

Informational Hearing

Senate Committee on Agriculture **Senator Anthony Cannella, Chair**

Regulatory Impacts on Agriculture

Salinas, California

February 24, 2012

SENATOR ANTHONY CANNELLA: We're running a few minutes late, but I'd like to get started here; if everybody could have a seat. I've got an opening statement here. So before I give my opening statement, if you wish to have public comment, there's a sign-in sheet over there, so if you could sign those then I will call you up in the order that you sign in.

Good afternoon ladies and gentlemen. Welcome to the Senate Agriculture Committee informational hearing titled "Regulatory Impacts on Agriculture."

Today's hearing is a brief glimpse into how regulations impact California's \$34 billion agricultural industry. California ag is the most regulated in the nation, requiring farmers and ranchers to comply with everything from environmental quality to product maturity standards. With the slow state economy and the state budget far into the red, it is important that we look closely at our regulations to ensure they are accomplishing their goals without being needlessly burdensome.

Exploring the regulatory impacts on agriculture is too large an issue to be covered comprehensively in a single hearing. We'll try to focus on just a few examples today to help the committee begin understanding how regulations can affect agriculture.

During this hearing, we'll look at California's regulatory climate and take a closer look at a few specific regulations impacting growers and processors both locally and statewide.

In 2006, California passed AB 32, the Global Warming Solutions Act, which will have a big impact on our state's future. We'll explore how regulations required to meet

the goal of AB 32 affect California food processors. How is the state working with the industry to ensure that we are meeting the goals of AB 32 while allowing for the future of California agriculture's processing industry?

We'll also look at the local debate on regulatory impacts on agriculture. Currently, the Central Coast Regional Water Quality Control Board is attempting to renew the conditional waiver for waste discharge from irrigated lands. We will hear from both the regional board and agriculture on how the goals of these regulations impact agriculture. This issue has generated a lot of interest because the potential impacts to the local agriculture industry could be significant.

This is the Salinas Valley. It is the "salad bowl" of the nation where Californians grow the fruits and vegetables that fill the dinner tables of America. We have a duty to ensure the environment in which we grow our crops, but we must do so in a way that is not unnecessarily burdensome to our agricultural economy.

I'd like to invite ... We normally do a panel, we have everybody come up. But since we don't have that, I'm going to call each person up individually. So let's start with James Houston, Deputy Secretary, California Department of Food and Ag. Thanks for being here.

MR. JAMES HOUSTON: Thank you. Good afternoon, Chairman. My name is James Houston. I'm here on behalf of the California Department of Food and Agriculture. I appreciate the invitation and the opportunity to give some brief remarks.

I was asked to come and speak about the impacts that regulations have on agriculture. And I think that this is a very important discussion. And I'm happy to see that the Legislature and many in agriculture and throughout the state are heavily involved on this topic.

Now, I think when most folks think about regulation and impacts of regulation, they immediately want to jump to regulatory reform, and that seems to be a hot topic. Folks talk about regulatory reform, but I think when most folks think about regulatory reform, they are associating the negative impacts of regulations on agriculture.

From the first day that I assumed this position, I heard from agriculture about their concern over regulations, about their future regulatory structure, and nearly every day since. And everywhere I go, everywhere the Secretary goes, it's one of the first things out of people's mouths; is their concern about the cumulative impact and

some of the rationale and common sense that maybe could be imparted into the regulatory structure.

And I've heard countless stories of absurd regulations that don't make any sense, of processes that take an extraordinary long time, and arbitrary enforcement. In fact, last week's *Economist Magazine*, the cover story was on America and its overregulated state. So clearly, this is something that's very much a part of our modern day lexicon. However ... and there's no doubt that these are real. The people are concerned. And that's why the California Department of Food and Agriculture, Secretary Ross, and the Brown administration have really made it a point in their administration to try and fix this; to what we call is breaking down silos. So essentially what that means is that as the regulatory structure is developed, each sort of independent regulatory agency, each department sort of went about its task taking its statutory authority and trying to implement it. And as this sort of slowly built and built and built, we started to see these silos, and things that one particular agency was trying to accomplish either frustrated or duplicated something that another agency or local body was trying to accomplish. So one of the things that we're trying to do is break down these silos. And one way that you can go about that, and probably the most important, is to talk to people.

So Secretary Ross, myself, and other staff at the department are regularly engaged in talking to folks at EPA, folks at DPR, water boards, air boards, etc. to try and make sure that we understand their regulatory programs and what they're trying to accomplish. But also, that they understand the department's perspective and how this is going to impact agriculture. How do we figure out how it's going to impact agriculture? Part of it is our experience, but a larger part is really talking to farmers and ranchers throughout the state and their industry representatives to understand how these things are going to impact ... and maybe if there are better ways to design the "mouse trap."

Now, the other thing about regulatory reform is that it's an extraordinarily nebulous term. That many folks like to talk about regulatory reform but few understand or can agree on what that means and what regulatory reform entails. Many people think that the regulatory morass is like a Gordian knot and that the ingenious way to solve this is to simply cut through, and I understand that, and it seems like a simple solution. But this approach risks cutting loose very important

strands that provide valuable protection to our citizens, our environment, and our markets ... I don't know if you want to recognize ...

SENATOR CANNELLA: Yes. We have Assemblymember Alejo here joining us and we appreciate that. Thank you. Sorry, Mr. Houston.

MR. HOUSTON: No, no. Welcome, Assemblymember Alejo.

So what I was saying is, you know, folks have a tendency to look at the morass, think of it as this untenable knot—let's just slice through it. And that risks cutting very important things that folks care about and that agriculture needs. And good, bad, or indifferent, regulations have become interwoven into the political and economic structure of our economy, and nowhere is this more true than in agriculture. When you look at all the different boards—and I think some of our panel members will do a better job of describing this—but the amount of agencies—federal, state, and local—that a farmer has to interact with on a daily, monthly, or yearly basis is quite astounding. And not only in terms of environmental regulations, they have worker-safety regulations, but they also have a whole infrastructure of regulations that helps facilitate and promote agriculture, and that's primarily what the Department of Food and Agriculture is trying to accomplish. We try and facilitate markets. We protect against invasive species, etc. so that the agricultural industry can continue to function. However, when we're faced with such a challenge like this that seems so daunting, my personal opinion is that a "surgeon's knife" is the preferred tool. And how we go about this, though, presents another question, which is where to start. Do we start at the state level? Do we start at the local level? Do we start with those regulations that are most onerous on businesses? Do we start on those that are the least protective of people? Do we start with special districts? The fact is that there is simply no right answer and there's no ideal place to start.

So our proposal is that what we need to design is a tool for policymakers and stakeholders to address regulations and develop a system in which one can take either an existing regulatory package and analyze it and reconstruct it, or at least set up a model to design new regulations that are more comprehensive. And that's one of the things that we at the department have tried to do and work across cabinet. One of the prime examples of this is Governor Brown's directive to his secretaries to work and to communicate. Specifically to Secretary Ross, he has asked her to talk regularly with Secretary Rodriguez and Secretary Laird over at Resources—for those who don't know,

Secretary Rodriguez is EPA—and we’ve done that. And the relationships that were formed ... and it’s a brand new administration so it’s a real unique opportunity to set a real firm foundation of communication and cooperation.

A good example of this is a multi-agency effort we’re currently engaged in on dairy digesters. We regularly have met. I think we’ve probably met ... I started in May of last year and we’ve met at least five times. And this is federal, state, and local agencies all trying to address permitting of dairy digesters. Now, there are other aspects to just the permitting. There’s also an economics group and a technological feasibility group. But the important thing is that you’ve got all the important people in the room at the same time. We have stakeholders, we have representatives, and we have academics all trying to address this issue and trying to figure out a better way to design the regulatory structure and get digesters built. It’s frankly a shame that we have maybe, what, a half-a-dozen dairy digesters up and running in this state, which pales in comparison to other states, and yet, we have the largest dairy industry in the nation. So it’s an extraordinarily important endeavor and one that we’re very proud of because we think ... and what we’re discovering is that this process of collaboration can really identify those points that can use an efficiency redesign, understanding, like I said before, where the folks are coming from and how to better address those particular issues.

In addition, we’re working regularly with OEHHA on Prop 65 issues. We’re working with the Public Utilities Commission and the Energy Commission on their tariffs and on the EPIC program, which is sort of the new version of the Public Goods charge, to try and make sure that agriculture’s interests are represented and that folks understand what the ag community needs to see. Now, this process is ... and will continue to produce two beneficial results.

The first is that future regulations will better reflect an understanding of how they impact agriculture. And second is that these endeavors will produce valuable lessons that policymakers can learn in the future to help design that model that we can then use sort of to go about attacking the various aspects of regulations. Because at the end of the day, there is no single group of individuals, there’s no single group of policymakers that can go through and make a clean sweep of the regulatory regime. It’s got to be a bit by bit. It’s got to involve all the pertinent people on that particular issue to basically go in and attack an issue, an area, a regime and try and fix that and

then move on to the next one. The hope is that this will find a way to better harmonize the interests that lie behind regulations. And these are: the needs of the people of California, the needs of the environment, and the needs of our business community. Sometimes these needs coalesce and sometimes they conflict, but we need a mechanism to sort those values out. Now while we do all that we can to assist agriculture and our sister agencies and their regulatory programs, our authority at the Department of Food and Agriculture is primarily focused on three things. First is protecting commerce and trade through our plant, pest, and our animal disease prevention and protection programs. We ensure integrity in the marketplace through weights and measures and certifying devices and ensuring that transactions that depend on specific weights are accurate. And then last is that we promote agriculture through marketing standardization and inspections. And nearly all of our authority at the Department of Food and Agriculture, in terms of our regulatory authority, is focused on assisting the agricultural marketplace. We think this is of great benefit to agriculture. This isn't to say that there's certainly not room for improvement, but it is of great benefit to agriculture, and we think it's very appropriate in a state that has a \$37.5 billion agriculture industry.

We're clearly, by far, the number one agriculture producer in the nation. But there is a drawback to this, which means in tough budget times when we have General Funded programs and they get cut, the burden is going to fall on industry, and we've already seen this. We took a \$31 million cut in the past two years, and not just in our department, but in other departments. Agriculture is seeing fee increases to help compensate for some of this. Now at the department, I believe our total fee increase is going to be around \$3 million. We have a FIDO sanitary fee that's going to be about \$1.4 million, and then we have some animal health fees that are going to be around \$1.4 million. But that's less than 10 percent of the \$31 million that we cut. So what does that impact? Well, that impacts some of our core programs. Probably most important to agriculture and to this area is the Invasive Species Program. It's a Generally Funded program. It is something that provides a benefit not just to agriculture but to the state and to the citizens. It facilitates markets. It protects our ecosystem. It ensures a constant and steady supply of food to our citizens. But when cuts have to be made, we have to figure out a way to uphold our statutory authority with less resources. So the process that we've gone about is similar to an outgrowth of

the consortium process where we figured we would sit everybody down and talk and try and figure this out and put our heads together, and so, we've convened a series of symposia.

And I know your committee has had a hearing on the invasive species issues, and so, I know you're very much involved in this and recognize the importance of this issue. In fact, I believe you were instrumental in setting up the Subcommittee (or Select Committee, I can't remember) on Invasive Species and hiring Ken Spence, which we really think sends a strong signal from the Legislature about the importance of these programs.

So the symposium, though, is designed to get academics, industry, non-governmental organizations, multiple agencies, ag commissioners, etc. all in the room to talk about the future redesign of invasive species: What are our priorities; how is it funded; and what can we do to ensure that markets continue?

In addition, we're working with dairymen and processors of all sizes, local health officers, and the Department of Public Health to ensure that our food safety regulations can work with business of all sizes while still minimizing risk. And currently as I speak, I believe in Monterey, but somewhere in this county, our Animal Health Branch is having discussions with the rendering industry on ways that they can better redesign the enforcement program over the theft of inedible kitchen grease.

So the point that I'm trying to make, though, is that we are working very hard to ensure that our agency and others here from agricultural interests and understand the impacts that they will have on agriculture. It's one of the reasons why I'm very excited to hear from my other panel members; because at the end of the day, the people who know about the impacts of agriculture are the farmers and ranchers who have to deal with it every day. You know, I can catch a glimpse and I hear from folks, but I'm not the one who has to fill out the forms. I'm not the one who has to hire people to comply and try and figure this out or who faces decisions about how they're going to absorb the cost of regulatory compliance and offset that on such thin margins.

Like I said, I'm excited to hear from our other panels. I think that, and the Secretary agrees, that California farmers are the most creative entrepreneurial and perseverant farmers in the world, and so, there's no better group of folks that are prepared to face the challenge that we have here in the next couple of years.

I'm also very optimistic that the relationships that we're building across cabinet and with stakeholders are all going to yield positive results. I think that there's two things that we need to do. One, is to identify critical problem areas and high priority areas but also solutions to these problems. I mean, that's the hard part, is solving the problems. Identifying the problems is relatively easy, but solving them is difficult. But we have smart folks and we have good farmers and folks who want to do well, and so, I believe that the collaborative process is but a step on a path that will yield a new paradigm in regulatory design.

With that, I look forward to hearing from my good friend, Rich Matteis and the other panel members. And I'm certainly happy to entertain any questions.

SENATOR CANNELLA: Just briefly. First of all, thank you for being here. I've been very impressed with CDFA and Secretary Ross. And you guys are doing all you can to help. In fact, as I travel up and down the state, you know, most people want to cut government—whether that's good or bad, I'm not going to argue that—but everybody that I talk to about your department, they say we've got to fund it, so you guys are doing something right for people to say that. I think you provide a valuable service.

You were so thorough in your testimony that I only have one question. Last year we passed SB 617, which requires an economic impact assessment for minor regulations over \$50 million. Now, has CDFA, to your knowledge—I know you said you've just been there since May—but have they ever conducted an economic assessment on any existing or proposed department regulations? Do you think the department has ever done that, and if no, are you getting geared up to start doing that?

MR. HOUSTON: Well, I guess it depends on one's definition of an economic analysis. Certainly, we do an economic analysis on every regulatory package that comes out. I think there is ... us, like other agencies, there is criticism that has been levied on the thoroughness of those economic analyses. And I can't speak to those that have happened in the past, but I know that we are very mindful of SB 617.

SENATOR CANNELLA: Well, specifically what this requires is to come up with the regulation you'd like plus alternatives, and then you're mandated to pick the one that's least impactful on the economy. So it's certainly a more robust analysis than ... because previously what would be done is the agency would say, yes, we considered

other alternatives. They're not going to work and so they just discount them. So this is a more robust process.

MR. HOUSTON: Yes, certainly. I think one of the things about SB 617 that we're trying to currently figure out is what that \$50 million threshold means. Does it mean in one year or does it mean through the life?

SENATOR CANNELLA: So you need additional legislation to help clarify that, then, so we can ...

MR. HOUSTON: Well, I don't know if we need additional legislation; that's certainly the prerogative of the Legislature.

SENATOR CANNELLA: That's the fear of us lawmakers, that we pass the law and all of a sudden the agencies start ...

MR. HOUSTON: That's an ambiguity of the law; I will say that. That us as a department, when we were trying to analyze it and implement it, we still don't know, and we're looking to the Department of Finance or the Office of Administrative Law to give guidance. But we don't know and we haven't heard whether the 50 million threshold is over the lifetime of the regulation, if it's a 10-year window, or if it's an immediate term. So there is some clarification that's needed.

I think another thing that's interesting about SB 617 is that it in some sense delays the regulatory process. I mean, in some sense, I guess you might say that it's a good thing depending on the regulation, but it does, I mean, it adds 30 or 60 days to our already—what was a 6-month process. So I think we're just trying to figure out how this can work with 617. I certainly agree that the spirit of the law was a good one, and the governor signed it and, obviously, it has a lot of merit to it. But I think as a department and across the state, much as with many laws, we're trying to figure out the implementation, and it's still a little bit early in that process.

SENATOR CANNELLA: And then as you work with other departments and other stakeholders, have you seen any roadblocks? I mean, is everybody willing to work to try to work through this mess? And I'm not suggesting regulations are the problem; I think it's more the process developing the regulations is the issue. Are other stakeholders acknowledging that we have a problem they're working through? Because I know Secretary Ross is a champion in this department.

MR. HOUSTON: Oh, yes, certainly. I think it's one of those dynamics where the higher leaderships, like secretaries, undersecretaries, I think are probably more

acknowledging of the problem. I mean, I'm not going to lie; when you get into some of the programs, you know, folks get worried about their jobs, and so, that's a challenge that we have to break through. And it's not a fun one, but it is a real one. People are concerned about their livelihoods. There's greater things at stake. The public interest certainly trumps. But that presents a real problem when we're trying to go through these. But I think at the cabinet level, and they take the direction from the secretaries, and so, I think we've seen real positive results. I mean, even folks who are begrudging are still working, and we are still seeing progress. So I mean, the charge comes down from the governor and through the secretaries, and I think it's having an effect.

SENATOR CANNELLA: Good. Assemblymember, do you have any questions or comments?

ASSEMBLYMEMBER LUIS ALEJO: I'll be quick because I wasn't able to stay here for a very long time today. But I do want to thank you for coming down. And also, if you can extend our thanks to Secretary Ross. I had the privilege to go speak on her behalf in support of ... during her confirmation in Rules Committee. So we hope maybe down the road she'll do ... I think she's been here before several times, but to have her come down and visit some of the other agricultural leaders would be greatly appreciated.

But certainly, I'm looking forward to getting the information and the testimony, hearing the testimony from others here today because I think it's important. Senator Cannella and I come from different parties but have a great working relationship, and I think it's an example of what we need more of in Sacramento—having bipartisanship and really trying to find answers to some of the challenges that are going to be addressed here today. And we're trying to do that by, 1) visiting our local leaders in agriculture, saying how can we be of help? Where are the problems? And then being able to carry, as our package of legislation, efforts to address those problems and make the work on the ground a lot easier for our ranchers and our agricultural leaders. And so, we're doing this this year already, and there's been some legislation carried already—a bipartisan effort. On the local level, dealing with the regulations as well, and that's been a bipartisan effort as well. And I think that we're trying to exemplify the type of work that should be done more often in Sacramento. And so, I certainly look forward to hearing what everybody else has to say.

But also, thank you for your comments as well.

MR. HOUSTON: Thank you.

SENATOR CANNELLA: Thank you very much. Alright, next up is Rich Matteis, Administrator, California Farm Bureau. Rich, thank you for being here.

MR. RICHARD MATTEIS: Thank you. It's my pleasure. Thanks for having me down. I appreciate the opportunity to speak before you today on this very important topic.

A few years ago, we did a strategic plan for the California Farm Bureau. In fact, we started that process here in this county at a facility down here on retreat. And one of the parts of that process was to identify the key issues that impacted agriculture. At the top of the list was water. And then, of course, the second most important issue was water too. But overregulation was very, very high on the list and on the hearts and minds of our leadership, and so, it's something that we've been trying to address now for the last few years and with a very focused effort in Sacramento. I think you're aware of some of those activities.

Everywhere I go, as much as Deputy Secretary Houston mentioned, it's something that is brought to my attention. I don't want to go through the whole list of agencies and programs that impact California agriculture, but I did provide some documents. One of those documents, not refined, but it was a submission by one of our members recently of all the regulatory programs they have to face and all the agencies that have authority over their operations—federal, state, and county and then let's also realize there's also regional programs, there's also city regulations that come into play in some cases. But I think it's a pretty good synopsis of all that we face without going into all those programs

I'd like to spend time today talking more about what we do about this problem rather than what those issues are because I provided those to you here.

One of the things you've asked is what are the impacts of overregulation, and there are many impacts. And I know you have a study there in your packets from Cal Poly regarding cost impacts, and that's certainly one of them.

Some years back, I undertook a process myself. I guess I'm a glutton for punishment. But I tried to identify during the five-year period, the previous five-year period, how many new programs had come online that had impacted agriculture, and I came up with 20 programs in five years. All of those were a result of legislation passed

by the Legislature, all, most all of them. But it was a biannual inspection of terminals; it was Proposition 65—an air toxic hotspots law that had huge ramifications for processors; injury and illness prevention; and the list went on. And all those programs had costs related to them, usually fees, almost always compliance costs and then most times, both of those. And those costs drive up the cost of doing business. It makes us less competitive.

One of the other things I discovered is it discouraged some folks from getting involved in the industry. And we know in the generation coming up we need 100,000 new farmers, and the more difficult we make the task of doing that job, the fewer the people who are interested in taking on that challenge. And these are small businesses for the most part. So we need to think about those impacts about attracting folks into the field.

There are impacts of overregulation. When it impacts the cost of those products—there are areas in this state where people make real choices about whether they can afford certain food products. It impacts nutrition access, some of the other things that we don't think about. Certainly it results in consolidation, which we know by surveys of the public is something folks don't want. We know the public wants more smaller farms closer to home. But as this regulatory burden builds, the smaller operators find a hard time keeping up with the larger operators. They can hire the consultants and the staff expertise to deal with those issues, and so we're driving consolidation—no question—by pursuing this course.

One of the other things that I think that's not considered—and I understand why it happens—when a new proposal comes forth, maybe it's legislative, maybe it's regulatory, is there's little thought given to the cumulative impacts. You know, will this program only cost this much? This is not that much of a bitter pill for the industry to swallow. But when you add that to all those programs you see on that handout I gave you, those cumulative impacts become a huge burden for the industry. So it's looking at those programs in a vacuum, if you will, and not realizing that we're putting such a burden that we're economically burdening this industry to the point where it can't survive and thrive.

One of the things the industry would like to have, and is essential, is regulatory certainty. We don't even have that. Even in cases where there might be some clear line of authority granted to an agency, we have agencies vying for position. A good

example: Up in Siskiyou County, there was a declaration that mere diversions of stream water was considered a stream bed alteration that required a permit. The end result of that puts the Department of Fish and Game squarely in the place of deciding water rights. That's really what that does. Well, we have to back up and say, wait a minute, the State Water Board has authority over water rights not the Department of Fish and Game. And so, we think there's a number of those areas that we need to focus on—clearly designate a lead agency, and that has to come probably from the Legislature to get that job done.

There are the more overarching issues—you brought up the 617—you know, over time, that probably have some positive impacts on future regulation. As you are aware, during the budget process last year, there was focused attention by the Legislature and the governor on regulatory reform and some of those overarching issues—CEQA reform, economic analysis, peer-reviewed science. Some of those things are helpful, but they have a trickle-down impact. What we need is some regulatory relief in a more immediate basis. That's what folks are looking for. Both those things are important to do. You have the overarching kinds of regulatory framework, regulatory process issues. But there's also specific programs that could be improved. And we took it upon ourselves, the Farm Bureau, to develop a list of the kinds of things that could be done, and they were very reasonable. In most cases, they weren't just saying no; they were just saying let's buy some time because the economy is being burdened right now and so we should give the industry more time to get its arms around some of the key programs. And so, that kind of work needs to be done.

I know when people think about this regulatory morass that we've created—and Deputy Secretary Houston talked about not cutting through it but using a surgeon's tool—the question becomes, how do you deal with that? And the way you eat an elephant is one bite at a time. And that's the only way we can do this work. We didn't get in this place overnight. It's years and years of having layer after layer of regulation put on, and so now it takes time to sit down, take it program by program. Deputy Secretary Houston talked about the digester program; that's an example of that. Let's get the parties around the table, industry stakeholders, the agencies that are involved, and try to come up with a plan so that we can have more dairy digesters, not fewer. Jim mentioned that we have a half dozen. We've actually lost ground. We've lost a half dozen digesters in the last ten years. We should be going the other direction. And

by taking these programs one at a time—it's hard work—but work through them and come up with solutions.

Many times when a piece of legislation is passed there's unintended consequences, and I know you're all aware that that happens. And the intentions can be great, but once they get put into practice, once an agency starts to implement that plan, sometimes they don't work out the way that it was originally envisioned.

And it brings to mind: Some years ago—I mentioned the Air Toxic Hotspots law—now that law was an important law. The law intended to get a good handle on the quantity of toxic emissions in this state, the sources of those, and then try and come up with a plan for reducing those emissions. Unfortunately, when it went into practice, it involved a lot more businesses than was necessary. It didn't target the right businesses. The businesses who weren't toxic polluters were picking up the biggest part of the tab. The agency was ill-equipped to manage the program, and there were really no results from it. And so, that program needed to be rebuilt. And that was done through a couple of pieces of legislation which agriculture was involved in, because wineries were impacted, agricultural processors of other types, and we were able to get that done, refocus the program, have it pertain to the toxic emitters and give the agency the opportunity to really do its work. And what's interesting about that is the author of that legislation that reformed that program is probably somebody you know. His name was Assemblymember Sal Cannella. And he took it upon himself to get that thing fixed, and it needed to be fixed. So these things can be done. It's hard work. You take them one at a time and break that down.

One other thing I'd like to mention—and we've talked about this the past year in the Capitol—is making agencies accountable. Right now, agencies are pretty much held harmless from all that they do and sometimes they make mistakes. And that's fine, but sometimes those mistakes result in real cost for the people out in the field—small farmers, family farmers, and ranchers. And so, there needs to be some accountability there. There is a statute on the books that makes agencies responsible when they do cite somebody incorrectly, but it's been on the books for about 30 years. It's outdated. There are limits as to what a cited party can recover if they're successful in their case, and it hasn't kept up with inflation. And there's a standard there that's almost impossible to meet for anybody who was wrongly accused and cited to get recovery. So we think that law needs to be looked at. It was put there for a reason. It

can be updated. There's similar language under the Health and Safety Code, and that's something that can be done to make agencies more circumspect in how they apply rules when they come before them. So there's an opportunity there.

The Department of Food and Agriculture has a process now called Agricultural Vision. You may have heard of it. A presentation was made at the Capitol last year on Ag Day, and there will be a progress report this year. And there was an attempt there to identify 12 key issues impacting agriculture and how to get this industry from this point to the year 2030 in a fashion that it can thrive and survive in and continue to bring jobs to this state and provide local food—local safe, affordable food. One of those subcommittees is the Smarter Regulation Subcommittee. It has been working on a number of initiatives. The dairy digester project is related to that program. And we're attempting to work with environmental stakeholders to identify areas where we can actually make a difference and fix the program.

I used the Air Toxics Program in one of the meetings as an example of the kind of things that could be done. And environmental stakeholders said, "You know, if you have other examples of that kind of thing, we can work with you to fix those problems." And so, it takes various stakeholders sitting down to identify those projects, and we have a formal way to do that through the Department's Ag Vision process.

We do commend Secretary Ross who has done a great job just here in the first year reaching out to other agencies. As the Deputy Secretary mentioned, she's done just an outstanding job of letting other agencies know what the impacts of their programs are on her constituency here in agriculture, and so, we certainly thank her for that.

And we know you as legislators are continuing to look at solutions. Assemblymember Alejo, I know you have a bill to deal with some intricacies with regard to licensing for those driving agricultural trucks. That's how this work gets done; find a problem, figure out how to fix it, and go after a solution. In this case, it's legislative. It might be regulatory. In some cases, it might be administrative.

That pretty much completes my comments for today. I'd be happy to answer any questions that you may have. And I thank you for the opportunity to be here.

SENATOR CANNELLA: Thanks, Rich. So we all talk about regulations. In fact, that's all I hear. I hear that's the biggest problem in the whole state. But when I

ask, “Well, which one? Which regulation?” And I ask that question because that’s what the governor asked me. I say regulations are a problem, and he says, “Well, which regulation?” So I asked the same question, and when I ask people that, they say, “It’s death by a thousand cuts. We can’t pick one regulation. It’s just there are so many.” So I will ask you, “Is that the case or is there one?” And I know you addressed this a little bit in your testimony, but is there one big one that we can attack that would help relieve some of these shackles that business has on them?

MR. MATTEIS: I don’t think there’s a silver bullet in this one. I go back to my proposal that we take these things one at a time and deal with them. That’s what we attempted to do through that budgetary process, is come up with a list. In fact, what got me to thinking about it, Senator Juan Vargas said, “You folks, you know, there’s some opportunity for regulatory reform. You ought to decide what that is.” And it’s different for ... you know, this is comprehensive industry. It is so diverse. So what is important to somebody producing timber is not important to somebody who is involved in leafy greens in this area or a cattle rancher in the Sierras. And so, we thought the best approach was to try to find several significant things to impact those folks.

There is an issue regarding the Office of Administrative Law, which is charged with overseeing all these regulations and deciding whether they’re necessary, whether they’re clear, whether they have statutory authority or not. You’re familiar with the program. But sometimes they err, and there’s no way to check that system. And so, maybe that’s something that would be helpful, to make sure that that review process works right. But in general, this death by a thousand cuts needs a thousand bandages, and I’m sorry to say, that’s the only way I can see it can get done. Otherwise, people just implode. They’re not sure where to start. And you start one program at a time. Well, maybe several—several at a time.

SENATOR CANNELLA: California ag competes in a global economy, obviously, right? People grow food in all different areas. And I think some would say in state government, “Hey, if you have to comply with these regulations, just raise your price.” And we know that’s not really possible because you’re competing. At what point are California ag products just not competitive, just not able to compete on the open market? Are we almost there?

MR. MATTEIS: We're certainly there in other markets on certain products. You often hear agriculture can't leave the state. Some kinds of agriculture can and some have. I managed the Pacific Egg and Poultry Association for about 15 years. When I started managing that organization, we had 33 million layers in the state. When I left, we only had 19 million layers in the state, which, of course, some people blame me—thanks a lot Rich—and made our industry go backwards. But the fact is, that product can be produced elsewhere more cheaply, and our regulatory programs are part of that problem. And certainly, now we have Proposition 2. We have the maximum amount of regulatory uncertainty you can think of. Those folks don't know how to make an investment. We're going to lose that business. And you know, we've also lost dairies, and we've also lost business to other countries in the agronomic side of the industry. So we're there. It's going to be by commodity by commodity. But we're there on some of those right now, even just with other states.

SENATOR CANNELLA: Alright. Assemblymember?

ASSEMBLYMEMBER ALEJO: I did want to just ... As being a new legislator—I I just started my second year—I have one way that I have found has been very effective informing new legislators about a wide range of issues impacting agriculture, is when agricultural leaders take the time, open up their ranches, their farms, their nurseries, and introduce new legislators, such as myself, about the key issues affecting their day-to-day work. And as a result of that, I've been able to go back to Sacramento and say, "Well, how can I help?" And then be able to get my colleagues, it's not enough to have your own vote. To be effective, you've got to persuade others to join in. And we can get people across both aisles joining on something, a bill has a better chance of succeeding in Sacramento.

So just to give some local examples: I've had the opportunity to tour our local nurseries. And then I was able to weigh in and get numerous legislators to weigh in on federal legislation where they were negotiating the Columbia Free Trade Agreement and its impact on our local fresh cut flower industry and its impacts to those few remaining flower growers in our state. The bill that you just spoke about came about—I was doing a tour with Scott Violini, a local cattle rancher, who shared with me, having no experience in that, but saying, "This is where we need some help. Can you help us?"—and introduced legislation. Again, I got numerous, now, legislators and senators and assemblymembers joining in on that effort. But I've toured the

frozen food processing plants with Del Mar Foods before and many others. But I'm just trying to give examples of how agricultural leaders here locally by opening themselves up and sharing their expertise with people like me and many others—most of the legislators come from Los Angeles, San Francisco, San Jose—who have no background in agriculture, but when you open it up and you ask if they could now, after touring their farm or ranch, how they can help, you get a lot more openness because now they have a partnership and a relationship with agricultural leaders and an openness and a willingness to really help out and address those problems. And for me, I think that I see that as the most effective way that we've been able to address ... There's so many, as you said, but at least you start looking at some key areas and not having to wait years but just saying, "Let's start this year. Let's address some of these. Next year we'll address some more." And hopefully, make the work in agriculture a lot easier.

MR. MATTEIS: I couldn't agree with you more. That's a very time-consuming effort, but it is part of the solution set to this problem. And we're trying to do more and more, you know, in the field. We have a Leadership Farm Bureau candidate here who asked the question last week, "What can I do during this campaign season to assist?" And I said, "Have candidates out—all candidates—and talk about your problems. Take them on an agricultural tour." That will be helpful. But that education is important and we need to do that, as you say, more and more with legislators from those non-rural areas, and we're doing that. And we need to do more of that. Because I've found that usually folks, no matter what side of the spectrum they're on, if you make a real case for your problem, they want to try to help. They really do. And so, you're absolutely right. We need to do more of that education so folks can understand the impacts in their area.

You know, we've done some dialoguing and some work, some modest work, in agriculture with the longshoremen. Take the Port of Oakland, alright. The number one sector out of that port is agriculture—20 million tons a year, and that can go to 28 million tons or 12 million. But those are crane operators' jobs, and they understand that, and that's why we've worked together on some initiatives. Because what happens to agriculture doesn't just impact folks in Modesto and Fresno, it impacts the whole food chain. Those are transportation, distribution, marketing, etc.

SENATOR CANNELLA: And literally, the food chain—where we eat.

MR. MATTEIS: The food chain as well. Thank you so much for the time.

SENATOR CANNELLA: Alright, Rich. Thank you very much. Appreciate it.

ASSEMBLYMEMBER ALEJO: And sorry, Senator Cannella. Thank you for holding this hearing. I planned so many things this day before I found out the hearing was taking place. But I just wanted to come and show my respects. And hopefully I'll get the information and the record that is made to see how I can be helpful. And I look forward to working with you on addressing these issues, Senator Cannella. Thank you for inviting me.

SENATOR CANNELLA: Thank you very much. Thanks for coming. Alright, next up is Matthew Allen, Government Affairs Analyst with the Western Growers.

MR. MATTHEW ALLEN: Good afternoon. It's a pleasure to be here this afternoon representing Western Growers. Our members grow, pack, and ship approximately one half of the nation's fresh vegetables, fruit, and tree nuts in California and in Arizona.

It's a pleasure to be here again to meet with you to discuss the issues we're having with regulation issues within the state of California. The regulatory burdens that currently face California farmers are making it ever more challenging to maintain and grow successful operations. Indeed, the need for regulatory reform is often mentioned as an important ingredient to help untie the hands of businesses so that they can focus greater attention on growing their business, hiring new employees, and planning for their future. As you know, regulations do not operate within a vacuum. Markets change, new technologies become available, and regulated entities have increasingly become better stewards of their industries. We are faced with a dynamic and challenging time for our state and our economy. These challenges provide an opportunity to make the necessary changes for our future and to loosen the reins on the farming communities so that they can continue on the road to prosperity. There are three broad policy considerations that Western Growers believes would help reduce the overall kind of regulatory burden within the state of California.

Number one: The sheer volume of regulations that our members deal with on a daily basis makes it very difficult to sustain existing operations, not to mention plan for the future. What we see is a general layering effect, where regulation after regulation is being promulgated, and that cumulative weight of those regulations is having a profound impact upon our members. If you don't know what the regulatory

environment will look like next year, how do you possibly plan your next year operations efficiently and effectively? This uncertainty creates not only a problem for businesses currently in California but also for those considering starting new operations in our state.

Our members are faced with the direct cost associated with complying with the regulations, like additional permits, fees, but at the same time, there are numerous indirect costs. These are such things as maintaining regulatory compliance; there's consulting fees, legal fees, additional staffing costs. There's also an opportunity cost that's incurred because there's more and more time being spent on behalf of our members in maintaining compliance with regulations versus time spent being creative to actually grow their business, hire new employees, and be more productive in their operation. All these costs make it more difficult to be competitive in the global marketplace.

Our regulatory process framework creates a chilling effect for those wanting to maintain or grow their operating presence in our great state. We simply need to stop this layering effect and shift focus to only enacting those regulations which are critically necessary, such as those dealing with public health issues. And the list could go on.

Number two: The California regulations that are already on the books should be subjected to a meaningful sunset review process. The state legislature should focus on ferreting out duplicative regulations, regulations that should be repealed for creating unintended consequences and those which are no longer necessary. We're not suggesting that all regulations should be repealed or that no new regulations should be promulgated. What we do suggest is that regulations be examined through the prism of a performance-based analysis. These are some of the questions that we think that would be helpful in asking in that analysis:

- What were the goals of the regulation?
- Was the regulation successful in meeting those goals?
- What were the consequences, both intended and unintended, of the regulation?
- What public benefit was gained by having the regulation on the books in the first place?

And we believe the answer to these questions would ultimately help lead to a determination on whether a regulation should be retained, repealed, or modified.

Finally, present and future administrations should more strongly exercise executive authority to ensure that state agencies promulgate regulations that are more narrowly defined to the scope of the enacting enabling statute. Properly limiting the scope of regulations will help reduce the level of uncertainty that our members have for their future business plans, and it will also assist in slowing the number and breadth of regulations within our state.

Our members are already inherently handling a certain amount of uncertainty within their daily operations such as uncontrollable weather patterns, market swings, and water supply challenges. The continuous piling on of additional regulatory requirements is counterproductive in ensuring that Californians, the nation, and global markets receive the vegetables, fruits, and nuts needed to ensure a safe, healthy and prosperous future.

Again, it was my pleasure to be here this afternoon on behalf of Western Growers. And I'd love to answer any questions that you might have.

SENATOR CANNELLA: Well, thank you for being here. So Western Growers has members in California and Arizona. How does California's regulatory environment compare to that of Arizona's?

MR. ALLEN: Well, I find that we spend much more time in California focusing on the regulatory burdens. One of the charges with our governmental affairs group is specifically on regulation and regulatory reform. Not so much ... Arizona has some overlapping issues, but it really becomes much of a burden. I think it goes to the layering effect in California where we just have built this voluminous code of regs. And as previous speakers have alluded to, it's really difficult to pinpoint individual ones because they all are having a difficult burden upon our growers, not only from a cost perspective but also time taken away from being productive in their operations.

You know, it's interesting. When you're talking to people within the state of California, when you're talking to them about regulations, they're finding they're having to become their own attorney in certain fashions, and you know, that's what the attorneys are for. They want to spend their time focusing on their growing practice and getting food to the table and to market.

SENATOR CANNELLA: Yeah. Are you working with the Farm Bureau as far as trying ... I mean, at some point industry is going to have to help solve this problem. You all are working on that. Because the reality is, the agencies, they're working hard, but they have a self-interest in kind of keeping things going the way that they're going. So what coalition is being built to start tackling these things?

MR. ALLEN: We are working with different industry groups because there is a lot of crossover on those, and we're continuing those discussions. And those coalitions have been very helpful in kind of pinpointing the areas that we can definitely find some common agreement to move forward. And each step in being able to reduce the regulation or modify it and look to those which are of most concern is always beneficial. And I think, just moving forward, it's also very important just looking at the overall broad policy perspective of the overall regulatory burden faced by our growers.

SENATOR CANNELLA: Yeah. Okay. Thank you very much. Appreciate your time.

MR. ALLEN: Thank you very much.

SENATOR CANNELLA: Alright, next we're going to go the next topic which is AB 32 Impacts on Food Processors. And the first person we have up is Steve Cliff, Ph.D., Chief, Climate Change Program Evaluation Branch for the Air Resource Board. Welcome.

DR. STEVE CLIFF: Thank you. It's quite a mouthful.

SENATOR CANNELLA: Yeah. And that's quite a title.

DR. CLIFF: Good afternoon, Chairman Cannella. Again, I'm Steve Cliff. I'm chief of the Climate Change Program Evaluation Branch at the California Air Resources Board. And today, I'm here to discuss the Cap-and-Trade Program and its impacts on food processors in California.

Assembly Bill 32 was enacted in 2006 to reduce greenhouse gas emissions in order to mitigate climate change. Under AB 32, California is required to cut its greenhouse gas emissions to 1990 levels by 2020. As part of this effort, ARB developed a scoping plan in partnership with many of our sister agencies and with the input and expertise of stakeholders, scientists, economists, climate experts, and the public. The plan reflects the comprehensive approach California is taking to cut emissions and drive the transition to a clean energy economy. The Scoping Plan

includes a broad spectrum of strategies, such as energy conservation and efficiency measures, as well as direct measures designed to reduce carbon emissions associated with the generation and use of energy. For example, the Low Carbon Fuel Standard regulation will reduce the carbon intensity of transportation fuels consumed in California. And the Renewables Portfolio Standard enacted under state law mandates renewable generation for a third of California's electricity.

In addition to direct regulation of sources of greenhouse gas emissions, the AB 32 Scoping Plan includes a Cap-and-Trade program, which is a market-based approach for reducing emissions. We estimate that Cap-and-Trade will achieve about 20 percent of the reductions necessary to meet the 2020 goal. Because Cap-and-Trade limits the overall emissions, it complements other direct regulatory measures by ensuring California's emissions goal is met. Cap-and-Trade was selected among many approaches because it encourages the market to create a price incentive for entities to reduce their emissions while simultaneously providing flexibility in how they chose to reduce emissions. I will briefly summarize how the program works, how it achieves these principles, and how it affects food processors specifically.

In the first phase of the program, covered entities will include any stationary source of greenhouse gas emissions at or above 25,000 metric tons of carbon dioxide equivalent annually. These sources include the state's largest emitters such as refineries, cement plants, and crude petroleum production. In 2015, fuel providers such as natural gas utilities and distributors of gasoline and diesel fuel are added to the list of covered entities, and they must account for the fuel they sell for consumption in California. Initially, there are approximately 35 food processors covered by the program.

The program works by establishing a firm cap on greenhouse gas emissions, which is the strict limit on emissions for all covered sources. The cap declines each year. And it's important to note that there is no facility-specific requirement to reduce emissions under the program, nor is there a limit on the emissions from any single facility. By creating a hard cap on emissions, Cap-and-Trade also acts as an economy-wide backstop to other direct regulations, thus serving to complement other efficiency and greenhouse gas emission-reducing measures in California. The cap is enforced with tradable allowances where each allowance equals one metric ton of greenhouse gas emissions. Those covered by the programs submit allowances to the

state in an amount equal to their greenhouse gas emissions during each phase of the program. Entities can trade these allowances amongst each other, which enables them to find the least expensive reductions and comply in a manner that makes the most sense for them. If an entity is unwilling or unable to make reductions, they can purchase allowances from the market in order to meet their obligation. Conversely, if an entity is able to make significant reductions in emissions, they are left with extra allowances that they can bank for future compliance or can sell at a profit if they choose. In a sense, the cap requires covered entities to live within a budget. ARB sets the overall budget of allowances, but companies have the flexibility to figure out how to best spend those allowances on emissions.

Each year ARB will issue allowances directly. Initially, we will allocate most allowances for free to industrial producers, including the covered food processors, to make sure that they can remain competitive in a global marketplace and to ease the transition into the program. We provide allowances for free to utilities to protect electricity rate payers from program costs. Some allowances are set aside in a reserve account to protect against the potential for high prices, and the remaining allowances go to auction where the money from the auction can be used by the state to pay for emission-reducing measures consistent with AB 32.

In addition to allowances, a covered entity may choose to use a limited amount of offset credits to account for a portion of their emissions. Offset credits are reductions in greenhouse gas emissions from sources not covered by the Cap-and-Trade Program or subject to other laws or regulations. Only specific reductions quantified from strict criteria are allowed to be used as offsets, and the reductions are carefully monitored and accounted for using methodologies approved by ARB. Offsets come from non-covered sources, like those we've heard about a lot today, reducing methane that comes from dairies or destroying refrigerants that would otherwise leak into the atmosphere from appliances that are at the end of their life or maintaining carbon storage in forests.

One important goal of AB 32 is to avoid overburdening certain sectors of the economy and to make sure that all sectors are doing their part to reduce greenhouse gas emission. This philosophy is carried out through the Cap-and-Trade Program. We set a threshold for inclusion in the program that is high enough to minimize the administrative burden on small businesses but low enough to maximize the reduction

opportunities at large industrial emission sources. Those entities that meet or exceed the threshold for inclusion in the program are incentivized to strongly consider energy use as part of their business and, therefore, are best able to determine for themselves when, how, and if reductions should occur. At the same time, ARB recognizes that industrial entities, such as food processors, may face a competitive disadvantage compared with businesses and regions that do not have similar climate policy. For this reason, the program is designed to limit the economic impacts on businesses.

In designing the regulation, we conducted a thorough analysis of the risk that production would shift out of California. This production shift from California to other regions is called “leakage,” and AB 32 specifically mandates that we minimize leakage when designing regulations. In order to minimize leakage, free allowances are provided to food processors and other industrial covered entities.

At the outset of the program, industrial covered entities will get virtually all of the allowances they need to comply with the regulation for free. As the regulation progresses, the amount of free allowances declines in proportion to the leakage risk that an industry faces. Food processors are considered at medium risk of emissions leakage based on our analysis; therefore, over the course of the program, food processors will receive nearly two-thirds of the allowances they need to comply with the program for free.

The Cap-and-Trade regulation went into effect on January 1st of this year. As ARB implements the program, we will continue to evaluate the potential for emissions leakage. For food processors specifically, we are working on an interagency agreement for research into the potential economic impacts of Cap-and-Trade on their industry to help inform the program moving forward. We understand that food processors face unique challenges including, for example, producing a diverse array of products and seasonal production cycles. We have been working closely with food processors on the scope of this research, and we are currently soliciting proposals from researchers at California universities to conduct this work. Further, we are interested in working with the industry throughout the implementation of this research study.

In closing, ARB will continue to work closely with all stakeholders, including food processors, to ensure the equitable application of the Cap-and-Trade regulation and to ensure that we achieve the dual goals of protecting our environment and the economy.

Thank you for this opportunity. I'd be glad to answer any questions.

SENATOR CANNELLA: It must be tough for you as a Ph.D. to try to explain it in ways that a person like myself could understand, but I appreciate your effort. I'm still a little confused, but I have a few questions I want to ask you. The first one that just came to me was you mentioned refineries, and various things and gas prices have been going up recently—it's getting very expensive to drive—do you anticipate gas prices will go even further up once this program really takes off?

DR. CLIFF: In the beginning of the program because free allowances are provided to refineries, we wouldn't expect that there would be any pass through of costs, or very nominal.

SENATOR CANNELLA: We can't blame you for the gas prices. (laughter)

DR. CLIFF: You can. I mean, you're certainly welcome to. I've accepted that on many occasions.

Starting in 2015, we would expect that the cost of complying with the regulation for those who provide fuel to Californians—these are large field providers, basically those at the rack—would pass along the compliance obligation for the fuel that they sell. So at that point, yes, absolutely, we would expect that the price of gasoline and diesel would reflect the greenhouse gas emissions associated with gas combustion in California. Again, those funds that essentially come from auction are cycled back into the economy for purposes consistent with AB 32. So it's not as though ...

SENATOR CANNELLA: So you're saying that the Cap-and-Trade, the money generated from that is supposed to go to offset the cost incurred by trying to meet this program?

DR. CLIFF: That's right. I mean, it helps to, say, buy reductions from other sectors where you wouldn't be able to normally achieve this.

SENATOR CANNELLA: Isn't it true that the governor in his current budget scored about \$500 million generated from Cap-and-Trade to be used in the General Fund? And in fact, he's also stated that he wants to use the money generated from Cap-and-Trade to fund high-speed rail, so isn't that deviating away from offsetting these other costs?

DR. CLIFF: I'm not the budget expert. But I will say, as I understand it, the way that funds have been viewed is having a nexus with AB 32. So to the extent that they're offsetting General Funds for other programs that would be reducing

greenhouse gas emissions, that would certainly be consistent with what AB 32 considers. I'll also point out that high-speed rail was a measure in the Scoping Plan considered as one of the state's strategies to reduce greenhouse gas emissions.

SENATOR CANNELLA: Okay. Now, I met with a lot of the food processors, in fact, I think we have a couple coming up after this, and what they're saying is, "Look, if you look at our operation now compared to where we were a few years ago, we have done everything we can and we've reduced our emissions tremendously." In fact, some of them have gone as far as saying, "We are as far as the science will let us go. We can't go any further." And so they feel like they're being punished. They were the good actors. They pushed the envelope, they tried to do the best they could, now that's the baseline. So it doesn't matter what you've done; now that's the baseline. You've got to go further. So they're concerned that the science just won't ... the technology just won't allow them to go any further. Would you agree with that concern?

DR. CLIFF: We've heard that concern, and we certainly understand it. And I think in designing the methodology for how we allocate allowances, we've tried to consider the appropriate baseline. And in considering the appropriate baseline, we've taken into account these kinds of early reduction opportunities. Certainly, because Cap-and-Trade is the type of program where you're responsible for your emissions, you're not responsible for achieving reductions. Any reductions you make early benefit you by virtue of having to have fewer allowances to comply with the regulation, so early action benefits all actors.

SENATOR CANNELLA: So, early action starting now or early action they did five years ago?

DR. CLIFF: At any time.

SENATOR CANNELLA: Well, how do you determine their emissions then? Do you have a sensor that goes up and ...

DR. CLIFF: We have reporting. There's a mandatory reporting regulation, and all these folks have been reporting since 2008 based on fuel use and ...

SENATOR CANNELLA: In 2000-what?

DR. CLIFF: In 2008.

SENATOR CANNELLA: So you're taking all that into consideration? You're going back as far as 2008? And I don't even know the unit of measurement that you

use for this. Let's say a thousand tons, okay. In 2008, you have a thousand tons. In 1990, you probably were at 500 tons. Now at 2012, you're back to 500 tons. You've met your obligations. You're finished. Is that the way it works?

DR. CLIFF: Because AB 32 requires the state to get back to 1990 levels, the program doesn't have any specific goals for any one sector or any one type of production. What it does is it sets a cap across all of those. For those who have found ways or can find additional ways to reduce their emissions, they'll benefit under Cap-and-Trade.

SENATOR CANNELLA: They'll benefit because it benefits the whole state?

DR. CLIFF: They'll benefit because they'll have excess allowances, for example, that they can sell to fund these reductions or ...

SENATOR CANNELLA: I'm sorry to interrupt you, but I get confused easily. So in 2008 they had a thousand tons of emissions, okay. They've worked very hard and they've gotten to 500 tons, okay, and that meets their 1990, which probably doesn't matter, but it shows that they've decreased tremendously. So does that mean they get X amount of units of allowances to sell or does it ... There's got to be some baseline? What's the baseline so you can measure when they get allowances or not?

DR. CLIFF: Right. So for all producers the baseline was 2008 through 2010, and we would look at the emissions during that period to set the baseline for how many allowances they would receive.

SENATOR CANNELLA: What if they decreased 50 percent between 2008 and 2010? What happens?

DR. CLIFF: They would be receiving fewer allowances because their emissions have gone down. But they would still be accounting for, say, the higher emissions in your scenario from 2008. So the fact that there's sort of an average that's higher, you know, that average is generally higher than it would be otherwise. And if those entities had been reporting with the CCAR program, which was established initially under state law, say, as far back as 2000, we could be looking at that baseline for that entire period.

SENATOR CANNELLA: Okay, so let's say in 2008 they have a thousand tons, okay, and they could see in their crystal ball this was going to happen and they didn't do anything, they just kept it a thousand until now, and then they installed the technology and reduced it down to 500 tons. What would they get for that?

DR. CLIFF: They would certainly benefit.

SENATOR CANNELLA: More than if they benefited being proactive?

DR. CLIFF: I think that's true. In the way that this type of allocation approach works, you know, sort of waiting until the last minute or until the program starts would probably benefit them.

SENATOR CANNELLA: And you can see how that would frustrate them.

DR. CLIFF: Absolutely. And in fact ...

SENATOR CANNELLA: They spent millions and millions of dollars to do that.

DR. CLIFF: And we understand that. And in fact, what we've proposed to the industry is trying to move away from this sort of an allocation system, and so, we're working with them to try and develop ways that address their concerns a little more readily. The challenges that we're finding ... What we like to do is move towards a system which provides allowances based on how much they produce, not on how much they emit, and that would give them a greater benefit for producing more, not for having emitted more. That type of incentive is the way that we like to shift, and we've been working with the industry to try and effect that result.

SENATOR CANNELLA: Another concern that industry has said to me is that this is on the market, right? There's going to be auctions for these ... "allowances," that's the word I'm looking for, that's the correct term?

DR. CLIFF: Right.

SENATOR CANNELLA: Okay. So they're competing with everybody. It's on the market. They're competing. So food processors ... And I know it's a medium risk for leakage, but I think they'll just close. But whatever. So they're competing. They have a fixed price. They compete globally for their product, right? So anybody can do what they do. I think we do the best. But anybody can compete. But they're competing against, say, PG&E for these allowances. PG&E has an advantage. They can buy them all up and just say, "We're going to pass these along to our customers;" whereas, the food processors cannot do that. So, I mean, I know you said you're going to hold back some allowances, but ultimately how is this a fair system?

DR. CLIFF: Sure. So the regulation has specific types of market rules which limit this sort of activity. We have a limit on how much covered entities can purchase, how much non-covered entities can purchase, and how much entities can hold. So we're trying to prevent this sort of market manipulation by cornering the market. For

example, we don't want any one entity to sort of buy up all the allowances and then hoard them. That's not possible under the way the rules are set up.

SENATOR CANNELLA: Okay, one last question. This is a big question, so I'm going to read it. AB 32 impacts on food processors will ultimately trickle down and impact farmers and ranchers and consumers. I think we can all agree on that. It's my understanding that this was one of the reasons that the European Union did not include food processors in their carbon trading program. What's the difference between the EU plan and the ARB plan when dealing with Cap-and-Trade with food processors?

DR. CLIFF: So the EU program had very specific rules for food processors. We have kind of a simple threshold of, you know, 25,000 metric tons or greater brings you into the program. As it turns out, if you look at the European rules and calculate out what that would mean in California if you applied the same sort of rule here, that would set a threshold of about 30,000 metric tons. So it's very consistent in Europe with what we did here. There's a modest difference there.

SENATOR CANNELLA: So they didn't exclude it? Because I have it in my notes that they did not include food processors. That's not accurate?

DR. CLIFF: That isn't. No. Sorry.

SENATOR CANNELLA: How dare you? (laughter) Okay. I think that answers all my questions. Thank you so much for your time. And I appreciate your testimony.

DR. CLIFF: Thank you.

SENATOR CANNELLA: Okay, next we're going to hear from industry. Is it Mecozzi? Is that how you say it? P. J.? Thanks for being here.

MR. P. J. MECOZZI: Sir, if you can't pronounce that, both of us have a problem. (laughter)

SENATOR CANNELLA: President, Del Mar Food Products Corporation. Thank you very much for being here.

MR. MECOZZI: Thanks for asking me to be here and for the opportunity to talk about my company a little bit. Most of you probably haven't heard of Del Mar Food Products. We're up the road in Watsonville. But if you ever had an Odwalla Strawberry C Monster, that probably came from us. If you've ever had Green Giant frozen Brussels sprouts or frozen spinach, those came from us. If you ever had the Italian wedding soups that are in the market, that spinach is probably coming from

us. If you've had Progresso Soup, the bell peppers in those products came from us. So we have kind of a whole host of Central Coast products that we freeze, so we're very tied in with the farming community here.

We've been in business since 1959. I came to Del Mar in 1986, and I took the company over at that time. And when I came to Watsonville, there were a host of household names that had plants there—freezing plants. J. M. Smucker had a plant. Green Giant had a plant. Birdseye had a plant there. There were some big plants there in Salinas. And we've had a lot of attrition in the frozen food business. We've gone from about a 20-million-pound a year packer to about 100-million-pound a year packer, and a lot of it had to do ... We just kept picking up the scraps when people were leaving town. A lot of the attrition had to do with lower labor costs, and it could be in Mexico, it could be in Texas.

So I'm really here to talk just a little bit, just a minute, about how the cumulative effects of doing business in California have been challenging, to say the least, for folks to do what we do.

We have about 500 employees. All of our people are Teamsters. Everybody that works at Del Mar has a pension plan and medical coverage which we pay 100 percent. There's no co-pay. So we're kind of an old-style business. But that's what we have there. And you know, we're going to make it work in Watsonville or we're going to close. We're not moving. I own the company. This is as far as we're going to go.

Anytime we do anything that kind of isolates us in a vacuum, when you're a manufacturer, it's always troubling, whether it's high workers' comp cost, which is kind of a state issue that we have here. Those are really ramping up. Those are causing us a lot of grief. Energy costs in general in California, as we know, are high. And this AB 32 issue is—not only are we concerned about what it does to emitters at the current 25,000 ton benchmark, but you know, then it will be the 10,000 ton benchmark, and then I'm right in the middle of that one when they get to the next cut. So that's a concern that we have. Certainly the impact that it has on electrical costs ... We're a big electrical user. We're not a big natural gas buyer. You'll hear from people just in a minute here that know a lot more about natural gas, those costs, and AB 32 than I do. But what it all really is going to ... The rubber is going to meet the road with food prices, and I think we're already starting to see food prices, as they've been ramping up from a whole host of reasons, are really going to start affecting the

consumer. This is where I think we're going to really start seeing some pushback. So I think that in general anything that we do that puts pressure on farming and on food processing, really, you have to think about it from the standpoint of the consumer. All food production in the United States is going through the Safety Modernization Act, and all those issues we're complying with. The farmers are complying with it. Their costs are going up. That's raising the price of our raw material. We're contending with a lot of the issues that we have to address, and those prices we're trying to pass on. But I think we're at the point now where we're going to have a very difficult time pushing these prices on a consumer that's stressed anyway.

I think the strength of California in our business is we have great farmers. We have great climate, great soil. We've got the basic building blocks of having a very vibrant and sustainable food production system. But I think we're getting a lot of pressures now, and the concern that I have is anytime we isolate in a region or even at the state level we're really putting our people in the food industry in jeopardy.

And those are the comments that I have. Thank you.

SENATOR CANNELLA: Great. Thank you for that. So you heard some of my line of questioning. I mean, are you concerned about your ability to buy these allowances on the open market and other industries that are able to pass these along to where it makes it harder for you to participate?

MR. MECOZZI: Well, I mean, at the beginning of this, to have this type of a program that is really isolated to the state of California, that's the most difficult part for me to really digest. I mean, that's just a tough deal because it does two things, I think. They say the industry is a medium risk leakage. I think it could be high risk leakage. But if it's an "I told you so," it doesn't do me any good. And I saw that happen in Watsonville. I saw everybody leave town. And we talked about this. And the city was very, very cooperative in trying to maintain the industry there, but we did over time lose a lot of the strength. And, of course, the city really is in need of additional manufacturers or this type of job. The type of business we run, we have people working there from all types of skill levels.

The other issue is, if you've got people that have gotten very efficient, you've got to figure out how not to punish them for the ... and you brought that out, Senator, earlier in your comments, in your questions. The firms that have gotten very efficient—and they did it because there's a financial payoff in getting efficient—that

was the modus operandi. Any system that is going to be fair has to take that into account.

SENATOR CANNELLA: Yeah. And so, have you done a lot of modifications to your facility, for example, for that very purpose?

MR. MECOZZI: We're not a big natural gas user. We're a big electrical user. So we've done a lot about conserving electricity. We've spent a lot of money conserving water. We're a fairly sizable water user, so we have the cost of the water, the value of the water, and the cost to discharge it. So we've spent a lot of money mitigating that—lots of our best people. A lot of the energy and the intellectual throughput that we have is going into dealing with these issues, not in, you know, marketing, not in product development. We spend a lot of energy in dealing with costs and concerns about regulatory issues.

SENATOR CANNELLA: So you're not as concerned about modifications? Your plan as much is just the higher cost of doing business? It's just all the additional costs you're going to incur because of all the prices going up?

MR. MECOZZI: Right. But we have to make capital investments to deal with the impact of the electrical costs, gas costs, water discharge, etc.

SENATOR CANNELLA: How many employees do you have?

MR. MECOZZI: We have about 500.

SENATOR CANNELLA: 500 employees. Okay. Well, great. Thank you very much for your time. I appreciate it.

MR. MECOZZI: Thank you for the opportunity to be here.

SENATOR CANNELLA: Next, I want to introduce Supervisor Calcagno. He's here, Monterey County supervisor, also in the dairy industry, so hopefully this is useful on both levels. So thank you very much for being here today.

Next we're going to have Tim Durham, Director of Operations. Tim, how are you? It's good to see you. Thanks for being here.

MR. TIM DURHAM: Thank you, Senator. Thank you for having us. It's a pleasure to be here and be able to talk a little bit about our company and how we see the implementation of AB 32.

Ingomar Packing is a grower-owned company formed in 1983 to manufacture tomato paste. Over the years, we've grown from our small roots to processing over 1.2 million tons of product a year. We manufacture tomato paste and diced tomato

products for industrial use. Our tomato products are used in ketchup, salsa, spaghetti sauce, pizza, so all of the products that we use on an everyday basis. We employ over 100 fulltime employees and 500 seasonal employees during our processing season from July through October. Our year-round operations have a positive financial impact on the economy of Merced County.

Our four grower-owners have been committed to California agriculture for multiple generations, and we believe as the primary processor for their agricultural products, we are inextricably linked to agriculture. The commitment to the long-term success of tomato growing in our entire industry can be seen in large capital investments made in the past 30 years.

Ingomar has over \$100 million in invested plant equipment, with our last major expansion completed in 2010. We believe investment in California commodity processing in agriculture is good for our employees, for our communities, California and the nation. The long-term viability and success of agriculture and tomato processing are dependent on each other in the Central Valley in California.

As the first processing stage for perishable agricultural commodity, tomato processing as well as the canning, frozen fruit and vegetable processing facilities should be exempt from AB 32. Exempting agriculture but not exempting primary processing of the products addresses only half of the agricultural equation. This could leave our grower-owners and other growers without adequate outlets for the products that they grow.

The current implementation policies of AB 32 will increase food costs for all Californians and all of our product buyers, this at a time when wages are stagnant. The nation is reeling from the worst recession in 80 years. Increased food costs and decreased working opportunities will disproportionately affect the rural agricultural communities of the Central Valley.

The entire food processing sector accounts for less than 6 percent of the regulated greenhouse gas sources in California, and tomato processing is only a portion of that. California processing of tomatoes represents 30 percent of the world processing tomato industry, with our primary competitors being located in China, Italy, Spain, and Portugal. China is by far the largest and fastest growing competitor, with coal frequently the fuel source for steam and electricity utilized in their facilities. Our European competitors generally use natural gas for steam production, as we do in

our plants; however, the European Union has exempted agriculture in primary processing for most climate change regulations. Consequently, California agriculture and primary processing companies are specifically at a competitive disadvantage with our largest competitors as with regards to fuels used and exemption from greenhouse gas regulations.

In the past eight years, we've spent almost \$2 million in our facilities to upgrade our boiler infrastructure, reduce NOx emissions, with most of these retrofits utilizing selective catalytic reduction systems. Furthermore, we have the most highly regulated and, consequently, cleanest boiler operations in the world with respect to NOx, SOx, and CO emissions. Our plants have continued to upgrade and enhance our technology and equipment to remain the most energy efficient in the world. All of our plants burn PUC natural gas, the cleanest fossil fuel available in the world. This energy efficiency extends to our growing operations with the highest yield per acre in the world, highly efficient drip irrigation, and the most efficient harvesting operations.

AB 32 has brought a level of uncertainty to our business we have not seen before. This uncertainty is being introduced by a bureaucracy in Sacramento very rapidly with limited time to fully analyze and understand the complexities of our business. We understand the desire to implement the greenhouse gas regulations rapidly; however, regulations should not be done so rapidly it endangers companies and agriculture in California.

As a food processing company, we will be issued allocations based on the average of our fuel usage for the years 2008 through 2010. Ingomar added capacity in 2010, but we have not been in a position to fully utilize that capacity because of crop and market forces. When we are able to maximize the use of this capacity, we will not receive allocation credits because it was not utilized during the 2008 through 2010 years. Instead, we must calculate the additional cost burden of those greenhouse gas allocation costs at our pricing structure moving forward. We believe this is punitive to those of us who added capacity and have grown our businesses in California.

On numerous occasions, we have been told by ARB staff they want us to grow in California but will not increase our allocation allotment if we are on an energy-based allocation system. Currently, no product-based allocation system exists for our products. After negotiating with the ARB in good faith for months on an easily verified methodology for boiler efficiency determination that would satisfy each unique plant, it

was announced that the allocation would be based on just energy consumption factors.

In our meetings with ARB, we were told we would receive 100 percent allocation for 2013 and 2014; however, there are significant limits to this 100 percent allocation scheme, and the actual allocations will be less than 100 percent. Allocations will be based on boiler steam efficiency of 85 percent, a target most in our industry, even with our most efficient steam systems, cannot attain. This level was determined after industry submitted information to the ARB regarding energy efficiency and an arbitrary standard of 90th percentile where the best-in-class values were selected. The food industry best-in-class was used, and individual processors don't know if we are processing similar items or in a similar manner. For our 2013 processing season, we will have to absorb the excess costs associated with greenhouse gas allocation purchases. Many of our customers' contracts are multi-year contracts with adjustments for the price of tomato, trucking, and fuel. Increased regulatory fees and taxes are not passed on; these are included in the base price of our products.

Speaking with carbon brokers and traders, we can get a feel for the price of allocations in the markets, but they're not stable. The trading scheme is almost finalized, and trading will not begin until August 15th, 2012. Estimates by the ARB are for an allocation price between \$10 and \$40 in the early time periods, but in the out years in 2018 to 2020, we have heard estimates of up to \$80 or more per allocation unit. We estimate the cost to our company could grow to over \$2 million a year by 2016 depending on the price paid for those allocations. In an industry with very thin margins, high market volatility due to commodity pricing and yield variances and weather risk, this exacerbates an already difficult situation.

In the past 10 years, our focus has moved from managing our core business to managing regulatory change. Ingomar now actively manages the purchase of deregulated energy, natural gas, and electricity and will add to this the purchase of AB 32 allocations. How well we do to purchase these commodities oftentimes has more impact on our bottom line than how well we operate our facilities.

Our fleet of on-site tractor vehicles is registered as both on-road and off-road vehicles. These vehicles are used to move our trailers from the product storage yard to our processing plant. They are never driven on a California road, were originally registered under the off-road regulations—and I have the certificates to prove that.

Last year I was informed by another ARB staff member that these are on-road vehicles, and they are required to be licensed as on-road. They have now been registered as on-road to meet the compliance date requirements. They remain registered under both systems. This rule highlights the confusion, complexity, and difficulty in complying with AB 32 regulations for our company. Even ARB staff is not always certain which rules apply.

Direct greenhouse gas costs will be on top of the currently 25 percent premium we pay for electricity in California. We expected electricity prices to increase as a renewable portfolio increases from 20 to 33 percent by 2020. Electrical rates will rise in 2015 as utilities begin to pay for the carbon emissions from fossil fuel that is used to generate electricity. These costs will be added to the increase for the higher percentage of more expensive renewables required. These costs are on top of the extremely high public purpose charges already imposed by the PUC. This is not to say we're opposed to all regulation or not willing to negotiate and do our part. Our industry led the way with the first selected catalytic reduction units installed on boilers in the San Joaquin Valley and, in fact, those were at our facility. As we replace our yard vehicles, we are spending ever higher amounts for the currently cleanest heavy-duty diesel engines available. We are incurring increased costs from our trucking company as they replace their fleet with the newest and cleanest on-road diesels available. We have accepted these additional costs and understand cleaner air through decreased NOx, PM-10, and PM-2½ emissions have substantial and immediate and long-term health impacts on our local communities in the San Joaquin Valley. Consequently, there's been a limited pushback by local processors. Heavy-duty trucking rules were delayed by ARB due to economic hardships in the valley and the state.

California produces the greatest diversity of food products in the world. Being able to feed our nation is a great source of pride for those of us involved with the California agriculture products processing industries. We have been able to do this as good stewards of the environment and while producing wholesome products at ever lower costs in real dollars. Primary processing is and should remain a viable part of the California agriculture, and AB 32 jeopardizes that position. Processed tomatoes alone account for almost 300,000 acres of cropland in the Central Valley and over \$850 million of farm income. I believe many urban Californians have a disconnect

with where their food comes from. We all know it comes from the fertile valleys that we call home, not just the local Safeway. I prefer it come from the fertile fields of California and not China or another distant country.

AB 32 is a local solution to a global problem. It ignores the overall principle that the lowest carbon footprint plant should not be penalized for being located in California. The current regulatory framework may favor producers located in China or other countries burning coal and emitting high levels of mercury and lead into the environment.

In summary, the food processing sector should be exempted from greenhouse gas regulation, especially primary processing. Primary processing has a direct linkage to agriculture production that cannot be separated. The accumulative cost of AB 32 regulation through higher diesel fuel costs and electricity costs will have a negative impact on our cost structure. These financial impacts alone will reduce our ability to be competitive with other processors in China and Europe. When the full impact of greenhouse gas allocation credit costs begin to increase in 2015 and beyond, we believe our industry will not be competitive in the world market. At a minimum, our industry should receive 100 percent allocation until the product benchmark system could be established. Furthermore, reevaluation of the leakage study of our industry should be conducted by an independent third party with selection input from the food industry. Energy deregulation a decade ago had serious negative unintended consequences for the state of California that we're still paying for. I believe AB 32 with the rush to implementation has the potential for extremely serious unintended negative consequences, especially for California agriculture and primary processing.

And again, thank you for the opportunity to speak with you.

SENATOR CANNELLA: Tim, thank you. That was a great testimony; a lot of information, so I'm just going to try to glob onto a bit of it. So 2008, 2010 analysis was done, data was collected, and the goal is to reduce down from that level. And you're saying that's great if you were static at that time; however, we have grown and tried to meet the market and employ and all these things, so are you actually being penalized because of that?

MR. DURHAM: We installed an additional \$15 million worth of equipment with the idea that eventually we would be able to grow the business. And when we're ready to grow that business ... And it did allow us to become more efficient in one of our

facilities. But we have not used more gas on an annual basis, so consequently, we will be penalized when we make full use of that equipment.

SENATOR CANNELLA: So does this, the process that we're going now to, Cap-and-Trade, does it de incentivize people from growing? I mean, if the goal is to reduce, yet one industry is growing, is that a problem?

MR. DURHAM: I think there are two sides to it. One is that it can be a disincentive to grow if we do not have a product-based standard. So under an energy-based allocation only, there is a disincentive.

SENATOR CANNELLA: They're just measuring the energy you're using?

MR. DURHAM: Exactly.

SENATOR CANNELLA: And that's the approach that ARB is going down—just energy use only?

MR. DURHAM: That is what they have in place for our industry today, yes.

SENATOR CANNELLA: And how would you like to have it? You said product-based and what does that mean?

MR. DURHAM: We have been promised a product-based allocation where depending on how many tons we process or pounds we produce we would then be allocated the energy. That process, however, doesn't take into account what happens if we run fewer days a year, where we will not be as efficient if we're suddenly rained out or if there's just a bad weather year. So there are a lot of vagaries in agriculture that we cannot control that could have an impact on that system as well.

SENATOR CANNELLA: I've also heard complaints that ARB—and look, this is very complicated. I'm not being critical of ARB—but they're oversimplifying the calculations to try to estimate the amount of energy use. Have you seen that? I mean, they're simplifying a very complex process.

MR. DURHAM: I think that, yes, overall they're trying to make it as simple—what they feel is as simple as they can. I think that Assemblyman Alejo had a very good point: Just as when we were being regulated for NOx reductions by the Air District in the valley, none of their regulators had ever seen a plant. My guess is that very few regulators at ARB have ever seen or understand agriculture.

SENATOR CANNELLA: And so, is the industry continuing to work with ARB or has ARB said that, at this point said, "We're done, we're moving forward, that's it?"

MR. DURHAM: With regard to the product-based standard, we are working with them on that. They have ...

SENATOR CANNELLA: You're still open to that?

MR. DURHAM: Yes. And ARB has a contract let with a consulting firm to develop a product-based standard for us.

SENATOR CANNELLA: Have you noticed ... I mean, we have a new administration now—the same kind of players as far as ARB, but a new administration. And my experience with the governor, he's very open to solutions. You know, he's a very thoughtful person, wants to dig into the details. Have you noticed a change in the way you're being dealt with since this new administration has come into office?

MR. DURHAM: I have not, no. I think that in general, because we only represent 6 percent of the total greenhouse gas that's being regulated, we're very small, so it's much easier, I'm sure, for ARB to regulate a refinery or regulate a cement kiln than it is to regulate a multitude of smaller processors that are on the threshold of the size that they are regulating.

SENATOR CANNELLA: Now some of the tomato growers that I know, and obviously there's a lot where I live, which is in the Central Valley, they say, "Look, if we don't have food processors we're out of business." How far can you truck tomatoes and still have them processed without them spoiling?

MR. DURHAM: We can't quite truck them to Nevada yet.

SENATOR CANNELLA: So it's a real deal; processors go out of business; that is out of business as well?

MR. DURHAM: Well, I definitely see that at this point I don't think any of the processors, and certainly we would not be willing to invest money in our plants for fear that we could in fact be obsolete in five years. We could be facing a situation where we're either obsolete or half of our processors are going to be out of business because any international markets are no longer going to be available to us. Thirty percent of our crop currently is being exported. That's a big increase over the past ten years. We think California is the best place in the world to grow processing tomatoes and that is in jeopardy. Those jobs are in jeopardy. Our businesses are on the line.

SENATOR CANNELLA: Just because you'll be at a competitive disadvantage by way of China and other emerging markets?

MR. DURHAM: We will be at a competitive disadvantage, yes.

SENATOR CANNELLA: Have you done a study on what the percentage difference is to do business? I mean, China it _____ cost anything, and obviously they would have to ship it to us, so there are additional costs. I mean, what is the point where it just doesn't—you can't do it anymore? You said \$2 million just to your facility alone.

MR. DURHAM: Well, I can tell you that I entered in the industry in 1981. We are selling product today for less per pound than we were in 1981 and that is on an actual per pound basis. So you can imagine that on a relative basis, given inflation, it is significantly cheaper today. If we have costs much above where we are at today, we can no longer deliver into other countries at the rate that we do currently. And truthfully, right now, the industry itself is overcommitted, oversupplied, and we're all losing money.

SENATOR CANNELLA: That's not good. Only government can lose money and still go on. So just to summarize:

- You'd like product-based standard; that would be helpful and ARB is working with you on that.
- Reevaluate the leakage study; I've heard that as well. I think you're a high risk.
- And then, 100 percent allocation, not less than that. That sounds like what you want. I think we can agree on that today. I'm not sure we can work that out today.

Look, it's great that you're here. It obviously shows that you want to work through these issues. So this is the first step. The next step is to work with you to try to remedy all these, and I look forward to that as well.

Alright, thank you for coming all the way over here. I really appreciate it. We'll see each other in traffic on the way home.

MR. DURHAM: Thank you, Senator.

SENATOR CANNELLA: Alright, next, Mona Shulman, Vice President and General Counsel, Pacific Coast Producers. So thank you for being here.

MS. MONA SHULMAN: Yes, thank you, Chairman Cannella. I appreciate the time and attention to this issue today. I'm with Pacific Coast Producers. We're a grower-owned co-op as well. And we have about 160 grower-owners that grow

peaches, pears, grapes, and tomatoes, all in the Central Valley. Most of our growers are ... well, all of our growers are family farming operations. We produce private label products—primarily canned. We sell more than 70 percent of our products east of the Mississippi, so most of our products leave California. We have three processing plants; one up in Butte County, one in Yolo County, and one in San Joaquin County. Two of them are fruit plants that will fall under the 10- to 25,000 range that will be affected once the 2015 natural gas is brought into the Cap-and-Trade program. Our third facility is in Yolo County. It's a tomato facility, and it is over the 25,000 benchmark, so we'll be in the program when it starts—as it starts.

I don't want to repeat everything that the two people ahead of me testified to, but I would echo everything that they said. And I just wanted to make a couple of additional points.

Not too long ago, the tomato industry in California was 6 million tons—20 years ago—and now the state produces 12 million tons of tomatoes a year. So along with that, the population of the world has increased. And I don't want to get lost in the analysis of, "Oh, we're concerned about our costs and product benchmarks," the fact that, you know, this is the food supply. We supply products to people across the nation. And hopefully, someday we can get back to exporting products as well.

As Tim noted, China has very rapidly increased from tomato production of zero to 6 million within under a decade, so there's some very real competitive threats out there as far as the economy is going. And I would submit that there are some economic activities that might be more important than others; and food processing, I would argue, goes in the important category as far as society goes.

So, you know, just to make a couple of follow-up points on some of the discussion. With regard to the energy benchmark versus the product benchmark issue: I do believe that CARB has the goal of helping us out with the product benchmark, but I do have a couple of questions. The first is, right now in the regulation is the energy-based benchmark, so presumably we're going to start the program with an energy-based benchmark in January, because even if CARB works with us in good faith because they think this will be better for us, that product benchmark is not going to be ready. So after the program starts, after we start in the energy-based benchmark, at what point are we going to switch to a product-based benchmark, and how is that going to affect people in the program? And one of the

things you hear is businesses hate uncertainty. To me, that's a pretty large uncertainty out there. How do you plan around an energy benchmark and yet, at some point, you might switch to a product-based benchmark? Even if it's better, it's still a big change, and you don't know when that's going to occur or how.

Another question I have with regard to even if we were able to switch to the product-based benchmark, which theoretically says we're going to issue allowances based on how much you produce, so theoretically as you produce more you're going to get more allowances. Well, as that cap declines, how are they going to continue to issue more allowances as we increase our production that don't conflict with that declining cap? So to me, there's still a lot of uncertainty about the product-based benchmark.

And the market itself ... We're a mid-sized company, we're called and we're told. But we don't have the staff, as you've noted, to compete with PG&E in the marketplace, and so, we're already getting phone calls from traders and brokers, and frankly, that just makes me cringe because I don't know. I mean, I don't manage my own 401(k) because I don't have the time to be out there understanding those things. I have other jobs to do. And so, competing in the marketplace against some of the big players is a big concern to us.

And I know CARB has said—and again, I'm sure their goal is laudable—to have some controls in there to prevent market regulation, but I wonder if some of the controls they're putting in there to prevent market manipulation are going to work against the market and make it unsuccessful? Because if you don't have a liquid market, how are you going to get participants in there to play in that market. So I don't know that those questions are adequately answered.

I think for us the bottom line is, you know, technology and physics limit our ability to reduce emissions. And so, we will be thrown into the market of buying allowances which will increase costs on us. And in our competitive marketplace, it remains a big question mark as to how much and whether we'll be able to tolerate those increases.

And on your point of what we've done for reductions and getting credit for that: you know, as our products are distributed nationwide, we have taken, as a company, great strides to switch from truck transportation to rail transportation and taking our products to the East Coast because that's where more of them are sold, and we have

achieved significant emissions reductions by switching to rail transportation. We moved our tomato production from San Joaquin County to Yolo County because our tomato growers are in Yolo County and so that significantly reduced our carbon footprint as a company as a whole, but, you know, none of that counts with respect to AB 32. So we as a company, because of costs, reduce emissions, and yet in the area where we're limited by technology and science, we're going to get hit hard.

So those are just the follow-up points I wanted to make. And I'd be happy to answer any questions if you have any.

SENATOR CANNELLA: I don't have any more questions. Thank you very much.

MS. SHULMAN: Thank you.

SENATOR CANNELLA: Dr. Cliff, would you mind coming up just to address a couple of points? So let's talk about, just briefly—and we want to get to the next panel—but product-based versus energy-based. I mean, I think they're making good sense. What do you think about that?

DR. CLIFF: We'd absolutely like to move towards product-based. That was our goal last year, and we're working with the industry to try and do that. I think last year there were a lot of challenges trying to, of course, get things quickly. Once you have a regulation, you've got this year to finalize it, and the industry still has some questions about how that works. What we need from them is data. In order to get those data, they need to be comfortable with how they're being used and where they end up. And as we marched along towards adoption of the regulation, we wanted to make sure that there was some regulatory certainty, so there is an approach in there that we think works for them.

SENATOR CANNELLA: Are you mandated by date certain to have this in place or is it just of your own kind of internal goal to hit this date?

DR. CLIFF: Sorry. So under OAL you have one year to complete a regulation from when the initial notice goes out. So that's the year that I'm speaking of—once the proceeding was open. So when it was closed, we have an approach in there that we believe works for them—this energy-based approach and that works well for most. For those who have grown and in some cases expect to grow significantly over the next few years, a product-based approach would be much better for them. In general, it would be better for the entire industry. The diverse array of products that they make

makes sort of picking which products to benchmark a little more challenging, so that's where we're looking to the industry to help us understand what products make sense to benchmark; get us the data. We've got a contractor in place, as Tim mentioned, and we're ready to move on that. How quickly we can do that is a little bit of give-and-take between us and the industry. We need the data to do it. We can take recommendations for changes back to the board. I don't think that starting in 2013 is necessarily a large hurdle. We can, in the regulation, ensure that we go back to the beginning of 2013 if that's necessary. We understand this provides uncertainty, and the industry doesn't like that uncertainty, that's why we finalized the regulation with an approach we felt was workable for the industry.

SENATOR CANNELLA: Now as far as the reevaluate of the leakage study, medium versus ... I mean, that's pretty scary. First of all, I want no businesses to go out of business, so understand that. But a concrete business, if it goes out of business, that's bad because people lose their jobs. But if a processing facility closes, it's bad as well because now all those farmers have no place to take their product. I mean, at some point are you looking at the burden that's being placed on these and the fact that, yeah, they may not go to Nevada, they may just go out of business?

DR. CLIFF: Right. So the analysis that we did looked at two different things. One is how much would this compliance cost be on sort of a unit of production? That's what we call emissions intensity. For food processors it's relatively low. We rely heavily on that because trade data are difficult to understand. The second part of the equation is how subject to competitiveness disadvantage are you in a global marketplace? That's what this study that we're working on with universities in California are trying to get research on on the ground. That's what that would look at. So I can tell you, "Oh, okay, the expected cost on a can of tomatoes is less than a tenth of a cent." What I need to know is, is that less than a tenth of a cent a knife edge where suddenly a company ...

SENATOR CANNELLA: _____.

DR. CLIFF: Right. And that's the data that we're trying to get. So in working with the industry and working with these researchers, we'll be able to get that. At the outset of the program, we start with this 100 percent of the benchmark as the free allocation for all producers; cement plants, refineries, and food processors. So it's in 2015 when the allocation starts to fall off that we would need to make

recommendations to our board to change if, indeed, we believe that their competitive disadvantage would be significant under this regulation.

SENATOR CANNELLA: So it was stated earlier that the plant out of Los Banos was not going to get 100 percent allocation. How do you deal with that?

DR. CLIFF: Well, the way the allocation works is it's 100 percent of a benchmark, so that benchmark is based on a standard. That standard is something that's relatively efficient, but it's at a point which most of the industry will actually be made nearly whole. It's not exactly 100 percent; the cap overall declines. So if one industry ... it's a zero sum game. So if one industry were to have more than, you know, at 100 percent while the cap's declining, that means you're taking it away from somebody else. So we're not trying to pick winners in that way; we're looking at who's an efficient producer within a sector and then allocating based on that sort of approach. So in every industry there are producers who are made whole.

SENATOR CANNELLA: Now, just one last question and then I'll let you go. So this open auction process, I mean, that's concerning to me. I know it's supposedly free market. I don't think that it is. But if you look at, like, the energy deregulation and Enron and how the market was manipulated, have you considered making it a closed process where it's just the stakeholders, the people that are affected? They're the ones buying the allocations rather than opening it up to outside investors? I mean, aren't you concerned about the manipulation that could occur because of that?

DR. CLIFF: That concern has been brought to us. The best way that I can explain this is that Morgan Stanley is a large electricity trader in California, so they're a covered entity. So distinguishing between a trader—somebody who you might recognize readily as a market, sort of, trader like Morgan Stanley—and somebody who is like a food processor—somebody you know is on the ground and has emissions at their facility—distinguishing between them is very difficult, and so you can't really limit the program to traders and covered entities and others because it's really easy to become a covered entity as a trader if that's, indeed, your goal. As well, this liquidity that Mona mentioned is really important, and traders are specifically in a market because they're incentivized by making a buck. So when the price gets to the point where they're willing to sell, those allowances then come back on the market. So having the broadest possible participation should benefit the market from that standpoint.

SENATOR CANNELLA: Maybe raise the cost. I don't know if it will benefit the people that are trying to just make their product.

DR. CLIFF: It shouldn't raise the cost. The cost is set by what those who emit are willing to pay for allowances, right? If you're willing to emit ...

SENATOR CANNELLA: They're a captive audience though. They have to ... If they want to continue operating, they have to buy these things. The processors, they've already invested millions of dollars, and they're at the end of what technology can offer, but they still want to operate and they want to grow. Now they're a captive market to buy this stuff, so I don't see how it's beneficial to them.

DR. CLIFF: Well, again, everyone is trying to reduce, so everyone in the economy is reducing under AB 32. What this does is ensure that those reductions are at the least cost that we can get them. AB 32 isn't intended to be free. I mean, we understand that there's going to be cost when we impose environmental requirements on any business. That's what our economic analysis shows. What we're trying to do is come up with a way that makes sense so that businesses can determine the best way for their business to continue to operate, and we believe this market program does that.

SENATOR CANNELLA: Okay.

DR. CLIFF: One thing that I would like to mention: earlier we talked a little bit more about how the allocation works. I think it's really important to understand that we want to see a successful program. California is not the goal here. Obviously, leading the world in trying to develop a broader program is what's really important to us, so we are really interested in working with the industry to make sure that it's a successful program here so that it can be copied and ultimately grow.

SENATOR CANNELLA: Who's following so far? Anybody taking that baton and running with it?

DR. CLIFF: Well, we are working on a linkage regulation with some WCI (Western Climate Initiative) partners.

SENATOR CANNELLA: Western what?

DR. CLIFF: Western Climate Initiative. So Quebec, for example, has a regulation that's very similar to ours. And there is a program on the East Coast known as the Regional Greenhouse Gas Initiative, and as they do their program review for the future, I think there's potential for developing a broader program as a result.

SENATOR CANNELLA: Yeah. Well, do the Cap-and-Trade program. Just so you know, and I'm sure you understand this, people will make money from adding additional cost to business. So these investors come in, they want to make money; and so they're going to hold out until such time as they make money, and it gets passed on to the businesses who, as you know—you're a smart guy, you're studying this issue—some of them are on the brink. They're barely holding on. So we've got to continue to work with industry who, for the most part, care about the environment; they care about our state. They want to do what's right, but at some point, they just can't do it anymore.

DR. CLIFF: We're committed to working with them.

SENATOR CANNELLA: Okay. Thank you very much. Thanks for your time.

DR. CLIFF: Thank you.

SENATOR CANNELLA: Alright. Now we're going to move on to a different subject: The Draft Agriculture Order impacts on agriculture. So we've got Michael Thomas, Assistant Executive Officer, Central Coast Regional Water Quality Control Board. And so, Mr. Thomas, thank you for being here. I just want you to know I spent most of my time just trying to understand this issue, so I look forward to your testimony and asking some questions.

MR. MICHAEL THOMAS: Good. Thanks for inviting me. I appreciate being here.

Listening to the speakers today reminded me of the annual meeting of the Farm Bureau in Monterey last year that I went to. I gave a presentation about our draft order that we were proposing to our board, and most of the comments that I heard were about multiple regulations from multiple agencies. Actually, they weren't about our order; they were about the state of regulations in California and the frustration that they were experiencing. And it reminded me of former Governor Schwarzenegger's panel that he put together and the report that they produced. This blue ribbon panel, the California Performance Review, which described the current state of California and the 340-plus boards and commissions that were implementing regulations, that often overlap and create this frustration; and they had suggestions for how to deal with that.

I think the problem is real—overlapping regulations—and I think it is something that we should be looking at, the state of California should be looking at.

In our little corner of the state here, agriculture is our largest industry. It's a major industry on the Central Coast—\$6 billion a year. It's also the foundation of our culture, so it's beyond just being business. We're aware of that. And we also have another issue. In 1988, a report was written for the County of Monterey. And it stated that the biggest threat to the agriculture industry in this area was the pollution that was being discharged, increasing the amount of pollution, and the pollution of public water supplies in groundwater, mainly groundwater. They were specifically talking about nitrates in groundwater. That was in 1988. That report said if we do not address this problem it is going to grow, and it is going to create an increasing risk to the industry, and the agencies that regulate it are going to have to deal with it. So the cost, the expense is only going to grow.

So fast forward to 2012: we haven't solved the problem, and it's gotten extraordinarily worse. We're dealing with some of the worst pollution problems in the United States right here in the Central Coast. We have surface waters in our area that are toxic and getting worse—right in this area, in the Salinas area, downstream from Salinas. We're required by law to deal with it. There are laws in all the policies of the State Water Board and the Regional Water Boards. All of our regulations, all of our policies require us to act on it and solve this problem. We have to consider other issues, like the economic impact to the industry. We have to consider it in our attempt to solve the pollution problem. We are required to solve the pollution problem.

In February of 2012, we issued a draft order that we felt ... I take that back. In February of 2010, two years ago, we issued a draft order that we felt dealt with the magnitude of the problem we were facing. Since that time, we have reduced those requirements extraordinarily. We have met with farmers, individual farmers, and farm organizations and other stakeholders, like water purveyors, municipalities, environmental groups, environmental justice organizations, and individuals. In response to the vast majority of comments from the agricultural industry, we reduced the requirements to a point today where we have a draft order that we're presenting to our board in March. We've reduced those requirements to a point where we know we are going to be challenged on the legality of that order, whether it is legal and appropriate to deal with the pollution problems. We're going to be challenged on it. It will be petitioned before the State Board and will probably end up in court. So what

we did is in response to many of the requirements we got, especially from small farmers. We created a tiering structure, Tier 1, Tier 2, and Tier 3.

Tier 1 includes the majority of the farmers in our region—55 percent—and the vast majority of small farmers. And the requirements for Tier 1 are among the lowest type of requirements that we issue. They're very similar to the 2004 order that the board adopted with, in some cases, fewer reporting requirements.

Tier 2 is similar to the requirements that the board adopted in 2004 and some additional reporting requirements.

Tier 3 has more-significant requirements. Those discharges in Tier 3, those operations in Tier 3, are those that present the greatest threat to water quality, and they have the greatest requirements. And there will be increased costs for those operations. And they are about 3 percent of the operations in our region.

We've had one of the most ... Not one of the most, we have had the most extensive public participation process of anything that has ever been in front of our board with this item. For three-and-a-half years, we have been meeting with stakeholders. We've had over 60 outreach events. We've gotten thousands of letters. We've had multiple workshops in front of our board. We've gone out and done presentations all over our region.

There is a great deal of fear out there. We heard it at our last board meeting, that there's fear about enforcement. There's fear that the water board, because it is a regulatory enforcement agency, that if information is submitted to the board that demonstrates discharge of pollution that the board is going to immediately take enforcement action. It's not reflective of reality. It's not reflective of our history. It's not reflective of how we have dealt with this issue for the past several decades. What we do have to do is establish accountability for dealing with this problem. We have to have information. We have to honor the public trust doctrine that is in the California Constitution. It says we are protecting the public. We have to protect the public. We have to protect their beneficial uses of this water, especially drinking water. We've got to demonstrate it. We can't simply keep talking about it; we actually have to do it.

I have these talking points here that go on for pages, but I'm going to skip them, and I'll just go to your questions.

SENATOR CANNELLA: Okay. That's a good idea. Thank you very much for being here. I know that this has been a very contentious issue. And I want you to

know this is really our attempt to try to understand the issues and try to work through them. This is just one group—one agency to another. So thanks for being here.

First, I've been told ... Look, I'm trying to dig into this. I'm not a farmer so I'm not nearly as much of an expert as you or some of the others, so if some of these questions seem basic, it's because they are.

MR. THOMAS: I caution you that I'm not a farmer, but I think there are some in the audience.

SENATOR CANNELLA: So I'm told that where we're going with the current order, if it's implemented, it would be the strictest in the entire state. In fact, the strictest in the entire country. Is that true?

MR. THOMAS: I don't think that is true.

SENATOR CANNELLA: You don't? Oh, okay.

MR. THOMAS: No, I don't. As I mentioned, Tier-1 requirements for 55 percent of the farmers in the region—very similar to the requirements that the board adopted in 2004. And I'm pretty sure we're going to be challenged on those: that they're not appropriate, that they're too lenient.

For the Tier-2, which is about 45 percent of the farmers or a little bit more, their requirements are similar to 2004 with additional reporting.

SENATOR CANNELLA: Okay.

MR. THOMAS: For the Tier-3 dischargers, they do have additional requirements. For subsets of those folks in Tier-3, they will have to do enhanced nutrient management, for example, and irrigation management _____. And they will have to sample their discharges. And some other agricultural dischargers do have to sample the discharges. They do have to submit reports to their water boards. Dairies, for example, confined animal facilities. So there are examples of other agriculture discharges that have to do this type of work. And we also do not believe that the requirements are overly burdensome. We believe after reading the literature and talking to experts in this, including people in the industry and certified crop experts, that these conditions can be met and they can be done.

SENATOR CANNELLA: Okay. So you referenced the 55 percent, Tier-1 and the other number. I read in one of the many reports that approximately 80 percent

would fall into either Tier-1 or Tier-2. My question is, is that 80 percent of the acreage or 80 percent of the farms?

MR. THOMAS: It would be over 90 percent of the farms.

SENATOR CANNELLA: What about the acreage?

MR. THOMAS: The acreage, I can't give you the percentage numbers off the top of my head, but the majority of acreage is in Tier-1 and Tier-2.

SENATOR CANNELLA: Because it seems like, you know, you drive down the Salinas Valley and it's incredible, the ag operations. I mean, most of the farms I would say are—a lot of the farms—are over a thousand acres and so that puts them in a new classification. So can you give me an estimate on what the percentage of acreage is? I mean, approximately how much of the acreage would fall into Tier-3?

MR. THOMAS: I don't even want to estimate it because I'm afraid I'll be wrong.

SENATOR CANNELLA: Is it 10 percent or 90 percent?

MR. THOMAS: Oh, no, it's much closer to 10 percent than 90.

SENATOR CANNELLA: Ten percent of the overall acreage, approximately, would fall into the Tier-3?

MR. THOMAS: A small percentage, yes.

SENATOR CANNELLA: A small percentage of acreage.

MR. THOMAS: The vast majority of operations are in Tier-1 or Tier-2, and the majority of acres—the majority of acreage—is in Tier-1 and Tier-2.

SENATOR CANNELLA: Okay. Now I read the 2004 Ag Waiver and that was really groundbreaking, alright. So it's been a progression. First, the problem was identified. Then you start working on it. You work with industry. You come up with a solution. And it seems like the initial program was kind of voluntary. I mean, you get a template off your website for five bucks, and so, it was really kind of, "Come over, let's work together." So that didn't work in your opinion? That wasn't sufficient to remedy the problem?

MR. THOMAS: It has not worked, no.

SENATOR CANNELLA: Okay. What data suggests that that didn't work?

MR. THOMAS: All of it.

SENATOR CANNELLA: Okay. So are you saying that you took samples from ditches and groundwater and it showed that the problem was getting worse?

MR. THOMAS: Yes. We have substantial data, surface water data, from our own program, from the ag industry's program, and from researches in the area (the data which is published), other organizations, like universities—the science departments are doing their own study, long-term monitoring that shows the degree of the pollution problem, the magnitude, and the trends, and they've been getting steadily worse.

SENATOR CANNELLA: Okay. So now let me dig into that just a little bit. So you say it's getting worse. But some of these contaminants, I mean, couldn't they just be in the soil and it takes a while for them to kind of work their way through the system? Or I guess, reading the original analysis, the board worked with stakeholders and said, "Look, we need to identify 50 sites so we can do our sampling." And from what my friends in the ag industry will tell me, "Yeah, we gave them the ones we thought were the worst, and so we went out there because we want to try to remedy this." I mean, isn't it possible that that wasn't a good sample?

MR. THOMAS: Sure, in the realm of possibility, yes. But the amount of data that there is, is overwhelming. There is absolutely no question that we have a severe surface water toxicity problem here and a surface water nitrate problem. There's no question. The data has been collected for years by multiple parties, and it all leads in the same direction.

SENATOR CANNELLA: So it seems like you're suggesting that there's a trend and it's getting worse versus a baseline, right? A baseline could be, "Look, it was here and now we're trying to improve it." But you believe that the trend is that it's getting worse and worse and worse. That nothing that's been done has really helped the situation—or not enough.

MR. THOMAS: Not enough. I think that there are farmers that are implementing practices that have improved water quality, absolutely. But it's not enough.

SENATOR CANNELLA: Yeah. So in 2004 this program started, and I think at the time everybody was happy, right? It's like everybody was coming together to work.

MR. THOMAS: No, I wouldn't agree with that. But go ahead.

SENATOR CANNELLA: Oh, okay. The agency wasn't happy. Because it seemed like they were—the ag groups were like champions saying, "Well, hey, look. This is a model for how we should move forward." Did I misinterpret that?

MR. THOMAS: Yes. I think the ag industry did agree with the process and so did the water board and water board staff working on it at the time. The problem was ... that process is actually ... it seems to have reached a mythical status now. The problem with that process is it included a very small number of people. It did not include the people who were impacted by the pollution. It did not include water purveyors. It did not include municipalities. It did not include residents—the people that are drinking polluted water right now; they weren't included. They weren't even notified. There were a few environmental groups that were involved in that process, and they said ... I wasn't in those meetings, but I have been told by the environmental groups that were that they agreed to it under the condition that when that order was renewed we would deal with the environmental problems.

SENATOR CANNELLA: Okay. Alright. Fair enough. But part of the problems, as I understand it, is that the folks that were enrolled, their issues weren't adequately enforced because there wasn't enough staff to monitor that. So now it seems like the bar is getting raised tremendously and how will you now enforce that? I mean, do you have adequate resources to enforce the new program which seems a lot more stringent.

MR. THOMAS: I think that it's actually a far better program in terms of being able to oversee the, I won't say enforce it, I would say implement the program. We are a regulatory enforcement agency. If people do not comply, we will prioritize. We'll prioritize it according to those tiers. Tier-3 will be the highest priority; Tier-2 second; Tier-1 the lowest priority. For those dischargers in Tier-3 that don't comply with it, our typical process is we notify them. We do not go right to enforcement. We notify them that they're not in compliance and ask them to come into compliance and give them a date to do it and try to contact them. The vast majority of violation issues are dealt with at that level. If we can't deal with it and it actually does go to enforcement, it ends up going before our board, and the board makes the decision about whether liability is assessed or not. In practice, the norm is that we work with dischargers—not just ag dischargers but all the discharge regulation. We work with the vast majority of them, and they do implement practices or whatever measures they need to come into compliance over a reasonable timeframe. That's the norm.

SENATOR CANNELLA: So how are you going to handle—and you may have answered this and I may be repeating it but I think it's a legitimate question—how will

you handle the volume of data? I mean, it's going to be like drinking from a fire hose, right? There's going to be so much information coming at you. How do you do it?

MR. THOMAS: The way you do it when you have a lot of information is you create a database, and you manage that database. We've created that database, and we're fully capable of managing it. We have other programs that have more dischargers than this. Our underground tank program in our region alone has 6,000 dischargers—6,000 operations, and they submit far more information than we're requiring here, many times more, and we're able to effectively manage that.

SENATOR CANNELLA: Now kind of a technical question. I'm told that there are only a handful of certified crop advisors to help growers meet regulations. And actually, in fact, there's only five or six in this area to help with this plan. So if there's so few of these folks that are the experts—and this is very complicated. I'm not saying farmers aren't great, they are. But this is very complicated stuff here. I'm a civil engineer, and I've been wrestling with this for several days, and I still only have grasped a little bit of it. How are they going to comply?

MR. THOMAS: I do not know how many crop advisors, certified crop advisors, are in this area. We have one employed at the water board who has helped draft these requirements. I have heard from certified crop advisors and organizations that train them that they are gearing up and have been gearing up to train them and are training more. They have programs in place to do that. And that they would be capable of meeting the needs. But I can't say more than that to you. That's what they've said to me.

SENATOR CANNELLA: Okay. So you work with the board. I was told there's five or six that are qualified so that's what I'm going off of. So when these folks aren't able to comply it goes before the board. You think, based on the board's ... I know you've got new board members, but are they going to show some leniency towards these folks because they're like, "Hey, we're doing our best. We don't have the professional expertise to do this."

MR. THOMAS: Yes. Absolutely. We'd work with the industry on that.

SENATOR CANNELLA: Now timelines—very specific timelines. How were these timelines for milestones compliance arrived at? I mean, very specific, right? A lot of things have to be done.

MR. THOMAS: So we had original timelines in our 2010 draft. And then in response to all the comments we got, we've changed most of those timelines and extended them. And when we consider timelines, we consider the degree of pollution, the threat to public health. If there's an immediate threat to public health, we have a very short timeline. If it's less of a threat to public health, we have greater timelines. If there is a learning curve involved, we take that into account. Things like the number of professionals that are available to help the industry. If it doesn't exist, then we would take that into account to allow that to be built. So we consider those and in our conversations with the various stakeholders and the experts that provide those services and then we come up what we think is an appropriate timeline.

SENATOR CANNELLA: As I said, I'm a professional engineer, so that's what I do outside of politics. And when I was a young engineer, I would draw plans and, man, we can do all sorts of things with paper and pens. We can do anything. We'd go out to the contractors, and they'd say, What were you thinking? Just because you can draw it doesn't mean we can do it. So based on the testimony and all the things you've done, are these timelines achievable in your opinion?

MR. THOMAS: Yes, I think timelines are achievable. And if we, in implementation, find out that they are not, then we'll have to deal with it. As I said, we don't go immediately to enforcement and say, "You missed a timeline. You are fined. You are hereby fined." It doesn't work that way. If the timelines are not being met and we are continuing to talk to the folks that are involved in this as we go along, that is what implementation is. And we get the information back that these timelines or a timeline is not achievable, then we will deal with that and adjust it if necessary.

SENATOR CANNELLA: Okay. Now government. I'm in the state legislature, and my frustration—a lot of levels of frustration—but one of them is we develop this policy. It's very complicated—many, many pages. And then it goes through committee hearing. And these witnesses that are going to—it's going to drastically affect their life—they come up to testify and try to explain to the committee, of which I'm on several, what the problem is and the chairman will say, "You get one minute," and that's it. It's impossible. It's impossible to adequately express one's concern, especially if it deals with their livelihood, in one minute. Now what we can do as elected officials is we can meet with these stakeholders outside of the committee hearing, before the committee hearing, and we can get a better perspective of what's

happening. So I am concerned with the process that the board has gone through, and it's on a number of levels.

One, again it's the three-minute public testimony, right? You have these farmers that could be spending an extra couple of million dollars a year to try to meet this new waiver, and they have three minutes to testify. Also, you've got this ex parte communication, which to me is outrageous. I mean it's unbelievable that these folks that are acting as judges, essentially, of these folks can't get a different perspective. In addition, you've got the ag member, because of the way the conflict of interest is interpreted, who has to leave the hearing, so the ag interest has lost their ability to speak on their behalf. It seems like it hasn't been a very fair process. And I'm not suggesting that that was the motive. These board members are being counseled by the attorney and the attorney is saying, "These are the rules." But I don't know how long you've been in government, but doesn't this seem a little bit unfair? Is that a loaded question?

MR. THOMAS: No. It's a fair question. The amount of time that we've spent in public meetings, that the board has spent in public meetings on this issue, is more than any other issue that it ever addressed. And what always happens is the board allocates time to representative stakeholders. So the ag industry gets a block of time to make presentations.

SENATOR CANNELLA: So more than three minutes?

MR. THOMAS: Yeah. They have gotten hours—many, many hours.

SENATOR CANNELLA: Before the board?

MR. THOMAS: Yes, before the board. And so have other stakeholders—environmental groups, environmental justice organizations. So the representatives—and I say representatives because I hear from farmers after our meetings that, "the people you're talking to don't represent me, and farming is incredibly diverse in this area, and so, take this into account in your consideration." So there are some people that I think probably are not adequately represented. The three-minute rule that our agencies have to deal with, because they have many things on their agenda—as I'm sure you're aware—many issues on their agenda, and they have to serve all of them. And so, when the room is full of people and the chairman gets a pile of testimony cards, he has to let everyone talk, and so, he divides up the time that's available and

says you get three minutes. But there are also these representatives there who get much more than that; they've gotten hours.

SENATOR CANNELLA: Now based on the ex parte communication ... I mean, I think my natural inclination is that I believe everybody wants to do the right thing, whatever that right thing is, and sometimes they just aren't knowledgeable of a specific area, right? So for example, I represent a rural area for the most part, and I have colleagues, dear friends, that represent urban areas, and we don't understand each other's issues, right? So we talk. We do tours. We try to—it's helpful to understand where they're coming from. So like this specific example, where, let's say you're going to control point-source in creeks or water bodies. I understand that. But in some cases they don't have that. They just have sheet flow and maybe they've got ... maybe they don't use the chemicals that I can't say that are in the report, but their neighbor up the hill uses those, and it rains and you can't control the rain water. The rain water comes through, and it now goes through their field. Now all of a sudden, they've got a problem. Where if these board members were able to take a tour of these various operations, they may say, "Okay, I understand now; I get what you're saying." Don't you think that would be beneficial to the overall process? Because again, I believe these board members are doing the absolute best they can with the information they have, but with these ex parte communications, it seems like it's very controlled as far as the knowledge. I mean, how can we deal with that?

MR. THOMAS: So the board does do field trips; they've done several. And the way we do that is we advertise it. We notice it. So we do a public notice and say the board members are going to be going on this field trip, and the public gets to go too.

SENATOR CANNELLA: Okay. So there have been field trips.

MR. THOMAS: Yes. And if a lot of people want to go, it becomes a logistical nightmare.

SENATOR CANNELLA: Sure.

MR. THOMAS: If there are a few people, then the board can do it, and they've done this many times. They've looked at best management practices, demonstration projects, you know, wetland-type systems that treat runoff, things like that, and met with farmers on site talking about that system. So they've done that.

SENATOR CANNELLA: Okay. Good.

MR. THOMAS: The ex parte rule is law so I can't ...

SENATOR CANNELLA: I know. I looked it up.

MR. THOMAS: So I can't speak to that. And so, our attorneys do advise the board members that they have to follow the law regarding ex parte rules.

SENATOR CANNELLA: Now, let's talk about the Ag Alternative. So Ag is—obviously, they're concerned, right? This is their livelihood. This is a big deal. This could cost a lot of money; it could take several thousand acres out of production, so of course they're interested, right? And they were part of the team originally. Now maybe the Environmental Justice folks weren't happy, but, you know, you guys were working together and trying to come up with a solution. So now they're at the table again, and they're trying to work on it, and they produced an Ag Alternative. And my understanding is the board said, "Hey, this makes sense. You have some good ideas, but we want more information. Provide us more information." So there was a study, the Los Huertos (I hope I'm saying that correct) report, that dug into the details that they felt the board was asking for. They submit that information, and the board says, "No. It's too late. We're not going to consider that." And I understand the board is trying to get something done; they're trying to move on. But in government, it's our job to not only get things done, but we want it to be done right. And if the board specifically asks for more detail, why was this report rejected?

MR. THOMAS: Okay. So the chairman did issue an order saying we would not allow new information into the record, and that is after talking with the board's counsel. So the chairman and the counsel discussed it, and they come to a decision. And they felt that was the most legally defensible decision, so that is the decision he makes. And I'm not an attorney, so please don't take this as a legal interpretation; it's just my own, and I'm not speaking for the chair or for the attorney.

SENATOR CANNELLA: I understand.

MR. THOMAS: My interpretation of that is that he stuck to his previous rule that the record was closed to not prejudice other parties—other stakeholders. At the same time, we discussed Dr. Los Huertos' idea in our staff report to the board, and we read his document. It was online. So we went and read it. And he made a presentation to the board. So the board heard it. And in March, Dr. Los Huertos, or the ag industry, can talk about that again in front of the board. But it's in an open session in front of everybody, so everybody hears the same thing. So no one is prejudiced by something being allowed into the record that they can't see and

comment on and then provide their own information to the board. As a matter of fact, after the workshop where Dr. Los Huertos talked to the board, someone came up to me afterwards and said, “This better not be allowed in as a document into the record because then I’m going to want to and so are a bunch of other people going to want to.” And so, I think that a main reason for their decision was to not prejudice others.

The information that Dr. Los Huertos submitted was really an idea, it was a concept, and it was something that was evolving; and he told us that he does not have support for the idea, that it is just a concept at this point. And we said to him—and as we put in writing and reminded people—that our order says that the approach he’s talking about can be used. It’s allowable. It’s part of implementation. And if a group of farmers want to get together and propose what Dr. Los Huertos is talking about, they’re completely free to do that. That order allows that.

SENATOR CANNELLA: And that would meet the conditions in the waiver?

MR. THOMAS: Yes. They’re allowed to do that.

SENATOR CANNELLA: Now you’ve got new board members, right, so you have a quorum now. We were kind of hoping that it would be held off until 2013 when this new regulatory reform bill would come in that you would have to do economic impact analysis, but we didn’t make it. So now you’ve got these new board members that—again talking about drinking from a fire hose, right, this is significant stuff. I mean, if you’re not opening things back up and allowing them to ask questions or get testimony that they may find informative as a new board member, I would be concerned about that. So how are you handling that with a new board member? Not you, but how is that being handled with the new board members?

MR. THOMAS: Two ways. In February, we had a workshop that we did not plan on having. We planned to just go into the March hearing. But we added a workshop in February, the beginning of this month. And two of the new board members were there, and they asked a whole lot of questions, and it went on for—I think that hearing went for eight hours. So they heard a lot of information.

And the second thing is that it is the board’s decision about whether to have a hearing in March, so they decide whether they are ready or not, whether they’ve read all the material and they’re prepared to have the hearing. If they decided that—and believe me, they are considering that going up to March. They’re the ones in the hot

seat. So they're thinking about whether they are ready or not. And what they've said to us, to the executive officer, is they're ready. Schedule the hearing.

SENATOR CANNELLA: Now on this ex parte communication: so it forbids the board members from talking to the folks in ag, right, that are the ones in there being affected by this, but ...

MR. THOMAS: On a one-on-one basis.

SENATOR CANNELLA: One-on-one basis. Now what about a mayor of a city or what about an Environmental Justice person, does it forbid them from talking to them as well?

MR. THOMAS: Yes.

SENATOR CANNELLA: So they can't talk to anybody about any of this stuff regardless who it is; otherwise, it's a violation of the ex parte communication?

MR. THOMAS: Yes.

SENATOR CANNELLA: Okay. Now I'm told that ...

MR. THOMAS: Let me back up there. They can talk to staff. If they have questions of staff, they can ask questions anytime of staff. The staff can meet with up to three members at a time to brief them on information that staff is preparing for an upcoming hearing. So that's different than ...

SENATOR CANNELLA: I understand. Have you ... Has staff been judicious in their time in meeting with Environmental Justice folks and the ag folks so that it's an equal representation of kind of the stakeholders for the most part?

MR. THOMAS: Staff?

SENATOR CANNELLA: Yeah.

MR. THOMAS: We have met with ag industry folks far more—there's no comparison—far more than any other group.

SENATOR CANNELLA: Okay. So my last question is ... You know, again, this is a lot of information. But what I've read is that Tier-3 growers, one of the things they'll have to do is create a kind of riparian buffer, and that, as I'm sure you know, is kind of in conflict with the food safety proposal with the leafy greens and the various things. So you've got conflicting objectives, right? You have food safety and then you've got this Ag Waiver. I mean, how do you marry those two together?

MR. THOMAS: A couple of things there. One is that the draft order that we published in 2010 did require the establishment of buffer zones. We revised that

multiple times to the point where there are a subset of growers in Tier-3—not all growers in Tier-3, a subset in Tier-3—that have to provide a riparian habitat protection plan. They have to come up with the plan. It doesn't prescribe a buffer; it says, "You come up with a plan for protecting riparian habitat." So the buffer zones are out. And I expect we are going to get challenged on that as to the legality of allowing that.

SENATOR CANNELLA: Because you think it's too lenient?

MR. THOMAS: The argument will be that it's too lenient. We're already hearing the argument that it's too lenient.

SENATOR CANNELLA: You have to agree, though, that you can't have conflicting standards?

MR. THOMAS: Okay. That was the second thing I wanted to talk about, the food safety issue. There are now the food safety guidelines for how to protect crops, and we were involved in the drafting of those guidelines. There was language that was conflicting. Our recommendation was to take that language out and to replace it with language that was not conflicting, and we did that. They accepted our language. There isn't that conflict anymore. There was originally in the original ...

SENATOR CANNELLA: Okay. So you think that's been resolved?

MR. THOMAS: I think that's been resolved, yes.

SENATOR CANNELLA: Okay. Well, good. I think that concludes my questions. But if you could stick around, because we're going to have a couple of folks from the industry and then we have additional questions.

MR. THOMAS: I'll stick around. You bet.

SENATOR CANNELLA: Thank you for your time. We appreciate it. Alright, next we're going to have up Norm Groot, Executive Director, Monterey County Farm Bureau. Norm, thanks for sticking around. We're going to be less than eight hours for sure today.

MR. NORM GROOT: Thank you. Storm water permit, the following day; that was a long week.

First, I'm going to apologize. I have a bad cold, so I hope I can get through this without turning it into a hacking session here.

Good afternoon, Senator. And thank you for the opportunity to testify today. My name is Norm Groot, and I'm the executive director of the Monterey County Farm

Bureau. Our organization represents over 400 farming families in the Salinas region, nearly 300 food enthusiasts in support of local food production. We strive to maintain the viability of the family farmer in the face of an avalanche of new regulation and costly permitting processes.

Our main concern with the proposed water quality regulation is that there is no use of science when determining the level or degree of regulation that's going to be imposed on the farming community. Any proposed regulation should be based on facts and proven science. Consistently throughout this process, we see the triggers for compliance are based on arbitrary and irrational assumptions and ultimately penalize the most proactive farming operations for their ongoing efforts to improve water quality. Claims of impaired drinking water are over-exaggerated and not consistent with the local groundwater monitoring program that we've had for the past two years here with our local water resource agency—two decades, excuse me. Timelines for compliance proposed in the Ag Order are not supported by either proven science or management practices that will achieve water quality standards in the defined periods. The proposed Ag Order sets the industry up to fail, and miserably.

Throughout this Ag Order process, the agricultural community has remained proactive by proposing a program that will certainly be the most intensive irrigated lands water quality protection regulation in the nation. And that's agriculture proposing that. We are the regulated community, and we should have a voice in how we are regulated. This is an element of the process that has been misplaced and ultimately without broad support within the agricultural community. This proposed regulation will polarize the regulated against the regulators. This is not a recipe for success by any means.

In the 2004 Ag Order adopted, there was general agreement amongst all stakeholders that a cooperative monitoring program was needed to determine the subwatersheds most at risk. This monitoring data provided a baseline of water quality throughout the region. The process worked well within the agricultural community who bear the costs of this particular monitoring program. This type of collaborative problem solving is missed from the current Ag Order process. Instead, the proposed regulation will translate into cost for each individual farm, and for monitoring and reporting, far exceeding the present cooperative monitoring program. Using the economic study commissioned by the agricultural community, the agricultural

community costs for the most intensive tier could be as much as \$600 per acre per year for the five years of the Ag Order. That cost is an unfair burden to those family farms that are struggling to make ends meet in an increasingly competitive market and economic climate. To some, these costs are the final straw and will cause them to either sell out or convert their land to other uses. This is not what a proposed regulation should ultimately achieve, the curtailing of an industry that provides jobs and families a way of living.

We all agree that water quality improvements need to be made and achieved. Past practices may have contributed to present water quality issues, but the food production industry is vastly different and significantly improved over past generations. New techniques lead to better water management, less nutrient applications, and controlled uses of crop protection tools. These are input costs into a crop and are not used indiscriminately. Any Ag Order that is invoked should take into account the improvements made over the past decade or at least the last seven years of the present Ag Order. Those farmers who have taken on the mantle of improving water quality will be penalized as the harshest within these new regulations, causing a disincentive to take advantage of further investments in water quality improvements or water conservation.

Take for example, the use of retention ponds, a current practice widely used here in the Salinas Valley. Farmers capture their tail water, allow it to percolate or reuse it for purposes on the farm or treat it through an engineered wetlands or a vegetative facility before releasing it onto their property. The proposed Ag Order states that water releases from these types of ponds should not impair groundwater. This literally translates into an impermeable barrier at the bottom of each pond. No farmer will take the risk that a discharge to a groundwater table would become the subject of a third party lawsuit through interpretation of vague language like this. The unintended consequences are an expensive process to line all retention ponds and curtail groundwater recharge in a region where salt water intrusion is already an issue. This also changes the name from “retention pond” to “sediment pond” because it will fill over time with particulates that cannot easily be removed because the pond is now lined. Detrimental effects on the environment where irrigation water is curtailed or not allowed to percolate to the groundwater are documented in a new

report issued by the Center for Irrigation Technology at Fresno State. The impacts of this type of regulatory policy are wide ranging and go beyond the farm.

Another example of poorly conceived requirement within the proposed order is the mandate—we call it a mandate—of riparian buffers along water bodies of the state. This is the solution that we just talked about. This will fallow thousands of acres along the Salinas River and its tributaries, reducing the economic viability of those farms that lose prime production land. Many of these farmers do not have the resources or technical knowledge to create these buffers—riparian buffers—and will be forced to extend and expend capital on creating what amounts to marshlands. Riparian buffers will provide new habitat, but this does not mix well with food safety and the requirements imposed by the supply chain—not necessarily the leafy greens document itself but the supply chain; there’s a big difference there. Thus, a farmer will be faced with a paradox with how to manage those two conflicting priorities.

Overall, we must look at the unintended consequences of the proposed Ag Order and how it will ultimately reshape the food processing industry along the Central Coast. Land values will decrease as farmers abandon lands deemed at risk, and landowners will suffer through tiering processes that will depress their rental rates. Given that farmers rotate crops and as such of their farms on nearly an annual basis, continuity of information is compromised when imposing edge of farm monitoring, producing a mountain of monitoring data displayed publicly for misuse and broad interpretation.

One of the obvious outcomes of displaying monitoring and reporting information publicly, as well as farm and nutrient plans through reporting to the Regional Water Board, will be exposure of farmers to third party lawsuits as interpreted by the watchdog groups. This will be the outcome of vague and misdirected language contained in the proposed regulation that creates an atmosphere of assault on irrigated lands. We cannot afford to litigate our right to farm or defend our perceived impacts through expensive court actions caused by poorly written regulation based on suspect assumptions. Each new layer of regulation must be written with clarity and certainty, based on fact and science with proven management techniques to achieve the goals mandated.

The economic cost must be considered as part of the equation, as well, when implementing a new regulation. Monterey County agriculture produces over \$4 billion

in farm gate receipts and has an impact of over \$8 billion in our local economy through jobs, related industry, suppliers, and processing. We employ over 45,000 workers annually and provide wildlife habitat and open space. We produce 60 percent of the leafy greens consumed by our nation annually. It would be a disservice to our fellow Americans if this industry is fractured due to the costly new regulations that don't achieve the stated goal. Farmers are indeed the new environmentalists—we have to be—managing our natural resources for the betterment of the entire community.

Thank you again for the time. And I'll be happy to answer any questions.

SENATOR CANNELLA: So, you know, I asked the question and Mr. Thomas wasn't sure. He tried to estimate. But they say in the report that 80 percent of the land would fall into either Tier-1 or Tier-2 ...

UNIDENTIFIED: _____.

SENATOR CANNELLA: Pardon.

UNIDENTIFIED: I think it's farmland.

MR. GROOT: Farms.

SENATOR CANNELLA: Of the farms. So what percentage—what do you think the acreage percentage is that falls into Tier-3 under this proposed plan? Do you have any idea?

MR. GROOT: I think it's going to be a lot higher than what they're estimating at this point. Our cursory review shows that that's a very low percentage. They, at their different workshops and presentations throughout this process, have mischaracterized that number as being very low. I would think that the actual farmers on the ground are going to be able to determine what tier they're going to fall into, and most of them will be Tier-2 and Tier-3 based on the assumptions in those tiers and the triggers.

SENATOR CANNELLA: So lengthy testimony, but if you could just summarize, what's the top concern ag has with this current proposal?

MR. GROOT: Well, for me the biggest concern is the edge of farm or on-farm monitoring. This is really a point-source solution that is being imposed.

SENATOR CANNELLA: Why does that concern you?

MR. GROOT: Well, agriculture is a non-point source, and it has been defined that way under the EPA and the Clean Water Act.

SENATOR CANNELLA: Can you explain that a little bit?

MR. GROOT: Okay. There are two different types of sources for discharges: point-source ...

SENATOR CANNELLA: Point-source usually goes to one point and then ...

MR. GROOT: Point-source is a drain coming out of, say, a factory that you can see where that place of exit is and it drains into a specific point. A non-point source is something that happens larger in the environment. It may come from many different sources and not necessarily specific from one area.

Our main concern here is the edge of farm monitoring that really penalizes individuals unfairly with monitoring and reporting costs that are, if you look at the list of constituents that they have in Table 2, that have to be monitored on a monthly basis. Those are fairly expensive costs that are going to have to be monitored and reported. So that is not going to give us an overall picture of what is happening in a subwatershed. That's a farm by farm situation and does not contribute to the overall aggregate response of how a subwatershed is responding to individual improvements.

SENATOR CANNELLA: So, obviously you've been involved in this. This has been a very lengthy process. I think it predates your time with the Farm Bureau.

MR. GROOT: Oh, yes. My last 15 months have been very interesting.

SENATOR CANNELLA: How good, in your opinion, is the data that the board is using?

MR. GROOT: Well, I think if you look at what was presented back in March last year at the hearing here in Watsonville, we actually looked at the data that they were using for the surface water and the groundwater monitoring that was being presented and the severity of the characterization being put there, and we actually presented testimony from an expert who looked at these numbers and these figures and the way the data was collected and refuted some of that, which was largely ignored by the board and the staff at that point. But I think it's all a matter of interpretation. And I think if you look at some of the things that our water resource agency has been doing in the way that they characterize the groundwater in this area, obviously, there are differences in opinion.

SENATOR CANNELLA: Now how has—and I understand the ex parte communication and the unfortunate conflict of interest decision. I mean, I just think that's bad. But how willing has the board been to listen to your concerns? It sounds like there's been lots of testimony, lots of meetings, field trips; do you feel like you've

been heard in your concerns? They may not agree with you, but do you feel like you've had a forum to express your concerns?

MR. GROOT: Well, I participated in one field trip that they did where they went out here to a local project that's looking at an engineered facility for a wetlands project, so to speak, off stream, and I participated in that. Beyond that, I have not seen any situations where the board has come out and said, "We want to go to a farm. We want to understand this better." At least that's from my opinion. I have not participated in those ...

SENATOR CANNELLA: Have you guys made that offer to say, "Come out. We want to show you why this won't work," and have you been turned down?

MR. GROOT: Yes. And I think that all relates to the ex parte and how that process has to happen.

SENATOR CANNELLA: It sounds like you can get around it; just make a posted meeting.

MR. GROOT: I'm sorry?

SENATOR CANNELLA: It sounds like that can be dealt with a posted meeting, right? So it's a meeting that's posted.

MR. GROOT: Right. And as Michael characterized, that becomes a problem logistically when you have a lot of people who want to go on a field trip and I agree with that. There's no problem there. I think what we're looking at too is, yes, we got to present our case, so to speak, at some of these hearings and some of these workshops. We were limited in time. We are the regulated body; we should get the vast majority of the time to present our case and our situation and have them understand it.

And you asked about the Los Huertos report. To me, it's kind of obvious that that's something the board should consider because they asked for that detail back in 2011. They wanted to know what our processes were. They wanted to know how this would be envisioned to be on the ground and work that way. And now that we have that, we have that information, that should be considered as part of the solution here. And not that I think it's necessarily new information; it's expanding on what we've presented already as a concept. And, yes, it is a concept. But nothing is on the ground yet so it is all conceptual.

SENATOR CANNELLA: Well, Mr. Thomas said that he thought this Los Huertos solution would meet the requirements set forth by this waiver, so it seems like it's okay, right? If that approach works, then isn't that okay then? What's the concern?

MR. GROOT: Well, the concern is, is the board has not had the privilege of reading that report themselves and formulating that information themselves, so I think ...

SENATOR CANNELLA: So you're saying that the staff may say, "Okay, yeah, it's fine. It meets the intent." The board takes action, and now there's a challenge and it doesn't, in fact, meet the intent.

MR. GROOT: I think what we're looking for is that the board should support this as part of their directive when they make a decision rather than allowing this to be a decision of the administrative officer or someone within their organization later on down the line. I mean, we are putting forth a fairly broad concept that has a lot of details in it, and if they support that as a board, that gives directive to the staff to really implement it rather than go through a process where we have to deal internally with the organization and it delays. It then allows everyone to fall into what happens with the Ag Order itself rather than having the option right away from the beginning to make that selection.

SENATOR CANNELLA: That makes sense. Now, you mentioned that it could cost \$620 an acre to comply with this order. Is that just Tier-3 or is that ...

MR. GROOT: Yeah. That would be for the Tier-3, the most onerous tier. We have a range for various different tiers. As we did the economic study, we did interviews with all the different growers that thought they would be in the different tiers. And actually, the speaker who follows me is going to elaborate on that particular process. But it does break it down by tier. And the 600 that I quoted is the most onerous tier—Tier-3—and the most costly part of that tier.

SENATOR CANNELLA: That's a lot. Now just a last question and then we'll move on. So these timelines, very specific, do you believe that ag can hit these timelines?

MR. GROOT: No. And that's why I stated I think they're setting us up for failure. I mean, if you look at it, if ag is attributed to the problem that is currently going on—which we have some questions on ourselves as to whether or not we're the

sole source of all of this—it took decades to get here, and it’s not going to be something that can be solved in two, three, four years. It’s going to take decades. And there are studies and science out there that show that. For example, nitrate issues in water, in the groundwater, is going to take decades to clear up. It’s not something that’s going to go away very quickly. And even if we stop using nitrogen today, the problem will still persist for decades.

SENATOR CANNELLA: So if you could have what you wanted to have, what would happen from this point on? For this process ...

MR. GROOT: For the hearing you’re talking about?

SENATOR CANNELLA: What would you do as far as the waiver? What’s going on? What would be ag’s request on this issue?

MR. GROOT: My request or the ag request?

SENATOR CANNELLA: You represent ag.

MR. GROOT: I represent ag, so my request would be that I think the board needs to be fully informed. I think they need to have all the available information. We are the regulated community. We presented that information, and for them not to be able to review that and see that before they make a decision is pretty poor. So I would ask, first of all, that be done. And second, I would ask for consideration of the fact that we’re the ones on the farm; we’re the ones out there on the dirt every day. We know how to manage our operations and what can be cost-effectively achieved based on the best management practices that we currently have in place. And I’m sorry, no deference to Michael, but they’re behind desks in San Luis Obispo, and they don’t know what’s going on here on the ground. So I think our request is to be heard. We are a community that’s going to be regulated, and we think that we should have a voice in how that’s done.

SENATOR CANNELLA: Alright. Hold on just a second. Well, we have a copy of the report, the Los Huertos report, and we’ll put it in our record, so it will be a public document that can be referenced from this point on.

MR. GROOT: Thank you. Appreciate that.

SENATOR CANNELLA: Okay. Thank you very much.

MR. GROOT: Alright. Thanks for the time.

SENATOR CANNELLA: Next up, Abby Taylor-Silva, Vice President of Policy and Communications, Grower/Shipper Association of Central California. Thank you for being here.

MS. ABBY TAYLOR-SILVA: Thank you. Well, thank you very much for having me here today. As you said, my name is Abby Taylor-Silva. I'm with the Grower/Shipper Association of Central California.

I want to talk a little bit first about the concern. There's a basic disagreement that's really permeated this multi-year Ag Order renewal. From my point of view, the Regional Water Quality Board's priority value is reportable measurements of water quality while the agricultural community's priority value is improving water quality through actions based upon science and technology.

The regional board has attempted over the course of more than a decade to evaluate management practices using millions of dollars of grant funding and highly qualified experts. They were unable to find a silver-bullet solution after 15 years of study. The regional board was unable to produce the very type of information (with funding and very knowledgeable resources) that they're now requesting from growers who have neither the funding nor, in many cases, the scientific background to do so.

Additionally, it is clear that staff has turned from a solutions approach to an enforcement focus and has decided to use individual monitoring as a basis for these enforcement actions. In the end, staff is recommending a point-source solution to a non-point-source situation. The result is going to be an approach which ignores the lag time between best management practices (BMP) implementation and actual measurement of improvement.

To regulate a non-point source, it's important to demonstrate an understanding of basic watershed functions: watershed improvement is a long-term endeavor and that each watershed demonstrates the unique lag times in how it responds to mitigations. The lack of a cogent discussion about lag times in agricultural systems is of concern. We all want improvements on the ground that will benefit water quality, but we need to give ourselves the time. Best available science has shown that the implementation of BMPs will be the tool to improve water quality. The only way that will happen is if we set up a system in our regulatory approach that values the implementation of BMPs as the highest priority with appropriately representative monitoring being one of the many tools we use to measure effectiveness.

The regional board staff does have a lack of understanding, from my point of view, of the regulated community, and it appears to be disinterested in becoming proficient in the interdisciplinary needs of agronomy within a water quality solution. That unfortunately creates a situation in which it becomes very difficult to be solution driven alongside agriculture.

I want to speak a bit about the process.

We are concerned with the process by which staff has conducted interactions with the agricultural community in the past three years. We believe the Porter-Cologne Water Quality Control Act states and that its intent is that regional boards are to provide fair, timely, and equal access to all participants in the regional board proceedings.

We are concerned that this process has been prolonged by what we see as the mismanagement of the Ag Waiver Panel in 2009. This panel was presented to the agricultural community as being organized to obtain feedback for renegotiating the Conditional Ag Waiver. However, in our opinion, the facilitated process did not properly ground the group with a full understanding of diverse points of view, perspective, and an appreciation of the lens through which stakeholders were viewing while sitting at the table. Rather, it seems the process was resistant to presentations by the stakeholders of different points of view, facts, or data, and it appeared that most discussion was about supporting positions. The agricultural stakeholders' understanding was that the goal of the facilitated process was simply to accept timelines and milestones to an already determined outcome. Consequently, agriculture came before the regional board in February, July, December of 2009 expressing that the process had aborted the collaborative approach which began with the first Ag Waiver in 2003/2004.

I'd like to share an example of how the process of collaboration was further eroded. A grower and, separately, an industry representative have both been cited and, at least in one situation, deemed a security threat due to comments they made out of concern for the process in the staff proposal. At least one of these individuals was interviewed by law enforcement. These individuals did not present a security threat. They are well-known and respected leaders in the agricultural community. The irony of not having a grounded facilitated process that allows stakeholders to build mutual respect and trust, I believe, caused a reaction that could be construed as

retaliation and intimidation, the result of which has made agricultural stakeholders reluctant to attend future meetings or to be critical of anything within the Ag Order process.

As I've sat through the workshops and read the regional board's perspective, I have evaluated this through an agricultural stakeholder's lens. I think the board and staff, from their perspective, believe that this has been an open and transparent process and that all stakeholders have been able to engage. From my perspective, on behalf of my grower/shipper members who have spoken to me about this, this process has fallen short. While there were many meetings, opportunities to write letters and to testify in front of the board, it has not been a process that has produced the collaborative outcome envisioned by many.

Speaking about economics—the economic analysis of the staff report as was provided in their March 2011 report and conducted by staff was insufficient from agriculture's point of view. To address our economic questions, Farmers Water Quality, a group in which we hold a leadership role, asked Professor Brad Barbeau of CSUMB and Kay Mercer to conduct an economic study on the costs of the growers implementing the proposed waiver and on the resulting broader economic impact.

The information that I want to share with you directly contradicts staff comments stating that the staff report will cost less than a third-party group coalition approach as presented by agriculture (and I do have copies for you here today). Costs represented for the staff report include administrative costs of planning, monitoring, and reporting; costs of implementing management practices; and more. As Norm alluded to, what we learned through this analysis is the cost of implementing a coalition such as that which was presented by agriculture and that which has been presented by Dr. Los Huertos would cost between \$7 and \$12 an acre, and that's based on assuming that about 185,000 acres may be interested in participating. If 50 percent do, it will cost about \$7 an acre. If fewer do, it will cost more—up to 12.

In order to comply with the order as presented by staff, the costs are going to be significantly larger. These are for vegetable or strawberry growers. For a Tier-1 grower, it would cost between about \$5 and \$100 an acre. Tier-2 would be about \$24 to \$231 an acre. Tier-3 would be \$73 to \$620 an acre.

Dr. Barbeau and Kay Mercer in their report stated that the costs associated with being assigned to Tier-3 appear to be about four times the costs associated with

being assigned to Tier-1, so it's important to ensure that the tier structure is justified by the degree of water quality impact. This comment cuts directly to our concern about the arbitrary nature of the triggers in staff's tiering system.

I want to speak briefly about groundwater now.

Staff is proposing a groundwater monitoring program that, in my point of view, does not align with their stated objectives for water quality improvement. They stated that this type of monitoring—testing groundwater wells—should already be routine under the existing 2004 Agricultural Order since this is such a fundamental practice. Testing and understanding the amount of nitrogen in groundwater for incorporating into a nutrient management program may be a practice used by farmers—it is—but there is an important linkage missing in this argument. Growers are using that information so that they may make more informed fertilizer application choices. The staff's use of that same information would be used for a different purpose. I quote:

The resulting water quality data will provide the Central Coast Water Board with necessary information to prioritize areas and farms for follow-up actions related to the implementation of nutrient management practices and drinking water protection.

That comes from the staff report. This is not applying sound science, a characterization of aquifers, well construction information, gradient or hydrology. It does not make sense.

In Monterey County, depending on the hydrogeologic area, some of the shallowest ag wells are 90 feet, while other wells are upwards of a thousand feet below ground surface. And in the deeper wells, the water may be drawn from hundreds of feet in depth. Because of the complexity of the hydrogeology, it could take anywhere from 10 to 50 years for the surface water to reach the well source water in deep wells. We have a hard time understanding how monitoring deep wells will help staff understand a grower's contribution to first groundwater. Unfortunately, the updated management practices that growers have implemented in the last 5 to 10 years, which are making a positive impact on water quality, may not be detected in source groundwater quality for up to 50 years. Improved grower management practices have

included drip irrigation, nutrient management plans, soil moisture monitoring, carbon inputs, and more.

We are concerned about implementation of regional groundwater initiatives. As we all know, at this time, the state is looking at statewide groundwater programs. With recommendations, come unknowns—we don't know if each of the recommendations can be implemented quickly, effectively, or efficiently until they are thoroughly evaluated. Thorough evaluation will allow us to determine which recommendations for implementation will make the greatest impact to address legacy nitrate and reduce current and future groundwater nitrate.

Alternately, the Ag Alternative Proposal would take well construction, hydrogeology, and aquifer characterization into consideration to measure improvements in surface best management practices related to groundwater. A more comprehensive system makes more sense. We need a system that takes into account current groundwater quality data, determines data gaps, and involves a network of local and county public agencies that are familiar with each of the groundwater areas and are charged with already protecting our community. This would provide a clear three-dimensional focus on the hydrogeologic system as a whole. Unfortunately, the current staff recommendations are directing resources to address lower-risk issues instead of scientifically comparing equivalent data.

I want to talk now a little about the solution.

The Grower/Shipper Association has a history of successful public-private partnerships and collaboration. Even though this process has been complicated and contentious at times, we are hopeful that there is still an opportunity to find common ground.

In March and May of 2001, agriculture presented a coalition-based proposal to the regional board. This Ag Waiver proposal blends science and practicality to improve water quality for a sustainable environment and a viable farming community. From the results of the 2004 Ag Waiver program, it is clear that agriculture needs to move forward to improve water quality along the Central Coast. We realize that. We've seen the Preservation, Inc. data. We need to do more. Therefore, this proposal provides the highest level of individual farm accountability of any irrigated lands program in the nation. Farmers understand the importance of protecting this valuable resource because their livelihood depends on it.

Agriculture's Ag Waiver proposal would require a comprehensive program which would review all farming operations in the coalition to see if appropriate management practices are being implemented. It would also prioritize areas where there are the most water quality concerns, provide accountability to the regional board, and work toward the development of a long-term solution using researchers working jointly with farmers to develop new tools and strategies to improve water quality. Improving water quality along the Central Coast is a shared responsibility among the community and all industries. Through this proposed solution, farmers would be taking a lead role as protectors of an important resource.

Additionally, the Ag Alternative will provide a mechanism for the staff to communicate and work more collaboratively with the agricultural community in Region 3. Instead of becoming inundated with difficult-to-navigate data and reports, the board and staff will be provided a comprehensive representation of water quality throughout coalition participants to help them focus their efforts.

In July of 2011, we began working with Dr. Marc Los Huertos of CSUMB on a solution for water quality improvement that is based on strong science and a dedicated interest in collaboration with conservation and scientific communities. This solution is a natural outgrowth of our coalition proposal (and I have copies of it here today). Included would be an audit of every field, a program that would partner the highest priority growers with researchers to find BMP solutions and a robust technical advisory committee and public advisory committee.

A key component of our alternative has always been that by agreeing to be subject to an audit and participating in the third party there would be regulatory incentive by not having to meet certain Tier-2 and Tier-3 requirements, and this is the key. Mr. Thomas is absolutely right; I think that everything that's been written by Dr. Los Huertos and the ag community fits well into the coalition that could be a part of the staff report. However, unless there is a regulatory incentive for being a part of the coalition, it will fail. We want to build in time to work with the regional board and staff on this concept so that their executive officer can consider this coalition option when the current order expires in September. We have always believed that a carrot-and-stick approach is the best way to meet regulations. This coalition's solution presented will provide us the opportunity to get it right the first time.

Thank you.

SENATOR CANNELLA: Great. Thank you very much. So just a few questions. So you mentioned the \$600 an acre worse case. How would that translate into the cost of produce? What does that mean as far as the consumer paying more monthly?

MS. ABBY TAYLOR-SILVA: It would significantly affect that grower and their ability to grow produce. Growers are traditionally price takers not price makers, so it would ...

SENATOR CANNELLA: So they don't have a lot of ability to control the market. They just say, "Well, we can compete or we can't compete. We're going to rip the crop out."

MS. ABBY TAYLOR-SILVA: And you choose whether or not you're going to grow a crop—precisely. So \$620 is going to dip way beyond what a grower's profit margin is on average.

SENATOR CANNELLA: Okay. And I've asked a lot of questions; I don't want to ask them all again. But in your opinion, has this been a flawed process?

MS. ABBY TAYLOR-SILVA: In my opinion, it has been. I don't believe that it's been as collaborative a process as it could be. I think that there should have, could have been an opportunity for more education of all stakeholders and ...

SENATOR CANNELLA: Can you say that again?

MS. ABBY TAYLOR-SILVA: More education of the staff and stakeholders.

SENATOR CANNELLA: So you don't believe there was enough education of the staff and the stakeholders? Now who are the stakeholders?

MS. ABBY TAYLOR-SILVA: The stakeholders being the environmental and the agricultural and the conservation communities. I think that there ...

SENATOR CANNELLA: Who would educate them?

MS. ABBY TAYLOR-SILVA: I think that there's an opportunity for agriculture to educate, but in the process that was instituted, that opportunity did not present itself.

SENATOR CANNELLA: Because I've been involved in a lot of different things over my career, and it seems like the best way to get things done is to come together in a collaborative process. Look, you have people that care about different things. Everybody comes to the table and they work and try to reach a compromise, and then that's ultimately everybody feels good about the process, and then they will do their best to comply. So in this case, do you feel like that's not been the case?

MS. ABBY TAYLOR-SILVA: I do feel that it's not been the case. And I think that a collaborative process works when every side has equal opportunity to influence the decision.

SENATOR CANNELLA: And you don't think that that's been the case?

MS. ABBY TAYLOR-SILVA: That's not the case.

SENATOR CANNELLA: So who has had more ability to influence?

MS. ABBY TAYLOR-SILVA: I think that the regional board staff does have much more ability to influence the decision of the board than the agricultural community or any other community.

SENATOR CANNELLA: And who do you feel has been able to influence the staff more?

MS. ABBY TAYLOR-SILVA: Definitely not the agricultural community. I feel that the ... Although we have sat down and talked with staff, I do not feel that there's an open interest in really understanding agriculture, agronomy, and the complex intricacies of the industry.

SENATOR CANNELLA: Okay. Alright. Thank you very much.

MS. ABBY TAYLOR-SILVA: Thank you.

SENATOR CANNELLA: Mr. Thomas, if you wouldn't mind, I've just got three basic follow-up questions, and then if you want to address anything that was said, that's okay as well. And then we'll get to public comment.

So the original 2004 plan did take cost into consideration. Is the board currently considering cost as part of their decision-making process?

MR. THOMAS: Yes. And so, in the draft order that we issued in 2010, we did do a cost, an estimate, and it was based on the literature and the information we had available. And since that time, as I mentioned, we reduced the requirements in the order to what they are today which we feel, I feel, are the limit to what is legal. We're up against the backboard here. And the board can consider costs, but the board also has to consider not just the cost to the regulated community, which is important, but other costs associated with the issue. And in this case, we have costs associated with the pollution itself. Water purveyors are telling ... We meet with water purveyors, and they tell us they cannot drill wells fast enough. They say they are spending millions of dollars to drill new wells. They're spending hundreds of thousands of dollars per year

to treat the water. Municipalities, they're telling us the same thing. And residential homeowners who have domestic wells are going to have to deal with this issue.

SENATOR CANNELLA: So the water agencies, municipalities are coming to you and saying, "Look, ag is causing us these problems. We need you to fix it." Is everybody saying it's ag's fault and they're not doing enough?

MR. THOMAS: The literature estimates the loading—where the pollution is coming from. So we have many, many studies that have been done that estimates where the pollution is coming from. The most recent study which was directed by the Legislature, which is SB 2X or SB X2, required that a report be done. UC Davis was contracted to do that report. They're in the process of writing it. The professor who is working on it gave a presentation to our board, and he's been talking—you know, we've been working with the group that is writing that report and analyzing the information. And the thing is, is ... you know, I hesitate to say this because it just throws more fuel onto the fire and these kinds of interactions that we have where I get up and say things and the other folks get up and say things, it's thrown fuel on the fire. And so, the only information that we have is what we have been reporting to the board is we're underestimating the problem. So this latest report that's coming out says that 96 percent of the pollution in the groundwater is coming from irrigated agriculture—not just agriculture, from irrigated agriculture and synthetic fertilizer. It's just throwing fuel on the fire. We need to stop talking about it and ...

SENATOR CANNELLA: When you look at cost estimates, I mean, how do you estimate? Who does the number crunching for you to say, "Okay, this is what it's going to cost. Okay, if we take this off, it's going to cost less?" I mean, how do you do that?

MR. THOMAS: We use the literature. So whatever exists in the literature, in most cases, that's what we use. Occasionally, we will hire—in certain cases, under certain regulatory requirements, we can hire resource economists or require that. We can require the dischargers to do that kind of work. In this case, the laws that we're following do not require us to do that.

SENATOR CANNELLA: Yeah. It was mentioned about groundwater monitoring. So it seems like a legitimate argument. If you've got a 90-foot well or a 500-foot well, I mean, it does take a long time for the contaminants to get down to the groundwater. So what useful information is that, to monitor the groundwater?

MR. THOMAS: Yeah, it's legitimate. We would not be asking or requiring or expecting farmers to sample water that's a thousand feet deep if that's the case. What we're interested in as far as protection of the domestic wells is that shallower water where the domestic wells are located. Farmers overall, I think they should be sampling the water that they are using to irrigate their crops because they should know the nitrogen concentration in that water. They should be taking it into account when they are determining how much fertilizer to apply, and we've had farmers tell us that.

SENATOR CANNELLA: Okay. So the representative from the Farm Bureau said that they feel like they're being set up for failure. I mean, can you understand why they feel that way?

MR. THOMAS: Yeah, absolutely. I think any time that there are schedules imposed, schedules that are adopted into an order like this, it's going to feel that way. And it's not ...

SENATOR CANNELLA: That's not your intent; your goal is to work with them to try to come in compliance?

MR. THOMAS: Yes.

SENATOR CANNELLA: That's the attitude of the board and the rest of the staff is, "Look, we really want compliance. We want to work with you. It's not going to be punitive. We want to work with you on this." That's the attitude?

MR. THOMAS: Yes. And if we were regulating this—I assure you, we are not regulating this as a point-source problem—it would look nothing like this. And there would be sampling regularly of the effluent, of the discharges, regular sampling and submitting that information to the board, and it would all be public. We'd be sampling upstream and downstream of the operation. That's a point-source approach. We're not doing that here.

SENATOR CANNELLA: Now you mentioned the farm tour. It sounds like there may have been one or maybe more. But what do you think; you've got new board members, you've got a lot of anxiety—I can sense it from you a little bit. I can sense it from the other witnesses. The goal, obviously, is ... look, at some point, we've all got to come together, right. We can't continue to be at each other's throats. We have to figure out a way to work together. What's the likelihood that we could publicly notice a farm tour and say, "Look, let's talk about some of these issues that we're concerned

about. How can we get water—we've got water uphill going downhill—and try to explain some of these things?" I mean, is there any willingness from the board or are they at this point saying, "Look, we've done it. We're done. It's time to move forward."

MR. THOMAS: The indication from the board to us at this point is we're going ahead with the March hearing. That doesn't mean we can't do those types of activities—have field trips. And whether it's staff or staff and other stakeholders or staff, stakeholders and the board going out and doing these field—we can still do those things. At this point, the board—and I won't say that that's an option in lieu of the March hearing because the board has directed us to do the March hearing.

SENATOR CANNELLA: Okay. Alright. Well, thank you again for being here. I appreciate your testimony and answering questions.

MR. THOMAS: Thank you.

SENATOR CANNELLA: Alright, at this point we're going to move on to public comment. And so, my first person on the list is Steve Shimek. Is Steve here?

MR. STEVE SHIMEK: Good afternoon. My name is Steve ...

SENATOR CANNELLA: You get 30 seconds. No, I'm just kidding.

MR. SHIMEK: I actually have a question: How much time do I have? I'll try and be brief.

SENATOR CANNELLA: Yeah. How much time do you need?

MR. SHIMEK: I think about five.

SENATOR CANNELLA: Okay.

MR. SHIMEK: Alright, here we go. So first of all, my name is Steve Shimek. I'm executive director of an organization called the Otter Project and Monterey Coast Keeper Group. We have offices in Monterey, and we have a membership of about 3,000 nationwide. So it's not a giant group; it's a small group.

So first of all, I'd like to start out by very quickly, just as bullet points, addressing a few of the things that have come up in both questions and some of the statements. First of all, I'd like to point out that ex parte applies to both sides of this issue. The environmental groups are not allowed to talk with the board members as well as the ag folks. It applies equally. It's a level playing field.

Secondly, there have been field trips. The field trip that Mr. Groot mentioned that went out to look at the engineered wetland also in the afternoon went and looked at Benny Jefferson's farm out on the Salinas River.

The Ag Alternative, I'll come back to that in a second.

One of the things that I want to point out is the calendar. It's been three-and-a-half years working on this order. It's not a matter of people having the opportunity to say what's on their mind. It's a matter that now this process has really gotten bogged down—and it's a matter that I hope you can appreciate, Senator—that it's a matter of now it is time for the board to make a decision. It's that point.

New board members, you brought that up. One of the board members attended several meetings in advance of his appointment, so he applied, and he attended, so he heard many of the things that were going on. There was a full-day-long hearing that was at the request of agriculture—as you heard—eight hours of testimony. There's been several months for people to come to speed. And, you know, just look at the way that that hearing went. Mr. Los Huertos in ag was given two hours approximately to offer their comments. This was before public testimony. But this was two hours. The environmental side was given forty minutes.

As far as meetings with the regional board staff, there have been three meetings of agriculture to every single meeting of Environmental Justice or the environment. They have three to one. There's a list of all those meetings that they have had. Three to one they have met with staff.

Six hundred dollars, we think is greatly exaggerated. In fact, there's a statement made on the public record that whatever the third party does is on top of what the staff already has to do, so how can it be a savings if you need to have the original program as well?

Intimidation, I heard Ms. Abby Taylor-Silva talk about intimidation. Well, I'll only say that I'm a pilot, and I've had a farmer come up to me and say that if he knew my tail number he would shoot me down. I think it's on both sides of the issue. I think that that was a little bit too bad of a comment.

Let's look at the calendar. In November 2008, a committee was formed. I was part of that committee. I've been involved in this longer than many of the people that you've heard from today.

The Ag Order expired in July 2009. In February 2010, staff came out with their own proposal. Staff asked, way back in 2010, they asked for alternative proposals. They asked for them. They asked them from agriculture, and they asked for alternative proposals from the environmentalists. We came up with a proposal. So

those proposals were due in April 2010. In December 2010, they came up with their proposal.

SENATOR CANNELLA: And when was it asked for?

MR. SHIMEK: So ...

SENATOR CANNELLA: What was the date that they asked for the thing?

MR. SHIMEK: They were due April 2010.

SENATOR CANNELLA: So when were they asked for? When did the board ask for them?

MR. SHIMEK: It was probably around November the year before.

SENATOR CANNELLA: Okay. So that's not a whole lot of time to prepare an alternative, right? It's a ...

MR. SHIMEK: Two other ag groups were able to prepare one, and the environmentalists were able to prepare one.

But then, their proposal was allowed into the record. Their proposal was allowed into the record when it was submitted in December. And then they said, "We want to bring back more detail." So then, they brought up more detail in May. Then they said, "We want to bring back more detail in February of 2012." The record has to stop at some point and a decision needs to be made.

Finally, as far as process goes, there was a second process to this whole thing. And there was the ag, you know, where we all came together and couldn't find agreement before the thing. Then we all had the opportunity to submit proposals. Then there was—people said, "Well, you know, the commodity groups weren't involved. The right people weren't involved in the process." And so, the Packard Foundation actually funded another process—a parallel process. And Abby was there—I'm sorry—Ms. Taylor-Silva was there. I was there. Mr. Groot was there. It was the same group. We could not find agreement after a series of daylong meetings, and there was lots of time. It was not a matter of more time needed; it was a matter that we came to the brink and then could not find agreement. And I'll only say that I was ready to agree. This is not a matter of not enough time or not enough information. It's a matter of it's time for the decision-makers to make a decision.

In conclusion, I just want to make one point and that's there's been a lot of rhetoric thrown out about third-party lawsuits. You know, that's me. That's Coast Keepers.

SENATOR CANNELLA: You're that person?

MR. SHIMEK: And it's total smoke screen. Under the Clean Water Act, irrigated ag is exempt—essentially exempt. They've got a line item exemption under the National Clean Water Act. Under the Clean Water Act, there is a citizen-lawsuit provision that allows organizations like mine to bring lawsuits against polluters. So this is all being done under Porter-Cologne. And under Porter-Cologne, there is not that line item exemption for irrigated ag, and so, that's why it's being done under Porter-Cologne, which is California state's water quality act. There is not a citizen-lawsuit provision in Porter-Cologne. I might be able to sue for nuisance but that would, frankly, not be under Porter-Cologne, and it would have nothing to do with these regulations. So, you know, there's lots of smoke here. We need to move on.

Thank you.

SENATOR CANNELLA: Mr. Thomas said that he thought this would be challenged, that it would be appealed to the state board and challenged in court. And I asked him, "Well, is that the environmentalists that would do that?" and I thought he said yes. So I'll just ask the question: do you think the board's current proposal goes far enough? I mean, is that sufficient to meet the needs that your group is concerned about?

MR. SHIMEK: Well, first of all ... so I'll answer the question directly but then let me add a sentence or two.

SENATOR CANNELLA: Sure.

MR. SHIMEK: So I'll answer the question directly: No, I do not think it goes far enough. I think that there needs to be more. So that's the direct answer.

I think that both sides will, frankly, petition. And there is Farmers for Water Quality, which is the group that Ms. Taylor-Silva is part of and leads; they are on record, and they are raising money for a petition of the Ag Order. It is printed on a website. So to be more candid about the answer, I think both sides will petition.

SENATOR CANNELLA: So you don't think this goes far enough. So when you presented your proposal, did it go a lot further than the current board's proposal?

MR. SHIMEK: Right. So one of the shortcomings of the current proposal (I'm using this as an example) we supported but went further than the February 2010 proposal. In other words ... am I right here? 2010 I get ... so this has been going on a long time.

SENATOR CANNELLA: Sure.

MR. SHIMEK: So it was that proposal that we, frankly, came out, and we said we support it, but we find some things in there that we think need to be corrected. So it was that early proposal. And as Mr. Thomas said, since that February proposal of several years ago, they have come stepwise, stepwise, stepwise at ag's request to weaken, weaken, weaken. We were in support of that first proposal with some additions that we offered. As an example of that, in that February order it basically had a long list of pesticides and said, "You're high risk if you use any of these pesticides." It was a very long list. Now the list is Diazinon and Clorpirifos. And what we're concerned about, frankly, is that people will simply switch. And I think that that's a real concern.

SENATOR CANNELLA: Okay. Well alright. Thank you very much.

MR. SHIMEK: Thank you.

SENATOR CANNELLA: Alright, the next witness, Bill, I'm going to say Lipee. I think that's right, but I may be saying it wrong. Did I say it right?

MR. BILL LIPE: No, it's wrong.

SENATOR CANNELLA: Darn it.

MR. LIPE: Don't worry. It's just a name. Bill Lipe, actually. It's good to see you again, Senator. And thank you, everybody, for being here and coming to Salinas—a fine town.

I came to talk about AB 32 and some of the things that I have seen in the five years I've been in the community.

First of all, I'm part owner of a fertilizer company here in town, NH3 Service. It's been a company that's been in the Salinas Valley for a little over 70 years. We employ—when we're in full bore—we employ about 70 people. We support, obviously, hundreds if not thousands of ancillary businesses—attorneys, contractors, electricians, and all that kind of stuff so we feel, like a lot of people in this valley, that we're a contributor. We believe in our local economy. And one of the cornerstones of that local economy here in Salinas is agriculture.

And what I've seen, some of the effects of AB 32, it comes down to two things, obviously, at least that I've noticed: there's the air quality board and there's the water quality boards. The air quality board a few years back implemented some pretty stringent policies that has essentially impacted trucking here in the state to the extent

that it's driven many businesses out of business. It's threatened many of the smaller independent truckers into going out of business. And a lot of the policies being—at least from what I'm seeing—a lot of the policies being written have been based on really bad information. In fact, the study that was done by the Air Resources Board was discredited by UC Berkeley as being grossly in error. Policies are being written by people—and this goes to the water board as well—policies are being written by people that aren't elected by anybody. They're not really accountable to any of the constituency.

I feel sometimes that AB 32, that the Legislature has given up their right to dictate how businesses and corporations operate in this state. And it's, to me, very ... And your predecessor, Jeff Denham, I talked to him extensively about this—that you guys are virtually powerless when it comes to the water board or to the Air Resources Board. I mean, you guys really don't have any authority at all and that to me is a scary proposition when I see these things coming down that really impacted these truckers.

And now the last couple of years with the water board and the meetings, and I think you've seen, sides are kind of dug in. And I appreciate you mentioning that. Really, it needs to be collaborative, and I think many in the agriculture community, especially here in Monterey County, want that collaborative approach. I think early on in the process it was felt that agriculture was not really being heard and that the staff was coming out with very “this is how it's going to be” and without any kind of input or feedback from the agricultural community.

As time has gone by here the last couple of years, I think agriculture has gone a long way towards wanting to meet the letter of what the staff wants along with wanting to improve water quality. I don't think ... I mean, I think it's a misnomer to say that farmers somehow want dirty water or want to pollute the water, or it's a fertilizer supplier.

I heard it mentioned in these meetings, sometimes by staff, that a company like mine is an industrial polluter. And it was mentioned just a little while ago, synthetic fertilizer. Well, synthetic fertilizer is a term for what we call “conventional fertilizer.” It's a type of fertilizer that's used all over the world. It's used all over this country. And it's been used the last hundred years to create yields that really feed the entire

world. And to make it out as to be some kind of bandit or some type of rogue polluter out there just littering the land is really offensive to me.

I'm fourth generation, so we really feel like we've been a part of this community. We've done a lot to ensure that we don't—we've paved our yards 20 years ago, back before it was even a thought to do that. My great grandfather and grandfather were ahead of their time and wanted to watch out for this kind of stuff.

The other thing is, working with farmers, and it's been talked, "Oh, they're just out there dumping fertilizer on the ground just willy-nilly." Well, I can attest to the fact that farmers in this valley are very technical. We do a lot of soil samples every year. Farmers don't want to pay for something they don't have to put on. I mean, I'll just be honest with you—and believe me, because we hear about it when that kind of things happens. And so, we're working with them to help control their costs in a way to put, really, into the ground and into the root zone in particular. And that's, I think, a key thing to understand with what we're doing in the fertilizer industry, is we're not just throwing it out there and letting it in amounts that can leach into the ground easily. We're putting fertilizer into the root zone where it can be available to the plant. This gentleman said, "You know, nitrate comes out of the water," and it can come out of the irrigation water, but that doesn't necessarily mean that those nitrates are available for the plant to use.

And it's been testified in front of the water board that, you know, if you cut back from what you think the minimum nutrient need is for the plant, you're not going to get a crop that makes it to market. And if you don't get a crop to market, you're not going to make any money. You're going to lose money.

And that comes to the point of growers being price takers. You know, they have to live with what the market is going to yield, and if you spent so much money, it costs you \$3 a carton to get the crop ready and the market is \$2.50, you're going to just get under. And some of that's happening this year with the weird weather we're having.

Anyway, I just wanted to come to you because I'm scared. I hear the rhetoric, and it scares me that people are making my industry out to be some kind of villain. And what we're trying to do is provide our growers the most efficient means to bring a marketable crop to market and feed the world. I mean, we don't want our produce coming from Mexico. We don't want our produce coming from China.

And it seems to me there's an effort right now ... There's dirty water out there. I think everybody can attest to that. Nobody is denying that. But is agriculture solely responsible for that? I don't know. There's a lot of cattle up in the hills. There's a lot of septic systems when you get out in the Prunedale area and other areas up in the hillsides, and all of that contributes to the nitrate level in the water and in the groundwater.

But going to point-source, we've got a large aquifer out here where—topography. To determine the exact source of the nitrates of the water is an extremely difficult process. And do we want to go about putting a lot of overhead in place that may not result in what we all want, which is improved water quality?

And somebody mentioned the SB X2. I don't know if you've had a chance to take a look at some of the slides they've put up. I've had a chance to look at them. And agriculture is being targeted to be shaken down. Everybody looks. And it's a billion dollar industry. There's money out there somewhere. We're going to get it to clean up all this water. And I just feel like because the municipalities and the state may be broke that now they're looking for a fall person to take on the burden of cleaning up all this water. And I don't want to say ag doesn't want to be involved in cleaning up the water; I think our testimony proves that we do.

And to have the chairman of the Regional Water Board reject Dr. de Los Huertos' report without ... in my mind, let's go another three months and let the other side come in and comment on what ag generated. I mean, what's the rush to do this? It's taken decades and decades for this water to get the way it is. We should determine the best possible process to clean it up in a measureable way. Let us do that. Let's not rush to judgment on a vote.

So I appreciate your time. I hope I wasn't too disorganized in my thoughts. And I just want to say thank you again for allowing the time here today. We really appreciate it.

SENATOR CANNELLA: Thank you for your comments, sir. Appreciate it.

MR. LIPE: Thank you.

SENATOR CANNELLA: Alright, next, Kathy Thomasberg.

MS. KATHY THOMASBERG: Thank you for meeting us here in our own turf. This is quite nice, Mr. Chair. I have a very brief statement, and most of it's facts to clarify potential facts—what were thought of as facts that are not facts.

My name is Kathleen Thomasberg. I work for Monterey County Water Resources Agency. I'm a senior hydrologist. I've worked there for 20 years. And my group monitors the groundwater quality for nitrate. And, yes, there are nitrates in groundwater. There's no doubt about it. But I don't think the word "toxic" is qualified in this statement.

The '88 report that was mentioned by Mr. Thomas is one of three reports. The '88 report was generated before I had arrived in '92. And that report basically stated through statistics on several wells in each of the hydrologic subareas that it is estimated that those wells will double in nitrate by 1994. Well, I was hired in '92, and I wrote that next report. And to my shock and surprise, because I had no clue what the groundwater was like at that time, it didn't double in those same sample wells in each of those hydrologic subareas. Some of the water nitrate went up; some of them went down; and some of them stayed the same. And in a following report in '07, we compared the very same wells from '88 to '95 to '07, and we encountered the same thing—some went up; some went down; some stayed the same. Yes, these are agricultural production wells. These are not small domestic wells or municipal wells.

The second item (I have two parts), it's an example of what growers have done in that last 20 years or more. In 1988, the '88 report for the state came out on nitrate; that was right after our '88 report came out. And basically, as a result, growers—36 people composed of many facets of water users, including growers, municipalities—formed an ad hoc nitrate advisory committee. Thirty-six people came up with a document that I still use today, at 1990. Then after that, CDFA had the Mill Tax on fertilizer, and Salinas Valley and Riverside County were the pilot areas to utilize those funds for research on irrigation and nutrient management. Our agency had a hydrologist for nine years that did that with UC Cooperative Extension. And were the growers required to do this? No. They did it because they wanted better science to implement in their fields.

And then the second example is a program that I manage and have done so for quite a few years. It's an ordinance-driven program for urban and ag to report pumping, extractions, and conservation measures for water. So how do I know they're doing a good job? Because, number one, the summer report every year shows us what practices they are implementing at their expense, not because we're pounding them for it; it is an ordinance though. But we don't have to enforce it because we have

97 percent reporting for over 1,800 operating ag and urban wells in the Salinas Valley which covers 210,000 irrigated acres. We also have 97 percent reporting on conservation measures that both ag and urban operators are doing.

And in Art Baggett's words—we all know who Art is—"local problems, local solutions, local people."

Thank you very much.

SENATOR CANNELLA: Question. So who do you work for again?

MS. THOMASBERG: Monterey County Water Resources Agency. We're a special district formed in 1947 to address seawater intrusion. I also oversee the seawater intrusion generation—prime generation.

SENATOR CANNELLA: So you work for the county. And so, you think ag has been doing a lot to mitigate the problem; is that a fair statement?

MS. THOMASBERG: That is a very fair statement. And unfortunately, the regional board, with whom I have worked for 20 years, does not acknowledge recently all of the works that the growers have done in the last 20 years.

SENATOR CANNELLA: Have you testified before the board? And this seems like information if I were on the board I'd want to hear.

MS. THOMASBERG: I have held off because I didn't think it was appropriate. Our division chief was going to join me today, but he was redirected by our general manager, so I'm representing the agency. And I felt it's time that I clarify some facts to benefit growers and to address the regional board. So the answer is no.

SENATOR CANNELLA: Your testimony is fairly significant. So are you going to write a letter to the board and also put this in writing?

MS. THOMASBERG: Yes, I can.

SENATOR CANNELLA: Because again, as a board member I think that I would want to hear from, you know—really, you're a peer, right? So I think that would be important.

MS. THOMASBERG: Yes. Thank you. I will. I will pursue that, and I've been writing it for the last three years in my head.

SENATOR CANNELLA: Well, good. Thank you very much for coming today. Very informative.

Next up, Kirk Schmidt.

MR. KIRK SCHMIDT: Senator Cannella, thank you for the time today. My name is Kirk Schmidt. I'm the executive director of Central Coast Water Quality Preservation. We do the water quality monitoring program. It was called the Cooperative Monitoring Program for Agriculture in the Central Coast. We've conducted this since 2005. And we have seven years of data in the Salinas and Santa Maria area and six years of data in the rest of the region. It's the most complete set of data of agricultural water quality in the Central Coast region, and it exceeds the data points that the CCAMP program, which is the Central Coast Ambient Monitoring Program, which is maintained by Region 3.

It was said earlier that the data are undeniably getting worse. Now, it's difficult to understand what time perspective that statement refers to, but since 2005 that's not the case. What we have is a circumstance where since 2005 either the data is static or it's improving. Now, that is not to say that there's not significant impairment in water quality in agricultural areas along the Central Coast, but what it does reflect—and this is reflected not only in our data but also the CCAMP data and the data posted on the regional board's own website—that over the course of time since 2005 the flow in agricultural creeks—not the Salinas River—has in general declined. This means that the load of the constituents, whether it's a chemical constituent or fertilizer or pesticide, is declining because there's less water in the stream. And the reason we know this is that the concentration of those constituents has remained mostly static.

The EPA requires that Region 3 use a method called "total maximum daily load," which measures how much load is in a region of particular constituents. So they would have one for sediment and one for nutrients and things like this. But the standard is the daily load. Now if the flow of water, which is the result of the reduction of the irrigation coming off of the fields, which means farmers have changed their practices to irrigate so that less water is flowing off their fields—if the amount of water flowing off their fields declines, you look at the concentration measured in the water and multiply it times the flow. So if there's less flow, the load has gone down significantly. So to say that it's undeniably getting worse is in denial of the data that Region 3 has on their website and their own data from CCAMP. Now, there is one exception, and it's an important exception. And that is, sometimes when you have flow drop from significant flows to a trickle—and a good example is Chualar Creek

south of here, where in 2005 the irrigation flows were significant and now the amount of flow during the irrigation season is less than comes out of shower head when you take a shower in the morning—so the flow has declined so significantly that evaporation of the remaining water has a tendency to concentrate the constituents that remain in the water. So while we can measure increased elevation of constituents in the water because of evaporation, the load in those streams has gone down significantly and measurably, it would be difficult to say that this is something that can't support data, and does support data, that shows agriculture has done a significant amount of work to reduce the load to the water bodies in this portion of the state of California.

Thank you.

SENATOR CANNELLA: Alright. Thank you very much for that.

Next up, Dirk Giannini. Dirk, are you still here?

MR. DIRK GIANNINI: Good evening, Senator Cannella. How are you doing? Thank you for having us today. My name is Dirk Giannini, a local grower here in the Salinas Valley of numerous acres of leafy greens. And I just have a few comments and then I was going to maybe refer back to my testimony I did on the evening of February 1st and kind of reflect on that as well.

In the Ag Waiver process, what we're going through right now, usually the saying is "the devil is in the details." In this case, the devil is in the process. This system is broke.

And I do want to agree with Mr. Shimek. You know, I think after three-and-a-half years we would be on the same page; however, the interpretation that we learned from staff and the associations that I'm involved with, we are miles apart on interpretation of what the staff has provided. And I'll refer to some of those in my testimony of February 1st.

Also, with respect to Mr. Shimek, I believe in the process. The Farm Bureau was involved for countless hours in this process when there was a stakeholder meeting called the Ag Panel. That for numerous meetings ... I was not personally there; however, Bobby Martin another farmer was there; Tracy Roberts, our Farm Bureau water coordinator, was also involved; and others.

And also in the Packard facilitation that was mentioned earlier, not once did Mr. Shimek or the environmental community come up and agree to a solution. It was

more of that litigious attitude that was going on through the process. So there was never a settlement or an agreement from either side even though the Farm Bureau was reaching out as much as they could in the process.

The Ag Alternative is obviously what we're in support of. And what staff has proposed is one of the most onerous programs that would be involved within the nation.

As a farmer, working on the ground is where we can actually improve water quality, not by turning in layers of documents and testing and results that I would probably have to hire someone in my organization to do. And I would rather put those resources into actually basement management programs and practices on our ranch so we can actually improve water quality.

So with that, I want to kind of go back to February 1st and read my testimony, what I read Chairman Young and the board, and then make some highlight points on that. So I'll go back in time here to that.

Good evening Chair and Board Members.

My name is Dirk Giannini, manager of Christensen and Giannini who grows various row crops in the Salinas Valley. I'm a fourth generation farmer who has been farming my entire life. I'm supporting the Ag Coalition approach and the inclusion of Dr. Los Huertos report. When I come to these workshops, it never seems to amaze me that when staff makes their presentation I learn how they interpret what they wrote. Being the Monterey County Farm Bureau president and a member of numerous organizations, I have received many consolidated updates on what the staff has presented in the past in its ongoing changes, content and interpretation. For example, tonight, the acres in Tier-1, 2, and 3 are significantly skewed. There are many more acres in Tier-3 as reported this afternoon unless there is question and change in interpretation.

Like, there was testimony earlier today; there are thousands more acres in Tier-3 than what staff thinks. So why is that?

I also learned that I can allow 90 parts per million nitrates discharged from my ranch as long as I can show improvement if it was originally 100, yet it would not be supported legal advice.

So that example was brought up through the evening. Bobby Martin had talked about a well that had 100 parts per million; and if he improved it by 10 parts per million, he would not be out of compliance, is what staff had said. But word for word,

it says that we have to meet drinking water standards that discharges from our ranches. So interpretation is just really across the board on this.

I think this is a system in flaw with the stakeholder and staff relationship, if you even call it that—a relationship. Our system of communication with staff is broken. There is minimal dialogue that takes place between a handful of organizations, and the communication is basically trying to understand what has been presented at a hearing or workshop.

In addition, I am very concerned that we are trying to push this staff proposal through with the courteous workshop this evening.

That February 1st workshop was requested by the ag community. Without that request, I'm afraid that we would be fast forwarding to March 15th.

And we do appreciate that they did have that workshop, but with three-and-a-half years of going back and forth and to learn that in just over a handful of months; it's not right.

It has taken us since 2008 to get where we are today with five workshops. How can we cram all this information and the evolution of the two proposals into one workshop and one hearing in March?

I have also testified before that the industry has surpassed science and at such a time where we need more science, we are preventing a professor, a doctor mind you, Dr. Marc Los Huertos to present this proposal this evening. I think this is representative of the relationship between the stakeholders and staff.

In addition, our local UC Cooperative Extension advisor's input and recommendations have seemed to be tuned out.

And just to comment on that; I think, you know, farmers, we reach out to RCD, NRCS, the UC extension for advice in these difficult times, and it doesn't seem like their information has been considered by staff in this whole three-and-a-half year process.

Interestingly enough, these scientists have a lot of academia resources that work with growers that usually in most regions try to get ahead of such science and help the growing community comply with such regulations as this one. With this being said, I urge you to allow Dr. Los Huertos proposal, from one of our most knowledgeable academic leaders, to enter the record for review and in conjunction with the Ag Proposal as an extension of those concepts.

I also want to reiterate what my colleagues have said in the past. The staff proposal requires the industry to submit layers of documents, monitoring results, and tests. As we go forward, this will require me, personally, and my organization to worry about hiring someone to make sure my family business complies with your regulations, submitting multiple layers of paperwork and not really focus on needed projects and BMPs, improving water quality, which is why we are here tonight.

And that's what I reported to the board on February 1st.

Thank you.

SENATOR CANNELLA: Alright. Thank you very much.

Alright, the last speaker, John Ivancovich. Hopefully, I said that correctly.

MR. JOHN IVANCOVICH: That was very close, Senator. Thank you very much for trying.

First of all, thank you very much for being here. I listened to you a few other times at different places over in Hollister.

SENATOR CANNELLA: Yeah.

MR. IVANCOVICH: Thank you very much. I don't have a lot to say. But earlier in the meeting, you asked for some specific examples of regulations that are problems. And I think it was Richard Matteis, if I'm not mistaken, who said "death by a thousand cuts." Well, maybe I can give you just a couple tonight to think about.

You know, I think I'll preface my remarks by the fact that the American farmers, typical in this area, produce the safest, healthiest, most nutritious, abundant food supply this world has ever seen. It's very affordable. In America, even the poor can afford to eat well. And most people don't realize that in producing this food supply a majority of farmers in this country have to work off of their farm to support themselves, their families, and their farms; and that's not even counting spouses who have jobs that are off the farm. I'm in that group.

I work fulltime off the farm to support my farming habit. And people, if they knew how little I make for how much work I do, they ask the question, "Are you crazy?" And so, the issue of regulations is critical to me. Because when normal people go home to sit down and watch the evening news, have some popcorn and soda, or take the kids to the soccer game, I go home and go to work. I'm sometimes 1:00 in the morning finishing the spraying in my orchard and up the next morning at

6:00 to go to work. So anything that increases my workload is really important to me. I do it because I really love farming. It's in my blood.

The first example I'd like to talk about is this Ag Waiver, the water situation. I'm in Tier-2. I have right now a 40-acre farm; about 15 acres of it is in cherry trees; the rest is in just hay. My intention is to have it all in cherry trees. I'd be close to that right now except for the fact that my water is not good water. I was told one time by a laboratory, "John, the only water that's worse than yours is in Monterey Bay." It killed my first orchard. And the reason it did that is I have two wells; the well on my property I have full use of, it's a terrible well. I share another well, an interest in another well, off my property with three other parties. And until about five years ago, I couldn't use that water because it came to me in an old concrete line, and my partners in the well would not repair that line—replace it—because to do so meant I got some of the water. Water is a commodity. You understand this part, right? But finally I was able to switch to the other water which was better, and I'm rebuilding my orchard now.

I tell you this because even the better water, it's not great water. And what I have to do every year is I have to put on five tons of gypsum per acre to try to solve the problem that my water that I'm putting on creates—my water is high in sodium. Do you understand the principle of how to get rid of sodium in your ... Yeah, gypsum, a chemical reaction. The sodium exchanges with the calcium into calcium sulfate and then the sodium sulfate will leach if you put on excess water. Rainwater, we try to get that in the wintertime. Well, there's a problem here. The problem is, as I read the current draft proposal, it's illegal for me to put on calcium sulfate. And the reason it's illegal is that sulfate, calcium sulfate, is a salt. And when you have this process where you exchange the sodium in the soil, you're now creating a different salt. And then so you get rainwater that's driving that salt below the root zone. Obviously, eventually, that can reach the groundwater.

The draft reg says that you may not leach salts. You may not pollute the groundwater. My water that I have does not meet drinking water standards; therefore, I cannot even irrigate my own farm with my water. That's what the draft waiver says. So I presented this problem to a staff member and was told, "Oh well, our interest really is nitrates." Well, I appreciate that. But the problem is your waiver says I cannot do this. So if you adopt this document as you have it now, technically you

have to stop me from irrigating my orchard with my own water. And if you don't, you could be sued. So how you would address that issue, I'm not sure. Maybe they can just say, "We're not addressing this issue," or, "We realized that farmers must do this, and if they do it reasonably, it's okay," or something. But unless you address this issue, you have a real problem.

The second thing I wanted to point out to you is years ago the state came up with a pesticide-use reporting process. You want to use a pesticide in farming? You have had to have the pesticide-use permit that you get. Annually you have to refresh; you have to take training, etc. And before you put on a pesticide, you have to have that permit, and the permit tells you what you can put on. There are restricted materials. Certain materials are more toxic, yeah. Well, this is okay; it's good, not a problem. But it's an extra level of work. If I want to poison ... What was changed recently to make phostoxin, which is a tablet we use to kill gophers—now it's a restricted material. I have to file—not just get a pesticide use report. I have to file a notice of intent to poison that gopher.

Now, I'm fortunate; my county is rather reasonable in how they enforce regulations. I was told, "Well, just at the first of the month send us a notice of intent that you're going to use this stuff this month. Then at the end of the month, you can go ahead and report to us how much you used that month." Well, you know, it takes a lot longer to file the use report than it does to actually poison that gopher. And so, if I want someone on my farm to help me do this, he has to be trained, get licensed, okay. I have to, every two hours, check on him. I don't necessarily think that that's bad, okay. I think it's reasonable to have regulations.

But I've got to tell you, I didn't get into farming to comply with regulations. I got in to make some sort of money on this thing to support myself and grow a really good crop of cherries. People tell me mine are the best cherries they ever tasted. Well, I know my competitors down the road; theirs are just as good as mine, if not better. But we raise great cherries. But at some point, and I think you hear this all over the country these days, people are complaining about regulations. Everything about our lives now, the government is getting more into our lives. They want more money. The more people they have, the more regulations they can pass and enforce on us.

I understand we have a great problem with groundwater. And I don't think anybody has said here today that the nitrates in the water can come from sources that

are natural sources. My farm has 99 parts per million nitrates in the water. I didn't put it there.

Now the board wants ... One of the requirements we're looking at is well monitoring. They're proposing that we would have to sample our wells and report to them the pollutants in those wells. Well, as you heard earlier, someone said it takes 10 to 50 years for whatever happens on the surface to get down to the water. I didn't put those pollutants in the water. I can't afford to spend the money to go ahead and sample this stuff and then report it and then assume the liability so people will think I did. "It's your well; it's your problem. You're the guy that put the stuff in there." But right next to me, about a half-mile away is the sewer pond—the city sewer pond. And water is always moving. It doesn't just stay where it is. You know that. So I wanted to point out that is a problem, I think.

And the last thing I wanted to point out is another thing for you to consider, is you're familiar probably as a civil engineer with the spill prevention containment and counter measures plans. The company I worked for has a 10,000-gallon diesel tank. It's inside of a concrete structure, and it's maybe 20 miles from the nearest navigable water source. But because it's 10,000 gallons, we had to hire a professional engineer to write us a report as to how we are going to prevent a spill from ever contaminating the waters—navigable waters. It cost over \$3,000 for the report. That's the first part.

The problem is—daily monitoring, weekly, monthly, annual monitoring—testing for a tank that's inside a concrete structure. If the whole thing ruptured and fell to the ground, there's never any way it's going to reach some navigable waters. The first thing you do is clean up the mess, right? If you had a 500-year storm, I don't know if it would reach the water. But when I read the SPCC regulations, as I read it, it says if there's a reasonable possibility the spill reaching water you have to come up with a SPCC, right? So the County of Tulare approached my company and said, "Hey, _____, you need to do this plan."

We said, "Why?"

"_____."

So I read the _____. I said, "Well, this is the deal. I just did ... It's not reasonable. It's not reasonable."

"Well, we'll check with the state." They checked with the state (and I can give you the name of the person. I'll find out).

The guy at the state says, "No. It doesn't matter. Forget the _____ reasonable. Anything ... You've got to have an SPCC."

Well, I learned at a meeting earlier this week that a man from EPA (I have his name and telephone number) told the presenter at a meeting I went to on Wednesday that the fellow there, this presenter, talked to this EPA guy and said, "Listen, if there's no reasonable thing," he says, "Nah, if it's reasonable, it's not going to ... you don't have to do SPCC." The guy from EPA says, "You don't need to do an SPCC." But the guy from the State of California says, "No, you have to do it anyway."

I complain not just about the 3,000-some-odd dollars but all the training you have to do, the record keeping.

I could go on, but I think I've got my fair share. Thank you.

SENATOR CANNELLA: Alright. Thank you very much.

Alright, that concludes our hearing. I want to thank our sergeants from the Senate who have been here all day. Thank you for being here today. And I thank my staff for being here. And thank all of you for coming.

This is the first step, and we'll continue working on these very important issues. So thank you.

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