

MR. ABARBANEL: So my question then -- thank you for the answer -- but my question, then, if we are turning, as the board discussed in public before and has been discussed by Mr. Gibson, to nonpoint sources to watersheds, should we not permit jurisdictions in a watershed to report together instead of having to report separately on all issues? Some issues may be specific to the City of Escondido but some issues may be specific to watershed.

MS. ARIAS: Right. So the annual report that will be submitted by each of the jurisdictions,

it's going to be, more or less, a two- or three-page report where they tell us very succinctly what they've completed in the last year. But the water quality permit plan annual report is where we expect to really learn whether, as I've mentioned, whether or not the strategies are working. So if there are nonpoint sources within the watersheds, that, say, the co-permittees have learned a lot about those nonpoint sources, then that will be the place where we learn about it. And in fact, the water quality permit plan annual report will involve the co-permittees in each of the watershed management areas to report to you their findings from the last year.

MR. ABARBANEL: Thank you. That's all.

CHAIRMAN DESTACHE: Actually, I'm going to go a little further with your question.

MR. ABARBANEL: That's fine.

CHAIRMAN DESTACHE: So the structure would be that each watershed would have its own WQIP?

MS. ARIAS: Yes.

CHAIRMAN DESTACHE: And within that watershed it could have four co-permittees?

MS. ARIAS: Yes.

CHAIRMAN DESTACHE: They're going to collaborate --

MS. ARIAS: Yes.

CHAIRMAN DESTACHE: -- on that report for that individual watershed?

MS. ARIAS: Yes.

CHAIRMAN DESTACHE: Okay. And is that the only report they're going to do? Or they're going to do a report as a co-permittee also?

MS. ARIAS: They will also do their own report, but I really want to stress that it's really truncated. Like I said, it's going to be.

CHAIRMAN DESTACHE: The Calvary is coming in.

MR. CHIU: Let me simplify it for you. And each one of those will have one annual report.

The annual report will be primarily focused on reporting the monitoring data and the assessments that are generated based on the monitoring data.

What we've done with the jurisdictional programs in terms of their annual reporting requirements, they're part of the Water Quality Improvement Plan Annual Report, but it's been boiled down to a two-page form, essentially, which kind of reports on the numbers that they've collected over their fiscal year and basically just confirms that they are complying with the requirements of the permit.

We, as staff, then, would be using those jurisdictional annual reports, the numbers essentially, to go out, speak with the co-permittees, take a look at their programs, see what generated the numbers. See what types of strategies they're implementing, and make sure that they are implementing the water quality improvement plans as stated.

Does that clear it up a little bit?

CHAIRMAN DESTACHE: So if a co-permittee is in five watersheds, arguably City of San Diego is going to be --

MR. CHIU: Yes.

CHAIRMAN DESTACHE: -- more than that.

MR. CHIU:: Correct.

CHAIRMAN DESTACHE: So in fact they are in five watersheds, their annual report, their two or three page reports on their monitoring requirements per each individual WQIP and they could take that report and put it in the WQIP and highlight the watershed requirements in each one of those individual watersheds?

MR. CHIU: I think the answer is yes.

CHAIRMAN DESTACHE: I'm trying to extrapolate what the implementation of the co-permittees are, or what their requirements are,

because each watershed is going to have a WQIP.

MR. CHIU: Correct.

CHAIRMAN DESTACHE: And, say, they're over five of them, they're going to have monitoring across the breadth of those WQIPs that they could do one report for, but when they send it in for WQIP(a), they're going to have that highlighted, the monitoring that they did in that section, or that watershed?

MR. CHIU: Yes. So for the co-permittees that are within multiple watershed management areas, they're going to have to kind of break up the way they report things.

But, you know, the water quality improvement plans and the jurisdictional program documents will kind of tell us, and the public, what they plan on implementing within each watershed management area.

They'll be able to, you know, prioritize their resources among those watershed management areas as well to focus their resources on specific areas as they see fit. And as it fits within each watershed management area.

But then, you know, the jurisdictional annual reports, like I said, are basically just numbers, and will just be reporting that they are implementing the programs as they state within their

water quality improvement plans and within their jurisdictional program documents. And then it's sort of incumbent upon staff to make sure that they are implementing in accordance with their water quality improvement plans and their jurisdictional program documents.

CHAIRMAN DESTACHE: Okay.

MR. ABARBANEL: May I follow up?

Who is going to prepare the watershed report?

MR. CHIU: The co-permittees within each watershed management area will designate a principal co-permittee, but I imagine that there will be some collaborative effort in putting those plans in and annual reports together.

But the concept is to try to minimize the number of reports that are being generated and then take the most useful information and provide that to the regional board and public so that we know what's going on.

MR. ABARBANEL: So we know there are 10 watersheds and there are 18 cities in the county. What will be missed if we only had 10 watershed reports?

MR. CHIU: So we have 10 watershed management areas within the region. We have 39

co-permittees total --

MR. ABARBANEL: I'm sorry, I forgot the other counties.

MR. CHIU: We have 13 of them, Orange County and five of them in Riverside, and 21 down here.

MR. ABARBANEL: If we had 10 watershed reports, what will be missed?

MR. CHIU: I don't think we'll miss anything. If anything, what we're going to miss is a lot of reports.

MR. ABARBANEL: Why have the over 39?

MR. CHIU: I'm sorry?

MR. ABARBANEL: I understood you to say that individual jurisdictions have to make reports --

MR. CHIU: Right.

MR. ABARBANEL: --that comes to you? Say 39 reports, right? Why not just have 10 watershed reports and not ask the individual jurisdictions to have additional watershed reports?

MR. CHIU: I'm sorry. So there is one annual report per watershed management area. They're two-page kind of number thing. It's kind of a piece of that. So there's not 39 annual reports being submitted to us in addition to the water quality improvement plan annual reports. So there's one annual report per

watershed management area with kind of an attachment at the end that gives us the numbers.

Right now as it stands, we actually receive actually 60 annual reports, some of them in excess of a hundred or more pages. We have very little time, if any, to do a thorough review of them. We believe it's much more efficient for us to get some basic numbers and then we actually spend what time we would have spent reviewing the report going through their programs with them to kind of see what's kind of behind the numbers.

MR. ABARBANEL: I think that is the answer to the question that I asked. We're changing from whether it's 39 or 60 reports to 10 watershed reports perhaps with some contributions from some of the other jurisdictions that may have some other information.

A VOICE: Mr. Chairman, if I could chime in after Mr. Abarbanel, if I may, please.

One thing that would be missing would be the ability of the staff to evaluate compliance with the NEP standard by the municipalities themselves. So in a watershed where you may have three out of the four municipalities working very effectively through their jurisdictional plan, you may have one that does not, and those three would expect you to weigh, adjudicate

an issue there. And if we don't have reports from municipalities individually that would also be difficult to do.

I have also been told anecdotally by representatives and co-permittees here in the room today that they need to be able to report individually to their councils, to their boards, as well as to us in order to keep themselves on track. So the reports we've tried to distill down, we've tried to make them as useful as practicable so we can spend more time with the municipalities to work with them on the watershed scale and still be able to assess compliance as necessary as EPA would expect us to be able to do, jurisdiction by jurisdiction, should it come down to that.

CHAIRMAN DESTACHE: I like the fact that we're paring down the number of reports we're doing, and I respect the fact that each agency or jurisdiction has to report to their board or their governing body. And I like even more so the fact that if you have a watershed group that has five permittees and one of the permittees is not doing their job, then potentially the other four permittees could help them do their job better and I think that...(laughter).

MR. CHIU: We'd like to think that everyone

within a watershed can support the others. But I think again, within this framework, it's incumbent upon staff also to be part of the solution and provide the support where necessary.

Where we see shortcomings, we want to make sure that we can provide that guidance and support to make sure they're brought up to the same level and expectations in performance as the others within the watershed.

CHAIRMAN DESTACHE: But it is, you know, working together sometimes -- I didn't get a big laugh, but I got a decent one -- so the reality is that we all have to look at each other as partners in each watershed, and find the answers, the correct answers. Because to dictate what the answer is to do the job in the watershed is the wrong answer because only the people on the ground will know what the right answer is and the monitoring will prove that out eventually.

Gary, do you have any questions?

VICE CHAIRMAN STRAWN: I'm okay.

CHAIRMAN DESTACHE: But anyway, do you see where I'm looking to that? It also allows staff by not having to look at 60 reports to help those watersheds themselves. And, you know, hopefully the agencies will help each other. I know that's...

MR. CHIU: I think if we put in the conditions, it will evolve to that point at some point in time. It's a little early to say now, but I hope so.

CHAIRMAN DESTACHE: I'm going to pass.

Eric?

MR. ANDERSON: No.

CHAIRMAN DESTACHE: Gary?

VICE CHAIRMAN STRAWN: Real quick. And maybe try and truncate this a little bit.

If it's not already included in your presentations, I would like to hear as each of the co-permittees come up and talk to us throughout the day, a quick statement whether you believe this new tentative order will have a significant reduction in the amount of reporting and paperwork that you're required to do? Thank you.

CHAIRMAN DESTACHE: Tomas?

MR. MORALES: Well, I do have a question, but it's actually for Ms. Arias. It's not about the reporting.

MR. CHIU: I can do it all. More the presentation.

MR. MORALES: The presentation described the ability for folks under the new proposed MS4 to do

erosion control in a manner that was in the best interest of, let's say, the watershed or a broader area of our region as opposed to something site-specific.

My question was, how far away from where the development in the past, which would have required something like that, can the, let's say, the alternate work or the project be done?

I know it almost sounds like, I was telling one of my fellow board members, our version of Captain Craig kind of, but the devil is always in the details. But what I wouldn't want to see is for the -- a lot of the or a particular area for example to say we don't want these catch basins, but we can do something over here in this other area where other folks are in fact --

MR. CHIU: So the way the requirements are currently set up, it basically encourages that they do any projects within the same hydraulic sub areas, fairly small watershed. But no further than the hydraulic unit that they are within. So that would limit them to the watershed management area.

But the key component there is that it provides the best water quality benefit to the watershed. So you know even though they may say, you know, we think that we can get something over here,

cheaper, better, if it doesn't provides the best water quality benefit to the watershed as the co-permittees within that watershed management area determine, then, you know, a project wouldn't be allowed to do something like that. But, again, We're trying to, you know, kind of broaden the way we think about how we utilize our development planning and development resources to best achieve water quality benefits.

So the more we can do that, the more holistically and watershed scale thinking, the better we will be off in the long run, I believe.

CHAIRMAN DESTACHE: Okay.

MR. CHIU: Thank you.

CHAIRMAN DESTACHE: I think we'll move on to US EPA and words of wisdom we have for us.

MS. LIN: Good morning, Mr. Chair, members of the board. My name is Cindy Lin and I'm US EPA's liaison for your board. I'm here to speak on behalf of US EPA and our report for this regional and your permit and tentative order before you today.

First, I want to commend your staff on their tireless effort to date working on those permits with all the co-permittees both up in Orange County and up in Riverside. It's been very, very encouraging to see trying to work out the very many, many details that

we're going to hear more of.

Also we support the direction of a regional permit where you are trying to collaborate with multiple co-permittees for one permit so there is consistent language across the board.

In our view Regional Board 9 is one of the few boards that's leading the effort in finding an effective and workable permit and we believe this permit is a reflection. There's flexibility, there's specificity, and also a still maintained clear numeric goal. So there's a lot in this permit to talk about, but I'm going to truncate my comments today and just focus on a few items of interest.

Specifically I want to comment on a few sections in the permit that was up for discussion and challenges that Christina had brought up. Before I do that I want to mention that perhaps the most important message that the EPA can send today is that we believe that clear and measurable enforcement goals are necessary in a permit.

Regarding the inclusion of what we see in the current language that's clearly in this tentative order, the language in Provision A we strongly support that language. EPA supports this language which is also a reflection that's been reflected in your state

board adoption of Resolution 99-05 that Christina mentioned earlier. The language again is clear, measurable. It directly ensures water quality as a tactic, and we believe it is the best and most appropriate interpretation of the Clean Water Act. We also believe this language should remain as is and should not be modified.

And I've mentioned this. I've been to many of the workshops along with John Kemmerer from our office and this language has come up, and we've repeatedly said that to the other stakeholders.

The second part which has to do with the inclusion of TMDLs. This permit includes all the TMDL waste allocations and the applicable water quality objectives. Specifically we support the language in keeping TMDL waste allocation or water quality based effluent allocation or the use of a BMP, or best management project base, approach is acceptable, but there must be documentation and details in record that the numeric value or target will be achieved. This is consistent with our guidance. Documentation must demonstrate that the BMP-based approach will be successful in achieving the waste allocation that's been included in the TMDLs that now has been included in this tentative order. Water quality based effluent

limitations is included in the permit and is a great definition of a TMDL waste allocations.

We believe that the documentation for these waste allocations must be incorporated into the permit and if there are any changes or so we'll talk to your staff but we believe that the current language is good effort in including some of that language and includes the type of water quality based effluent limitations and their values we want to see.

On the third issue of priority development project structural BMP performance requirements. I just want to read this so that you're familiar with it. I don't know that that specific language was covered earlier. In a section where it states, "The design capture volume is equivalent to one of two, either the volume of storm water produced from a 24 hour 85th percentile storm water event or the volume of storm water that would be retained on site if the site is fully developed and naturally vegetated as determined using continuous simulation modeling techniques based on site-specific soil conditions and typically vegetative power.

We support the first part, which is that the volume of storm water produced from a 24 hour 85th percentile storm water event. We do not recommend the

second part. We do not recommend the second part of the design capture because we believe it is not clear, not easy to interpret and provides a potential for confusion as to what the requirements are. So this is not a hearing today to act on the resolution, but I just wanted you to know, because you'll probably hear more about it later and we'll provide more information to your staff, too.

One of the last things I want to talk about is something that Mr. Morales brought up and I want to thank you for your comment on the alternative compliance, off-site compliance. EPA supports your current tentative permit language stating that technical infusibility must be demonstrated on site before going off site.

When referring to the alternative compliance option for off-site cases, we support that permit's language. Specifically that the co-permittee must determine that implementation of alternative compliance option will have a greater overall water quality benefit for the watershed management area than those performance requirements defined meeting the compliance of on site cases.

We believe it's always best to try and treat on site first because that is where the modification of

the natural environment is impacted, although off site treatment may be acceptable in specific certain cases. To meet on site requirement, this should not be viewed as equivalent.

So we support your language provided in the permit currently that provides for greater overall water quality benefit. And we see this as a really clear and important inclusion in your tentative language. We are very encouraged to see that language and the distinction between the two. So thank you, for your staff, for including that.

Finally, we want to thank the opportunity to comment on this and to be able to be part of this effort. And I want to remind as this tentative permit moves forward to keep in mind that the permit is a critical tool, not just a regulatory tool, but a planning tool too, to define on how to meet water quality objectives and protection and the beneficial uses. So we do support very specific detailed numeric language in your permit.

Thank you.

CHAIRMAN DESTACHE: Okay, any questions.

I have a couple. I'll ask the first question I was going to ask last because it's more esoteric than anything else.

As far as hydromodification goes and the fact that there are sites that are developed that have soil types and conditions that provide sedimentation into stream beds, I think that issue is one of the issues that needs to be clarified specifically within the permit because if in fact for a hundred years that site was providing sediment to a stream and then you remove that sediment to the stream it's going to have an effect on the bio side of that stream. Therefore I think that if we don't look at that in a planning document, in a planning situation, we're going to get to a point where we're cutting off all that, not -- and I don't want to use the word "intrusion" -- but the adding of minerals, resources to stream beds to help the bio side of all streams that are getting watershed -- water distributed into.

What's your feeling on that side of it? And how would you look at a change to really reduce the effect on the land development side of it?

I know that's a pretty broad question, but I'd like some kind of input on that.

MS. LIN: If I can understand, you are asking what our position is on situations where the removal of sediment would not be beneficial?

CHAIRMAN DESTACHE: Yes.

MS LIN: Okay. So I guess what our response would be is that we think it's critical to do your homework first, to evaluate what the necessary requirements are to have a healthy biological system, and to understand what those goals are, and then to try to understand basically what the requirements would be for trying to test technical feasibility or unfeasibility on the site, and then to make the various decisions that affect that.

Which is why I think in this permit it does have all of those different options that you can go off of. So I mean I think that's the new wave, and that is one way we're trying to incorporate this flexibility language, more planning and more specificity. So that covers every body's concerns, right? I think for us we just want to make sure there's clarity on what that means. So I think that situation could come up, but if that's the case I think it's outlined in the permit of how then you would try to move down the decision tree of what you would do.

So if it's the case, for example, on site, that it would be less beneficial, for example, to remove additional sediment, that's where you would have to try and make the case for a technical unfeasibility on site and move off site, as an example.

CHAIRMAN DESTACHE: Okay. Yeah. And we'll push staff to think outside the box on that, because that really is a different way to think about how you approach storm water.

The second question is if you could go back to a point in that you would like to see the watersheds get cleaned up to, how would you depict what that date would be? It's not an easy question, but I've been asked that.

MR. ABARBANEL: Is that a hard question for you?

MS. LIN: It is a hard question and I've been asked that question before. And in fact I would point to Los Penasquitos which is the very same question we have, which is do we go back a hundred years, a thousand years, thirty years. And I would say it's very case-specific. I would point to two examples. The first example is EPA established a wetlands creek estuary. In that situation, based on the information we had, we actually requested that we would go back 120 years. Now, there's a lot of details in that, but I'm just saying -- I'm making the case it very much depends on what our situation is and what our goal is. In Los Penasquitos we went back to...1973?

A VOICE: '74.

MS. LIN: '74. So you can see that difference. And I think part of I think the overall consideration is, one, what should we bring back our biological improvement to a point where it still maintains the beneficial protection of the uses, but also that is a practicable given development. So those are the things that I actually considered in both cases but we got different answers. So it's never just we always have to go back 500 years.

CHAIRMAN DESTACHE: I appreciate your answer because it is a hard question. It's a question that everyone should be asking themselves when they're looking at the planning side of it, and maybe the first question you asked: At what point do we go back to, and why?

There are streams that I've heard that they're talking about going back 500 years, but the sources of those have never been impacted. But it is a question that you should be asked up front. It allows for the quality planning of watersheds in a time frame that's achievable.

I mean, if we make it unachievable we're going to break our pick on it and that's not the right answer. So thank you very much.

MS. LIN: You're welcome.

CHAIRMAN DESTACHE: I think we're going to take a five-minute break because I think probably everybody needs it.

(A recess is taken.)

CHAIRMAN DESTACHE: Okay, we are going to move on to the county of San Diego, Orange County, and Riverside counties combined proposal -- or presentations. And you're on.

MR. PADRES: Thank you, Mr. Chairman and members of the board, and good morning. My name is Claudio Padres. I'm with the Riverside County Flood Control and Water Conservation District. And like I mentioned before, I'm just the first of what will be several speakers from the three counties. We'll generally go in the order of Riverside county and San Diego county and then Orange County.

So, little bit about us, Riverside County Flood Control. We are the principal permittee on three separate phase one NPDES MS4 permits and because of that we have actually considerable experience with what it takes to focus on outcomes and really what programs work and which ones don't. So while we still have some concern with the regional permitting approach, the main gist of my presentation, at least, is going to be on the concept of focusing on outcomes and how to do that.

So in the last 20-plus years we've been regulated by activity-based permit or action-based permits as was presented by staff.

And while we have made progress, these permits haven't always allowed us to direct our resources on the strategies that we know will be most effective at addressing the unique issues in each of our watersheds. So we agreed that outcome-based permits are really the evolutionary next step. we agree on that point. And my comments are going to be focused on how to make sure the permits actually accomplish that. And based on the permits that were made in staff's presentation I would say that I agree with the majority of what they're saying so really what it comes down to is to make sure that the permits fully follows through with that vision.

And the shift that we're talking about towards outcome-based permitting is really not an easy one, nor is it likely that it can be achieved fairly quickly. It's such a big change that we need to take it slow, methodical and really think about the potential unintended consequences of what we're doing like we talked about self-conservation as well, and make sure we do it right.

So I really commend the permit writing team,

just to mention the ones I'm aware of, Wayne and Christine, Laurie and Eric and I'm sure there may be others, for really taking those important first steps.

Before we get into the specifics of the permit, though, I think we're willing to start with fundamental one point. We can talk all day about how to improve the permit itself and we likely will with the crowd we've got here. But if the current deficiencies in the basin plan, the receiving waters limitation language, and the TMDLS aren't addressed by the board concurrently, then the outcomes we're targeting may not be appropriate or achievable. And then any permit that's based on the achievement of those outcomes is destined to fail.

So I think while that's not going to be the focus of at least my presentation, I think we can't lose sight of that key point that we have to make sure the outcomes we're targeting are realistic.

Another point on that same -- I'm going to go back a slide -- another point I also don't want to miss is that we need to make sure that the burden of attaining those receiving water outcomes is not solely placed on the MS4 permittees. As the board well knows, there is multiple permitting programs out there from industrial to construction to ag waivers and all of

these parties have a stake or a role in addressing and attaining those desired outcomes. So one concern that we have is that we want to watch for what I have seen in the permit is an undue placement of that entire burden on just the MS4 groups. And I'm not going to downplay that we play a significant role in that, but we aren't the only one.

So board staff presented back in April and even in today's presentation a theme all long that they believe, and we agree with, are necessary to focus on achieving outcomes. So I'm going to start by identifying some common problems that we've seen in past permits that can stand in the way of a permittee being able to be strategic, adaptive and synergistic and in turn prevent us from focusing our resources on attaining those outcomes.

The first problem is that the continual layering on of more and more requirements of each permit site, simple because they think it's a good idea and in some cases they are or because of a misperception that simply by doing more we're more likely to achieve our outcomes.

And we all know that perpetually trying to do more is unnecessary and unsustainable, but yet that trend has been spiraling out of control. And further,

each of our programs already invest multiple millions of dollars each year and our programs have gained over 20 years of experience with boots on the ground and have a good experience with the programs in our specific watersheds and the issues in those watersheds. So we have a good understanding of what works and what doesn't.

And good things have been done. For example, in Riverside county we've successfully worked with California Department of Pesticide and Regulation to how we relabel pesticides which we label pesticides that we have seen to be causing toxicity in our watersheds. So that's a recent development, we've been able to pull through and get those relabeled to protect water quality. And further deployment of low impact development we've researched LID installations across the nation and developed an innovative LID BMP design manual and a two and a half million dollar LID testing and demonstrating facility to actually show and demonstrate and quantify the benefits of those specific BMPs that are in our manual.

We're also working collaboratively with San Diego county on efforts to identify proper management of nutrients in the Santa Margarita/Laguna estuary, and that's an ongoing project.

So the key is not simply doing more. The key is having a permit that allows us to implement focus and smarter programs that prioritizes the strategies that will best achieve the desired outcomes in our watersheds.

Second. We need to avoid prescriptive one size fits all approaches. And we did hear this from staff, although you'll see later in my conversation, there are still elements of the permit that do this.

And that approach, that one size fits all, is clearly the opposite of a favorite outcome-based approach. For example, if we're required to implement advanced programs to target sediment in a watershed that isn't impaired or doesn't see problems with sediment then every dollar we're putting into that is clearly diverting money staff time and resources that may be focusing on resources that may be of more relevance to that watershed. So ultimately what we need is a permit that allows us to redirect and focus our citizens' existing resources in a way that is more strategic and adaptive to the issues in each watershed.

So with those potential pitfalls in mind, let's take a look at the permit.

The water quality improvement plan that was described to you, while it's not perfect, we will

likely have comments on that, it does do a good jobn of focusing on outcomes and incorporates the concepts of being strategic and adaptive and synergistic.

But despite the fact that this planning document identifies those, the implementation documents, the JURMP and the monitoring program requirements, don't fully allow us to focus on those strategies. So instead of being a shift from an activity-focused permit to an outcome-focused permit, what we're seeing is a permit that requires both. As I discussed, activity based permits and outcome based permits really aren't compatible and activity prevents us from being able to focus on outcomes.

So the first thing we need to do moving forward is to work with your staff to review the draft permit for any requirements that as been drafted now currently prevent us from being fully strategic or adaptive or synergistic because otherwise all this talk about focusing on outcomes will never become a reality because our resources will continue to be split between what we know needs to be done and what the permit require us to do.

The next four slides are going to comprise some specific examples that I've identified from the permit that needs some work. And additional issues are

going to be brought up by subsequent speakers as well. And ultimately what I think we're going to be looking for is the board to direct staff to continue to work with permittees and other stakeholders as well to resolve these issues.

The first one I want to discuss is the receiving water limitations which certainly got some attention already in their earlier presentations. But in light of the Ninth Circuit court decision which you're possibly aware of which implies that this language requires strict compliance with water quality standards, the key point that needs to be known is that that requirement simply cannot be complied with.

It is absolutely imperative that the language be fixed because if it isn't, every other provision of this permit can become irrelevant. We won't be able to focus on outcomes. We won't be able to focus on the strategies we've developed or adapt those strategies, nor will we be able to be synergistic, because all of those efforts and all those resources can end up redirected to costly litigation and lawyer's fees because there is nothing a permittee can do to ensure their compliance with that language. It is effectively out of our hands. There are things that we can do, but we can't ensure our own compliance.

It is effectively a provision that guarantees noncompliance from day one. And there is no reason it has to be written that way. There is discretion on this issue.

So I would strongly support and encourage the board to participate in efforts at the state level, there's that workshop that is going into schedule for next Tuesday, on the 20th, to develop receiving water limitations language that can be complied with.

Regardless, however, of what comes out of that state board workshop, I believe it is the responsibility of this regional board to not adopt permits that include language that cannot be complied with the presumption that it may be addressed in the future through potentially a reopener.

Other regional boards including the L.A. board, have addressed -- have taken steps to address this. I can't comment on whether it's enough, but there is movement in other regional boards as well to try to address this issue and provide language that can be complied with. Doesn't mean it's easy, but it needs to be able to be complied with.

The second issue I wanted to bring up is some low impact development, sizing and hierarchy changes that we're seeing in the permit. The LID

requirements have been actually significantly rewritten in this permit. And I believe I saw in the fact sheet where staff may have described that these aren't significant that they're generally compliant or consistent with the recent Orange County and Riverside county permits that were adopted, but that's simply the no the case. In fact, under those requirements as written, low impact development BMPs will be two to three times larger than under the permits that you've just adopted in 2009 and 2010. It will require a complete rewrite of our standard storm water mitigation plans; basically the plans for development projects to meet the standards.

We would have to completely rewrite those documents that we've just recently prepared. And, getting closer to home, it effectively throws out our two and a half million dollar investment our citizens have made in that low impact development and testing facility because no longer are those BMPs the way they were designed and the way they were sized and the way we're testing them are no longer sufficient. The BMPs in this permit will be a different animal than what we've been working on and we've been working towards all along, and I believe that is unnecessarily so.

The next issue which has already gotten some

discussion is hydromodificaiton. I think there are going to be more speakers after me that are going to address this issue, but I do want to highlight a few points from Riverside county's perspective and from the issue of the flood control district.

thep roblem is that those requirem3ents as drafted established unjustifiable standards that presume that our receiving waters will all be restored to their natural state.

But the reality is that many streams are managed by flood control districts in cities to provide necessary protection to our residents for their life and property in areas that would have otherwise been subject to flooding. These systems are by design not susceptible to hydromodificaiton, yet the tentative order nevertheless, kind of on the one size fits all approach, requires all priority development projects tributary to those developments are extremely costly to mitigation.

How big these BMPs can be, in many cases cost prohibitively so, such projects would be mitigating for impacts that in some cases are likely never to exist because the reality is the value of the developments protected by the those existing facilities that are managed by the flood control districts both in

terms of real property value and economic value and jobs for our citizens would preclude turning back the clock on those systems. We're not saying it can never be done, but we can't move forward with the presumption that it can never be done and design one size fits all requirements that expect that.

The solution may be simple, though. We've all been talking about focus on outcomes and if we apply that to hydromodificaiton, that will help address this.

The tentative order should use the water quality improvement plan as the tool to identify what is the proper management scenario for each of our streams, whether it's susceptible, whether it's not susceptible to hydromodificaiton. And based on that what is the right control measures to require development projects to do. I don't believe we should be predefining that in a permit when we don't have all of that information. The water quality improvement plan, through that process, we will have that information.

Further, we generally support actions to restore streams and restore beneficial uses in streams where it makes sense. But again the permit shouldn't presuppose that that can and will always happen until

there are real and viable plans that can make that happen, because we all know that there are multiple agencies that are involved in that process. If you're going to affect a stream, it's not just between us and the regional board. It's between us and Fish and Game and Army Corps and a myriad of other requirements that are put in place and in some cases will never be done so.

The last issue I'm going to bring up before I hand it off to some of my colleagues is the monitoring requirements.

It's true that many improvements have been made in the tentative order compared to where we started. And that is largely in response to proposals that were put forth by San Diego county permittees to your staff, and we appreciate those improvements. However, it's important to recognize that where staff's starting point was when we're talking about how it has improved. The monitoring program using their adapting language I heard in one of their focus meetings was originally drafted to include literally everything staff felt was allowable under the law. So while the current draft certainly is better, it still needs more work to be done to make sure our monitoring doesn't become its own roadbloack to our ability to focus

resources on outcomes.

As an example of an area that I believe is costly and unnecessary, even the smallest of cities will be required as written in the permit to inspect 80 percent of their outfalls twice a year during dry weather. And anytime there's evidence of dry weather flows, even just a puddle, as currently drafted a full source identification will be required. And that includes anything from just tracking to the source but including enforcement and resolution of that, source of that dry weather puddle. And those source studies can take weeks or months. That's not a small undertaking. That can take a significant portion of a staff person's time to address. Just based on some calculations that can easily take for a small city two and a half full time year around staff just for that one permittee and just for that one line of the permit. That's not including all the other requirements we have to comply with.

We also heard earlier as part of this slide the assessment requirements and the need to assess. And we agree there is a need to assess, but we also can dump a lot of money in assessment and we need to make sure we're doing assessments that are scientifically justified and with tools that are readily available.

For example in the permit the assessment requirements that the things or answers -- the questions that we're being asked to answer, excuse me, would require extensive pollutant models to be developed for a myriad of pollutants. This isn't just like one pollutant that we have like for a TMDL. For basically every pollutant that you might see in that watershed you would have a pollutant model for that. That is extremely and highly detailed and extremely expensive. I tried to et you an estimate before for today's meeting but unfortunately i didn't have time to do that. They are very expensive.

So really the assessment requirements need to be better vetted to make sure that the assessments we're being asked to do are at levels that are justified and balanced in terms of utilizing resources that we have already available to do them.

So at the end of at least my portion of this presentation my main request to the board, to the extent that I can do this because I know you're not taking action today, is to direct staff to continue to meet with the permittees to discuss and resolve these issues. There weren't more discussion and they're not well suited for comments. these are tings that we really need toa hve a back and forth on to resolve.

So I appreciate your time. I'd be happy to

answer any questions. And if there aren't any, I'm happy to hand it to the next speaker.

CHAIRMAN DESTACHE: We will continue until twelve o'clock.

MS. RAMOS: Good morning, Chairman, board members. My name's Patricia Ramos. I am here from Riverside County Transportation Department. I'm the deputy director for the Transportation Department. And I'm here today to talk to you specifically about Public Works road projects and the redeveopment of existing public roads in southwest Riverside county.

The Riverside County Transportation Department is responsible for the maintenance and safety of several thousands of miles of road within Riverside county. Our obligation is to the traveling public to provide safe, efficient and reliable roads to travel on. Our motive is not profit driven but as public servants we strive to maintain and improve as many roads as possible within our budget each year. Each year we prioritize our improvement plan with safety projects being our top priority. The primary source of our revenue comes from gas tax or sales tax which is never really been enough and over these past several years have gotten even worse.

We take advantage of federal and state

safety grants as often as we can however these come with funding limits and time conbstraits. When we talk about redeveopment of a public road, yr definition is the widening of a shoulder, the addition of a turn lane, the improvements of an intersection and the correction of a sharp curve in the road or a severe dip in the road. These projects make corrections to roads that were built when Riverside county was a rural community and when repeat drivers traveled these roads.

Today we have several hundreds of thousands of residents in southwest Riverside county and many of these rural roads see more daily traffic than ever imagined which is why additional road right of way was never preserved when these roads were built. today when we develop new road projects we consider future development we purchase adequate road right of way for for future expansion. We purchase mitigation land to offset environmental impacts and we incorporate water quality features.

The county strives to be good stewards to the environment by protecting water quality and we believe that we have come up with an approach that can satisfy both the needs of the transportation department, the public, and the San Diego Regional Water Board. Two years ago the county worked closely

with the Santa Ana Regional Board to develop guidance specifically for Public Works roads projects. This guidance approved last month is substantially similar to the guidance being developed in Orange County and the guidance being considered by Los Angeles county for road projects. This guidance is developed around the Green Streets concepts and are the guiding principles that the county will develop all projects with. It provides a rigorous series of feasibility tests to ensure that all projects incorporate water quality BMPs and address hydromods to the maximum extent practical. By using this plan as a means to fully comply with the permit, the public is able to rely on us to provide a safe road to travel on. Where we're able to get these projects out to the public in a timely manner. We're able to take advantage of grant funding by meeting deadlines. The county reduces liability exposure due to dangerous road conditions and water quality is addressed to the maximum extent practical at each specific project site.

Recently the county completed the construction of a roundabout in the Temecula area and Rancho California Road. The scope of this projct was to improve an existing intersection deficiency. Several thousands of cars travel this road each day as

they tour the many wineries in this area. The road has multiple intersections and several are in need of traffic control devices to slow the traffic down to the area to improve safety and provide an opportunity for residents and tourists in the area to cross Rancho California Road or merge onto the road. A traffic signal would have been the appropriate solution in an urban setting. However, in this tranquil rural environment, a roundabout was the appropriate traffic control.

This project costs $800,000 to build, but the total project costs doubled to $1.6 million to purchase land and construct a basin to treat 100 percent of the runoff from the site. We are now unable to build the remaining need of roundabouts due to a shortfall.

We believe a balanced approach that addresses quality to the NEP for the project while still allowing the department to meet its mission to protect public safety is necessary. Not only is the current approach problematic because of the cost, but also because of the context sensitivity of the surrounding community. Although the basin performs its function, it is not complementary to the surrounding environment. This area has rolling hills, balanced

landscape of vineyards, beautiful wineries, and most recently a nicely landscaped roundabout and a sliver-sized basin that was required to fully meet water falling and hydromod is a eyesore.

The public looks to us as both the county and the water board to as public servants to ensure that funds are spent to not only protect the environment, but the public as well. I urge you to reconsider your decision to eliminate the option in this new MS4 permit for the co-permittees to implement an NEP approach or Public Works Transportation projections that meet the intent of the US EPA Green Streets guidance.

These projects are very different from all other nonroad redevelopment projects, and we urge you to reconsider and allow for the development of guidance that addresses these unique needs.

We look forward to the opportunity to work hand in hand with board staff to develop guidance that is fair, reasonable, equitable, and compliant through a global approach in lieu of the typical project by project WQMP approach.

Thank you.

CHAIRMAN DESTACHE: I think that's going to be a pretty good place to break, because we're going to

come back at one o'clock for elected officials. Hopefully we can get through them in a -- we have a closed session during lunch that we will be discussing Items 11(a), (c), (d), and (f)

So at this point, we will resume at about five to 1:00 and let the elected officials get the queue and get them running through as fast as we can.

(Luncheon recess taken: 11:55 p.m.)

A VOICE: Good afternoon. I was here this morning and I enjoyed the pesentation.

I am here at the direction of the entire board of supervisors, bar none. And the county of San Diego has a strong, clean water record and we support each and all goals of your program.

We collaborate and we cooperate consistently throughout the region with the public and the private sector to address clean water in a coordinated fashion. The county has been subject to a municipal storm water permit for 20 years. They've developed a comprenehsive and vigorous storm water program that has made remarkable progress. Each water the county of San Diego spends over $35 million on storm water programming. This regional collaboration has achieved real results, and our beaches today are cleaner than at any time in my memory.

Reasonable compliance standards are needed for clean water. We brought forward at the September 26th County Board Supervisors meeting a call to action to protect the environment while controlling the mounting costs for increasing water quality regulations on local government, on business, and on industry, and we're concerned about the stifling effect on our economic growth. Last April the San Diego Regional Quality Water Control Board incorporated new requirements that are a financial threat to our region. While we did not object to all of the requirements, we are strongly opposed to the TMDL standards.

The new rule will require the county and 21 other agencies in our region to comply with the total maximum daily loads of bacteria. And you do have discretion. I want to make that point. We're going to hear a lot more about that later as other presenters come up here. You do have discretion. I also want to present to you the letter that is signed by 19 of the 21 local agencies. I'll leave this, Mr. Chairman, with you.

More scientific studies must be conducted on the TMDL to effectively analyze all sorts of bacteria and establish limits that are reasonable and effective. The bacteria TMDL requires that we return to pristine

conditions before the more than 3 million residents who make San Diego county their home.

The second thing I'm going to leave with you is an aerial of the area that the watershed at the Leo Carrillo Beach that we're using as the standard. There's very little development in this watershed that's being used as an example of what we're trying to achieve. I've spent most of my life working on clean air. Had we taken such a standard I can tell you there would have been no program. If we just said we're going to get back to prehistoric conditions, in effect, and that's going to be our standard, we are going to pull something out like that and make it the standard.

You can see from these, you can Google it if you haven't, you'll see that there is clearly very, very limited development in that watershed. Very different from San Diego. According to the county's technical experts, studies show that the current technology is not capable of removing bacteria to the levels that would meet water quality standards during rain events.

Doing so requires local jurisdictions to mitigate for bacteria that is caused both by man and caused naturally by birds, wildlife and other environmental sources. Without allowing us to

differentiate between manmade and naturally occurring bacteria, the county will find itself on hugely expensive and a nearly impossible regulatory journey. And we can't be throwing limited public funds at intangible targets.

For example, when we do air quality, we go after the precise sources, like cars and factories.

For many years I've been involved, as I mentioned to you, I'm a member of the California Air Resources Board. I know what criticism is and I've been there. But I can also remember back not too many years ago when we were regulating two-stroke jet ski engines, and what we found is a lot of the pollution was going into the water. But we have the regulatory authority to do something with the manufacturers that the water boards didn't have, and we did that. We did exactly that. And I have a couple of yellow ducks in my office of one of the experiments to show what a two-stroke engine did versus a four-stroke engine. And we helped clean indirectly, not directly, but helped clean up air quality. We have tools in our disposal that maybe don't have to go back to the source and make the changes there. Not after it gets into the water. Avoid getting it into the water to begin with.

Well, we need same type of point of

pollution standards here so we can directly identify the parking lots, the businesses, and the other sources of pollution that we need to address. The standards and the mandates by the Regional Quality Water Control Board are setting us up for failure. These new requirements have the potential to cost our region billions of dollars over the next 18 years, and the regulated parties may never meet the compliance standards. Unfortunately, these unsubstantiated requirements will ultimately affect local taxpayers who will pay for increasing compliance costs either directly or through diminished public services. The county show the total cost of the program is expected to be between 16 and $31 million per year.

For perspective's sake, we recently broke ground on something that I'm very proud of, a new water front park. And it's something that's going to be here for generations. Under this new regulation, county taxpayers will be funding the equivalent of a new water front park in the next 18 months and never achieve the related clean water goal. As you can see, this new regulation from the San Diego County Water Quality Board is threatening our region in what I feel is our quality of life.

The permit also requires what would make it

significantly, significantly more difficult for development to move forward in this county by requiring the new and the redevelopment projects return to site hydrology to predevelopment conditions as opposed to preexisting project conditions. This is the current requirement, to return to the preexisting project conditions.

Returns urban in-fill projects that existed under natural preurban conditions are going to present a significant challenge, especially to redevelopment which is generally considered an environmentally friendly mode of development. I'm thinking again of our waterfront park, what we would have to do where we took out enormous parking lots to put in a park and the rules we would come under had this been in place as we start to redevelop this property. Just start to imagine that and keep that as an example. The benefits of putting in a park it seems to me are clear, but the challenges this would have proposed to us would have been enormous. Let's work together to stop this unsubstantiated attack on our taxpayers, on our economy and on our environmental goals.

We should table the wet weather portion of the bacteria TMDL because its compliance targets are not reasonable or attainable based on technology. And

we should suspend the dry water portion until adequate scientific information is available to reevaluate the numeric standards and accurately quantify inputs from natural sources.

We need to work collaboratively with the local agencies to draft permit language to ensure that the water quality language are reasonable, cost-effective and scientifically based. I'm stressing that. That's the basis of which we've made incredible progress on the air quality in San Diego and throughout California. We stand by it. We want to work with you. We do share the goals of cleaning up the water but the methodology here we think is flawed.

With that, if I can approach you and leave you these documents, the letter and the aerial that shows you the beach.

CHAIRMAN DESTACHE: Thank you. Next we'll go to Supervisor Slater, Slater Price.

MS. PRICE: Thank you very much, Mr. Chairman.

Good afternoon. I'm Pam Slater Price, District 3 County Supervisor for the county of San Diego. And as my colleague said, we are committed at the county for clean water. Personally many of you who know me know that my entire career has been focused on

environmental protection and enhancement. And I've been very proud to be the recipient of numerous awards including the Water Woman award from Surfrider Foundation. So I'm here to commend you for everything that you do and say that I strongly support what you do and what your efforts are.

That being said, I have to say that we have to look at what can be done as opposed to what ideally might be done. And we have to make consideration for this kind of regulation as being the art of the possible because we all do want to cooperate. I will tell you that we want clean water. Our constituents demand clean water. Our constituents, regardless of their party or other affiliation, want to have clean water in the seas. They want clean and available water to drink. And this crosses all the other boundary lines. So with that in mind, I'm here to plead a little bit with you to say that we would like to work with you. We would like to work with you to come up with a plan that will achieve the goals that we see before us that will do so in a way that doesn't cripple our attempts and cripple government, because sometimes if the bar is too high or if the bar is set in such a way that we cannot possibly attain the result, there's a growing level of frustration that occurs not only

with the elected officials but with the county staff members and other cities, the other agencies that participate with us in this permit.

I think it's safe to say that all of our co-permittees have the same goal. We all want the same clean water. We all want to work with you in the cooperative fashion. And we support the goals.

That being said, we know that we've improved water quality in the past. We would constantly get bad report cards from Heal the Bay and other organizations like that. In the past few years, we've been getting 90 percent and A-plus ratings at most of our beaches. So that says a lot to me because, as Supervisor Roberts said, there are many things out of our control that happen upstream that we really can't control. And they happen as a rsult of wildlife, of other people upstream dumping things in that we can't control. It's nonpoint source pollution. We don't know where it comes from. And so we want to reduce that bacteria in the water. We want to see the water be pristine. Ideally I'd love to have water like we had a millennium ago. You know, I'd love to see that happen. But I don't see how we can do that unless we make it possible and make it so we can cooperate to achieve the goals that we all have.

I commend you for taking this on. I mean,

this is something that doesn't win you any popularity contests, but it's something that needs to be addressed.

And I think we need to address the number one concern that we have. The number one concern is the biggest unsubstantiated cost driver in the permit which is the bacteria TMDL. The cost estimates to take action in the six watersheds that the county shares jurisdiction is estimated to be 2.2 to $4.2 billion over the 20-year compliance time frame.

And we believe that more scientific studies are needed to ensure that the bacteria TMDL is effectively analyzed all sources of bacteria in establishing limits that are reasonable and effective, things that we can actually do.

Current studies show that with current technology we're not capable of removing bacteria to levels that would meet water quality study standards during rain events.

The draft permit also includes receiving water limitation language that we now know unnecessarily exposes local government to third-party litigation. I've seen it, recently, action taken against L.A. County by NRDC. And by the way, I'm a strong supporter of NRDC. I think they do great work.

But what we don't want to do is we don't want to have government/public agencies that are supported by taxpayers and there's limited funds, and there will continue to be limited funds in the future, for all of our needs to see them subjected to lawsuits that really even I don't think are intended by the legislation.

I think the legislation goes in one direction and leaves some loopholes that unfortunately lawsuits can be initiated against the agency and costs a lot of money. And those monies are taken out to defray the cost of defending and then paying for the lawsuits are monies that are taken directly out of benefit areas for the public.

So what we want to do is make a situation that is cooperative for all of us where we can be a valid and good partner with you to get the job done along with all our co-permittees in the region.

We want to see the water cleaned. We would love to work with you and have your cooperation. and I appreciate the opportunity today to speak before you.

Thank you so much.

CHAIRMAN DESTACHE: Thank you very much for your time.

We will go to Mr. Felin.

MR. FELIN: It's Gary Felin from Oceanside

City Council. And I'd like to echo many of the comments that my colleagues made.

I'd certainly like for any decisions to be made based on sound science. We'd certainly like the baseline to be based on a local watershed rather than something that's along way away so that we have something fair to compare. Also we want the board to be sensitive to creating massive unfunded mandate and the huge cost that's going to entail when there's not a ready source of funds for these kind of expensive requirements.

In terms of the City of Oceanside itself, I'd certainly like to make sure that the rules are structured so that when the water is tested at the mouth of the San Luis Rey River that it's netted against what the river was like when it came into the city and that as a city we're not held responsible for events we can't control that are upstream.

Also, I would certainly echo the belief that the daily bacteria counts are going to add billions in costs with what seems to be limited benefit. And I hope the board will balance out the cost-benefit structure. And I certainly don't see anything new when we recognize that that last 10 percent of the benefit is usually 90 percent of the cost and it's usually, you

know, never cost-effective to try and get to 100 percent.

Also, I'd like to echo the issue on the in-fill requirement for the City of Oceanside, you know, for environmental reasons that's what we're trying to encourage, in-fill developments. And the requirement that you're going to -- that the developer has to meet some predevelopment standard doesn't seem to be realistic. It seems to be counterproductive to other environmental goals.

Also, the bacteria count requirement in the City of Oceanside at the San Luis Rey River don't properly account for the effective birds and natural wildlife. Certainly we shouldn't be penalized because more birds come into the city because we create a natural watershed. So I hope that will be properly accounted for in the rules.

And I think the larger issue that I'd like to comment is on the impact on the economy overall. In the state of California, we seem to have all kinds of boards going for their own reasons establishing regulations irrespective of the cost of the larger economy. And it seems that California's always in competition, if not exactly at the top, we have the highest cost of water, the highest cost of electricity,

the highest cost of gas, the highest cost for workmen's comp, the highest sales tax, the highest income tax. At some point you reach the straw that breaks the camel's back, and we've already seen the impact of the neverending regulatory costs with the fact that California's has more out-migration rather than in-migration. Most of the out-migration is the very people you want to attract to have a strong economy in terms of college educated, you know, people trying to raise families. And as a result, California, as we all know, has lower growth than the rest of the nation as a whole. And I'd like to emphasize it's far easier to protect the environment and have the support to do that in economically prosperous times. So please keep the larger economy in mind as you're drafting these rules.

Thank you very much.

CHAIRMAN DESTACHE: Thank you for your comments. And Deputy Mayor Jim Cunningham, City of Poway.

DEPUTY MAYOR CUNNINGHAM: Thank you. Thanks so much for having this workshop. This has been quite an education. Thank you for your comments, supervisors.

I come from a bit of a different perspective. Earlier this morning you guys mentioned

that you wanted to have this workshop because you wanted to prevent unintended consequences, and there are significant unintended consequences I think that come out of this permit process.

First and foremost, in all of our cities and, there's 11 or 12 of us in this county, we don't have sufficient funding to maintain the bacteria levels that are in this permit process. We certainly don't have the funding to monitor it. So what are the unintended consequences? We have about a hundred miles of horse trails in Poway, and the irony is it's many of the horse trails that the Indians have traveled on in our valley down there. We would have to close them down. we can't monitor them. The quality of life would be dramatically changed in our region, not just in our city. And the one size fits all problem that this permit process has, I'll just give you a few examples and then I'll be done.

Poway as a result has many, many single-family residential developments -- not many, but some -- remaining that are very difficult to develop because of the topography in the area. Under the new permit process the majority of the single-family residence developments would be identified as priority properties even though the actual potential for a new

generation is relatively low. For instance in our area we have many valleys and hills. To build a home in those areas require long driveways just to have ingress and egress. Your permit process shows that the length of the driveway, it becomes the priority of the project and puts them into the new standard which is incredibly expensive, and I don't think they'd be able to immediate the US NEP requirements.

Also, the soils, the soils throughout our county are different. Poway soils are mostly designated as type D soils which are somewhat impervious. Placing a driveway in type D soil is a lot different than putting a driveway in a pervious area. That's not accounted for in the permit pocess. Poway and our region are in the front lines, as you guys know, of fires.

We're the first ones to be impacted by wildland fires. Putting in many, many ordinances to protect our community and the rest of the particular county. Our fire department requires wider driverways and turnouts and areas for our trucks to get into that otherwise would not be required. These additional widths and lengths of driveways are not included in the permit process, not even considered in the permit process, and puts all of those new properties better on

the fire lines into the -- into the permit process.

We also have fuel modifications. The whole city does. But we went another step. Fuel modifications meaning we have to take out, and we have, much of our vegetation. Well, you know your permit process puts us back into the requirements and takes away what we're trying to accomplish, and that's to have flame/fire retardant properties and fuel. Again the development standards should be based on pre-project conditions and not the predevelopment natural conditions. We love our natural area in Poway. We have 45 percent of our community is in a natural area. We maintain that. But I agree with the supervisors who so eloquently stated this is a matter of collaboration. This is not one size fits all. The unintended consequences will be dramatic. We can't afford it. So consequently we'll be shutting down some areas that you guys work so hard to protect and our community so greatly enjoys.

Thank you.

CHAIRMAN DESTACHE: Thank you for your comments and I will echo this is about collaboration. It's not about one size fits all. That's the direction the EO has been given and the staff. It really is about answering the questions that are related to

individual watersheds and how they are affected by the permits.

And your comments on the TMDLs, we're going to look at that closely and make sure that we understand that, and that it's a permit that takes into account the -- those limitations and how we meet those and when we meet those.

So it's -- but your comments are very much appreciated. We appreciate your time and your efforts to come here. And in the interest of keeping this moving, thank you very much, and we'll get onto -- I don't know if it's County of Orange is next or the City of San Diego? Oh, the counties.

I'm going to ask a couple of questions here. We have lots of cards from the county, Todd Snider, Richard Crompton. Are all these people going to speak or --

MR. SNIDER:: Actually, I'm going to be the only person from the county of San Diego speaking right now. I'll hand it over to a couple of other co-permittees. We do have additional county speakers that will use their three minutes at the end if that's appropriate.

CHAIRMAN DESTACHE: Okay, very good.

MR. SNIDER: Good afternoon. My name's

Todd Snider. I'm a watershed planning manager with the county of San Diego.

I'm going to be kicking off the san diego co-permittees portion of this joint presentation. After I go through a few slides I'm going to pass it off to Ruth Cole of the City of San Diego and she's going to speak very specifically about the TMDLs.

I wanted to start off by saying that we do really appreciate the regional board staff put into this permit reissuance.

This permit reissuance process is much improved over the previous processes, just the fact that we had so many earlier drafts to be able to comment on is much appreciated. I think the dialogue we've had through the focus meetings over the last six months have really been excellent. And I think we have a better permit today than when it was first released back in April.

Also, to echo what you heard from Riverside county, when I'm going through these slides these positions that I'll be stating here really represent the opinions of all of our co-permittees. The county is the lead permittee in San Diego. there's quite a bit of coordination. So these are all consensus points that represent the opinions of all 21 of our San Diego

co-permittees.

We do very much support the watershed-based approach through the Water Quality Improvement plan. We think the direction the board staff laid out is excellent and I think the intention and the vision are very good. We do want to be encouraging innovation. We do want to be encouraging strategic approaches and the watershed scale is an appropriate scale to be doing that.

Staff did make significant changes to the early version of this draft that came out. We very much appreciate that. A good example is the monitoring requirements. When the draft first came out in April we had a very onerous very expensive monitoring program that really wasn't bringing much value in terms of the data that would have been collected and how it would fed into the adaptive management process. To their credit, board staff heard our recommendations, incorporated our suggestions, and I think today, although there are some siginificant technical issues with the monitoring we'd like to continue to dialogue on I think we're very much in support of the changes that were made and it was a very positive direction.

So that said, I think kind of what you've been hearing, you've been hearing a consistent theme

from all the speakers today. There's really three critical issues that remain. A lot us feel like board staff have done most of what they could to improve this permit. I think the key issues that remain are really policy issues, they're very high level issues, but they're very important to get right. So part of what we'll be talking about today is what our concerns are with these three issues you see here: compliance provisions, TMDLs, and the development requirements. And we actually have very specific, very simple fixes to suggest and we hope you'll consider this.

So, first of all, just to echo some of the themes you've heard today, we have demonstrated success over the last several years. If you look at our beach closure data, compared to 10 years ago there is real change that has happened. And that's not just happening magically. It's actually a real commitment to infrastructure upgrades, a diversion to many areas, if not most, of the coastal storm drains to the sewer system. We have several UV treatments up the coast. I was at a presentation the other day, and I saw the City of San Diego staff presenting a number of beach closures from 10 years ago to present. And it was dramatic. 99 percent improvement during dry weather. So we have improved beach water quality, and a lot of

it has to do with the efforts of our co-permittees.

Another good example of the success is we had local co-permittees who worked at the state level to do exactly what Chairman Roberts suggested, deal with the source. So there was legislation passed that would remove copper from break pads. That's the most efficient way to deal with pollutants. Before introducing it into the environment you deal with it at the source. and of course we have revised how we deal with development. The low impact development and hydromodificaiton programs have really made a difference in terms of mitigating development before it happens.

With that said, there are some significant challenges that remain. Water quality objectives can and will be exceeded even when treatment is in place. There was an interesting -- board staff acknowledged this in their presentation as well -- you can't prioritize every drain, you can't priortize every portion of the watershed. You need to be strategic and being strategic and directing your resources to priority problems, that means that something else has got to give.

There was a really interesting article, if you haven't seen it, in a couple of -- it might have

been a month or two ago, in "Storm Water" magazine that went through the BMP treatment effectiveness dealing with bacteria for the BMPs that are available today. Virtually no available technology can remove bacteria to levels that are required in this permit to meet the quarter quality objectives so there are real significant concerns about the feasibility of some of these standards.

Also in 2008, the National Academy Of Sciences came out with a report that talked a lot about why storm water, why MS4s are different than other traditional point sources of pollution. Storm water I think as we all recognize is a nonpoint source problem that's dealt with through a point source sort of permitting strategy, and there's problems with that.

I mean, there are thousands if not tens of thousands of points of entry from the storm drain system into receiving waters. Unlike a confined system such as waste water or your typical industrial facility, there's much less control over storm water systems than there are over those other facilities.

And really a lot of what the permit does is it requires us as municipalities to change behavior, to change behavior of residences, businesses. Of the people who contribute runoff or pollutants into our

systems the city's encountered. To we know behavioral change takes a long time to accomplish. It's not something that can easily happen overnight.

So the challenge is, how do we prioritize resources while maintaining accountability and a focus on water quality outcomes. And again we think that the water quality improvement plan does provide a path forward to a new paradigm to prepare more appropriately address this.

There's a lot of advantages to the WQIP process that board staff talked about today. Here's some of them. Currently we have permit requirements, TMDLs, areas of special biological significance all addressed in separate plans. So the water quality improvement plans really have an opportunity to bring these different regulations into a single place at the watershed scale. We support that approach.

To address Mr. Strawn's question about streamline reporting and what the co-permittees feel, I think from the San Diego co-permittees perspective, the level of reporting probably would not change under this new structure, but there will be fewer reports it to read so I think the information will be a little more user-friendly and accessible. That would be my response.

WQIPs really provide an opportunity to prioritize resources. We're permitted to priortizing water quality problems that need correction, the sources contributing to those problems as well as the geography of the watersheds that are focused on the most important problems.

And as part of the WQIP process, we're committed to figuring out where our limited resources can be best put to use, because as everybody knows when everything is a priority nothing is a priority. So there's a number of features of the water quality improvement plans that really take the next step into accountability, measurability, and accountability for co-permittees.

Each water quality improvement plan will have water quality based goals with associated time lines. Those are clear and measurable standards. Co-permittees will be given the flexibility to identify effective actions using sound science. That's a positive. The WQIPs will be vetted through a very significant public state or comment process. So before they get adopted by the executive officer, the public will have a chance to input.

So the water quality improvement plan is not a free ride. It's a very rigorous process, and it's

very measurable and outcomes based.

And of course the other benefit to you as a regional board is that developing very rigorous water quality improvement plans will obviate the need to have to develop really costly TMDLs in the future.

So this is our first comment in terms of what would need to be changed in the current draft and it has to do with compliance provisions. How is compliance measured under this permit. There's been a lot of reference to Provision A which is the section of this Prohibitions and Limitations. Let me just describe some of what's required right now. We think some of the compliance requirements are conflicting so first of all, you have effluent limitations that require pollutants and storm water to be reduced to the maximum extent practicable. This was the standard that was the original intent of the Clean Water Act when it was amended to bring storm water into the NPDES program.

NEP standard has been re-affirmed in both the state board and EPA policy. NEP is the appropriate standard because of a lot of the reasons I just described. Systems with thousands of outfalls, limited controls. You can't do everything everywhere, so maximum extent practicable is appropriate.

And when a Blue Ribbon panel of experts was asked to look at that question they agreed and they recommended that NEP be the standard for MS4 permits. But at the same time in the provision of this permit you have receiving water limitations and what do those require? Those require that every outfall, every point of entry from the MS4 into a receiving water you may never discharge any kind of pollutants or flow that causes or contributes to a violation of water quality standards. Those receiving water limitations apply to every point of the watershed. So that's why you're hearing consistently that there's a risk of noncompliance from day one. We know that we will never be able to comply at every drain at all times so that presents a real risk of liability for co-permittees.

Even if you ignore the possibility of money being wasted on fighting potential lawsuits, the receiving water limitations as written seem to be inconsistent with the direction you heard from board staff today in terms of prioritizing drains, prioritizing resources, so that you're focused on real change. Figure out what your most important problem is and try to improve it the best you can. With this receiving water limitation language in the permit, you just have conflicting standards.

And then finally, in Attachment E you have TMDLs. So TMDLs are really developed for prioritized water bodies. And the irony of this is where as a TMDL we definitely have the concerns about the attainability and achievability of the TMDL. Even in cases where TMDLs have been developed for priority waters, they're given a time line; 10 years, 20 years to comply. So you really have this kind of perverse situation where your TMDLs have a compliance schedule yet you have a receiving water language that applies day one to every portion of your watershed. So it doesn't seem to make sense.

So in terms of what we would request, we're asking to do exactly what the L.A. Board just did last week, which is to develop language that clearly links these innovative water quality improvement plans that are goal oriented and measureable to permit compliance because if those WQIPs aren't linked to permit compliance, what incentive is there for innovation and really pushing forward to make those plans creative and effective?

So I think it's inappropriate as you might hear in other forums to refer to the watershed plan approach as constituting compliance as a safe harbor. It's not a safe harbor. These are very expensive

plans, and real change is going to happen.

So with that, I'm going to pass it over to Ruth Cole with the City of San Diego, and she's going to talk about some of our concerns with the TMDLs.

CHAIRMAN DESTACHE: Ruth, is this part of the City's ten minutes?

MS. COLE: Good afternoon. My name is Ruth Cole. I'm with the City of San Diego. And today I'm representing the co-permittees to talk about TMDLs.

But the whole thing is, you know, we've heard that the permit does not include an option for expressing the WQ bells as BMPs, okay? This was allowed and written into the TMDL, particularly the bacteria TMDL on page A-41. And we've heard it's acceptable by US EPA to have BMP-based compliance as long as it's able to demonstrate that we are in compliance with the wasteload allocations that are written out during the TMDL process.

The WQ bells as written are likely to consist of the receiving water limitations and will require, and we want them to require, the implemention of the BMP program to achieve the TMDL requirements within the receiving water.

The BMP-based WQ bells for TMDLs are already in some California permits. In Region 4, the L.A.

trash TMDL has BMP-based requirements. The Santa Ana Regional Board also has the Santa Ana River bacteria TMDL that is BMP-based.

So what we're asking for is in Attachment E to add an option for BMP-based compliance with the wasteload allocations as envisioned by the TMDLs. The BMPs can be laid out in the outcome-based WQ, water quality, improvement plans, so everybody knows what we're talking about. And the numeric WQ bells can remain as a backstop to the BMPs if they don't succeed. So there's an option here to do the BMP-based and therefore move forward if they don't work with the WQ bells.

Our third comment is by applying the water quality objectives as effluent limits. The permit limits the ability to target hot spots and increase efficiencies by each municipality and by each watershed collectively. The TMDLs included have extensive analysis and modeling already at this point.

We've gone through this with the bacteria TMDL. It took us, what, eight years to bring it forward? I was at the first meeting and I was at the last meeting, okay? We've done this with the Los Penasquitos lagoon TMDL where we, the City, stepped up at the request of the regional board to help with the

TMDL. And there's a lot of modeling, a lot of writing a lot of collaboration, but we brought forward I think the first TMDL to you that was supported by not only the EPA but the environmental groups and the municipalities, okay?

So what we're asking for is that Attachment E -- what we're asking for in our request is that the effluent limits in Attachment E should be based on the water quality -- on the wasteload allocations, not the water quality objectives.

In addition, the BMP-based compliance, Attachment E, should provide an option to demonstrate compliance by meeting load-based wasteload allocations.

Here I have a fairly cool little diagram for you. This is Chollas Creek. We have a dissolved metals TMDL in Chollas Creek, a lot of it caused by aerial deposition. you've heard us talk about copper break pads. The City was very active in that on behalf of the other co-permittees. But here's the watershed, the north fork and the south fork. Here's the north fork, here's the south fork, and then as we go through you'll see these are all the outfalls we have in Chollas Creek 831 outfalls. And here would be representative of major contribution locations just for us to sample within Chollas Creek.

So getting in here and doing monitoring at all the outfalls with concentration-based TMDLs can be, let's just say, very costly, okay? And very time-consuming I honestly don't think we have enough people or laboratories to do that extensive amount of work, okay? And here's where we talk about the outfalls must be addressed by water quality objectives and then the wasteload allocations.

So my last point, I wanted to talk to you particularly about the bacteria TMDL. As you heard, I was there from the beginning to the end, okay? Basically, it's one of the most challenging TMDLs in the United States. The weather requirements will require us to go back to prehuman because the weather-based requirements takes up the total wasteload allocation, okay? I mean nature takes up all of it. And so you're basically, and we said this during the TMDL hearings, we have to have our water quality comparable to drinking water standards to be discharged through any of the outfalls. So that's a really big deal for us.

One of the things we want is to make sure that only include the TMDL requirements through the permit term, okay? During this permit, the TMDL's good for 20 years, right? It was adopted in 2010, approved

by EPA I believe approximately 12 months later, about March of 2011, and approved by the office of Administrative Law in October of 2010.

And we have 20 years to comply and there's all sorts of interim dates in there. Those interim dates, the ones that fall within this permit time span should be included but the ones for 20 years out, things may change, we may have our reopeners. We may bring back through special studies some of the information that you want to hear about to modify things. So we're recommending that you only put in the requirements that are during this time period. Let's see. And we also want the stakeholders. We are doing special studies. The co-permittees are doing a reference beach study again for the second time. We are also doing a reference creek study, and the City of San Diego has done bacteria work in Tecolote for 40 years. It's not that -- we're not sitting back waiting, okay? We're getting out there to do the work.

And it seems like the permit conflicts with the revised TMDL, okay? There's some issues with that.

And then also you need to be aware that EPA is coming out with new standards for bacteria later this month. They had it advertised last spring, comments were due I believe last April or May, and now

they're going to be coming back out with their new bacteria standards which is going to change everything, okay? Change those compliance points for us. We may have to go back and recalculate everything anyways. So a reopener is very important in this TMDL because there's all sorts of things changing.

I also found it very interesting that staff told the stakeholders during the TMDL process that the implementation details would be worked out during the permit phase. Okay? This morning I heard you can't work out any of the details in the implementation phase in the permit because it had to be done during the TMDL. So I find that very disconcerting that we had staff telling us one thing during the development of the TMDL and now they're coming back saying -- and it's different staff, understand, different people, but we're still hearing conflicting things that, you know, we can do -- we can modify and change the implementation plans during the permit phase and now we've been told we can't.

So, at this point, I would like to turn it over to Julie Precopio with the City of Santee. She's going to talk to you about hydromodificaiton.

MS. PRECOPIO: Good afternoon. I'm going to talk briefly about the development planning aspect of

the draft permit.

First I'd like to acknowledge that the regional board staff did make some significant changes to the section in particular and we believe that the workshop process was very effective and, you know, the changes that they made for the most part were good changes. So our comments were all related today to the hydromodification management plan. First, the draft permit revises the board adapted San Diego Hydromodification Plan prematurely and without technical basis.

The San Diego HMP is a technically robust document by any standards. It was prepared by the best experts that we could find and reviewed by a technical advisory committee that comprised of well known and respected individuals from academia, consulting engineers, environmental groups, development industry representatives, and resource agencies. Development of San Diego's HMP took more than two years and cost the taxpayers over a million dollars. The document was fully vetted through a public review process and in 2010 a San Diego HMP was adopted by the regional board. And last year we began implementing the plan and at this point, we have no data or information that the plan isn't working exactly as it's designed. In fact,

it's been used as a model for subsequent HMPs so we feel pretty good with it.

Now is not the time to change courses. We're in the process of conducting a one and a half million-dollar monitoring plan to collect real world data to support the science behind our HMP. Regional staff is proposing significant changes to a very robust document without technical data to support the change.

You heard regional board staff speak earlier and show the adaptive management diagram where you plan, you implement and you monitor and you assess.

Well, we're -- we're in the implementation just beginning to monitor and we're being asked to revise the plan and that's really setting us back. It's not the right way to move forward. So we ask that the San Diego permittees, we're requesting today, that the regional board reaffirm your previous resolution that adopted the San Diego HMP and that we be allowed to complete the monitoring plan to assess the HMP before any changes are made. We have a substantial investment in time and taxpower dollars to make changes at this point. We believe it's a scarce waste of resources.

Specifically one of the changes that the regional staff is proposing to make to our adopted HMP

is fundamental. Where do we need to apply HMP controls?

The draft permit proposes to expand the application of HMP controls to areas where there will be no benefit. The goal of the hydromodification plan is to protect streams from unnatural erosion that can be caused by development so it's important to remember that we're talking about flow rates leaving a site and not water quality. Every site has to ensure water quality no matter what so water quality is protected.

But with erosion protection in mind, the San Diego HMP provided detailed recommendations where HMP should be applied. And after extensive modeling and technical analysis and after consulting with the technical advisory committee, it was determined that in some cases HMP controls are simply not needed to prevent downstream erosion. Certain areas do not have the potential to be impacted by upstream development.

For example the ocean streams that are deposition or they're building of sediment, they're not eroding; concrete line channels or other channels that are designed to accept increased flows without eroding; these do not require upstream HMP controls. So we believe that these areas should be exempt from the HMP requirements because they do not need to be protected

from unatural erosion caused by development and applying costly HMP controls to these sites that drain to these areas will simply serve no benefit.

You heard Ms. Arias speak a little bit earlier about the options for off-site compliance and we think that is a great idea to allow a project to comply off site to some sort of channel restoration or creek restoration project. However, obligating a project to pay for some sort of off site HMP improvements when the project itself has no impact or no potential to cause downstream erosion just isn't appropriate. So we request that the HMP exemptions identified in the board-adopted San Diego HMP be maintained so HMP controls are only applied where they're needed.

And, finally, my last comment on the HMP is another change that the permit is proposing to make is to require projects to reduce flow to naturally occurring rates rather than to preproject rates. And you've heard this discussed by other folks today.

What does this mean? This means that previously developed sites have to drastically reduce the rate of flow leaving their site in order to match undeveloped sites conditions. What it means is much larger volumes of stored water translates into higher

costs and really without any benefit. So the result is redevelopment projects that are widely accepted and is beneficial to water quality are made less feasible.

And the particular challenge with this particular item is that this requirement mandates mitigation beyond project's impacts. You'll here later during the attorney's presentation that cities are limited to what we can require of a development project. Conditions and requirements must be tied to a project impact. This language goes beyond a project impact. So we believe that project should be required to match preproject flow rates. So our request here is very simple. We ask that the language in the project predevelopment naturally occurring be replaced with preproject, and in this way we can especially sure that projects are required to mitigate their impacts and not beyond.

And that concludes the comments from the San Diego co-permittees. In summary I'd just like to say that we really do appreciate the regional board's staff's efforts to work with us. It's been a great process to date and we hope to continue our work. There is more to be done and we very much -- we ask that you direct your staff to sit down with us to incorporate our requests, specifically direct staff to

work with co-permittees to develop water quality improvement-based compliance language, direct staff to incorporate the BMP-based compliance to include permit language to ensure consistency with adopted TMDLs, insert language that requires the permit be reopened, and only TMDL requirements that -- TMDL requirements that fall outside of this permit term not be included. And lastly, that you reaffirm your previously adopted San Diego HMP and replace the predevelopment naturally occurring language in the project --

(Interruption.)

MS. PRECOPIO: I'll just wrap up without the mike.

We believe that these requests ensure consistency with your previous direction. And that it will move us toward our shared goal of water quality improvement. And unless there's questions, then the Orange County co-permittees I believe are permitted to speak next.

CHAIRMAN DESTACHE: I think we're going to wait until all three of your presentations to ask questions of which I have a couple.

(A recess is taken.)

MR. BOONE: Good afternoon, Chair, members of the board. I'm Richard Boone with the County of

Orange. I'm going to bookend three technical presentations. It will certainly be becoming apparent to you there's a recurrent theme here, but I really think if you can stick with the Orange County piece of this we're going to bring some additional details to the issues that will really help you understand what the real policy issues are before you.

Just wanted to note before I start if you're following the news from Europe, King Richard, III was dug up from beneath a supermarket parking lot earlier this year and Shakespeare credits him with the immortal line, "My kingdom for a nine-volt battery." It goes downhill from there. So I'm going to very quickly go through some background information from the Orange County storm water program. We have three principal policy issues, three principal areas of concern for you that my colleagues are going to talk to.

So, very quickly, Orange County storm water program, we have 22 years of program implementation experience. Some of us were there for the very first permits, including myself, in 1990. Collectively without co-permittees cities we bring literally hundreds of years of experience to the practice of storm water management.

Every time we develop a new program element

to comply with the requirements of your staff or their counterparts in some other region, we apply nationally recognized consultant expertise. Over the years, we've gone through very credible recognition for some of our key program elements.

We've just completed at the start of this year a new program for land development, transitioning the way we condition land development from treat and release to on-site retention. It was recognized -- the engineering excellence was recognized by the Orange County Engineering Council, and we've also got California legislature recognition for that project, public education and outreach. We've gotten awards fromu or peers, California Water Association, as well as many public awards from the industry for our efforts.

The water quality management program that we've established for land development, it was the product of an 18-month very intensive collaborative advisory process. We estimate that we spent between 1.2 and $1.5 million putting the program in place. In north Orange County we now have 12 months of implementation experience.

Since 2002 we estimate that about 8 percent of the urban land area in Orange County has been

subject to, at least intially, the treat and release approach to the conditioning of the land development water quality protection. So literally hundreds of these projects have gone in with these water quality protections.

In terms of applying that expertise to that water quality renewal -- still getting over Richard, III?

CHAIRMAN DESTACHE: I abdicated.

MR. BOONE: I think one of our concerns is when we go through permit renewal, there is a period of introspection where we, the county, and the permittees put together our evaluation of the program. We document in a report of the waste discharges on permit application, and that really gives your staff an opportunity to tap into our experience and where we think the program should go. With a regional permit, we've circumvented the report of waste discharge process, and that is a concern.

In terms of water quality improvements what have we generated or what can we look back on over the last 22 years and hang our hats on? We'll talk extensively today what we'll continue to talk about water quality and bacterial water quality. We get most recently in the Heal A Bay report card. We are getting

excellent results and recognition for our efforts in Orange County.

We've also had a history of using innovative regional BMPs to solve particular water quality hot spot issues.

Lastly, we have spent tens of millions of dollars on monitoring. And I wanted to give you one very small piece of what we found from that. We would really like all of the work we do on environmental assessment to better inform the permit renewal process. We talked about beach water quality. This is a time series plot of fecal coliform bacteria and concentrations at the outlet of Aliso Creek. The red line marks water quality standard. And you can see since 2002 we have some pretty significant trends in the right direction and even in our inland stream systems in dry weather we're getting pretty close to contact standards. So there's some very laudable successes that we think we've achieved.

So the critical policy issues of why we're here today, we think the compliance needs to be attainable. And I'll talk very briefly about that and then my colleagues are going to focus in on three specific areas of concern.

The bacteria TMDL, Green Streets,

hydromodification, and I think they'll give you very useful information so you'll understand the issues. And then I will conclude with some wrapup remarks.

So compliance needs to be attainable. All of the speakers I think before me have talked about the receiving water limitations section of the permit. This notion that as soon as the permit is adopted we are in violation if we cause or contribute to an excedence.

We know that runoff retention now is the preferred management strategy for addressing this condition of watershed imperviousness. And obviously sustained meaningful environmental outcomes are going to be tied to development cycle and retrofit opportunities where they present themselves.

So this really is certainly for wet weather a long-term endeavor. And I think the permit recognizes that with the WQIP concept that that needs to be the compliance mechanism.

And this has become an issue for us this year because of the ninth circuit decision. The ninth circuit, the opinion from the court is there in the second bullet. There is no textual support for the proposition of compliance with certain provisions, the management process, noncompliance with the discharge

provisions. So that decision is why this is suddenly of paramount concern to local agencies and districts regulating the storm water mandate.

We've noted the workshop, state board workshop, on November 20th, on December 4th, there's an aspect of that decision which is being argued in front of the U.S. Supreme Court.

So the recommendation, our recommendation to you, is direct your staff to work with the co-permittees to make the WQIP, the compliance mechanism for the permit. And also direct your staff to advocate for WQIP-based compliance mechanism for the state board workshop on November 20th.

So with that, I'm going to have the next policy issue, bacteria TMDL, over to my colleague.

MS. PALMER: Thank you. My name's Nancy Palmer. I'm with the City of Laguna Niguel. For the last 10 years I've been with the Orange County Stakeholder Advisory Group. That group started up actually not too long after this regional board issued a clean up and abatement order to Laguna Niguel for bacteria coming from one of the city's outfalls to Aliso Creek. So by the time the bacteria TMDLs were approved in 2010, I had already spent close to $10 million personally in city general funds and state

board grant funds to construct targeted treatment and source controls for bacteria in the Aliso water drainage. And I'm happy to report that the dry weather bacteria load in that area has dropped over 90 percent. So it's been a long road generally. Working on the bacteria TMDLs, it's taken 10 years of discussion, a lot of good faith effort by stakeholders, and that group included the permittees, the environmental groups, the federal EPA, your staff and this board. We didn't get everything that we would have preferred on those TMDLs, but together we were able to craft language for the TMDLs, and then for the basin plan amendments that all of us could support, because all of us really did want to move forward with it. And I can assure you that all of the permittees have continued moving forward in the two-plus years since the bacteria TMDLs were approved.

We spent that time developing our load reduction and monitoring plans and started critical local research projects based on what was agreed to in the TMDLs and the basin plan amendments. And those plans were actually just submitted to the board in September. So now we come to the point where the total maximum daily loads get formally incorporated into the MS4 permit. I will say I see a lot that I like in this

draft of the MS4 permit. I think your staff has done a great job in consolidating all of the different elements, and I do think the stakeholder workshops over the summer yielded some really good progress on all of the pieces and including Attachment E, the total maximum daily load piece of it, but I do think there are some really important issues in Attachment E that really still need to be resolved.

The basic problem is that the total maximum daily load provision in Attachment E of the permit are contrary in critical ways to what was approved by you in the TMDL basin plan amendments. This actually contradicts federal law. The TMDL provisions in MS4 permits have to be consistent with the assumptions and requirements of basin plan amendments. So how is the draft permit different? First of all, it doesn't include the calculated maximum daily loads or the wasteload allocations that were based on those.

Second, it disregards the intention of basin plan amendments that the water quality based effluent limits can be based on BMP programs. Also the draft permit has moved our chronological starting line for the program, tightened prescription on our sampling performance. It's omitted key methods for us to demonstrate compliance, and it has failed to

acknowledge the reopener provision that assures us of a midstream course correction. The net result is it's not going to be feasible for us to stay in compliance. We will be violating numeric effluent limitations that are built into this draft permit and that means that we will all be looking at potentially mandatory minimum penalties. I want to take those points one at a time.

First a lot of time and effort was spent in developing the bacteria total maximum daily loads to calculate and allocate numeric, daily, monthly, and annual and seasonal bacteria waste loads to the MS4 permittees. Those wasted allocations were then incorporated directly into the TMDL basin plan amendments. Federal law requires that water quality based effluent limits in an MS4 permit which is what makes the TMDLs enforceable have to be consistent with any available TMDL wasteload allocations. But the draft permit just leaves the calculated wasteload allocations entirely out. Instead the draft sets up bacteria concentrations as water quality based effluent limits. What's the practical difference? The wasteload allocation describes the total number of bacteria in the flow from MS4 over the course of a day or a season as a function of the total flow volume and the average concentration.

The draft permit is asking how many bacteria happen to be in one sampling vial. For me, as an MS4 manager trying to stay in compliance, that is an insurmountable difference as has been stated already by other speakers.

Bacteria concentrations are unstable inherently. They are alive. They multiply. They divide. I can reduce and control their numbers by the millions over in the course of a day. We cannot control how many might end up in every vial in that flow.

Next, the text of the basin plan amendments states, and I'm quoting here, "Water quality based effluent limits may be expressed as numeric effluent limitations when feasible and/or as a best management practice program as expanded or better-tailored BMPs, but the draft permit doesn't express the water quality based effluent limits as a better tailored program of BMPs or as a TMDL wasteload allocations. Instead the draft permit expresses the water quality based effluent limits as a numeric effluent limitations in the form of water quality objective concentrations."

It just sort of jumps over that little caveat, when effluent limitations are feasible.

The state water board's own Blue Ribbon

panel made findings on exactly that subject and concluded that numeric effluent limits in MS4 limits are not reasonably achievable for a city government to precisely control the concentration of bacteria in essentially every teaspoon of water that flows from its MS4 through thousands of individual properties.

When the board approved the bacteria TMDL basin plan amendment couple of years ago, they committed specifically to a five-year reopener. The board made that commitment because it recognized that the TMDL had some inherent flaws because of some very large gaps in the data that were used to make the TMDL calculations. The plan was that the permittees would use the five years, do research, flesh out the local data, do some number crunching, and bring back more locally appropriate wasteload allocations that exceeds frequencies for this board's approval and consideration.

With the reopener, the updated allocations and frequencies would reset the bar that permittees would have to jump over, whether that be higher or lower. And the permittees, I have to tell you, we are doing our part. We put together funding agreements and we started the research last winter in conjunction with the Southern California Coastal Waters Research

project, and that is ongoing and we expect it to be ongoing for several more years. So we feel that right now the draft permit isn't doing its part in recognizing that that course correction is supposed to have been built into the process, and the process at this board at this time had agreed was appropriate and necessary.

And kind of adding into that, the draft permit also proposed to tighten up our samplings requirements for weather and effectively changes our starting line for measuring our process towards dry weather compliance. The language changes mean to me that I have to do my bacteria concentration sampling during the storm seasons worst case conditions. I also get no credit for the millions of dollars I've already spent or the progress I've already made concerning dry weather discharges over the last 10 years. This is not the language that we in the board were able to support in the basin plan amendments.

Looking at the far end of the compliance time frame, the total maximum daily load basin plan amendments indicate that the co-permittees would demonstrate their compliance with the final water quality based effluent limits by demonstrating that they have and are implementing structural and

nonstructural best management practices to control all anthropogenic sources of indicator bacteria, and that's straight out of the amendment. But the draft permit does not allow for us to demonstrate compliance by what we do to control sources averaging flows. Instead it requires to meet precisely the water quality concentrations objectives, which we stated over and over again is not really feasible to do.

So how does that all add up? The water quality based effluent limits as currently stated are not going to be reasonably achievable? The co-permittees will not be able to demonstrate compliance. We will be in violation of an enforceable numeric effluent limit within our permit which means if reported alone we will be subject to mandatory minimum penalties.

When this happens, the board will not have the discretion to take circumstances into account or to reduce the minimum penalties which are currently required to be assessed at $2 a gallon. To put that in perspective, that one outfall that we had an abatement order on it blows at approximately one-tenth of a cubic foot per second. Over the course of a day, that comes to $175,000. Aliso Creek flows at about 5 cubic feet per second. That comes out of compliance, that's about

$6 million a day. I hope that the board sees the wisdom and tries to avoid that scenario.

What corrections do we think are needed? First, I actual agree with the EPA, with Cindy Lin. Incorporate the TMDL wasteload allocations into the permit as water quality based effluent limits.

Second, correct the starting line and the monitoring requirements that got changed.

Third, reaffirm the reopener commitment to correct what's really our finishing line criteria.

And fourth, allow our compliance option to the implementation of a strategic program of best management practices that are designed and calculated to achieve the TMDL wasteload allocations.

So kind of a summary of that, we recommend that you direct your staff to work with the stakeholders to correct all the TMDL provisions. They're inconsistent with federal law, contrary to the intent of the basin plan amendments, and could result in nondiscretionary mandatory minimum penalties.

Thank you.

CHAIRMAN DESTACHE: Thank you very much.

MR. TAYLOR: Scott Taylor supporting the Orange County Storm Water Program, and realizing that we've drawn and coveted after one spot. I'll try to

move along here.

I just want to spend a few minutes talking about the enhancements we'd like to see in the permits sections that address green streets and hydromodification mitigation plan.

So our first item is the application of new and redevelopment standards to roadway projects. And roadway infrastructure is unique. The right of way is limited. There are technical constraints in terms of traffic design and building design and engineering, and roadways have safety as a primary objective. The proposed new and redevelopment standards treat roadway projects the same as any other land project mandating that bio-retention or bio-filtration can be used. the roadway project, this may invoke a lot of unintended consequences that we've heard quite a bit about today, this will be at odds with our obligations under the public resources code to kind of balance the competing interest among state resources or stop some projects all together, and I'd like to illustrate these points with a couple of examples for you.

The first example is a green streets retrofit project which is actually underway in existing urbanized residential areas. An integrative project (inaudible) street rehabilitation and mobility

improvements on a bicycle boulevard and drainage and water quality improvements. It would trigger the new and redevelopment projects because of reconstruction of some of the streets and the trenching for the storm drain improvements.

So you can see just in the basic constraints, you can see the flow of the water, and these are pretty narrow streets, actually constructed in the '20s, so kind of a good model for LID, actually. And then here you can see the existing driveways which is another layer with some physical constraints. You add in the utilities and the street trees which we would want to preserve under a project like this.

And, finally, the fire department is obviously very picky about their turning (inaudible) and getting their trucks in and their access.

So you can see here, then, the final maximized bio-retention area, if you will, and that's these two spots right here for this project. As many areas in California, this site is underlaid by clay soils. And the bio-retention units, what could be fit in this location, are about 5 percent of the size that would be required under this permit. So the project and its benefits may not have otherwise gone forward with the mandated BMP sizing that's put in this draft

permit.

The second example is a new roadway project in a greenfield area. And the purpose of this illustration is to show the grading constraints that some roadway projects have. Grading is typically minimized to avoid impacts to natural areas and hashtag conversions. Implementation of bio-retention along a road like this would increase the project footprint dramatically requiring the take of an additional area. And you can see here you've got a lot of slopes that you're chasing. Sometimes they're greater than two to one. So anything that you add along the parkway areas is going to extend that impact area out, in this case, the San Clemente coastal (inaudible).

So analysis of balancing these types of project impacts is best accomplished at the planning levels through EPA. We estimate about 3.3 million to incorporate the hydromod and bio-retention areas as depicted there graphically into this project.

So, to summarize on this point, a more flexible standard is needed for street infrastructure projects. Use of the proposed new development, redevelopment for streets will result in a disproportional amount of capital outlay for marginal environmental benefit in some cases. Other NPDES storm

water permits recognize the unique constraints of streets, including a recently adopted Caltrans permit which allows for a variety of BMP approaches. There are emerging BMPs such as permeable friction course overlays that are compatible with existing infrastructure. They're economical, they have dramatic water quality benefits, but they would really be excluded under this permit for being used. So we ask the board staff -- ask the board to direct staff to include the EPA Green Streets compliance as the compliance standards for roadways.

So the second to last subject that I would like to tee up is the elimination of key exceptions from the hydromodification litigation requirements, specifically the accommodations for properties draining to engineered channels. For engineered channels, there's no threat of erosion for the range of flows that have been identified by the HMP program. We understand the main reason for engineering channeling exemption was eliminated was to allow for the potential for future channel restoration. But in urban areas the restoration of channels isn't really going to be feasible, and I'd like to demonstrate that with a couple of examples for you. This is a Prima Deshecha watershed again in San Clemente. And you can see this

is what it looks like today. It's a fairly urbanized residential area. This is what it looked like back in 1947, so virtually no development in the watershed. And you can see down here, this is just a zoom down by the coast of what, essentially, the channel flow line looked like there in blue prior to development. And then the green is what it looks like today. And then here's the overlay with development back in.

So again it's pretty obvious and pretty clear that this is going to be impossible to restore the original channel alignment. And I think since the alignment and slope can't be restored to predevelopment conditions, we're still interested in attaining some of the preexisting functions and values for creeks like this, but if you're looking at an in-stream rehabilitation project that's going to be done within the physical constraints that exist today in terms of channel slope, available area, and available cross-section and the urbanized discharge rate that's there. So there's really no benefit in reducing the discharge rate to predevelopment conditions on a property by property basis such as contemplated under this order since the in-stream enhancement project must consider all of the changes that occurred in the stream in developing a new design.

Second example. This is the next watershed down in San Clemente, Segunda Deshecha Canada. Here's what it looks like today. Here's the 1946/1947 aerial showing the channel, and then a flood plane. And what's there today? Obviously, again, limited, limited availability. But if there was a redevelopment project in Segunda Deshecha hydromodification controls would need to be applied.

So in summary, we support the enhancement projects to the Segunda streams, but they must be based on the physical and engineering streams that are present. Providing a hydromodification draining to engineer channels will not change the feasibility of in-stream enhancement projects. We ask the board to direct staff to include an exemption for properties draining to engineer channels.

So that's it for me. At this point, I'm going to have Richard come up and close for us.

CHAIRMAN DESTACHE: Thank you for your time.

MR. BOONE: So I'm going to summarize the technical part of our presentation, and it's going to be a contribution from legal counsel representing a number of the counties as part of the Orange County presentation.

So in terms of critical policy areas,

technical policy areas that we think you need to address and provide some direction to your staff on, compliance needs to be attainable, obviously. The receiving water limitation in the ninth circuit decision.

We ask that the process here of permit renewal respect the prior progress in public processes that have gone on before that have laid so much in the bacteria TMDL and the basin plan amendment and how that going forward is going to be incorporated into the permit.

And then, lastly, as you've heard, we have some very significant concerns, policy level concerns, about how we may be required going forward to condition land development, and that really needs some very definite consideration.

So, fundamentally, the recommendation to you from our Orange County co-permittees is that you direct your staff to continue to dialogue with us. And with that, I'm still, with some battery time, I'm going to hand it over to legal counsel.

MR. HUNT: Thank you board members.

Jeffrey Hunt from the county counsel's office Orange County, representing Orange County.

We're going to submit significant written

legal comments so I'm not going to try to cover all of that territory in this presentation, but rather just focus on a couple of I think most significant issues that we've identified in reviewing this draft permit.

And I think from the speakers that you've heard more from a technical standpoint there's significant concern about some of the hydromodification requirements; in particular the elimination of the exemption from those requirements for engineered systems.

And from a legal standpoint why we consider that to be a significant problem is that we do feel that under the Clean Water Act there does need to be a significant factual basis for such requirements within the permit, and, in particular, a factual basis demonstrating that those provisions do essentially serve a water quality function.

And why we're concerned about the elimination of the exemption for engineered channels is that we don't believe that that case has really been made. It appears to be primarily motivated by a federal policy issue that favors kind of a restoration ultimately of the natural course of that channel, you know, over time.

And with an engineered channel, I think

there's a significant argument as the speaker from San Diego demonstrated when they developed their HMP plan and when the county developed its HMP plan, it did look at the issue as to whether hydromodification requirements for a particular project do in fact serve a water quality purpose or because of the nature of the channel that it's discharging in there is really no water quality need for such applying those requirements to that particular project.

These provisions of the proposed permit don't allow the public entities to go through that exercise.

So again, we think it's a problem just under the Clean Water Act or under the requirements of the Clean Water Act just as kind of a boots on the ground lawyer for the county. We also see it's a problem from a very practical standpoint that there is a significant amount of case law out there that does put an obligation on the county to maintain, you know, when we develop or engineer a flood control property that the property owners within the area are protected by that engineered facility have a right to essentially rely on that continued protection.

And to the extent that you take actions or fail to take actions to maintain the capacity of that

system, the public entity is in fact exposed to liability for it. I think the slides from the previous speaker kind of demonstrate that if you basically try to start restoring those channels back to their natural states, that you do lose those capacities and you do begin exposing public, you know, private property to flood risks that didn't previously exist.

So we think that kind of financial exposure on a public entity is not warranted, particularly in situations where there doesn't seem to be a water quality benefit that's associated with it.

The other kind of legal point I'd like to make is more kind of a jurisdictional point about the whole process of the regional permits. That the way that we read the regulations is that regional permits are permitted but only under certain limited circumstances. Primarily the permits are going to be issued either on a jurisdiction basis or in situations where there is really a shared watershed, a common watershed. I think the graphic that the earlier speaker from the regional board put up showing the jurisdiction of this permit and of this regional board demonstrated that there really were multiple watersheds within this entity that really aren't connected. And what the graphic did fail to show, failed to show was

certain, you know, features. In particular the Cleveland National Forest which separates Orange County from Riverside county, Camp Pendleton which essentially separates Orange County from San Diego county. So these three sort of areas that are covered within this jurisdictional permits are very distinct and not really connected either physically or legally and jurisdictionally. So it seems inappropriate to apply and there really doesn't seem to be a legal basis to apply it in this particular circumstance.

I recognize chief counsel has a different opinion on this and has issued a letter pointing to a couple of examples. Those examples I don't think really necessarily support their arguments, particularly points to an example up in the Bay Area where the various entities actually petitioned and agreed to it, agreed to a jurisdictional permit or a regional permit.

And also pointed to an example up in Alaska which apparently also did fall within that one jurisdiction. The way Alaska does things is different than probably anywhere else.

The other point I'd like to make kind of on the regional nature of the permit is that it does tend to undercut the whole iterative process that again was

mentioned by your speakers as a very important part of the regulation of storm water.

The regulations and the practice require that a reported waste discharge be prepared at the end of every permit cycle, and the permit be based on that reported waste discharge. That is the vehicle they seek. It's the cornerstone of the process in that it does tend to assemble the data and the information learned from past permit experience and that the new permit is essentially based on that information and built on it.

This regional permit, the way it's being applied in this particular case is that reported waste discharge is largely kind of becoming a meaningless task. It will be submitted after the permit's being developed. The regional board, you know, try to deal with that issue has put in a different requirement for this Form 200 requirement, which is a much more abbreviated sort of report and, again, doesn't really serve the same purpose that the reported waste discharge does and the board will, you know, that's the information in front of the board and the staff and the board itself in developing the requirements. So we do have significant legal concerns about both of the hydromodification and regional permit approach.

And with that, I'll yield the rest of my time. And Shawn Hagerty will address a couple of the significant issues that were raised by the other speakers as well.

MS. STROUD: Good afternoon. I'm Deputy City Attorney Heather Stroud from the City of San Diego. And today I'm here to address you on behalf of the San Diego co-permittees on our legal concerns on the hydromodification requirements.

Specifically local governments are limited to what they can require from developers and can only require mitigation for impacts that are actually passed by a project, and that's a constitutional limitation that we are subject to.

There are two major areas in the hydromodification section of the draft permit wherein this becomes an issue. And the first is the requirement that we require developers to go to predevelopment naturally occurring runoff conditions. Especially where you have a redevelopment project, you might be requiring mitigation for a project that's actually beneficial to runoff and may have less runoff than existing conditions that are on the ground.

And then the second issue where that comes up where the hydromodification exemptions that have

been fully vetted and approved by the regional board to take those away now basically exposes us to potential liability for requiring mitigation that's not caused by a project.

As a practical matter, these conditions may be unenforceable by us. There has to be a nexus between a project's impacts and the mitigation that's required. And also, the permit as drafted is inconsistent with EPA's approach. We heard Dr. Lin from EPA express concerns about the naturally occurring language and a related section of the permit.

She said that it would cause confusion regarding what constitutes compliance and what the naturally occurring condition is, and there's the same concern here.

Also, the one size fits all approach we heard from EPA is not appropriate because it's case-specific in terms of what your goal is for restoration. For the same reason, it wouldn't be appropriate to require all development to mitigate all naturally occurring conditions.

The same issues potentially arise for the alternative compliance in lieu of fee and we are subject to the Mitigation Fee Act and have to go through some rigorous requirements to establish that

there's a reasonable relationship between the fee and the development's impacts, and that's Government Code Section 66001.

So I would just like to reaffirm the technical presentation staff requests that the post-project runoff flow rates and durations should not exceed preproject runoff rates, not predevelopment naturally occurring, and to reaffirm the board-adopted 2010 hydromodification plan.

Thank you. I'll turn it over to Shawn Hagerty now.

MR. HAGERTY: Thank you. Mr. Chair, members of the board. Shawn Hagerty. I'm a partner with the law firm of Best, Best & Krieger, and I'm City Attorney for the City of Santee. I've been asked to address the receiving waters limitations language on behalf of the City of San Diego. And fortunately for you, I think I'm the last speaker on behalf of the co-permittees.

I wanted to make two points. A very simple one. That is, you have the legal authority to address this issue. And then, two, you should use that authority now for the reasons that have been stated earlier.

So why do I say you have the legal authority? Well, really, it's fundamental to the

structure of the Clean Water Act. And it is absolutely, unequivocally settled law that MS4 permits are different animals under the Clean Water Act. MS4 permits under the Clean Water Act do not need to require strict compliance with water quality standards. The section -- you've heard a lot today about numeric water quality based effluent limitations, that comes from secretaries certain section of the Clean Water Act, Section 301. That section does not apply to MS4 NPDES permits. MS4 NPDES permits are a very different animal. They have different rules that apply to them.

now why is that important? And the seminal case on that is Defenders of Wildlife. You may not be in the habit of reading reported cases, but this is one I think you should read. It's not that long. The text itself is probably about eight pages. And it really walks you through the structure of the Clean Water Act as it applies to MS4 discharges.

And I think if you look at that, you come to three important conclusions. One, water quality based effluent limitations, including ones that are derived from TMDLs, are not required for MS4 permits by the Clean Water Act. You can use a BMP-based approach. It's allowed.

Two, because MS4 permits don't require

strict compliance with water quality standards, you as the permitting authority have the ability to define how compliance with what water quality standards are to be achieved.

As I was listening, the third, this is more kind of a structural one, little bit of a philosophical one, but a lot of this permit is based upon the goals of the Clean Water Act as a whole, to restore and maintain. That's fundamental to what your staff is trying to do here. How are you going to argue again that? But the key point is that those goals have to be achieved through the permitting system that exists in the Clean Water Act, and that's the MS4 NPDES system.

And why is that important? Well, it's fundamentally important because Congress understood that MS4 systems were different. And Todd Snider did a good job of explaining that. Others have as well. It's a different system. So we want to achieve the goals of the act, but we do it through the permitting system that we have which recognizes some of the constraints that we have as dischargers on the ability to achieve water quality standards.

Now, you have language in your permit dealing with receiving water and it is generally consistent with the state board's precedential decision

that establishes that decision, 99-05. Your language actually adds some things that aren't in the precedential language. That may be something you want to look at, but it's generally consistent with that.

But what I would encourage you to do is look at the state board order -- it's 2001-15. It's one dealing specifically with the 2001 San Diego permit, because that is really the order that interprets the receiving water limitations language in light of the "Browner" case that hadn't been done before. Even the '99 language wasn't based on "Browner." Earlier decisions of the state board actually seemed to misunderstand what I just told you earlier, that water quality based effluent limitations have to be in permits. That's what they thought. "Browner" said they don't, and so what happened in 2001 is the state board looked back at its language and said, "Well, how do we interpret this in light of "Browner?" And it did so by saying, "We are not requiring strict and immediate compliance with water quality standards. Our permits are designed, our language is designed to achieve those standards over time through the iterative process."

And there seems to have been a development in thought about what that order means. I'd encourage

you to look at that order closely because part of that order actually says a lot of what the co-permittees are asking you to do here. It actually links the iterative process to the discharge prohibitions. That was something that was deemed to be lacking in the order and the permit at that time and the state board said go back and fix that.

So what does that leave you with on the state board? It means that you have an enforceability system. We're not asking for exceptions or anything like that, but it's linked to the iterative process, and it has to be linked to the iterative process.

Why you're hearing so much about this today is not because of the previous orders. It's because of the ninth circuit decision that interpreted those orders in a way that in our view turns those orders on its head. It says, "No, this strict and immediate compliance with water quality standards isn't required." And this iterative process, well, it's in the permit. It has nothing to do with compliance. It's some kind of appendage that just sits out there that isn't linked to compliance. And that's what we're asking you to address.

So, fundamentally, this is a policy issue for this board. In our view, there are no legal

constraints on your ability to address it. You may hear either see in written comments or hear from other speakers that there are concepts such as anti-backsliding or anti-degradation that may place limits on your ability to address this issue. We don't think that would apply. You would not be lowering numeric effluent limitations or removing permit conditions. We're not asking you to take the receiving water limitations out of the permit. We're just asking you to link it to the unique ways that you have in this effort to comply with those requirements.

You would not be allowing degradation of high quality waters. You would be establishing a mechanism to improve water quality, which is the goal. And these issues came up at the L.A. Regional Board hearing last week, and regional board staff specifically addressed them and the board rejected them as limitations on the authority. And they developed a compliance mechanism that was consistent with the program that they were developing. So that's what we're asking you to do today.

And I attended a lot of the focus workshops and the meetings, and I think board staff at least understood why we were making this request. But at the end of that process, there was an indication that they

were constrained from a staff level to make changes, and that we should address the board and ask the board to give direction if that's the board's desire to address these issues, and that's why we're doing it.

We think the compliance language should be linked to the adaptive management process. It should be linked to the TMDL implementation plans. And the key part, it should be linked to the water quality improvement plans in such a fundamental, innovative part of what you're doing in this permit.

It needs to be that the compliance mechanism needs to be in the permit itself. It can't just be in the fact sheet. There can't be language in the fact sheet about how you might look at it or interpret it or enforce this language. It needs to be in the permit because each element of the permit is an enforcement requirement. So we need that in the permit itself.

There was a lot of talk earlier in the staff presentation and others about wanting to set up a system where you can try and fail, try things and fail. And you can't have that process. You can't do those innovative things if it's not linked to a compliance mechanism that is achievable.

So we would ask that you direct staff to reassess the compliance language in the permit. And

also it has been mentioned, there's a state board process that's going on specific to this issue, and we would ask that you direct staff to engage in that process.

Thank you.

CHAIRMAN DESTACHE: Thank you very much.

I have two other speaker cards from the county, one is Karen Holman. I don't know who she is.

MS. HOLMAN: I'm for the Port of San Diego speaking on behalf of --

CHAIRMAN DESTACHE: Okay. Are you speaking as part of their presentation?

MS. HOLMAN: No.

CHAIRMAN DESTACHE: We'll call you as an interested person, then.

CHAIRMAN DESTACHE: Okay. Then Richard Crompton?

MR. CROMPTON: I'm speaking as an interested person.

CHAIRMAN DESTACHE: Okay. So the City of San Diego, we have a 10-minute slot for them. Let's take a five-minute break. We'll make Chris wait five more minutes.

(A recess is taken.)

CHAIRMAN DESTACHE: If everyone can take

their seats. Chris McFadden is just dying to tell us.

MS. McFADDEN: Good afternoon. I'm Chris McFadden. I'm the deputy director with the City of San Diego Storm Water (inaudible).

What I want to mostly do is just kind of thread in the elements of Mayor Sanders' letter that was sent out last week and what you've already heard, also last week (inaudible) met here in San Diego. They had a blowout turnout. They've had more people than they've ever had, and I think one of the main reasons (inaudible) go to Wayne's presentation. He did an excellent job, with standing room only, actually, at that meeting. So I think it really underscores the important decisions that all of are making today, and it also demonstrates all the science that is being done around the state. And I think it's very important that, you've heard best available science time and time again, and I think that's something that we really need to take home.

I also want to thank, of course, David, Eric, Wayne, Laurie, and Christine Arias for their efforts. This has been a really successful process. In the City's mind, I think this is something we'd like to see done moving forward as well.

They have listened to a lot of things. I'm

not going to reiterate what you've already heard, but they have made some substantial changes that we are very impressed and we'd like to see. Also, we do see this as a model for TMDL. You've heard our involvement in the third party for TMDL with (inaudible) which is very effective, and I think this is carrying on that same momentum with all the stakeholders and the regional board here.

Of course the City's approach is to work constructively to identify all the issues in the watershed, and we believe the regional board has taken these approaches and done what they can within their control. I think the attorneys have really laid it out well. There are certain limitations that staff do have and that ultimately they are going to have to rely on your authority to really make some of these difficult decisions. Some of the significant issues that remain still, and actually this is brought out by Mayor Sanders' November 7th letter, our concerns about the fiscal impacts and long-term sustainability of the draft permit.

The City of course spends over $36 million each and every year on protecting our beaches and bays, and we do have concerns about possibly having the board divert more funds away from public safety and fire

protection and other port services to meet some of these regulations that we still think need to be looked at from a more scientific basis.

So Mayor Sanders does request that you send your team to finish the really good work that they've already started with the regulations community to identify appropriate scientifically based remedies to address these concerns and withhold any ultimate decision until these decisions have been made so we can achieve a achievable, sustainable guide to what everybody wants and what all the stakeholders desire in all of our watersheds.

So, overall, we do support the watershed based approach to this permit. We are under a lot of TMDLs that we are already reporting on. And in a lot of cases, to answer your question, this is going to streamline our reporting. It's not necessarily going to reduce the amount of reporting that we do, but I think if you're going to be looking at information on a certain watershed you're going to have one place to go instead of a bunch of other projects and JURMPs from other municipalities.

So we would ask you to direct your staff to refine the compliance through the water quality improvement plans as outlined by the other

co-permittees. We also request that the permit not be adopted until the state board next week, fortunately, meets to talk about their receiving water and limitations. It's going to have significant issues that I won't bring up again.

And also on the HMP, the co-permittees did spend over a million dollars developing this over two years and it was adopted by your board, by all of you, recently, and we want to maybe sure that we get this right. And we committed to spend about $1.5 million of monitoring by all the co-permittees on this HMP monitoring plan, and we want to make sure we get to continue that good work that we really have well thought out.

And in closing, I'd just like to reiterate thank you for the process. I think we've come a long way. And I just want to make sure we get this right, because I do think there are a lot of eyes throughout the state and probably even throughout the country, that are looking into this.

So, thank you.

CHAIRMAN DESTACHE: Thank you very much, Chris. I have another -- Richard Hopkins. Are these interested parties?

VICE CHAIRMAN STRAWN: Three different

cities.

MR. HOPKINS: Interested party.

CHAIRMAN DESTACHE: Okay. What about from the City of San Diego? Do we have anybody else? Chris was the show. All right. Good.

We are going to move on to the environmental groups, San Diego Coastkeeper. And I see Jill getting up. Do you have an estimate of how much time?

MS. WITKOWSKI: Hopefully not 45 minutes. I'll be sharing this with Collin Kelly from Orange County Coastkeeper, Inland Empire Waterkeeper, and will also probably cede some of my time to Noah Garrison from NRDC so he can discuss some specific legal issues that were just phrased.

Good afternoon. I'm Jill Witkowski. I'm with San Diego Coastkeeper and since I last was before you, I've now become the waterkeeper for San Diego Coastkeeper. That means I get to use my environmental science background and my legal skills to be the voice of the water of San Diego. So I'm here speaking on behalf of San Diego county waters and on behalf of the people who use the water.

What I'd leak to do first is to take a step back. Like Laurie said when she started and really reframe the issue for you in our point of view from the

environmental point of view because you've heard for several hours from the co-permittees point, and I want to talk to you personally about why this issue is important to me.

So pop quiz. Department of Environmental Health, how much rain does it trigger to have a beach closure advisory and how long does that advisory last? Do any of you know? If you listened to Laurie earlier you should know the answer to the second question. So point two inches of significant rainfall in 72 hours is the advisory.

The reason that this is frustrating to me and frustrating to a lot of surfers and swimmers is that the 72 hours is a blanket advisory in all beaches throughout the whole county. You get a surfer who says, "Gees, you know, I swam 24 hours after it rained and I didn't get any ear infection so they must be lying or I shouldn't trust the Department of Environmental Health."

And it's extremely frustrating not to be able to know better information about when our beaches should be opened or closed. But also it's extremely frustrating from somebody who enjoys the water. And I want to talk to you about that from my personal point of view. So this is me with my friends getting ready

to in Glorietta Bay at the beginning of the triathlon season last year. And I'm a triathelete. The other members of the triathlon Club of San Diego, we're in the water all year round. And we were getting ready to race the Super Seal Triathalon which is an Olympic distance triathlon at Silver Strand which is the bay side of Coronado in March, and actually that race was canceled this year, or actually the swim portion was canceled, because it had rained the day before, which was okay with me because I had a sinus infection from the swimming I had been doing in Glorietta Bay and Mission Bay. I also got an ear infection this year after I was a swim buddy and the San Diego International Triathlon which is in Spanish Landing. And recently got a sinus infection after swimming in Vail Lake in Temecula for a race.

But this doesn't only affect me. It affects -- triathlon is just one lens to view this through. It is a big deal for San Diego. This is the birthplace of triathlon. Last year we had the IT World triathlon series which brought 2,000 from 42 states and 16 countries to San Diego to race. And it was a two-day race. It was in May. Fortunately they didn't have to worry about rain, but actually there was rain forecasted in that week and we're all keeping our

fingers crossed. I'm signed up for a race in March 2013. It's actually the Half Ironman in Oceanside. They bring 3,000 athletes all across the country to Oceanside. They stay in the hotels. They fly into our airport. They come from Australia, France, Spain. They're professionals to come here to race, and we all keep our fingers crossed and we hope it doesn't rain.

The situation to me is unacceptable for a such a beautiful place like San Diego. And one of the things that we had discussed in a focus meeting process is our goals for this permit. Laurie said earlier, we want you to fail early and often. I hope that we succeed early and often. And Wayne had said during the process that we recognize it may take multiple permit processes and multiple permit go-arounds to actually see improvement in dry weather and that we may never see improvement in wet weather. That's unacceptable for us, and we really need to rethink our standards. This is actually one of the things that I agree with Mike McSweeney from the BIA and I had opportunity to have conversations. The BIA and Coastkeeper don't often talk, but we're working that way and that's one of the benefits of our focus meeting process.

Not just me. Here's another picture, since I won't be the only one swimming. This was some staff

and volunteers from Coastkeeper on Swimmable Action Day. This is the 40th anniversary of the Clean Water Act, and San Diego Coastkeeper protects fishable, drinkable, swimmable San Diego waters, and we're here protecting this for everybody.

Why is the storm water so difficult? Well, it's death by a thousand cuts. It's the sprinklers, it's the dog poop, it's the car washing, it's the power washing, it's the open dumpsters. And that's why this is so important. We've got so many really talented, smart, dedicated public servants in this room right now that care about this issue, but we're not going to solve it by ourselves. This is going to take a whole community. It's going to take residents getting involved, businesses getting involved, and that's why organizations like San Diego Coastkeeper becomes so important to partner with the regional board staff, to partner with the co-permittees so that we can work together to achieve these goals. You know, the co-permittees aren't in it alone. We're here to help, and that's one of the things we wanted to bring forward in the meeting process.

So, focus meeting process I wanted to add my thanks to the regional board staff for the tremendous way that they have approached this permit. It's in my

experience unprecedented to have a pre-draft draft to be able to discuss, to come together, to have facilitated meetings. It led to incredible discussion at the meetings and both outside of the meetings.

I really commend the San Diego co-permittees for coming to meet with us. I commend the staff for meeting with me as well and allowing me to bring the San Diego Green Building Council and other groups together. So we can work on where we can work together on solving this problem.

So San Diego Coastkeeper's goals for these permits were a few things. To safeguard the water quality improvements protection that we've had already.

As you've heard the co-permittee say, they've spent a lot of time and money working on this problem, and we want to make sure that we preserve those improvements. But also progress has been slow and I think one of the great things this permit does is it says, "Okay, instead of saying this is how many miles of streets that you have to sweep and how many inspections necessary that have you to do every month, let's see where our priorities are and let's develop the best approaches."

One of the things that -- and from an environmentalist point of view it's a little bit scary

because it's a lot harder to say, "Hey, you're doing this right or you're not doing this right." We have to set goals and trust in this process.

One of the things that we brought to the table was involving Coastkeeper and other local groups likes Escondido Creek Conservancy and Los Penasquitos Lagoon Foundation. When we figure out the priorities and when we figure out the strategies so that we're all working together and it's not just co-permittees against stakeholders.

So I'm going to touch very briefly on some of these issues. I'll let Collin and Noah get into more of the details. But so the hydromodification issue that we've talked about, hydromodification can be a serious problem. I support the idea of where on-site compliance really is not feasible. Looking at something that would be better overall for the entire watershed and really looking at improvements, something that I had discussed with Mike McSweeney and discussed with the regional board, and I'd like to see some regional project actually get off the ground and be successful. However, one of the things that the permit looks at now is this new in lieu fee program which is sort of like a mitigation banking program. It says you can do on-site compliance, or you can pay money and the

project has to be done within four years.

I'm not really sure how this works. I mean You have, one, you have a $4 million restoration project of Escondido Creek and you have a subdivision that wants to go in and they pay a hundred thousand dollars towards this project, towards this restoration project. But what guarantee is there that the project actually happens? And what happens if there isn't enough money for the project to get forward? Who's holding the bag? Who is responsible for making it? Do you have to undo -- you can't undo the development, the subdivision that's already been in. If it's already built, then you can't do additional on-site treatment there. What happens?

One of the things that I had suggested, I'm not sure if you're familiar with "Kick Starter," but it's basically a proposal for a project and you have to have enough people basically buy into it and say, "Yes, I want to do that." And then you have to meet a certain limit. You have to meet the goal to say this project is going forward, and then the project goes forward.

So I would support the idea of seeing if these regional projects work, but there have to be safeguards to make sure we don't have these holes, that

we don't have projects that don't go forward.

So the bacteria TMDL, there's been a lot that's been said about this. It's been extremely technical. I'll let Noah go into many of the details, but, basically, at the end of the day the TMDL has to under law be incorporated into this permit. So I understand comments by the county and concerns about money and how expensive this will be, but not incorporating it into the permit isn't an option. I'm sure Ms. Hagan can weigh in on the legal aspects of it, but I fully support the regional board's staff's position as well as the position by the EPA that this has to go in. Now, there are interesting points that Noah will talk about, incorporating the wasteload allocations and making sure that these water quality based effluent limitations are in the permit.

We support what is there now. And we just want to make sure that this bacteria TMDL goes forward because it's so important. This really gets into the heart of being able to swim, being able to use our waters.

Adaptive management. This is the safe harbor issue that we've been talking about on and on and on. And basically this cause or contribute to water quality violation language comes straight from

the Clean Water Act and from the Clean Water Act water violations. As regional board staff said, it's been in our permits over and over again. Noah will talk specifically about the Ninth Circuit litigation and how it impacts or doesn't impact this language, but we support keeping the language as is, and we support the way the regional board staff has approached this.

So using volunteers resources and public participation, this is a key issue for us. San Diego Coastkeeper has a huge volunteer water quality and monitoring program. Our program has had a lapse since 2000 and we monitor 32 sites around San Diego county each month. We have volunteers go out and -- Travis our lab manager and other volunteers test the water for bacteria, and we also send samples out for metals. We have a great website, a Wiki, that keeps tract of the data and information. We think this is actually a really great resource for co-permittees to use.

One of the things that's been frustrating to us is that some co-permittees like San Diego county will ask us for information and will use our data as they do their decision making. And I think the regional board staff was trying to do a good thing by saying as we do our water quality implementation plans, as we identify our priorities, let's use all available

data that we have out there. So they will use Coastkeeper's data to try and figure out where are our problems and where should we use our resources.

Unfortunately the language is a little bit vague. It talks about relevant and appropriately collected and analyzed data, and that's actually not specific enough for us to be able to say, "Hey, we have relevant, adequately collected, and analyzed data." We'd like to see it specific so we can say San Diego Coastkeeper's program and our data should be used and is helpful. If the data we have right now is not helpful, we want to know how to make it better.

Another option of using voluntary resources -- and here's our 32 sites. There's a map of where we collect -- do our monitoring each month. This little picture on the side is about our pollution patrol programs where voluntary neighborhood water watch programs that we've been talking about with co-permittees, really trying to get residents engaged in understanding how they contribute to storm water problems and how they can be part of the solution instead of part of the problem.

The thing with these programs is it's really going to depend on your neighborhood. The program in La Jolla is not going to be the same as the program in

OB. It's not going to be the same as the program in Santee. But these are programs where you work with a co-permittee, you work with local neighbors, you work with a volunteer group to really get people engaged and excited and leading by example and working with their neighbors to make better choices about how we deal with pollution, because this problem is so big it's really going to take all of us.

I also want to let you know that as we participated in this process San Diego Coastkeeper, Orange County Coastkeeper put together comments to the regional board staff and we were joined by these organizations as well in participating that care about this permit and want to see storm water protections.

I'd also like to discuss the JURMP reporting issue that we had talked about, jurisdictional reporting versus watershed reporting. I really appreciate your efforts and the regional board staff's efforts in trying to reduce the amount of reporting that we have. As one of the probably only people who read all of the jurisdictional reports from all of the co-permittees in San Diego county, they were a nightmare. They're huge. They're completely inconsistent between co-permittees. And they're long. And they're probably extremely costly and not a good

use of resources.

However, we think the two-pager is much too short, and I heard the co-permittees say the same thing. They need to have a more robust reporting to be able to show their city councils and show environmental groups and the regional board staff how well they're doing. And also -- so I agree with Mr. Gibson's comments on that.

But it's also on accountability. It's great we're doing planning on a watershed level, but things don't get implemented on a watershed level. Things get implemented on a jurisdictional level. Budgets are at a jurisdictional level, and so it's extremely important to be able to say, "Here are our watershed goals. Who is doing something about this?"

One of the issues that came up in a focus meeting is what if the watershed agrees on a priority and then nobody in the watershed actually wants to do something about that? That they're all going to do something in the other watersheds that they're involved in. For example, Solana Beach in two different watersheds. It may choose to do all of its work and focus all of its efforts in one watershed and not another. So these jurisdictional reports are important to figure out who's doing what in which watershed.

And if something gets dropped, if we have these orphaned issues, if we have these goals that aren't met, who is responsible for meeting them. Who's dropped the ball. So that's why these jurisdictional reports are important. I would actually make them more robust than the permit currently has them.

So now I'm going to hand it over to Collin Kelly from Orange County Coastkeeper and Inland Empire Waterkeeper.

Thank you.

MR. KELLY: Hi. Good afternoon. My name's Collin Kelly, staff attorney at Orange County Coastkeeper and Inland Empire Waterkeeper. We cover all of Riverside county and San Bernardino counties for the Inland Empire Waterkeeper, based in Costa Mesa and Riverside.

First of all, I'd like to thank the regional board for establishing this process. It's sort of rare when I have the opportunity to come down to San Diego before the regional board for San Diego. I'm generally dealing with the Santa Ana regional board, which of course we love. However, I think this process can be used as somewhat of a model. We generally in the past have had groups that were led by consultants and not necessarily a facilitator.

And it looks like that's what was used here. And I felt that after every meeting everyone felt like they had their opinions heard. And I think it made the process a lot less contentious than it otherwise could have been. If there's any consideration in changing your process, if you need anybody's support with what you're currently doing, you can just give me a call.

I'd also like to remind the board throughout this process, because we've heard a lot of the co-permittees come up here and talk about taxpayers and how much this is going to cost and of course all of us are taxpayers so that's something we all listen to.

However, it's not simply the co-permittees that have the ear, citizenry. So of course we're nonprofit organizations so we don't have that natural base of taxpayers a say in what government does. We have those people that have a direct interest, a very significant interest in water quality to seek out keeper organizations in our NRDC. So we hear a more robust and interested opinion on things like this. And that's what we do, coming here.

It's essentially to remind the regional board that no single entity can claim to represent the public. We all represent parts of the public and taken in a whole, I think the right decisions can be made.

I think it's fair to say that all of us do represent interest in our collective waterways and to maintain and improve water quality in those areas. However, I think all of us can agree that at a certain level, and I think we're reaching that level now, you see a plateau of regulations and the impact those regulations have on water quality. Twenty years ago it was a substantial -- as regulations improved, you saw a marked improvement in water quality. And I think we're starting to see on a jurisdictional basis there's perhaps some limitations to that. And one of the things that Orange County Coastkeeper is interested in sort of the decentralization of water quality responsibilities. By using things like low impact development, people can take responsibility for some of the water quality improvements they might contribute to and through some common sense things, I think a lot of people if explained to them in a common sense way, they will voluntarily take a lot of these things on and seek to improve water quality.

However, we do recognize some of the limits of those and have in the past, in north Orange County, supported regional low impact development BMPs. We do share some concern about the ability of parties to maintain some types of LID BMPs over time. We do

appreciate the ability of local governments to take alternate in lieu fees and construct regional LID programs because it provides the public with the verifiable information on what governments do, and we can look at their books. We can determine what they're doing with those projects.

However, one of the issues we have and have had in north Orange County, and continue to have here, is the measurement of alternate in lieu fees and the likelihood that the development of LID BMPs actually occurs. It's been said during some of these meeting that north Orange County should be a model for the implementation of regional LID. One of the issues we raised there was since the north Orange County MS4 was adopted, there's essentially been a collapse in the economy and no significant development in that area. So I think it's premature to say that the north Orange County example is a model of how to go. And it will probably be a number of years before we're able to determine how effective that actually is.

One of the issues we have is whether the fees collected are going to be sufficient to actually construct and maintain the project. That's not something that we have an answer to and I don't think it's anything that anybody's going to have an answer to

at this point until we see how the process rolls out. The four-year time line is a good start, I think, but it still doesn't provide me with reasonable assurances that the development is actually going to occur.

One of the issues I'd also like to discuss is there's a significant amount of leap of faith that environmental groups had to do to participate in a project that was regional in scale and not county by county. I know that's something that we've had to internally deliberate for a significant amount of time. The reason being that in this region alone, it's hard to say Temecula, downtown San Diego, and Laguna Beach, you would automatically think they are very similar in your mind. They all have very regional problems. There's, granted, a large carryover, say 70 to 80 percent is going to be essentially the same, and that's why we supported that project. However, we are taking a leap of faith that with a regional permit, it's going to relieve the stress on the regional board to actually -- and this has been said to me by no one at this regional board -- but get out of the office. Not always be writing permits, but actually start enforcing some of these things and see how they're actually working on the ground. If this is a mechanism that allows something like that to happen, we'd very much

appreciate that.

However, we do have an issue, and this did come up during the process, the interest in the co-permittee to actually implement an effective adaptive management process. And for that to work, there actually has to be an analysis and flesh on what they're doing and how it's being implemented, what the results are. But they actually have to determine what those results are and compare those to their goals and find out if they're reaching their goals.

And we had some sort of disturbing comments during some of the meeting that that was not going to be a process that the counties necessarily had the capacity to do. That they're sort of good at moving forward, but not necessarily good at reflecting and having a course correction. I'm sort of bringing that up just as something that regional staff can remember that so when we're in year three of this permit that we're not at the same problems we are now. I'd hate for us when we're here in another five years to be dealing with the problems of 2013 in 2018, because far too often that's been something that's happened.

Just as a quick conclusion, we've had some issues in the past with -- we also, like San Diego Coastkeeper, do our own water quality testing, sort of

to supplement the regional board with information that I know has been useful. It has been used in permits themselves to justify numerics. And at times water quality testing information from us from third parties comes into question. And this is probably not something that -- it's a dirty word, probably, in this room, but "litigation" is something that is very useful. And the usefulness for our water quality information is that our water quality information has to be agreed that it can be challenged in court. It's something that can be used for regulatory purposes, and to justify permit numbers. We think that the numbers that we collect and -- the numbers that we collect are justifiable to be used. And if you have any questions about anything like that, please let us know.

I know that San Diego Coastkeeper and Orange County and Inland Empire Waterkeeper are going to be contributing some lengthy and reasonable comments on the specific issues here, but given the time I think everybody would like to see those in writing.

Thank you.

MR. GARRISON: Good afternoon, Mr. Chairman, members of the board.

I realize this has been a fairly long afternoon already so I will try to keep my comments to

a reasonable length. I think a broad overview of why we're here was provided very well by --

VICE CHAIRMAN STRAWN: Can you state your name.

MR. GARRISON: Sorry. I'm Noah Garrison. with the Natural Resources Defense Counsel. I'm an attorney with the water program in Santa Monica.

I think an overview of sort of what brings us all here was provided very well by San Diego Coastkeeper and Orange County and Inland Empire Coastkeepers. I'm going to bait and switch and begin by showing a really nice photograph of a San Diego beach here and talk about economics, Clean Water Act regulations and technical studies. So I apologize in advance for taking your attention away from this.

Beginning with why are we here, and that's because we get tens of millions of visitors to our beaches in southern California every year. We get millions of people who use our inland waterways for fishing, for recreation, just for piece of mind. We live and work among these waters.

Aside from just the aesthetic that it provides, there's an actual economic benefit that comes with this. This is a tremendous part of California's economy. We start with California has the largest

ocean economy in the United States. It's ranked number one overall for both employment and gross state product. Beachgoers in California spend as much as $9.5 billion, billion with a "B," annually, and the nonmarket values associated with beachgoing in California contribute as much as another $5.8 billion. This is a huge contribution to the local economy. So it's something that's worth protecting. It's worth spending money on.

We actually have made improvements over the past 10, 11 years of this permit and since the Clean Water Act moved towards requiring permits on storm water runoff. But we're not really there yet to say that we've achieved our goals.

San Diego county last year reported nearly 300 closing advisory days at its beaches, not even including closing advisory days that have lasted longer than six weeks, so semi-permanent closings. These are one-off or one-week closures. Orange County counted more than 750 closing advisory days. Studies show they have a real impact. Studies show that increasing the water quality of Long Beach which gets a C grade to the slightly healthier standard of Huntington city beach which is a "B" grade result in $8.8 million in benefits over a 10-year period.

The health costs that come -- the costs of not cleaning up our waters are tremendous. Depending on what model is used for looking at the medical cost, studies of Orange County show that just gastrointestinal illness occurring annually as a result of storm water pollution, bacteria pollutions are in excess of what would occur naturally result somewhere between 6 to $16 million in direct medical costs. And if you start calculating what's called the willingness to pay or what people would pay not to get sick when they go to the beach, you're looking at 50 to $130 million in costs that are incurred as a result of bacteria pollution in our beaches.

A hypothetical study, looking at closures of Huntington City Beach in fact with the cleaner standard found that on a per day basis for closure results in a hundred thousand dollars lost to the local economy and for a month-long closure, you're looking at a $3.5 million lost. So there's tremendous repercussions from allowing our beaches to become polluted. So that's a backdrop.

I'm going to talk now about the Clean Water Act and the legal facts behind this and why the controls you're putting in this permit are actually required. In particular I'm going to give a lot of

attention to the receiving water limitations. There's been discussion today about this Ninth Circuit litigation from last year. I want to point out that case is a complete red herring. It changed absolutely nothing. Everything that you've heard about today has been in force since actually 2001.

So to begin with, the state is required to adopt water quality standards to protect its beneficial uses. And these standards provide a basis for regulating discharges in order to prevent water quality from falling below acceptable levels.

MR. MORALES: Mr. Garrison, can I ask you to slow down just a bit? It's really hard on our court reporter.

MR. GARRISON: Absolutely. My absolute apologies. I will try to make it easier for her.

So water qualities standards once established, the entire purpose of these is for the Clean Water Act to meet these water quality standards. They're there in order to protect the public health, to protect aquatic life, to protect drinking water. The whole point of the water quality process is to meet those goals.

So in 2001 with the support of US EPA and the state water board, this board actually determined

to make compliance with water quality standards as a numeric limitation mandatory in this permit. And it was the absolutely the right decision to do. It was to protect public health and to move water quality forward in the region. The provision in the permit in 2001 stated the discharges from the MS4 caused or contribute to the violation of water quality standards or water quality objectives are prohibited.

Now, far from this being settled in 2011 has requiring that numeric violations have to be prohibited, that provision of the permit was litigated almost immediately. In 2004 a state appellate court held that this board had authority to require compliance with numeric standards as an independently enforceable provision, and noted that it had been challenged in the first instance because it would prohibit municipalities from discharging runoff from storm sewers if the discharge would cause a water body to exceed the applicable water quality standard established under state law.

Everyone knew in 2004, actually in 2001 from the adoption of this permit, that you were going to be required to comply with these standards. It was a standalone provision that you were required to meet.

Similar provisions in Los Angeles in that

permit adopted in 2001 were also challenged in court. And the state court there found that the regional board included these receiving water limitations under these prohibitions against discharges that violate water quality standards as independently enforceable requirements that prohibit discharges that cause or contribute to a violation. That was from a state court decision in 2005. It was upheld by an appellate court in 2006.

This requirement has been around for years. There's nothing new about this. and everybody knew at that time they were required to meet water quality standards. So in 2011 when the ninth circuit decision came along and said there's no safe harbor in this permit and you are required to meet water quality standards, they actually cited back to these prior court decisions. Right, this was decided under state law already. Everybody knows this. You are required to meet them. It didn't change anything. All it did was apply a decision that had already been made.

So the contention that's been made before you is that this is some new requirement, that nobody saw this coming, that the result is going to be on day one of the new permit, that the permittees are going to be now out of compliance is completely false. They're

out of compliance today. They were out of compliance yesterday. They were out of compliance five years ago. This is an ongoing violation that's occurring. There's nothing new in the permit language that we'll be adopting. It has been in place since 2001 and should continue to be required. This is how we move the ball forward and how we ultimately get to the place where we'll have clean water.

Earlier you heard one of the permittees talk about the fact that the plans or the water quality plans in place aren't really safe harbors because they have a lot of protections. They are required to take a lot of actions. But looking at the ninth circuit: Definition here, it says, "There is no textual support for the proposition that compliance with certain provisions shall forgive noncompliance with the discharge prohibitions."

That's exactly what a safe harbor is. It is being allowed to put in place practices or BMPs or a plan and have that substitute for compliance with the water quality standards. It absolutely unquestionably is a safe harbor and under prior state decisions, it shouldn't be concerning something new. This is something that this board has been rightfully enforcing for 10 years.

That being the case, there's been a lot of discussion that you've had discretion to now remove these provisions and I would like to submit to you that that's not the case. Under the Clean Water Act's anti-backsliding provisions, when a permit is renewed or reissued, the interim effluent limitations standards or conditions have to be at least as stringent as in the prior permit. In this case, you have conditions or effluent limitations, depending on how they're interpreted, but say that you're not allowed to violate water quality standards. You can't then read from those standards and remove the influx of those standards into the new permit. You have to require compliance with them.

So to that effect, the board has some discretion on how it enforces those. It can issue time schedule orders. It can issue compliance schedules. There's a number of paths it can take to enforce them. There's enforcement discretion. There's no discretion in order to weaken these provisions in the permit. They have to remain. And board staff and -- this board had been right in maintaining this in the permit and it should continue on that path.

I'd also like to make another point. This is from our Region 3 of the EPA decision which says

that backsliding would actually encompass allowing for added time. So if this permit comes out and says we're going to delay implementation of this standard, we're going to delay enforcement of this standard, that actually would constitute backsliding. Backsliding is not allowed under the Clean Water Act.

Another reason that it's not allowed is that the state's federal anti-degradation policy would prohibit weakening standards. A lot of the permittees discussed that they need to prioritize TMDLs, and if they're subject to mandatory violations for violations for nonimpaired waters, that will frustrate their efforts.

Then we shouldn't prioritize those waters that aren't already impaired. Those are the waters that we should be protecting the most. The ones that are currently clean should be kept that way. And if we take the approach that we should just prioritize TMDLs and we can allow these violations and let water quality to degrade, that violates the anti-degradation policy which states that you can't allow water quality or beneficial uses to be impaired as a result of permit terms. So for that reason as well, we can't allow for weakening of water quality standards.

I'd also like to talk about TMDLs briefly.

This has been discussed quite a bit. I think Coastkeeper pointed out the waste allocations in the TMDLs must be incorporated into the permit. That's absolutely the case. The Clean Water Act permit must be consistent with the wasteload allocations in the TMDLs.

Yes, you can use a BMP approach, but only if it has been demonstrated through scientific evidence and study that that BMP will in fact achieve the intended wasteload allocation. As EPA pointed out, again it's been raised as well, but this permit is not a venue for challenging the determinations already made in the TMDL itself. Once the TMDL wasteload allocations compliance schedules are set in the TMDL, they have to be incorporated into this permit, and there's no discretion to avoid that unfortunately.

You do have the authority to open up the TMDL or revise the TMDLs for the basin plan process, but it can't be done for the process of adopting this permit.

I do want to talk briefly about one of the specific provisions in the permit. That is the LID section, or the redevelopment requirements. This is just the language pointing out that provisions in the permit are required to meet maximum extent practicable

standard which basically states that efforts that are practical must be incorporated into the permit and can only be taken out where there's another practice that will achieve the same results, or where the costs so greatly outweighs the benefits as to render the practice invalid.

You've heard quite a bit about it over the past couple of years really in adopting other permits as well, but basically the idea is that we want to retain the runoff on-site rather than runoff -- pick up pollution and runoff off-site. Typically under undeveloped circumstances, only 10 to 20 percent of rainfall will actually develop as runoff and 80 percent will evaporate or soak into the ground. And when you develop an area, you tend to flip that paradigm on its head so that 80 percent of the water or 100 percent of development is runoff and only 10 percent will soak into the ground.

The permittees should be allowed to use this simulated modeling standard to show that they're maintaining on-site the difference in runoff between what was occurring naturally in predevelopment conditions and what would occur in developed site. And I would submit that that is not a good standard to hold by. The reason being, this is a chart from a study

done by Dr. Richard Horner. He's a National Academy of Sciences panel member on storm water runoff and also a nationally recognized expert in low impact development and storm water runoff controls.

And on the left-hand side there are five blue columns. Each one of those columns represents a different type of development in San Diego county. So it shows a multi-family residence, a single-family home, a commercial development, a redevelopment site. The orange bar that goes across is the amount of runoff that would need to be retained on site in order to meet the 85th percentile storm. In coastal San Diego, it's about 60 percent of the annual runoff that occurs.

What this shows is, those blue lines shows the amount of runoff that can be retained just through infiltration practices on normal soil type. So not looking at evaporation not looking at harvesting and reuse. just using runoff on-site to infiltrate that water and keep it on site. You retain up to 100 percent of the runoff on each type of runoff if you have good soil conditions.

On the right-hand side, you have the same five categories of development, looking at different and there's development types. And what it shows is that on D soils so clay-rich soils -- and I submit

there's quite a bit in San Diego and can pose a challenge -- on D-type soils, even these areas just using simple management techniques for the roof runoff only, dispersing it, trying to capture it and harvest it, putting a green roof in place, you can still capture it on-site and at least half of that required volume. That's utterly fantastic. And the permit provides for off-ramps. If you can't retain more than that, that's fine. You can bio-filter or you can go to a regional project. There's multiple pathways you can take.

This isn't going to prevent development. It just says that where it's feasible to retain that runoff, you have to retain it. There's still a staggering volume that can retain even where soil conditions don't permit infiltration.

The problem with the additional standard in the permit where it says you only have to retain what would occur naturally under predevelopment standards and what would occur developed is really not a very high standard. That's an average of about the predevelopment and postdevelopment change in runoff for clay-type soils in San Diego. And what you're looking at it's really an average of about between 25 to 30 percent of the runoff. It's a very low bar. It's not

practicable to retrieve. So by allowing that to be the standard, you're requiring less than what the Clean Water Act envisions as a requirement.

The Clean Water Act says you have to reach the maximum extent practicable reduction of discharge of pollutants. And this standard simply won't get there. So we would submit that the 85th percent runoff standard where it's feasible to retain is absolutely the correct standard to use. It's used in permits throughout California. It's used in Orange County, it's used in Riverside County. That's the standard this board should be requiring. Where it's not feasible to retain that full volume of runoff, the permit says you can bio-filter. You can go to a regional project. But using this lesser standard is going to result in more pollution to waters, less water that can be put to a beneficial use, it's not the right path for San Diego.

Finally, I just want to mention very quickly that anywhere in the permit where there are provisions such as watershed quality plans or other provision plans that allow permittees to design their own force for implementing a permit, they really do need to be subject to meaningful review for this board and for public process. I think there are a number of

provisions in place for that. But I want to make sure that there aren't places where significant portions of the provisions within the permit could be rewritten by the permittees. And no offense to your executive officer who does a fine job, but simply approved by the executive officer, that needs to go before a public process and be reviewed by this board in a public hearing. There are, again, there's a number of provisions in place in the permit we'd like to see it go before the board if it's a significant rewrite of major permit provisions.

With that, I'd like to point out that San Diego and Orange County really have tremendous resources. They have tremendous aquatic resources. We use our waters in this region, and we should be doing everything that we can to protect them. There's a legal basis for it, but as a policy, we want people to go swimming and not get sick. We want people to fish and be able to eat the fish.

We want to be able to make use of our waters and we should be doing everything in our power to make sure that happens.

Thank you.

CHAIRMAN DESTACHE: Thank you.

We will move on to interested persons.

MR. BUTO: I'm an NGO rep. I represent Clean Water Now. Maybe I filled out the wrong card.

CHAIRMAN DESTACHE: That's fine. You can come up. You can get another card filled out.

MR. BUTO: Thank you very much. I appreciate the opportunity.

I'm Roger Buto. I am the founder and executive director of the Clean Water Now Coalition. Welcome, everyone, including Eric. It's very nice to see you again. It's been a long road.

I would like to make several comments. Number one, for board members don't know who Clean Water Now is, or the Clean Water Now Coalition, I should say, we are approximately a 15-year organization. We'll be celebrating our 15th year in January of next year. We are based in south Orange County. And as Collin mentioned, Laguna Beach which I consider, because I've lived there for 40 years, the most beautiful city in south Orange County, we're very protective of Laguna Beach.

As an introductory remark, just so that you're familiar with who and what we are, we are arguably, and I've said this in some of the workshops, we aren't just the little engine that could. When we started in '98, we are the little engine that did.

Initially, we did take a lot of the people that have spoken before you, at least their agencies. We took former executive director Bruce Reznick of Coastkeepers. We took Marco Gonzalez. I believe he was working with Surfrider. We took the NRDC, the Sierra Club. We took everyone and anyone in what I've developed known as the Toxic Soup tour of the south Orange County watersheds.

And as a result of that, part of what happened was the cleanup and abatement order that you heard Ms. Nancy Palmer of Laguna Niguel discuss at that cleanup and abatement hearing which was held in downtown San Diego, in fact Clean Water Now and Coastkeepers were the only two NGOs that pled the case for that cleanup and abatement order.

As a direct, I guess you can say, result or function of that, Clean Water Now continually petitioned former Executive Officer Mr. Roberts to in fact impose a cleanup and abatement order on the entire Aliso Creek watershed. We did finally settle on a compromise, the Clean Water Code 13225 directive. The irony is this new permit looks suspiciously a lot like the 13225 directive but for the whole San Diego region. And so we are very pleased with the permit and we concur with about 99.9 percent of what is in the

permit.

For those that went on the Toxic Soup tour, we were very disturbed. We filmed children taking Louisiana red crawdads home and eating them near HUD housing in Laguna Hills. Actually I was asked to testify before the Orange County Grand Jury and received accolades. I was chastised by the district attorney of Orange County, because at the time I was so naive as a Good Samaritan I didn't realize. I got in a lot of trouble for filming children, even though they were out in the public domain.

With that said, we have arguably, and I think I can support that, the longest record of enforcement activities and leading those. We petitioned this board, and especially worked closely with Former Chairman Jack Wynan and Wayne Baglin.

(Off the record.)

MR. BUTO: Why is that, sir? These other people got all this extended time? That doesn't seem to be very fair. I wasn't.

VICE CHAIRMAN STRAWN: Excuse me. This was a block of time of 45 minutes.

MR. BUTO: You're already showing this is not egalitarian. Why should these other organizations be shown preferential treatment?

CHAIRMAN DESTACHE: How much time do you think you need?

MR. BUTO: Probably two or three minutes at the most.

CHAIRMAN DESTACHE: That will be fine.

MR. BUTO:: (Inaudible) Clean Water Now that cost Caltrans almost $20 million for the cleanup and abatement of the (inaudible) and failed BMPs on the 73 and 241 toll roads. We did it without attorneys, Sierra Club, Surfriders, or Coastkeepers. We did (inaudible) engine that request. So we take this new MS4 very seriously.

I would like to point out that we do have two issues I'd like to bring up. One is procedure, the other is actually technical about the permit itself. We would ask you to strike the reference to the Green Building Council with "lead." We feel that that will be legally challenged and have to be rescinded anyway in a sense spending the money giving it (inaudible). It's nonprofit, but it specifically says "lead" in the business council. I was asked by Wayne to provide it. We request we (inaudible) I'm a 40-year builder. I understand Cal Green "lead" is a little bit more nebulous, and it's going to be stricken eventually anyway.

I would like to have one solution that's a policy change. Teleconferencing (inaudible) this is because as I experienced I see all these wonderful slides and pictures. I see other NGOs being given an inordinate amount of time and staff (inaudible) would. But as I've already boasted, and staff can tell you, we have a lot more scalps on our pole than (inaudible) we would like to be treated. Teleconferencing will go to a straight (inaudible)form of mitigation. It will attenuate some of our concerns that we have equal access to staff.

I think one of the things that needs to be -- this is a form of conflict resolution (inaudible) is embedded in adaptive management. We don't think a lot of money (inaudible) or the litigious hammer. They should be given more time and access to your staff than we do. I apologize, Mr. Strawn. Once again, I think my card got confused. I didn't need a Power Point, though. I am a Power Point.

Thank you.

CHAIRMAN DESTACHE: Thank you very much. I would request that in the future you do contact staff and set up a time that is commensurate to the other NGOs.

MR. BUTO: Thank you, sir. Thank you for

the respect.

CHAIRMAN DESTACHE: Okay, now we're going to move on to interested persons. And these speaking will have two to three minutes depending on each of their comments. We are going to take all the opposition interested parties first and then we'll follow up with the balance of the support and we'll go from there.

Kathy Riser with the San Diego Chamber.

In the interest and brevity, I will thank everyone up front for your time and effort and being here and sitting through this.

MS. RISER: Thank you, Mr. Chairman, members of the board. I'm Kathy Riser -- that's spelled R-i-s-e-r -- with the Atlantis Group. And I'm representing the Greater San Diego Chamber of Commerce today.

The Chamber is a nonprofit (inaudible) 3,000 member companies and 35,000 employees. The chamber is here to express deep concerns and strong opposition to the tentative order as presented. While we believe it's very important, we believe the orders proposed will impose unreasonable and expensive regulations on local government, business and industry without achieving water quality. The tentative order as proposed is a "one size fits all" approach that is not

scientifically proven (inaudible) unprecedented levels of regulation and which will be shifted to the local businesses. Eventually the order imposes new and unsubstantiated hydromodification (inaudible) in the county regardless of whether the projects themselves contribute to the problem.

It also requires a new and redevelopment (inaudible) to conditions that existed under natural preurban conditions will be a significant hardship to redevelopment and in fill of development. The performance will expose unnecessary lawsuits by third parties which will increase the permit impose an unattainable TMDL for bacteria which could put 2.2 and $4.2 billion in this region over the next 20 years. We're concerned that the permit will open space and coastal linkages and wetlands functioning. We support the concept of a longer permit cycle so if we can see the permit we're using have (inaudible) before we begin changing it again.

We appreciate your staff holding the series of workshops to discuss the draft permit, and we're committed to working cooperatively with them and (inaudible) results producing permit. We're hopeful that the final will result in programs that make sense, both from an environmental and economic standpoint

(inaudible) the regional with the local agencies to ensure that water quality regulations are cost-effective and scientifically based.

Thank you for your attention.

CHAIRMAN DESTACHE: We are going to move to Pedro Orso Delgado.

MR. DELGADO: Good afternoon. Pedro Orso Delgado, City of Santee. I'll be brief.

You have heard basically all of the concerns. We at the city joined with the county board of supervisors in this call to action to protect water quality while controlling the mounting (inaudible) increased on local governments, businesses and industry.

We at the city support the regional water quality goal of protecting and improving water quality. We have proven our commitment to water quality by investing to restore Forest Creek and Woodland Vista Creek. However, this permit will send that (inaudible) will draw our focus away from continuing making improvements in water quality based on the draft will result in significant and unprecedented level of regulation and cost without basis and science.

There will also be significant cost passed along to local businesses. The two biggest concerns on

the draft permit are incorporation of the TMDL, bacteria regulation that is not backed in sound science, and significant additional monitoring costs without any measurable benefit to the water quality. As everyone else has stated, we would like the -- we could go back to the table with all of the co-permittees and work with your staff to fix that.

Thank you.

CHAIRMAN DESTACHE: Thank you. Just one addition. If in fact you are opposed or support a specific entity, if you could state that, we'd appreciate it. And if the previous two speakers have the ability to do that now.

MR. DELGADO: We would support modify, or we would oppose it, as it stands right now.

CHAIRMAN DESTACHE: Okay, thank you. It looks like Torrey Walker has been ceded Brett's (inaudible) time.

MR. WALKER: I'm Torrey Walker. I won't actually need the six minutes that Brett gave me so I'm sure you'll appreciate that. Thank you.

My name is Torrey Walker, president of Torrey R. Walker Engineering. I've been involved with surface water management for 28 years. First I do want to commend sincerely your staff's efforts in this

permit and appreciate the focus of meetings very much. And one of the biggest things I liked about this permit is the flexibility and outcome based approach that's incorporated into the water quality improvement plans and I'll come back to that.

The permit tentative order as it stands right now I cannot support, and I'm going to address only one element of that. And basically as a water resources engineer, I've come to see that as complex as storm water regulations are. They're not nearly as complex as nature which has always repudiated man's efforts to control and regulate it. The best we can ever do is seek to understand nature's processes better and that is to achieve some level of scientific and technical competence. Then with a better understanding, we attempt to best manage our activities through publicly accepted policies, and that's why we're here.

A failure to first properly understand the underlying science will always inevitably lead to poor public policy and also meaningless wasteful regulations; most importantly, however, with sometimes disastrous consequences.

So over the past 28 years I've observed and adapted to several shifts in focus regarding surface

water management. I've seen the inevitable problems that arise from when shifts in focus occur, and I've been in part of the solution for solving these problems. But the shift in focus that has been incorporated into this tentative order has me very concerned. I'm already beginning to (inaudible) focus better quality solutions that compromise public safety in larger storm events. This is an issue that everyone in this room should be very concerned about and some have expressed this already.

Even though our Mediterranean climate means we don't see frequent flooding causing events when we have them, we will be seeing more widespread damage in the future. One of the best specific examples in this tentative order is the unqualified requirement to uniformly retain almost all storm water runoff as a percentage. This is coming from a national push towards green infrastructure. It's not a (inaudible) concept, just a complex one. It's one that demands understanding of the limited application in our region. This is not currently recognized in the tentative order. And unless this understanding is recognized our (inaudible) will be severely undermined.

Consider the following: Much of our region consists of 90 percent rock and clay totally unsuitable

for infiltration. Currently 95 percent of all lawsuits in our region that are geotechnically based involve water. So it's an attempt to uniformly impose this requirement within our built (inaudible) process for obtaining a permit of technical (inaudible) for infiltrating runoff. The tentative order still (inaudible) even if it's technically infeasible. But we don't live in Washington, D.C. where EPA came up with this, or Washington State where it's been implemented (inaudible) Richard Horner's name earlier (inaudible) vastly different. Our built environment is different. The precipitation we receive is infrequent and comes in irregular patterns commonly known as the El Nino/La Nina phenomenon.

So, to sum this up, the exorbitant cost of uniformly (inaudible) imposing this requirement will only be a fraction of the cost of geotechnical failures in subsequent lawsuits. This requirement must be moved as it is from the permit and instead it should be put in as one of the tools that is available, because it does have some application.

Thank you.

CHAIRMAN DESTACHE: Next speaker will be Tom Fuller, Decatur Advisors.

MR. FULLER: My name is Tom Fuller with

Decatur Advisors. I'm a civil engineer and a longtime San Diego developer and builder and a member of the Bidding Industries Association (inaudible) which has to do with the prohibition of illicit discharges and connections to the MS4 in particular (inaudible) I have to tell you the focus group approach is excellent and very informative and commend the staff, but I also have to commend the co-permittees for their approach and presentation. They've really done an excellent job. I think brought (inaudible) some good clarity and moved process along.

The particular component of the tentative order that I'd like to address is ones required by the federal regulations 40 CFR, related it to nonstorm water discharges, and in particular to discharges from footing and foundation drains. It's addressed in the 40 CFR and also in the tentative order EP2.A1 And 3.

At the focus (inaudible) we discussed this with staff and we seen some comments addressed through footnotes which are found on page 66 and 67 of the tentative order. And the problem is that where 40 CFR requires the footings and foundation drains category of discharges to be addressed as illicit discharges only, if the municipality identifies them as sources of pollutants to the waters of the U.S., the tentative

order says they're illicit discharges unless they're covered by a separate NPDES permit or it can be proved in advance that they're (inaudible) ground water during any part of the year. It's a different and much higher standard than to meet in the 40 CFR standard.

The problem in practicality is that the burden of proving that the foundation drains and footing drains are not a problem has shifted to the individual project component without any connection as to whether it's actually contributing pollutants to the waters of the (inaudible)

And secondly, these footing and foundation drains are extremely common, and they have been this (inaudible) for years and years. They're required by the building codes. And if the co-permittees' detection of illicit discharges, they identify these, I'm not sure exactly what they're going to be able to do.

Thank you very much.

CHAIRMAN DESTACHE: Next is Richard Hopkins.

MR. HOPKINS: Good afternoon, Mr. Chairman and members of the board. I'm Rick Hopkins, the Public Works director for the City of Chula Vista.

For the record, we are in opposition to the permit as written. We would hope to continue to work

with your staff to work through the issues that are very well highlighted by the co-permittee team. There are a couple of things I'd like to highlight with respect to Chula Vista that weren't mentioned. And certainly cost is not in the Clean Water Act, although the federal government certainly in early days of the Clean Water Act participated heavily in financing public projects, but financing is elusive. And Proposition 218, local jurisdictions cannot raise taxes without (inaudible) people Chula Vista's had some tough experiences with that over the last couple of ballots. So who's going to fund this, that's the issue.

I think we're trying to be deliberate and (inaudible) in what we put into the permit requirements. We want to make sure that all these requirements result in clean water which is everybody's goal and we see a permit as written. We weigh in the cost to the city with the provisions as written. Also we have impacts to our development community in the hydromodification area, there are certain project exemptions. Discharging directly to dispositional reaches of major rivers and development projects which impervious footprint is not increased (inaudible) scientific support for such (inaudible) eliminates these exemptions without further analysis.

Predevelopment hydrology. Certain provisions of the proposed (inaudible) require projects to return to their sites hydrology to predevelopment conditions (inaudible) is questionable. But their immediate effect is to discourage development and redevelopment and HMP revitalization and economic growth.

Thank you very much.

CHAIRMAN DESTACHE: We have Luis Para, and he has been ceded three minutes by Taylor Lawson.

VICE CHAIRMAN STRAWN: Mr. Crompton, you will be next if you want to get ready.

MR. PARA: Good afternoon, board members. I hope I'm not going to need the six minutes. My name is Luis Para. I have a Ph.D in water quality form Texas A&M and (inaudible) also a full-time consultant in water quality issues. So I am one of the guys that people call when they don't know what to do and how to solve the mass of the compliance and regulations and saving money to the (inaudible) compliant. And it's getting even tougher and tougher to satisfy everybody.

I'm here because I want to talk about a hydromodification expert in one of the issues that wasn't mentioned in the excellent presentations (inaudible) the Riverside county, the City of Santee

with Judy, and Orange County about the current expenses and all the problems with hydromodification. It is not that the permit eliminates extensions. They are still there. It basically means that they eliminate 90 percent of the applicable ones.

It has made it really difficult for an extension. I don't think the permit qualifies (inaudible) existing underground storm drains and channels because they mentioned that if you are draining (inaudible) but if you are draining to an existing storm ground drain (inaudible).

But the point I want to address that hasn't been mentioned regarding moving away from the extension part, we have to do hydromodification in the current permit. We have to deal with the flow duration curve of a comparison between possible and predevelopment conditions. In the simple terms, we have to address the water in the way that nature intended for a range of flows. It's not entirely true that we are releasing -- what we're doing is we're releasing erosive water in the way that nature intended to release it which is different altogether. So I just wanted to make a clarification because what we're trying to do is release the same amount of water or less that nature intended before we were there. And

we're doing that comparison with existing conditions, not with natural occurring conditions. So there is a lot of problems that people have mentioned when we move to natural conditions, if susceptible than is legally entitled to do (inaudible).

But the point I wanted to make, and that's what I'm getting at, is there are two aspects of hydromodification. One is water that is already complex enough that we have to spend more than a million dollars dealing with HMP document that kind of guide you in how to do it. It's still acceptable improve (inaudible) but the second aspect of hydromodification that this permit incorporates is the most scary to me which is the compensation for the loss of sediment supply that is mentioned in the permit that nobody that's idea (inaudible) the project must compensate for the loss of sediment supply, good sediment, because you're natural. You can go to the water and then if it (inaudible) sediment you need to come here and be treated. So it's going to be very challenging to separate the good sediment which is the natural, the anthropogenic, sediment that we have to deal with. So how do we do that. Well, the permit says the project (inaudible) loss of sediment supply.

I'm going to tell you right now loss of

sediment supply will occur. Why? Because unless you are redeveloping any surface and not necessarily have to be surface, you can even put a (inaudible) and everything is still going to loss of sediment supply because the water drop isn't going to have the impact that nature intended. So even if you put landscape, the landscape sediment production is different than the natural Masonite sediment (inaudible) so they're actually getting into a very complex issue.

So how are we going to deal with the sediment supply? So Orange County has provided some ideas of more or less try to see how to do it in the watershed manner. Let's try to identify watershed. Those areas that are highly sediment producing areas, let's say 10 percent of the watersheds that producing 90 percent of the sediment. And if some of those areas have (inaudible) we can have that sediment production area. But on a project by project we cannot deal with that issue because we cannot put like a little part of the project that's supposedly hydro (inaudible) sediment producing and have an independent drain system (inaudible) sediment when it rains and then if it rains the eight years he has to throw (inaudible) sediment, it's totally unpractical from a technical point of view.

And I can anticipate the nightmares of my future clients. "Luis, how will we deal with this and try to come up with a reasonable response to that?"

So I really don't believe the top provision, as it's written, should be there because it's basically unfeasible to do. And if those -- one of those things, hydromodification with water, is already complicated enough, but when I deal with sediment you don't only -- you need to deal with the quality of the sediment, the quantity of the sediment, the distribution of the sizes of the sediments. The way the sediment is put into the -- into the water system. So it is actually calling for a system that is going to fail. So if a project needs to comply with Part B, E32BF, the permit, the compensation for the loss of sediment, there is no -- basically the project is okay. I'm going to put a statement in there that I ain't causing no problems (inaudible) because there is no way to go around that issue. So I just wanted to add that most of the other points I had here, other people before me have already made them. So thank you for your time.

CHAIRMAN DESTACHE: Richard?

MR. CROMPTON: Good afternoon. My name is Rich Crompton. I'm the director of Public Works for the County of San Diego. And we oppose the permit as

currently written. Thank you for the opportunity to speak today.

I think we can all agree that we need to (inaudible) an approach to regulating water quality to best serve the interest of taxpayers, but a particular concern is the shift from a BMP-based permit to a numeric limit or a TMDL-based permit. This is a game changer. And what is it that made this change? It is likely that the EPA recommendation, I say "recommendation," in a memo of November 12, 2010, for a permitting authority such as your board to move to numeric (inaudible) remains hotly contested at the federal level. In fact, the EPA has yet to formally make a numeric limit or TMDL recommendation. In plain English what this means is a switch to a numeric limit or a TMDL based permit is based on a very controversial EPA recommendation. Again, this is a recommendation, not a requirement. And your board has total discretion to take actions and not include TMDLs in the new permit or to use a BMP-based permit.

The science that exists today, it can't scrub bacteria out of the water. If my board gets rid of some parks (inaudible) closes some fire stations to put the money into the bacteria TMDL, I can't even guarantee with the science that exists that I can

comply with the bacteria TMDL regulations. Even if you want to be really great people and change those limits and just say cut them to half, we still can't get the bacteria out of the water. The science just doesn't exist. While we urge your board to continue to revise the permit while keeping the following in mind (inaudible) first, local governments are not open-ended sources of funding. You're well aware of the budget limitations we face. For example, the regional board's only TMDL reports (inaudible) bacteria TMDL in the San Diego River watershed alone could reach hundreds of millions of dollars over the next 10 years. The regional costs are in the billions.

Second, we've invested a lot in our existing programs and are committed to their continued improvement. In many respects this (inaudible) reinvent the wheel rather than existing programs (inaudible). We agree that partnerships and collaboration should be the preferred approach wherever possible. Unfortunately, this draft permit doesn't follow this type of approach. We urge your board to direct staff to partner with county and local government staff to draft a permit that is truly strategic, flexible, affordable, adaptable, and does not include numeric TMDL limits or allow BMPs to be

used instead of the bacteria TMDL.

Thank you for your time.

CHAIRMAN DESTACHE: Mr. Bolin?

MR. BOLIN: Thank you. I am Dennis Bolin, principal of the Ridge Engineering Technical Advisory (inaudible) that put together the hydromodification (inaudible) that group not only (inaudible) did the co-permittees hire a consultant, as you've heard today over a million dollars in cost. They also have hundreds, if not thousands, of hours of staff time. And if you look at the volunteers that worked on this program, they literally had thousands of hours of volunteer time to put together the hydromodification management plan for San Diego county. I personally spent hundreds of hours on that plan. We had eleven meetings throughout the life of the project. Each one of them was typically a half a day meeting. There was homework associated with that. A whole lot of reading and technical back-and-forth with e-mails (inaudible) for San Diego county that was technically sound. Looked at the region, not just individual parts of the plan, but looked at the region. Looked at where exemptions where hydromod were appropriate for San Diego county. We vetted those well throughout the committee process and incorporated those in the plan.

That plan was adopted by your board in July 2010, became effective in January 2011. We're just getting started with the implementation of that plan. This permit as opposed (inaudible) and incorporated into this plan (inaudible), and that's just not a reasonable thing to do.

We'd like to see this plan given an opportunity to succeed. This is a first-class plan with a lot of volunteer hours associated with it, and we'd like you to direct staff to keep the plan in effect as it is in the permit.

Thank you.

MR. GRAY: Chairman Destache, members of the board, I'm Mark Gray (inaudible) industry coalition on (inaudible)

I represent six large (inaudible) associates that work in the south Orange County and south Riverside county areas. We are not in support of the permit as written today. I have three main points I want to make today.

As you may have recall we have a vested interest in this permit. I represent developers and builders who plan and pay for these projects on the private side, and I represent the men and women who (inaudible) storm water controls that we're talking

about today the infrastructure. We have a vested interest in this. We're very interested, and we appreciate staff working with us over time. And I'm -- three main points today.

Number one, the evolution of the LID and hydromodification requirements as compared to the 2009 and '10 permits really don't have -- are not supported by solid findings of fact, both in the permit and the fact sheet. And I've reviewed these completely and -- no audits, no annual report data, the same EPA citations are used in the permits research project, citations are used. There's nothing new that's been developed since 2009 and 2010 to tell us to take the leap where this draft permit is going right now.

I can site one quick example. The requirement to bio filter is one (inaudible). If you can retain the 85th percentile, 24 hours storm, there isn't a finding of fact to demonstrate the validity of that.

Number two, and most importantly, and their efforts to uphold and implement the existing HMP, we fully support that they bear repeating for the tenth time. Over $1 million spent -- more than $1 million spent on the HMP -- I believe it's 3 -- and the thousands and thousands of hours that have gone into it

(inaudible) Technical Advisory Group (inaudible) hits home for our membership the draft order hydromodification in the HMP process, not only in San Diego county, but with our friends in the municipality the (inaudible) working on the same types of technical bases for exemption. We're throwing good money after bad results and bad outcomes. I'll give you a couple of specifics.

The urban area exemptions have been removed. We're basically going to require hundreds of thousands of dollars for hydromodification control in urban areas. Being pressed, and probably rightfully so, through legislation (inaudible) and in places of climate change and redevelopment strategies this is a detriment with (inaudible) let me sum up with two more things. (Inaudible) needs to recognize not only concrete exists in hydro channels that have been hardened for flood control (inaudible) other types of hardening other than concrete and been removed.

And finally what I want to sum up, we support LID. We support the water quality goals that you have set when you're doing redevelopment. We're implementing hydromodification controls in implementing LID controls on-site. You're achieving hydromodification control already in the urban and

suburban footprint just by installing low impact development, just with the requirements that your staff have written. I think we need to recognize that. And, again, not require controls where it's not necessary. We're not going to have an impact and not (inaudible) Thank you for your time and your staff's effort. Really appreciate it.

CHAIRMAN DESTACHE: Tiffany Bloomfield?

VICE CHAIRMAN STRAWN: Wayne Rosenbaum will be next.

CHAIRMAN DESTACHE: Apparently Tiffany is not here.

MR. ROSENBAUM: Good evening, Mr. Chairman, members of the board. My name is Wayne Rosenbaum. I'm a partner with Sloane Reed. I'm here today on behalf various clients and I'm a member of the BIA Storm Water Committee.

I'm going to put on my lawyer's hat first and ask that we incorporate within the record for the purposes of this permit adjudication all of the materials received by regional board staff during the workshops. I think that's going to be meaningful and beneficial for all of us to be able to look back at that rather than (inaudible) I will supply to you written copy, but also request that it be made part of

the record (inaudible) the little Hoover Commission's entitled "Restructure Cleaner Water," and the senate-select committees on the impacts of regulation storm water on runoff in California.

Now that I've finished with that, the procedural part, from a policy standpoint, there are huge portions of this permit that my clients can support. Those portions of the permit, some of us are old enough to remember (inaudible) make huge sense. On the other hand, we believe that the permit is still stuck with one foot in the future and one foot in the past that we are asking people to prepare water quality improvement plans, which should be the model for going forward which I believe (inaudible) legal fix that friends from NRDY have talked about. It can work, but you cannot do that and simultaneously be stuck with command and control. The two pieces do not fit together.

And as simple examples of that, we have this issue of the discharge prohibitions which arguably is part of the water quality improvement plan, but having it hang out there over anyone's head waiting for somebody to test under Section 505 of the Clean Water Act whether the (inaudible) is viable makes a lot of people very uncomfortable the concept of an 85th

percentile retention level before we have really evaluated through the water quality improvement plans what the proper retention level may be on a watershed by watershed or even a subwatershed basis puts the cart before the horse. The idea that we are going to absolutely require that the prohibition of illicit discharges before we really understand which of those illicit discharges make a difference, which of those illicit discharges are historic.

And just as a footnote, I'm waiting for the first person to tell the first HOA you got this -- you have this footing drain and, Oh, by the way, you can get it permitted under an NPDES permit but shouldn't cost you more than 40, $50,000 a year in testing. There are problems here you hadn't thought of so our suggestions are as follows. One, provide adequate time to implement the water quality improvement plans. I'm not sure it can be done in 18 months.

And then provide the comfort and the confidence to the regulated community that says we will maintain the status quo while we are developing these plans because the permit does not appear, although we've heard the permit does not appear, to be clear on that.

Thank you very much.

CHAIRMAN DESTACHE: Michael Sweeney -- McSweeney, sorry.

MR. McSWEENEY: Mr. Chairman, members the board, staff, I'm Michael McSweeney. I'm the senior (inaudible) for the Building Industry Association. We represent 700 companies with approximately 30,000 employees. I wanted to, first off, thank the staff for doing the meetings. I think the unintended benefit, if you will (inaudible) I'm probably the least knowledgeable in this group because I've been at the BIA for a year. And listening, it seems like we're focusing on one percent of the water to get it perfect and ignoring the rest of it instead of trying to solve the problem to get ahold of the hundred percent of the water. And maybe we can get -- I think that would be a better benefit going forward, but the problems with storm water pollution are regional. And if you look at outside this room, there's a graphic of how the sewer system started here. People used to have outhouses (inaudible) dumped their stuff and they did it property by property back then.

We do it on a regional basis. We collect it, we treat it, and we dispose of it (inaudible) on a property by property basis. (Inaudible) Wayne stood up in that first meeting on the 27th of June and said we

want you to fail and we'll learn from that but it could take a hundred years from now. I don't want to sentence my kids (inaudible) of waiting for the end result.

But focus meetings were great and it reminded me of a three-legged stool. You've got the regional board co-permittees and you've got myself and Jill at the third stool. If you take any one of those legs out, the stool collapses. And what I would ask is that you continue the process of getting everybody together to work at this, because the decision that you're going to make going forward is going to have regional implications far beyond this. And as a citizen, in light of the -- I need 30 seconds -- in the overall effects this permit is going to have on employers, if it goes forward (inaudible).

As it is now, this will be one gigantic bulldozer to push employment out of the state. Why would anybody want to expand a business here? By a simple 5,000 square foot addition to the company could trigger a full site compliance which could cost them hundreds of thousands of dollars, when Austin, Texas is dangling (inaudible) they'll just commute back and forth on Southwest.

At this point (inaudible) and support this

permit, but as it is currently written we can't go there.

Thank you.

CHAIRMAN DESTACHE: at this point, we are going to (inaudible) ask board members for questions, comments that they would have. Hopefully we can get some questions.

David, do you have input at this point or (inaudible)?

MR. GIBSON: Just logistics. Our technical assistant over here (inaudible) that our digital recorder is nearly full and if we might want to take a few minutes to download that before we continue.

CHAIRMAN DESTACHE: It's not the first time that we have filled it up. So we'll take a five-minute break. And if anyone desires to come back, you can hear our comments.

(A recess is taken.),

CHAIRMAN DESTACHE: I'm going to attempt to get us out of here in the shortest possible time.

What I am going to say is that I've talked to the other board members and we have -- we're going to give staff questions that we would like for them to bring back to us in another public forum which would be next month's board meeting. And what we're going to do

in this fashion is that the co-permittees and the NGOs and the other people that are interested hear our concerns and what we're asking staff to do, so that they can come back prepared.

(Inaudible) we heard a lot about technical bacterial science and there was testimony regarding the capability of cleaning the water of its bacteria. I would like to see if in fact staff has documentation that that actually can be met and in what fashion that can be done.

On a broader scale, as far as numeric effluent limits for the permit itself, I was interested in the fact that the TMDLs have a life span that has timing in which the effluent requirements are met and how can that be implemented or can that be implemented within the storm water permit, the MS4. Also, the same with WQ Bells and what's the benefit of numeric effluent limits over BMPs, and we want to look at those. So basically it's a receiving water issue.

We may hear from the board on the 20th, the state board on the 20th, that they're going to go in a direction that we're not really trending towards, but we'll deal with that when we get there.

On hydromodification, I think a critical issue, and I tried to frame it with the US EPA

representative, that hydromodification is both a time sensitive issue, one that you go back to, and along with water quality. But hydromodification has its challenges. And with the hydromodification plan that we passed or the resolution for hydromodification, how can that be implemented into the MS4 in a more succinct manner. And that being how can we implement the rules and regulations that are included in the HMP because we really haven't gone very far down the road with that program to, for lack of a better depiction, just throw it down the drain. I think it's a valuable tool and I think it can be used in the MS4, but I need answers and clarification.

On a global basis with staff and co-permittees, there is a tremendous amount of experience, expertise. The willingness to participate, we need to keep pushing that forward. So the more that the co-permittees, the NGOs, the interested parties can be involved, the better off we're going to be because this is a game that we have to play all together. We cannot be alone. We cannot regulate the public or the co-permittees in, an essence, we're regulating the public without input from the co-permittees and all other interested parties. It's beyond what I believe is our scope. And without input, we're not going to

get there.

I was very interested in the comment from Mr. Taylor, brought up roadways. It's imperative that we look at that portion of the permit because roadways are number one. They're critical to moving people in a safe manner. But there has to be better answers as to how we treat that. The Caltrans permittee, I believe, David, has it been approved by the state board?

MR. GIBSON: It has.

CHAIRMAN DESTACHE: Okay, so there's data and ability to use the documentation within the Caltrans permittee as part of the way we look at this permit. And I think it's important to do that.

Something struck me that (inaudible) said. I don't know if you misspoke or it was an intended comment, but you stated that our goal is for restoration and my goal is for clean water and always will be for quality clean water, and restoration is a tool that we used to do that, but clean water is my goal. And I think it's the rest of the board members' goal also.

Oh, the NGOs. There's a couple of statements that they were going to provide written comments. Have they provided written comments to date (inaudible)? Tomas?

MR. MORALES: I wanted to thank everybody out there as well for their participation. When you were talking, Gary, I think I saw five lawyers in the audience writing your argument.

For staff, just a couple of questions based on some of the things I've heard today and I just want answers (inaudible) I'm not particularly moved on something is just hyperbole.

To the extent that I heard repeatedly the cleanup of the bacteria is infeasible, explain to me at some point why that is not the case. I'm assuming it is not the case because otherwise that would not have been put in at that level.

I would also like a better understanding for myself on what the limits would be. I guess if something cannot be done in terms of, like, the basins near where a project occurs, what limits would be in terms of where it might be moved, because I don't want something that would create another vehicle that have lower income communities, for example, be like the catch basins for basins.

MR. CHIU: I'm sorry, is that related to the bacteria or is that related to the development plan?

MR. MORALES: Related to the development plan. I moved down from the bacteria.

MR. CHIU: Sorry about that.

MR. MORALES: This is more of in keeping with what Henry asked about, I wrote down the same thing.

If anybody out there can tell me what the breakdown is for the billions and billions of dollars I would appreciate it. Just give me, you know, a hundred million here, a hundred million there. I want to know what the time frame is. Like Henry also said, how much is already being spent? Because if this is over 20 years and we're already spending billions and billions of dollars, okay.

And then, finally, legal. I'll just ask directly of staff. Okay? Thank you.

CHAIRMAN DESTACHE: Okay. One other item for staff. A couple of times we heard one size fits all, and that's not my interpretation of what this is. I would like to see more clarity on that (inaudible) or the WQIP being a one size fits all for each. I mean, both globally, regionally, and also watershedwise, because that's not my understanding is where we're going.

And then I truly want to thank everyone for participating. Without the type of participation we're having, we're not going to get there. One of the

things that made the Tijuana River Valley recovery team successful in that project get pushed forward and start getting funding was participation by all parties.

And so congratulations to all of you. We'll get this done. It will take us some time. And with your help, we'll get it done sooner.

Thanks, staff. I appreciate your time and your efforts, as always.

Thank you. We're adjourned.

(Proceedings adjourned at 5:50 p.m.)

STATE OF CALIFORNIA)
:ss
COUNTY OF SAN DIEGO)

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth;

The proceedings were recorded stenographically by me and were thereafter transcribed; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

_____
KERSTEN SONG, CSR No. 12796