

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

WEDNESDAY, MAY 8, 2013

WATER QUALITY CONTROL BOARD
BOARD MEETING ROOM
9174 SKY PARK COURT
SAN DIEGO, CALIFORNIA

1 MR. MORALES: Everybody take their seats,
2 please.

3 MALE SPEAKER: I wasn't even going to speak
4 today. I just want to let you know that the --
5 collectively the copermittes would like to reserve
6 their remaining time for closing argument.

7 MR. MORALES: Okay.

8 MALE SPEAKER: I think everything kind of
9 got bunched together into one block. And as I
10 understand from Board Member Strawn I think we have
11 30 some minutes. 34. Thank you.

12 MR. ABARANEL: Three and a half now.

13 MR. MORALES: We're going to -- actually
14 it's not really taking something out of order, but
15 we do have -- and she has been here since noon and
16 will be leaving soon, Dr. Lynn Reaser from Point
17 Loma, who authored, I guess, the study that was
18 commissioned by the city on the economic cost
19 benefit. And the only reason I raise this is
20 because she will be leaving soon so if there are
21 any board members that have specific questions for
22 the author of that report, this would be the time
23 for us to ask them. I don't believe any -- any
24 other folks in the audience get to question her,
25 all that time as passed. She is simply here and

1 able to us if we have questions.

2 MR. KELLY: My name is Colin Kelly. I'm
3 the staff attorney for Orange County Coastkeeper.
4 We would like to reaffirm our objection to the
5 inclusion of this report. We think that
6 presentation does bias us since our reports that
7 were submitted were not accepted.

8 MR. MORALES: Dr. Reaser will not be making
9 a presentation and she may not even open her mouth
10 if we have no questions, quite frankly. So unless
11 there are any board members that have questions.

12 MS. KALEMKIARIAN: I did.

13 Thank you for coming. In the executive
14 summary it states that there was an alternative
15 strategy developed by Western Water Solutions,
16 which had a tiered approach over 20 years and those
17 costs parameters were used in the report's
18 analysis. So do I understand that you were using
19 it as the basis for your cost analysis, a strategy
20 that -- this Western Water Solutions strategy,
21 whatever that is.

22 MS. REASER: Yes. Western Water Solutions
23 had proposed a 20-year strategy and that was the
24 basis for our cost estimate of about 3.7. We did
25 the economic impact of that analysis.

1 MS. KALEMKIARIAN: Okay. That was my only
2 question.

3 MR. ABARANEL: You -- you based part of
4 your cost analysis on the cost of parking at the
5 beaches.

6 MS. KALEMKIARIAN: Right. That was my
7 other question. Thank you.

8 MR. ABARANEL: I presume that was the City
9 of San Diego, because if you think you can park at
10 the beach in Del Mar for that amount, I would like
11 to ride with you.

12 MS. REASER: Yes.

13 MR. ABARANEL: By the way, it's free in
14 Encinitas.

15 MS. REASER: Thank you, Professor. As you
16 know, we did the study and did look at these three
17 elements and one was implicit value of beaches to
18 be able to access more water day, beach days in the
19 year. And so to try to value the implicit value of
20 that we looked at different parameters and used
21 primarily that \$10 figure from the City of
22 San Diego, knowing that some people will obviously
23 value a day at the beach considerably more than
24 that \$10, but some would value it less. So we use
25 that \$10 basically as our best estimate to try to

1 gain a true measure of implicit value of beach
2 access to the residents of this region.

3 MS. KALEMKIARIAN: I did have one other
4 question -- go ahead.

5 MR. ABARANEL: I was also interested in
6 when assessing benefits you didn't assess the
7 benefits and -- I must say, I was thinking of Gary
8 -- of recreation at lakes and rivers which could be
9 polluted by bacteria as well.

10 MS. REASER: Yes. That is a legitimate
11 concern. And we did address that in our report.
12 This focus was primarily on the beach area
13 although, again, the huge cost differential between
14 benefits at about 617 million and 3.7 billion was
15 still large that we viewed that, even if you
16 included the benefits of the rivers and streams,
17 that would certainly raise that potential benefit.
18 But you are certainly correct, we did not include
19 all those other recreational areas, but we did
20 mention it in our report.

21 MR. ABARANEL: This report was written in
22 2011 and the permit before us is written in 2013.
23 Previous permits, as we have heard, emphasize
24 action rather than outcomes. How much would you
25 estimate the copermittes in focusing on outcomes

1 instead of only actions can save, and, therefore,
2 decrease the cost and increase the benefits.

3 MS. REASER: I think the numbers that we
4 used in this report are still legitimate. We
5 talked about inflation before. We basically did
6 all of your analysis in terms of constant dollars,
7 and so I think the overall parameters are still
8 legitimate at this point.

9 MR. ABARANEL: Okay. My question wasn't
10 about inflation, it was about change in strategy.

11 MS. REASER: I'm sorry. Then I think the
12 -- the strategy, for instance, as you look at
13 option two, and we look at the approaches, we
14 recommended a less costly approach that would
15 achieve the same objectives. And so, for instance,
16 using more active stream management, more
17 aggressive street cleaning, more active trash
18 pickup, more use of best management practices. All
19 of those less costly motives could be highly
20 effective in various individuals that we spoke to
21 in achieving these very important objectives that
22 you're trying to reach.

23 MS. KALEMKIARIAN: I just -- the economic
24 benefits analyzed didn't include the benefits of
25 the planet.

1 MS. REASER: Well, we certainly did look at
2 the economic benefit to the planet in some respect.
3 Clearly the value that people put on beach activity
4 is obviously of value to the planet. Second, the
5 economic benefits that we structured in terms of
6 the implementation of tourists to the beach
7 activities, that certainly has a very important
8 preferable benefit to the planet. And, third, the
9 health benefits are also important to the planet.
10 It would be hard to really measure planet benefits.
11 We have done that in some of our previous studies
12 where, for instance, we look at the reduction of
13 greenhouse gases and that I did mention. But --

14 MS. KALEMKIARIAN: It doesn't --

15 MS. REASER: This does not come with that
16 kind of a measure.

17 MS. KALEMKIARIAN: No.

18 MS. REASER: We looked at various studies
19 and this is the first, to our knowledge, that's
20 taken as comprehensive approach that we did,
21 looking at not only the implicit value of the
22 beach, the economic benefits in terms of
23 restaurants and stores and all that economic
24 benefit, and also the reduction in healthcare costs
25 as well as the work cost loss and additional costs

1 of healthcare. So this is the first study where we
2 tried to blend all of those elements together.

3 Did we miss some, certainly. I -- I
4 believe we have. We did the very best we could to
5 capture everything that we possibly could to
6 quantify it. And, again, we started out with a
7 very objective few. I happen to have a passion for
8 the environment myself. When we do studies we go
9 in with just the view that we will use our best
10 economic theory, tools and evidence and let the
11 evidence fall where it may. And, quite frankly, we
12 were surprised at the big gap between cost being
13 about six times the economic benefits and so I
14 agree it should have been captured and I would have
15 loved to have captured, we just don't have the
16 tools or data to do so. I think that those still
17 would be encompassed at a significant gap between
18 the cost of the most expensive report in bringing a
19 more reasonable lower cost alternative to still
20 achieving those objectives and narrowing that gap
21 between the cost and benefits of this very
22 important endeavor.

23 MS. KALEMKIARIAN: I guess the problem I
24 have, and obviously it's good and important for us
25 to look at this kind of data, and you're limited by

1 economic analyses, but there's so many benefits. I
2 mean I can't say the benefit to a citizen is -- or
3 my enjoy-ability is \$10 in parking, the effect on
4 Marine life, the effect on the quality of the ocean
5 water, the ultimate effect on global warming, the
6 availability of alternatives measures, which aren't
7 excluded by the permit. And I appreciate it -- I
8 wrote a question here on your recommendations and
9 action step; can't we do these under the permit, of
10 course the municipalities can.

11 My reaction was "interesting" but all
12 of these benefits that are there, which we can't
13 quantify or put a dollar value on necessarily, but
14 that we intuitively know are there. Difficult to
15 measure. So the gap didn't bother me as much as it
16 might an economist, because I'm looking at it
17 saying there is a lot of qualitative and
18 quantitative measuring we really can't do.

19 MS. REASER: Right. And in terms of
20 measuring these things, trying to think of how one
21 might do it, one might try to, for instance, ask
22 people what would certain standards, pure water,
23 the environment, global -- you know, what is this
24 value to you.

25 MS. KALEMKIARIAN: What would you pay?

1 MS. REASER: And you could do a survey and
2 ask people. The problem with that kind of survey
3 is that there often not that totally reliable. For
4 instance, people ask, you know, what would you pay
5 to be green. They will say one thing, but when
6 they actually are asked to go to a store and
7 there's actually something else they may pay.

8 Another example is consumer confidence
9 surveys, which you say one thing, but then they do
10 something totally different. So one will ask
11 people their opinions, but even then that's not a
12 hard fast way to come up with a conclusion. Over
13 time I think we will have a better impact of the
14 whole impact of global warming and a lot of
15 scientific evidence, but even now the best
16 scientists, Dr. Abaranel, would probably not be
17 able to actually quantify all of the dimensions of
18 -- of environmental damage that we have done.

19 MR. ANDERSON: My comment is actually at
20 the risk of delving into the bacteria TMDL that I
21 think is appropriate in a different forum and
22 reopen a requested by the copermittees, my comment
23 is this the more rhetorical economic study is as
24 stated earlier today, the bacterial TMDL is based
25 on improving information there's science. Before

1 you spend 300 billion dollars in infrastructure --
2 over 300 billion dollars in infrastructure, don't
3 you think you would spend money on the science?
4 And we know the science is not that far from
5 getting perfect information on bacteria.

6 MS. REASER: I would just like to comment
7 on that because that is a point that we made in our
8 study looking at various scientific studies and
9 understanding that, again, all of the evidence is
10 perhaps not totally clear, as it rarely is, but
11 that's one of the reasons we recommended going in
12 at a less aggressive lower cost and more -- giving
13 somewhat more time to allow perhaps some of this
14 more scientific research to be undertaken. We
15 could not obtain from that county health
16 authorities, for instance, data on healthcare
17 illnesses that might be related to ocean bacteria.
18 So even though -- that kind of evidence would be
19 very important to understanding and having a better
20 handle on the cost benefits of these programs.

21 MR. ANDERSON: The TMDL does give everybody
22 some time to deal with this and what we are talking
23 about today which is MS four permit, which is
24 forced to include whatever the TMDL is. So today I
25 want to talk about the MS four permit and then look

1 forward to reopening the bacterial TMDL with good
2 science.

3 MS. REASER: I would like to comment that
4 we have done other water studies. We had done a
5 study on the marginal cost of water for Equinox
6 Center. And we did rely heavily on much of the
7 information, for instance, by Coastkeeper and some
8 of these other NGO's. So just to make it clear
9 when we did the study it was done very objectively
10 and we really just tried to bring the best evidence
11 that we could to the table.

12 MS. HAGAN: Mr. Chairman, I would actually
13 recommend that you allow, if they're interested,
14 the NGO's to ask some limited questions of
15 Dr. Reiser, because this evidence was allowed in at
16 the very last moment of the last hearing day and
17 they might not have had an opportunity -- obviously
18 they didn't have an opportunity to question anybody
19 or consider it except -- except to do written
20 comments. I don't know if they have an interest in
21 asking her some questions, but before -- before she
22 leaves I would recommend that you allow them to do
23 that if they wish.

24 MS. REASER: Also, this report is on your
25 website and we have some hardcopies here as well.

1 MR. MORALES: To Noah, or anyone -- and,
2 ma'am, if you're -- you can have a seat.

3 MS. REASER: I'm fine.

4 MR. GARRISON: Noah Garrison, with the
5 Natural Resources Defense Counsel. I have taken
6 the oath.

7 We don't want have any questions at
8 this time. However, I would like to state our
9 agreement with staff that this report is irrelevant
10 to the proceeding at this point, and, respectfully,
11 to request that the board, to the extent you are
12 going to consider this report, that you do allow in
13 this -- the studies that we submitted as rebuttal
14 evidence against this report. The fact that we
15 were offered a comment, we certainly appreciate,
16 but without the ability to back that comment up
17 without supporting evidence really does leave us
18 without any recourse and potentially prejudices us
19 if this does come up in any kind of petition or
20 post-adoption hearing. We would respectfully
21 request that you do accept those studies in
22 evidence.

23 MR. MORALES: Just so -- so I'm clear, what
24 was the agreement that the report was irrelevant?

25 MR. GARRISON: Well, we agreed the report

1 was irrelevant with your staff but to the extent
2 you are going to consider it, the individual board
3 members may be considering or that it is actually
4 allowed in as evidence at this point, we would
5 request the study submitted, along with our
6 response to that report, are also admitted into
7 evidence.

8 As currently stands, I believe the
9 board has rejected several of those studies saying
10 that staff did not have time to review them, but
11 that really is what lends weight to our response or
12 our comment.

13 MR. MORALES: I think it was maybe three
14 out of five studies. Several of them are already
15 in the record.

16 MR. GARRISON: I believe two of the five
17 were, yes.

18 MR. MORALES: The problem isn't -- the
19 problem is one of timing and staff has to review
20 those, respond, we open things up and we're back
21 here in August.

22 MS. HAGAN: I did want to point out that
23 similarly the cost benefits report, all of the
24 studies referenced in that document, if they're not
25 already in the record they're not -- they were not

1 added to the record by virtue of the report being
2 allowed to be entered into the record.

3 MR. GARRISON: But the report itself was
4 entered into the record and that's what we're
5 concerned with. Anyway, I don't want to belabor
6 the issue and thank you for your consideration. We
7 just wanted to raise that point again.

8 MR. MORALES: Okay. Thank you. Then,
9 Dr. Reaser, thank you.

10 MS. REASER: Thank you very much.

11 MR. STRAWN: I think were up to the NGO's.
12 The order I have is the NGO'S next. Is that -- did
13 I get that out of order?

14 MS. HAGAN: That's right.

15 MR. GARRISON: This is Noah again.

16 MR. STRAWN: I -- I show you have about
17 between minutes.

18 MR. MORALES: Do you want to save any of
19 that for rebuttal?

20 MR. GARRISON: We would. Thank you
21 Chairman Morales. We would like to save five
22 minutes for rebuttal.

23 Again, Noah Garrison with the National
24 Resources Defense Counsel. I have taken the oath.

25 Thankfully I think I have given some of

1 the testimony that -- that has occurred before us
2 today. I'm going to significantly shorten my
3 presentation. The first thing I will talk about is
4 the low-impact development. We voiced our concerns
5 about bio-filtration as being allowed to permit
6 requirement before, but at this point I think the
7 language that the EPA has put forward, at least
8 addresses significant portions of our concerns and
9 we would not object to that as the language in the
10 permit. Clarifying the bio-filtration language is
11 something we would not object to. Moving forward.

12 There is one provision that we've
13 deleted from the errata, receiving waters must not
14 be utilized to convey untreated storm water runoff
15 from the priority development project to the
16 candidate project. The fact of the matter is you
17 then have a development site that discharges runoff
18 into the receiving water. That water is then
19 conveyed to a regional project of some sort and
20 that's where the treatment occurs.

21 It is our understanding, from speaking
22 with staff and EPA, that provision was removed
23 because it was redundant within the permit, that it
24 is sort of a given that you can't discharge
25 untreated runoff into the MS four system and

1 ultimately receiving water, but I would like to get
2 clarification from that from the staff. And if
3 that's the case we're fine with this being deleted.

4 The staff is saying yes it is
5 redundant.

6 STAFF MEMBER: It is redundant.

7 MR. GARRISON: With that, I'm going to move
8 to -- if I can get these to fade away.

9 The receiving water limitations and our
10 objection to option two and why we support option
11 one.

12 And the first thing is that we keep
13 hearing again, we heard it at the last hearing, I
14 thought this issue was sort of debunk. We keep
15 hearing that this permit is going to place the
16 permittees in immediate noncompliance and they need
17 a pathway to compliance and they haven't had one
18 and somehow this is going to be -- this permit will
19 completely change the ball game, and I would like
20 to reiterate that's not the case. In fact, in
21 reading a letter that the executive officer put
22 forth this morning, it states, I would note that
23 the same receiving water language, which has been
24 in MS four permit since 2001, has not resulted in
25 undue San Diego Water Board enforcement actions or

1 citizen suits for receiving water limitation
2 exceedances within the San Diego region. This is
3 the third permit term for San Diego that these
4 provisions have been in place. And with each term
5 we hear, oh, well this is going to take us longer
6 to, you know, fix and longer to deal with that one
7 permit term. And we need to find a compliance
8 mechanism and the only way to do this is to allow
9 us different pathways which will relieve us from
10 compliance with the receiving water limitations.

11 And they have had a compliance --
12 compliance process. The process has been in these
13 permits since 2001, but the permittees aren't
14 raising their hands and saying, hey, we have
15 violations. Hey, we need help solving this
16 problem. Hey, what are the next steps the board
17 can help us to go through in order to fix this
18 problem.

19 They're simply not availing themselves
20 of the process that's been in place for 12 years.
21 Likewise, they have been in violation of their
22 permits for 12 years. This permit change is
23 nothing. And so this new option, this alternative
24 compliance, it really just completely changes the
25 game here. First of all, there is no need for it.

1 And the state of litigation that keeps being
2 alluded to just isn't coming. I believe I'm the
3 only organization here that is actually involved in
4 any of these lawsuits. It is an incredibly complex
5 difficult deal. This has been going on for almost
6 four years now and it's not over yet. The
7 resources and -- and staff time, and funds, and so
8 forth, just make this generally an almost
9 impossibility for someone to undertake. It's an
10 absolute last resort action that is taken when, in
11 the case of LA County, that particular permittee
12 was actually not even acknowledging they were even
13 a discharger. This isn't something we want to do.
14 We would much rather work with the permittees. We
15 would rather see them proposing projects and
16 proposing different plans that they can come up
17 with, particularly the water quality improvement
18 plans are the perfect mechanism for that. We would
19 rather work with them than against them on this.

20 Now to Mr. Gibson's point that maybe
21 there's only a handful of small watersheds that
22 this would be applicable to, and that's great and
23 this process isn't something that should be totally
24 thrown away, but should be undertaken as a timed
25 schedule or some sort of compliance mechanism for

1 the permit. Any permittee that stands up and says,
2 hey, we're having trouble meeting water quality
3 standards. We're having violations of the permit.
4 We want to go through this process. We want to
5 undertake analysis and the modeling, and everything
6 that's needed and work with the board. We would
7 want to be involved in that process and work with
8 them as well. But this shouldn't be in the permit
9 as something that grants them an opportunity for
10 any watershed for any permittee to come up with a
11 plan. And do I realize, as Mr. Gibson has pointed
12 out, it has to be approved by the water board, but
13 it shouldn't be available to every permittee under
14 every circumstance. This should be something that
15 is undertaken as an enforcement mechanism when
16 everything else available to them under the permit
17 has failed.

18 And to the question that was asked
19 about does this remove the enforcement of the
20 board, the answer, in part is, absolutely, because
21 if this board approves a plan and the permittees
22 implement that plan and violations of the receiving
23 -- of the receiving water limitations or
24 exceedances of the water quality standards
25 continue, then this board says they're in

1 compliance. And certainly it eliminates any kind
2 of stake that the environmental groups or public at
3 large have because at that point they're in
4 compliance and we have no right to challenge them
5 on that.

6 With -- with the receiving water, as
7 they are, they still have opportunity to utilize
8 the process. They have the opportunity to come to
9 the board and say, hey, that process that was
10 earlier proposed, we would like you to undertake
11 that with us through our compliance action and we
12 really want to work with you on that. And everyone
13 else, the public, everyone who is outside who is
14 affected by this permit has the opportunity to say,
15 hey, you're violating the permit and I want to get
16 involved with this.

17 But that option is largely removed if
18 they're allowed to meet the requirements through
19 these alternative compliance options. So I would
20 also like to say, very quickly, that Mr. Brown --

21 MR. STRAWN: You need to speak a little
22 more slowly. I think our reporter's head is about
23 to spin off.

24 MR. GARRISON: I apologize. I was trying
25 not to get that comment from you this time. Thank

1 you very much. I would like to say to the point
2 that Mr. Brown raised, that this doesn't alleviate
3 their need to comply, it just gives them more time.
4 But that violates the requirements of the clean
5 water act. This is a letter from the EPA region
6 three, I showed this last time, writing on MS four
7 permit, in Maryland, that says that backsliding is
8 prohibited in NPDES permits, allowing additional
9 time to complete a task that was required by the
10 previous permit constitutes a less stringent
11 condition and violates the prohibition against
12 anti-backsliding. In the previous permit they were
13 required to meet the receiving water limitations.
14 They were required to meet water quality standards.

15 If the new permit states, okay, you can
16 do a plan, and you now have time -- there's a gap
17 whereas long as you're do that plan you're in
18 compliance, that violates the anti-backsliding
19 requirements and it would be an illegal provision
20 under the Clean Water Act.

21 Finally, the last thing I would like to
22 say about it is that this board has evidence of
23 concern that we really have an outcome based permit
24 and this is exactly the opposite. What this says
25 is you go through a process. You model. You

1 study. You come up with a plan. You propose a
2 plan. You then adopt that plan and implement
3 things and then regardless of what the outcome is,
4 you're in compliance. And that's something that we
5 strongly urge against. So as a matter of policy
6 this is a bad provision. As a matter of law it's
7 illegal. And, ultimately, it's something that we
8 would embrace if it was done outside the scope of
9 the permit as an enforcement action, which is
10 something we absolutely oppose being included in
11 the permit itself.

12 I am going to turn this over to Jill
13 Witkowski. She is going to discuss an additional
14 specific that was added that makes this even more
15 of a problem, but in broad strokes we urge the
16 board to adopt option one with the changes
17 explained by the EPA and to reject option two.

18 MR. MORALES: Just -- any questions? I
19 have one since it's kind of, I guess, the flip side
20 of the question that Henry asked earlier to the
21 copermittees.

22 And the EPA was here earlier this
23 morning and they say they're okay with option two.
24 So how do you square the letter you're showing us
25 with what they told us earlier in the morning.

1 MR. GARRISON: I would argue that
2 Mr. Kemmere has stated in previous proceedings, and
3 I don't want to speak for him, but he has stated
4 there are potential anti-backsliding questions in
5 earlier proceedings. So whether or not they are
6 okay with it in principle, that they feel like it
7 presents a robust process, the legal question is
8 not one that I believe that he thinks EPA has --
9 has further answered, and, to my knowledge, this is
10 the only ruling in any kind of legal context that
11 EPA has given on the issue and --

12 MR. KEMMERE: Should I answer that?

13 MR. MORALES: Sure.

14 MR. KEMMERE: So what Noah is showing there
15 is a letter from our regional office in
16 Philadelphia and that -- I mean -- we did look into
17 -- we spoke with the people in our office of
18 general counsel in headquarters about this letter,
19 and this kind of situation here, and it really is
20 not a black-and-white question. The
21 anti-backsliding issue, there's a lot of different
22 qualifications in the anti- -- implementation of
23 anti-backsliding. And it's not completely clear
24 that is -- that this provision would constitute an
25 anti-backsliding. I can't come out and say that,

1 you know, if -- depending if there is a court -- a
2 court has to deal with, sometimes they might
3 interpret something differently than this.

4 But our view is that the way that the
5 staff here has developed this option two is
6 rigorous. It has that quantitative analysis and,
7 again, we think that it is a workable approach.
8 Our preference would still be, as I said earlier,
9 option one and see what the state board comes up
10 with. We think option two is workable and, again,
11 the question on -- I can't come up here and say
12 there is absolutely no risk to this from an
13 anti-backsliding standpoint. I'm not a lawyer. I
14 know our lawyers would not really -- would not come
15 up with a black-and-white answer on this either.

16 MR. MORALES: They would say it depends.

17 MR. ANDERSON: The copermittees, and I hope
18 this is okay to ask this now, suggested some
19 changes to option two, if we decide to adopt option
20 two. Did you track those?

21 MR. KEMMERE: I had a really hard time
22 tracking them, frankly, and I, from what I could
23 understand, I was very uneasy about them because I
24 think, again, the thing that we like about option
25 two, and what we think is good about it is it has

1 this quantitative analysis and it has some
2 measurable goals that need to be met, and what I
3 was hearing from Orange County, seemed to be
4 departed from that, but, frankly, I don't have a
5 copy of what was -- what was given. And so it's a
6 little hard to follow, but my inclination is it's
7 probably not something we would be comfortable with
8 so -- but if I can get a copy.

9 MR. GARRISON: And, again, I would note
10 that the rigorous process, and any of the things
11 that EPA finds that they do agree with in that,
12 even though they stated absolutely preferred option
13 one, those would not be lost. This could still be
14 used as an enforcement mechanism, and that is the
15 proper context for it.

16 MS. WITKOWSKI: Jill Witkowski, good
17 evening, with San Diego Coastkeeper. I would like
18 to talk about ASBA. We heard a lot about areas of
19 special biological significance this morning from
20 UCSD and all the great work that they're doing.

21 And I would like to discuss with you option
22 two and how it's gotten worse from our opinion by
23 adding in ASBAs to the alternative compliance. Not
24 sure how much you know about ASBAs in general, but
25 back in the '70s the state decided that there were

1 special water quality protection areas and
2 designated them areas of special biological
3 significance. These were given rigorous
4 protection, which is basically no new pollution
5 into these areas, discharges from storm water have
6 to comply with natural ocean water quality, and
7 it's -- it's a rigorous and protective things
8 because these are special and beautiful areas that
9 we want to protect.

10 In March of 2012, they came out with a
11 20-page rigorous requirement for what discharge in
12 these areas would have to do and that includes the
13 City of San Diego. Part of this would require an
14 ASBS compliance plan, in -- and significant
15 monitoring and in the event that they find that any
16 discharges do not comply with natural ocean
17 conditions within 30 days, they need to send a
18 report to the regional board and the state board.

19 There are requirements on inspection
20 frequency, erosion control, structural and
21 nonstructural BMPs. It's a thorough and complete
22 process. What I'm concerned about is having that
23 be included in the alternative compliance option,
24 is that somehow there'll be some way of partially
25 complying with these rules.

1 The state board has set up stringent
2 requirements for areas of special biological
3 significance, which is if you want to discharge
4 into them, you have to already have an existing
5 discharge and you have to already meet these strict
6 requirements and if you don't already discharge
7 into them, you're out of luck. And then making
8 this somehow be included in the alternative
9 compliance, I'm concerned that these strict
10 requirement wouldn't be met. So basically, there
11 are other permit requirements and to somehow say we
12 don't have to comply completely with those other
13 permit requirements is pretty scary and terrifying.

14 Another thing about the option two
15 alternative compliance changes that were made in
16 option two is -- it sounds like the suggestions
17 that were made by the San Diego copermittees to
18 make the provision better were adopted, but none of
19 the issues that I raised in substantial part, you
20 know, I had multiplied the problems with some of
21 the language that could be fixed with, for example,
22 peer review modeling, and making some of the
23 language more consistent and none of those were
24 adopted into -- into option two.

25 So I would object to that on that

1 reason. And also, both option one and option two,
2 I believe reduced the monitoring frequency and
3 provision D to A3B from twice during the wet season
4 to once during the wet season. And we just wanted
5 on the record that we support rigorous monitoring
6 and would prefer that the -- the change not be made
7 to reduce the amount of wet water -- wet whether
8 monitoring.

9 I, just to answer board member
10 Kalemkiarian on the question of, you know, why are
11 we doing this, alternative compliance option, why
12 is the regional board staff put it in. I think,
13 from my point of view, the regional board staff
14 heard significant concerns from the copermittees
15 and wanted to come up with a way that would be
16 stringent and rigorous in order to allow them to
17 have alternative compliance. And I think they did
18 the best job that they could in the short time that
19 they had to try to put something together.

20 But I think with the attitude of the
21 copermittees of -- get us as few regulations as
22 possible, we want something that's cheap and
23 cost-effective that the rigorous standard that the
24 regional board staff was intending were not
25 actually happening in the time period that we have.

1 And so my concern is first, that this language has
2 not been thoroughly vetted and the changes we
3 suggested were not put in. But in second, un
4 actual implementation, it will never happen the way
5 the regional board staff is hoping.

6 And what I hear that the copermittees
7 are saying, we need this provision because they
8 don't want to get sued and we're saying we really
9 don't want this provision because we think it's
10 illegal and at the very least what Mr. Kemmere said
11 it's sort of in shades of grayest whether it's
12 illegal or not.

13 So for that point of view, we urge you
14 to include -- include option one to make sure that
15 you're on the right side of the law for sure and
16 that the copermittees still have the option of
17 pursuing other compliance options through
18 approaching the regional board on an individual
19 basis. Thank you.

20 MR. ANDERSON: Wait. So I'm looking at
21 your testimony from the April 11 hearing on the
22 suggestions on B3C2 and mostly I see major problems
23 without suggestive language to correct those.

24 Did you have some specific
25 recommendations that we need to include?

1 MS. WHITLOCK: Well, I specifically didn't
2 include language changes because --

3 MR. ANDERSON: We just object to that.

4 MS. WHITLOCK: But if would be included, we
5 would be happy to provide red-line language.

6 MR. ANDERSON: I was trying to refresh my
7 memory as well. Thank you, Jill.

8 MR. STRAWN: Jill, I'm going to -- I think
9 you're lucky that we delayed this a month because a
10 month ago I was pretty mad at you for -- I'm a
11 little disappointed.

12 MS. WHITLOCK: Okay.

13 MR. STRAWN: And right now, I'm pretty
14 happy with you because I think your approach up
15 here -- well, it comes down to something. What
16 bothered me last time was that the insinuation that
17 the staff had succumbed to political pressure and
18 put that option, the original option to wording in
19 there. Because I think you knew better. That was
20 an approach to try to put some quantity and
21 scheduling into a corrective action. Whether it
22 was done correctly or not, we can argue all day,
23 but to come in here and insinuate that somebody did
24 it for other than professional reasons was -- it
25 doesn't fly very well with -- but you accounted

1 well for yourself today.

2 And as long as we keep this approach --
3 if you win this battle, you -- you don't want to
4 lose your high ground in the process. You have
5 always come in with good science and good legal
6 options and I appreciate that. And I want to stay
7 as your strongest supporter. So thank you for
8 today.

9 MS. WHITLOCK: Thank you. Any other
10 questions? Thank you very much.

11 MR. GARRISON: I just want to close out
12 part of the presentation, one other point to make
13 on the issues is that the state board is
14 considering this right now. They are moving
15 forward with petitions on the Los Angeles permit on
16 this very issue. This permit can contain a
17 reopener to deal with it once the state board makes
18 its ruling.

19 But aside from the fact that it's bad
20 policy and potentially illegal, it bears waiting
21 for the state board to address this issue. They
22 certainly are going to and better to wait, allow
23 that process to go through incorporate whatever
24 changes, if any, are made than to make this change
25 which we believe is a rash choice and then have to

1 change it further at a later date completely
2 potentially restarting a program that counsel for
3 the state board to address this process, if you're
4 leaning on going in this direction at all, but
5 better still just to eliminate the proceeding and
6 go forward with the permit.

7 MR. ANDERSON: You know, you're starting to
8 sound like the copermittees.

9 MR. GARRISON: I believe I take umbrage in
10 that, sir.

11 Thank you very much.

12 MR. STRAWN: You have almost six minutes
13 left. Now I get --

14 MR. MORALES: Turn to the building
15 coalition and they have a total of 28 minutes. I
16 show six people that you've picked the order, and
17 just give me your name. I assume you've already
18 done a red card for everybody.

19 MR. McSWEENEY: Mr. Chairman, before get
20 started, we would like to use our 15 minutes and
21 reserve our 13 minutes for rebuttal and our closing
22 statement. You have myself, Dennis Bowling and
23 Tory Walker in this 15 minutes, and then whatever
24 time that we don't use, we would like to give to
25 one of our members from San Diego Gas & Electric to

1 discuss their issue which is very specific and none
2 of us are qualified to make that presentation to
3 the board. So we'll use our 15 minutes now and
4 reserve the 13 minutes for later.

5 Wayne, how do I get out of this?

6 MR. CHIU: I'm sorry.

7 MR. McSWEENEY: Mr. Chairman, when we're
8 finished, if I could ask Wayne to come up and help
9 get Fred's couple of slides up on the screen.

10 MR. CHIU: Sure.

11 MR. MORALES: You did state your name?

12 MR. McSWEENEY: Yes, I'm Michael McSweeney,
13 senior public policy advisor for the Building
14 Industry Association. We will get started by
15 introducing Mr. Dennis Bowling.

16 MR. BOWLING: Thank you. I'm Dennis
17 Bowling. I'm a principal of Rick Engineering
18 Company. I have taken the oath. Also the chairman
19 the technical advisory committee that put together
20 the hydromodification plan for San Diego County.
21 That involved in the storm waters since the 2001
22 permits, and I have a lot of experience in trying
23 to make these things work.

24 What we do support as part of this
25 process is development of water quality improvement

1 plans. We think they're a -- would be a great
2 asset to San Diego County. It will be an open
3 process involving all the stakeholders. The
4 stakeholder panel consisting of experts to assist
5 in the development of the water quality improvement
6 plans will be great. We're looking forward to
7 regional water shed solutions and alternative
8 compliance will really help us with all that.

9 With alternative compliance that's
10 proposed with this permit, we'll be able to achieve
11 cleaner water faster for San Diego County. And it
12 will incentivize and encourage regional
13 cooperation. We do have some suggestive
14 improvements to the plan. First, adopt EPA's
15 policy as incentivizing in-fill development by
16 keeping the urban in-fill hydromodification
17 management standard exemptions per the existing
18 San Diego County hydromodification management plan
19 process and modify them as necessary as part of the
20 stakeholder process and development of the water
21 quality improvement plans. And allow more time for
22 the water quality improvement plans. It's proposed
23 that you give the executive officer the authority
24 to extend the time necessary to develop the water
25 quality improvement plan if needed. The reason I

1 say that is that there's going to be a lot of
2 volunteers following this process. I put literally
3 hundreds of hours in the hydromodification
4 management plan and now we're going to do eight
5 plans in San Diego County in 24 months.

6 There's no time in some of plans for
7 the volunteers who should be involved in those
8 plans to be able to make the effort to do it right,
9 so we're proposing that you grant the executive
10 officer that authority.

11 Also, redefine priority development
12 projects for large areas, low impervious projects,
13 and we'll talk more about that later. And change
14 the sediment transport language. And we'll talk a
15 little bit more about that later. And also,
16 redefinition of ground water. The coalition and
17 the regional board staff agree that the tentative
18 order keeps current hydromodification management
19 standards in place until such time as the water
20 quality improvement plans are approved by the
21 regional board. The coalition believes that the
22 current hydromodification management standards are
23 based on good science and a lot of hard work.

24 Given the limited resources available
25 to the copermittees, the coalition believes that

1 the current hydromodification standards should be
2 presumed appropriate unless shown otherwise through
3 development of the water quality improvement plans.
4 So we request this of the board: That the
5 following finding be added to the tentative order,
6 and that's the regional board finds that there is
7 substantial evidence to support the use of the
8 current hydromodification management standards in
9 each water quality improvement plan, unless there
10 are unique characteristics in the watershed to the
11 contrary.

12 And now I would like to turn it over to
13 Tory Walker.

14 MR. WALKER: Tory Walker, president of Tory
15 R. Walker Engineering. I did take the oath. Thank
16 you for this opportunity, Chairman Morales and
17 members of the board. I would like to revise a
18 little bit of my short presentation and make it
19 even shorter. Mr. Uhley from Riverside County
20 presented a slide earlier on a recommended action
21 with regard to the sediment balance. We support
22 that language. Essentially, it says this is a very
23 complicated issue. It's definitely one of those
24 issues where one size does not fit all. In
25 concept, it's a great idea. As a policy in a

1 permit, it's not a good idea. So essentially, the
2 recommendation is to incorporate it into water
3 quality improvement plans. That's where these
4 issues can best be studied and dealt with.

5 In addition to that, I would just like
6 to add that I was a little disappointed today to
7 hear a lot of testimony focussing on a purpose for
8 a water quality improvement plan, which I think the
9 initial intent and purpose was to achieve water
10 quality objectives sooner and I think we might lose
11 focus of that. As a stream restoration person,
12 it's my desire to see the functionality of these
13 receiving streams being restored quickly. And
14 that's behind these comments. Thank you.

15 MR. McSWEENEY: Michael McSweeney, and I
16 have taken the oath. One of the issues we talked
17 about is the ground water. We talked with staff
18 and the executive officer yesterday, and the
19 problem becomes when an applicant goes in to deal
20 with a copermittee, so we feel we could clear up a
21 lot of ambiguity by just changing -- and the
22 request for the board there is changing the
23 definition to sub-surface water that occurs beneath
24 the water table and soils and geologic formations
25 that are fully saturated as determined by an

1 appropriately-licensed professional pursuant to
2 California Business and Professions Code Section
3 7830 ET. Whatever that means. I'm not a lawyer.

4 MS. KALEMKIARIAN: And following.

5 MR. McSWEENEY: And following. Thank you.
6 The purpose of the EPA standard and AB32 and SB-375
7 is a tremendous change in the way we've been asked
8 to build in the last five years, and that's to get
9 it to build in the in-fill project. We feel that
10 keeping the urban in-fill project resumption
11 reflects the EPA's policy direction to incentivize
12 in-fill development is a good thing. And we liked
13 to use the preproject condition standard unless
14 specific findings in the water quality improvement
15 plans require an alternative standard.

16 The definition of a prior development
17 project, we spoke yesterday with staff and we think
18 that there should be -- this is what this request
19 to the board is -- a definition that -- that if
20 you're building either wind turbines for a solar
21 farm out away from the city, that if you have less
22 than three percent total impervious surface, that
23 that could be excluded under the -- what's
24 considered a prior development project. I would
25 like to show a hand in the audience. How many of

1 you here are experts or consultants dealing with
2 storm water? Raise your hands. So there's maybe a
3 dozen people here.

4 With the water quality improvement
5 plans, we like to give Mr. Gibson the ability if
6 for good cause, to extend the deadline because
7 quite frankly, doing eight of these simultaneously,
8 the number of hands that were here, it's a lot of
9 work. And a limited number of people that have
10 both the knowledge and expertise and the
11 understanding of the environment and the
12 watersheds. So this is a request for the board to
13 modify the draft order to give your executor
14 officer discretion to extend the timeline if good
15 cause is shown.

16 MR. MORALES: Are you making a pitch?

17 MR. McSWEENEY: Well, he was quite
18 surprised yesterday when we brought that up.

19 Alternative compliance, we talk more
20 about this in our close, but we want to make sure
21 that project applicants can actually use the option
22 of alternative compliance. Our copermittees
23 naturally are not comfortable at this point because
24 if we do some retrofits, they're going to have to
25 maintain them. And I think that it's a moral

1 obligation for all of to us find a valid point of
2 getting them the resources that they would need,
3 not only to comply with the permit, but to make
4 sure that we can do alternative compliance because
5 it does not do any of us any good to have this in
6 the permit if we're not allowed to use it.

7 And I'd like to conclude and give Fred
8 a few minutes. We like the fact that we're on a
9 path of a collaborative relationship. We're
10 talking and working with people that we haven't
11 worked with before. And I tip my hat to your
12 executive officer for putting us on that path. We
13 want -- we want to be able to support this permit.
14 I think we need a little bit more time. I'll
15 address that in my close as to exactly why I think
16 you're going to find that the hydromodification
17 plan deserves the time over the next few years to
18 see the measurable results and to validate all the
19 effort and expense that went into it.

20 And last but not least, the water
21 quality improvement plans are supported by
22 everybody in the room and we want to make sure it
23 gets done right and gives us the time to do that.
24 So Fred, it looks like you've got -- how many
25 minutes, sir?

1 MR. STRAWN: You're coming up on 11 total.
2 So take maybe three minutes and then you wanted to
3 save 15?

4 MR. McSWEENEY: Yes. So if you can, just
5 let him know when we're done with our 15 minutes, I
6 would appreciate that.

7 MR. ANDERSON: Can you stop the clock real
8 quick so I can ask Mr. McSweeney a question. Just
9 a practical question on the three percent request.
10 If you have an energy solar wind project out in the
11 back country that occupies less than three percent
12 of the site, don't you think that it would be
13 pretty easy to maintain any storm water runoff on
14 site and let it infiltrate without having ever to
15 discharge?

16 MR. McSWEENEY: I'm going to let Wayne
17 answer that. He has much more knowledge than I do.

18 MR. ROSENBAUM: I'm not sure about that.
19 Wayne Rosenbaum, partner, Stoel Rives on behalf of
20 the coalition. I have taken the oath. Here --
21 here is our problem. When you look at some of
22 these facilities, Mitchell covers hundreds of acres
23 frequently. You have isolated points around where
24 you have the foundation here and the foundation
25 there and you add them up and all of sudden you

1 have blown through the 10,000 square feet.

2 MR. ANDERSON: Or five.

3 MR. ROSENBAUM: Or five.

4 To have to implement -- you're right.

5 There shouldn't be a problem with everything -- you
6 don't need to implement LID in that kind of
7 situation because you sort of have a natural LID.
8 But the way we have created the permit, we have a
9 whole other set of steps that we're going to have
10 to go through, additional things we are going to do
11 in a situation that hopefully we're really doing is
12 we're doing some good things for the environment.

13 We are reducing our carbon footprint,
14 climate change, et cetera. These guys are the
15 folks that are helping resolve that problem and
16 it's -- this puts one more impediment in this
17 process where it's not really not going to get any
18 better water quality. So that's why we requested
19 it. Thank you.

20 MR. JACOBSON: Good evening, Chairman
21 Morales and other board members. My name is Fred
22 Jacobson and I work for SDG&E as a principal
23 environmental specialist and I'm -- I have taken
24 the oath. The post construction BMPs are meant to
25 address land development projects that have

1 concentrated areas or new and impervious surfaces.
2 For example, the roof and the parking lots of this
3 commercial complex that were in, these are new --
4 these are areas of concentrated impervious
5 surfaces.

6 However, the same permit conditions
7 would also be applicable to long linear type
8 construction projects like our transmission lines.
9 These projects have small disconnected footprints
10 of new and impervious surfaces that spread out over
11 long distances. They're not concentrated. They're
12 not the same kind of -- they don't create the same
13 issue as new commercial center like this. So this
14 is a significant concern to us that because of the
15 way the permit is written, that on these projects
16 that we would be subject to these kinds of
17 requirements, although there's not really an issue
18 for those requirements to address.

19 Just as an example of one of thresholds
20 is 10,000 square feet of new impervious surface.
21 That's on the left-hand side and on the right-hand
22 side is just the relative size of a foundation for
23 a new construction or for a new transmission to
24 your foundation. So you can see there is a
25 relative difference here. Note that the area on

1 the left-hand side is all concentrated in one area.
2 The small circles of foundation footprints would be
3 located over a long distance on a construction
4 project for a new transmission line. And when we
5 build these lines to connect to the new solar
6 farms, wind farms, new sources of generation so
7 this is a current issue for us in this permit. And
8 applying the same requirements that are applicable
9 to a new commercial development to these types of
10 linear projects just doesn't make sense and it's
11 not appropriate.

12 The state board in several of their
13 permits, they have recognized this difference.
14 They addressed it by -- in the construction general
15 permit, they made a specific finding post
16 construction BMPs are not applicable to linear type
17 of projects. They have a special name for it.
18 It's linear underground project or linear
19 underground overhead project or LUP. And what we
20 want to see is that same consistency in this permit
21 as in the state board's permit. What we've been
22 told is that the board needs to make this decision.
23 Staff directed us to make our case so what we're
24 requesting is that you incorporate language into
25 the permit that specifies or clarifies that

1 development projects are not subject to the
2 development planning requirements in Section E-3,
3 and we have provided language and provided some
4 handouts of language that we have previously
5 provided.

6 MR. McSWEENEY: Thank you very much.

7 MR. ANDERSON: I have a question.

8 MR. ABARANEL: Can you go back to your
9 previous slide? Suppose I grabbed the square on
10 the left and started moving vertically with it,
11 when does it become a LUP?

12 MR. JACOBSON: I'm not sure.

13 MR. ABARANEL: When it's a half foot wide
14 and 20,000 feet long, is it a LUP?

15 MR. JACOBSON: What I'm -- what I'm -- so
16 you're saying if you take that, you lengthen it, at
17 what point does it become a LUP?

18 MR. ABARANEL: I keep --

19 MR. STRAWN: Are we raising it off the
20 ground?

21 MR. ABARANEL: It's the great path of
22 China.

23 MR. JACOBSON: Keep the area the same.

24 MR. ABARANEL: Okay.

25 MR. JACOBSON: But as I pull it, it

1 contracts in the horizontal direction.

2 MR. ABARANEL: When does it become a LUP?

3 MR. JACOBSON: Well, in the definition the
4 state board has included in their construction
5 general permit is a LUP when it is -- and there
6 actually is a definition.

7 MR. ABARANEL: There is a long definition.

8 MR. JACOBSON: So anyhow, the definition
9 talks about facilities that are like pipelines,
10 pipes and wires, that are not your standard
11 footprint for a development project.

12 MR. MORALES: I'm going to ask, I hate to
13 do this, a hypothetical question. Say we keep
14 things as they are, the Sunrise Power Plant, drive
15 out to the desert, we see wires and all the
16 locations where the -- meet the ground, that's a
17 LUP?

18 MR. JACOBSON: Correct.

19 MR. MORALES: What would SDG&E have to do
20 different under the permit than it does now other
21 than like some reporting requirements? Is it your
22 position that you are going to need to do some
23 hydromod or other work around every base of --

24 MR. JACOBSON: Yes. You would have to do
25 hydromod.

1 MR. MORALES: So what would SDG&E do at
2 each location?

3 MR. JACOBSON: We have not had a project
4 subject to this. We have done designs for this to
5 address what would be required, but the permit does
6 require just what it would for all the other types
7 of projects subject to the post-construction
8 requirements.

9 MR. MORALES: Which is?

10 MR. JACOBSON: Well, it's hydromod. It's
11 low-impact development. These -- these tower
12 foundations are spread out. That's one of the
13 first things we do under LID is you disconnect your
14 pervious surfaces.

15 MR. MORALES: But you're not -- you're not
16 going have to put in impervious pavers because
17 you're out in the middle of nowhere. The water
18 will go -- how does it work?

19 MR. JACOBSON: Again, the specific designs
20 we haven't sat down and said this is the design.

21 MR. McSWEENEY: Let Dennis take a stab at
22 it.

23 MR. ANDERSON: I have a question for Wayne
24 on this if I could.

25 MR. BOWLING: Dennis Bowling again. If you

1 were required to do hydromod for a project like
2 that you would have to take the water that's
3 displaced by that impervious surface, whatever it
4 was, 10 square feet, 20 square feet, take it into a
5 device to hold that water and either infiltrate it
6 into the ground or release it at an extremely low
7 rate and you would have to have one for every one
8 of the towers. The problem is really maintenance
9 of all those facilities. There is no real water
10 quality impact for putting a very small concrete
11 impervious surface stretched out up uncontinuously
12 along a power line that the impacts would be
13 unmeasurable feet away from the device. So there's
14 really no benefit to it, but the cost would be very
15 high. And the long-term maintenance would be high
16 and there would be additional right of way
17 associated with the device. And it's sounds
18 ridiculous, but the way permit and hydromod plan
19 you would have to do an individual assessment of
20 every one of those to determine the difference in
21 run off, pre and post. Do an analysis. Store the
22 water and drip it off at a controlled rate or
23 infiltrate it into the ground for little or no
24 benefit.

25 MR. MORALES: I guess I have a question for

1 staff later. Would this be one of those instances
2 where they could like do a project some other part
3 of the watershed so it wouldn't necessarily have to
4 do that at every location? You say, okay, we're
5 going to do a really nice project somewhere in Pine
6 Valley rather than here, here, here, here?

7 MR. BOWLING: That would be great for
8 alternative compliance, but there really isn't an
9 alternative compliance component of
10 hydromodification management plan for San Diego
11 County. So when you look at it, and they did this
12 study on it, they would have to treat it at the
13 source or you would have to over tenuous for
14 something -- for something else. Really hard to do
15 when you're talking about the very low flows that
16 we're talking about for hydromodification
17 management. You really try to trap, capture and
18 treat every square foot of the impervious surface
19 before it discharges offsite because you can't over
20 mitigate for it. We're dripping water off these
21 projects at such a slow rate because of the slow
22 energy required so hydromodification cannot happen
23 downstream.

24 It's really something that should be
25 excluded and it's so small that there would be no

1 benefit for an extremely high cost.

2 MR. ANDERSON: Can I ask a question?

3 MR. ROSENBAUM: Yes, sir.

4 MR. ANDERSON: So the definition of LUP
5 exclude the roads necessary to get to the
6 transmission poles and everything? I'm not that
7 worried about the individual little concrete
8 foundation, but I see the impact of those roads are
9 pretty dramatic as you go out in the back country.

10 MR. ROSENBAUM: Well, the way we have
11 defined re-development projects, underground
12 utility projects would not be considered or I guess
13 a re-development project does not include
14 underground utilities or redoing underground
15 utilities.

16 MR. ANDERSON: This is underground/overhead
17 project is LUP. So the overhead project, do they
18 require -- do the roads become exempt in this
19 definition, if you can answer that, or if anybody
20 can.

21 MR. KEMMERE: I have to read this.

22 MR. ANDERSON: You're on the same page as I
23 am as trying to understand the language.

24 MR. KEMMERE: That is quite an interesting
25 definition. I don't -- that's from a different

1 permit. And, you know, we have had this discussion
2 with SDG&E on several occasions and each time we
3 have told SDG&E we don't agree with them. If the
4 board were to direct us to include a special
5 exception you know we would do it at your
6 direction. But other than that we don't believe
7 it's necessary.

8 MR. McSWEENEY: Thank you very much.

9 MR. STRAWN: Next we go to interested
10 parties and the first one is Mr. Roger Butow from
11 Clean Water Now.

12 MR. BUTOW: Roger Butow of Clean Water Now,
13 and, yes, I have taken the oath.

14 I also stayed in a Holiday Inn a few
15 years ago and if you know the commercials, I
16 haven't done brain surgery yet but I'm thinking
17 about becoming a theoretical physicist. Just
18 thinking about it.

19 First thing I would like to do is point
20 out that we too support -- thanks Henry.

21 We do support errata option number one.
22 The irony is we didn't share any information, other
23 than just simple transmission, to Coastkeepers or
24 NRDC. We notice they're on the same page we are.
25 And I definitely did not communicate with US EPA,

1 and I'm very glad to hear John's comments. And we
2 concur with everything, including the errata or
3 additions that US EPA included. We have the same
4 anxieties and fears and also we obviously are not
5 fond of backsliding. We would like to say that we
6 also do believe there was -- we like the new
7 wording of priority development projects in option
8 number one. We also like the fact that in both
9 options the word "restore" has been restored so
10 we're very appreciative of that word, because we
11 believe that is actually what we are doing. It's a
12 simple return.

13 So that said, we have one other
14 objection to errata option number one that has not
15 been mentioned. We have absolutely, we'll just
16 say, very little faith in the concept of the water
17 quality improvement plan panel. Our experience, as
18 we shared in our submissions to you are that this
19 has been abject failure in southern Orange County.
20 In fact, the historical incidence that have
21 occurred have just been the opposite. We're afraid
22 that the county will just -- the copermittees will
23 just appoint people to that panel that are
24 go-along-to-get-along people.

25 They will decide, and even though we

1 know staff is attached, they can go around staff
2 and ex-parte communications, they can come up with
3 the done deal with the go-along-get-along people.
4 We won't call them appointees, we will call them
5 annoy-ties. So we have zero trust really in the
6 county to be the lead on that and we don't see, if
7 I can use the word, the concept is not flushed out
8 enough, and we'll leave the pun there, but we just
9 don't feel that there is enough oversight built
10 into it. The County of Orange has never
11 empowered -- in my 15 year history has never
12 empowered an NGO and, in fact, refuses to appoint
13 NGO's to any water shed committees, even an ad hoc
14 that sound NGO support. So that said, that is
15 actually the fatal flaw in option number two for
16 us. Option number one deletes it and we like that.

17 Moving on. We were very fascinated
18 that it was noted that our cost benefit analysis
19 was resinated and found relevant, except I don't
20 know what was relevant. I not only like to know
21 what I have done wrong, but what did I right, so if
22 there are comments or questions I sure would like
23 to know why it was found to be relevant, but I can
24 list some bullet points and then I will leave with
25 these bullet points about the cost benefit

1 analysis.

2 First, dated two years ago, why are we
3 suddenly seeing it drop like a trump card or
4 something at a bridge game or crazy eights. This
5 thing has been in existence for two years. Why
6 wasn't it submitted during the focus workshops. It
7 has kind of an auspice, kind of an air of
8 desperation, and, by God, maybe we can throw that
9 on the pile and that will convince them. So we
10 have -- we have very little faith in that.

11 Why, once again, it was completed two
12 years ago, but it's completely derivative. It
13 consists -- it's an aggregation. In literature you
14 would say it is derivative summation based on
15 outmoded studies. Everything in here is seven
16 years or more in age and the era of water quality,
17 that is Jurassic Park. That's a Tyrannosaurus Rex,
18 all of these studies. The epidemiological is -- my
19 God, it's almost 15 years old. That is actually
20 almost -- I agree because I wrote almost the same
21 thing that the NRDC did, irrelevant. And that's
22 what probably makes it irrelevant. But I would
23 also say the proper mechanism, or at least to have
24 done a co-writing of the report would be a cost
25 effectiveness analysis. Cost effectiveness is a

1 type of economic evaluation that examines the cost
2 and health outcomes of alternative intervention
3 strategies. It compares the cost of an
4 intervention to its effectiveness as measured in
5 natural health outcomes as in cases prevented,
6 years of life saved, et cetera. It's presented in
7 a cost effectiveness ratio, does that sound
8 familiar, which expresses cost per health outcome,
9 such as cases prevented, years of life gained, et
10 cetera, and it compares alternative programs with
11 common health outcome, recess the consequences of
12 expanding an existing program. If we're going to
13 do this then let them come back -- let them come
14 back in a year with both a new cost benefit
15 analysis, one that actually is current and
16 up-to-date, and, second, a cost effective analysis.
17 And I sure would like to know why my report was
18 found relevant, but I don't know if we have time
19 enough.

20 MR. STRAWN: You're out of time.

21 MR. BUTOW: You can ask me questions.

22 You're not out of time. I was happy to see the
23 gold star by my name. Thanks.

24 MR. STRAWN: Sean Kerrigan?

25 FEMALE SPEAKER: He is on his way.

1 MR. STRAWN: Okay. Had a couple of
2 representatives from Senator Beason's office;
3 Jessie Gype (phonetic) or Angelie Kelnick
4 (phonetic). One more card from a Vaikko Allen.

5 MR. ALLEN: Good evening, Vaikko Allen is
6 my name, regulatory director for Contact
7 Engineering Solutions. I will definitely not take
8 my entire time here. My -- I just want to say
9 thank you for taking the extra time between the
10 last hearing and now to make the changes that are
11 in the errata sheets. My main interest really was
12 in the post-development BMP criteria, and I'm happy
13 with the changes that were made to the
14 bi-filtration piece there so I will leave it at
15 that and say Thank you.

16 MR. STRAWN: Is there anybody else from the
17 public that would like to speak that I don't have a
18 card for or I may have lost their card or got it
19 mixed up in the wrong pile? No? Then I guess
20 we're back to closing statements.

21 MR. MORALES: Okay. Let's go to the
22 closing statement portion and we'll begin with
23 Building Industry Coalition.

24 MR. McSWEENEY: Again, Michael McSweeney
25 from the Building Industry Association. I wanted

1 to start off by thanking the board for setting up
2 the stakeholder process and specifically Executive
3 Officer Gibson.

4 I feel like a rookie this last year in
5 NFL training camp and this is the first big game.
6 I talked to many of the people in the audience,
7 this is my third, this is my fourth, this is my
8 second. This is my first, so I think you and I
9 share something. This is our first permit
10 adoption.

11 Past cycles, based on the stories told,
12 were very adversarial, kind of like a circular
13 firing squad. Everybody shot at each other. This
14 permit has been a journey. And Executive Director
15 Gibson has all got us in a canoe. All the groups
16 have an oar and surprisingly we're not whacking
17 each other with the oars. We're paddling along
18 together, sometimes shaking our heads that we can't
19 believe we're doing this, but were almost 100 yards
20 from shore and we want to support this permit. We
21 feel we're this close. The permit is incredibly
22 complex. The revised permit was released 40 days
23 ago, 138 of the first 148 pages had changes. The
24 errata sheets were released 12 days ago and a
25 revise was released yesterday.

1 There are still issues that need to be
2 resolved. Lots of unanswered questions. And the
3 issues are complex and costly. Yesterday we spent
4 two hours with Executive Officer Gibson and his
5 staff and a couple of issues for us were answered.
6 It's been that iterative process for us talking
7 with the different groups, copermittees, NGO's, and
8 staff to get us to this point. With so many moving
9 parts and so many dollars at stake why not give us
10 the time to get the consensus necessary.

11 All of us here have a responsibility to
12 work together to secure funding necessary for our
13 copermittees to be able to do the work necessary
14 and required in a permit. All of us. We can't
15 point to the next guy, "it's your responsibility."

16 The best case is to get a broad based
17 funding source where everyone has a skin in the
18 game. The broader the base, the easier this will
19 be to get the resources necessary. If you look to
20 the business and development communities to fund
21 the permit you will fall willfully short and you
22 will cause unintended consequences of employers
23 leaving the region, making the remaining employers
24 less competitive, while causing increases in all
25 types of housing and construction projects. Would

1 region nine not be better served by all of us
2 together, joining together, board, staff, NGO's,
3 permittees and the business coalition to offer
4 possible funding solutions to our governor and
5 legislature. Additionally moving forward I believe
6 the regional quality control board needs to be a
7 team builder, part cheerleader, part coach and part
8 referee. We need to continue the collaborative
9 process that you started a year ago all the way
10 through the adoption of the water quality
11 improvement plans.

12 Mr. Gibson, you and your team hold the
13 key, as directed by your board, to shepard us
14 through this new process. If we are successful not
15 only do we clean up the water faster, we
16 demonstrate to other regions and states that a way
17 forward to solving complex and costly public policy
18 problems is the way to go.

19 We support the option two errata and
20 would like time to work with the copermittees, the
21 NGO's, regional quality board staff.

22 The reason I went back for my marker is
23 there was some discussion, like Noah said, about
24 alternative compliance. Being the rookie at the
25 game. The circle I drew represents 1.3 million

1 homes built in this county.

2 Wayne Chiu, have we had storm water
3 permits for like 20 years? So let's say for the
4 sake of discussion over 20 years there have been
5 BMP's that much of what has been built is covered
6 by some sort of BMP.

7 So my question is, where are the
8 pollutants coming from. If these have BMP's the
9 answer to question is the rest of the environment.

10 What alternative compliance can get for
11 us, and I know my friends in the copermittee
12 community are nervous about this, but it allows us
13 to do what we do now, which is effective on new
14 construction projects. And then as Jill, when I
15 shared this with her, told me, we put an extra skin
16 in the game, whether it's in lieu fee. The
17 alternative compliance goes to address what's been
18 built for 150 years. That's how we can get to
19 where we need to be quicker for less cost.

20 So what's the tradeoff? The tradeoff
21 is additional compliance on site costs more money.
22 Would it not be better served to do what we do now,
23 which is very effective, and move additional
24 dollars into the areas that have nothing. Trade
25 one to two percent additional pollutions here for

1 at worst 60 percent over there. Talk to Vaikko
2 Allen about the types of existing technologies that
3 are on the market today that we can utilize.

4 So we find yourselves here, what, 15
5 hours later over the last two months, we're tired,
6 our butts are sore, we want to go home. For all
7 the testimony you heard one amazing point stands
8 out to me, every single person in this room wants
9 to clean up the storm water. Everyone. Nobody is
10 disagreeing. We all agree on the same outcome.
11 The disagreement is how we get there.

12 Does the Regional Quality Control Board
13 staff have all the answers? No.

14 Do the copermittees? No.

15 Do our friends in the NGO community?

16 No.

17 Do we? No.

18 But we all have expertise we all need
19 to share. The key is to continue the
20 groundbreaking process you started back in June
21 with the structured workshops. The more we work
22 together in a collaborative fashion, the more we
23 find ways to agree. The more we work together, the
24 more we trust one another. And that's the critical
25 point. Trust and respect to have be earned. It

1 takes time.

2 Richard Boone from Orange County last
3 month was right when he expressed disappointment in
4 the lack of continuity after the structured
5 workshops were completed. We had been much better
6 served to continue working monthly together to get
7 to where we need to be. Luckily for our group
8 Coastkeepers reached out and we found a way to work
9 together. Thank you, Jill, for having the guts to
10 ask to meet with us and to start work with us. We
11 respect you for taking that first step.

12 Take a moment and review the process of
13 putting together the MSCP. We talked about that
14 last month. Most people said it couldn't be done,
15 would cost too much, take too long, but here we are
16 15 years later and the MSC is looked upon as a
17 national model. It brought together all the
18 stakeholders that you have done, built a consensus,
19 put a plan in place, and as has exceeded everyone's
20 expectations, but they took the time to do it
21 right. We have that same moment in front of us.
22 We can continue down the same prescriptive path of
23 must or join hands and continue collaboration on a
24 permit that will achieve consensus and produce
25 better results. We could be a national model of

1 how we do this.

2 Our coalition has learned to respect
3 and trust people we thought were adversaries, the
4 environmental NGO's. We still disagree on a number
5 of subjects, but we know that they are sincere and
6 we trust working with them because we respect them
7 and what they stand for. We believe they trust
8 working with us. They have experts who should be
9 in contact with your engineers in figuring out ways
10 forward to solve this problem. No one person or
11 group has all the answers but working
12 collaboratively we learn from each other, build
13 bonds and trust and respect that allows for the
14 exchange of ideas to grow and flourish.

15 Before you know it we'll have a permit
16 with broad support, new ways of working together
17 that will produce better ways to achieve
18 compliance. We'll be well on the way to solving
19 this problem instead of fighting over who controls
20 telling who what to do and how to do it. The
21 choice is yours. We can continue fighting all the
22 way forward or you can give us the opportunity to
23 get it right. Our position is to get it right over
24 getting it done. Outcome over process.

25 And now Wayne Rosenbaum will do the

1 lawyer thing like on the commercial on TV.

2 MR. ROSENBAUM: I always get the fun parts.

3 Wayne Rosenbaum, Stoel Rives, on behalf of the
4 coalition.

5 On number one we have a couple of
6 thoughts and comments. We do support option two.
7 We do support it for a multitude of reasons. First
8 of all, we have spent a lot of time working on a
9 permit that assumes that we're going to develop
10 high quality water quality improvement plans. If
11 we were to take option -- the alternative
12 compliance option off the table, there is no
13 motivation other than a stick for the copermittees
14 to get involved, or for the community to get
15 involved. It becomes purely strict liability.

16 Two, while we do respect staff's
17 assertions that, you know, they will use their
18 prosecutory discretion, we still have not asked for
19 and have not received an opinion as to how midgon
20 (phonetic) strict liability penalties apply to this
21 NPDS permit. It is an NPDS permit. If you accept
22 option one it has numeric affluent limits and at
23 that point each of these copermittees every time
24 they send you a report will be sending you \$3,000
25 for every line on that report where they cannot

1 meet the water quality objectives today. This is
2 not a formula for working cooperatively together
3 and solving the problems.

4 We believe that the option two is a
5 better option. Moreover, it is the option that was
6 -- that was -- been incorporated into almost every
7 other storm water improvement. A water quality
8 improvement plan is nothing but a storm water
9 pollution prevention plan by a different name. We
10 use them in construction permits. We use them in
11 industrial permits. We use them across the board.
12 Plan, do, check, review, and we do it all the time.
13 I understand that NRDC decisions that says, "Well,
14 we always had strict liability in these permits."
15 I intend to disagree. I have been at these storm
16 water permits for about 18 years and the result of
17 it is we never -- until NRDC -- yes?

18 MR. STRAWN: You have one minute.

19 MR. ROSENBAUM: One minute. Until NRDC, no
20 one, at least in the regulatory regulated
21 community, thought we had strict liability. We had
22 BATBCTP. This is a huge change. And I guess I've
23 run out of my time, so unless there is one final
24 question or comment, very quickly for the record,
25 we're still real queazy about whether or not

1 procedural due process was followed, but we would
2 like to get on with it and get it done, so I got it
3 on the record. Any questions? Thank you.

4 MR. GARRISON: Thank you Chairman Morales
5 and members of the board. Noah Garrison with the
6 Natural Resources Defense Counsel. I would like to
7 note our objection to the changes proposed by the
8 building industry, in particular, the proposed
9 changes to the definition of priority development
10 projects and to the hydromodification standards,
11 but beyond that we have no further comments. We
12 urge the board to adopt a strong permit that
13 removes the alternative compliance provision as
14 laid out in option one and thank you for your
15 consideration of our comments. Thank you.

16 MR. STRAWN: The business about the LUP, do
17 you have a concern or a position one way or the
18 other about the linear projects.

19 MR. GARRISON: I hesitate to state that we
20 have an opinion one way or another at this time. I
21 think our view is that, as was pointed out, that
22 most of these are going to kind of runoff onto the
23 ground and soak into the ground or get taken up by
24 vegetation anyway, but we don't really have a
25 strong opinion beyond that at this point.

1 Certainly for the priority development
2 project, we do. Three percent over a large area
3 could be an extremely large amount of impervious
4 surface being put in place, but I don't have a
5 decision one way or the other.

6 MR. STRAWN: Thank you.

7 MR. GARRISON: Thank you very much.

8 MR. STRAWN: Copermittees, you have half an
9 hour or so left. I don't know if you want to use
10 all that. It's getting late, in case you didn't
11 notice.

12 MR. BROWN: Well, I know for the Port of
13 San Diego I won't be using that. I only have one
14 point to make and it's only one minute. I think
15 you should decide in a broad philosophical ideas of
16 what you think is right, but I do want to address
17 one technical point. On the EPA letter that's the
18 been much discussed here, the pertinent language
19 here says that backsliding is prohibited in NPDS
20 permits allowing additional time to complete a task
21 that was required by the previous permit,
22 constitutes a less stringent condition.

23 My point is that the TMDL's have never
24 been written into these prior permits. What the
25 copermittees are saying is that this huge

1 additional burden is because we now have to deal
2 with these TMDL's written into a permit. So that
3 the -- the fact that we're asking for additional
4 time to deal with that additional burden should not
5 be considered anti-backsliding. And now I'll turn
6 it over to the main presentation. Thank you.

7 THE REPORTER: What is your name, please.

8 MR. BROWN: Again, this is Bill Brown from
9 the Port of San Diego.

10 THE REPORTER: Thank you.

11 MS. SCORPANISH: Good evening. Mary Anne
12 Scorpanish from the County of Orange where I lead
13 the OCY program and I'm speaking giving closing
14 remarks on behalf of all the copermittees. I want
15 to start out talking a little about option two.
16 And if you didn't get the message already it is a
17 very high bar. It is a very challenging
18 alternative for any of the permittees to try to
19 pursue. It relies on the water quality improvement
20 plan that the permittees would need to develop and
21 have approved by this board. It's not up to the
22 permittees to decide what might be good enough and
23 then, you know, saunter on from there. It's also
24 subject to public input. It's focus, remember, the
25 water quality improvement plan, on those outcomes

1 on prioritizing on what the most important problems
2 are in each one of these watershed management areas
3 on being strategic with those, on being innovative.
4 And if we step back for a minute and think about
5 what the intent, or at least what we understood the
6 intent was as presented by the staff, was to
7 clarify what the receiving water limitation
8 language meant. We all thought -- all the people
9 in the regulated community thought we knew what
10 that language meant all these years that it was in
11 our permits. The LA County flood control district
12 case, the court ruling on that, completely flipped
13 that on its head. And so that's why we have been
14 making a number of comments throughout all the
15 workshops and the hearings that you've held on how
16 important this receiving water limitation is in
17 light of that court case. Because we feel it's
18 completely changed -- changed the game. And there
19 have been comments earlier about, you know, we
20 thought it was all subject to MEP requirement,
21 which, in essence, says you have a program, you're
22 doing everything that you possibly can be doing
23 that's practical to do, and, therefore, you're in
24 compliance. I will make a note that the other
25 outcome of that court case was that every separable

1 element of the permit is visibly enforceable.

2 So in terms of option two taking away
3 any enforcement authority that the regional board
4 has, any enforcement leverage that the regional
5 board has, we don't see that being the case at all.
6 We know that option two is not going to prevent us
7 from getting sued. And, in fact, nothing that
8 could be written into this permit would prevent us
9 from -- from anyone from bringing suit. But what
10 you can do with option two, and what is within your
11 discretion to do, is provide us at least the
12 possibility that we can be in compliance instead of
13 option one which is really no possibility at all.
14 We feel very strongly about that, and you may have
15 heard some equivocation in April during the last
16 two days of hearings, because we don't see it as
17 certainly as a safe harbor, we don't see it as an
18 ideal solution, but we would rather have some
19 possibility than to have none at all. I also want
20 to speak mostly on behalf of myself here that --
21 and for my team as well. We didn't go into public
22 service and dedicate our careers to that to have
23 anything less than sound policy. Anything less
24 than good government. Anything less than being
25 good public stewards, and not only the environment,

1 but the financial resources of the tax payers. And
2 our mission is to be -- you know, to do nothing
3 less than to be in compliance. I mean that is the
4 minimum bar that we strive for. So every time we
5 have come to you and made a plea for some permit
6 requirements that are achievable that are within
7 our reach, it always goes back to that mission that
8 we feel and that personal mission, as well as our
9 organizational mission. We are not like a factory
10 that controls what comes out of our pipes and
11 controls our process, our system, the storm drains
12 and flood control channels is open to whatever
13 comes in to them. We -- we know that the lawmakers
14 responsible for reducing that pollution in those
15 discharges that we make from our system to the
16 maximum way practical, but I think what we're
17 tasked to do, we are tasked to make changes to
18 industry standards. We have made some very
19 fundamental and far reaching changes to the
20 development industry practices and development
21 industry standards. We're talking about other
22 industries and business as well as; gas stations,
23 restaurants and so forth.

24 We're also being tasked by the Clean
25 Water Act as an MS4 system operator to change

1 societal practices to get people to stop littering,
2 to get people to stop over-fertilizing and overuse
3 of their pesticides in their yard and a myriad of
4 other kinds of activities. This doesn't happen in
5 year. It doesn't happen in a permit term. These
6 are, you know, decade long practices, and that's
7 why we have time and again we go back to Congress's
8 intent by setting that MEP standard on to these MS4
9 permits rather than the strict limits at the end of
10 the pipe in terms of meeting new affluent limits.
11 So I wanted to bring that back to you and to let
12 you know that we are in it for the long term. We
13 are in it -- we are in this business to make water
14 quality better. We owe it to our community. We
15 owe it to the future generations, and that's what
16 we're committed to do. With that, I don't know if
17 you have any questions, but that was the sum of my
18 comments and I just maybe one more comment. So
19 even if it didn't cost us anything to do all of the
20 requirements that are in the permit, if we can't
21 ever be in compliance, that means something to us.
22 So it's not merely the dollars but it's -- it's
23 being in compliance and doing the right thing and
24 being within the law. That is important to us.

25 MR. STRAWN: And thank you for being

1 expeditious. I guess we're to the staff.

2 MR. MORALES: US EPA.

3 MR. STRAWN: Oh, US EPA, do you want to
4 make a closing comment? Cathy start.

5 MR. KEMMERE: John Kemmere with EPA. So,
6 yeah, I don't have any closing comments prepared.
7 I just wanted to -- just a couple of quick things.
8 There was some comments made about the TMDL and the
9 scientific basis for it. We do stand by the letter
10 we wrote to the Congressional reps. That is based
11 on sound science and bacterial approach, that the
12 reassessment of the recreational use criteria that
13 EPA did in 2012.

14 I did look at the Orange County
15 proposal, and, again, I hope I made my point clear
16 that we really do prefer option one. Option two
17 options, but if you do choose to go with option
18 two, I would really recommend you stick to the
19 staff recommendation. I didn't see the value in
20 the Orange County changes that were recommend. I
21 think your staff to have well thought-out approach
22 in how they came up with that option two.

23 Unless you have other questions for me,
24 that's all.

25 MR. MORALES: Staff.

1 MR. CHIU: Good evening, Chairman Morales
2 and members of the board. I just want to say first
3 and foremost, thank you to everybody in this room
4 for sticking it out for three days of hearings. I
5 think we all learned a lot by listening to each
6 other. I know I've heard quite a bit that I
7 thought I understood and have a better
8 understanding of now but doesn't change my opinion
9 necessarily, but it still gives me some better
10 understanding.

11 You know, when we -- when we first
12 started on this permit, our -- our end objective,
13 our only objective was to make sure that we have a
14 permit that will end up restoring the water quality
15 standards within our receiving waters. We do
16 acknowledge that it will take some time. And we
17 know that's going to take more than five years. We
18 weren't expecting anyone to achieve the water
19 quality standards in five years.

20 We've been doing this now for almost 25
21 years. And we have seen some limited success, but
22 we know there is a lot of progress to be made. Now
23 during the testimony that you heard during the last
24 couple of hours, we still are back down to three
25 issues that I mentioned during my opening remarks

1 during the first day of the hearings.

2 We are still talking about development
3 planning issues. We're still talking about TMDL's.
4 And we're still talking about the compliance
5 option. I'll touch upon all three.

6 With the development planning
7 requirements, we believe as staff that we have made
8 all the changes that are necessary, based on the
9 testimony, based on the comments received, based
10 upon on our understanding of what's necessary in
11 order to achieve improved water quality. With the
12 exception of USEPA's recommendation, you know, we
13 would basically say that all changes that are
14 necessary are provided to you in the errata, both
15 in options one and two, or the development planning
16 standards.

17 In terms of TMDL's, you heard a lot
18 about the new science that's available, the, you
19 know, potential flaws in the approach that we used.
20 I agree there is new science. There is new
21 information the TMDL's can improve. That doesn't
22 invalidate the approach that we used. That does
23 not invalidate the TMDL's. That does not remove
24 the requirement for us to incorporate the TMDL's
25 requirements as part of this permit.

1 We believe they have been incorporated
2 as required and as appropriate, so we don't believe
3 any additional changes are necessary other than
4 what we have provided in errata. Now, as far as
5 the last option or the last item, the compliance
6 option, obviously we've -- we have provided you two
7 options to consider. Now, it is obviously an item
8 of interest for almost everyone in this room and
9 you'll note that there is some fairly strong
10 opinion on what you should do. Staff does not have
11 an opinion.

12 We have provided you the options
13 because we believe this is a policy decision. We
14 don't have a preference, but I will give you
15 staff's understanding of the ramifications. If we
16 go with option one, we maintain the status quo. We
17 maintain the legal precedent that has been set by
18 the state board through the Presidential order.
19 We're not opposed to that in any way.

20 Option two, we believe does provide a
21 very rigorous process and way for the copermittees
22 to provide to us and to the public their vision of
23 a pathway to compliance. We believe compliance is
24 achievable. We believe water quality standards can
25 be restored in the receiving waters. We don't

1 believe it's going to take five years. We do
2 believe it will take time. We don't know how long
3 that will take.

4 The copermitees should be given the
5 opportunity to tell us how long they believe it
6 will take, and the public should be able to weigh
7 in on what they think it should take. We believe
8 that option does provide that way of approaching
9 the problem and finding a solutions. As I said, we
10 don't have an opinion either way. We believe both
11 would be acceptable to us as staff. Our executive
12 officer may have a recommendation for you. I have
13 not heard it. I do not know what it is. Our legal
14 counsel may have some legal advice for you or some
15 legal guidance for you. I know some of it, but I
16 don't know fully what it -- it may imply. But our
17 position is that this tentative order is ready for
18 your option today.

19 We recommend adoption of tentative
20 order R92000130001 with either corrected errata
21 option one or corrected errata option two with the
22 proposed change provided to us by EPA. And there
23 may be some additional errata, depending on the
24 choice you make. Thank you very much.

25 MR. ANDERSON: Wayne, so if we do lean

1 towards option two, the copermittees, we kind of
2 County of San Diego, Riverside and/or Orange County
3 have suggested some different errata language to
4 clarify. Do you have a specific -- should we ask
5 you for your recommendation, specific ones as we do
6 that?

7 MR. CHIU: If you were to choose option
8 two, I would recommend no change to the proposed
9 option. I don't believe the changes that have been
10 requested are appropriate and USEPA has indicated I
11 don't think they would support option two if we
12 were to make any additional changes to it. But
13 that doesn't mean that we can't make changes to it
14 for you're to direct us to.

15 MR. ANDERSON: That one I did find
16 particularly attractive was the nexus discussion
17 clarification that would allow the copermittees to
18 just do what is within their legal to do. That was
19 I think that was County of San Diego.

20 ^ MR. CHIU: I believe that was a footnote
21 they wanted to the predevelopment requirement.

22 MR. ANDERSON: Right.

23 MR. CHIU: We would not recommend that
24 change, simply because it does, as Mr. Morales had
25 pointed out, it does kind of have some ambiguity

1 and how they might make a finding. And we believe
2 that the way the water quality improvement plan has
3 been structured, they could identify -- through the
4 alternative water shed, water shed management area
5 analysis, they could potentially identify those
6 types of areas that would not be subject to
7 hydromodification requirements.

8 Thus, would not be necessarily required
9 to restore a predevelopment condition runoff
10 condition, but you know, that would require
11 analysis of the watershed to demonstrate that that
12 wouldn't -- would in fact be an appropriate
13 exception for a particular area of the water shed.

14 MR. ANDERSON: Thank you for your response.

15 MR. STRAWN: Sorry if I missed everything.
16 The copermittees errata about making copermittees
17 plural and to singular possessive. Do you have a
18 position on that?

19 MR. CHIU: My position -- our position is
20 that the changes we made as provided in the errata
21 are appropriate for some of the compliance options.
22 There is -- the way we decided upon what should be
23 individual versus, you know, group requirement was
24 basically was it going to be based on what's coming
25 out of a particular copermittee's outfall? Or how

1 is something being expressed within the -- the
2 TMDL's.

3 And with the -- you know, the A through
4 C options, those were primarily looking at what's
5 coming out of the copermittes outfall, and how is
6 that copermittes's discharge affecting the
7 receiving water within its jurisdiction. With some
8 of the load-based options, if the TMDL's that
9 incorporate that load-based option, that load-based
10 option is expressed in the TMDL as a sum total for
11 all the copermittes, and it does not break out
12 those loads -- loads to particular copermittes.

13 And I think the one that the
14 copermittes are most focussed on, the water
15 quality improvement plans, the option to utilize
16 the water quality improvement plan to demonstrate
17 compliance, it is our belief that, you know, if you
18 are in a water quality improvement plan, everybody
19 should be implementing that water quality
20 improvement plan, and everyone is jointly
21 responsible for implementing that water quality
22 improvement plan, that they are complying with the
23 TMDL's, but within that water quality improvement
24 plan, they can demonstrate that they are
25 individually complying with, you know, A through C,

1 or that they are jointly meeting the load reduction
2 requirements or the load requirements, which are
3 provided as a sum total of the copermittees within
4 a water shed.

5 So we believe it's appropriate to limit
6 the singular to just what is coming out from the
7 outfall of the copermittees' outfall on
8 jurisdiction versus the other options, which I
9 believe has some joint responsibility involved.
10 Hopefully, that makes sense.

11 MS. KALEMKIARIAN: Just a follow-up. Since
12 you've been writing on this process very well, for
13 these kinds of things having drafted long documents
14 and Thomas -- you miss stuff. There's things that
15 get changed later. People don't understand
16 something a certain way, how correctable is this
17 six months from now, a copermittee comes us to and
18 says, oh, my God. This is an EES instead of an EE,
19 apostrophe S. How correctable is this that we can
20 take something up like that if it comes before us?

21 MR. GIBSON: The board can certainly
22 entertain minor amendments to it, but the process
23 to that would -- there would be some cost time to
24 it. What I would point out more importantly is
25 that there will be a water waste discharge in 2014

1 and another one submitted by Riverside County in
2 2016. Those offer us opportunities to provide
3 corrections or clarifications in minor ways as well
4 as change of course in major ways. If there were
5 relatively minor issues, I would suggest probably
6 they're not that important. If there's a spelling
7 change for example, or an apostrophe as versus and
8 S, apostrophe.

9 Certainly one could argue it the other
10 way. But if they're indeed those type of lessons
11 since to learn, we can incorporate those changes
12 and if they truly important, if they do really turn
13 a legal corner, then we can bring back an amendment
14 to the extent we become aware of this. And I am
15 count on the engagement going forward, willing the
16 canoe perhaps to use that metaphor, that where we
17 do learn lessons along the way. I do intend to
18 bring them back to the board's attention, but I do
19 not want to be paddling around in circles either.
20 I hope that answers your questions. We can bring
21 back issues if we need.

22 MS. KALEMKIARIAN: I just can't imagine
23 with something coming -- points along the way, that
24 there's not going to be clarifications needed. No.

25 MR. GIBSON: I do have a recommendation

1 regarding the receiving water limitations
2 compliance option for your consideration.

3 MR. MORALES: I think we'll finish. Here's
4 my plan. We're going to ask -- I'll let the board
5 ask as many questions that they want of staff.
6 Then we will take a short break. We'll come --
7 I'll close the public hearing at that point. We'll
8 take a short break because I have no idea how long
9 we're going to be talking about this. We will come
10 back. We'll get your recommendation and begin our
11 discussion. That's called a cliff hanger.

12 MR. CHIU: Mr. Anderson has an area
13 that --

14 MR. ANDERSON: It was down to my last
15 question about, I think it was proposed by
16 Riverside, that I thought was attractive or had
17 merit, was the definition of redevelopment in
18 adding the language about routine maintenance to
19 maintain original purpose with facility and
20 emergency construction activities required to
21 immediately protect public health and safety.

22 MR. CHIU: Our opinion is that it's not
23 necessary. Obviously, everybody wants additional
24 clarity, especially for their particular type of
25 project or their particular concern. We believe

1 that the definition is broad enough to consider
2 most of those things and that if, in fact, there is
3 a project that is not going to cause an impact to
4 the receiving water, then there will not be a
5 problem. But for flood control projects in
6 general, they are part of the receiving water and
7 they are impacting the receiving water. Yes, there
8 may be some benefit that's being provided by that
9 project, but we believe that, you know, anything
10 going into a receiving water that alters its
11 condition, alters its, you know, potential support
12 of beneficial uses, should be examined closely
13 before it is not called a PDP or prior writ
14 development project.

15 MR. ANDERSON: Thank you. That was a good
16 answer and I appreciate it.

17 MR. STRAWN: That same logic applies to the
18 SDG&E linear project request for basically, you
19 figure it's covered under the existing.

20 MR. CHIU: Correct. In general -- when
21 we're talking about these linear projects, you
22 know, we've covered the ones, the definition of
23 redevelopment project, pretty much it covers the
24 underground utility. For the overhead facility, I
25 would say if the copermitttees were to find that a

1 project such as a linear project were to meet the
2 criteria of a prior writ development project and
3 they believe it is truly going to impact water
4 quality, then they should be implementing PMPs.

5 I question whether, you know, a 100
6 square foot pad would generate so much runoff as to
7 require the implementation of huge BMPs that are
8 going to cost so much to implement and maintain.
9 If you this about 100 square feet, you know, we
10 talk about maybe a half inch of rainfall, that's
11 about, you know, 40 gallons. 100 square foot pad.
12 Out in the middle of a desert, I'm not sure that it
13 is impossible to infiltrate. I'm not sure that is,
14 you know, difficult to manage. I'm not sure there
15 could -- there aren't BMPs that could be
16 implemented that he are relatively three
17 self-maintaining, but I have not designed it. I
18 have not seen the situation come up.

19 If and when the situation comes up, I
20 think we may have to look at it closely, but I
21 think the copermittees need to be given the
22 discretion to determine whether or not they believe
23 that it should be subject to the priority writ
24 development project requirements.

25 MR. STRAWN: Last comment. Much more

1 concerned about the access roads to those power
2 lines above or below ground than I am the pads.
3 This wouldn't -- that wouldn't be affected here
4 anyway, so...

5 MR. CHIU: If those are paved roads, I
6 would say we might have concern, but if they're
7 unpaved roads, we would at a minimum expect that
8 they be designed so they minimize runoff and
9 generation of sediment that can be discharged to
10 receiving waters. C.

11 MR. STRAWN: The sediment is where they
12 cross the back country streams are the big concern.

13 MR. CHIU: Right.

14 MR. STRAWN: Okay.

15 MR. MORALES: Okay. At this point, I'm
16 going to close the public hearing on this and we're
17 going to take a short break and then we're going to
18 hear from our executive officer.

19 (Recess taken.)

20 MR. MORALES: If you take your seats,
21 please. I'm going to call the meeting back to
22 order. The public hearing is closed at this point,
23 and we have pretty much two things to do. The
24 first is to ask our EO and take it from there, so
25 Dave.

1 MR. GIBSON: Thank you, Mr. Chairman,
2 members of the board. I have said and I will
3 repeat it again today. That this is both the best
4 of times and perhaps the worst of times. This is,
5 I think, the most important decision the board will
6 make for the next 20 years, like the shipyards was
7 for the last 20 years. This decision that you have
8 the chance to make today sets the stage for what we
9 will do with municipal storm waters, the single
10 water discharge to our region, the singles source
11 of stressors to our receiving waters. It's where
12 we have the greatest challenge that faces us today.

13 I truly expected coming into the April
14 hearing to be defending an approach in the face of
15 opposition from the environmental groups. That we
16 would provide what is essentially right now called
17 errata two, that we give you the option to provide
18 assurance for compliance.

19 When the municipalities are
20 implementing the water shed, water quality
21 improvement plan. That means certain criteria as
22 provided for. It is truly what I want to
23 recommend, but I cannot do that today. I think it
24 is where we have to be some way. I think the tool
25 that we want to use, but I do not think the time

1 itself is right now. When I consider the event,
2 recent months it has given me pause to wonder
3 whether or not we're were indeed ready to take that
4 step.

5 I do think that the water shed
6 quality -- water quality improvement plan is where
7 we need to invest our time and resources, but the
8 steps are which are described as optional, I think
9 are a challenge to surmount. When I hear
10 unremitting testimony in opposition to peer
11 reviewed TMDL's that's based on sound science, that
12 provides for 20 years to achieve the goals, and for
13 which we have again and again indicated a
14 willingness to engage and to update as appropriate
15 as new science comes in, it leads me to wonder
16 whether the copermittees right now are able to
17 engage in the type of planning that would address
18 multiple loads, all of this essentially, quantify
19 those loads, be able to propose a program that
20 would have social and political support and very
21 significant costs. Certainly a cost that cannot be
22 any less than what we're talking about right now
23 for the bacteria TMDL's.

24 And when we consider nutrients,
25 sediment, metals as we heard about earlier,

1 pesticides in the river side, herbicide, conditions
2 like hydromodification and erosion, biological
3 condition, I am concerned that providing this level
4 of assurance on the water receiving only is perhaps
5 a bridge too far at this time.

6 It does not speak to the rightness or
7 wrongness of the approach. I do think it's the
8 right way, but I'm not sure that we are ready and
9 time is right for that approach. I think that
10 instead we do need to focus on the water shed water
11 quality improvement plan as otherwise provided in
12 that tentative order toward the anticipation of the
13 day that we can take this approach with the
14 copermittees and provide that kind of assurance
15 that can galvanize that kind of support for the
16 kind of changes that need to take place in our
17 communities to truly change urban stream syndrome,
18 to mitigate and prevent it.

19 I think that's what we have to do.
20 That's the challenge that's facing us, but I think
21 that adding the errata two now at this time is not
22 the right thing do, although I would've thought
23 otherwise last month. There are those of us
24 opportunities to learn and to change and to adopt
25 to this course. We have, as I mentioned earlier,

1 the report of discharge for Orange County in 2014.
2 We have another report awaiting discharge in 2016
3 for Riverside County where we can consider adding
4 those copermittees to this permit for the region
5 and we can take lessons learned and adopt the
6 permit in those ways.

7 It may also be true by that time the
8 state board will have issued an amended
9 Presidential order or new Presidential order
10 instructing us on how to address receiving water
11 limitations exceedances. There may be even a Nine
12 Circuit Court of Appeals ruling in that time or new
13 information coming from the courts that would
14 inform this approach. There are opportunity yet
15 for us to come back to this approach that is
16 proposed for receiving water limitations compliance
17 options.

18 I think that the work that we can do
19 together in the water shed water quality
20 improvement plan can step us forward towards that
21 option. And ultimately, I think that when we can
22 have elected officials writing letters in support
23 of this approach as we have all TMDL's, that
24 they're willing to make that kind of political and
25 social commitment to the kind of costs that are

1 certainly going to be anticipated in that plan.

2 That will be the kind of plan that you
3 would want to approve and provide that level of
4 assurance for. But then is the right time to take
5 that action. I think what's particularly important
6 here today besides all of the many other issues
7 that we are addressing in the storm water permit
8 and progress that we have made there is you have
9 the opportunity to speak to the state board or to
10 the courts as to how you have viewed this issue
11 because a state board considers this, as they have
12 at the workshop last November, as they may consider
13 in a petition for review in the Los Angeles storm
14 water permit, as they will consider on this permit,
15 however you decide.

16 It is an opportunity for you to make a
17 statement that they will take note of. We have the
18 opportunity to evolve and to improve this approach
19 with the water shed water quality improvement plan,
20 I think that is truly a game-changer, not only
21 regionally, but I think ultimately statewide and
22 perhaps nationally.

23 I think we can make good investment on
24 that collaborative approach with the water shed
25 storm water copermittees, and that one way day we

1 can actually recommend this type of an approach.
2 But I don't think that day is today. So my
3 recommendation to you is that you adopt the
4 tentative order with errata option number one with
5 whatever corrections that are appropriate in your
6 view. And that would concludes my recommendation.

7 MR. ANDERSON: Was the EPA recommendation
8 on the -- that included in that?

9 MR. GIBSON: Yes. I would concur with the
10 recommendation offered by EPA with regard to the
11 new development and significant redevelopment
12 sections.

13 MR. MORALES: I think I'm going to need --
14 thank you. I think I'm going to need a motion and
15 a second. I don't care what the motion or the
16 second is, but then we can have a discussion. May
17 not be where we end up. I just want to make sure
18 we track whatever we need to do properly.

19 MR. ANDERSON: Can I ask the attorney a
20 quick question?

21 MR. MORALES: Yes.

22 MR. ANDERSON: What the heck does
23 procedural due process mean?

24 MR. ABARANEL: How long do you have?

25 MR. ANDERSON: Briefly. And have we

1 followed it.

2 MS. HAGAN: I believe you have more
3 than provided procedural due process to the parties
4 in this matter and not everyone has gotten what
5 they wanted, but they have all had ample
6 opportunity and notice to be heard on the issues,
7 so I don't believe that you are required to do more
8 than you have.

9 MR. ANDERSON: Thank you.

10 MR. MORALES: Thank you.

11 MR. ABARANEL: I would like to move that we
12 adopt tentative order number R9-2013-0001
13 incorporating option one and the recommendations of
14 the EPA.

15 MR. ANDERSON: Second.

16 MR. ABARANEL: And now it's open to
17 discussion.

18 MR. MORALES: We are open to discussion
19 now. We have a motion and a second. So
20 discussion.

21 MR. ABARANEL: I would like to say when I
22 first heard the word MS4 was serving on the Del Mar
23 City Council and it came from this board and early
24 executive officer in a form of a bill for \$100,000
25 to do something that we had never been consulted on

1 it was not a happy time. There was no clarity on
2 what the goals were from the point of view of the
3 residents of that particular city. I have to
4 suspect that that experience was replicated
5 elsewhere certainly in San Diego County and the
6 region. I was so upset by it I used to actually
7 get quite irritated when the street sweeper came by
8 because it wasn't clear to me it was doing
9 anything, but they were doing it. This order or
10 tentative order, if we adopt this MS4 permit, which
11 stresses outcomes versus actions, has been
12 discussed extensively with the copermittees
13 including -- thank you for recognizing the City of
14 Del Mar as tiny, but it has a permit, in my opinion
15 is a drink of clean water. If this were the
16 airport it would be a breath of fresh air. It's
17 absolutely totally a change in how the city, county
18 can work with our residents to accomplish something
19 that as many people have said here everybody wants
20 to achieve. I really appreciate your comments from
21 -- I served for about 20 years as a public servant
22 before I found this job, which I didn't -- where I
23 had to work harder and not get paid as much and
24 took it immediately.

25 It's not just to be in compliance.

1 It's to lead, it's to accomplish goals, and even if
2 those goals getting in compliance are a long way
3 away, taking that leadership is definitely
4 appreciated by your constitutes. They don't say it
5 all the time, but they do appreciate it. So I
6 think this is an incredibly positive step and it
7 has implications, many of which have been discussed
8 here, but a few which haven't, and I would like to,
9 since we've all said many of same things over the
10 last several months, I would like to point -- point
11 out some things that haven't been said, and I said
12 it a little bit earlier with regard to an earlier
13 decision and that has to do with education. You're
14 going to have to have people understanding what it
15 is they need to do to contribute to the outcome.

16 On the matter of cost benefit analysis
17 I would say none has been done to date. Regardless
18 of the fact that we were urged to accept a 2011
19 study, and have it in the record, and spent a lot
20 of time on it today, it was not put out to bid. It
21 was not peer reviewed. It doesn't have any real
22 stature. And if that is going to be really, really
23 important, not just the cost, but the benefit. The
24 -- then I would urge the copermittees working with
25 the board, working on your own, to do a serious

1 one. Really think about the cost and the benefits
2 and come back with plans that make the money that
3 need to be expended to have major benefits.

4 Thank you.

5 MR. MORALES: Anybody?

6 MR. STRAWN: Quick question, just to
7 clarify in my mind, we talked about with the EPA
8 errata and my notes said most of that had to do
9 with option one which is not part of this, so can
10 someone clarify what that errata would be that.

11 MS. KALEMKIARIAN: It's right here. Just
12 about filtration.

13 MR. STRAWN: So just that one comment?

14 MS. KALEMKIARIAN: Yes.

15 MR. MORALES: To be clear we're talking
16 about option one.

17 MR. STRAWN: I understand. But when we
18 talked about the errata I knew the big bulk of his
19 errata had option two. Thank you for reminding me
20 it was in there.

21 The only other comment, and it's a
22 general one that bothered me and I -- some other
23 people in the process, because I agree it's been a
24 wonderful process and it's a huge advance over what
25 had been done in the past. But I think if you all

1 reflect on it there were some -- there was a lot of
2 time in my mind wasted discussing items that either
3 were irrelevant or at the very least not going to
4 affect the direct results. One of them was that
5 cost analysis thing. I agree totally with the
6 professor. We should have just, thank you very
7 much, we stuck in the record, but there was nothing
8 in there that should have convinced anybody of
9 anything. And yet we spent an awful lot of time
10 talking about and we could have attacked on its
11 merits and throw it out. Not thrown it out. I
12 think it was best to bring it in the way we did
13 then reject it based on its merits as opposed to
14 the other item, the TMDL's. We, staff, again and
15 again made the comment that TMDL's are TMDL's.
16 You're not going to change them in this MS4 permit.
17 There's a process for that. There's concerns about
18 them. But the amount of time we spend arguing
19 about TMDL's was basically people saying we don't
20 believe what you're telling us about TMDL's.
21 That's understandable. But I think that should be
22 along with what the professor said. That should be
23 one of our goals is to get a little bit better
24 understanding and trust of one another that we
25 don't have to build things into something like an

1 MS4 permit to avoid some horrible outcome that
2 everybody is telling it isn't going to happen, but
3 just don't trust them. So we got to work on that a
4 little bit. And that's all I got to say. I do
5 thank everybody for their participation and I'm
6 voting for it.

7 MS. KALEMKIARIAN: This has been really
8 gratifying for me because my approach in my work
9 and my non-profit work was always collaboration and
10 cooperation and conversation, so I really applaud
11 Dave Gibson and the staff for the way you
12 approached this, even coming at the tail end I
13 could see what a difference it is and I -- I'm
14 going to support the motion and for the reason
15 really that it's the staff and Dave Gibson that
16 have to make this happen with the partners in the
17 community. I don't think that option two would
18 have protected anybody and it doesn't appear to me
19 that there is an imminent threat of litigation. So
20 it seems to me that the challenge is for people to
21 build that trust that people are really serious
22 about moving forward toward the goals and I was
23 quite alarmed by some of the public official
24 testimony, frankly, that seemed to say, well this
25 is a good idea, but we can't do it, period. And

1 San Diego County is going to have to lead the way
2 frankly in showing the board and working with the
3 staff that they do think it can be done because
4 right now the attitude that's been projected is
5 that it can't be done. And we just need to find
6 ways to alert people to when the ocean is dirty and
7 I just don't buy that. So I think there is so much
8 good that can come from this. I was going to -- I
9 would have voted for option two as well but my
10 comments would have been, everybody get ready to
11 their feet held to the fire, because if option two
12 was given and people didn't start moving on it, it
13 was going to be the same old, same old.

14 I, particularly on Dave's
15 recommendation, would vote for option one, but I
16 think now it really -- there's a different feet to
17 the fire, which is if the litigation is the result,
18 as an attorney, I'm saying that's a bad result
19 right now. So I'm going to take the NGO's at their
20 word that this is not where it's going.

21 And I look forward to the opportunity
22 in 2014 to see if we're ready at that point to look
23 at measured steps forward.

24 MR. ANDERSON: Mostly I want to commend
25 Wayne and the MS4 team. The two options and the

1 errata were prepared in a very short period of time
2 and sent to us with time to consider. I went back
3 through all my notes and everything and you guys
4 did a great job of covering all the really
5 important issues and giving us the opportunity to
6 vote on a very clear choice. And, frankly, I was
7 leading toward option two. Especially by the end
8 of the day, but it is something that Dave and his
9 staff have to enforce and with the opportunity of
10 -- of taking -- allowing the option two options in
11 the -- in the renewals for Riverside and Orange
12 County and allowing them to write -- I really look
13 forward to them being in those permits when we
14 receive the applications to do the -- to do the MS4
15 permits. I really applaud the direction this is
16 going. I hope that everybody doesn't take out
17 their pistols and start shooting.

18 MR. MORALES: I was actually really torn
19 most the day and in fact I still am in many
20 respects. I remember when I first got this job. I
21 was told by someone, you got to be crazy. That's
22 the kind of thing where you will make no friends
23 and lots of enemies and you work your butt off,
24 and, by the way, not get paid. And didn't quite
25 understand it at the time, but I think what she

1 meant was that, you know, to do it right sometimes
2 hard decisions will have to be made. I struggled
3 with what is the best approach to get clean water.
4 You know, is it, you know, giving like cities and
5 applicants and other copermittees leeway where --
6 or the ability to craft their -- their own
7 approaches and will that be most effective or is
8 it, you know, an approach like we have in -- in
9 option one. But I did mention earlier that I was a
10 history major, studied a lot of history, and still
11 try to. And I would be surprised if in the prior
12 discussions of permits, especially the initial
13 ones, that folks who sat on the board at that point
14 didn't hear exactly the same issues and concerns
15 from the regulated community that, one, it's too
16 expensive; two, we'll never be able to comply;
17 three, the money could be better used elsewhere;
18 four, you guys are nuts. But that's always been
19 the case in -- well, in history. And I am hopeful
20 -- I will vote for this. I am hopeful that at --
21 at some point, you know, everybody in the room or,
22 frankly, our kids and grandkids will look back and,
23 you know, think we made the right decision.

24 So unless there is any further
25 discussion or questions by the board I'll call for

1 a vote.

2 So all those in favor of the motion to
3 adopt the tentative resolution with option one and
4 EPA's suggested errata today, please signify yes by
5 saying aye.

6 BOARD MEMBERS: Aye.

7 MR. MORALES: Any opposed? Passes.

8 And thank you folks.

9 (Whereupon the hearing was concluded at
10 7:41 p.m.)

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1 I, Johnell M. Gallivan, Certified Shorthand
2 Reporter for the State of California, do hereby
3 certify:

4

5 That the meeting was taken by me in machine
6 shorthand and later transcribed into typewriting,
7 under my direction, and that the foregoing contains
8 a true record of the meeting.

9

10

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12 Dated: This day of , 2013,
13 at San Diego, California

14

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16 _____
Johnell M. Gallivan

17 CSR No. 10505

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