

Senate Select Committee on California Job Creation and Retention

Senator Roderick Wright – Chair

Informational Hearing on Regulator Reform: *Implementation of Phase II Storm water Permits: Implications for Business, Municipalities, and Taxpayers*

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SENATOR WRIGHT: Let me thank everyone for coming today. We want to have a discussion about storm water and the potential that it creates. This is a committee about job creation and retention. And as I say that, I want to say something that will seem like an oxymoron of sorts: The government doesn't create jobs. Let me say that again because a lot of people get it twisted: We provide services and those services are important. We build infrastructure so that some of you can provide jobs. We provide a utility system so that some of you can provide jobs. We do storm water treatment so that some of you can provide jobs. Obviously, people work at providing those services, but we have to be careful when we as government say that we're doing things to create jobs. The way that we create jobs is to help you do it.

And I understand, for example, that the 5 Freeway is an integral part of getting tomato soup; and I know that because sometimes when I'm driving behind the truck and a tomato flies off and hits my windshield, I concluded that he's in the tomato soup process and we're helping to facilitate that by building the 5 that allows him to get from the farms to the processing plant where that takes place. And then they cook the soup with gas that's a part of the utility system that we manage. But again, I want to keep reiterating because I have colleagues who get that twisted.

Our mission is to make your life, as those in the private industry, as least cumbersome as possible. We want to provide you the level of certainty so that you risk your capital and ideally come up with products and services that people want so that in order to do that, you provide jobs.

And in my old view of the *Sopranos*, we do something else that's also important: Government lives on the vig. Now the young people won't know what that is and so I'm not even going to tell you. It's short for vigo rish. And the young people go look that up. But we live on the vig. We get a piece of the action. It is our challenge, then, to make sure that there is action for us to get a piece of, because if there ain't no action, we don't get nothing. So the way the government creates jobs, so to speak, is that we provide stability, we provide certainty, we provide infrastructure, we provide services and you risk capital and at the end of that pipeline we get a piece of the action. Now that's how it ought to work.

Now, now that the gang is all here what I'd like to do— and again, we're going to note for the record that the black guy was here first and all the white guys came later because— see, you all would have said something different; if I had come in I would have heard the undercurrent of tones.

But let me welcome my colleagues, Senator Gaines, Senator Dutton, Senator Huff.

And I have just, again, a brief opening remark that I'll come back to. But let me ask if any of you wanted to make an opening comment. You don't have to but I wanted to extend that to you.

Senator Dutton.

SENATOR BOB DUTTON: Yeah, I will just briefly. And I think that was a very good opening statement with regards to, you know, what we feel, me personally and obviously you do too, government's responsibility is we don't create the jobs, as a matter of fact, some might even say we interfere with the creation of jobs. And the kind of jobs that I think I'm primarily concerned with is in the private sector.

You know one of the things that we've talked about here in the legislature; some of us believe that we're overregulating and that we have a tendency to not take into consideration the actual economic harm and hardships that we're going to create that might be far worse than the problems that we're trying to solve. And one of the hard fast things that we've got to realize is that when we talk about regulatory reform and excessive regulating control, the same things that affect the business community also affect our schools, affect state government, local government, and the everyday citizen. So this regulatory control, this ambition or this need to feel like you've got to have a heavy-handed regulatory environment here in California is actually in my opinion, working towards our detriment. So what I'm really concerned about and I'm glad that you've convened this informational hearing, I think that this is critical, to take a look at—to make sure that what we're doing is truly heading us in the right course. We've already seen in California's case where sometimes our zest to want to go out and actually be a leader in something has had its problems, because sometimes the science behind what we've proposed in our regulatory schemes has turned out to be based on faulty assumptions and facts. And so, I'm glad you're convening this hearing. I'm looking forward to participating.

And just for the record I'd like to point out why I apologize that my Republican colleagues failed to show up here in a timely manner, as the Chair has, I would like to point out though, that we do have three Republican senators here and one Democrat senator here (laughter). And so, obviously, I would say that we just have a huge deep concern over this issue. And I'm sure it's not because of a lack of attendance on so many of our colleagues. But I just want to let you know that we're deeply committed to this.

SENATOR WRIGHT: Thank you so much. Senator Gaines.

SENATOR TED GAINES: I want to thank you, Senator Wright, for calling this hearing. And I think it's very critical; we're at a critical juncture here in the state of California. We're in a very tough economy, obviously, with 12% unemployment. And we've had challenges in the past with bureaucracies in the state of California and I think we ought to be taking a broader view as the Legislature in terms of oversight. I think much of the oversight that's been provided historically by the Legislature has been lost as a result of term limits and then the loss of institutional memory. So I see this as a great example, a great opportunity to hopefully create a new dynamic in terms of making sure that we're keeping an eye on what's happening with our bureaucracies in the state of California. And I'm not trying to be critical of them. I think they're doing what they've been charged to do. I think we have to give them the right tools so that we are getting common sense answers and implementation of regulation in the state of California. Time and time again we've run into situations where there was not an understanding of the common sense approach to the implementation of a regulation.

A couple of years ago we had an issue with the Rubicon Trail. I'm an off-roader. We had an opportunity to speak to the Water Resources Board. They were talking about shutting down the trail for certain times of the year. We were able to negotiate with them and I think things are going much more smoothly in making sure that off-road enthusiasts have a right to use one of the best off-road trails in the world right in my district.

What we're looking at today is the promulgation of regulation on every business in the state of California which will cost hundreds of millions if not billions of dollars in this tough economy. We are virtually going to force businesses to shut down if we follow the letter of the regulation that's being proposed in terms of storm water drainage.

I had the opportunity to speak to Ken Denio yesterday. He's a business owner in my district; Denio's Farmers Market and Auction, you may be familiar with for folks in the Sacramento area. He took a look at these regulations that the Department of Water Resources is implementing for storm water runoff. He thinks the cost is going to be about a couple million dollars. That shuts his business down here in the state of California. And so, I'm so pleased that you're moving forward with this, and my colleagues are here, and the opportunity to speak on this. It's critical we come back to a common sense approach.

What baffles me is there's been no analysis on cost of the implementation. What is the cost to business; what is the cost to local government for the implementation of these regulations?

And so, thank you so much for this opportunity to speak. And I apologize; I'm going to have to leave because I've got another commitment. But thank you for fitting me into your agenda.

SENATOR WRIGHT: Okay. Thank you. Senator Huff.

SENATOR BOB HUFF: Thank you, Mr. Chair. And since there's three of us and soon to be two, I'd like to make a motion. Just kidding. But you know, it sounded really good for a moment given the lopsided nature. You know, looking at the agenda here ...

SENATOR WRIGHT: Kind of unusual, isn't it?

SENATOR HUFF: Looking at the agenda here it looks like we have enough material for at least five or six Select Committee hearings, so I really came just to hear what the business community has to say and then figure out if there is the response that we as a legislature can do that will help address and streamline things. So I look forward to the conversation.

SENATOR WRIGHT: Okay. You know, for a people who are not sure why they came, today we're going to be talking about the State Water Board and new proposed regulations on runoff. You know I say that because some people might sit here—I've actually been to funerals where people sat in on the wrong funeral and cried and went through the whole thing and found out that, yeah, it was the wrong guy.

But I want to thank as well, the folk at the Water Board; it was a few months ago that I appeared before you and I was on the other side of the dais and we were talking about the regulations that were being proposed. At that time what we were looking at was the proposal for holistic strategies and some of the things that you were looking forward to doing on the concrete runoff and the non-permeable sources and the plants and the trees and some of that, and it sounded good except as is often the case, a trip to the finest restaurant is also good until the bill comes and then when the bill comes, people have a different perspective as to how good it was. The USEPA has recommended, for example, that the best management practice in lieu of the numeric effluent limitations is a way that we had to go as an option. California, we often seem to choose the way that's most expensive as opposed to the way that is most practical.

I'm looking at the permit for some of the municipalities and the low impact development strategies; I'm not sure that this, again, is thought through. Now I understand that you have a statutory provision that allows you not to have to look at the economic impacts of what you do so you do that on a selective basis and I assure you, you wouldn't get that through the Legislature today, but you have it now, and you obviously, jealously defend that.

Today in this committee though, we do want to look at cost and we want to look at realities. And you know, some of the things we will look at is where does this money go? I mean if we collect one or two billion dollars a year out of the economy, what happens to that cash; and are we going to claim that we are creating jobs with that money as well?

We want to look at some evidence about the effectiveness of some of the programs that the Water Board is proposing. I'm concerned in some instances that the Board can act as the prosecutor and the judge in the same proceeding. That too is challenging.

We want to talk about the schedule of some of the hearings. I don't have all the facts but there are people here from the Water Board. But I'm led to understand that there are going to be some hearings scheduled, like, on Christmas Eve so that obviously no one would get there or some time around that time. But I do understand that there are hearings where you only get one or two minutes to speak and the decision is already made before you get there, and so, essentially you just show up to fall on the sword. Thus the discussion I had earlier about the human sacrifice; it was not taken out of _____.

Our challenge in California is not to create ways to make our manufacturing and quality of life more expensive than it already is. If we continue to make our things more expensive, then people will simply take that business someplace else. And if we're looking truly at a recovery, we're going to have to work together. So as I look at Arizona and Nevada and Washington and all those states that we border, I want to be as clean as they are when I'm looking at the dynamic. But I don't need to try to get the storm water runoff so that it's drinkable; that's something that might be possible but it would be hugely expensive.

So with that, let me shut up because you all hear me all the time and I've done the opening remarks. We've heard from the Committee. Our first witness today is Tom Howard, the executive director of the State Water Resources Control Board. And thank you, sir, for coming because I know you could have been 22 places today. And I know we met, again, over at the Resources Building around the corner and I was on the other side. And I want to thank you for the courtesies that you guys showed me because I've been kicked out of places that were better than the one that you had and you guys treated me with a great deal of hospitality. I appreciate that. And welcome to the Senate Committee on Job Creation and Retention. Thank you for showing up, sir.

MR. TOM HOWARD: Thank you, Chairman Wright and Senators. My name is Tom Howard. I'm the executive director of the State Water Resources Control Board. The Water Board is responsible for water quality regulation of the State. There are nine regional boards and they do sort of the day-to-day implementation on the ground. The State Water Board does the statewide policies, permits, regional board oversight, plus it independently deals with all the water right issues in the State.

I'd like to start by giving sort of a high level assessment of where we are in the process and the comments that we've received. What we're talking about here are the issuance of three permits, three NPDS permits; one for discharge from industrial facilities—storm water discharge from industrial facilities; one for discharge of runoff from small municipalities—a population less than 100,000 greater than 10,000; and the third is a statewide permit for Caltrans facilities.

Federal law requires that we renew these permits every five years. All these permits are presently pretty behind in their renewal schedule. We've had several starts and stops trying to reissue these permits, and so, it's taken quite a bit longer than it does for most of our permits.

About a year ago I initiated a new effort to say, "Well, these have been sitting around for an awfully long time. Let's see if we can get these reissued." And so, around the beginning of the year the three draft permits were reissued.

My overall assessment of the drafts that were issued is that they do a good job of incorporating everything new we've learned about storm water management over the last 15 years or so. But at the same time, there's significant departure from the existing permits. Similarly, when I looked at all the comments, my overall assessment of all the comments is that the permits require too much change too quickly at substantial expense and therefore that's not reasonable, especially in light of the existing economy. My assessment of the comments is that I agree with them; that in fact the permits do need substantial amendment. They are in the process of being amended based on the comments. I expect that a new series of permits will be out in about three months for all three of the permits. And I'd be happy at that time to come back to this committee or to individually brief the senators on what those redrafted permits look like.

With that, I'll go through this PowerPoint presentation reasonably quickly. This just sort of outlines in a little more detail what exactly we're up to.

SENATOR WRIGHT: Hold up, Mr. Howard. Senator Huff.

SENATOR HUFF: I'm hearing some word that some of those watching on TV may not be able to hear you well, so could you please speak into the microphone. Pull it as close to you as you possibly can.

MR. HOWARD: Well, I'm not sure how to use this. _____ might help but still, does anybody know how to forward this thing? Anyone?

UNIDENTIFIED: _____

MR. HOWARD: What's that?

UNIDENTIFIED: You've got _____ right here.

MR. HOWARD: Okay. That will do it.

So why are we issuing these permits? Fundamentally the reason is that in an urban setting this is the greatest cause of pollution in the State's water bodies. It causes things like beach closures, water quality impairment; this urban runoff contains metals, oil products, pesticides, toxicity, sediment, trash. It causes fish kills. It also has caused a physical alteration of the water bodies themselves. What happens as you build impermeable surface in a watershed, it changes the way the water runs off and changes the energy in the stream and causes stream incision and erosion and habitat destruction.

The other reason we do it is that we're required to do it under the federal Clean Water Act. The State Water Board is the delegated entity under the Clean Water Act. And in 1987 amendments were made to the federal Clean Water Act that required that storm water permits be issued—NPDES permits (National Pollutant Discharge Elimination System Permits)—for storm water discharges. And so, we've been issuing these permits since 1992.

This is sort of a visual of the kind of problems that are encountered in storm water runoff. The picture on the left is Long Beach. The picture on the right is Santa Monica Beach. And this is just, obviously, there's a huge visual impairment caused by trash from the runoff but, of course, what you can't see beneath the trash is the water is, you know, contains many of the pollutants that I was referring to before. And clearly, we're not supporting the uses of these water bodies when we have circumstances like this.

This is an example of what I meant by stream alteration. This picture on the left shows what people call urban stream syndrome. As I mentioned, the energy in the stream channel changes as a result of the construction of impermeable surfaces and it starts incising the stream channel which in turn destroys the uses again.

This is just a pulp mill but as you can see, there's a lot of exposed material and so, if a storm, when a storm event occurs in an industrial facility and the water runs off into the storm drains and into the nearest creek, there's the potential for carrying pollutants off the facilities.

So there are five types of storm water permits that the Water Board issues. The first ones, what we call our Phase I. An MS4 is jargon for "municipal separate storm water sewer system." There are 19, approximately 19, of these permits statewide. They're for communities greater than 100,000 and they're issued by the regional boards. For example; LA County has a single Phase I MS4 permit that covers about 80 different cities, some of them reasonably small.

The other four permits are issued on a statewide basis and they're issued by the State Water Board because we're the ones that issue statewide permits. There's a construction permit, and under federal regulation anyone who disturbs more than one acre as part of a construction activity is required to be covered by the construction permit. We issued this permit about 18 months ago—we reissued it about 18 months ago.

The remaining three permits are the ones in question right now: the Phase II MS4 for communities less than 100,000; a statewide industrial permit; and the statewide Caltrans permit.

Just to give you a sense of what's required in these permits; this is in the federal regulation. There are six minimum measures that need to be incorporated into an MS4 permit:

- You have to have a public education component;
- A public participation component;
- Illicit discharge, detection, and elimination to make sure people aren't putting things in the storm drain that are inappropriate for storm drains;
- Construction site runoff control;
- Post construction runoff control;
- And a pollution prevention good housekeeping program.

So I'm going to talk just briefly about each one of the three permits; what the recent history of reissuance is and what the principle issues are in each one.

Phase II Small MS4 was first adopted in 2003 and it expired in 2008. I use the word "expired," but if it isn't renewed in five years as federal law requires, it simply stays in effect. The reissuance process began in 2007. A lot of discussion with the affected parties. So far this year we've conducted five workshops on the draft permit after it was issued.

The major issues that were raised during the Phase II comment process, as the Chair mentioned:

- Cost of implementation. The California Association of Storm water Quality Agencies estimates an average of three times the cost of the current permit.
- The permit requirements are too specific and they resemble the Phase I permits. As you might recall, the Phase I permits have been in effect for 20 years but this permit has only been in effect for less than 10, and so, while we were—the draft permit moves towards what we already require Phase I permittees to do. The assumption is that that's unreasonable in light of the fact that the Phase I permittees are larger and that they've had 20 years to get to this point.
- There's a commercial industrial inspection program that's included in the permit which generated quite a bit of comments. And there are monetary requirements for communities of greater than 25,000.

So that permit, like I say, is in the process of being redrafted based on those comments.

The second permit is the Industrial General Permit reissuance. The permit expired in 2002. In 2003 we had a couple of different drafts; held hearings on it. The big issue, a big controversial issue, was whether numerical effluent limits were appropriated in Industrial Storm Water Permit. So we convened a blue ribbon taskforce of experts and in 2006 they gave us a report that said they may be feasible for the Industrial General Permit but we need better data in order to do that, so we've been collecting that data over the last five years. In any event, in 2011 we reissued the Draft Industrial General Permit; held workshops, hearings, and comments. And again, that one is— here are the summary of the comments we've heard on it.

- Again, the number one issue: cost of implementation. The California Council of Environmental and Economic Balance that estimated the cost increase range from 90 to 2,000% as a result of implementation of this permit.
- The numeric effluent limits that were incorporated in the permit are perceived to be not feasible by many people to comply with.
- The monitoring and inspection requirements are excessive.
- And the training roles and requirements are a burden for small companies.

Again, this is just what I perceived to be the principle comments that were received.

So we're pretty close. We've got a revised draft. We haven't released it. But a couple of things that we are going to be recommending to our board is to remove the numeric effluent limitations and return to sort of a "benchmark approach" it's referred to. And we'll be reducing the inspections back to approximately the current permit limits. A large number of other changes but I think those are the ones that will drive most of the cost downward.

The third permit is the Caltrans MS4 reissuance. That permit—the regional boards used to adopt regional permits for Caltrans but in 1999 they asked the State Board to instead, issue a single statewide permit because of the difficulty of trying to comply with nine different regional permits. The permit expired in 2004. And we've been having pretty regular meetings with Caltrans on that permit since then. But that's been seven years. So we reissued this permit as well.

Caltrans tells us that their estimate for compliance with this permit is \$900 million a year; quite an eye catching number. Then the principal thing driving costs from the perspective of Caltrans is that there were— within the permit there's the need for Caltrans to develop solutions for areas where we find that their discharge causes exceedance of water quality objectives. Also, an implementation of total maximum daily loads, which is a regulation that the Water Board adopts to deal with impaired water bodies. Also, their discharges to areas of special biological significance, which are in the ocean. And then also, there is a requirement for them to identify areas where they are blocking anadromous fish passage and not allowing anadromous fish to move up into spawning areas. And so, those retrofits are what largely seem to be driving costs. They also are concerned about monitoring requirements.

By the way; we've looked at this estimate of \$900 million a year and we'll be sitting down with Caltrans over the next few months and going through the permit carefully with them. Our estimate is that the number—there's some misunderstandings about what exactly is required and that that drives a lot of those costs, so our estimate is that number is larger than it—but it is nonetheless a large number and it needs to be dealt with effectively.

So next steps: We've scheduled meetings with Caltrans and CASQA to talk about the Caltrans permit and the other two permits. We want to make sure that we've addressed the comments as much as possible and that we are in agreement as to what exactly the permit is and is not asking for.

We'll be releasing new drafts and then initiate a new round of workshops, hearings, comments, and response to comments.

And that was all of my testimony, so I'd be happy to answer some questions now.

SENATOR WRIGHT: You know, what I think I might do, do Members of the Committee have some questions for Mr. Howard?

SENATOR HUFF: _____

SENATOR WRIGHT: Senator Huff, without objection, can you take—what I'd like to do is perhaps get some questions that we have and then kind of complete a panel one at a time. Then, if you don't have to leave, we're still going to have a lottery for that human sacrifice at the end, so we don't want— I'm kidding. But I'd just like to get questions. So Senator Huff, why don't you go ahead.

SENATOR HUFF: Thank you, Mr. Chair. One quick question; you had a slide in there, I think you said Long Beach, but there's a lot of debris on the beach; do they have screens on the rivers to catch the debris that is coming? because it floats, obviously, or it wouldn't be floating up onto the beach.

MR. HOWARD: Yeah. Well, some of the southern California rivers, they put up a berm to catch the trash as I understand it, and then they bring the trucks down and then try to load it up. But in some areas, a lot of it gets through anyway and ends up either out in the ocean where, of course, it causes quite a bit of grief with our aquatic life out there, and then a lot of it ends back up on the beach. My understanding is that areas like Santa Monica— I showed you Santa Monica Beach and Long Beach Harbor; that was actually the harbor, not a beach itself on the left. But on Santa Monica Beach and other beaches where they have this problem when it rains that they have machines that cross over the beach and pick up the trash and that's sort of an ongoing activity that they have to deal with.

SENATOR HUFF: I guess the question is are there ways to better catch it before it gets to the beach, into the ocean, while it's still contained within the river?

MR. HOWARD: Well, like I say; they do put some berms up to catch it in some areas.

SENATOR HUFF: That looks like a berm failure there; there's an awful lot of stuff on the beach.

MR. HOWARD: Yes. I don't think they do it everywhere. And you know, we actually are, in some of our permits, we're requiring areas, people to identify where the high volume trash areas are and then to put inserts into the storm drains at those locations to catch the trash before it gets into the water. That's one of the things that are required in some of these storm water permits.

SENATOR HUFF: Alright. Okay. Thank you.

SENATOR WRIGHT: Senator Dutton.

SENATOR DUTTON: Regarding that comment about the \$900 million from Caltrans: It's been my experience since being here for the last nine years that generally it never comes in less; it's usually more. And I've also seen that too when they did the implementation of AB 32, the cost estimates of the cost of the impact or cost of retrofit and so forth was substantially estimated to be less than reality. And so, I've never been one that has ever believed that it's going to cost us less. So I appreciate you wanting to go back to them and double-check their numbers, though.

You said something on the permitting process that the—like for example; the Industrial Permit are proposed to use a numeric, but you're talking about going back and recommending to the Board they not use that. Could you tell me how that changes then or what your thoughts are there again?

MR. HOWARD: Well, the blue ribbon panel when they made recommendations to the Board, as I said, had indicated that they thought that once more and better information is gathered that it might be possible to be able to identify certain technology-based numerical effluent limits that an industrial facility should be able to comply with. So we went through all the data that we had and we tried to identify some numbers that we thought made sense, and we relied largely on USEPA, what are referred to as "benchmark" numbers. However, you know, when I looked over the comments and the cost that people said wouldn't necessarily be incurred, it was pretty clear that we didn't have adequate—it seemed to me that we didn't have adequate support to justify putting numerical effluent limits in, so we are, like I say, redrafted the permit with the recommendation to remove the effluent limits.

SENATOR DUTTON: And when are we going to be able to see what the redraft looks like then?

MR. HOWARD: The redraft? We expect to get all three permits redrafted within the next three months or so and back out on the street for another series of workshop and comment.

SENATOR DUTTON: Okay. So your intent is to go back into the public for a public hearing process and to go get some testimony and further input as to the regs or is just an orientation, "Here's what it is, take it or leave it?"

MR. HOWARD: Oh, no, not at all. In fact, you know, it could very possibly be that once we finish this next round we'll have enough comment that we would go through the whole process all over again. So when we redo the process we'll let people do exactly what we did before; we'll go out to do workshops; we'll have a response to comments; we'll have comments, hearings. And like I say, if at that point it doesn't appear fully cooked, we'll do it all over again.

SENATOR DUTTON: So your indication would be to try to create one-size-fits-all so that everybody is going to be having to play by the same rules whether they're in Chico, California or Brawley?

MR. HOWARD: Well, the way that a lot of these permits work—for example, the Industrial Permit, the facility is supposed to develop its own storm water pollution prevention plan and that is meant to be a site specific plan that the industrial facility would develop based on the hydrology at that location. But generally, the permit will include the broad outlines of the things that need to be included and then based on site specific conditions; they would develop their own pollution prevention plan.

SENATOR DUTTON: Okay. Did you say you're going to stick around?

MR. HOWARD: Yes, I'd be happy to.

SENATOR DUTTON: I may have a couple more questions. I am a little concerned, and let me just suggest something from my experience in dealing with the implementation of AB 32 when I was approached by the Black Chamber of Commerce and the Hispanic Chamber of Commerce; they were supposed to be part of focus groups in order to help develop an implementation plan and their general feeling was that they weren't so much providing input as being dictated to, so you might want to keep that in mind. Sometimes it's an attitude more so than anything else. But you've got a lot of people here that really want to solve problems. They certainly want clean water. They want clean air. But this heavy-handed command, regulate, do it our way or take the highway, is not very conducive to trying to create a good, you know, image for California to encourage people to make investments. So I would suggest when you're going through these workshops, make sure you actually do like their input is wanted, otherwise, don't waste their time. Just let them know, "We're just here to tell you what it is; take it or leave it. But, you know, we really don't want your input." I just don't want them coming back to me next year and start complaining to me about the fact they felt they were shut out of the process.

MR. HOWARD: Well, the Board has expressed strong concern about this issue of cost, and once the Senate has directed us to go back and make sure that these permits are reasonable, that's our intent.

SENATOR GAINES: The biggest complaint that I've been hearing is the process and the ability to make sure that we have stakeholders at the table. My concern is that the business community and municipalities and local government were not engaged from the

beginning. I'd sure like to have them at the table prior to the public hearings occurring so that their voices can be heard. The frustration I'm hearing from both local government and the business community is that these were just implemented and now they're having to react rather than trying to influence the process in a positive way. And again, I think that's kind of the theoretical aspect of the implementation of regulation versus the real world impact, whether it's fiscal or the amount of time allocated to implementing the regulation, and then of course, trying to make sure that these businesses can continue in a tough pre-enterprise economy in which you are competing with businesses not just in the state of California but worldwide. And so, if you could help us in that regard I would sure love to see them engaged and involved from the very beginning so that we don't end up at a hearing like we are today trying to figure out how we're going to make this all work.

MR. HOWARD: Yeah, I appreciate that. As you might have gathered from the PowerPoint that I had; these permits have been in need of renewal for a long time. And, actually, for all of them over the last few years there have been many meetings with various stakeholders. It's just that when I reinitiated this effort about a year ago, I said, draw on what you've learned over the last five years of talking about renewing these permits, and actually, let's just get a draft out. So that's what we did.

At this point I've asked that we sit down with Caltrans and with CASQA, which is the California Association of Storm water Quality Agencies, and bring their folks to the table and talk through these permits and make sure that we have addressed their concerns to the extent that we can under federal law and that at least there's no misunderstanding between what it is we're asking and what they think. But the idea is to try to engage in the way that you're suggesting.

SENATOR GAINES: That would be great. I appreciate that. And I don't know how you can proceed forward but is it possible just to take the existing regulation and say, "You know, we are in a very tough economic time and we're going to keep the regulations as they stand with an extension for another five years or whatever that timeframe may be." I think that would be very helpful in a time when people are struggling.

You know, I look at our budget and the challenges that we've had with trying to make ends meet and the LAO said we've got additional revenue coming into the state of California and we tried to get a handle on where that money was coming from. They were estimating \$7 billion in additional revenue and they said, "Oh, a lot of it is capital gains." And that may sound great on the surface and I'm sure there are some folks out there that might work for Google or Intel and maybe they've got some stock options that they're cashing out on, but a lot of my constituents that I'm talking to are digging into their 401(k)s and they're using that money to survive and that's a capital gain. So I don't have a real good handle on whether this economy is really improving or we're going in a slow downward trend with no improvement in the short term. And I think reality is such that we just need to take that into consideration and maybe not implement any new regulation. Let's use what we have on the books. Let's extend that for another five years. Let's engage the business community, small government, all the stakeholders, as we move forward.

So thank you for your time. Appreciate it.

SENATOR WRIGHT: Mr. Howard, let me add a couple of concerns. Let's take the Caltrans example that we were discussing. Much of Caltrans road is interstate highway. The federal government says that we can't limit who can travel on it, so at any given point a percentage of the people who travel on Caltrans highways might be from Oregon, Arizona, or Nevada, or any place else that they may come from. If we were to come up with a \$900 million cost— let's just use, whether it's right or wrong, it's their number, let's play with that; where does that come from?

MR. HOWARD: Well, Caltrans has identified where it came from. I think they

SENATOR WRIGHT: No. I'm not saying where the number came from; I'm talking about where did the \$900 million come from?

MR. HOWARD: Yeah.

SENATOR WRIGHT: Because I mean, people around here pull stuff out of places that you don't even want to admit to. (laughter) I'm just trying to figure out now where they're getting \$900 million.

MR. HOWARD: Well, my understanding is that it would, if there was really an expense like that, that it would come out of their highway construction funds.

SENATOR WRIGHT: Okay. So if you took it out of their highway construction funds, that means that they would reduce highway construction by \$900 million.

MR. HOWARD: Yes.

SENATOR WRIGHT: But that would mean that we would take \$900 million out of a fund that hires people, right? I mean, the highway construction fund is used to make the road better. I mean, those of us who have cars that require 4-wheel wheel alignments appreciate it when they fix the road because it reduces cost. If you've got one of those BMWs that has the soft wheel; a pothole in a freeway at 60 miles an hour means you're about to buy a wheel or two. So I mean, there's a reason that you want Caltrans to do that construction project. So if we take the money from that and shift it to you, then that means that the guy who was going to do that construction work doesn't have a job and I'm not sure what we get in its place for the \$900 million that was taken out.

MR. HOWARD: Well, first off I guess my point is that we agreed that it would not be reasonable anywhere near of \$900 million cost to protect water quality associated with Caltrans runoff. So, you know, I don't want to dwell too much on that fact since we have no intention of having a storm water permit that costs \$900 million.

But yes, if we were to adopt a permit that had a large cost, it would result in a change in who was being hired from road construction people to people who would have to work on things like infiltration and other things that like along Caltrans right-of-ways. So money would still be spent. The people would still be working; they'd be working on something else. The outcome would be improved water quality and that's the purpose of the permit.

SENATOR WRIGHT: But here becomes the challenge, though, sir, and it becomes a policy question. If the guy down at the Campbell's Soup plant can't use the 5, then not only do I lose the guy who's driving down the street, I also lose the guy who was working at the Campbell's Soup plant. I ultimately have an impact on the farmer who was growing the tomatoes that the cat in the truck picked up to take to the Campbell Soup plant so that the food processor could process the tomatoes and make the soup that was later taken over those same highways across the country so that other people could get soup. I'm just saying; if I replaced that whole chain of people who were working for one water quality guy, that don't make sense. And again, in my neighborhood we have an expression: "If it don't make dollars it don't make sense." So I'm saying I'm clear about the water quality issue and I don't want to minimize it, but if I'm choosing between making sure that the road works or I maintain my existing water quality issues, that's kind of, sort of, from a public benefit standpoint, a no-brainer. I mean, and if the federal government tells me that what I'm already doing is compliant with their law, then the question is do I as California want to exceed what the federal government is requiring me to do? which then goes back to your committee and the commission; why are you escalating the cost in a time when I ain't got no money?

MR. HOWARD: Well, once more, first off, I guess I'll repeat it, that what the cost of this permit is going to be at this point is unknown.

SENATOR WRIGHT: Let's make it 300 million. I mean, whatever it is that exceeds what's already being spent has to come out of somebody's ass pocket, right. So if it's 300 million, if it's 900 million, if it's 150 million, at some point we're going to take money that's currently doing something and there's a chain of employment that's in what's currently being done. I'm saying that what you're providing out of that doesn't necessarily produce, or it could. Maybe that I need an analysis that would show that if I spent \$150 million in the water quality, that I would get the same economic return that I get from fixing the road. And maybe it's true that I would, at which point we could have a different discussion, but all that I've seen thus far doesn't indicate that.

MR. HOWARD: The exact cost of what this permit is going to entail is unknown at this point because we are still in discussion with Caltrans as to what that permit should look like.

SENATOR WRIGHT: But listen to what you just described, okay? Now, let's go back. I'm the guy at Campbell's Soup and I'm the trucker driving on the road. So I'm looking at a cost—I'm taking SEEB's(?) number that was in your slide. There's a cost increase that's somewhere between 90% and 2,000% because they too couldn't determine what it was. So the range between 90 and 2,000 is a pretty big gap. But if that's what we're looking at and you're thinking about doing business in California, now you just put a big question mark over anybody who's ever thought about that they might want to play. Because if that cost is going to come back to them in the form of an increase for his or her permit, and I don't know what it's going to be, and I'm going to get potentially a notice about it later on, and then your current system as I understand it is that the board members can't talk with the affected people so that the only people who you have real negotiations with are the people who we would call in a courtroom; they're not real parties of interest. So you can talk with the people who want to raise the cost, but if a guy who's going to get his cost increased showed up to have a discussion, it would be a self-determined ex parte communication so you couldn't talk to him other than in a workshop where the input wouldn't be that valuable because there's a different standard of how you communicate.

MR. HOWARD: Well, if you're asking about the ex parte communication issue; yes, under state law the Water Board is not allowed in issuing a permit, to have ex parte communications.

SENATOR WRIGHT: Well, but that's a reg that you adopted. Your reg ex parte communication is not the same as the PUC.

MR. HOWARD: No, we never adopted a reg on ex parte communications; that's a state law.

SENATOR WRIGHT: Okay. Well, we have a different— maybe we'll fix that. Between that and Byron Sher's law, that's something that we can do. But my understanding is that the reg that governs ex parte communications for the PUC, which does have that as a judicial function, and the one that covers your reg are not the same because when you're involved in a proceeding, it's not exactly the same process. Now my understanding might be wrong. I know the PUC much better than I know yours, but I know that your regs are not the same as those of the PUC. But again, maybe we're wrong and maybe that's something that we can adjust because you come under a different part of law than the PUC does. They're in the Utilities Code and you're not. So starting from the fact that you're not even in the same book, it's clear that you don't have the same reg and you don't have the same regulation but my understanding is that that was something that was adopted by the Board. I could be wrong. I'll defer to you because you've been with this one much longer than I have. But if I were to take for example, say, the city or the county of Los Angeles, if it's an aggregate, what would your estimate be that the county of Los Angeles, who does an aggregate permit, what would their permit increase be under the proposed regulation?

MR. HOWARD: I'm not sure that there'd be much of any effect on the county of L.A. because they're under a Phase I Storm Water Permit that's adopted by the Los Angeles Regional Water Quality Control Board; they're not subject to one of these statewide permits.

SENATOR WRIGHT: So the difference between an L.A. and say Roseville, would be that Roseville would be subject to your reg and L.A. would be subject to its own local water authority, is that correct?

MR. HOWARD: Yes.

SENATOR WRIGHT: What would the cost be for Roseville?

MR. HOWARD: Well, what we—Roseville submitted some testimony to us and I don't have the exact figure but I think they're here. But I think they said it would be a couple of million dollars—I recall reading their testimony—for them to implement this. But like I said, I think they're here, so I'm sure they'll provide you with ...

SENATOR WRIGHT: Now the cost that you have, the slide that you showed that had the trash and stuff that had washed up on the beach, and in southern California I'm familiar with—the one in Long Beach is actually the rundown from the L.A. River which comes into Long Beach and in Santa Monica and, I can't think of the name of the canyon now but there's a trail that runs—it actually comes out right at Venice. Both of them are a collection of storm water drains. But the trash pickup; is that a function of the water quality—I mean, the Bureau of Sanitation I know in L.A. County and the county solid waste management company picks that up; that's not a part of the water cost that I'm aware of.

MR. HOWARD: Yeah, I believe that the Los Angeles County storm water permit will; it's in the process of being renewed right now and it will include trash provisions. But those trash provisions are not for picking it up once it's in the water; it measures to keep the trash out of the water; things like identification of areas of high trash generation within L.A. County and then the requirement to put in inserts in storm drains so that trash never ends up in the river.

SENATOR WRIGHT: Okay. Senator Huff.

SENATOR HUFF: I think this is my last question for you. There's a lot of things we can't quantify on cost. One of the things that is quantifiable is the \$750 training, the two to three-day training and the online test. Then there is a bill that I believe we passed by Assemblymember Garrick that is on the governor's desk that would exempt professional engineers from this training. It was never necessary before so it's questionable about whether it's necessary now. In a rare display of bipartisan support, this bill received zero opposition and it's on the governor's desk because my understanding is you and/or your department is opposing that. Could you explain if that's true? Why are you pushing back so hard on this training that we haven't had in place in the past?

MR. HOWARD: The training that's involved here is the preparation of a storm water pollution prevention plan at construction site, so it was incorporated. The Board adopted a permit about 18 months ago, a statewide construction permit, and included the requirement that a person who is preparing these plans actually has some training in the issues that are identified in the permit.

Quite frankly, you know if you're talking about how you're going to be effective in implementing storm water permit, probably the number one way is for people to be educated in what is needed in order to eliminate or minimize storm water pollution. A lot of the storm water pollution is caused by simply people doing things that—like over application of pesticides or things of that nature. And so, the permit is just trying to ensure, since we've had the opportunity to see these storm water pollution prevention plans that have been produced to date and the quality of them and the problems associated with them, to make sure that everybody who's spending their time preparing them actually understands what's in the permit; what's required; how to do a monitoring plan. And so, the course itself in our opinion is not an engineering course; it doesn't teach engineering. And the people who have prepared these plans in the past in some cases have been engineers; in other cases other things. But we still see problems in these plans whether they were prepared by engineers or by people with other backgrounds. So the Water Board believes that, and that's why they incorporated it, that requirement, into the permit that training on preparing these plans is appropriate.

SENATOR HUFF: Well, I can appreciate what you're saying but it illustrates one more thing about—in my experience professional engineers know what they're doing; they go about it; they get trained for that and when we erect these incremental barriers, it's lax, it gets in the way of productivity, it's an extra expense so it drives up the cost of everything. But you know, again, the Legislature is held accountable by the electorate to get things done and when we try to get it and then we get significant push-back on something that's never been objectively demonstrated the need for, it just seems that it's counterproductive in the long-run to getting our state back to work and getting the projects done that we need to get done.

SENATOR WRIGHT: We're on the Pacific Rim of the country so to speak. Now Oregon has a border on the Pacific; Washington State has a border on the Pacific; do they have the same permit cost that we do?

MR. HOWARD: We've often in the past tried to mimic Washington's permits. They write very high quality storm water permits or very reasonably restrictive storm water permits, and we've learned from the permits that they've issued.

Oregon; I'm not that conversant with Oregon's permits but all of them do issue storm water permits that are similar to these.

SENATOR WRIGHT: See, my understanding, and I could be off, is that we're one of the few people that are writing to exceed the federal regulations. I understand that Oregon and Washington are consistent with federal law and consistent with the Clean Air Act.

I'm not sure why a Clean Water Act— excuse me, wrong group. We'll get them in a little bit. But the objective for us to push beyond that would be what? Why would we want to exceed what the Clean Water Act requires us to do?

MR. HOWARD: The Clean Water Act requires in the storm water permits that controls be established to the maximum extent practicable. That's the term that's applied. And we're sort of left with the unenviable task of trying to figure out what maximum extent practicable is.

On the MS4 permits, for example, they have requirements for construction control, post construction control, and good housekeeping procedures; everything that we've asked in the permits in our opinion, fall within those requirements. Now the question then becomes what is maximum extent practicable for post construction storm water controls? What is maximum extent practicable for good housekeeping for a city in its storm water program? And what you find if you look at the various state permits, is that those requirements are in many cases different because the State has defined maximum extent practicable for good housekeeping or for post construction controls to be different.

SENATOR WRIGHT: Okay. I mean, the EPA describes best management practices in lieu of the numeric effluent limitations. Clearly, the numeric effluent limitations are more expensive than the EPA requirement?

MR. HOWARD: Well, yes. That's why probably one of the reasons that we've elected to remove it from— to recommend it removed from the industrial permit.

SENATOR WRIGHT: Okay, so are we going to go back to the best management practice recommendation the EPA has or what are we ...

MR. HOWARD: Yes.

SENATOR WRIGHT: Okay. Alright. Well, let me— I kept you a while. I hope you can stay. And I appreciate your giving us some insight. And there are a couple of things, obviously, we need to work on. If you can stay for a while I'd appreciate it. But I clearly appreciate the time that you've given us and the insight that we've gotten thus far.

What I'm going to do is I'm going to just try to speed things ...

SENATOR DUTTON: Mr. Chairman?

SENATOR WRIGHT: Yes, sir.

SENATOR DUTTON: I just want to make sure because I will have some follow-up questions, so we'll be able to ask additional questions ...

SENATOR WRIGHT: We're going to chain him to the seat.

SENATOR DUTTON: Okay. Thank you.

MR. HOWARD: I will stay until the end of the hearing.

SENATOR WRIGHT: Okay. I'm going to ask Geoff, and I'm going to mess your name up and I apologize, Brosseau, and Jim Earp, and Rick Land, and Ms. McKinney from Roseville; if you guys would all come forward. And Mr. Ketley from Watsonville will take these four seats. Sergeant if you would—I don't think—does anyone need the computer?

UNIDENTIFIED: I don't use PowerPoints.

SENATOR WRIGHT: Yeah, I have a book called *Real Leaders Don't Use PowerPoints*; that's actually a cool book.

Thank you all so much. I was trying to group you. Your comments were kind of in the same area in terms of reacting so I wanted to do that. And I don't have who's who but I'm going to go to the gentleman there in the back with the, I guess, it's a gray with a blue tie. I can't quite make out the color but I'll get as close as I can.

Thank you, sir. If you'd give us your name and we can get started.

MR. GEOFF BROUSSEAU: Thank you. It's Geoff Brosseau. Good morning, Mr., Chairman and Honorable Committee Members. My name is Geoff Brosseau. I am the executive director of the California Storm Water Quality Association, or, CASQA. Thank you very much for the invitation to appear before you today and for the opportunity to provide this information for your consideration.

Before making some comments and to help put those comments into some context, I think it's important for me to provide some information about who is CASQA, because we're a little bit different kind of organization than you might be used to listening to. What's our frame of reference; where are we coming from on this issue; and what is our role in storm water quality management in California?

Well, CASQA is a 501(c)(3) nonprofit organization. We're composed of storm water quality management organizations and individuals, cities, counties, special districts, all the local governments, a variety of industries and businesses, including the construction industry, and consulting firms and equipment vendors, so really, everybody who deals with storm water is probably a member of CASQA, or, from my perspective as executive director, should be.

In effect, our membership provides storm water quality management services to most Californians. CASQA was formed actually in 1989, so before the storm water regulations actually became into effect we were already an organization here in California. And we were formed to recommend approaches to storm water quality management to the State Water Resources Control Board.

In its early years of existence, in the early 1990s, we actually were appointed under the Administrative Procedures Act as an official advisory body to the State Water Board itself in terms of the development of the new, at that time, storm water programs about 20 years ago.

As a 501(c)(3) organization under the federal tax code, of course, CASQA is prohibited from conducting, lobbying, or advocating advocacy activities to any significant way. Our members are really scientists, engineers, planners, managers and staff that work for these various cities and counties and companies around California. We are essentially, really, the practitioners of storm water quality management in California. In effect, we are the local implementers of the federal and state requirements that are then passed down to the local agencies.

CASQA's role over the last 20 years in storm water in California can really be characterized broadly as being a resource, really, and that's true today and in fact, very true in this hearing as well; a resource because the significant amount of experience our members have gained in helping develop and implement storm water quality programs in California. We publish guidance materials. We hold quarterly meetings and annual meetings and webcasts on storm water quality management. We administer training programs and provide information on regulatory processes.

Storm water quality management is a relatively new endeavor in this country and CASQA has acted mostly as a convener and if you pardon the pun to some degree, a conduit for storm water quality professionals to share information and to advance the endeavor. In fact our tagline is that we are dedicated to the advancement of storm water quality management, science, and regulation. So our interest is to really, bottom-line, doing what's best for storm water quality management in a smart and cost-effective way.

Regarding today's topic of today's hearing I'd like to make some general observations on the two main subjects of the hearing and those are, of course, economic analysis and the regulatory process that you've already been talking about this morning a little bit. These observations are obviously based on our involvement in the storm water program for the last 20 years.

I'd like to compliment staff on the background paper that you received for this meeting today. I found it very thorough and very comprehensive and it gives you a very good history of the storm water program in California and also its current status as well.

On the first topic of the morning on economic analysis; you'll be hearing from other presenters after me about the specifics of cost and the impacts of cost to their operations. But I'd like to make maybe some general observations which I think are important to keep in mind as you're thinking about the big picture on storm water quality management and particularly general observations on the economics of the situation we as local implementers find ourselves in currently in trying to provide some context for the hearing. The bottom line is, the situation that we are finding ourselves in currently is increasingly a very challenging Catch 22. On the one hand the amount of money in the storm water program overall is either stagnant or declining, and on the other hand, the scope of work is increasing and actually escalating much more quickly than we could have imagined before. On the money side of things there's a few factors that it's important to keep in mind. Obviously, on the economy, the number one issue of the day of course, I don't need to say much about this other than to remind all of us, because sometimes it seems like we forget about it, that the economy is not good; it hasn't been good for at least three years; it doesn't look like it's going to get much better any time soon. So that reality has a very significant effect, as you've already heard this morning, on the ability of all three permit type holders: municipal agencies, industrial facilities, and construction site operators to comply with their permits. There just isn't much money to go around.

Another key factor to be aware of, and this is particularly I think important for the Legislature, is Proposition 218 which was passed in 1996. It's having an increasingly chilling effect unfortunately on the storm water program in California. As you probably know, it requires that voter approval for certain types of property related fees; and when it was passed it requires that the imposition or increase of a property related fee or charge must be approved by either a majority of the property owners in a community or by a two-thirds vote of the electorate in that community. Prop 218 included some exceptions though to that voting requirement and those exceptions were for basic services like sewer, water, and refuse collection. Unfortunately, rather inexplicably, storm water was not included as one of those basic services back in 1996, 15 years ago. Perhaps it was because back then the issues of storm water management and permit compliance were not as acute as they are today. In any case, there is a real fear in the storm water community that Prop 218, if it's not reformed to address storm water quality as a basic infrastructure, basic service of cities and counties, that these programs will start to die on the vine and that a significant public investment over the last 20 years will essentially be wasted. So Prop 218 is a very important thing to take a look at.

Another key factor on the money side of the thing is fees. In your background paper it mentions the fact that the very significant increase in permit fees was passed by the State Water Board about two weeks ago. Storm water fees were increased by 35% in the current fiscal year despite the fact that over the course of about nine fiscal years the State had inadvertently over-collected about \$28 million from storm water permittees in the State.

Oftentimes it was suggested to us that while if you want to fund your program why don't you just get some grant money and use grant money to fund your projects and things. And compared to the wastewater program which is sort of our sister program if you will, storm water has been woefully underfunded since its inception at both the state and the federal level.

Although the grants are helpful in the short-term, in the long-term they obviously are not sustainable. At some point the grant goes away and yet the programs must continue, so grant funding is really not a long-term solution.

SENATOR WRIGHT: Because of time, I want to get everyone else in and I've got a number of people that want to talk in the "Public Comment" period. But yours is written; if you'd make sure that we get that that we can include it.

MR. BROUSSEAU: Sure. Certainly.

SENATOR WRIGHT: And I'm going to switch to your colleague there without the jacket on, in the white shirt.

MR. ROB KETLEY: If I do this in under five minutes do I get spared from the human sacrifice?

SENATOR WRIGHT: Absolutely. (laughter)

MR. KETLEY: Well, I can try. Chairman Wright and Honorable Members of the Board, Ladies and Gentlemen, my name is Robert Ketley and among other things I am the water quality program manager for the city of Watsonville. Thank you for the opportunity to address this committee today and provide a local government perspective on the current Draft Municipal Storm Water Permit.

Before I start, I would like to acknowledge that until this permit my experience in working with the State Board staff has generally been very good. I do believe, however, that the regulatory process used by the State Board in reissuing permits is flawed. I'm hoping our efforts today will help correct those flaws and assist in reestablishing an effective working relationship very soon.

The city of Watsonville is part of a larger coalition of over 60 local government and allied organizations called the Statewide Storm Water Coalition. We have not come here to complain; we have come here to be part of the solution.

I want to quickly touch on economics. No reasonable person argues with the need for clean creeks, rivers, and beaches in California. I certainly don't. I've spent the last 25 years working on almost every aspect of storm water and have worked with many environmental groups on a number of successful watershed issues and projects. Water quality is both my job and my passion. I do it 24/7. However, local government has to be financially responsible and effectively manage the limited resources entrusted by the public. As such, we must ask ourselves two questions: One, what level of implementation can local government afford for clean water programs; and two, how can we get the best bang for the buck?

The fact of the matter is the draft permit is setting up many local governments for failure; precedent setting changes with limited stakeholder involvement or well defined water quality outcomes are under consideration. Changes which could increase local storm water programs costs as much threefold. I've done the math; that's true for Watsonville.

I think it is important to put these changes into context; let me use my city as an example.

Watsonville is a working class community on the Monterey Bay. We currently struggle with declining revenues and an unemployment rate of 29%. Let me restate that statistic another way: When I walk down Watsonville's streets I know that every third person I pass is out of work. With a median household income of \$47,000, Watsonville is a disadvantaged community. To balance our budget we have been on one day a week furloughs since 2008, have cut out 10% from all of our programs, including storm water quality. To say times are tough would be a masterful understatement. Despite these hard times, Watsonville has worked very hard to keep its environmental programs afloat. Many other communities are facing similar situations are doing the same.

We recognize the importance of these programs to the communities we serve (we could touch on the funding limitations that Geoff and others have mentioned). The simple yet inescapable fact is that many of the new state mandates will be largely unachievable without funding from the State. For many communities this permit will require elected officials to face the dire choice; either cut public services to pay for new storm water programs or chose the path of noncompliance fraught with condemnation, steep fines, and even litigation.

Some permit supporters have a false belief local government can simply implement new fees to pay for these programs. As Geoff just mentioned, Proposition 218 pretty much rules that out. Let's be brutally honest; does anybody really think that you can get more than 66% of the residential community to raise taxes or fees to support a storm water program that bans residential car washing and requires community-based social marketing when the local economy is effectively on life support? That said, we firmly believe the proposed permit can be re-crafted to make far more effective use of seriously limited funds.

And last but not least, stakeholder process. The board's efforts to reach out to stakeholders are inadequate and I have no doubt that this is the main reason I'm speaking to you today. The coalition is asking the State Board to more fully engage local government in the stakeholder process and conduct a comprehensive cost benefit analysis. We strongly believe this will guide the State Board in assessing the most cost-effective permit provisions without forcing local government into a no-win position of non-compliance.

There are a number of very good storm water programs being implemented by Phase II communities across the State; engaging the people responsible for those programs would be an excellent way to design a permit that would really work and won't automatically result in noncompliance.

So to summarize: The coalition is asking the State Board to do two things to make the storm water permit pass the straight face test.

1. Take into account the very real economic and funding difficulties experienced by local government. And,

2. Bring local government fully into the stakeholder process to ensure that the permit is indeed implementable and effective.

Was that under five minutes?

Thank you yet again for letting me address the Committee.

SENATOR WRIGHT: Thank you much. And, ma'am, I'm going to just keep rolling and we'll do questions for this panel at the end.

MS. KELYE MCKINNEY: Thank you, Chairman Wright and Honorable Members of this Committee. My name is Kelye McKinney and I am the engineering manager for the environmental utilities department within the city of Roseville. I'm a registered civil engineer in California.

Roseville is the founding member of the Statewide Storm Water Coalition. The coalition now includes over 60 local governments and governmental support organizations such as, the California League of Cities, the California State Association of Counties, and the Regional Council for Rural Counties.

The coalition was created in response to the Draft Phase II Storm water Permit released by the State for public review and comment in June of this year. Coalition members are concerned with the breadth of new programs proposed within this draft permit; programs which clearly exceed federal requirements for these types of permits.

Like Mr. Ketley, I too have a passion; I'm passionate about accomplishing water quality goals in a way that honors our responsibility as stewards of the limited financial resources that have been entrusted to us.

The unfortunate truth is that California's existing regulatory environment is chasing businesses out. Instead of chasing businesses out we should be focused on setting the table for them. By way of example; earlier this year a large solar panel company was looking to build a 1.35 million square foot manufacturing facility on 180 acres to employ 4,500 people. This company was down to two sites; one in Roseville, California and one in Mesa, Arizona. This company ultimately selected Mesa. When asked why Roseville lost out, they indicated the uncertain regulatory environment in California made them select Arizona. The time and money required to navigate through state regulatory red tape just did not pencil out. New far reaching regulations such as those included within the Draft Phase II Permit will only serve as one more reason for businesses to leave California or chose other states when considering where to locate.

In no uncertain terms, the State must be thoughtful and measured in the regulations it imposes. Our businesses, local government, state and nation face a new real threat of structural budget deficits. Like Roseville, coalition members have been working for years to address these challenges with instituted layoffs, early retirements, furloughs, salary reductions, and program cuts, and eliminations. Extreme care must be taken to ensure newer expanded state mandated programs or regulations achieve specific targeted goals. Cost benefit analysis are imperative in making these determinations.

In reissuance of the Phase II Permit, the State Water Resources Control Board is seeking to impose state unfunded mandates that go well beyond the federal requirements within the Clean Water Act. The draft permit includes significant new programs or higher levels of service such as, the requirement to regulate landscape irrigation and individual residential car washing; the requirement to secure adequate resources to comply with the mandates; the development of trash reduction, industrial commercial runoff; and receiving water quality monitoring programs and incorporation of total maximum daily loads and associated implementation plans.

These requirements which exceed the six minimum control measures that our federal government has established to achieve the maximum extent practicable standards set forth in the Clean Water Act. For example; local governments are required to clean out their storm drain inlets when they are one-third full. Roseville has over 10,000 drain inlets. A new vacuum truck estimated at \$300,000 and a maintenance crew will be required to fulfill this element. Even a representative of EPA stated at a public workshop before the State Board, that California will be the only state in our nation to impose such stringent Phase II requirements. Imposing regulations that exceed federal requirements and exceed those being considered by other states will create an uneven playing field for the business community. Why should businesses elect to expand in California when it is easier or less expensive to do so elsewhere?

The fiscal impacts of the Draft Phase II Permit on local governments are staggering. As Mr. Ketley mentioned, many currently regulated Phase II entities are expected to see their costs triple. If the Draft Phase II Permit were implemented as proposed, Roseville's costs will increase from 800,000 per year to 3.5 million in year one with an average permit term cost of 2.9 million per year. These costs only reflect the cost to our local general fund for administering and directly implementing storm water programs. The costs do not reflect the increased burden of compliance by our utility departments or the increased costs to capital improvement projects, or costs to businesses.

The city of Napa has also requested that I share their story. Napa is a strong supporter of improving water quality and has a longstanding record in that arena. The permit as currently drafted will cost the city upwards of \$4 million the first year which is a tenfold increase in their current expenditure level. At the moment, the city of Napa's general fund is projected to have a \$2.5 million deficit in fiscal year 12/13. If the Board implements the permit as is, the city may be forced to lay off essential personnel and/or eliminate important programs in order to comply. These cuts could have drastic impacts to public safety, which would devastate their community.

As Geoff mentioned, because of Proposition 218, this will place local elected officials in the unenviable position of having to determine what core general fund services should be cut or what staff should be laid off to fund new storm water programs. Without significant modification to the Draft Phase II Permit or funding from the State, local governments will have to justify those difficult decisions to their communities.

While the Phase II Permit is issued predominantly to municipalities, it will have a direct impact to hundreds of thousands of businesses across California. The Draft Phase II Permit imposes upon local governments to require existing businesses to implement eleven categories of storm water quality best management practices. This includes expensive site retrofits which may cost tens of thousands in dollars or more. Businesses will be faced with unnecessary administrative costs, new long-term maintenance costs, and very likely new local government inspection fees. There are no allowances within the Draft Permit to address issues such as who is responsible for site retrofits if the business is a tenant and does not own the property, physical site constraints or the inability of businesses to pay for the required improvements? These retrofit requirements could well be the final straw that forces many businesses to close their doors. Quite simply, the retrofitting requirements will place additional financial burdens on our businesses in a down and struggling economy.

The Statewide Storm Water Coalition strongly supports removal of the business retrofitting standards in this draft permit.

I will provide the rest of my presentation to you in writing and for my time to businesses that are here that would like to speak to this Committee today.

SENATOR WRIGHT: Okay, thank you very much. I'm going to my friend from Watsonville: is the sharp shooters gun range still operating in Watsonville there?

MR. KETLEY: I can provide you with a gun range, Senator. (laughter)

SENATOR WRIGHT: Alright. Sir, in the gold tie; thank you so much.

MR. JIM EARP: Good morning, Senator. I am Jim Earp, executive director of the California Alliance for Jobs. I appreciate the opportunity to spend a few minutes. I'm going to truncate my comments and will take some of what I have written here and put it in a more usable format and will submit it to you. But I do have a couple of things I would like to just cover quickly.

The California Alliance for Jobs is a contractor union partnership that represents the heavy construction industry. We're the people that build our roads, our water systems, all the infrastructure in the State. And I specifically represent about 2,000 contractors; 80,000 members of the laborers, the operating engineers, and the carpenters, some of whom are here today and may have an opportunity to speak for a minute or two toward the end of the meeting.

I also serve as a member of the California Transportation Commission and in that role I— a couple of my comments will be pertaining to the letter that the commission also sent earlier expressing some concerns about various aspects of this permit.

Basic position: and here I'm going to take that CTC hat off for a minute and go back to the construction industry that I have worked in and have been associated with for the last 35 years. We all want clean water. Even those guys out there with their hard hats and their rough demeanor, they want clean water; they want clean air, there's no argument about that. And there shouldn't be any conflict between the need for a clean environment and a healthy economy. There should not be a conflict between those two.

A perfect example to me of how they can work together was back in the early '70s when I was a little younger then but I remember when the federal Clean Water Act was passed and that was begun to be implemented. It created a lot of construction jobs, a lot of facilities, a lot of water treatment plants, a lot of infrastructure was built to provide cleaner water for our citizens. But something's happened over the years; we've become more process driven and less performance based, less goal driven and that's a problem and that's what we're seeing in the earlier drafts that we, in the initial drafts, that we've seen on this particular permit.

I was pleased to hear some of the comments Mr. Howard gave. It's the first time I've heard that it looks like we might not be looking at a billion dollars a year in Caltrans costs. I don't know what that final number is going to be but we have to keep our eye on the ball about costs, and that, I'm hopeful, is going to be a central part of this conversation as we move forward.

The excessive costly requirements proposed by the State Water Board in my view are forcing a conflict that shouldn't exist by pinning water quality versus jobs in this economy. And in the case of Caltrans it's also forming another conflict.

Caltrans lives on a fixed income and it's not enough money right now. There hasn't been an increase in the gas tax, neither federal nor state, in over 15 years—17 years; it's been a long time. That is the bread and butter of the Caltrans highway program and transportation program. We've got some bonds that we helped pass a few years ago in us providing a temporary injection of money, very vitally needed money, but the bottom line is, there isn't enough of it to go around do what needs to be done in California's transportation system.

As an example let's take— we've heard the \$900 million figure. Let's suppose we end up with a regulation that costs half that much. Right now Caltrans brings in about—has available—about a billion-six, a billion-seven each year just to run its SHOP program which—I forget the acronyms—the SHOP is basically the money they have to spend on maintaining the current system. That means not only potholes and repavement; it also means realignment of an unsafe curve; it means putting an auxiliary lane in where you need to have better traffic flow. Those are safety projects. So now we're looking at taking— let's suppose we're lucky enough to reduce the cost of this regulation and let's suppose we come out with a half a billion dollars a year instead of \$900,000 a year. I'm hopeful that it's not going to be

that much but let's suppose it's still a half-a-billion dollars; that's a third of what they have available for this program. The Shop program which has about a billion-six, a billion-seven a year actually needs about seven-billion a year. We're digging ourselves in the hole to the tune of five-and-a-half billion plus every year in unmet road safety improvements. So let's just be clear that when we spend money on water cleanup, let's make sure that we're getting some benefit out of it because there's going to be a road somewhere that's not going to get realigned fast enough and there's going to be somebody— there are going to be people who are going to be injured or perhaps even killed in a piece of unsafe road. Let's be sure that we're spending that money wisely. That is the key here.

We all know that regulation, we all know that clean water, clean air is going to cost some money. We're going to have to spend some of it because we need to. There's a benefit to that. We need to do that. But let's make sure that we don't waste it. We commissioned a study of ten other states that are complying with the federal Clean Water Act and how they're doing this— how they're meeting this regulation with regard to their transportation program. I'm going to leave a copy of that with you. The bottom line of that is is that other states have found more cost-effective ways to do this. And we need to pay attention to what they're doing. California does not have all the answers. We need to be able to look at what other folks are doing and figure out a more reasonable cost-effective way to do it.

In the end, I would like to just throw out a couple of other ideas, some of which may end up in your bailiwicks, Senators, in terms of how we could look at this legislatively. We need to make sure that these regulations have a more firm connection between cost and benefits. There are too many regulations where the agency that is responsible for the regulation has no real concern or statutory requirement to look at the economic impact of those regulations. We need to change that. Because that is the bottom line; there is no free lunch. The cost to everything we do, whether it's cleaning up our water or our air or protecting habitat, there is a monetary cost. We do have to look at when does the benefit become unsustainable? When do we spend this much money to get this much more environmental benefit? That's what we've got to be looking at.

Secondly, maybe we ought to be looking at consolidating the role between the State Water Board and all these regional water boards. I'm a little baffled sometimes when I see a transportation project that sometimes actually transcends two different regional water quality boards and they've got to deal with different agencies. They don't know what the rules are, or if they do, they're not getting the same rules. So maybe we ought to take another look at that and figure out a way to streamline that whole process.

And finally, just a little anecdotal: I have a good friend who's a major home builder in this state. He's building a project recently in Oakland. And, of course, under the General Construction Permit everything, any water that rains on his or comes on his property has got to be cleaned up. Fine. He's doing that. Where does that water go when it comes— it's nice clean water coming off of his little project. It goes into a storm drain that's full of dirty water. And I'm wondering exactly what's the logic of that; isn't there a better way to take what resources we have and look at it from a drainage system standpoint and instead of penalizing just somebody who happens to be building something at the moment and making them try to incur all the costs of clean water and all the responsibility, we need to spread that out and figure out a way to actually end up with cleaner water that dumps into the bay or dumps into a wetlands habitat? It just makes no sense to go through what we were going through in some cases and put that clean water back into a system unless you happen to be a fish right there where the clean water comes out; you know, hang out there as long as you can because the water is dirty everywhere else. We want the clean water but if we're going to spend x number of dollars, let's make sure it's actually cleaner when it ends up in the bay.

Thank you very much.

SENATOR WRIGHT: Thank you.

MR. RICK LAND: Good morning. My name is Rick Land. I'm the acting chief deputy director for Caltrans. And I don't want to repeat a lot of what's already been said but let me just make three quick points. Consistent with what you heard from the city of Watsonville and the city of Roseville, Caltrans is serious about our environmental stewardship and water quality is a piece of that. We're just as interested in good environmental practices across the board, as I suspect many entities that are involved in this discussion. In fact, we spend now anywhere from 150 million to 200 million dollars per year just on storm water compliance. And so, I just want to make sure that that's clear; that we're clearly interested in water quality.

And as Mr. Earp basically said, we need to make sure that whatever requirements come out of a renewed permit, actually generate and dictate and clearly provide us with a significant water quality benefit. So we're always trying to balance our environmental stewardship responsibilities with our transportation system needs.

The other point I want to make sure I make is that in order to develop a comprehensive assessment of the costs in order to comply with this permit and understand the effects on the State Highway Account, we have to clearly understand the requirements and the expectations that are imposed on Caltrans by their permit. The proposed permit language as currently drafted is very complex. The interpretation of the requirements has been very difficult. The specific things that Caltrans needs to do to achieve permit compliance are unclear in many, many areas. And we are going to be sitting down with the Board. In fact, our first meeting is this afternoon to sit down with board staff to make sure that we clearly understand what the requirements are because the interpretation has significant implications on what it's going to cost to comply and our estimates up to this point have been based on a very strict interpretation. And again, I want to be clear that it's not just what Caltrans interprets of the requirements to say, or what the State Board interprets the requirements to say, but

what the regional boards interprets the requirements to say, because we have projects in all nine regions and the interpretations and the requirements must be clear because the cost implications are significant.

And then I don't want to beat this issue too much, but one of the things that Jim very clearly said was, "Where does the funding come from?" The source of funding for transportation is fixed; it's tied to gas taxes at the federal level and the state level. It's a fixed pot of money. And we are off by a factor of four already for maintaining just the existing system of needs versus the funding that's available; and that's just to maintain the existing system. That's not to add new lanes or improve capacity in existing system. It's just to maintain and address safety issues on the existing system. The revenues are only about 25% of what the needs are. So anything that adds additional cost that results from the storm water permit is going to impact those numbers and it's going to come out of the same pot.

So again, water quality is important. We need clear and effective requirements that are clear to interpret and we understand the requirements so that we can adequately and accurately assess the cost. And we need to have requirements that really do give us a water quality benefit for any increase in additional cost. And again, it's all coming from one same source that's already impacted.

SENATOR WRIGHT: Okay. Senator Huff, Senator Dutton, any questions of this group?

Let me go back to the municipal representatives. If Prop 218 limits where you get money from, where would you propose to get the money if the fees were quadrupled or quintupled or whatever the factor is? Where would that money come from?

MS. MCKINNEY: Those monies have to come from our city general funds. And those are the same funds that, of course, support things like police services, fire, libraries, so we're then in a position of looking at how do we balance those general fund dollars that are already stretched and revenues are dropping, to pay for increased programming?

SENATOR WRIGHT: This would not be considered part of the sewer, so you wouldn't be able to tap that as a revenue source that you ...

MS. MCKINNEY: That's correct.

SENATOR WRIGHT: Because the sewer is kind of volumetric so you're able to charge it against but this doesn't— I mean, it depends on how much it rains as to what the cost is and you can't control that.

MS. MCKINNEY: Right. Well, with the sanitary sewer that goes to waste water treatment plants, it's a completely separate system in most communities so you cannot, because of Proposition 218 that allows for water rates and waste water, storm water specifically outside of the bound—for Proposition 218, so we cannot create new user fees in order to support storm water programs without a super majority vote of your community.

SENATOR WRIGHT: Let me ask another question: You're an engineer and there may be someone else on the panel that could help with this. Let's say that I take a Caltrans road or I take a street in Watsonville or a street in your town, in Roseville. Okay, so if people drive down the street sometimes the car leaks oil; you've got the rubber from the tires; you've got dogs; there's a whole bounty of things that end up in the street. It rains. That water runs off someplace. Much of it kind of goes on the side of the road and dries up but let's say that some of it ends up in a storm drain. In L.A. we have a thing called Biona Creek, which I couldn't think of earlier, but Biona Creek is what runs into Santa Monica, the L.A. River which has become a part of a storm drain system terminates into Long Beach but there are a series of storm drains that run into that. I'm going to guess if you've got 10,000 drain facilities in Roseville then you too have built a storm water runoff system. What happens to that water? Obviously your sanitary sewers— again, I'm more familiar with L.A. County, that's where I live, but I mean we have like, Hyperion, where we take a sanitary sewer and that water is taken and processed into tertiary treatment and then we actually now take, our water agencies who take some of that water and then reprocess it again; what do you do with the storm runoff water that currently flows in, say, Roseville or Watsonville, or at Caltrans? Because you have the same dynamic; trucks drive over the road. It rains. That water runs off. Obviously you have to move it someplace so that you don't have somebody die of a hydroplane accident. So you have an obligation as you engineer the road to ensure that the water goes someplace. In both instances, what happens to the water after you do that?

MR. KETLEY: Senator, to talk to Watsonville; there's very little once it's in the storm drain system, that we can do. What we tend to do in the municipal arena and Caltrans does as well, is try to capture this at the source, so we have very effective street sweeping programs. In the case of Watsonville, we've actually got our street sweeper set up on the refuse and recycle routes to go behind them so we can make sure that vehicles aren't on the street when we're going to pick up trash and recycle and street sweeping.

SENATOR WRIGHT: But see, we're talking about two different sets of things. The water treatment program that the Water Board does is not necessarily just the trash. I mean, there are all the chemicals that are a part of the water as well. So the trash, you're going to handle— again, I'm familiar with L.A.— but the Bureau of Sanitation or County Solid Waste Management, they're going to handle the heavy trash portion and they're going to do that whether or not there's any storm water or not. I mean, what we're now talking about is when the water runs off and it has chemicals in it. So there might— again, the rubber has a thing that stays in it even after you swept the street. The cars that drive over the freeways, there's rubber, there's oil, there's stuff that's there. What do you do with that water that runs off if anything at all? In L.A. for the most part, we don't do anything with it. It runs into the storm drain. It pops into Biona Creek. And if you go and you look at the—right at Venice—it terminates and that water runs out and that's why if there's a day that it rained, you usually don't want to go on the beach that day. I'm not going in much anyway, but you usually don't want to go on the beach because— and that's

not unique to L.A. County. I mean, in Laguna Beach, in Orange County, or in some portions of San Diego, each of them that I'm aware of has water runoff issues and on days that it rains, you have to wait until they measure the bacteria and you have to wait until the bacteria counts go down until it's safe to go back in. So I'm going to guess that in Roseville and in Watsonville and at Caltrans, that you channel the water but you don't necessarily treat storm water.

MR. EARP: Yeah, we have a number of what we call "best management practices" that we employ to address storm water in specific areas and that can—I mean, there's a lot of different techniques. One is hydro modification, where basically you catch it at the source; you try to have those things filtered out before it starts collecting into a large conveyance system or you collect it in a large conveyance system and you may have filters or those kinds of things to filter out the water. Now that happens in areas where we have done new projects or we've increased the surface area. And so, there are a lot of best management practices that we employ. Keep in mind however, that the existing state highway system was built at a time when there were not a lot of storm water requirements in place. In fact, there were none. I mean, most of the state highway system was built in the '50s and '60s, so they're huge, impervious surface areas at this point where the water is collected to get it off the highway and there aren't any treatment systems in place. So that's one of the things that I think we need to keep in perspective here. It would take years and several dollars to put in retrofit systems to completely address what you're talking about where you address the storm water that comes off the entire system.

SENATOR WRIGHT: What I'm not clear of as I'm listening—and again, engineers help me; I don't know this. I'm just, you know, a poor kid from south central L.A. But is it possible to take the water that comes in a storm drain system—I mean, I guess anything is possible, it just depends on how much money you want to spend, but is it possible or practical to try to treat the water beyond—like you mentioned, that you do some filtering. If I were trying to get chemicals out I'd have to do—I mean, either I'd go to reverse osmosis or—I'd have to do something if I were going to get that water clean enough to be discharged without there being an environmental penalty. Which would beg the question, Mr. Earp, that you raised as to sustainability. At what point does the cleanup outweigh the value of what it is you're attempting to do? I mean, because I could capture it and then I could do reverse osmosis and I could almost make drinking water out of storm water. Now that would probably be some expensive drinking water but it could be done. The question is I guess, as you as engineers who are kind of in the civil area, is that a practical thing to do and what can be done and—because as I'm listening to the Water Board staff, it sounds as though they're wanting to go closer toward more treatment of the storm runoff water because you can't control who gets on the freeway. You don't know whether or not his engine oil is leaking; you don't know whether his transmission fluid is leaking; you don't know whether or not he's running P-zero Pirelli's and they're soft and they wear out very quickly. I recommend the Michelin's if you've been using the Pirelli's by the way, because they last a little bit longer. But I'm just saying. But the different tire hardness issues will dictate how much rubber that tire is going to leave on your freeway, all of which contribute to what would be the measurement that you would take for the water that would determine that it had to be cleaned up. I'm overly simplifying the process as I understand.

To your point, at what point have we exceeded what makes good sense from the standpoint of our—I mean, we could close the city of Roseville and then they wouldn't have a problem. I mean the people who live there would be a little ticked off that but I'm just saying. I mean at some point there's some dynamics that you can't control. Farmers have a similar issue where if I'm farming I could say, "Well, I'm going to shut down the farm and you don't get to eat." I mean, at what point does the cost not reflect something that's practical to do and we have to say this is just something we'll have to inherit as a societal cost?

I'm not sure where we—I mean it's a lot of question. I took too long to answer it. I'm sorry for that. But somebody help me. Yes, sir.

MR. BROSSEAU: I mean you're right; basically storm drain systems were designed for quantity control, for flood control, to move water away from people and property for that purpose and then we realized later on that a lot of stuff ends up in storm water and that we needed to start managing storm water from a quality perspective. Unfortunately, our system is designed just the opposite; to move the water away quickly so there's a lot of diminishing returns there in terms of how much do you want to spend to try and cleanup that water? And unfortunately, the tipping point is fairly low on the curve for storm water because the system, the infrastructure is almost working against you. So we can certainly do small projects: to put in infiltration devices; and capture the first part of small storms; and capture all of the small storms; or capture the first part of large storms, but once you get to a certain level of flow, the volumes of water are just astronomical and there's no way you're going to stop that water long enough to let the stuff settle out or to somehow filter it so in the end you have to let that water go. So that's why you hear people promoting the idea of low impact development to try and let the water infiltrate where it lands but you can only do that for relatively small amounts of water.

SENATOR WRIGHT: Okay. Any other comments from the panel?

MS. MCKINNEY: I agree completely with what Geoff just indicated. In the storm water systems, we have hundreds of points of discharges within our community into our creeks and water bodies, so trying to take the concept of capturing them like you do a waste water flow to a central facility would be astronomically expensive. And again, the cost, because of Proposition 218, without establishing a user-based fee program, it comes out of general funds which are highly limited, so the costs would be just too high in order to accommodate a treatment program like that.

SENATOR WRIGHT: And I want to separate trash from chemicals, because at the end of the day, I mean, I can screen for a Styrofoam cup, that's fairly easily done and cities are pretty adept at doing that anyway because they have to. What becomes more complicated is actually treating the water. The discussion that we're having here is more to the latter. We're talking about the water and not the trash as much. The trash is fairly simple. The chemicals become a challenge because getting it out of the water ...

Mr. Earp, you're ...

MR. EARP: You're getting to the root of when I was talking about performance and goals versus process. What concerns me about what's been happening with some of these draft regulations is there's a lot of money being spent on monitoring—going around collecting data, testing the water—little samples of water—this and that; a lot of expense on collecting data, not as much on things that are actually going to improve the water itself. Now you do need some data but my concern is, you collect enough data and then show that you're not able to actually comply with what you want to do, now you've set it up so people can come and sue your rear end and it'll cost you a whole lot more money, and so, now you've opened up a whole litigation thing. So, you know, I think focusing on how you can actually get something done with the water to the degree that you have the money, focus the money on doing that and not so much on a lot of this paper pushing.

SENATOR WRIGHT: If you would, Mr. Earp— do people ever call you “Earp” and then like ...

MR. EARP: Never. Not a chance. (laughter) It was Wyatt Arp, didn't you know that?

SENATOR WRIGHT: This isn't quite like Dodge City but— if you would, you were going to fashion some other comments and you raised a number of things that I think as well are important; ma'am from Roseville as well, the concerns that you raised about the ability to have local input into the process at the Water Board. As well, I think, we should be clear as to the point that you just raised, Jim, as to the outcome versus the process. If we're going to ramp up the amount of money that we spend to collect data and if we're going to ramp up the regulatory fee, but at the end of the pipeline you can't assure me that we've actually done anything to make the water— I mean, if I can't fix it, it doesn't mean— why do I care what happens? So again, it might be that we might be looking at taking the water and moving it someplace beyond that but that gets to the point that the fellow from Watsonville raised; that you have so much water, that the volume may not be something that you could practically shift someplace. So we might be looking at— and the other challenge becomes is that if the water is not potable, it may not be that you want to move it or there's not much that you could do with it anyway. For example; you may not be able to use it in an agricultural setting because the chemicals that it picked up on the highway may make it unusable as gray water or something like that, so that there may need to be a broader perspective of what we do with it as to what's sustainable and something that we can make work; and how do we get it in a fashion where you as a local government are not put in the place where you get a cost that you have no way to pass on because you're precluded from passing on the cost, but you're incurring that cost and it comes out of a different pocket. So you've got a regulatory command over here that says you have to do this but you don't have any way to distribute the cost against anything. And you too have the same problem that many of the people who are going to be the beneficiaries of your roads. Just as with Caltrans, I would imagine, that upwards of 25% of the people who are on a Caltrans road at any given time don't even live in California. So you could end up where, whether or not that's a person who's driving in to pick up cargo containers out of my district in the Port of Los Angeles— I mean, we have thousands of truckers who come in every day picking up TEUs that they're taking back to other places. We can't charge them for driving on the interstate highway because the federal government told us years ago you can't, so you can't charge them for riding on the highways. He's picking up the TEU to take goods back to Chicago that came into the Port of L.A. or Long Beach, but now you're left holding the bag for the cost of maintaining that road that this gentleman from Chicago or Colorado or wherever it is that he came from had to do.

Alright. Well, I appreciate, again, from here I'm going to ...

SENATOR DUTTON: _____ I've been trying to listen to this and I heard about Prop 218 and stuff. But you know the problem you've got right now is that you're creating again, an additional regulatory burden that doesn't really give you any cleaner water, okay, and that's what I'm concerned about. I think it goes to your comments about doing a proper cost benefit analysis. And what we do as the State is we impose all these regulations which filters on down to the locals. The locals have got to figure out a way to comply with the state regulatory requirements just like businesses do, schools do, and everybody else, Caltrans has to, and when you really break it down as to how much real benefit you get out of this. What I've really done is I've created another agency, another layer of bureaucracy that increases the administrative costs and yet the public gets very little actual benefit out of it in the way of cleaner water, more water. We're doing the same thing with energy. We just seem to have this tendency to want to just consume everything with regulatory, you know creating more of a regulatory climate. And the only jobs we're creating are regulatory jobs—regulators. That's the only jobs you're creating. You're not putting more people back to work building things. We're not producing anything. The only thing we're really doing is we're administering stuff. And if we don't get back to actually producing, putting people back to work actually doing things— and that's why I'm concerned about this whole policy that we're looking at right now.

You know, we've got groundwater situations. This state is a big state. One of the things that contaminate groundwater more than anything else is when we have these massive firestorms come out there and then we get all the huge runoff coming off the mountains and everything else. Well, who are you going to have to take out that permit? God? I mean, or how about the federal government? They own

50% of the state. I mean, but that's causing the problem. So who ends up getting stuck with the burden is that poor sucker that's downstream, okay, and then all of a sudden it becomes their burden. They're the ones that have the responsibility. Well, how about the chipmunk out there that chewed the wire down or something like that, that caused the fire— or how about the bolt of lightning that came in? You know, they caused the darn thing.

So that's what I'm really getting concerned about with what's going on here. We don't allow proper management of our timber system. We don't allow proper thinning out of the forestry ...

SENATOR WRIGHT: Hold up. Don't go anywhere. I mean, let me do something. I'm going to ask ...

SENATOR DUTTON: Well, you're getting me all excited. (laughter)

SENATOR WRIGHT: I'm going to ask Sara Aminzadeh, Dorothy Rothrock, and James Simonelli, if they would come forward.

Let me thank you guys for coming. I've got some information that I want to get back from the two of you that we can include in the record.

Sara, I'm going to ask you to go first because I know you've got a time constraint.

And after this panel we're going to go to "public comment."

And let me again thank all the panelists who came and for the work that you put in.

UNIDENTIFIED: Thank you.

SENATOR DUTTON: By the way, while this next panel is getting squared away; one of the things that when we're talking about this kind of an issue, the thing about asphalt. You know, there's nothing more toxic out there than asphalt itself and yet that's what we use as a way to cap off certain types of dangerous hazards, natural materials like arsenic or asbestos in the natural form. We run into contamination issues. One of the requirements we require for containment is to put an asphalt cap on it, okay. So it's just whole bunch of stuff out there that ...

SENATOR WRIGHT: You're right. Well, hold that because Mr. Watson isn't gone.

Ms. Aminzadeh, you're up. And thank you for giving us this time.

MS. SARA AMINZADEH: Thank you. Good afternoon, Chairman Wright and Committee Members. My name is Sara Aminzadeh and I'm the acting director for the California Coastkeeper Alliance. And let the record show that if there is a human sacrifice at this hearing I'm certainly it, as the, I believe, only environmental representative in attendance today.

California Coastkeeper Alliance represents twelve water keepers throughout California. And CCKA along with our network of water keepers have been actively involved in ensuring the control of storm water pollution for the past 20 years. Our local water keepers review, inspect, and negotiate best management practices and monitor industrial facilities discharging storm water. Our organization has worked closely with the State Water Board to develop, adopt, and implement storm water permits that comply with federal and state laws, are easy to enforce, and actually improve water quality.

I want to make three key points today. The first point is that these permit revisions are badly needed and they're long overdue. Secondly, these storm water regulations actually protect a large part of California's economy (the ocean and coastal sector), and can create green infrastructure jobs.

So to the first point: These permit provisions are long overdue. As the State Water Board's executive director covered, the Industrial Storm Water Permit was last updated in 1997, and the other permits have not been updated in years as is required by federal law.

Why are revisions needed? Why do we need to update this? Why can we not just extend this for five years as one of the senators suggested earlier?

Under the federal Clean Water Act, the State Water Board is required to regulate storm water pollution to the maximum extent practicable. In 2010, 83% of California's rivers and streams the State Water Board assessed were deemed impaired or so severely polluted that people could not fish in them, swim in them, or drink the water, which is the primary intent of the Clean Water Act. Ninety-six percent of lakes and reservoirs were too polluted so that is why these revisions are needed. This is not some random effort to achieve a pristine or perfect environment. They're badly in need of regulations to address rampant pollution throughout the State.

So we've heard today that perhaps that these are too much change too quickly and too much expense. And certainly, the economic concerns that have been raised today are quite troubling. But effective storm water management is actually essential to California's ocean and coastal-centered economy.

According to the National Ocean Economics Program, California has the largest ocean economy in the United States. Our ocean economy supports a vibrant tourism industry, a diverse fishing industry, international ports and other businesses. And California's ocean dependent economy is estimated at between 43 billion and 46 billion.

In 2010 California's coastal communities helped draw approximately 200 million visitors to California. Visitors' spending directly supported jobs for approximately 873,000 Californians and resulted in 6.1 billion in direct state and local tax revenues. Beach pollution restricts this growth by driving away beach goers. As Senator Wright noted earlier, storm water pollution can cause beaches to be closed and therefore restricting as tourism revenue.

So how do these storm water regulations relate to the ocean and coastal and beach economy?

Polluted runoff, both contaminated storm water and nonstorm water runoff, is the most significant and widespread source of contamination of coastal waters. Poor storm water management may also increase flooding, causing property damage from flashfloods and leading to higher insurance rates. Millions of dollars are spent on treating the symptoms of storm water pollution but much less is spent on efforts to control its causes.

And we've heard a lot of requests today for common sense solutions that actually achieve benefits that we can see. Our organizations believe that low impact development techniques that slow and sink storm water flow can both reduce polluted runoff and create new low energy localized water supplies, particularly in southern California to reduce dependence on northern California's supplies.

I handed out a report that was just released yesterday called *Water Works: Rebuilding Infrastructure, Creating Jobs, Creating the Environment*. If the Committee would please turn to page-5. This report created an assessment of what an investment in water infrastructure would do nationally for our economy. The report found that an investment to upgrade water infrastructure to comply with the federal requirements would generate \$255 billion in economic activity and create close to 1.9 million jobs. So what does this mean for California?

In California, on page-25 of the report which I did not provide because it's quite lengthy ...

UNIDENTIFIED: _____

MS. AMINZADEH: Yes. I can provide the full report. An estimated 120,000 to 199,000 jobs could be generated in California from building green infrastructure and implementing the sort of low impact development strategies that actually capture rainwater so that we can use it. It's a no regrets strategy that has multiple benefits.

And I just want to leave the Committee with a request to please reach out to our groups on this work. We are interested in working together on solutions. We've been working in these processes for years. We attend all of the hearings of the State Water Board. We review the comments and the permits, multiple drafts. And we are very interested in working with the Committee and the business community to craft permits that actually improve water quality and that sustain California's economy.

Thank you.

SENATOR WRIGHT: Your time; when do you have to get out? Because that all determines whether or not we do questions with you or go to ...

MS. AMINZADEH: Well, I was supposed to leave at twelve, so.

SENATOR WRIGHT: Oh, okay. The challenge, I think, where we have to be careful in some of the discussion of green jobs, it's like if you gave me beluga caviar I'd throw it away because I don't like beluga caviar. Now somebody else might say, "Wow! This is like really good stuff. How could you throw away the beluga caviar?"

"Because I don't like it."

The challenge when I hear people describe green jobs is is that something that you would do on the natural? If I would, then the fact that it's a green job makes good sense because it's something that I would do. If what you're proposing is not something that I would do and for example, again, if I take California, many of the things that we propose are not things that other people would do. So that what happens: for example; in my district, Boeing makes airplanes. McDonnell Douglas used to make a whole lot more planes there before Boeing bought them before they went bankrupt trying to make planes in Long Beach. When Boeing goes to Seattle and makes airplanes, the cost per plane is cheaper in large part because the regulations in Seattle are less expensive and onerous than the regulations in Long Beach, and Seattle ain't too much further away from the ocean than is Long Beach.

I just watched a car plant down the street close. It was the last car manufacturing plant in the state of California, which is ironic for a state that has more cars per capita than any region in the world. They were able to make the same car—not a close facsimile but the exact same car that they were making here they could make in Texas for \$300 a car cheaper. In Houston and San Antonio were making the cars also fairly close to oceans and they too are governed by federal laws just as California is. Something has to give if Washington and Texas, who are both governed by the same federal government, can find ways to do things that California can't for a fraction of the money that it costs to do it in California. I'm not saying that, again, that we don't want clean water. I'm saying that this \$265 billion that would be generated has to come from someplace. I'm not going to get it from the lady from Roseville because she doesn't have it to give me, so the question becomes, not whether or not—I'm taking the comment that she made earlier so since she ain't got it to give, that means in order for me to get the jobs from this \$265 billion, I've got to get it from someplace. Currently there ain't nobody volunteering. We're back to the human sacrifice again which is where that joke came from when I made it up. Nobody is volunteering to give up their livelihood to create this green job. When you cut to the chase; it's not clear that it's going to get the stuff out of the water to begin with. So if we're not going to build massive systems to actually do tertiary treatment to storm water, perhaps we could. Maybe the low level impact will have something on future developments, but as the gentleman from Caltrans referenced, most of the freeways were built in the '50s and '60s so you'd have an enormous cost and it's not clear again, where you get the money from because Caltrans indicated that the gas tax and the other things are capped. So we're going to end up with what maybe clean beaches and stuff anyway because there won't be nobody that lives here. And if we eliminate the population you can achieve the same thing and I'm not saying that facetiously because we

really just lost a congressional district in the last census so for the first time— we kind of, sort of, skated losing it. But for the first time in the last 40 plus years, we did not see a net growth in California population. So I'm just saying, at some point, not that we say is it going to be a dirtier this or a dirtier that; I'm just saying that it's not clear that much of what we're doing is going to actually make that much difference to begin with. We're going to comply with federal law. Washington does—Texas does—Oregon does, but somehow they've managed to do it for substantially less cost than we do. That also becomes our challenge because we don't have \$265 billion to spend.

MS. AMINZADEH: Well, that's a national figure. And clearly there are going to be costs associated with infrastructure upgrades but the bottom line is that California needs to protect its natural resources as an economic strategy, not an environmental strategy. Our economy in this state and maybe perhaps that differs a little bit from Washington and Texas, depends on our coast and ocean; it depends on people wanting to come here wanting to swim in the water. That's a critical part of our economy and so we have to find a way to improve water quality. If we have more than 80% of rivers and streams that have been assessed as too polluted for these activities, that's a major problem that California needs to address.

SENATOR WRIGHT: Well, let me welcome my colleague, Senator Rubio from the great area of Kern County. They don't have any beaches in Kern County.

SENATOR MICHAEL RUBIO: You stole my thunder, Mr. Chairman. Well, I wanted to thank the Chair of this great committee for allowing me to sit in. I was a bit late because I was travelling up from the Central Valley. It's why I'm wearing boots and, actually, a Fresno State shirt.

SENATOR WRIGHT: Bull Dogs.

SENATOR RUBIO: I'm a bull dog today. But I had a question. Given the fact that you bring up the issue of economics, the issue of the State's competitiveness in terms of growing into the future, any study that you look at today by any reputable group has the Central Valley as being the fastest growing region in the State. We have no coastline. What we do have are some homegrown advantages of agriculture, energy, particularly you talk about green energy; it's going to be the mecca for sun, wind, and solar projects, etc. Is there any consideration from those along the coastline, given your position, to work with us in the other part of California where we have no coastline but we have many rivers and streams, etc., they eventually get to us sometimes from the east and the north, to work with us on a set of regulations that perhaps is not a one-size-fits-all but that applies some common sense approach? And let me give you a concrete example: on my drive today it was raining quite a bit and it did all day yesterday. I don't—you've heard from different businesses and I've read in the material that some, whether it's a cement plant or others, can actually quantify how much it would cost and how they might capture the water—filter it clean it, etc. I don't know how it can humanly be done in some of these field and farming operations, dairies, etc. where we might be able to do that. The reason I crashed the Chairman's party if you will, is to ask that question from your perspective. Is there some consideration from your group to work with us over in the Valley, the Central Valley, San Joaquin Valley, to help us, (a) still be good stewards of the environment, do what is right but, (b) do it in a manner in which that doesn't significantly impact the one part of our state that according to so many studies is going to be the one area that does grow and helps us thrive into the future? What are your thoughts on that?

MS. AMINZADEH: Absolutely. And in fact, in the Central Valley, I focused my previous comments on economic considerations given the Committee's focus. But the concerns for water quality in the Central Valley are actually much more closely tied to public health issues, so nowhere in the entire state of California are these storm water regulations more needed than in the Central Valley where nitrate contamination is already having serious public health impacts. And a study was just released yesterday that shows that nitrate contamination might actually be lowering IQs, so you know, there are some serious economic ties to the coast and ocean but the Central Valley needs these regulations more than anywhere else in the State.

SENATOR RUBIO: Well, you're changing subjects on me just a bit because I could also take that and tell you that perhaps the real debate is between the rural and urban part of California, where you have gotten more share—your lion's share—of grant dollars to help with your waste water treatment facilities, etc., the infrastructure; whereas the Central Valley, because of its poverty levels, has not been able to make upgrades with respect to the lack of infrastructure that it has. I could argue that if you were to work with me that we could perhaps, for \$150 million, solve many of the problems that we're currently working on, whether it's Kettleman City, Tulare County, Fresno County, some other parts of the valley where it's true, we have high nitrate levels. But going back to the new regulation, if we have a regulatory scheme that will shut down businesses in the Central Valley, you will then take the poorest region not only in California but arguably in the country per the congressional study that was done a few years ago, make it poorer, those, then, citizens will not be able to pay the increases to the public utility districts to improve the infrastructure to resolve the nitrate levels. Do you see how this is all intricately tied together?

So while you consider not only the challenges tied to public health, back to my question, when we established these storm water regulatory schemes where we established the new regulatory body, is there a one-size-fits-all or is there any consideration to take into account the different types of practices that exist throughout the State?

MS. AMINZADEH: I think that at the state level the statewide permits need to comply with federal and state legal requirements. But I think that the regional water quality control boards can make specific variations for permits and specific issues that come up and they do do that.

SENATOR RUBIO: Got it. So my last question to you, and I appreciate you bringing it up, is I'd love to work with you to get that \$150 million for the San Joaquin Valley to improve our nitrate levels because—perhaps some of the questions I have for you are a bit unfair given your coastal ties, but I really think the debate in this building and the story that needs to be told about California is the struggle between the two Californias—the coastal line versus the inner inland valleys that we have and the poverty levels that we have. And I know pertinent to the discussion today, Mr. Chairman, it is front and center. The question for me on one hand is how do we build the infrastructure to deal with our nitrate levels because it's tied to public health? Similarly on the other hand, how do we make sure that we have a regulatory scheme that partners with the private sector and have jobs in the poorest area so that we don't have the number of people unemployed unable to pay their public utility bill, to make sure they have that sewer system and water system? Because we have septic tanks where we're finding fecal matter back into the water subject and that has a lot of do with it. So I look forward to you working with me on that particular issue.

Thank you.

MS. AMINZADEH: Thank you.

SENATOR WRIGHT: What I would hope that we would do— and this is a perception that may be unfair— oftentimes there are regulations that are proposed like \$900 million for Caltrans and you say, "Where did they get that from?" or the discussion from the municipalities about the cost. And there's a kind of "We don't care. Go find it." And that worked years ago because there were people coming to the State and businesses were coming to the State and they were prepared to pay it, so for a while that worked. But that dog ain't hunting the same way that it used to. And the challenge becomes as our cost tend to increase, that you're finding that— and again, Ms. Rothrock will talk about manufacturing— but as you begin to find that you've reached peaks and you're going down in the manufacturing sector, then there are fewer dollars left to play with. I mean, so if I lose a NUMI plant, that's 6,000 jobs that are gone. If I've got a plant like Solyndra, that can't compete because they're costs were too high to begin with; notwithstanding the manipulation that they got from the Chinese, but they couldn't compete anyway because their cost structures were too high. If I've got other people who are leaving here because they can't compete, then that means that the revenue to produce— I mean if the 265 is a national cost— the challenge I have with that is where I started earlier; that assumes that I'd buy beluga caviar and I wouldn't. And so, many of these things that are proposed as green jobs, when I look at it from my ghetto economic point of view, it ain't real because it suggests things that I wouldn't buy to begin with.

And, the other thing that I found certainly in the number of regulations, and we'll have a discussion with some of that later, is that it's not clear that you achieve the cleanup that was proposed. So oftentimes, the regulations suggests something that when you cut to the chase you're not going to make it necessarily better anyway. For example; if I looked at the lakes and what have you, it's not clear that most of those lakes and rivers are dirty because of storm water runoff. There are a variety of things that could have caused that to have occurred, many of which are also being handled in other parts and other kinds of regulations. There were a number of things— many of the lakes and things that are polluted are such because of natural pollution that occurred that made them unsuitable to begin with. I mean, a lot of people forget, for example, that in Los Angeles County, before there was a metropolis called Los Angeles County, there was smog. The Indians recorded back as far as the 1800s that the basin in Los Angeles created an environment where you always had smog. It wasn't a phenomenon that occurred because of the automobile, it was a phenomenon of the topography of the city. Now all the cars and people made it worse, to be certain, when you add to what was already there, but there will always be smog in Los Angeles even if you took all the people away because of the dust and the nature of where Los Angeles is. And many times what we're trying to do is exact a standard that's unreachable that ultimately ends up financing people into something that they call a green job. If it's not something that I would buy, it ain't a job; it's a cost. If it's something that I would buy, then it's a job.

MS. AMINZADEH: I think there are two points. First, in this case, often we do know the source of the pollution. The State Water Board Section 303(d), Clean Water Act list of impaired waters, identifies the source of pollution, so to a large extent for these severely polluted waters we do have a sense of the source.

Secondly, with respect to the jobs, beluga caviar issue, when we talk about low impact development strategies, these are strategies that are badly needed. So when you characterize them as things that you wouldn't need anyway, I don't know that that's applicable to this. Low impact development strategies reduce polluted flows, they create local water supplies, which I'm sure everybody in southern California can agree is badly needed, and they will serve as adaptation buffers to rising sea levels. So these are workhorse strategies that can serve multiple purposes and they are not sort of, you know gold standard or a pie-in-the-sky type dream; they're hardworking strategies; they're smart; they're cost-efficient, and they have real benefits and those benefits have been analyzed and reported in numerous reports over the past five to ten years.

SENATOR WRIGHT: Except by the people that have to pay. See, everybody is a Christian as long as somebody else is carrying the cross. When I put that on your shoulder it changes the dynamic considerably. All I'm saying is that— and again, it's not an argument

of do you do (x) or (y), because clearly, you have to do something. I mean, and if I took the Pigovian view of economics and you say the polluter pays. If you know that Joe Smith is the one polluting the river upstream, then make Joe pay or make Joe leave, whatever that issue might be. I mean, or you come up with a cost for Joe in the Pigovian sense that says that you created this much of a negative externality; therefore we're going to put that cost back to you. The problem that I'm saying is that we're distributing often the cost of the negative externality to people, in the sense of Senator Rubio, who are unable to pay and when you do that, what happens is that you exacerbate rather than fix some of the things. So if we said, this regulation; for example, the Water Board regulations that we're describing today; it's not clear after I paid the money, that my water would be better, so the only certainty that I have is that my money would be gone. That's the only guarantee that I've got, is that I'd be broke. It's not clear, for example, that this is going to make, whether it's 900 million or 300 million or 100 million— Caltrans spends, they said, \$150 million today on mitigations, but if it was 150 or we went to 900, it's not clear from the discussion, from the regulations, that it would make Caltrans necessarily any better if they spent 900 million. So the only thing that would happen is that their 900 million would be gone. Well, maybe we would hire somebody to do more monitoring but it's not clear that the water is going to get any better. If we said we're going to do these things that specifically— the low impact program that you described, that works assuming that you're doing more development and much of the area that I represent, we ain't developing nothing because we're already built-out. I mean, I represent an area that there probably aren't two acres of undeveloped land in my entire district so therefore the build-out strategy, unless I'm going to tear down Inglewood and then redevelop it in a low impact fashion, I don't have much development left that takes place. That development that does take place, I have to account for water and I have to do a number of things as a part of new regulations anyway, which by the way, is something that as the builder going forward you know that's the rule and you comply with it. I'm simply saying, is that we have to be careful— and I'll shut-up.

And I appreciate you staying because we're really not trying to make you the human sacrifice. But Senator Gaines raised the point that I think is important when he was talking about extending the regulations. One of the main impediments to jobs which is what this committee is attempting to review, is uncertainty. If I'm going to build a widget plant in Roseville, I want to have a sense of what my cost per widget is going to be on the regulatory front as well as on the energy front, on the labor front, and what have you. If you introduce uncertainty into that front, then I'm going to go someplace where the certainty is clearer.

MS. AMINZADEH: Absolutely. And environmentalists and industrial facilities agree that the current industrial storm water permit is too confusing; it's not clear what the costs are going to be and it's not enforceable. And our organizations are working with the State Water Board to produce a permit that is clear and enforceable and provides some certainty to all parties.

SENATOR WRIGHT: Well, that's good. This is progress. Hot damn! So, the idea becomes, again, not only do we want to make it clear but you want to have some longevity with it. You don't want to create an environment where I'm in business today and I operate it on what I thought were going to be a set of regulations and then in six months there's another one that costs me more money, and then in six months there's another one that cost me more money because at some point if I'm in business, I'm a price taker. I don't have the ability to shift the costs that are created to the customer all the time. That's where the Pigovian philosophy of economics falls short because it assumes that I can continually pass the cost along. Sometimes I can, and sometimes I can't.

MS. AMINZADEH: But there's another piece of the economic puzzle; if we allow storm water to run off facilities, like today, without being treated or cleaned and it goes into rivers and reservoirs and drinking water supplies, then people in certain areas of the state, which is already happening, have to go and buy bottled water. That's passing the costs off to people. So we can't only look at the economic impacts of this to industrial facilities and governments, we have to look at the public health impacts; how many people are going to the hospital from swimming in contaminated water or drinking contaminated water? There are many economic costs associated with the fail to regulate and manage our resources.

SENATOR WRIGHT: And one of the things that I think we'll have to do becomes as we propose the regulations, such as they are, that we need to actually look and see did the regulations work, right? I mean for example; we required people to put an additive in the gasoline as a regulation. California did it by choice. Some states did; most didn't. Most had better sense than we did. The additive that we mandated go into the gasoline actually impacted water quality. It wasn't the choice of the oil company per se; it was the choice of the regulators in state government. They did that. So that meant that they spent \$8 billion for this regulation that didn't work. And then we spent an additional \$4 billion to take it out. We also got rid of almost 20% of our refining capacity because they couldn't afford the transition and the cost to make the new gasoline, which now means that we have some of the highest gasoline in the country, which means that if I'm an airplane company I tanker fuel and I don't buy it here, which means that I now lose \$600 million in a year in avoided jet fuel taxes. Then on top of that, I lose an additional \$400 million in transfer trucks who don't buy diesel fuel here because every one of the interstate highways has a truck stop on it and they buy the diesel fuel from there so now I'm a billion short. Well, hell! If I had that billion I could give it to him so he could do the water treatment stuff he's talking about. I'm just saying; at some point, and there's a law that doesn't even require that the Water Board do an economic analysis; they can but they don't have to and up to now, they don't. So as a consequence, we don't even know whether or not what they're proposing works. We're talking about stuff that often— I mean again, as I look at Seattle and I look at our neighbors around, they ain't doing this. So we're exceeding what everybody else is doing and ...

MS. AMINZADEH: I don't think that's true. Earlier Tom Howard said that we actually look to Washington which has stronger storm water regulations, as a model, so I don't think it's ...

SENATOR WRIGHT: Trust me. The people that Boeing were about to take the C-17 to Seattle because they could make it for substantially less money and Seattle doesn't have, you know, near the population that we do and they don't have as much agriculture. They don't have as much agriculture as you do in the San Joaquin Valley. So all I'm saying is that I'm not suggesting at all that Seattle and Washington are not complying with the Clean Water Act; they do. What those other states have found is that they're able to do it for a whole lot less than we do. I mean if we just said we're going to be in the group, I just want to stop us from leading with our chin. I mean in boxing that usually is not a recipe that's going to let you win the context. I'm just saying. I mean that's not to say that you don't do the cleanup; it's not to say that you don't monitor the environment; it's not to say that you don't want to have standards and visions of how you can make it better; I'm saying that much of what's proposed doesn't even make good sense. Ray Charles could see that some of the things proposed there weren't going to work. Therefore, you end up in a situation where again, the money is gone; the water is still the same as it was and somebody ended up with a green job. I would contend that that's hustling backwards. If you said to me, "If you do this, that this is going to make the water better, count me in." If I'm going to put MTB in gasoline, that's idiotic. If I'm going to require there to be something in fuel or some of the things that we do that can't be complied with, I can't do that.

And when we were experimenting it was fun because we could play around but now it's becoming a case where I've got states calling on businesses in California saying, "You know what? You should move here because we figured that out a long time ago." And it's not you individually. I'm saying that we can and should be able to create a system whereby there's a regulatory regime that's stable, consistent, and predictable so that people who come here to make and build stuff know what they're going to have to do. We did that at one time in an environment where we didn't concern ourselves with the cost. I mean we went through World War II. Again, this would be closer to Mr. Huff and Mr. Dutton's district. But we went through World War II where they used to dump rocket fuel in the ground. And I'm not exaggerating. The army literally dumped rocket fuel in the ground and then it would rain and the rain would percolate down and the rocket fuel ends up in the aquifer. It absolutely happened. Some of it super fun sight and in some cases we're trying to go back and...

MS. AMINZADEH: And I'm sure that those discharges would have argued that that was the only economically feasible way to get rid of that rocket fuel. But it's the State Water Board's role and it's the Legislature's role to protect the public's health and interests.

SENATOR WRIGHT: Well, at the time they would have argued that they didn't want to speak Japanese or German. There was something else going on at the time. But I'm just saying. And the challenge for us is that you look at that now and now we know that that's something that we shouldn't have done. I agree that that's the case. And I agree that we've got to make sure that we monitor the regulations and we've got to make sure that we make the water better. But we've got to make sure that the regulations work and we identify a way to pay for it. That also has to be the thing. We just can't say, "This is going to cost you x number of dollars and you've got to pay for it."

I'm sorry. I'm going to give you the last word. And I appreciate— you're a good sport and I appreciate that.

Can you take a question from Senator Dutton?

MS. AMINZADEH: Yes.

SENATOR DUTTON: Just quickly. I'm not putting you on a hot spot. This report is national, right? It's not ...

MS. AMINZADEH: Yes. But there are California numbers in there.

SENATOR DUTTON: In the five pages you gave us?

MS. AMINZADEH: No. But I can provide the whole report. I just didn't want to inundate ...

SENATOR DUTTON: It's online, right?

MS. AMINZADEH: Yes. And I have the figures in front of me if you want them.

SENATOR DUTTON: That's okay. I know you're in a hurry and I can look it up online. Also, at the beginning of your statements you were talking about the federal requirements. You used the word "practical."

MS. AMINZADEH: "Maximum of extent practicable" is the legal ...

SENATOR DUTTON: Can you please define for me "practical?"

MS. AMINZADEH: Well, it's "practicable," and actually in Senator Wright's ...

SENATOR DUTTON: You know where I'm going; what's practical to you may not be practical to me. I'm just curious if there's a— did anybody bother to define the word "practical" in the application has you were referring to it? Because you and I may have different definitions of "practical."

MS. AMINZADEH: That's true.

SENATOR DUTTON: And then the other thing too about that area, and you're right, we've got— also fireworks and everything else were produced down there. But the other problem too, and let me explain to you something that's happened; this is also what's going on in the Central Valley. Down in my area is the Chino area. My wife is a fourth generation Chino girl and of course the farm, the dairies down there. You know they started out with about 35,000 cows and then they ended up with over a million cows and what ends up happening is that as the costs associated with making a living and stuff increases you look at ways to expand your market. So what they

did is then instead of having a couple of cows, they end up having three or four cows and then they have five or six cows. Because as the costs go up, the property taxes came in and all the utility rates go up and all this other stuff, they have to add more cows. Whenever you start adding more cows you're going to create more natural waste that, then, the groundwater gets contaminated because of high nitro levels and things like this because we've got so many cows per acre and now we've seen that explode. But then also what's happening, about the only way we can deal with things like the _____ contamination and the high nitro levels is if we actually are able to put water into the groundwater system, right. Well, you see right now they're being stopped. Down in our area in ground storage is kind of a critical thing. We can't put runoff because they say that that's contaminating that water. And yet, I've got to recharge that basin and the only way I can dilute it is to where it's acceptable levels and it's safe, is if I do put more water in there. So somehow we're going to have to come up with a balance, a common sense approach here. Because once it's pumped back out of there it's going through a pretty extensive filtration system before it actually gets to the consumer because this gets filtered again anyway.

So I'm not saying what you're saying is wrong; I think there's some good—I'd like to make sure most of this is going to actual building of infrastructure and not just more think tanks because that doesn't get me there. I don't know because I haven't seen the details as far as how you're spending your money or how this is resonating. That's the reason I was curious about it.

But you know, we might want to give that some thoughts too, because I don't think anybody is disagreeing with what you're talking about. And right now down in southern California we pay some of the highest water rates of anybody in the name of conservation because they don't want us using more water. And so, somehow you're going to have to give someplace.

That's the only comment I've got to make.

SENATOR WRIGHT: _____ with Senator Rubio and we'll be working on nitrates and we can raise the intelligence quotient of the people in the Central Valley.

MS. AMINZADEH: And I'm also going to come with ...

CROSSTALK

SENATOR WRIGHT: Excuse me; but one of the discussions was, was there is a suspicion, correct me if I'm off, I think I understood you to say that there was a question as to whether or not the nitrates were causing intelligence lowering issues.

MS. AMINZADEH: Yes.

SENATOR WRIGHT: You can't make this stuff up. (laughter) But I'm just saying. But I think in the aggregate we can work together. The challenge becomes is that we tend to do a lot of it piecemeal. So there's the storm water and there's waste water and there's different things that ultimately might need to be combined so that you're able to make them more effective. If we were able to use more of the storm runoff water and it was clean enough so that there could be gray water and you could—I mean I think that there are things that we should look at and we should be more holistic and making sure that we're doing the best that we can with the technologies that we have before us. I think that all begins to make good sense and everybody is moving forward. The problem becomes is, again, when the bill comes and we want to make sure that the bill is equitably distributed so that everybody feels that pain equally.

And I appreciate your giving us the time and putting up with crazy people who are here. But again, I've got a whole lot of people who are out of work. The four of us here have unemployment rates that are higher than many parts of the state, so the challenge for us is to see those things that we're able to do that help people work in areas where we can get a real job. So I appreciate it—recognize what you do. Because I can see in L.A., between Biona Creek and the L.A. River, we're better than we were 25 years ago and the population has increased over the last 25 years. So there's significant progress that to your credit and the credit of the people that you work with would not have occurred had you not been there. So I see it. I recognize it. But as we move forward and we're looking at our incremental increases, we want to measure that and make sure that what we're getting over the incremental increase is worth the cost that we're going to pay for; that becomes part of the challenge in what we do.

MS. AMINZADEH: Thank you. I look forward to working with the Committee.

SENATOR WRIGHT: Alright. Thank you so much. Jim.

MR. JAMES SIMONELLI: Good afternoon, Chairman Wright, distinguished Committee Members. My name is James Simonelli. I'm executive director of the California Metals Coalition. I also have the honor to serve as co-chair of the Water Coalition. And for this part of the discussion I'd like to focus on the Industrial Permit because that is what impacts our members and the members of the Water Coalition.

The Water Coalition is one of the most diverse coalitions here in Sacramento. We've got business, over 100 trade associations representing 20,000 businesses. We have a workforce, labor—over 1.5 million workers and many of which are from organized labor, government—you've got local cities and counties that directly and indirectly are impacted by the Industrial Permit. And the one thing that I haven't heard during all of this discussion is schools. Schools are regulated by the Industrial Permit and in part of our Water Coalition we have nearly 500 school districts encompassing 92% of California's children. So when we talk about storm water and we talk about "industrial," we're talking about a very, very diverse, very broad, everything from a small mom-and-pop shop to the place where our children go to school.

The Water Coalition really has a simple goal. We do support the efforts to improve water quality and take reasonable and measured steps towards this goal. And we have a track record because this permit change that we're talking about has been a regulation for 20 years. You have 20 years of investment. You have 20 years of data sampling. You have 20 years of people going out in the rain and collecting rainwater and sending it to labs. I can also confirm, contrary to the slides that we saw this morning, that the storm water runoff from our industrial facilities do not include things like beach balls and lawn chairs and large bags of trash. Essentially, you're talking about a very thin flow of water that comes off of a site and that is what is sampled and captured.

A lot of our biggest challenges as far as the Water Coalition have been pointed out. The issues of cost. The issue of what is the net impact of jobs, not just what we think are created or what we expect to gain; but what's the net impact of jobs? What is, for this type of permit, based on the benchmarks or the previously proposed limits, is there an establishment to fail? I'll give some examples later of specific facilities and what the impact truly is of storm water in their sampling. But in many ways we are setting up our community to fail.

So essentially, the Water Coalition has some basic goals. We have some issues that are going. But I think what's really brought us all together today is the process that's led us up to this. We're talking about a permit that is 14 years overdue. We're talking about a permit that has had 14 years of discussion. And I'm reminded by my freshman year in college, a professor that put on the front of his door around it by duct tape that says, "A lack of planning on your part does not constitute an emergency on my part." And when I look at what's happened in the last six to eight months, there has been a rush, even though we've had 14 years to do this, a rush to put out a permit, a rush to review this permit, a rush to push everybody to get their comments in one or two minutes in, and it's created, essentially, why we're all here today.

And you know I'll quote one of the things that we received as the business community during this process. It's at the bottom of an email from the State Water Board. It says, "Please be advised that State Water Board staff may not discuss the proposed revisions until the new draft is published." And this was in July. And so, we were directly told we can't talk to staff. We know what happens at ex parte; we can't talk to the Board; we can't talk to the executive officers. There's a void of communication. And in a business and economy that's as unstable as it is, that uncertainty is what I think you're seeing brewing here. So I wanted to point out those things because it's essential to this larger water coalition.

As far as bringing a larger scope down to specifics, my organization, the California Metals Coalition, is a manufacturing. We actually make stuff here in the state of California. There's about 6,000 facilities that do the metal work, representing 250,000 employees. And those employees that we employ, eight out of ten of those employees are considered ethnic minorities; eight out of ten are considered to be in communities of concern. These are living wages, health benefits, to communities that really need these jobs.

And so, some specifics about the impact of this draft and the impact of storm water: Based on the draft of our facilities we looked at in the first year between \$10 and \$12,000 impact per company which translates into between 48 million and 72 million dollars per year in cost. And for manufacturers, storm water for us is a non-revenue generating source of activity and when you look at those dollars that would go towards that, you're talking about money that doesn't go towards investing or towards hiring people. Even more specific; one of the benchmarks that our industry has to measure is zinc and zinc is a constituent that's measured in the storm water. Less than 1% of our industry processes zinc yet over 50% of our industry cannot pass the benchmark for zinc and the reason for that is because we have metal roofs, we have metal gutters, we have cars that drive on our property and drive off of our property, and so, we have facilities that they could shut down for three weeks, four weeks that can't pass the benchmarks and hence proposed is limits at one point that are proposed. And so, you have the cost of exceeding those limits, which for the second year for our industry would be somewhere around 150 to 200 million dollars and then by the third year, once you get into engineering controls just to capture the gutter rain that's coming off, you're talking about a quarter billion dollars just for our industry based on what you saw as a Draft Permit.

So I think as you look at individual sites and individual companies, both in the small and macro sense, you throw in schools, you throw in cities, you throw in Caltrans, you have a significant portion of the state of California, I would argue, representative of every legislator in California, that's impacted by this issue of when it rains somebody has to scoop it up. And I think, you know, the further we can analyze and look into these things the better.

So going from here I think a few things have come out that I'd like to suggest.

One is to fix the ex parte. We need to talk to that Water Board and I think that can be a legislative fix. I think that we need to look into the cost benefit analysis because this issue of not doing it at all because it's "a permit," when we all know at the end of the day this is essentially a new regulation change, is something that needs to be addressed and could be addressed legislatively. And at the end of the day, I think we need to continue, because again, a 14 year span of waiting for a new permit when essentially the State and the State Water Board, they are not under a federal mandate to adopt something different that's in place right now. They are mandated to review and to look at it again but not mandated to do what they're proposing. And so I think reigning back in all of these things and "reigning" with a r e i g n, r a i n, should be the focus of everything.

So on behalf of the Water Coalition and the California Metals Coalition, we thank you for holding this. It's significantly important for jobs and everything that we're focusing on. I'll obviously be around for questions. But Dorothy is also here as well to give some comments. So thank you.

MS. DOROTHY ROTHROCK: Thank you Chair and Members. My name is Dorothy Rothrock. I'm with the California Manufacturers and Technology Association. And I'm going to try not to repeat anything that's been said which is hard because I think we've covered the landscape here.

We all know the economy is in bad shape, especially for manufacturers. And it's very crucial at this time that we be sending a very strong message to the investment community that California is a safe place to come and explore putting new money to work. We've been named the worst place to do business seven years in a row by CEO Magazine.

Now particularly when we're trying to go somewhat beyond federal law, it's important to show those outside potential investors that the certainty that they want to hear is that we are going to do things that make sense; that if it's going to be a cost, there's going to be a benefit that's going to justify that cost. That's the kind of certainty they need. They need the certainty that the regulators are going to make sense. They also need the certainty that they are going to be able to have adequate opportunity to provide input to those regulators.

And getting to this ex parte issue: we really think the Board is hiding behind a rule that they don't need to hide behind in this regard. They've chosen to make this process quasi-judicial. They don't need to. They could treat it legislatively. In fact I think that the issue of determining what federal law means, maximum extent practicable, is a legislative issue. It looks like to me, I'm not an expert, but probably science, economics, technology, all sorts of things would be involved in determining what's practical. That's a very policy driven decision. It needs lots of analysis and thought. That's legislative and we should have access to the Board to discuss that and the ex parte rule is not legitimate.

I suggest, just to close—I'd said I'd be quick—I don't want to be sacrificed. I think Ted Gaines, Senator Gaines had a good idea about sticking with the permit as it is. Let's start work today on a process that may take a few years to get it right. We took a couple of years to do the scoping plan for AB 32; I don't think this is any smaller than that. They're still implementing AB 32. This is something, and there was huge public process. I can fault CARB for a lot of things but I don't fault them for the public process. That's the kind of effort that the State Water Board needs to put in this process.

Thank you very much.

SENATOR WRIGHT: Questions from other senators?

UNIDENTIFIED: In listening to all this there's just a tremendous challenge we have and I agree that we should have it collaboratively if we can. A process that weighs the economic impacts of the decisions we're making. It's not lost on me that while Senator Wright, Mr. Chairman, talked about the air in L.A. County, we have a better probably more viable illustration in all the water that went into the ocean was potable at one time. But we weren't around. It's very salty and it's got a little bit of everything in there. And some of the requirements that we have here to clean it up would make rainwater suspect in areas where it's coming down through some of the pollution so now we're going to be responsible to clean up even to the level of polluted nature. I think this stuff really deserves a strong look at it. We can't be pricing ourselves out of business. We will absolutely be, you know, looking for the last person to turn the lights out. We can have the cleanest water around. We have the cleanest air around. We could have nobody around to enjoy them.

Thanks.

SENATOR WRIGHT: Okay. Senator.

SENATOR DUTTON: Yeah, could you kind of elaborate. You made a reference to a quasi-legislative versus quasi-judicial; could you kind of elaborate on that a little bit?

MS. ROTHROCK: Yeah. In fact, staff did a real good job of outlining this in the report here. If the Board is working on a quasi-legislative matter, then communications back and forth can be very freely accomplished. If it's judicial it's considered more like, well, it's a case in controversy; you've got a particular party and a particular compliance issue and it's not appropriate for the parties to be talking to the judge off around the side.

So the permits are rather strange because they're a permit to operate, which sounds kind of individual but in fact it covers dozens and dozens, hundreds of different facilities and different types of folks, as James did a good job describing, so it's a little bizarre that it's in that kind of a framework for analysis or the process for communicating with the Board when it has this broad application. It is in fact a regulation that should be governed by the type of regulatory process rules that we have in the APA and the fact that it is not governed by the APA is kind of a strange aberration; think of what California law should be for the State Water Board.

SENATOR WRIGHT: Alright. Thank you. Any further questions? I want to do two things. Mr. Watson, thank you for staying. And as you open, but I want to give you the last word because a number of people have made descriptions, so if you had a closing comment I wanted to give you that before we went to public comments. You know, I called you "Watson." Excuse me. Mr. Howard. I'm sorry. I called you "Watson." I apologize. I'm old. When you get old you'll make mistakes too. But as the group, I mean, you started off and a number of people have said things. And I appreciate you being here because I hate it sometimes when people say stuff about me and then I don't get to respond and in my business it happens all the time so I'm used to it but I try not to do that to other folks. But I wanted to give you the last word in the witness panel.

MR. HOWARD: Oh! Well, thank you. Actually I don't really have much in the way of a response. What I've heard is what the Board heard during their workshops. It's what the comments that we received indicated; it's why the Water Board is doing a substantial

redraft of the permits right now and is going to go through another whole process of comment and public hearings and public workshops to discuss the new draft permits when they come out.

As I said when I think the first thing I started was that the comments and summary was that this was too much, too fast, and at a time when the economy— and too expensive at a time when the economy can't afford it. And the Water Board— well, I'll speak only for myself— and I agree with that and that's why we're in the process of going through this again.

SENATOR WRIGHT: I would hope, I know that the holiday time is busy for a lot of folks, I would hope we would perhaps look at a time at the beginning of the year and kind of start fresh so that we don't end up where there's something where people said, "I didn't know they were meeting on Christmas Eve or something to that effect." I would hope as well— you know, I will have our Leg Counsel people look at the rules vis-à-vis the ex parte judicial versus the other thing. I don't purport to be an expert in the water side.

I do know the rules at the PUC; once there is a proceeding that it takes on that process because they are judicial and will have to make what could in effect be a judicial finding. There's often, in their case, an administrative law judge who's hearing the matter and then that administrative law judge is going to refer it back to the entire commission. So theirs is a little different than yours in that regard; that's why I was talking about the differences.

But I think some of this could be made less cumbersome if the affected parties, including the environmental— I mean, if everybody had an opportunity to sit at the table, the real parties of interest and the— I would contend some of the environmental groups are real parties of interest as well because it's their cash-cow that we're talking about. So if everybody who had an interest had an opportunity to fit in, if we could look at that.

As well, I think we should begin looking at the cost benefit analysis. I understand that Senator Sher's bill kind of exempted you from having to do that, but just because that's there doesn't mean that it's a good idea. And I think we might want to begin looking at just some of the analysis. I mean I looked at a regulation that was going to cost an inordinate amount of money for a 3% increase in benefit and I don't think that it was clear to everyone that we were talking about a 3% increase it was a CARB reg. At some point you might say you know 3% is not even something that you'd be able to measure going out. So I think as well going forward, I'm just kind of a plain guy, we'd like to know as we look at the regs specifically what they do in terms of them improving the water. It might be that it's a tactic, but I hope that we're able to demonstrate is that the regs that are going to come out are going to have a demonstrable impact on the water quality so that we're not just saying we just raised all these rates but the water is still the same as it was. I know, again, in southern California we're working on our beach stuff and we're putting filters and booms on a number of things in those channels and canals that feed into other waterways and the oceans but I would hope that we would begin looking at the cost, the benefit, the word Mr. Earp used was "sustainability" in a fashion that's normally not used in this context to see that it works. So I appreciate that.

I look forward to working with you again. We'll have some notes that we'll come back to you with. And I hope that we're able to get together again because I'd like to think that at the end of the day we all have the same purpose, which would be to increase the quality of life for the residents of California. And starting from that purpose and moving forward I think we can achieve better water and a quality of life and have people have jobs because I can assure you that your quality of life is severely impacted if you ain't got no job.

And so, our challenge is how do we keep the economy growing in a way that provides the revenue to do much of the things that we're talking about doing? I don't think that they're mutually exclusive between the environment and doing that. But we just want to make sure that the things we're doing actually produce real value.

So I appreciate you being here and I know you could have been— for three hours I have privilege and thank you, sir, for your time in being here and in some cases being the person that we beat up and then another person's cases I welcome and actually say thank you for that work that you do because there's a real need to make sure that we deal with storm runoff water, and someone who looks at that and has been working on that as you have, we appreciate what you do.

MR. HOWARD: Thank you, Senator.

SENATOR WRIGHT: We're going to open up. If there's a public comment that someone has we'll take those. And if you see an open microphone or seat, please come forward and take it and we'll keep going.

MR. JOSH PANE: Mr. Chairman, Members, Josh Pane on behalf of the California Refuse Recycling Council, a 50-year-old council of recycling companies, the original scavenging companies, so we do do a substantial amount of environmental work in the State.

One of the issues we're happy to hear that the Board, from Mr. Howard, today is looking at the best management practices rather than the numeric limits. But in the existing regulation, and this hasn't been brought up so I wanted to bring it up to your attention, in the existing regulations there's the issue of lawsuits—in existing regulations. Our organization and many of our members have been the recipients of these lawsuits. The lawsuits in our estimation seem to be in the frivolous range. It seems that certain parties, certain law firms and certain environmental groups are using some of what is today in the regulation to file these frivolous lawsuits on folk in our industry that are attempting to do the very best job. So we'd like the Legislature to look at the possibility of the law and how it affects, if there's a way to do it with, for example, the ADA. The Legislature passed a revision to the federal law that the Legislature had the authority to, on the ADA, that allowed a company to begin the process and not be susceptible to a lawsuit, to begin the process of fixing its

ADA compliance. We'd like to urge the Legislature to see if that same type of law could be applied here. That if a company is in the process of complying, that, then, that company, there'd be no lawsuit possible at that point.

SENATOR WRIGHT: Let me, to move forward, if you would give us a little bit of what you have; if you'd get that to staff.

And I'm going to take a chair's prerogative and thank Katherine Agard and Paul Donohue from my staff, and I forgot the gentleman's name from—Mr. McCarthy on the Republican side; let me thank in fact all of you for putting the hearing together and the work that went in. I forgot to do that earlier on. Let me as well thank the sergeants who are here. Everybody could have been doing something else today other than to listen us talk so I appreciate all the staff time that went into making this work.

But, Mr. Pane, if you would get that to Paul, we would probably want to look at that as an outcome of what we had at the hearing.

MR. PANE: Yes, we will do that, Senator.

SENATOR DUTTON: I've actually had some experience with what's going on with the ADA fix supposedly that took place. Unfortunately, we've never implemented it. It was put into effect back in 2008. We've got businesses right now being sued out in Redlands and so forth. I just put in a bill to try and have a 120-day stay on lawsuits until it can be fixed and I couldn't get it out of the first committee. And the reason was because they said about the 2008 fix that was put into effect; the problem is it hasn't been implemented. And there has been somebody that's actually gone through the certification process that's still being sued. And part of the other challenge is that even if we fix it at the state level; they just walk across the street and file those same lawsuits into the federal courts. So that will be the other thing that we'll need to take a look at.

MR. PANE: Well, we know that it has some effect on the ADA side. You can see them in windows now; it says "ADA compliance under progress." If we could get just something simple to allow companies that are trying to do its very best job to clean the water coming off its plant, while that's happening if we could just have some semblance of order so that we don't have these lawsuits, that would be helpful.

SENATOR WRIGHT: Okay, well, just get us something to work with.

MR. PANE: We'll get that to you, Senator. Thank you very much.

SENATOR WRIGHT: Thank you. Well, let me take this gentleman who is standing up. Sir, why don't you take that microphone right there.

MR. STEVEN DESJARDIN: Hello. My name is Steven Desjardin and I'm a business owner in Roseville, California. And so, I've heard a lot from legislative and representatives; how about a business owner? As an owner of a restaurant, these regulations actually regulate me as a tenant of a building to do things outside my building as a tenant and in the parking lot that has a separate ownership. And so, when I'm actually down here on a day like today talking about storm water affecting a restaurant, I think we know how far a way we've gone with this regulation.

I'm also a real estate developer. I've developed in Roseville for 25 years now. And my last project I got approved in the city of Auburn, got the Smart Growth Award from the Sierra Club, which they don't hand out a great deal. So I'm pretty happy with the ...

SENATOR WRIGHT: How much did that cost you?

MR. DESJARDIN: Just calling up and talking to them. (laughter) Absolutely nothing, sir.

SENATOR WRIGHT: Okay.

MR. DESJARDIN: And the point is, is that I can call and talk to them. When I came here in '87 I did the first permits for vernal pools and for wetland creation. I could call up and talk to _____ Fish and Wildlife Service. I can talk to _____ Corps of Engineers. I could talk to the EPA. I could talk to Fish and Wildlife. I can't talk to the Water Quality Control Board.

I will tell you right now; I as a developer can't construct now because it's raining. The last time the permit was updated I hired engineers and people who were certified by the Corps, to design a program. The answer is they couldn't give me a program because there's no event that they specify. So when you have a regulating body that's not responsive to me as a business owner, to me as a developer, or me as a citizen or you as our ultimate regulating body, we have a recipe for disaster. So I want to echo the ability to talk to the body. There's probably, I'm going to guess after having done this for a while, there's probably two people who are writing this stuff who've never even talked to a business owner or someone like myself to collaborate.

I got through the creation of vernal pools for heaven's sakes. I was able to collaborate with the regulators. That collaboration is key.

Right now storm water is so far to control and as we look at anything else, please look at it in conjunction with the other permits that are already in place. In Roseville again, we don't have beach balls by the beach— we don't have a beach, and we already have things to deal with this. We have detention basins, retention basin that deals with the energy; we have storm water interceptors you know in parking lots and things so why on earth are we going more, to spend another 100% for a tenth of a percent benefit?

Thank you very much.

SENATOR WRIGHT: Okay. What I'm going to do; sir, I'm going to ask you take that one and if I could, I'm going to take the people who are standing. So if you would line up on the standing mics and I'll take the seated people last just because you're more comfortable than they are.

Yes, sir.

MR. IAN PADILLA: Thank you very much. I'll be brief. I know the hour is late. Thank you, Mr. Chair and Members, number one, for having this hearing on this very important issue. My name is Ian Padilla and I'm with the Coalition for Adequate School Housing. We represent over 500 districts and about 92% of school kids on school facilities and maintenance issues. I did want to mention we are also part of the Water Coalition and the Statewide Storm Water Coalition as well. We share many common concerns.

To be brief; CASH has three primary concerns. One is the cumulative impact of all the permits. That's something that hasn't been discussed here. The construction permit has already left the stable so I'm not going to bring it up here. But that's something that we're very concerned about.

Certainly the other one is the inclusion of numerics in some of the permits, particularly the Industrial Permit. That's a very difficult prohibition. And most above all is the cost implications for schools of all these.

I'll spare you my long bullet point list of what's happened to schools in the last three years. You know very well. It's a very difficult time. But I will say that every dollar that goes to a non-educational requirement is a dollar that doesn't go to educating kids. I think that's a difficult logic to ignore.

We have some technical concerns on the municipal permit. I won't bring that up. We're going to work with staff on that one.

But our real concern is the Industrial Permit. We think the confusion created by the complexity of the numeric-based approach is going to get us into a situation of perpetual noncompliance and I think we see that's a common statement.

We're also concerned about some other issues: monitoring requirements; maybe a need for more flexibility in the training requirements; the prohibition on group monitoring, some of the schools, particularly county offices of education, it's more efficient for them to do that and so they would like that option.

The Industrial Permit there's some question, well, why do schools care about this? Under the permits we— it basically applies to schools that operate school bus maintenance yards and we have estimated that the cost per site will be about 30,000 to about 130,000, something like that. Now it's important to understand that that would be, we think, the cost of complying with the permit but if corrective action triggers are triggered the cost of mitigation could be significantly more.

So in conclusion, and we did give staff our letter that went to the Board, we urge the Water Board to be measured and reasonable as we go forward. I think that's a common theme. I was somewhat encouraged by the statements of Mr. Howard with regard to some of that. And unfortunately as currently drafted, we don't think that the Industrial Permit is either measured or reasonable and we are ready to work with the Board on issues going forward.

Thank you.

SENATOR WRIGHT: Thank you.

MS. NICOLE HERNANDEZ: Good afternoon Chair, Members, and Staff. My name is Nicole Hernandez, on behalf of CAPA, the California Association of Port Authorities which is comprised of the State's 11 commercial and publicly owned seaports. We submitted a letter to the Board back in April and provided that letter to your staff as well. So we just want to say that we have concerns and we look forward to working with them and others to address them.

Thank you.

SENATOR WRIGHT: Thank you.

MS. SUSAN ROHAN: Good afternoon. My name is Susan Rohan. I'm the vice mayor of the city of Roseville. I want to thank you very much for having this hearing today.

SENATOR WRIGHT: You guys are well represented today.

MS. ROHAN: Your efforts to examine the impacts of state regulation on California's economy is timely and critical. As Kelly McKinney stated, our cities support the effort to maintain and improve water quality, however, the goal of improving water quality must be balanced. The State Water Resources Control Board must account for cost in any regulatory effect, cost to local governments, and more importantly, the cost to our local economies. The best way to do this is to require that a cost benefit analysis, along with input from all stakeholders, be a part of any permit or regulatory writing process.

As was stated earlier, this will help the State Water Resources Control Board prioritize which permit provisions will result in good progress toward improving the State's water quality without bankrupting local governments and driving more small businesses to shut their doors and cut jobs.

I am also very concerned to hear about the lack of effort by the Water Resources Control Board to provide adequate outreach to the businesses that will be affected by this Draft Storm Water Permit. This alone is cause for alarm and underscores the inherent flaws of how these storm water permits are written and adopted.

Senior management and the council at the city of Roseville asks staff to work with other affected municipalities to elicit change on the Draft Phase II Permit. This effort has resulted in the creation of the Statewide Storm Water Coalition. Coalition members, over 60 strong, have taken notice and are saying that this permit process is flawed. The permit is not very well thought out and the results of the

permit will be devastating. Severe cuts to core general fund services, failed businesses, and/or businesses that flee California for a more friendly business environment, fewer jobs, all of which will add to our State's continuing problems.

With the good work by your committee today and in the future, we are hopeful that some balance will be restored to the State's regulatory permit processes. The stakes are very high and inaction will not serve California and its economy well.

Again, the city of Roseville thanks the Committee for seriously looking at this issue. And we look forward to the Committee's recommendations, possible future reform legislation, and other actions to promote constructive change within the State's regulatory system that will stem the tide of business leaving our state.

Thank you very much.

SENATOR WRIGHT: Thank you.

MS. LORI CHEN: Good morning. Thank you for having this hearing. I'm Lori Chen with Clean Water Action. We wanted to bring forth the notion that preventing the pollution to begin with is probably the most cost-effective way, and to include that approach and to understand that any cost benefit analysis would need to look at impacts beyond the direct impacts—the secondary health impacts—and the impacts to communities that are often the least capable of dealing with the pollution, the agricultural communities that don't have the resources to deal with the nitrates. All those impacts on those communities are even greater because they don't have the resources to deal with the public health issues that are incurred.

SENATOR WRIGHT: Thank you.

MS. TRUDY HUGHES: Good afternoon, Senator. Trudy Hughes with the California League of Food Processors and co-chair of the Water Coalition. And I just want to thank you and the rest of the senators here for helping us on this issue and for giving us an ear. We want to acknowledge the fact that the State Water Board has come to the table. And we have met with staff. And we are hopeful that the revised draft coming out will address some of our issues.

That being said; a lot of the discussions we're having are happening on the back end. We would really like to be able to have the discussions up front with the State Water Board so that we can maybe put some workgroups together and deal with these issues on the frontend so that we're not in this panic at the end and dragging these folks in front of you and whatnot. So we're really hopeful that out of this we can get some reform so that we can have some meaningful water quality benefits that come out of this entire process.

Again, I work for the League of Food Processors. We have 160,000 direct jobs, permanent jobs, in the state of California. Our industry has an employment factor of 5.5. That means for every one direct job that we create in our industry that creates five more. We want to be able to not just retain that number, but expand that number. And food processing and agriculture in the state of California doesn't have the luxury of simply moving to Arizona. We have to comply. We have to stay in the state of California. We have one of the most robust agricultural producing areas in the world. And when we put these types of onerous burdens on the industry, it certainly impacts the price of food; it impacts our ability to compete both nationally and internationally.

So again, thank you for the opportunity to present our case here today. And thank you for giving us the opportunity to continue to dialog with you.

SENATOR WRIGHT: Thank you.

MR. TOM JACOB: Thank you. We appreciate very much the hearing. I'm Tom Jacob. I'm here on behalf of the Chemical Industry Council of California. I'd just like to endorse the comments that have been made about the Industrial Permit and to express particularly a concern with a process that would have allowed this permit to be put forward in the first place with such extreme concerns about it. We really do need a process that finds a way to get the interest—all the interests—frontend loaded so that we don't have to arrive at such a difficult stage and we can get a meaningful permit that we can all stand behind and move forward with.

Thank you.

SENATOR WRIGHT: Thank you.

MR. JERRY DESMOND: Chair and Members, Jerry Desmond representing the Metal Finishing Associations of Southern and Northern California, approximately 200 members. We're part of the Water Coalition. And I just had one point to one of the elements that is of great concern to us. And we have about 25 other industries that have group monitoring programs. For 14 years we've had an ability to have a program with a group leader that helps the small businesses that we are, and many others are, as well as the school districts, for monitoring, inspection, reporting, and sampling so that they can comply and not have to spend the kind of resources they would have to as small businesses individually.

We understand the first draft would eliminate the group monitoring programs. We understand the second draft is probably going to eliminate them as well. We have not had any collaborative working group type of environment to bring this issue up. We're hopeful that that could occur but we think that with your leadership and direction maybe that could take place.

Thank you.

SENATOR WRIGHT: Alright. Thank you.

MS. DAWN KOEPKE: Thank you. Dawn Koepke with Mc Hugh and Associates on behalf of the State of California Auto Dismantlers Association. SCADA is the statewide trade associate for the auto dismantling and recycling community in California. We are

also a member of the Water Coalition. Share the concerns voiced by the coalition and members. We're specifically concerned about the challenges with compliance and costs associated with the permit and any future permits. Our members participate in a "Partners in the Solution Program." It's an award winning program that we've worked with state, federal, as well as local entities to craft, that essentially provides requirements for our members to meet along environmental standards, including storm water compliance. And our members are some of the best actors out there. Absent the ability to have a workable cost-effective permit, we're highly concerned that our members will be subject to lawsuits and third party actions that would essentially put these mom-and-pop entities out of business and ultimately push some of the cars and vehicles that are currently in the salvage market to those that are kind of in the underground economy—the unregulated, noncompliant operators which, obviously, as we can all understand, would have significant and worse impacts for the environment.

So we appreciate you holding this hearing and look forward to continuing to working with you.

Thank you.

SENATOR WRIGHT: If you would get us some, just a page, some of the issues that are unique to the auto dismantling business. If you would just get that to staff, that would be appreciated.

MS. KOEPKE: Absolutely. Will do. Thank you very much.

SENATOR WRIGHT: Thank you.

MR. JOHN BERG: Thank you, Mr. Chairman, Committee Members. My name is John Berg. I'm with the Pacific Merchant Shipping Association. And we represent, besides the ocean liners, the marine terminal operators that facilitate international trade in California. I'll be brief.

We share, essentially, the same concerns that the other stakeholders raised today. We are encouraged that the Water Board is addressing some of these issues and we look forward to seeing what those changes will be.

We also are very appreciative of your efforts, the Committee's efforts, and we would encourage that you continue the oversight and vigilance on this issue, both yourselves and the entire legislature, because this is a huge issue for our industry, and, obviously, most all industries in California.

SENATOR WRIGHT: Let me ask as well if there are some things that are unique to the maritime? In my district I have the Port of Los Angeles, so maritime issues are serious to us. And between my longshoremen and the truckers that come in and out and the goods that are moved through the Port of Los Angeles, there's a significant economic factor. So if there are some specific concerns to that aspect that you've involved in, if you could, as well get that to staff.

MR. BERG: I'd be happy to do that. Thank you very much.

SENATOR WRIGHT: Thank you.

MR. TONY FRANCOZIA: Good afternoon, Mr. Chairman and Members. Tony Francosia for the Western Cities Petroleum Association. I want to second many of the comments that have already been made. And if I can just briefly encourage the Committee's interest in, if necessary, legislation to address the problem of ex parte contacts.

Very briefly: The senators who are here today now know far more about our concerns than the members of the Water Board do. And if you just contemplate for a moment, typically when you've heard from us you would go to them to find out what the issues are. They can come to you now and find out what our concerns are because we've been able to talk to you.

The other thing that is a corollary to the Board's determination that this is a quasi-judicial proceeding is that they should be expected, then, to hold an evidentiary hearing at which each permitted entity's concerns could be heard and that's certainly not the process that they use and I don't think anybody would reasonably expect that to be done. This is quite clearly under the government code a regulation or a regulatory process, not a judicative process. And if that needs to be clarified in statute we would encourage the Committee's interest in that.

SENATOR WRIGHT: Thank you.

MR. TODD BLOOMSTINE: Mr. Chairman and Members, Todd Bloomstine for the Southern California Contractors Association. Senator Wright, you spoke earlier about the uncertainty for business. Just today, Bloomberg published an actual graph that charts uncertainty for business. It's very, very interesting to take a look.

But on behalf of SCCA, we are members of a construction organization, the acronym is KICKWICK(?), I don't know exactly what the acronym stands for, but they've been very, very involved with the construction permit.

One point on the merits: not to be confused but the Construction General Permit as I understand it has been implemented on September 2nd, so I wanted to make that abundantly clear.

Two issues that have come up: 1) there is training that's required for the designers that design the project. And then there's also requirements for the practitioners, the one that actually tests. We are very, very under— we're very, very short enough QSPs. There's not enough out there right now for the existing construction projects if the construction industry recovers— actually, when it recovers.

One final note from somebody that's been working in and outside the building for 15 years now; I see a lot of veteran legislators, a lot of veteran staff here. One of the main roles of the Legislature is to oversee the executive body. I don't think there's enough of that

going on in this building right now. And really, I don't know how to do this, but to somehow shift that knowledge from the veteran legislators to the newer members is dramatically important so that as these issues progress and as veteran legislators term out, you've got a new batch to come in and follow the process.

Thank you, Senator.

SENATOR WRIGHT: Thank you.

MS. WENDY GARRICK: Senator Wright and Members of the Committee, my name is Wendy Garrick and I'm here on behalf of the Roseville Chamber of Commerce—1,200 members, two of which are with us today. Just to encourage you to direct the State Water Board to engage with the business community and have us participate in the discussions and be proactive instead of reactive we'll find a lot better solutions. So appreciate the time today.

SENATOR WRIGHT: Thank you.

MR. RANDALL FRIEDMAN: Good afternoon. My name is Randall Friedman on behalf of the United States Navy. The military in California represents ...

SENATOR WRIGHT: We were talking about you earlier.

MR. FRIEDMAN: Well, we represent direct expenditures in the state of some \$57 billion a year. We share the concerns that have been expressed in terms of process and cost. We too have been unable to talk to the State Board staff on this permit even though we'd like to, even though the aspects of these various permits can have a profound impact on our ability to do our national security mission in the state. So we certainly welcome your involvement and oversight. And again, just welcome a revision. We believe that there really does need to be a pause in this process to take all this information in and everyone follow through with a comprehensive look at the overall storm water issue and we certainly are willing to participate in that.

Thank you.

SENATOR WRIGHT: Thank you.

MS. ERMINA KARIM: Thank you, Chairman Wright and Honorable Members of the Committee. My name is Ermina Karim. I'm the president and CEO of the San Luis Obispo Chamber of Commerce and our 1,400 small business members and the thousands of people they employ in our region. I hope you'll bear with me today; I came up—this is my first time testifying at the state level. And we're here because we're frankly terrified of really the undetermined price tag of regulations that have undetermined benefit.

Let me make sure you're clear that our chamber doesn't fight regulation for regulation sake. In fact, the number one point in our six-point economic strategy is proactively protecting and enhancing San Luis Obispo's quality of life with objectives like protecting our signature landscapes, our creeks, and riparian habitats, opposing activities that will harm our regional environment and many other priorities that we believe will foster our prosperity. Our chamber back in the early '90s fought offshore oil drilling. We helped lead the preservation of some 27 miles of California coastline greater than the size of San Francisco. And we helped lead our city to be the first to ban indoor smoking in the world. So we're really proud of that record. And I share this because I think it provides some context, unless you're a smoker. (laughter)

We certainly understand reasonable regulation but what is being proposed is far reaching, unrealistic, and unreasonable, and has no significant proven benefit that we have yet heard.

We have supported the city of San Luis Obispo in its storm water management program which was put into place about two years ago that has so far removed over a million tons of sediment and debris from our storm water system and has removed about 100,000 tons of trash from our creek. These programs are slow specific, they're reasonable, and they're working and we know this because in last year's winter storms we had no reported flooding.

It currently costs our city about \$750,000 to implement it. Our city anticipates that these costs will double to nearly—over double to nearly \$2 million due to the significantly expanded scope of businesses that will be needed to inventory, monitor, and regulate and that doesn't even begin to address the implementation costs that our local businesses will bear from costly retrofitting to training and monitoring. This kind of additional burden, as we've heard from so many speakers today, could and will probably make the difference for businesses that have been fighting to keep their doors open over the last few years due to the recession. They don't have the staff or the money to comply. And why is that?

In our membership alone, 60% of our members have five or fewer employees; 80% have 20 or fewer. They are the smallest of the small businesses. They represent the bulk of net job creation over the last decade. They are the engine that we are hoping is going to pull us out of this beleaguered economy but they have little to no idea of what is coming. They're just focused on running their business. And their voice hasn't been at the table in this process that we've all been discussing. They will be the ones who are sacrificed. They will become an additional burden to the State and all they want to do is work.

You know, it's astounding that through this process economic analysis has not been considered. In our personal lives and in our businesses we don't have that luxury. The cost and the opportunity costs must be considered so that in our state, in our local regions, we can actually act like we want to help our residents, our businesses, our entrepreneurs be successful here. Government as you've already noted, doesn't create jobs but it certainly can get in the way and harm their creation.

So I'm encouraged as I know others are, about some of the things that have been pointed out today; that the process will change. Hopefully, that there's going to be a plan to engage a broader shareholder base. We look forward to a new draft that gets rid of costly expectations like retrofit requirements that prioritizes the scope of targeted businesses, and most importantly, meaningfully engages the business communities so that we can achieve a common goal—a better water quality. Our businesses look forward to being at the table and to an enhanced process.

Thank you for hearing my comments today.

SENATOR WRIGHT: Thank you.

MR. ERIK JUSTESEN: Thank you. I appreciate you having us here, Senator Wright and Members of the Committee. My name is Erik Justesen. I'm the president of a small business in San Luis Obispo. We employ 70 people in our architecture, engineering and planning firm. Our firm over the years, this last three years, has suffered greatly in this downturn. And I'd like to offer up the following comments from our perspective at the table here which has been severely lacking.

I am pleased with what I've heard today in the testimony from many people, including the public sector. And quite frankly, this permit has created some strange bedfellows and now I'm testifying at the same hearing as many of our affiliates in local government arena.

I'm concerned with the process and a complete lack of public outreach and education to the general business community. It is pathetic. I've never seen anything worse. And quite frankly as we stand here today, I can guarantee you that most of the small businesses in this state have zero idea of what's going on—less than zero. In fact, I serve on the chamber board. I'm a member of ULI. I'm a member of the Engineering Society of California. And it's going to hit these businesses over the head; they don't even know what's coming. So outreach and education is absolutely fundamental and critical.

With regard to economic impacts: well, let's just say it like it is. Regulation flows downstream. It goes from the feds to the state to small businesses and it ends up on our balance sheet. That's where it comes from. So while I'm somewhat pleased that municipalities are prevented from passing these costs on through fees, regulations and taxes because of Proposition 2, 14 and others, at the end of the day it's going to end up coming out of our pocket. So the cost of regulating this is going to be expensive for us down the road. Beyond that, the cost of making these improvements that have been outlined, and hopefully we won't have to comply in the timeframes that are suggested, they're going to cost tens of thousands of dollars. You've heard from other industry experts, from the port authorities, but you know, from the small business perspective, it's brutal. It's absolutely brutal. You know we've laid off as I said, about half of our staff. We're struggling to stay in business. They're good jobs. They're head of household jobs. They're jobs that support families in this state. And you know; now we're struggling to kind of keep our footing, regain the business.

And the reason I drove up here from San Luis Obispo is because you hardly, probably ever hear from someone like me who is just fighting for our jobs. As Ermina said, most of the jobs in the state come from small businesses—two-thirds of them. And you know, there is not a real good voice for these industries and businesses.

So at the end of the day do we support water quality and improvements? Absolutely! It's a good thing to do. In the business it does that. But the question is how to best accomplish this goal?

I think we've heard a lot of good testimony today about how we can do it but in the review of this draft permit; it lacks the fundamental elements necessary to meet these goals—first and foremost being education.

So what I would suggest here is you stop this business straightaway. You put it on a different track completely. You create a process that gives flexibility to the permittees (that's the cities and municipalities) to be able to best implement these practices. And as you've heard; many of the permits that are ongoing are creating fantastic advances in water quality at reasonable cost-effective prices. So we need a permit that makes surgical adjustments to existing known and effective regulations where incremental changes are implemented to maximize their effectiveness and minimize the costs. What we don't need, what we can't afford, and what won't improve water quality is this broad and ineffective shotgun approach which badly misses the mark.

Thank you.

SENATOR WRIGHT: Alright. Thank you very much.

MR. TIM CHOU: Mr. Chair and Senators, Tim Chou on behalf of the San Francisco Bay Area Rapid Transit District or BART. BART has a fairly specific concern that we'd like to raise and that is in the MS4 Permit, in the original draft or in the first draft anyway, transit properties were included as new non-traditional sources. We recognize that in the most recent draft that has been changed but they are still possibly categorized under the permit itself in the heavy rail transit category. And we're concerned that any time during the permit process the State Board or local regional water quality management districts could draw BART into the permit process. So a first concern there.

It would be very, and perhaps prohibitively, expensive for BART to retroactively apply the requirements of the MS4 Permit along their 104 miles of track, 44 stations which for the most part are 40 or more years old. And it would be an incredible burden on BART, and obviously have to just be passed on at some point to the riders of the system, so we're concerned about the cost of the retroactive application on the system.

BART does currently administer their storm water through the Construction General Permit process and also for an Industrial General Permit for their maintenance facilities. And we believe those programs are managed well by BART.

We were most concerned frankly that we weren't invited or involved in the stakeholder permit process to the extent _____ I think you heard this from a lot of folks, but very concerned with the communication, the process itself, and the inability to participate. We are hopeful and we would suggest that the heavy rail transit agency category be dropped entirely this round. And that as we talk about the permit renewal in the next five-year round BART would be more than happy to come to the table and discuss how that could be best implemented.

SENATOR WRIGHT: Mr. Chou, if you would make sure we just get a copy of that specific—if we don't already have it ...

MR. CHOU: Yes, sir, we did submit a couple of days ago, BART's full letter that went to the Water Board. It's along; about 10 pages. I'd be happy to come in and chat with you about it.

Greatly appreciate you holding the hearing.

SENATOR WRIGHT: Thank you.

MR. KEN DENIO: Thank you, Chairman Wright and Committee. My name is Ken Denio. I'm owner of Denio's Roseville Farmers Market and Auction. I'm one of the other business people that have come here from Roseville.

Honestly, a lot of the other people have said what I was going to say. But I just want to be sure and make one point clear: For my facility, I cover 70 acres in Roseville. I have ten outlets, storm drains, on my property. My initial review in looking in doing BMPs to convert those, is anywhere from \$200- to \$350,000 in outlet.

And I know the city throughout. You know, their 2.5 million plus to monitor the permit and program. The one thing that did come out of that was that all the property owners in Roseville that have storm drains on their property are responsible to retrofit those if it went under the way the Draft Plan was first written. Now I understand it's being rewritten.

And I think one of your prime comments was the uncertainty as a business person that I have. I mean I can't move forward; I can't do any improvements until I know what I'm supposed to do.

And my business is a swap meet is actually a small business generator for the area that I live in. We are the ones where mom-and-pop businesses come in and if they have an idea for product merchandise, they can come in on a short term basis; market their product; see if it works for them and then they go out into brick-and-mortar stores. What I've seen in the last couple of years is a lot of the brick-and-mortar stores are coming back into my marketplace because they can't make it out there. And I see this as just another nail in the coffin of business in the state of California and I really appreciate you giving me the opportunity to at least have my input on it.

I was really unaware of what was going on until the city of Roseville came to me and said, "Hey, you need to get involved in what's going on with the Storm Water Permit." And I will be involved from this point on. But I just want to sort of put a face to small business because I know you get a lot of people that represent business organizations and stuff. But I am a business person that will actually be impacted by this which would affect all the small businesses that ...

SENATOR WRIGHT: Thank you so much for coming.

MR. DENIO: Thank you.

SENATOR WRIGHT: Let me say before we adjourn that we're going to prepare a communication. I think we've certainly got at a minimum, a plan of action that we want to suggest to the Water Control Board; the issues about ex parte rules, broadening the platform of the discussion, looking at our over-compliance beyond the federal requirements. I mean I think there are a number of outstanding recommendations and concerns that were raised. We'll be communicating back both as part of the Committee and possibly with some legislation that we'll be looking at the beginning of the year.

Again, I want to thank everyone for coming to Sacramento on rainy day, or whether you came from southern California as did the three senators here, or whether or not you drove from San Luis Obispo or Roseville, which was a short hop for you all, we appreciate the concern that you have. And on behalf of the Committee, I certainly would like to communicate that we understand, we feel that, and the purpose of the hearing was to reflect that we all share that concern that we not be the ones that are costing jobs and economic growth.

So thank you all for coming and we'll be adjourned.

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