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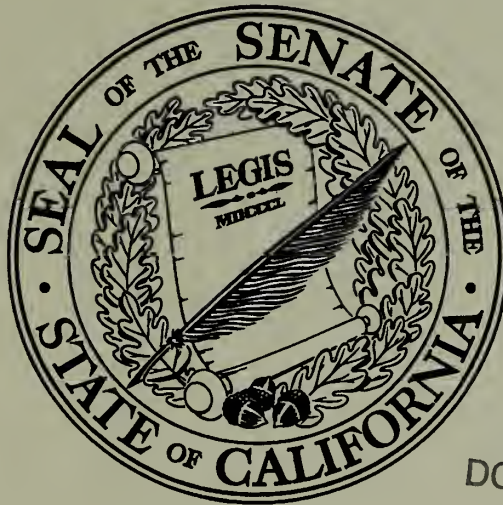
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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

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WEDNESDAY, FEBRUARY 4, 2009

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

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INDEX

1		
2		<u>Page</u>
3	Proceedings .....	1
4	Governor's Appointees:	
5	GREGORY W. JONES, Member, State Board of	
6	Education .....	2
7	INTRODUCTION by SENATOR ROD WRIGHT .....	3
8	INTRODUCTION by SENATOR KEVIN MURRAY .....	4
9	OPENING STATEMENT BY GREGORY W. JONES .....	5
10	Questions by SENATOR OROPEZA re:	
11	Junior Achievement program .....	9
12	Achievement gap .....	10
13	Role of cultural differences .....	17
14	Preparation of teachers and staff	
15	to meet the Latino demographic ...	17
16	Diversity on the board .....	19
17	Questions by CHAIRMAN STEINBERG re:	
18	SB 219 and drop-out issue .....	21
19	Drop-out rate and API .....	25
20	CAHSEE exam and special ed.	
21	students .....	25
22	Eighth-grad algebra requirement ..	26
23	STATEMENT BY SENATOR OROPEZA .....	28
24	STATEMENT BY SENATOR CEDILLO .....	28
25	STATEMENT BY CHAIRMAN STEINBERG .....	37

APPEARANCES

MEMBERS PRESENT

- 4 SENATOR DARRELL STEINBERG, Chair
- 5 SENATOR GIL CEDILLO
- 6 SENATOR SAMUEL AANESTAD
- 7 SENATOR ROBERT DUTTON
- 8 SENATOR JENNY OROPEZA

STAFF PRESENT

- 12 GREG SCHMIDT, Executive Officer
- 13 JANE LEONARD BROWN, Committee Assistant
- 14 NETTIE SABELHAUS, Appointments Consultant
- 15 JULIE NYSTROM, Assistant to SENATOR AANESTAD
- 16 CHRIS BURNS, Assistant to SENATOR DUTTON
- 17 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

- 21 ARTHUR L. ANDERSON, JR., Member, Board of Parole
- 22 Hearings
- 23 GREGORY W. JONES, Member, State Board of Education

Witnesses in Support of Appointee:

2	AUBRY STONE, California Black Chamber of	
3	Commerce .....	30
4	JAMES C. SHELBY, Urban League .....	32
5	RAE BELISLE, Ed Voice .....	34
6	SHERRY GRIFFITH, Association of California	
7	School Administrators .....	34
8	BRANCHE JONES, California Charter Schools	
9	Association .....	35
10	DEBORAH KEYS, Voices for African American	
11	Students, Inc. ....	35
12	JIM LANICH, California Business for Education	
13	Excellence .....	36
14	LARRY LEE, <i>The Sacramento Observer</i> .....	37
15		--000--
16	ARTHUR L. ANDERSON, JR., Member Board of	
17	Parole Hearings .....	39
18	STATEMENT BY CHAIRMAN STEINBERG .....	39
19	STATEMENT BY SENATOR CEDILLO .....	41
20	STATEMENT BY CHAIRMAN STEINBERG .....	42
21	STATEMENT BY SENATOR DUTTON .....	43
22	STATEMENT BY SENATOR AANESTAD .....	45
23	OPENING STATEMENT BY ARTHUR L. ANDERSON, JR.	46
24	////	
25	////	



1 Questions by CHAIRMAN STEINBERG re:

2 Determining unreasonable risk

3 of danger ..... 47

4 Weight of psychological

5 evaluation ..... 48

6 Impact of Proposition 9 ..... 49

7 Examples of 15-year denials ..... 50

8 Effect of inmate's faith on

9 decision-making process ..... 54

10 Questions by SENATOR OROPEZA re:

11 Faith and rehabilitation ..... 51

12 Ethnic breakdown of board ..... 57

13 Question by SENATOR DUTTON re:

14 Number of times in agreement with

15 deputy commissioner with civil-

16 service status ..... 59

17 STATEMENT BY SENATOR AANESTAD ..... 54

18 STATEMENT BY SENATOR DUTTON ..... 58

19 Witnesses in Support of ARTHUR L. ANDERSON, JR.:

20 AUBRY STONE, California Black Chamber of

21 Commerce ..... 56

22 CATHERINE BARANKIN, California Collaboration

23 for Youth ..... 63

24 DAVID DAHLE, Los Angeles County District

25 Attorney ..... 65

v

1 Witnesses in Opposition of ARTHUR L. ANDERSON, JR.:

2 MATT GRAY, Capital Alliance ..... 66

3 KEITH CHANDLER, Sanders & Associates ..... 76

4 DAVID WARREN, Taxpayers for Improving Public

5 Safety ..... 81

6 CLOSING STATEMENT BY ARTHUR L. ANDERSON, JR.. 85

7 STATEMENT BY SENATOR STEINBERG ..... 88

8 STATEMENT BY SENATOR CEDILLO ..... 91

9

10 --o0o--

11 Proceedings Adjourned ..... 94

12 Certificate of Reporter ..... 95

13 APPENDIX (Responses by Appointees)..... 96

14

15

16

17

18

19

20

21

22

23

24

25

vi

**PROCEEDINGS**

1 CHAIRMAN STEINBERG: Good afternoon. The

2 Senate Rules Committee will come to order.

3 Jane, if you would please call the roll.

4 MS. BROWN: Senator Cedillo.

5 Dutton.

6 Oropeza.

7 SENATOR OROPEZA: Here.

8 MS. BROWN: Oropeza here.

9 Aanestad.

10 SENATOR AANESTAD: Here.

11 MS. BROWN: Aanestad here.

12 Steinberg.

13 CHAIRMAN STEINBERG: Here.

14 MS. BROWN: Steinberg here.

15 CHAIRMAN STEINBERG: A quorum having been

16 barely established, we will begin today with the

17 reference of bills.

18 SENATOR AANESTAD: So moved.

19 CHAIRMAN STEINBERG: So moved by Senator

20 Aanestad.

21 Any questions, Senator Oropeza? Any questions?

22 SENATOR OROPEZA: No.

23 CHAIRMAN STEINBERG: All right. Please call

24 the roll on that matter.

25

1

1 MS. BROWN: Senator Cedillo.

2 Dutton.

3 Oropeza.

4 SENATOR OROPEZA: Aye.

5 MS. BROWN: Oropeza aye.

6 Aanestad.

7 SENATOR AANESTAD: Aye.

8 MS. BROWN: Aanestad aye.

9 Steinberg.

10 CHAIRMAN STEINBERG: Aye.

11 MS. BROWN: Steinberg aye.

12 CHAIRMAN STEINBERG: We'll leave the roll open

13 so the members can vote. The vote stands three to

14 nothing.

15 Let us move right into the governor's

16 appointees appearing today, and we'll reverse the order,

17 without objection here, and call up Gregory W. Jones up

18 for appointment as a member of the State Board of

19 Education.

20 Mr. Jones, welcome.

21 MR. JONES: Thank you.

22 CHAIRMAN STEINBERG: I want to make sure before

23 we begin that you have an opportunity to introduce any

24 family members or any special guests in the audience.

25 It's a tradition of the Committee, and I want to give

2

1 you that opportunity.  
2 MR. JONES: Okay.  
3 CHAIRMAN STEINBERG: Oh, yeah. I'm sorry.  
4 Before you do that, you have a couple of esteemed -- one  
5 member of the State Senate and one Senator emeritus --  
6 Not a bad title. Use that one.  
7 SENATOR MURRAY: I like that.  
8 CHAIRMAN STEINBERG: -- who would like to come  
9 up and make an introduction. So if you don't mind  
10 taking a seat. Take some water. That's all right. We  
11 do have a water shortage, but --  
12 SENATOR OROPEZA: We can spare a cup.  
13 CHAIRMAN STEINBERG: We'll ask Senators Wright  
14 and Murray to please come forward.  
15 SENATOR WRIGHT: Mr. Chair and members, thank  
16 you for juggling the time. Kevin and I have both known  
17 Greg Jones for a number of years through his work with  
18 State Farm Insurance, his work with the Urban League in  
19 Los Angeles working with inner city children on  
20 education, and doing just a yeoman's job making sure  
21 that State Farm Insurance was a community-involved  
22 insurance company.  
23 Some would say that's an oxymoron when you try  
24 to involve a corporation like State Farm in the state of  
25 California in communities across this state, and I think

1 that Greg has been exemplary in that role, and I think  
2 he would be a welcome addition to the California Board  
3 of Education.  
4 CHAIRMAN STEINBERG: Thank you very much,  
5 Senator Wright.  
6 SENATOR MURRAY: I like that emeritus thing.  
7 I'm going to start using that. It gives me something as  
8 opposed to retired.  
9 Again, I'm happy to be back here before this  
10 august body. As Rod said, we've known Greg a long time,  
11 and, over the years, in addition to his day job in the  
12 insurance business, have sat and talked about his  
13 passion for the children in our state and their  
14 education.  
15 And I think you'll find most importantly that  
16 he not only has a passion, that he comes with ideas but  
17 not necessarily with an ideological agenda, which makes  
18 him, I think, the perfect appointee for this kind of  
19 position at this time.  
20 And I would, again, for many years of  
21 experience working with him, highly recommend him for  
22 this job and, hopefully, your support for his  
23 confirmation.  
24 CHAIRMAN STEINBERG: Very good, sir. Thank you  
25 very much for coming back, for taking the time, both of

1 you. It means a lot. And we'll now hear from the  
2 appointee.  
3 Welcome back, Mr. Jones. Again, I just want to  
4 reiterate my offer. If there's anybody you want to  
5 introduce at the outset, please feel free to do so.  
6 MR. JONES: There are some people that will  
7 speak on my behalf. I assume they can do that at the  
8 end.  
9 CHAIRMAN STEINBERG: They can do that. Just  
10 any family member or anyone else.  
11 MR. JONES: Okay.  
12 CHAIRMAN STEINBERG: Very good. If you would  
13 like to make a brief opening statement. We welcome you  
14 to the committee.  
15 MR. JONES: I would.  
16 Thank you very much, Mr. Chairman. It is  
17 indeed an honor to come before this esteemed committee  
18 to answer your questions regarding my confirmation to  
19 the State Board of Education.  
20 It has been a privilege to have served on this  
21 board for the past year and offer my perspective on  
22 raising student academic achievement for all students,  
23 for closing achievement gaps and mitigating the  
24 continuous drop-out rates that are slamming the door of  
25 opportunity, particularly on the poor and children of

1 color.  
2 My passion and focus on these issues -- excuse  
3 me -- has its roots in my own personal experience. I've  
4 seen both sides of the education divide, if you will.  
5 My mother was a teacher of disabled students for  
6 20 years. Her mother, my grandmother, was a college  
7 graduate in 1906, a rarity for any woman at that time,  
8 much less for an African-American woman. She was a  
9 teacher and an administrator, and her father, my  
10 grandfather, was a president of a university.  
11 It was my grandmother who ingrained the words  
12 that really guide me today, and I think guide much of my  
13 decision-making, when she said over and over to my  
14 brother and I, "No one rises to low expectations."  
15 On the other side, my father, like his father  
16 and his father's father, was a high-school dropout, yet  
17 it was he who taught me, I think, the two most important  
18 lessons of my life: Number one, that education is your  
19 passport to the future; and, number two, as he would  
20 say, "You must reach as you climb," meaning that as you  
21 realize success, it is your responsibility to reach back  
22 and help others.  
23 It is that advice, I think, that allowed me to  
24 realize a measure of success that I could barely even  
25 dream of as a kid and ultimately become, as you have

1 said, president and CEO of State Farm General Insurance  
2 Company, one of California's largest businesses.  
3 I think it's that advice that led me to found  
4 the NAACP chapter in Ohio and become the founding  
5 president of 100 Black Men, and chairman of the board of  
6 the Los Angeles Urban League, Junior Achievement of  
7 Southern California, and California Business for  
8 Education Excellence, and California Business Round  
9 Table.

10 My commitment is to bring those experiences to  
11 bear as a member of the State Board of Education in  
12 collaboration with all of the stakeholders who have the  
13 best interest of our children at heart, in order that  
14 all children, in particular those who find themselves  
15 being left behind, have the same opportunity that I had  
16 and that you had to realize their dreams and  
17 aspirations.

18 I believe that business has a unique and  
19 important role in this partnership, along with the  
20 education community, because I believe we bring a direct  
21 knowledge of changes that are occurring in business and  
22 industry, and a keen sense of requirements for current  
23 and future employees. Secondly, I believe we can help  
24 define the learning outcomes that the global marketplace  
25 requires. And, finally, I think we can provide needed

7

1 feedback on the degree that students master the  
2 qualities required for success.

3 Over the past 18 months, I visited nearly 30  
4 schools, most in California, some not, many highly  
5 successful --

6 SENATOR OROPEZA: Pardon me. Excuse me. Most  
7 in where?

8 MR. JONES: Most in California, some in other  
9 states.

10 SENATOR OROPEZA: Okay. Thank you.

11 MR. JONES: Many of them were highly successful  
12 schools. Many of them were in poor and minority  
13 neighborhoods. I say that only because it has  
14 reinforced my belief in, really, three things: Number  
15 one, there is no school that cannot be successful;  
16 number two, there is no child that cannot learn; and  
17 number three, leadership does matter.

18 With high expectations and challenging  
19 curriculum, well-trained teachers, involved parents, and  
20 visionary school leaders, we can give students the tools  
21 they need to realize the quality of life that those of  
22 us in this room enjoy.

23 In that regard, I am committed to continue the  
24 greatest lesson in leadership that I learned many years  
25 ago, and that is this: As a leader, sometimes you have

8

1 to believe more in people than they believe in  
2 themselves. That's what has happened to me, and it is  
3 what we owe every child we are charged to educate.

4 With that, Mr. Chairman, I am pleased to answer  
5 your questions.

6 CHAIRMAN STEINBERG: Thank you very much,  
7 Mr. Jones. Let's see if there are questions. I know I  
8 have a few, but if there's anything --

9 SENATOR OROPEZA: You don't want to hear from  
10 the witnesses first?

11 CHAIRMAN STEINBERG: We usually ask the  
12 questions.

13 SENATOR OROPEZA: Do you want me --

14 CHAIRMAN STEINBERG: Go ahead.

15 SENATOR OROPEZA: All right.

16 Thank you very much for being here today. I  
17 just have to mention as an aside that Junior Achievement  
18 is the thing that turned my life around. I'm a kid that  
19 grew up in a challenging environment, and but for that  
20 program, I really don't think I would be here. So I'm  
21 glad to see you are involved in that. Are you still  
22 involved in that program?

23 MR. JONES: I'm chairman emeritus. I'm on what  
24 is called an emeritus board of Junior Achievement.

25 SENATOR OROPEZA: How long have you been

9

1 involved, just out of curiosity?

2 MR. JONES: Oh, probably about 15 years.

3 SENATOR OROPEZA: That's great. Good. I have  
4 a couple of questions.

5 One of the things that is of deep concern to  
6 me, and you mentioned in your remarks, is the  
7 achievement gap. As a former school board member who  
8 represented a predominantly Latino and African-American  
9 district, it was always frustrating to me and continues  
10 to be frustrating to me the data that indicates this  
11 differential between various ethnic students, ethnic  
12 groups of students. And I'm puzzled, I'm absolutely,  
13 you know, flummoxed about how we go about resolving that  
14 and what the root causes are. Might you have some  
15 observations about that?

16 MR. JONES: Yes, I do have some opinions and  
17 observations about that.

18 The causes, obviously, I think, are many, some  
19 of which are -- I believe are societal kinds of issues  
20 that we all wrestle with. Many of the kids,  
21 particularly in this state, but many other places as  
22 well, they live in environments that are challenging.  
23 Many of them are homeless; many of them have single  
24 parents; many of them don't have the type of support  
25 that we experience. But those are issues, and I think

10

1 there are a number of them.

2 But I would say this. But at least for me, and  
3 maybe you experienced the same thing yourself, Senator,  
4 at least for me, the thing that has had the greatest  
5 impact on this are expectations. Let me tell you what I  
6 mean by that.

7 The children that we're talking about, they  
8 live in a world of low expectations from their home,  
9 from their peer group, sometimes from their own family,  
10 and sometimes in their schools. And so that is kind of  
11 the world that they live and operate in. I saw this  
12 firsthand myself, and, again, maybe you did as well.

13 I was very fortunate. My kids were very  
14 fortunate. They grew up -- Because of my success with  
15 State Farm, they grew up in nice communities, nice  
16 neighborhoods, but -- and they went to very good  
17 schools.

18 SENATOR OROPEZA: Public schools?

19 MR. JONES: Very good schools.

20 SENATOR OROPEZA: Public schools?

21 MR. JONES: Public schools. My kids went to  
22 all public schools, and they were very good schools.  
23 But both of my kids experienced, and I did as a parent,  
24 and many others who I talked to like me,  
25 African-Americans who had kids in school, my kids at

11

1 almost solely on that, how do we go about closing the  
2 achievement gap, how do we take best practices. We've  
3 created something that I'm very excited about. I think  
4 in the last 18 months, we've had a series of five what  
5 we call best practice institutes. Just had one three  
6 weeks ago in Fresno. Fresno, California, three weeks  
7 ago, we brought in 35 high-performing schools in poor  
8 and minority communities, brought them together with  
9 135 other schools, 350 teachers, who sat and talked  
10 about best practices, things that we're doing that are  
11 allowing us to close the achievement gap, because all  
12 these schools of these 35 schools are closing  
13 achievement gaps. That's how you had to qualify.

14 Clearly, there are answers -- Clearly, there  
15 are answers out there. I believe that's where you've  
16 got to start. We've got to start with expectations.  
17 We've got to have the right kinds of assessments and  
18 measurements so that we're keeping schools on target and  
19 focused, and I think we've just got to demand from  
20 schools and school districts that they focus on -- that  
21 they focus on this issue.

22 SENATOR OROPEZA: Let me just follow up briefly  
23 on that. The challenge, the problem -- The problem is  
24 that we've been saying that same thing for a long time,  
25 and it is not the first time that I heard about low

13

1 times were held to lower expectations even than their  
2 white counterparts in good schools. I don't know that  
3 that was intentional. I don't know that people even  
4 knew that that was happening, but that is what happened.  
5 And it was up to us -- It was up to my wife and I to  
6 make sure that we were there to make sure that people  
7 held our children to the same level of expectation. So  
8 for me, I think that's clearly a foundational issue of  
9 what really has sort of driven this. There are,  
10 obviously, a lot of other issues as well.

11 To the second part, in terms of what do we do  
12 about this, I mean, obviously, that is the most  
13 important question that we have, how do we go from  
14 knowing this to doing something about it. And as I  
15 said, I visited a number of schools in this state, and  
16 most of them minority schools. Many of them were highly  
17 successful. And I say that to say there's a lot of good  
18 learning out there already, and I think perhaps the  
19 first thing that we can do is learn from those who are  
20 already successful, that one of the things I don't think  
21 we have done as well as I would like to see us do is  
22 really create best practices.

23 One of the things that I've also been involved  
24 in with this other organization called CBEE, California  
25 Business for Education Excellence, our focus has been

12

1 expectations, and I concur with you that some  
2 teachers -- some schools have a culture of low  
3 expectations. How do you -- but I don't think -- And  
4 you mentioned you don't think that's the total problem.  
5 I would concur with you that there are problems in the  
6 schools beyond the societal issues, beyond expectations  
7 being a problem.

8 How do you think we get beyond just a  
9 discussion about expectations at the leadership level,  
10 the Board of Education? What have you done, or what  
11 would you like to do in your tenure on the board about  
12 this problem?

13 MR. JONES: What I have done so far in my  
14 fairly brief time on the board, less than a year, are a  
15 couple things, I think.

16 First of all, I think was the impetus -- one of  
17 the impetuses, I guess I should say, in really helping  
18 the board create our first, at least that I know of, our  
19 first retreat to help us really get focused on what the  
20 key issues are that we want to deal with as a board, so  
21 we did that. We went off and created issues. The  
22 number one key issue was closing achievement gaps, so  
23 that as a board, how do we stay focused on this; how do  
24 we bring this in every single meeting.

25 I talked at the last meeting about we need, at

14

1 every meeting that we have, to have closing achievement  
2 gaps on the agenda, what's happening, what are we doing,  
3 what's happening in the field, what can we learn about,  
4 number one.

5 Number two, I have championed, as you probably  
6 heard or seen, about the establishment of the  
7 African-American advisory committee. I believe that  
8 African-Americans being -- continue to be at the bottom  
9 end of the achievement gap. We really need to  
10 facilitate a way to bring people together that are  
11 having success, that have ideas on how we create this,  
12 because I guess I have come to believe while all of us  
13 have thoughts and ideas, all the answers don't sit here  
14 in Sacramento. The answers are out, people on the  
15 ground, in the field. So that is compatible.

16 We already have, as you probably know, an  
17 English language learner advisory committee, so this is,  
18 I think, compatible with that. They really do  
19 accomplish the same thing, to get those ideas that  
20 ultimately help to get kids to grade-level proficiency.

21 Thirdly, what I want to do is, again, sort of  
22 facilitate more learning on our part for the board. How  
23 can we learn from those people that are accomplishing?  
24 We haven't seen many people come to us, at least I  
25 haven't, and say, "Here's what I'm doing. Here's what's

15

1 working," so that we can then take that, translate that,  
2 hopefully create policy that is allowing that to be  
3 scaled in some way so that we can begin to make some  
4 move in that regard.

5 Finally, I could say -- I said this to Senator  
6 Steinberg this morning. Those schools that I visited,  
7 there are a lot of common denominators, I guess, of  
8 success and all of that, but if I were able to see one  
9 thing through my own eyes, it was what you mentioned  
10 lastly, and that is -- it's no surprise; it's just like  
11 business. The best schools are run by the best leaders.  
12 We have to invest in our leadership, because --

13 I went to a school called Ralph Bunche  
14 Elementary School. Dynamic young principal there. Came  
15 out of Teach for America. She inherited that school.  
16 They were 18 percent proficient in math and language  
17 arts. Five years later -- I think I have these numbers  
18 pretty correct -- about 70 percent proficient. She said  
19 to me -- Her name is Mikara Solomon Davis. She said,  
20 "Greg, it ain't rocket science. You got to get parents  
21 involved. You got to get kids ready to come to school.  
22 You got to get kids ready not just to attend school, but  
23 be ready to learn in school once they get there. You've  
24 got to set high expectations. You've got to get  
25 teachers to buy into what it is you're trying to do.

16

1 And you've got to generate energy with students so that  
2 they're anxious to learn."

3 And so I just say all that to say there are  
4 answers out there, because there are schools right now,  
5 because we have some in your district, that are doing  
6 some pretty good things.

7 SENATOR OROPEZA: Two more quick questions, if  
8 I may, Mr. Chair.

9 CHAIRMAN STEINBERG: Thank you.

10 SENATOR OROPEZA: One is what do you -- Do you  
11 think that the role of culture and --

12 What role do you think cultural differences and  
13 the understanding of cultural differences has to do with  
14 learning? And do you think we are sufficiently  
15 preparing our teachers and staff in our schools to meet  
16 the new demographic, which is predominantly Latino? In  
17 the future, we are looking at a predominantly Latino  
18 school district, but a very diverse school district  
19 notwithstanding. That's the question.

20 MR. JONES: The first part of the question, I  
21 don't know what part it plays. I think it definitely  
22 does play a part. And I think, you know, just like me,  
23 all of our family history and background and culture  
24 plays some degree into who we are, and how we think, and  
25 all that. But I do think it has clear relevance. I

17

1 don't know what relevance that is.

2 In terms of the second part of your question, I  
3 would have to say the answer to that is probably none,  
4 not nearly as much as we need to. I think we've got to  
5 make a lot greater investment in not just the quality of  
6 teachers, but teachers who can relate to today's  
7 students, and to what their needs are and how they  
8 learn. It's a whole issue I think of -- because I think  
9 kids learn in different ways.

10 So this whole issue of multiple pathways to  
11 results I think is a very important one, because -- like  
12 when I went to school, the teacher teaches, and you  
13 listen and regurgitate back.

14 SENATOR OROPEZA: Well, let me suggest to you  
15 that culture plays a very important part in whether or  
16 not a kid can learn, because if a teacher doesn't  
17 understand that the use of certain language -- for  
18 instance, I'm sure as an African-American, you can  
19 relate to the concept of language being effective or not  
20 effective, as simple as that, or as complex as something  
21 much more complicated.

22 If parents aren't approached appropriately, if  
23 children aren't approached appropriately, if we don't  
24 take it where they are instead of the reverse, we miss  
25 the boat on a lot of youngsters. And I would just draw

18

1 your attention to schools where that change has been a  
2 focus of the energy of the school.

3 In other words, for instance, in Long Beach  
4 where there were significant populations of Cambodian  
5 young people in the school, when the principal took on  
6 the challenge of educating every teacher about some  
7 cultural aspects that might be relevant to the  
8 classroom, relevant to the teacher- parent relations,  
9 the test scores went up. That's not the only dynamic,  
10 but it was a huge part.

11 So let me just suggest to you that you give  
12 more thought to how that impacts education, how  
13 profoundly it can affect a child's openness or  
14 non-openness to being educated by the teacher who, not  
15 with any ill-will, but just out of their ignorance does  
16 not go where the child's culture goes.

17 Finally, let me ask a question about the  
18 diversity. Diversity is a very important issue to me,  
19 diversity on our boards, commissions, and every  
20 governor's body, including our own Senate, which I  
21 continue to fight for this very issue that I'm going to  
22 ask you about, and that is the gender imbalance on this  
23 board.

24 I know there are eight men and two women  
25 serving on the board, and certainly there are at least

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1 half of our young people who are female. And I'm just  
2 wondering, given that dynamic, how you outreach or how  
3 you attempt to seek input from the women -- from women  
4 about what should be going on at the Board of Education  
5 since there don't seem to be a lot of female members.

6 MR. JONES: Well, I think that's a very good  
7 observation, very good question. First of all, I hope  
8 we see that dynamic change, because my hope is that the  
9 state board should reflect our state and our community  
10 and our schools, which as you well know are very heavily  
11 minority students, and, obviously, 50 percent of our  
12 students are likely female. So, obviously, I hope that.

13 I think in terms of what I do, and I can't  
14 honestly say I've done a whole lot of this, but I do  
15 want to seek out input from all the stakeholders,  
16 whether they're women, or minorities, or whoever they  
17 happen to be. So that will clearly be something that  
18 I'll work at.

19 SENATOR OROPEZA: Thank you. Thank you.

20 MR. JONES: I'll give you my commitment I'll  
21 work hard at it. I'll work hard at that.

22 SENATOR OROPEZA: Thank you. Until we get more  
23 members, it's the responsibility of some of the men to  
24 also convey that perspective and to seek out those  
25 viewpoints.

20

1 Thank you very much, Mr. Chairman.

2 CHAIRMAN STEINBERG: Thank you very much,  
3 Senator Oropeza. I would echo, certainly, those last  
4 comments in a very serious way.

5 I would like to ask -- I suppose make a comment  
6 and ask a couple of questions, if I might.

7 We've had the opportunity to meet Mr. Jones a  
8 couple of times, including this morning, and I enjoyed  
9 it very much. Obviously, a sincere and very  
10 accomplished person.

11 What I would like to suggest to you, though, is  
12 that as you go forward with your full-term members of  
13 the State Board of Education, that you focus, because  
14 I'll always remember sort of the advice I got when I was  
15 newly elected to the State Assembly, and it's advice I  
16 try to pass on to new members all the time. They say,  
17 "What's the key to success and making an impact?"

18 I was told the key is to -- You can't solve  
19 every problem, you can't lead on every issue, but you  
20 can pick a couple of things that really matter that  
21 maybe others are not paying sufficient attention to, the  
22 body politic is not paying specific attention to, and  
23 you can drive them.

24 So when you talk about the achievement gap, of  
25 course that's the issue of our time, in my view. And

21

1 when you talk about, you know, some of the process-  
2 related things that you've done on the board, like  
3 organize the retreat in which you urged the achievement  
4 gap be part of every agenda, I would like to suggest to  
5 you that you think about taking a subset of the  
6 achievement gap issue and driving it.

7 Now, I have my favorite issue, which the  
8 members have heard me talk about every time we talk  
9 about the State Board of Education, and that's the  
10 drop-out rate, because the drop-out rate may not be  
11 everything, but I think it's a real window into the  
12 achievement gap. And it's also something that is  
13 tangible enough that if we set a goal, as policymakers,  
14 to reduce or eliminate over time, we can actually  
15 measure it and potentially achieve it, and in doing so  
16 reduce the achievement gap.

17 So I would like to ask you your view on the  
18 drop-out issue. I suppose the easy answer would be:  
19 I'm against people dropping out.

20 MR. JONES: You just took my answer away.

21 CHAIRMAN STEINBERG: I took the answer away,  
22 right, right.

23 But specifically, the board has before it my  
24 Senate Bill 219 in which the board is empowered to  
25 decide just how large of a factor the drop-out rate

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1 ought to be in the academic-performance index, because,  
2 as you know, the API is largely based now in test  
3 scores; and 219 says "as drop-out rate," and leaves it  
4 to you and your fellow board members to determine what  
5 weight that should have. I'd like your perspective on  
6 that issue going forward, please.

7 MR. JONES: Okay. To the first more general  
8 issue, obviously, I agree with your statement. I'm  
9 against that. But because of this -- and we all know  
10 this -- the drop-out rate closes some very promising  
11 doors and it opens some very dangerous ones for kids.  
12 And it ultimately impacts things like the achievement  
13 gap; it impacts things like crime; it impacts things  
14 like drugs; it impacts things like teen pregnancy. So I  
15 know that's an objective, and I know you would certainly  
16 agree with that.

17 But I agree with you. I think it's time for  
18 more action. I think it's time for more focus,  
19 specifically on the drop-out issue. I think it's time,  
20 and I am not only willing but anxious to carry forward  
21 the implementation of 219, because I think it is what  
22 will provide the kind of focus and oversight and  
23 accountability to get to put attention on this issue. A  
24 lot of people talk about it, and everybody thinks it's a  
25 bad thing and we need to do something about it, but it's

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1 time for us to begin to move to action. So I think  
2 that -- I'm very anxious to do that, number one.

3 Number two, as I mentioned to you this morning,  
4 Senator, for the other senators, in the last 18 months  
5 I've been involved for my organization, State Farm, who,  
6 by the way, I just retired from last Friday, so I'm not  
7 part of State Farm anymore --

8 CHAIRMAN STEINBERG: Congratulations.

9 MR. JONES: Thank you.

10 CHAIRMAN STEINBERG: But you are still like a  
11 good neighbor.

12 MR. JONES: They still are sending me a check.

13 But I travel around the country addressing just  
14 this issue. I worked on behalf of our president and CEO  
15 of our parent company working with America's promise on  
16 creating a drop-out strategy. And part of that strategy  
17 was we held, I think, nine -- we don't call it this --  
18 drop-out summits where we got in front of kids and asked  
19 them, "Why did you drop out?" and they gave us all the  
20 reasons. Then we got in front of people like us and  
21 said, "Okay. Let's take that and create strategies to  
22 address it." Talked to probably over 3,000 kids, and  
23 the issues are those that we're all familiar with, but  
24 it has led me to some conclusions about this.

25 Number one is that the -- the issue that you

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1 just talked about. We've got to give attention to it,  
2 we've got to make accountability, we've got to expect  
3 that there -- I think we've got to expect every school  
4 district to have a strategy to address.

5 CHAIRMAN STEINBERG: Excuse me. Just to get to  
6 the subset of my other question, I'm not asking you for  
7 a number, because I'm not trying to ask you to  
8 pre-decide, but what weight in general do you think the  
9 drop-out rate ought to have in the academic performance  
10 index?

11 MR. JONES: I can't give a number.

12 CHAIRMAN STEINBERG: I don't want a number.

13 MR. JONES: I think it has a significant  
14 weight, because I think it has a lot to do with the  
15 drop-out rate. And I think if we can keep kids in  
16 school -- for kids being in school, that means they're  
17 more excited about school. That means they're more  
18 wanting to be there, wanting to be there, and they're  
19 going to be, hopefully, more engaged.

20 CHAIRMAN STEINBERG: Okay. Thank you. Maybe I  
21 can move on, if you don't mind, to the other areas, and  
22 that is: We've been very concerned, many of us in the  
23 legislature, about the CAHSEE exam as applied to special  
24 education students, especially those with developmental  
25 disabilities, and the lack of board action on actually

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1 aggressively attempting to develop rigorous but  
2 alternative assessments so that those with ability but  
3 also certain disabilities can, in fact, proudly hold a  
4 high-school diploma and go on to higher forms of  
5 education. And that doesn't happen now except through a  
6 local waiver process, which is rather inefficient, and  
7 there isn't a standard across the board.

8 What will you do, if you are confirmed, to make  
9 sure that this issue is dealt with at the board level?

10 MR. JONES: I think the waiver process is  
11 inadequate in dealing with this. I really do. I think  
12 identifying ways for young people that want to take the  
13 exam to take the exam. And there are people that,  
14 through no fault of their own, are unable to do that.

15 So I would very much support and, again, as I  
16 said with the other issue, I'm very much willing to move  
17 that forward in our agenda as a state board, to address  
18 the issue of alternative assessments for kids with  
19 disabilities.

20 CHAIRMAN STEINBERG: And you will do that; you  
21 will agendize that?

22 MR. JONES: Yes, I will.

23 CHAIRMAN STEINBERG: Okay. Last question on  
24 algebra, the very controversial eighth-grade algebra  
25 requirement, which I think we might have a disagreement

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1 on that, and that's okay, because reasonable people can  
2 disagree on that.

3 But what we talked about in my office and what  
4 I would like to just explore briefly with you is the  
5 seeming lack of an implementation plan for how to  
6 actually make that aspiration, which everyone agrees is  
7 a good aspiration, how to actually make it work.

8 And so I wonder if you could talk about whether  
9 you've learned any lessons from that experience. As you  
10 think about the big policy initiatives going forward, is  
11 it essentially to have an implementation plan at the  
12 same time you pass a sweeping policy that calls for  
13 action?

14 MR. JONES: Yeah, I think in my first ten  
15 months, that's probably a great lesson learned.

16 CHAIRMAN STEINBERG: Okay.

17 MR. JONES: I think philosophically, as I said,  
18 I believe it's the right thing, because I believe it's  
19 the right thing for kids, to set that aspiration for  
20 kids. But I would also be willing to say that probably  
21 our implementation wasn't as strong as the aspiration.  
22 So I think, certainly for me, it's a lesson learned.  
23 And I think, as we think about policy, it's important to  
24 think about how do we implement things we want to do,  
25 and I think that applies to a lot of -- yes. There is a

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1 ever-changing state, very dynamic, and we have to be  
2 very sensitive and thoughtful about those demographic  
3 changes and the changes in the workforce, and the aging  
4 of our workforce. So we have to make -- Whatever  
5 changes we must make must be urgent, thoughtful but  
6 urgent on these matters.

7 And I want to re-emphasize for you, English-  
8 language learners and English-language learning is a  
9 priority for the Spanish-speaking community, and we need  
10 people to recognize that and put the resources that are  
11 essential for that. We need to prepare a new workforce  
12 for the future.

13 And I would say to you, you need to know that  
14 the Spanish-speaking community is anxious to learn  
15 English, and we should be responsive to that with the  
16 commitment of resources for that community to learn  
17 English, to integrate themselves linguistically in our  
18 society, and we cannot wait for politics.

19 But this is really a need for a thoughtful  
20 policy of making that type of investment. It's  
21 important not just for our democracy and integration of  
22 these communities, but it's important for our economy  
23 and our future.

24 CHAIRMAN STEINBERG: We will let you answer  
25 that or respond to that in your closing.

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1 lesson learned.

2 SENATOR OROPEZA: Would it be okay if I  
3 followed up? Just a brief follow-up.

4 CHAIRMAN STEINBERG: Go ahead.

5 SENATOR OROPEZA: That is to say that that is a  
6 very important lesson to learn as a policymaker, whether  
7 you're a senator or a member of a state board.

8 Practicality, on-the-ground reality, has to  
9 kick in. We don't have the good fortune of being able  
10 to just philosophize about what-ifs. We have to really  
11 adopt laws and regulations that work on the ground.

12 So I'm glad to hear you learned that lesson.  
13 It's one that all of us have to learn as we go forward,  
14 and we're criticized when we don't. And I agree, it is  
15 an important -- very important issue going forward.

16 MR. JONES: Thank you, Senator.

17 CHAIRMAN STEINBERG: Are there other members  
18 that have questions and comments for the nominee?

19 SENATOR CEDILLO: My colleague had an  
20 observation.

21 CHAIRMAN STEINBERG: No, he didn't. Go ahead,  
22 Senator Cedillo.

23 SENATOR CEDILLO: I don't want to delay this.  
24 I share the viewpoints of my colleagues.

25 Let me reiterate we do live in a very exciting

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1 MR. JONES: Okay.

2 CHAIRMAN STEINBERG: Thank you, Senator  
3 Cedillo.

4 Let's hear from the witnesses in support of the  
5 nominee. Glad to see a couple of my esteemed  
6 constituents here today.

7 MR. STONE: Good afternoon, everybody. I'm  
8 Aubry Stone, president/CEO of the California Black  
9 Chamber.

10 It's a very interesting day for me today. I  
11 came with the intent to speak on behalf of a person who  
12 has nothing but sincerity in his heart to try to move  
13 the agenda in the state of California, and that excites  
14 me. But then after my arrival, I saw a gentleman that  
15 supported the California Black Chamber in its infancy  
16 years up for nomination to the Parole Board, so if I  
17 don't bore you guys too much, I'd like to stick around  
18 and make some commentary on him as well.

19 CHAIRMAN STEINBERG: You're welcome to.

20 MR. STONE: He's just an outstanding citizen.

21 But Greg, right now I'm very humbled by the  
22 opportunity to make some comments on his behalf. For  
23 those that know me, Senator Dutton, yourself, and  
24 Cedillo, you know I'm not very humble, so this really is  
25 very special.

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1 Going back to the senator's statement, and I  
2 just want to reiterate that is -- talking about the  
3 policy and the algebra thing that the chair brought up,  
4 I think that in reality, there's a conceptual approach;  
5 but then pragmatically, somebody has got to lay it on  
6 the table so that if it happens in three years, five  
7 years, whatever is realistic, because those people that  
8 come through the educational and academic arena, you  
9 know, to get to algebra and geometry, it's a stair step,  
10 adding, subtracting, multiplication, short and long  
11 division, before it all makes sense, but you got to get  
12 there.

13 We have -- As Senator Cedillo mentioned, we  
14 have a tremendous stimulus package that's coming down.  
15 Everybody knows it. Everybody knows we have this bond  
16 issue that's still being rolled out. You can't be a  
17 carpenter without having math skills. You can't do any  
18 vocational skills. So anybody that raises the issue to  
19 raise the expectations.

20 In going to the chair's statement, you know,  
21 his subset is drop-out, and that's a great subset. My  
22 subset is expectations. I truly think that anybody that  
23 makes part of their mantra the expectations of our young  
24 adults, because we keep talking about the end-result  
25 ills, the overcrowding in prisons, the lack of revenue,

31

1 all of these things, if you dig down and roll your  
2 sleeves up, comes from the lack of basic education.

3 So, you know, to have this type of individual  
4 with his kind of courage, his vision, and I'm sure he's  
5 going to modify his implementation skills, you know, we  
6 just hit a ball out the park today. I'm glad to see  
7 him.

8 CHAIRMAN STEINBERG: Thank you very much.

9 I know there are a lot of witnesses. I would  
10 ask the witnesses if you would be brief, we'd appreciate  
11 it.

12 Council Member Shelby.

13 MR. SHELBY: Honorable Senator Darrell  
14 Steinberg, my state Senators, as president of the Urban  
15 League and also mayor of Citrus Heights --

16 CHAIRMAN STEINBERG: Mayor Shelby.

17 MR. SHELBY: -- I'm honored to be here this  
18 afternoon.

19 CHAIRMAN STEINBERG: Thank you.

20 MR. SHELBY: To other distinguished  
21 colleagues --

22 I know I'm not going to get the same time Aubry  
23 got.

24 CHAIRMAN STEINBERG: Aubry always gets the most  
25 time. That's the rule. That's the rule.

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1 MR. SHELBY: I'm here today because I have a  
2 lot of respect for Greg Jones as an individual, as a  
3 corporate leader, and as a man of compassion. I've seen  
4 his hard work in terms of bringing corporate dollars to  
5 Los Angeles Urban League, millions of dollars in terms  
6 of commitment to the strategic plan. Of course some of  
7 those millions didn't roll up to Sacramento, but I still  
8 love him anyway.

9 In the National Urban League, he has been a  
10 national board member. Greg helped start a new program  
11 called New Lights. Every summer, 2,000 young people  
12 across the country come to the National Urban League  
13 convention. They spend a week at a college campus in  
14 the city where the Urban League's national conference is  
15 held and talk about leadership, and it was Greg's  
16 support from State Farm that made that possible. And  
17 the program still exists today.

18 I know his compassion for education. We may  
19 not agree on everything, but I want someone on the state  
20 board where if I have a problem, I can sit down and talk  
21 to. And that's what I ask for.

22 Darrell, you know my commitment to dropouts.  
23 We graduated over 1200 dropouts from Sacramento Urban  
24 League since 1995. That is a mainstay of our  
25 organization. We also know about expectations. Poor

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1 kids in poor neighborhoods, we know, are taught by not  
2 the best teachers. That's a major problem as well. So  
3 when we address the system, the policy at the state  
4 level is one thing. We have to make sure that the  
5 expectations of the classroom is the same in poor  
6 neighborhoods as it is in middle-class neighborhoods.

7 I'll sum up by saying this: I'm from a middle-  
8 class family. I worked to get there. And my kids went  
9 to school. They're all college graduates, but I've  
10 always had to go to the school because the teachers'  
11 expectations were not as high as mine.

12 CHAIRMAN STEINBERG: Thank you very much,  
13 Mayor Shelby. Appreciate all your good work and your  
14 testimony.

15 Again, briefly, please. Name, rank, serial  
16 number.

17 MS. BELISLE: Rae Belisle, CEO of Ed Voice, a  
18 statewide advocacy network supporting low-income and  
19 minority children, and we are thrilled to see the  
20 leadership that Greg Jones brings for those children at  
21 the state board, and we support his confirmation.

22 CHAIRMAN STEINBERG: Thank you, Ms. Belisle.  
23 Appreciate it.

24 MS. GRIFFITH: Good afternoon. Sherry Griffith  
25 with the Association of California School

34

1 Administrators. Our board interviewed Mr. Jones and  
2 were persuaded by three important factors, and you heard  
3 these today.

4 His support for local control tied to results,  
5 his support for equity but without an etiological bias,  
6 very open-minded to different approaches, and his belief  
7 that strong leaders equal strong schools, which is near  
8 and dear to our hearts, and we encourage his  
9 appointment.

10 CHAIRMAN STEINBERG: Thank you.

11 MR. JONES: Mr. Chairman and members,  
12 Branche Jones, California Charter Schools Association.  
13 We support the nominee. We love his commitment to  
14 education, first of all, and we think he brings a needed  
15 diversity to the State and State Board of Education.

16 CHAIRMAN STEINBERG: Thank you, Mr. Jones.

17 MS. KEYS: Good afternoon. Deborah Keys, vice  
18 president of VAAS, Voices for African-American Students.  
19 It's a group of educators and community members across  
20 the state of California that advocate the -- closing the  
21 achievement gap of African-American students.

22 Mr. Jones has been a key supporter and leader  
23 at a time so critical to the future of our state. His  
24 experience as a business leader enables him to  
25 understand the quality of education our students need to

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1 be successful in a global economy.

2 As a state board member, Mr. Jones has  
3 consistently proven to be someone who is driven by what  
4 is best for all students. He consistently supports  
5 legislation and policies that positively affect  
6 California students. Mr. Jones is a role model and an  
7 advocate for children.

8 It is extremely important that we continue to  
9 support high-quality leaders such as Mr. Jones, on whose  
10 leadership we depend, and it is without reservation that  
11 VAAS enthusiastically endorses the confirmation of  
12 Mr. Jones.

13 CHAIRMAN STEINBERG: Thank you very much.  
14 Appreciate it.

15 MS. KEYS: Thank you.

16 MR. LANICH: Good afternoon. Jim Lanich,  
17 president of California Business for Education  
18 Excellence. I'm here advocating for Mr. Jones's  
19 confirmation on behalf of California Business for  
20 Education Excellence, the California Business Round  
21 Table, and the Cal Chamber.

22 What you heard from Mr. Jones today is from the  
23 heart. He means it. I can say that. I work with him  
24 all day, every day, 24/7, and we're absolutely honored  
25 that he's sitting here before you, and we urge your

36

1 confirmation.

2 CHAIRMAN STEINBERG: Thank you. Appreciate it.  
3 Mr. Lee. Welcome. Good to see you. Another  
4 constituent.

5 MR. LEE: Thank you, Senator Steinberg. My  
6 name is Larry Lee on behalf of *The Sacramento Observer*  
7 and the California Black Media. We'd like to  
8 wholeheartedly support this nomination. We think  
9 Mr. Jones brings a unique perspective to the problems  
10 that face the achievement gap in California.

11 As a member of the media, it's important that  
12 we can look at it from an outsider's view and see he has  
13 outreached to our communities in a variety of ways, so  
14 we wholeheartedly support him.

15 CHAIRMAN STEINBERG: Thank you very much,  
16 Mr. Lee.

17 Are there any witnesses in opposition to the  
18 nominee? If not, I'd like to take a motion.

19 SENATOR OROPEZA: Moved.

20 CHAIRMAN STEINBERG: Moved by Senator Oropeza.

21 Just a brief comment. I'm proud to support  
22 your nomination as well and know that you have taken  
23 this process and the comments today very constructively.  
24 And I just want to clarify one thing. It doesn't have  
25 to be the drop-out rate as your subset. It happens to

37

1 be mine. But I do think that part of leadership,  
2 especially on a board like this, is to focus on a subset  
3 of the larger problem and be the person known for  
4 driving that change, because to be too much of a  
5 generalist, in my view, leaves you a mile wide and kind  
6 of an inch deep when it comes to actually trying to  
7 effect some of the change that you are committed to.

8 So I would ask you to think about that as you  
9 begin your four-year service.

10 MR. JONES: Absolutely will. Thank you very  
11 much, Senator.

12 CHAIRMAN STEINBERG: Thank you, Mr. Jones.  
13 Let's call the roll on the motion.

14 MS. BROWN: Senator Cedillo.

15 SENATOR CEDILLO: Aye.

16 MS. BROWN: Cedillo aye.

17 Dutton.

18 SENATOR DUTTON: Aye.

19 MS. BROWN: Dutton aye.

20 Oropeza.

21 SENATOR OROPEZA: Aye

22 MS. BROWN: Oropeza aye.

23 Aanestad.

24 SENATOR AANESTAD: Aye.

25 MS. BROWN: Aanestad aye.

38

1 Steinberg.  
2 CHAIRMAN STEINBERG: Aye.  
3 MS. BROWN: Steinberg aye.  
4 CHAIRMAN STEINBERG: Thank you very much,  
5 Mr. Jones. Your nomination will go to the floor of the  
6 state Senate either tomorrow --  
7 MS. BROWN: Next week.  
8 CHAIRMAN STEINBERG: Early next week.  
9 Let's lift the call on reference to the bill  
10 that was file item one, please.  
11 MS. BROWN: Senator Cedillo.  
12 SENATOR CEDILLO: Aye.  
13 MS. BROWN: Cedillo aye.  
14 Dutton.  
15 SENATOR DUTTON: Aye.  
16 MS. BROWN: Dutton aye.  
17 CHAIRMAN STEINBERG: All right. That passes  
18 five to nothing.  
19 All right. We're going to move to Mr. Arthur  
20 Anderson. I'm not sure if there's anyone here in  
21 particular to introduce you, Mr. Anderson.  
22 MR. ANDERSON: No, sir.  
23 CHAIRMAN STEINBERG: Welcome up. Brief opening  
24 statement here.  
25 In view of the Rules Committee, at least the

39

1 history of the Rules Committee, these confirmation  
2 hearings for the Board of Parole are particularly  
3 important, because the hearings that you conduct as  
4 members of the Board of Parole are conducted entirely  
5 outside of the public's view, and so our job is to shine  
6 some light on the process. And that, of course, is our  
7 job.  
8 We have many members, actually, that we know we  
9 will be hearing as nominees to this board in the next  
10 several months, and for you, Mr. Anderson, as the first  
11 one, and for all of the subsequent members, we're going  
12 to ask, fundamentally, the following two questions: Can  
13 the appointee, one, provide fairness to all parties in  
14 the so-called lifer hearing process? And, two: Given  
15 sort of the political volatility and public nature of  
16 some of these decisions that you're called upon to make,  
17 does the appointee have the courage to act independently  
18 to determine who genuinely poses an unreasonable risk to  
19 public safety.  
20 So with that, I welcome you to the committee.  
21 If there's any family member or anybody special in the  
22 audience that you want to introduce, please do so. Give  
23 us a brief opening statement, and then we will open it  
24 up for questions.  
25 Senator Cedillo, before that.

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1 SENATOR CEDILLO: I appreciate setting the  
2 framework, because I think it's important. The recent  
3 history has been the governor has been insistent on  
4 sending people before us who are good people, competent  
5 in many areas, but who all come from professions that  
6 have as their objective, basically, putting people in  
7 jail or keeping them in jail.  
8 So it seems unfair to the candidates when there  
9 is not a mix, when there is not a balance as the law  
10 requires. There's not the diversity that the law  
11 requires. It's unfair to those candidates, because they  
12 have a burden. Each one then comes as a candidate whose  
13 sole training has been to put people in jail, to enforce  
14 the law, and therefore have a bent or a bias towards  
15 that.  
16 And then they're asked to come before us as the  
17 candidate who is not in compliance with the articulated  
18 intent of the law, the letter of the law, and so it's  
19 unfair to them, because we have to look at what the law  
20 requires, and if it's a diverse board. We have yet to  
21 see candidates who reflect that diversity. It's unfair  
22 to this candidate and to others.  
23 And then we know that we have the recent  
24 passage of propositions which add a burden on these.  
25 You want them to be courageous and fair, but it's very

41

1 challenging for them, given, one, their training; given,  
2 two, the pool that they're taken from; and, three, the  
3 recent legislation.  
4 So I think we have to really ask the candidates  
5 how can they overcome that to see that justice that is  
6 articulated in the law, that we're trying to implement  
7 here, is realized, given those burdens. And I think  
8 that's, really, a necessary question.  
9 CHAIRMAN STEINBERG: You remind -- and, again,  
10 we're going to get right to you, Mr. Anderson, but I do  
11 think it's important to understand what the role of the  
12 member of the Board of Parole Hearings is, because  
13 before I took this job, I didn't understand exactly how  
14 it works, and now I do. And it's important to put it  
15 out to the public.  
16 There are 17 members of the board. Twelve  
17 members hear what are known as adult indeterminant life  
18 cases and five hear juvenile cases. What this board  
19 does not do, and this was my impression before, again, I  
20 got into this, adult members do not do parole  
21 revocations, only what are known as indeterminant lifer  
22 parole suitability hearings.  
23 In other words, in an indeterminant sentencing,  
24 somebody is sentenced seven years to life. At seven  
25 years, they get an indeterminant parole hearing. Now to

42

1 complicate it a little bit with the passage of  
2 Proposition 9, if that parole is denied the first time,  
3 Prop 9 now says that the presumption is they don't get  
4 another parole hearing for 15 years, and of course the  
5 old standard used to be between one and five years.

6 Now the board itself -- and this is why these  
7 are very powerful positions -- can say, Well, by clear  
8 and convincing evidence, this person ought to at least  
9 be considered for parole at some point in time less than  
10 15 years.

11 So that's the -- That's the nature of the job  
12 we are talking about here, and I think that's important  
13 for everyone to understand as you go forward. Okay.

14 MR. ANDERSON: Okay.

15 SENATOR DUTTON: Senator --

16 CHAIRMAN STEINBERG: Yes, Mr. Dutton.

17 SENATOR DUTTON: This has come up before  
18 regarding the apparent makeup of the board, and so I  
19 actually did some research regarding the penal sections  
20 that involve the selection of the commissioners and  
21 deputy commissioners. While it's true it says that  
22 the -- "by Governor, confirmation of the Senate, it  
23 should reflect as near as possible a cross-section of  
24 racial, sexual, economic, and geographic features of the  
25 population of the state."

43

1 It also says under Penal Code 5075.6(d)  
2 "Commissioners and deputy commissioners hearing matters  
3 concerning adults under their jurisdiction," and it  
4 talks about what they do, and then it goes down and it  
5 says "Insofar as practical, commissioners and deputy  
6 commissioners shall have a varied interest in adult  
7 correction work, public safety, and shall have  
8 experience or education in the fields of correction,  
9 sociology, law enforcement, medicine, mental health, and  
10 education."

11 So this specifies that they want to have some  
12 kind of association with that, at least that's what this  
13 code says.

14 SENATOR CEDILLO: Right. You're right on  
15 point. It says "varied." It means, for example, not  
16 just the DA, but the public defender.

17 SENATOR DUTTON: Well, every one of the  
18 hearings are by people we confirm, but also it's a  
19 deputy -- it's usually somebody who's from the defense  
20 that sits at a two-man panel that make these  
21 determinations.

22 CHAIRMAN STEINBERG: I don't want to digress  
23 too much here. I think that what is clear, and, again,  
24 we're going to take Mr. Anderson's nomination as an  
25 individual on the merits, but there is a broader context

44

1 here in terms of sort of an, A, ongoing maybe  
2 philosophical disagreement about the diversity of  
3 appointees. Democrats feel that there should be more  
4 than just folks from the law-enforcement community. I  
5 heard sociology and mental health in that description.

6 SENATOR OROPEZA: And medical.

7 CHAIRMAN STEINBERG: Mr. Dutton, I think, is  
8 trying to defend the position that people ought to have  
9 some ongoing connection to law enforcement or to  
10 corrections. We're not going to resolve that in terms  
11 of a policy body here. We need to hear the nominee.  
12 But we're setting the stage, really, for future  
13 nominations as well.

14 Go ahead, Senator Aanestad.

15 SENATOR AANESTAD: And yet nobody has  
16 mentioned, I think, what all of us and all of the people  
17 on the board are interested in and have to have as the  
18 primary reason, and that is not necessarily to put  
19 people in jail, but to protect the public. And I think  
20 we're talking about protecting the public. That's what  
21 we should be thinking of when we're talking about law  
22 enforcement, rather than saying, "All they want to do is  
23 put people in jail."

24 CHAIRMAN STEINBERG: Yes. Okay.

25 Mr. Anderson, what do you think of all of this?

45

1 SENATOR OROPEZA: Make your opening statement  
2 first.

3 MR. ANDERSON: Sir, I'm just happy to be here.  
4 I realize I'm the first one out, and I'm here to ask you  
5 to judge me as an individual. I'm here to ask you to  
6 judge me on my record. I'm here to explain to you my  
7 philosophy. And I know you're going to do that.

8 You look at my application and my resume. My  
9 resume is diverse. I worked my way up through the ranks  
10 of state government, and that includes law enforcement.  
11 I'm proud of my record as a law-enforcement officer,  
12 because it involves a record of fairness. It involves a  
13 record of versatility. You look at some of the programs  
14 I've developed and the organizations I've been involved  
15 in, they're diverse. They're not about always putting  
16 people in jail, because I believe, as a member of this  
17 community, you got to be part of a solution, not always  
18 part of the problem.

19 And it's true. Our job is -- When I was in the  
20 law enforcement, it was protecting, but I've been an  
21 administrator for 30 years. And I've been -- I've seen  
22 what it takes to have fair laws and to have fairness in  
23 what we do when I was in the law-enforcement arena. And  
24 now I have the opportunity to be in this job. And I've  
25 demonstrated the ability to think objectively, to be

46

1 fair and impartial in my hearings, to treat people with  
2 respect and give hearing decisions that are sound based  
3 on the regulations that are provided to us.

4 You look at some of the programs that I've been  
5 involved in in this community, and we talk about things  
6 like the Special Olympics. You look at the March of  
7 Dimes. I've been involved in the March of Dimes where  
8 we raised \$1.5 million this year. I'm proud of that.  
9 I'm proud of my involvement in the Boys' and Girls'  
10 Club. I'm proud of my involvement in Chips for Kids.  
11 We've raised money for toys. So my background is  
12 diverse.

13 I have educational achievements. I have a  
14 master's degree. I've gone to U.C. Davis and expanded  
15 my educational opportunity. So I know what it takes to  
16 be involved in a community. And I know what  
17 communities, the various communities, expect of their  
18 public servants, because I've been one for 35 years.

19 Thank you.

20 CHAIRMAN STEINBERG: Okay. All right. Thank  
21 you, Mr. Anderson. Let me -- You have a commendable  
22 record of community involvement and care for people.  
23 That's obvious.

24 I want to hone in a little bit on your  
25 philosophy in terms of the way you look at the cases.

47

1 an opportunity to look at the psychological report from  
2 a professional's point of view, and I use that  
3 psychological evaluation as a jumping off place to ask  
4 specific questions and to determine suitability factors.

5 Does the inmate have a knowledge of why this  
6 occurred? Does he have a proper insight in terms of  
7 dangers? And then I use that as a tool, and I, along  
8 with the deputy commissioner, determine if that  
9 psychological report is appropriate, and we use it as a  
10 tool to help us arrive at a decision at that time.

11 CHAIRMAN STEINBERG: My final question for now  
12 is to ask you to respond to -- or your interpretation of  
13 Proposition 9, which -- and its impact on the way you  
14 conduct a hearing.

15 Do you begin with a 15-year presumption if  
16 somebody is seeking another parole hearing after having  
17 been denied initially, or do you believe that in most  
18 cases, that 15 years is far too long for someone to wait  
19 for another evaluation?

20 MR. ANDERSON: Well, sir, I realize that the  
21 Prop 9 had a chilling effect on the whole process, and  
22 what I do is I weigh each case independently. Some  
23 cases will warrant a 15-year denial, and some cases will  
24 not.

25 What we look at is the measure, the yardstick.

49

1 Let's start out with the most basic. Title 15 states  
2 prisoners shall be found unsuitable, quote, "if a  
3 prisoner will pose an unreasonable risk of danger to  
4 society if released."

5 Now that's sort of a basic definition, but  
6 could you maybe describe with a little bit of detail how  
7 you interpret that standard? What are you looking for  
8 in determining whether somebody is an unreasonable risk  
9 of danger?

10 MR. ANDERSON: Well, sir, what I use is all the  
11 tools that are available to a panel member. I'll look  
12 at: Is the person a reasonable -- like you say, a  
13 danger to society? I start with the suitability  
14 factors. Does the person have remorse? Does the person  
15 have a significant stress in their life that contributed  
16 to the crime? Those kinds of factors. I look at their  
17 institutional adjustment, and I also look at their  
18 current mental and past state of how they are at this  
19 time. And I also look at their parole plans in terms of  
20 getting out of the institution. And so I heavily  
21 weigh -- I weigh each one of those factors.

22 CHAIRMAN STEINBERG: How much do you rely on  
23 the psychological evaluation?

24 MR. ANDERSON: The psychological evaluation,  
25 sir, is a tool. The psychological evaluation gives me

48

1 Is there a clear and convincing reason why this person  
2 should have a hearing.

3 CHAIRMAN STEINBERG: Can you give two brief  
4 examples, one in which you believe the 15 years was  
5 appropriate and one in which you believe the 15 years  
6 was far too long, just so we get a real life sense. Not  
7 names.

8 MR. ANDERSON: A good example of one where  
9 a 15-year denial would be appropriate would be a person  
10 who has poor institutional adjustment. They've been in  
11 trouble.

12 CHAIRMAN STEINBERG: In the prison?

13 MR. ANDERSON: In the prison system. They have  
14 a record of violence that's ongoing. They've been in  
15 ad seg, which is administrative confinement, better  
16 known as solitary confinement. They have poor insight  
17 as to the causative factors of the crime. They have  
18 no remorse as to the causative factors of the crime.  
19 And also, they don't have any realistic parole plans,  
20 should they receive a date. Those are the kinds of  
21 persons that more than likely will receive a 15-year  
22 denial.

23 The other part of it is that the people that  
24 drop down into the three, five, seven-year denial. Is  
25 that what you're asking me, sir?

50

1 CHAIRMAN STEINBERG: Yes. An example of  
2 someone who drops down to a much shorter period between  
3 hearings, and what is your justification for doing so  
4 when you do so.

5 MR. ANDERSON: Well, more than likely the  
6 individual who dropped down to a shorter period of time  
7 has institutional adjustment. They have made a  
8 significant institutional adjustment over the years.  
9 They have remorse. They have parole plans. There's  
10 something in their background or something in the  
11 hearing that comes out that says they need another  
12 period of confinement to erase these discrepancies,  
13 maybe it be three, five, or seven years.

14 CHAIRMAN STEINBERG: Thank you very much.  
15 Let's ask other members.

16 Questions?

17 SENATOR OROPEZA: Okay.

18 CHAIRMAN STEINBERG: Go ahead.

19 SENATOR OROPEZA: Hi, I have one question, and  
20 it relates to a specific in one of your cases.

21 You know, I feel that faith can play a very  
22 important role in rehabilitation.

23 MR. ANDERSON: Yes, ma'am.

24 SENATOR OROPEZA: I wonder about how you factor  
25 that into all these other elements that you just

51

1 discussed, and the reason why I asked that is -- Let me  
2 share with you a quote that I have from one of the  
3 hearings. And the question that you asked the potential  
4 parolee was, and I'll read it directly, "Did the Lord  
5 Jesus Christ forgive you for your actions?"

6 Now, my question about that is: Is there a  
7 right answer to that to open the door, or is there a  
8 wrong answer, or how do you factor that in?

9 MR. ANDERSON: There is no wrong answer. I  
10 just want -- I don't know the specific hearing, but I  
11 was using that line of questioning to determine how  
12 religion has changed this individual's life, and how  
13 much knowledge he has of religion.

14 SENATOR OROPEZA: This is asking if the Lord  
15 Jesus Christ forgave them. I'm a religious person  
16 myself. I think that's a pretty -- it's pretty --  
17 There's a great bound of assumption in that. It's a  
18 pretty heavy question.

19 MR. ANDERSON: Right. I wanted to see the  
20 response.

21 SENATOR OROPEZA: What do you do with that?

22 MR. ANDERSON: I realize if the person says  
23 yes, they're really truly involved in their religion;  
24 and if they say no, I don't take the question any  
25 further.

52

1 SENATOR OROPEZA: Okay.

2 MR. ANDERSON: Usually when I ask that  
3 question, they're the ones who have brought religion  
4 into the conversation, and then I ask the question.

5 The reason I bring that up is because religion  
6 played a significant part in my sister's rehabilitation  
7 when she got out of prison.

8 SENATOR OROPEZA: All right. Thank you.

9 MR. ANDERSON: You're welcome.

10 CHAIRMAN STEINBERG: I need to follow up on it,  
11 and I'm glad you asked the question, Senator Oropeza.

12 It was one element that concerned me as well,  
13 not because religion can't help somebody overcome, you  
14 know, their great struggles, but I was raised believing  
15 very strongly also in the separation of the church and  
16 state.

17 So what worries me a little bit is if his  
18 answer in this particular case or another particular  
19 case was no, whether or not that would negatively affect  
20 your -- your decision to grant the parole, because there  
21 may be many reasons why the answer would be no. Maybe  
22 they're --

23 SENATOR OROPEZA: A Muslim.

24 CHAIRMAN STEINBERG: Maybe a Muslim, they may  
25 not believe in Jesus Christ. Maybe they're an atheist.

53

1 It may be that they have other sources of spiritual  
2 guidance or other sources of motivation. So that  
3 bothered me too, so I really need some comfort that --

4 I'm not sure it's an appropriate question,  
5 first of all. But even if it arguably is, if the answer  
6 is no from the inmate, does that adversely affect your  
7 decision-making in any way?

8 MR. ANDERSON: Not at all, sir. That is not a  
9 suitability factor. That is a statement of conversation  
10 that I use when the inmate opens the door and they talk  
11 about their religion. It is part of getting relaxed and  
12 allows him the opportunity --

13 CHAIRMAN STEINBERG: You wouldn't initiate a  
14 discussion about religion?

15 MR. ANDERSON: No, not at all. I never do.

16 SENATOR OROPEZA: It's a follow-up.

17 MR. ANDERSON: Yes.

18 CHAIRMAN STEINBERG: Okay. Senator Aanestad.

19 SENATOR AANESTAD: As somebody who doesn't have  
20 a whole lot of knowledge about the whole process, I'm  
21 reading in the newspaper or seeing on television all the  
22 time about all of these people who seemingly get  
23 religion and get converted, and now they're trying to  
24 make themselves out -- "Well, now I'm a changed person."  
25 And while I believe that does happen, I very sincerely

54

1 believe that, I sometimes wonder how sincere it really  
2 is coming from some of these folks who use it as part of  
3 their overall statement.

4 And I think it's very inappropriate when  
5 somebody -- I'm assuming that the inmate has initiated  
6 that, with that kind of statement. I think it's a good  
7 follow-up to try to assess whether or not they truly are  
8 sincere and have an understanding about what it is  
9 they're purporting has changed their life.

10 CHAIRMAN STEINBERG: All right.

11 SENATOR OROPEZA: If I can.

12 CHAIRMAN STEINBERG: Yes.

13 SENATOR OROPEZA: I don't disagree with that,  
14 and as a Christian I just don't know whether a litmus  
15 test of my faithfulness would be if I thought that I had  
16 been forgiven yet.

17 CHAIRMAN STEINBERG: Or your particular faith.

18 SENATOR OROPEZA: Right.

19 CHAIRMAN STEINBERG: There's the relevance of  
20 the faith in the first place, and then it's, well, a  
21 particular faith, Jesus Christ, is appropriate.

22 SENATOR OROPEZA: What about the rest of the  
23 world?

24 CHAIRMAN STEINBERG: What about the rest of the  
25 world.

55

1 the Highway Patrol, and I said, "Art, would you work  
2 with me, because we're trying to find a way to be  
3 preventive. Forget the backside. If we can just say  
4 some things, do some things to push down the number of  
5 young -- especially African-American males going to  
6 prison, then would you join forces with me?" and he has  
7 never, ever, ever said no.

8 And we have done this all over the state. He  
9 did it on his own nickel, on his own time, took holiday/  
10 unpaid leave to come down and be a presenter for us.  
11 And for that I'll be forever grateful.

12 But more important than that, it goes to where  
13 his heart is on this issue, and I think in no uncertain  
14 terms that he will be very fair, unbiased in all his  
15 decisions as it pertains to our young men and women that  
16 are incarcerated. And, really, Prop 9, ooh, that's  
17 harsh. But anyway, I truly support Arthur.

18 CHAIRMAN STEINBERG: Thanks a lot, Aubry.

19 SENATOR OROPEZA: Mr. Chair, may I ask a brief  
20 factual question regarding the board itself and the  
21 membership? Can I ask for what an ethnic breakdown  
22 would be? I think we have that, but I'm not --

23 CHAIRMAN STEINBERG: Sure. Ms. Sabelhaus,  
24 Mr. Schmidt.

25 MR. ANDERSON: Yes, ma'am. We have nine males,

57

1 MR. ANDERSON: Senator, again, I want to  
2 reiterate I will use that as a suitability factor, and  
3 in all of the cases the inmate brings up the  
4 conversation themselves, and it has brought a variety of  
5 religions in these conversations, not just the Christian  
6 faith.

7 CHAIRMAN STEINBERG: Okay. All right. Very  
8 good.

9 Are their witnesses in support of the nominee?

10 SENATOR OROPEZA: He's back.

11 CHAIRMAN STEINBERG: Mr. Stone.

12 MR. STONE: I -- very briefly. I can just  
13 simply say that the relationship that the California  
14 Black Chamber has had with Arthur, both on the personal  
15 and professional level, is exemplary. And I would like  
16 to add, too, to the point of concern and --

17 First of all, I don't envy you to have to  
18 evaluate and go through the whole process, especially in  
19 this kind of arena.

20 CHAIRMAN STEINBERG: We sign up for this.

21 MR. STONE: I understand. I understand. This  
22 is 250 an hour before taxes.

23 But on a very serious note, we do a statewide  
24 leadership conference every year, have been doing it for  
25 the last 12 years, and I went to Arthur when he was with

56

1 three females, and three of the males are African-  
2 American.

3 SENATOR OROPEZA: And that's it? Everybody  
4 else is Caucasian?

5 CHAIRMAN STEINBERG: Of the 17.

6 MR. ANDERSON: Yes, ma'am. Well, I'm just  
7 talking about the adult side.

8 SENATOR OROPEZA: What about -- Can you share  
9 about on the other side? Is it the same? You don't  
10 know.

11 MR. ANDERSON: Sorry.

12 SENATOR OROPEZA: Well, I just want to say that  
13 given the demographics of our prison population, this is  
14 another area where I would be concerned about the  
15 profile, the lack of diversity in terms of -- I hope  
16 there's some gender difference in terms of the young  
17 people and relative to fairness and an opportunity to  
18 really relate to the totality of a human being and their  
19 culture. It just seems like it would be good to have a  
20 little more diversity on this.

21 CHAIRMAN STEINBERG: Mr. Dutton.

22 SENATOR DUTTON: I feel I have to add some more  
23 information, because actually I was really interested in  
24 some of the issues about the board and what their makeup  
25 was, because the people before us, the appointed

58

1 commissioners, they actually work -- when they have  
2 these hearings, they have a partner. It's a deputy  
3 commissioner who actually has civil service status.  
4 Most of them, 33 of them, actually, are former defense  
5 attorneys. In fact, a few of them are actually former  
6 lifer-inmate attorneys and parole attorneys, so there  
7 are actually quite a few civil-service-status deputies  
8 that they work with -- are actually coming out of the  
9 defense side of the ledger.

10 I think what we'll find in most of these cases,  
11 whenever they deny -- my understanding is whenever a  
12 parole is denied, it has to be a unanimous decision  
13 between the two hearing commissioners.

14 MR. ANDERSON: Yes, sir.

15 SENATOR DUTTON: Actually, if it's granted, it  
16 has to be a joint decision.

17 Now in your cases last year --

18 SENATOR CEDILLO: So they have veto power.

19 SENATOR DUTTON: Pardon?

20 SENATOR CEDILLO: The commissioner has veto  
21 power.

22 SENATOR DUTTON: Well, they both do.

23 My next point is: How many times in this last  
24 year, for example, have you disagreed with the  
25 commissioner -- the deputy commissioner who has civil-

59

1 service status, in a decision for that particular  
2 inmate?

3 MR. ANDERSON: One time, sir.

4 SENATOR DUTTON: How many times have you been  
5 in agreement?

6 MR. ANDERSON: I've had over 400 cases, and  
7 we've been in agreement in 99.9 percent of those cases.

8 CHAIRMAN STEINBERG: Thank you. Let's --  
9 Ms. Barankin, welcome.

10 MS. BARANKIN: Thank you. Mr. Chairman and  
11 members, Cathy Barankin, and I'm --

12 SENATOR CEDILLO: How many of those decisions,  
13 to be exact, was the deputy commissioner a defense  
14 commissioner?

15 SENATOR DUTTON: Well, out of the total pool,  
16 the numbers --

17 SENATOR CEDILLO: Not the total pool. I'm  
18 talking about his experience.

19 SENATOR DUTTON: I don't know.

20 SENATOR CEDILLO: We don't want to make an  
21 assumption of what the pool is as it reflects his --

22 SENATOR DUTTON: I've given you --

23 CHAIRMAN STEINBERG: Let him finish.

24 SENATOR CEDILLO: Let me finish, with all due  
25 respect.

60

1 With specificity, you've articulated that only  
2 on one occasion he disagreed, but we'd like to know with  
3 the same specificity of those cases how many of those  
4 decisions were defense commissioners, which you made  
5 reference to.

6 SENATOR OROPEZA: With their background.

7 SENATOR CEDILLO: Right. How many were defense  
8 commissioners and how many were not.

9 CHAIRMAN STEINBERG: Do you know that one,  
10 Mr. Anderson?

11 SENATOR CEDILLO: In appreciation for what  
12 we're asserting.

13 CHAIRMAN STEINBERG: Do you know the  
14 percentage?

15 MR. ANDERSON: I don't know the exact  
16 percentage, sir, but a lot of people I work with work  
17 with lifer defense attorneys, but I just can't give the  
18 exact --

19 SENATOR CEDILLO: But anywhere from zero to a  
20 hundred?

21 SENATOR DUTTON: Well, it's 68 current deputy  
22 commissioners, 33 of which --

23 CHAIRMAN STEINBERG: Thirty-three out of 68 are  
24 defense attorneys.

25 SENATOR CEDILLO: That's not -- You cited

61

1 specifically his experience.

2 SENATOR DUTTON: No, no.

3 SENATOR CEDILLO: No, no. You cited his  
4 experience.

5 CHAIRMAN STEINBERG: One at a time, members.

6 SENATOR CEDILLO: You asked how many times he  
7 disagreed specifically, his experience and his work, and  
8 we should know --

9 SENATOR DUTTON: The board --

10 SENATOR CEDILLO: If I may finish.

11 CHAIRMAN STEINBERG: Hold on, Mr. Dutton.  
12 Finish the point.

13 SENATOR CEDILLO: If I may finish, I would like  
14 to know with specificity, the same specificity, the  
15 number of those commissioners that you agreed with that  
16 were --

17 SENATOR OROPEZA: And he doesn't know.

18 SENATOR DUTTON: We may request that  
19 information.

20 CHAIRMAN STEINBERG: You know what? Here's  
21 what I think would be helpful in terms of the long term.  
22 I think we should bring back to the Rules Committee a  
23 breakdown of some of these statistics for this  
24 particular -- or not just for Mr. Anderson, but overall,  
25 just so we can have, maybe, a discussion outside of

62



1 the -- a particular nominee, whether there are trends  
2 that we should be concerned about.  
3 Ms. Barankin, please finish.  
4 SENATOR DUTTON: In addition to that, can I  
5 also suggest that you actually get the two codes so that  
6 everybody can see what it actually says.  
7 CHAIRMAN STEINBERG: Oh, we're not going to get  
8 the codes. Just kidding. Go ahead, Bob. I'm just  
9 kidding. We'll bring the codes before all of us.  
10 SENATOR DUTTON: It's just those two sections.  
11 What I didn't read is "They shall have a broad  
12 background in criminal justice and ability for appraisal  
13 of adult offenders, the crimes for which the persons are  
14 committed, and the evaluation of an individual's  
15 progress towards reformation."  
16 So I'm just suggesting if we're --  
17 CHAIRMAN STEINBERG: Ms. Sabelhaus, can we get  
18 to each member of the Committee the relevant sections of  
19 the code so that everyone can review them before the  
20 next time we hear a member of the commission.  
21 MS. SABELHAUS: (Nods head.)  
22 CHAIRMAN STEINBERG: Ms. Barankin.  
23 MS. BARANKIN: Thank you. I'll be very brief.  
24 I know I get extra points for that.  
25 CHAIRMAN STEINBERG: Yes, you do.

1 In support or opposition?  
2 MR. DAHLE: Support.  
3 CHAIRMAN STEINBERG: Very briefly, please.  
4 MR. DAHLE: Thank you, members. I'm David  
5 Dahle, Deputy District Attorney from Los Angeles County,  
6 and I am in charge of the unit that does parole hearings  
7 for our county's prisoners that come up for  
8 consideration.  
9 You have a letter from our elected District  
10 Attorney in support of Mr. Anderson. I would like to  
11 share with you my personal views, having done now  
12 40-some hearings with Mr. Anderson in five different  
13 venues.  
14 I would not speak to specific cases, per se,  
15 because individually, we can agree or disagree on any  
16 particular issue. I think what is most important to you  
17 is the overall tenor of what Commissioner Anderson does.  
18 He has the intellect, he has the demeanor, and he has  
19 the common sense to make a fair judgment in the hearing  
20 process. I have seen that firsthand.  
21 And I want to reiterate briefly the  
22 significance of the fact that there are very few, but  
23 one I believe he reported, split decisions, and I have  
24 been in hearings with this commissioner who has given  
25 15-year denials, who has given five-year, three-year

1 MS. BARANKIN: I'm here representing the  
2 California Collaboration for Youth, and I felt compelled  
3 to be here, both professionally and personally, because  
4 I am a huge fan of Commissioner Anderson.  
5 I started working with Mr. Anderson back in  
6 1993 when he was the director of the Office of Traffic  
7 Safety, and he started supporting the work that we did  
8 for protecting children by supporting efforts to put  
9 bicycle helmets on them, put them in booster seats and  
10 car seats, and safe routes to school, and all those good  
11 issues, and the relationship has continued to this day  
12 where he even supports our YMCA camp scholarship /so he  
13 is a wonderful person. He's a person of great  
14 integrity.  
15 I'm also a huge fan of his wife -- it's kind of  
16 a family affair, their volunteer work and their support  
17 of the community -- who works at the Mustard Seed School  
18 practically every minute she has off, making sure those  
19 kids get a decent education and have a fighting chance,  
20 because they're growing up homeless.  
21 So for those reasons, I strongly urge you to  
22 support this nominee.  
23 CHAIRMAN STEINBERG: Thank you. Are there any  
24 other witnesses in support?  
25 Witnesses in opposition?

1 denials, and given grants, and there has been very  
2 little dissension with respect to the attorneys that I  
3 have spoken to afterwards about the way they were  
4 treated in their cases. I would support his  
5 confirmation.  
6 CHAIRMAN STEINBERG: Thank you very much for  
7 coming.  
8 SENATOR OROPEZA: May I ask you do the DAs ever  
9 support parole? Do they ever come up and support  
10 parole?  
11 MR. DAHLE: I'll be quite candid with you.  
12 It's not very often. I have, on one occasion in which  
13 this commissioner has given a grant, not opposed parole.  
14 SENATOR OROPEZA: Thank you.  
15 CHAIRMAN STEINBERG: Thank you very much.  
16 Witnesses in opposition. We have two or three.  
17 Okay.  
18 MR. GRAY: Thank you, Mr. Chairman. My name is  
19 Matt Gray. I am a lobbyist, but I am not here  
20 representing a client. I'm representing myself and my  
21 personal experience with Commissioner Anderson.  
22 I want to make very clear that I do not know  
23 Mr. Anderson on a personal level. By all accounts, he  
24 seems to be a perfectly delightful individual, so this  
25 is not in any way to be construed as a personal attack.

1 He says the right things. He's very skilled in what he  
2 says, and that's to be respected.

3 I had the opportunity to witness a parole  
4 hearing, and it is -- For many of you who know my  
5 personal story, I cannot go into all the details, but  
6 for those of you who don't, I am a victim of a violent  
7 crime. I was shot and left for dead by a family member,  
8 and I would have died had I not been carted off to the  
9 hospital by someone else. The family member that turned  
10 themselves into the police, they were wildly drunk off  
11 of about a fifth of scotch, and it was an event that was  
12 unforeseen, had never been predicated by any prior  
13 violence at all. It was something that was fueled by  
14 heated tempers, egos, and a lot of alcohol, and it  
15 escalated into a shooting incident.

16 It is very unfortunate, but I am both the  
17 victim of a violent crime and the survivor of violent  
18 crime and a family member of an inmate. So those were  
19 the cards dealt to me. I tried to make the best of  
20 them. I care very much about public safety. I would  
21 not want the person who hurt me to ever be out on the  
22 street if I was not 100 percent satisfied and convinced  
23 that they were no longer a threat to public safety.

24 I showed up at the parole hearing in support of  
25 the release of this inmate. And I know him better than

67

1 crime, you have to rely on the record. You can  
2 establish your remorse, how you feel about it, assuming  
3 everything is true. So they wanted to discuss remorse.

4 The inmate substantially provided information  
5 on how remorseful he was. That was not in question.  
6 What was in question was whether or not the inmate had  
7 insight into the crime. Well, if you don't remember the  
8 crime, it's kind of hard to provide insight into the  
9 crime. But the inmate then said, "Okay. I can provide  
10 you insight as to who I was as a person at that time."

11 The inmate said that they were making a lot of  
12 money, thought they were better than other people, was  
13 very arrogant and egotistical, yet had a fragile ego  
14 that was -- whenever he was faced with problems that he  
15 could not compensate for, he would actually engage in  
16 drinking alcohol to the point where he would avoid his  
17 problems, and that he acted emotionally and  
18 irresponsibly at the time. And he had a lot of problems  
19 that he didn't know how to deal with and hence been able  
20 to deal with.

21 So with that insight, that's what I call  
22 incentive to crime. What's going on in your life that  
23 led you to the point where you made a defense.  
24 Mr. Anderson's conclusion was that the inmate had no  
25 insight into the crime.

69

1 anyone else. I have spent a lot of time getting to know  
2 him. Some of you also know me. I am pretty good at  
3 pushing buttons too. I tried to push his buttons, and  
4 it doesn't work very well. He's very skilled.

5 The point --

6 CHAIRMAN STEINBERG: If you can get to the  
7 nominee, please. When was the parole hearing that  
8 Mr. Anderson conducted?

9 MR. GRAY: Yes, sir.

10 At that parole hearing, the hearing was turned  
11 over to the deputy DA. That's in violation of the  
12 inmate's rights. Mr. Anderson stated, "You may ask any  
13 question you want," to the deputy DA who then directly  
14 questioned the inmate. The DA is allowed to ask  
15 clarifying questions of the commissioners who then turn  
16 around and ask the inmate. That was not how it was  
17 done. It was turned over to the DA to ask direct  
18 questions.

19 The inmate is allowed by right not to discuss  
20 the crime. In this case, the individual was extremely  
21 drunk at the time, was suffering from an alcohol-induced  
22 blackout. They wanted to discuss the crime. He doesn't  
23 remember the specifics of the crime, so Mr. Anderson  
24 wanted to then discuss remorse for the crime. Well,  
25 it's a little bit difficult. If you don't remember the

68

1 Then the inmate was asked about what kind of  
2 program he had done while inside. The inmate said,  
3 "Well, in the year and a half that I was out on bail,"  
4 that he personally paid for and engaged in therapy  
5 weekly, and sometimes biweekly, to find out what was  
6 going on in his life. And then when he entered the  
7 prison system, for ten years he engaged in Alcoholics  
8 Anonymous. However, it got to the point where the tone  
9 of Alcoholics Anonymous and the messaging conflicted  
10 with --

11 CHAIRMAN STEINBERG: Mr. Gray, I don't want --  
12 I want to give you your requisite time here, but it's  
13 going to be impossible for us as a Rules Committee to  
14 dissect the facts of a particular case and who was right  
15 and who was wrong.

16 What we're interested in is your opinion as to  
17 what judgment or lack of judgment Mr. Anderson may have  
18 exhibited in making a particular decision. So I don't  
19 want to cut you off, but I'm wondering -- when you're  
20 done with this description, we turn to Mr. Anderson and  
21 he can take 15 minutes and tell us how he saw that  
22 particular case differently. We weren't there, so --

23 SENATOR OROPEZA: It's not helpful.

24 CHAIRMAN STEINBERG: We want to know what  
25 judgment -- What I'm hearing you say is that he did not

70

1 consider -- The inmate provided adequate evidence of  
2 insight, and Mr. Anderson ignored it.  
3 MR. GRAY: I understand what you're saying.  
4 I'll avoid the opinions, and I'll avoid the background  
5 and get to the point.  
6 CHAIRMAN STEINBERG: Thank you. Please.  
7 SENATOR CEDILLO: I encourage brevity, but I  
8 understand that you are trying to lay out a scenario  
9 that speaks for itself, that you believe will speak for  
10 itself. In the failure to be responsive.  
11 CHAIRMAN STEINBERG: Go ahead.  
12 MR. GRAY: There's case law that says --  
13 There's *Lawrence, Davis Lawrence*, that says you cannot  
14 rely on --  
15 CHAIRMAN STEINBERG: (To the reporter): Do you  
16 need a break?  
17 THE REPORTER: Yes.  
18 CHAIRMAN STEINBERG: Okay. We're going to take  
19 a five-minute -- whatever you need. A five, 50-minute  
20 break. I don't know.  
21 THE REPORTER: Seven minutes.  
22 CHAIRMAN STEINBERG: We'll take ten minutes.  
23 Okay. Thank you.  
24 (Recess taken.)  
25 CHAIRMAN STEINBERG: Okay. Let us resume.

1 SENATOR AANESTAD: Are you saying the fourth or  
2 fifth time on the same case?  
3 MR. GRAY: You cannot continually deny parole  
4 based upon what happened 25 years ago.  
5 SENATOR AANESTAD: No. Mr. Anderson said the  
6 fourth or fifth time, and then you quoted. Was that  
7 involving one inmate or four or five inmates?  
8 MR. GRAY: This was involving -- Well,  
9 actually, Mr. Anderson continually does this. This is a  
10 pattern among many board commissioners. Mr.  
11 Anderson does it too.  
12 SENATOR AANESTAD: You mentioned four or five.  
13 MR. GRAY: For this inmate in particular, sir.  
14 SENATOR AANESTAD: So he has gone through four  
15 parole hearings with one inmate.  
16 MR. GRAY: Yes. And that is the standard  
17 response for most inmates. Parole is repeatedly denied  
18 based upon what the court has said you cannot keep  
19 denying parole on.  
20 CHAIRMAN STEINBERG: Senator Aanestad's  
21 question is: Was Mr. Anderson the officer, parole  
22 officer, for the four times this particular inmate was  
23 denied?  
24 MR. GRAY: No. This latest hearing.  
25 SENATOR AANESTAD: That's a big difference.

1 Mr. Gray, you can continue.  
2 MR. GRAY: So if I understood you correctly,  
3 you want me to start all over again.  
4 CHAIRMAN STEINBERG: Yes. Thank you.  
5 MR. GRAY: I can boil it down to much simpler  
6 points.  
7 Inmates are not required to engage in any  
8 programming which conflicts with their religious views.  
9 Mr. Anderson, after reviewing all of the records and  
10 stating such, ordered the inmate to go engage in a  
11 program which specifically violates the inmate's  
12 religious views, and he cannot do that.  
13 The California Supreme Court has said you  
14 cannot continually deny an inmate based upon the  
15 commitment of an offense. That never changes. You have  
16 to look at, yes, what they did, but who are they now as  
17 a person.  
18 The commissioner, Mr. Anderson, denied again,  
19 for, I think, the fourth or fifth time based upon the  
20 commitment of the offense without any nexus as to why  
21 and how it relates to who the inmate is. That's another  
22 violation. That will cost the State, and the State will  
23 lose on that. The Supreme Court has already ruled you  
24 cannot do that.  
25 Another issue --

1 CHAIRMAN STEINBERG: Very good.  
2 MR. GRAY: And then, finally, the psychological  
3 evaluations that they rely upon is really the only  
4 evidence.  
5 Prop 9 says they have to have clear and  
6 convincing evidence. The only evidence they really have  
7 is the parole reports. This inmate received four  
8 favorable psychologist reports with the lowest possible  
9 rating for violence, stating that they are not a threat  
10 to public safety, or essentially.  
11 This latest report, which they changed the type  
12 of report they're doing a little bit, was only slightly  
13 worse. Instead of "low," it said "low to moderate,"  
14 which is still at or below average. And Mr. Anderson  
15 decided to ignore all the previous reports and only rely  
16 upon this latest one.  
17 The problem is Mr. Anderson is not real  
18 consistent in how he does his hearings. There are often  
19 times he may or may not be prepared. He hasn't reviewed  
20 all the materials like he says he has.  
21 SENATOR AANESTAD: You've observed how many  
22 hearings of this?  
23 MR. GRAY: I was -- Specifically, myself, I  
24 reviewed two hearings. There's one comparative hearing  
25 where the inmate -- it was a premeditated, first-degree

1 murder where he shot and killed someone totally  
2 unrelated --  
3 SENATOR AANESTAD: But you're making your  
4 assessment. You said he's not prepared and that he is  
5 not consistent, and yet you have personally witnessed  
6 how many of his hearings?  
7 MR. GRAY: I personally witnessed one, and the  
8 statements that I made are accurate for that. I have  
9 reviewed the records for another, and the statements  
10 that I made are accurate to that.

11 SENATOR AANESTAD: Thank you.

12 MR. GRAY: This premeditated, first-degree  
13 murder, for the inmate, there was alcohol involved and  
14 drugs. The inmate had done no programming whatsoever,  
15 no Alcoholics Anonymous or anything. Nothing.  
16 Mr. Anderson decided it was appropriate to give the  
17 inmate a two-year denial based upon no other reason.

18 In this case where the inmate had done ten  
19 years of programming in AA, plus private programming,  
20 plus made amends and had been in for a long time, and it  
21 was second degree, no premeditation or anything, he  
22 gives him arbitrarily a three-year denial.

23 CHAIRMAN STEINBERG: Okay. All right.

24 MR. GRAY: That pretty much sums it up. The  
25 problem is Mr. Anderson keeps the tone up of denying

1 parole repeatedly for no appropriate logical reason.  
2 Thank you.  
3 CHAIRMAN STEINBERG: Thank you, Mr. Gray, for  
4 taking the time.

5 SENATOR OROPEZA: I hope at some point there's  
6 an opportunity to respond in particular to the question  
7 related to the gentleman's religion and treatment  
8 through the AA program. I would like to ask  
9 Mr. Anderson if that's true or not true at some point.

10 CHAIRMAN STEINBERG: Why don't we just ask  
11 Mr. Anderson to answer that in your closing. Okay.

12 MR. CHANDLER: Hello. My name is Keith  
13 Chandler. I work at the law firm of Sanders &  
14 Associates. Our firm specializes in parole matters, and  
15 the letter that our office sent is on file. I don't  
16 want to repeat things in the letter.

17 What I did want to talk about today very  
18 briefly was the discussion that the Committee members  
19 had about getting the rules and laws. I would urge the  
20 Committee to carefully read Section 3041 of the Penal  
21 Code. 3041 of the Penal Code says that the board shall  
22 normally grant parole at the inmate's first parole  
23 hearing. In fact, the law is structured so that the  
24 first parole hearing has to occur a year before the  
25 inmate is actually eligible for parole so that all the

1 paperwork can be done so they can actually leave.  
2 Another section that's very relevant is  
3 Title 15 of the section dealing with progress hearings.  
4 And I can't remember the number off the top of my head,  
5 but that is the --

6 SENATOR CEDILLO: What's the age of the first  
7 one, if you know?

8 MR. CHANDLER: Excuse me?

9 SENATOR CEDILLO: What's the age of the first  
10 one?

11 MR. GRAY: The age? How old the statute is?

12 SENATOR CEDILLO: How old is the statute?

13 MR. CHANDLER: The statute was written in 1977.  
14 It was part of the change from indeterminant to  
15 determinant.

16 The board actually has a series of rules that  
17 are called progress hearings, hearings they almost don't  
18 hold anymore as an institution, because they never grant  
19 parole.

20 The original theory of our entire parole scheme  
21 was that the legislature set a minimum term of 15 years  
22 for second-degree murder and 25 years for first-degree  
23 murder, and then they wrote a parole statute that said  
24 at the minimum term, the inmate is presumptively  
25 suitable for release and that the board shall normally

1 grant parole at that first hearing.

2 As an institution, I don't believe the board's  
3 granted parole to a single inmate at their first hearing  
4 in a decade. I would be shocked to learn that occurred.  
5 I do this for a living. I've done it for a quarter of a  
6 century. I've been involved with this. It's maybe  
7 happened a dozen times, and it's not a coincidence that  
8 this change has occurred as we went to an  
9 all-police-officer board. And this is a huge problem.  
10 It's not that police officers can't discharge this duty  
11 in a fair way, but "fair" is a relative term, and it  
12 deals with your experience.

13 Our firm has had cases that are staggeringly  
14 unbelievable in how an inmate doesn't get parole. It's  
15 not a hearing that Mr. Anderson did, but recently we had  
16 a hearing, and the guy was 82 years old. He's  
17 blind from -- I'm trying to remember the disease --  
18 cataracts, and they wouldn't do the hearing at first  
19 because he was so disabled. When they finally did the  
20 hearing, he was denied. He's 82 and blind. He has no  
21 real prior criminal record, and his crime was  
22 situational. He shot his wife and his brother when he  
23 caught them together in bed.

24 Eighty-two, blind, situational offense, no  
25 prior history, denied parole. That's how police

1 officers approach this task. Their mind-set, even  
2 though in their mind they believe they're fair, it  
3 doesn't allow them to be.  
4 And what we've got is a system where we've lost  
5 focus of what the actual law says. It says it shall  
6 normally grant parole. And I've been in these hearings  
7 where we've had people support commissioners because  
8 they say, "Well, they grant parole at a high rate,  
9 5 percent, 6 percent." I'm not saying we need a quota  
10 and it should be 50 percent. I'm saying that 5, 6, 7  
11 percent is woefully inadequate and is in direct  
12 violation of the law, and I hope the Committee takes  
13 that into consideration.

14 CHAIRMAN STEINBERG: Thank you, sir.  
15 Question from Senator Aanestad.

16 SENATOR AANESTAD: I do have a question.  
17 Basically what I'm hearing, and am I correct in hearing  
18 your objection is really to the quota or the fact that  
19 he's a law enforcement officer and not his past one-year  
20 experience on the board himself?

21 MR. CHANDLER: Our objection, as our office,  
22 is that we don't believe police officers are qualified  
23 to do the job.

24 SENATOR AANESTAD: I understand that part.  
25 Specifically, Mr. Anderson has been on the job for a

79

1 year. You have not attended any of his hearings or  
2 witnessed that. So you're not objecting to him as a  
3 person, but it's his background and training that you  
4 object to.

5 MR. CHANDLER: Yes, yes, particularly with  
6 Marsy's Law now in effect. A denial at three years at a  
7 minimum is all this man can do to help a guy that he  
8 thinks is close. When you factor in the fact that  
9 28 percent of our prison population is over 40, but the  
10 people that the board sees are predominantly 40 or over,  
11 because they've already been locked up, most of them 15  
12 or 20 years, these guys are incredibly expensive to  
13 house. Forty-five thousand bucks a year is tossed  
14 around as an average. Averages are averages. The  
15 reality is most inmates are housed for about 15,000 a  
16 year, and the elderly guys cost a quarter million. And  
17 that's how we get the average of 45,000.

18 When we deny parole to a guy under Marsy's Law,  
19 even if we give them three years, that's a minimum of a  
20 quarter-million-dollar cost to the State. If  
21 Mr. Anderson has a bad day, he can cost us a million  
22 dollars. It's crucial that we put qualified people on  
23 the board.

24 There are people with doctorates and master's  
25 degrees in inmate rehabilitation and other areas, and

80

1 they're not even being considered.  
2 CHAIRMAN STEINBERG: Thank you.  
3 MR. CHANDLER: Thank you.  
4 SENATOR AANESTAD: I just would comment if  
5 Mr. Steinberg has a bad day, he could cost us billions  
6 of dollars.

7 CHAIRMAN STEINBERG: Thankfully, I never have a  
8 bad day. That's very funny. Go ahead.

9 MR. WARREN: Good afternoon. My name is David  
10 Warren. I'm appearing on behalf of Taxpayers for  
11 Improving Public Safety. I'm here in opposition for a  
12 number of reasons.

13 Senator Aanestad, I have never attended one of  
14 Mr. Anderson's hearings. I'll admit that. I've read  
15 ten of his transcripts, meaning the transcripts of  
16 proceedings which he has overseen. He was not by  
17 himself, obviously.

18 In reading those transcripts, I'm greatly  
19 concerned by what appears to me to be a predisposition  
20 to find a reason under *Shaputis* to deny parole. Rather  
21 than following the *Davis Lawrence* standard of looking to  
22 the underlying offense, determining whether or not a  
23 person has made any progress along the way and to  
24 determine whether or not a person is a risk currently to  
25 public safety, it appears from the comments in reading

81

1 the transcript, and, again, it is my subjective  
2 evaluation, that the goal and the manner in which the  
3 questions are phrased and the statements are made are  
4 that it is to find a way rather than to find -- to keep  
5 a person in rather than to find a source of parole.

6 Also, in several of the transcripts, it is my  
7 subjective opinion and there's concern on my part that  
8 the commissioner was not prepared for that particular  
9 hearing and was confused as to other cases he may have  
10 been handling that day. And that is not acceptable in a  
11 member of the Board of Parole Hearings.

12 As Senator Steinberg pointed out, all of the  
13 parole hearings are done in a closed environment. I  
14 have to say in the 14 years I've been working with the  
15 Department of Corrections and for the 27 years I did  
16 187 defense, I understand that there is no perfect  
17 environment. But what concerns me, Mr. Aanestad, is the  
18 statement you made, and I think it's most appropriate,  
19 and that is the primary concern should be public safety.

20 Recently, an individual came before the board  
21 to seek discharge. This individual had a leg amputated,  
22 was dying of cancer, was restricted to a bed, and could  
23 not sit up by herself. She was denied compassionate  
24 discharge because of who she was, not because of the  
25 state of affairs.

82

1 We must focus on the principal reason, and that  
2 is to ensure public safety. A person that is dying,  
3 that costs the State of California a very large sum of  
4 money, which deprives all of us, especially in these  
5 budgetary restrictive times, discharge where they can be  
6 treated much more cost effectively outside is a  
7 catastrophic mistake.

8 Senator Oropeza, you pointed out that we need  
9 diversity. I strongly concur with that. I regret to  
10 say that diversity is not looked to in the appointments.  
11 There are no religious individuals with religious  
12 backgrounds as a member of parole hearings for adult  
13 operations. There are no individuals from sociology,  
14 from psychiatry. We must have these members.

15 In closing, approximately three years ago I  
16 attended one of these meetings because there was one  
17 particular member whom I found particularly  
18 objectionable, and I attended that hearing to testify  
19 against that individual.

20 Senator Perata announced at the conclusion of  
21 that hearing that even though what I said might be  
22 reasonable, he fully accepted -- his position was that  
23 if the governor appointed people, we should accept them.

24 Over a period of time, and continuing with the  
25 hearings and seeing the same people over and over again,

83

1 all with one background and all, apparently, after  
2 reading the transcripts, a predisposition, we have to  
3 put a stop to it, and we must send a message to the  
4 governor that we need a broad spectrum of individuals.  
5 That isn't to say there aren't people from law  
6 enforcement that shouldn't be on the Board of Parole  
7 Hearings. They certainly should be.

8 And there will be people that we will be  
9 supporting in the upcoming months who come from the  
10 Department of Corrections and from police services and  
11 other penal activities as far as the prosecution is  
12 concerned, but this particular individual, after reading  
13 those transcripts, I strongly urge you to reject his  
14 nomination. Thank you.

15 CHAIRMAN STEINBERG: Okay. All right.

16 Mr. Anderson, if you could, in closing, if you  
17 want to respond to the opposition, that's your right,  
18 and then also make sure you incorporate Senator  
19 Oropeza's question. Do you need that reiterated?

20 SENATOR OROPEZA: Yeah, related to the AA issue  
21 with requiring AA when it was objectionable on religious  
22 basis.

23 SENATOR CEDILLO: I'm interested in this  
24 comment about handing over a hearing to the DA,  
25 compliance with *Davis Lawrence*, and this -- with

84

1 reference to forgiveness by God, this discussion about  
2 when an inmate opens a door, to what extent does that  
3 make that appropriate.

4 The pro tem raised the question about the  
5 separation between church and state, and I have a  
6 concern that it's insufficient that an inmate opens a  
7 door.

8 MR. ANDERSON: Let me address that concern,  
9 sir.

10 CHAIRMAN STEINBERG: Sum up, if you will.

11 MR. ANDERSON: I don't use that as a  
12 suitability factor. I'm merely establishing a rapport  
13 with the inmate, allowing them to talk about it.

14 I have talked to a number of religious bodies,  
15 and it's a tool of just allowing them to talk about it.  
16 It's not a factor of suitability. It's just a statement  
17 of allowing them to talk about some things that are  
18 important in their lives.

19 With respect to AA, AA is religious-based, and  
20 a lot of the institutions have AA. And what I recommend  
21 is substance-abuse programming. If you have a problem  
22 with AA, which is religious-based, try to get substance-  
23 abuse programming in the institution. That's what I  
24 recommend, particularly if a person has a substance-  
25 abuse issue during the commitment of a crime.

85

1 With respect to --

2 SENATOR CEDILLO: Handing over the hearing.

3 MR. ANDERSON: Sir?

4 SENATOR CEDILLO: Handing over the hearing to  
5 the DAs.

6 CHAIRMAN STEINBERG: To the DAs.

7 MR. ANDERSON: Oh, handing over the hearing to  
8 the DA. I don't hand the hearings to the DA. I don't  
9 do that. What I do is allow the District Attorney,  
10 rightfully so, according to the code, to ask clarifying  
11 questions. What I do is I establish -- it's adequate to  
12 say, "Do you have a clarifying question?" and the DA  
13 would ask that question, and I don't want to repeat the  
14 question because it's double repeating, so what I'll say  
15 to the inmate is, "Okay. You heard the question. From  
16 this point on, I'll go ahead and have you answer that  
17 question," unless we have an objection from the defense  
18 counsel.

19 The defense counsel is in the room at the same  
20 time. If the defense counsel objects to any kind of  
21 questions that come from District Attorneys, they do  
22 object to it. So I do not hand the hearing to the  
23 District Attorney.

24 CHAIRMAN STEINBERG: Okay. Thank you very  
25 much, Mr. Anderson. Any other concluding remarks?

86

1 MR. ANDERSON: Yes, sir.

2 I just want to say in all my life, I've had  
3 some opportunities to do some jobs. I've had the  
4 opportunity to work the Office of Traffic Safety. You  
5 heard the testimony today from Ms. Barankin. My  
6 experience is diverse.

7 I have not only -- I think we've heard the  
8 opposition talk about denials. I've had grants. I've  
9 had some outstanding people that I have given grants to.  
10 So it's not all about denial. It's also about grants  
11 too.

12 I established a record of fairness in my  
13 career, regardless of where I work. So I've done that  
14 in this job. Do I have the courage to act  
15 independently? Yes, I do. I do have the courage to act  
16 independently and have done that in the performance of  
17 my job over the past almost one year.

18 Do I have things that I will be learning and  
19 taking away? Yes, I will. This is an ongoing process.  
20 I've had training to enhance all the knowledge that we  
21 get in terms of doing these hearings. So it's an  
22 ongoing process of correcting issues that come up before  
23 the board, such as Prop 9. We had training on that last  
24 month, two months ago.

25 So I believe I'm a suitable candidate for this

87

1 continuing work with the board. I care about it. I  
2 care about public safety, but I also care about being  
3 fair and impartial to the people I serve. So I take  
4 every job independent, every job seriously, that I've  
5 had, and this is one of those jobs I've taken  
6 independently and fairly.

7 CHAIRMAN STEINBERG: Thank you very much,  
8 Mr. Anderson.

9 Excuse me. I turned off everyone else's mics.  
10 Maybe that's a good thing.

11 SENATOR OROPEZA: Maybe it was time.

12 CHAIRMAN STEINBERG: I intend to support your  
13 nomination, and I want to explain why.

14 First of all, I want to speak to some of the  
15 opposition here, because, again, as we said earlier,  
16 yours is the first confirmation hearing of, I think,  
17 nine more to go, and this issue of diversity in terms of  
18 background, I don't mean racial or ethnic diversity and  
19 gender diversity. Obviously, that's significant too,  
20 but I mean in terms of background. I think it's right  
21 that if the board is made up -- This is just my opinion.  
22 If the board is made up of all people with a  
23 correctional or law enforcement background, I don't  
24 think that's right.

25 So I anticipate that we're going to come to a

88

1 crossroads with the administration here sooner than  
2 later as some nominations or as some series of  
3 nominations come forward, but you deserve to be judged  
4 as an individual, of course. And here is why I am going  
5 to support you: Because I look at the numbers. And I  
6 just want to read the numbers here, because they were  
7 interesting to me.

8 The Marsy decision began being implemented,  
9 Prop 9, as I understand, in December '08. So we have  
10 your numbers pre-Marsy, pre-Prop 9, and here are your  
11 numbers: You granted parole 30 times; you denied 315.  
12 I don't know if 10 percent is high, low, or whatever,  
13 but there's another set of numbers which I think are  
14 significant. You most often, in terms of a comparison,  
15 allowed for another parole hearing one year later, 132  
16 times; two years later, 100 times; three years later,  
17 30 times; four years later, 33; and five years, 20.

18 So you've demonstrated, I think, a pattern to  
19 at least err on the side of granting the parole  
20 hearing -- another parole hearing during a shorter  
21 window than a longer window. So that speaks positively  
22 from my perspective.

23 Post-Marsy, post-Prop 9, where you have the  
24 ability to impose a 15-year wait, and that's a heck of a  
25 law, I'll tell you, but you have that ability. So in

89

1 the month of December and January, you have had  
2 14 cases, and you denied all 14. You know, I don't know  
3 about that, but I do know this: You granted a  
4 three-year wait -- I'm sorry, a three-year wait seven  
5 times; a five-year wait five times; and a 15-year wait  
6 only two times.

7 Now, again, we don't have the ability  
8 necessarily to dissect all of these cases, but in terms  
9 of which side to err on here, the fact that you show a  
10 consistent pattern of not giving the maximum carryover  
11 shows to me, at least, that you're willing to exercise  
12 independent judgment and err on the side of giving a  
13 human being another chance where it is appropriate.

14 I urge you to be careful about this religious  
15 issue.

16 MR. ANDERSON: Yes, sir.

17 CHAIRMAN STEINBERG: Because, you know, again,  
18 in the public square, those things can be  
19 misinterpreted. And I urge you, despite the opposition  
20 that you heard today, to meet with some of these folks,  
21 right? Sit down and understand what they're saying,  
22 what's in their heart, and see if you can learn from  
23 some of the criticism that you heard here today.

24 MR. ANDERSON: Yes, sir.

25 CHAIRMAN STEINBERG: All right. Is there a

90

1 motion on the --  
2 SENATOR DUTTON: So moved.  
3 CHAIRMAN STEINBERG: Moved by Senator Dutton.  
4 Please call the roll.  
5 MS. BROWN: Senator Cedillo.  
6 SENATOR CEDILLO: Yes. In casting my vote, I  
7 want you to know that the years that I've been here and  
8 working with Senator Perata, I do believe the governor  
9 has a right to make his choices, but there's  
10 restrictions on that. I believe the governor has  
11 consistently been in breach of those restrictions.  
12 And, as I said at the beginning of this, it's  
13 unfair to you and to all the other candidates, because  
14 the governor insists on sending us only people who have  
15 a badge or who are victim-rights advocates. I have  
16 both, but that still does not qualify me for this. In  
17 fact, when it's only that category, it disqualifies you  
18 in some respect. So it's a tougher burden for you to be  
19 confirmed.  
20 I would advise you to be thoughtful of *Davis*  
21 *Lawrence*, be thoughtful of the presumptions that exist  
22 in the law.  
23 MR. ANDERSON: Yes, sir.  
24 SENATOR CEDILLO: As I said, I don't have a  
25 policy, let's say, that we should comply with the law

91

1 with respect to these appointments.  
2 MR. ANDERSON: Yes, sir.  
3 SENATOR CEDILLO: But I think when you take  
4 things case-by-case, there are opportunities for  
5 exceptions.  
6 Let me say to you that with respect to handing  
7 over the hearings, that's not a matter of convenience,  
8 that my sense is that the law was designed in that way  
9 to position you as a mediating force in the questions  
10 from the DA. In other words, that's the structure.  
11 That's the architect of that process. So when you, for  
12 matters of convenience and brevity and efficiency, move  
13 that away from you, it's really an important breach,  
14 because I believe the architecture of that law is for  
15 you to mediate those questions and not hand over that  
16 role to the DA. So I ask you to be in strict compliance  
17 with that.  
18 MR. ANDERSON: Yes, sir.  
19 SENATOR CEDILLO: Finally, I don't think it  
20 needs to be said more, a room here full of religious and  
21 faithful people, but we all understand there should be a  
22 bright yellow line between our faith and our exercise of  
23 public service, and it's important for people to  
24 appreciate that.  
25 So with that, though, I am happy to make an

92

1 exception to my policy, because I think we need to  
2 recognize people on a case-by-case, and I believe the  
3 balance of your commitment to community to serve us that  
4 way where it's been placed on you by the governor, and  
5 I'm happy to vote yes.  
6 CHAIRMAN STEINBERG: Thank you very much.  
7 Senator Cedillo is an aye.  
8 MS. BROWN: Cedillo aye.  
9 Dutton.  
10 SENATOR DUTTON: Aye.  
11 MS. BROWN: Dutton aye.  
12 Oropeza.  
13 SENATOR OROPEZA: Aye.  
14 MS. BROWN: Oropeza aye.  
15 Aanestad.  
16 SENATOR AANESTAD: Aye.  
17 MS. BROWN: Aanestad aye.  
18 Steinberg.  
19 CHAIRMAN STEINBERG: Aye.  
20 MS. BROWN: Steinberg aye.  
21 CHAIRMAN STEINBERG: Motion goes out,  
22 Mr. Anderson, five to nothing. Move to the Senate floor  
23 next week. Thank you.  
24 MR. ANDERSON: Thank you very much. I won't  
25 let you down.

93

1 CHAIRMAN STEINBERG: Thank you very much. We  
2 appreciate it.  
3 (Thereupon, the Senate Rules Committee hearing  
4 adjourned at 3:37 p.m.)  
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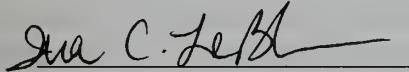


1 --o0o--

2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 10th day of February, 2009.

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18 INA C. LeBLANC  
19 CSR No. 6713

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1 APPENDIX  
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Senate Confirmation  
Arthur L. Anderson, Jr., Commissioner  
Board of Parole Hearings  
Responses to Senate Rules Committee Questions  
January 27, 2009

**Statement of Goals**

1. ***What are your goals and objectives as a commissioner of BPH? What do you hope to accomplish during your tenure? How will you measure your success?***

First, I was honored to be appointed to the position of Commissioner, Board of Parole Hearings (BPH). I consider the position a meaningful and challenging position. My goal is to be fair and objective and make decisions based on factors of suitability and unsuitability at each hearing.

With reference to accomplishments, it is my desire to use my experience and training to ensure policies and procedures are realistic and contribute to the overall effectiveness of the hearing process. Additional goals are to provide the BPH Chair and the Executive Officer with recommendations to increase the effectiveness of hearings, ensure that hearings are conducted as scheduled, and avoid unnecessary hearing postponements. Success will be measured by the continued reduction of backlog cases and assessing the overall effectiveness of the hearings.

2. ***Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to your conclusion and what measures you use to assist with your analysis.***

Based on my experience as a Commissioner, I firmly believe that inmates who are incarcerated with indeterminate life sentences can be safely rehabilitated and safely returned to society. I have come to this conclusion after conducting hearings where I along with the Deputy Commissioner have recommended grants of parole. There are some life inmates where the possibility of parole is currently not a viable option because they remain a threat to public safety and have done little, if anything, to change that assessment.

Inmates have the ability and opportunity to rehabilitate through self-help programs, positive institutional behavior and programming, and development of realistic parole plans. It is through questioning the life inmate at the hearing that I can assess whether the inmate is on the path of rehabilitation. Some questions are focused on whether the inmate has gained insight into the causative factors of the life crime and exhibits appropriate and genuine remorse. All the information received at hearing is considered to determine whether the inmate is suitable for release or remains a danger to the public.

**Senate Rules Committee**

JAN 27 2009

**Appointments**

My experience in conducting hearings has given me the opportunity to evaluate numerous inmates and determine whether the inmate has availed themselves of the opportunities to rehabilitate while incarcerated.

My ongoing training and experience has provided me with a foundation to determine the rational nexus between positive programming and rehabilitation and the ability to fairly determine the parole suitability or current dangerousness of an inmate.

### **Training**

*The 2005 law that created the BPH required that within 60 days of appointment and annually thereafter, commissioners and deputy commissioners undergo a minimum of 40 hours of training.*

**3. *Now that you have chaired hearings for several months, how do you evaluate the quality of your training? Do you have recommendations for improvement?***

My initial training consisted of classroom instruction, participation in mock hearings, and observation of actual hearings prior to being assigned a caseload. The training was effective and pertinent to the responsibilities of Commissioner. Under the direction of the Executive Officer, a training officer has been appointed and training is ongoing and far exceeds the minimum requirements. All personnel who are assigned as trainers are highly qualified and are subject matter experts. I along with other Commissioners suggested further training in the use of the psychological reports at hearings. The subject matter experts were responsive to this request and provided a training session on this topic for all Commissioners.

After my initial training, BPH has further refined the training program and developed new modules to ensure consistency among Commissioners. Training needs are frequently evaluated and discussed with Commissioners at the monthly board meeting. Training addresses new issues that come up in the field and provides a means to Commissioners to request information or training on specific issues.

**4. *When a procedural question arises during a hearing which you are chairing at an institution, who is available to assist you to answer the question? During previous BPH confirmation hearings, BPH members have raised concerns about the lack of support available to them by phone from Sacramento. Do you believe you get the help you need in a timely way so that hearings are not needlessly delayed?***

Most procedural questions that I would have would be relative to legal matters. A BPH attorney is available live by Blackberry from 7:00 a.m. to 7:00 p.m. and messages can

be left on this device outside of those hours to be answered promptly during the hours of availability. I have not experienced any difficulty utilizing this service. Additionally, I have the direct telephone number of one of the lead attorneys and have been able to obtain prompt responses to my inquiries. I have no concerns regarding the level of support or the promptness of service. I might add, the training officers have legal backgrounds and are willing to assist Commissioners when the need arises. Finally, all members of the BPH legal staff are available for support of the Commissioners.

5. ***The hearings you chair can sometimes involve complex legal or procedural issues. Does anyone continue to monitor your performance as a "lifer" panelist, either in person or through a review of transcripts, so that you may continue to improve your performance?***

BPH legal staff reviews all grants and up to 10 percent of all denials. BPH legal staff provides guidance to Commissioners on legal or procedural matters that have come to their attention through the review of grants and denials. BPH legal staff also provides guidance when I conduct a parole suitability hearing directed by court order.

The subject matter experts in the training group review hearing transcripts and provide feedback to Commissioners on a one-on-one basis. Personnel in the training group participate in the monitoring process with a goal of developing recommendations for improvement. As a result of this monitoring process, the training group has developed procedural advisories for Commissioners. This type of contact keeps me informed of issues that may be occurring in the field and how to address them.

6. ***What should the Legislature expect from commissioners regarding consistency in lifer hearings? Should all of the commissioners and deputy commissioners weigh the various factors in a consistent manner? In light of this, how is it that some inmates are given multiple year denials after receiving one-year denials even though their behavior, programming, and commitment often remains the same?***

As I related in a previous question, the BPH has implemented a comprehensive training curriculum that focuses on all aspects of the Commissioner's responsibilities. This training is designed to enhance and promote consistency in how Commissioners and Deputy Commissioners conduct hearings and make decisions of suitability. During training, the Commissioners and Deputy Commissioners were provided instruction on the factors governing suitability and unsuitability as found in Title 15 of the California Code of Regulations. Denial length and grants are based on the weight given to each factor which is within the discretion of each panel member.

I believe that the new leadership of the Executive Officer and his focus on ongoing training will ensure that Commissioners and Deputy Commissioners appropriately exercise their discretion under the law. I believe the Board is not arbitrary or capricious

but makes decisions based on individualized analysis to assess each inmate's current risk of dangerousness to society. With this in mind, each panel is comprised of different individuals and a different aspect of the inmate's case may have increased importance to a different panel. There will always be some variation in results because individual discretion and professional judgment are part of the decision process, but I believe all Commissioners work toward a goal of consistency.

I realize the Legislature has concerns regarding consistency in lifer hearings and it is my goal to remain consistent by considering all factors and provide all parties with a fair hearing process.

### **Programs**

*Prisons have a wide variety of academic and vocational programs as well as self-help offerings such as Alcoholics Anonymous. Commissioners may recommend an inmate enroll in a particular program to better prepare himself or herself for life outside of prison.*

**7. *How do you learn about educational, vocational, or self-help programs in state prisons? Which programs have you observed and when? How do you know if a particular program is effective? Please explain.***

I have a master list of all the programs that are available at the institutions. Further, I obtain updates of available programs when I arrive at an institution each week. During 2009, I visited all academic, vocational and substance abuse programs that are offered at the California Substance Abuse Treatment Facility (SATF). I interviewed staff and instructors to gain further knowledge. I also interviewed an inmate who leads a substance abuse treatment program. I will be observing additional institutional programs during January 2009.

Regarding program effectiveness, I ask the inmate during the hearing what he has learned from the program and if applicable how would he use the skills and knowledge that he has learned in free society. The integration of what has been learned by the inmate into how the inmate will use it is of the utmost importance in determining suitability.

**8. *As the department moves to focus academic and vocational programs on inmates being paroled in the coming three years, how will life-term inmates get the programming you recommend for them to qualify for release? Do BPH members participate in these policy decisions?***

Based on my current knowledge, inmates have a wide variety of programs that are available to them. Some programming may be reduced due to budget restrictions and

some programs are not available at all institutions. With this in mind, I have previously recommended that inmates develop their own self study program, such as specific reading when resources are not available. I also ask inmates and their counsel to advise me if there are challenges or problems accessing programming at the institution.

The BPH Commissioners have been informed that the Executive Office is pursuing this topic of discussion with the California Department of Corrections and Rehabilitation (CDCR) and program providers. BPH is kept abreast of new developments that may affect life inmates' programming from CDCR Adult Programs Division.

**9. *How are you made aware of the availability of programs at individual facilities? If you recommend participating in a particular program for an inmate, are you certain it is available to the inmate?***

I have a list of all available programs, vocational, educational, and self help at each institution and I obtain updated information when I arrive at the institution. I ensure that recommended programs are available or open to lifer inmates before I provide recommendations through inquiry of staff at the institution.

**Proposition 9**

*An inmate with an indeterminate life sentence is required to receive an initial hearing one year prior to the inmate's minimum eligible parole date. Until now, subsequent hearings have occurred between one and five years apart for murder convictions, and between one and two years apart for non-murder convictions. With the passage of Proposition 9 on the November 2008 election ballot, these intervals will be changed. Under the new law, the time between hearings would be extended to between three and fifteen years, as determined by the board, according to the Legislative Analyst. Inmates, however, could periodically ask that the board advance the hearing date.*

**10. *What changes in hearings do you foresee as a result of passage of Proposition 9, and how will they impact the board's workload? How is your training being adjusted to factor in Proposition 9?***

A significant change in the hearing process as a result of the passage of Proposition 9 is the expanded participation by victims and next of kin. This will likely result in hearings lasting longer and will require exceptional scheduling coordination. Additionally, the size of the hearing room and security are a few of the operational issues that may require accommodations. There is a potential that increased participation by victims and next of kin will impact the number of cases scheduled during the week. The Board began implementation of Proposition 9 during the week of December 15, 2008, and at this time empirical data is at a minimum. All board members have received extensive

training on implementing Proposition 9. Further, the legal team is available as a resource if needed.

Also of particular significance with the implementation of Proposition 9 is the change in denial periods when an inmate is found unsuitable for parole. The denial length has changed from 1 to 5 years to 15, 10, 7, 5, and 3 years. Equally important, is the use of the clear and convincing evidence standard in determining the appropriate denial length when an inmate is deemed unsuitable. Commissioners were provided several hours of training on the use of the new clear and convincing standard and other aspects of Proposition 9 at our week of training in December 2008.

### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The historic lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement, though under current policy it is supposed to be done every three years.*

*Effective January 1, 2009, as part of its effort to reduce the backlog of lifer hearings, BPH is introducing a new strategy. A new psychological evaluation, called a Comprehensive Risk Assessment (CRA), will be implemented and will be valid for five years. A secondary report, known as a Subsequent Risk Assessment, will be conducted as an update for hearings held prior to the five-year expiration of the CRA. Reports completed prior to January 1, 2009, will remain valid for three years from their completion date or until used in a hearing resulting in a decision.*

#### **11. BPH policy on psychological assessments seems to be evolving. Please explain the current policy and whether you expect further fine tuning in the coming months.**

As noted the current psychological evaluation has been revised and is called a Comprehensive Risk Assessment (CRA). The CRA is valid for five years and updated by use of the Subsequent Risk Assessment (SRA) when a hearing is conducted prior the end of the five year shelf life of the CRA.

The psychological report is a tool to assist Commissioners in assessing the present risk of dangerousness of an inmate as well as their mental state. The new psychological report guidelines were developed to create consistency within the report and in the use of the report. Life panel members consider information regarding past and current mental state and past and present attitude towards the commitment offense. The CRA



is used as a tool to provide the panel with information. The hearing panel uses this information to help determine the inmate's present risk of dangerousness. I do not foresee any major changes until this new tool has more field usage by Commissioners.

**12. How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool?**

I have received training on the role and use of psychological evaluations as a tool to assist in determining an inmate's current risk of dangerousness. I also understand that as the fact finder, I am free to give the psychological evaluation the weight I deem appropriate, considering all the facts and circumstances of the case before me, in my suitability analysis.

The Commissioners received training on the use of the psychological report at hearings. It is considered a piece of evidence, an expert opinion, that as a panel member, I can use it to assist with my suitability consideration. The information in the psychological evaluation provides information for lines of questioning to the inmate at the hearing.

**13. Do you believe the risk assessment information contained in the psychological evaluation is useful to you in making a decision? How will the new assessment be more effective?**

As discussed in the previous answers, the risk assessment information and the information on which the assessment is based provide fertile ground for questions of the inmate regarding suitability factors which consider the past and present mental state and past and present attitude toward the crime.

After receiving training on this new instrument, I am confident that the risk assessment information is relevant and useful for panel members in determining suitability of individuals. The importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel members. The CRA will be effective in that it provides more information about a specific issue such as, propensity to use drugs, role of drug/alcohol in crime, exploration of remorse/insight and extent to which individuals have dealt with issues that may be pertinent to determining suitability versus unsuitability.

### **Working Conditions**

*BPH members conduct their hearings in close quarters, inside state prisons in two-person panels. Some hearing documents are forwarded to them prior to the hearings.*

**14. Your working conditions can be difficult and your hearings can be long. Do you have any suggestions for how the process could be improved?**

In reference to working conditions, I have personally worked closely with staff, including the Warden, to improve unacceptable working conditions at one of the institutions. The outcome was a tremendous improvement and solved a long-term problem that affected the operational efficiency at the institution and the hearing panel effectiveness.

Due to budget constraints, and logistical and security issues, poor working conditions are not easily solved. There is no doubt that Proposition 9 may result in longer hearings which will impact both BPH and the institution staff. Therefore, ongoing communication between BPH and the management team from the institutions is a critical component. I believe that this suggestion has merit and can be addressed by establishing a committee consisting of the BPH chair, Executive Officer, and warden or assistant warden from each institution where lifer hearings are conducted. The meetings should be held semi-annually. Recommendations from these meetings can be used to budget for changes and serve as a conduit to improve working conditions.

**15. When do you prepare for hearings? When are board packets made available to you? Do you believe the current system allows you to be fully prepared?**

The board packets are sent to Commissioners no later than two weeks before the scheduled hearing week. I prepare for hearings on my days off and again review each case thoroughly the night prior to the hearings. Obviously conducting hearings Monday through Friday does not allow time for preparation during normal work week hours. However, not being prepared is not an option and I am willing to spend whatever time is necessary to be prepared. I knew the work week would be more than 40 hours when I accepted this position.

PAROLE CONSIDERATION HEARING INFORMATION  
BY COMMISSIONERS AND MONTH  
FOR JANUARY 2008 THROUGH DECEMBER 2008

Comm #	ID# 053	ID# 054	ID# 055	ID# 056	ID# 057	ID# 058	ID# 061	ID# 062	ID# 064	ID# 065	ID# 066	ID# 067	ID# 069	ID# 070	ID# 071	ID# 072	ID# 073	ID# 074	ID# 075	ID# 999
Name	Garner	Bryson	Biggers	Davis	Shelton	Martinez	Eng	Kubochi	Prizmich	Woods	Doyle	Anderson	Arbaugh	Drummond	Kane	Gillingham	Chrones	Michell	CDCR*	
Hearings**	573	531	555	329	278	241	213	12	593	87	514	448	313	181	255	221	203	203	1641	
Grants	43	17	19	6	13	4	9	0	23	2	31	30	32	19	20	19	9	5	0	
<b>Pre-Marsy</b>																				
Deny	310	375	423	187	181	163	183	8	385	47	311	315	207	117	176	155	135	124	1	
1yr	145	115	187	92	56	50	45	2	153	18	142	132	90	52	76	57	52	30	0	
2yrs	97	127	135	51	55	50	73	5	137	19	98	100	70	29	57	51	45	45	0	
3yrs	33	54	50	28	22	16	25	0	32	3	42	30	18	15	28	23	16	23	1	
4yrs	13	26	28	12	17	24	26	1	44	4	20	33	19	8	13	13	15	13	0	
5yrs	22	53	23	4	31	23	14	0	19	3	9	20	10	13	2	11	7	13	0	
<b>Post-Marsy</b>																				
Deny	15	4	23	0	0	0	0	0	30	0	11	14	21	13	23	7	6	17	1	
1yr	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	1	0	0	1	
2yr	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	
3yrs	12	1	8	0	0	0	0	0	15	0	6	7	19	9	16	4	3	5	0	
5yrs	1	0	4	0	0	0	0	0	6	0	1	5	1	2	5	2	1	8	0	
7yrs	0	1	9	0	0	0	0	0	5	0	0	0	0	1	2	0	0	3	0	
10yrs	2	1	1	0	0	0	0	0	0	0	1	0	1	1	0	0	1	1	0	
15yrs	0	1	1	0	0	0	0	0	4	0	0	2	0	0	0	0	1	0	0	
Slips	45	64	124	78	28	18	27	1	75	13	91	51	50	22	24	25	22	23	2	
Postpone	179	120	70	135	80	72	26	4	136	37	141	83	37	5	18	31	35	41	1462	
I/Alt	61	56	32	34	31	26	16	3	40	9	76	47	18	5	15	16	17	17	289	
Exigent	3	0	0	0	0	0	0	0	1	0	0	0	1	0	1	2	3	1	18	
BPT/CDCR	115	64	38	101	49	46	10	1	95	28	65	36	18	0	2	13	15	23	1155	
I/M Waiver	8	11	17	0	0	0	0	0	11	0	19	2	14	24	17	8	18	15	7	

\* CDCR (ID# 999) does not conduct Consideration Hearings. This column reflects actions by BPH-HQ to approve Stipulated Denials, Postponements, and Waivers.

\*\* Number of Grants, Denials, Slips, and Postponements will not sum to the total number of Hearings per commissioner due to other miscellaneous hearings not included in this table.

NOTE: Postponements for Commissioner Doyle (ID# 067) may be elevated due to actions processed through BPH Headquarters. One and two-year denials reported after implementation of Marsy's Law are due to stipulated denials made prior to the scheduled hearing date. As a result of on-going quality control efforts this summary reflects minor changes to data relating to past reports issued for individual months within this period.



CALIFORNIA LEGISLATURE

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SECRETARY OF THE SENATE

NETTIE SABELHAUS

APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

December 2, 2008

Gregory W. Jones

Dear Mr. Jones:

This is to inform you that the Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the State Board of Education on Wednesday, February 4, 2009. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by December 28, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by December 28<sup>th</sup>.

**Goals and Governance**

The State Board of Education (SBE) is responsible for setting policy and adopting rules and regulations for governing standards, curriculum, instructional materials, assessment, and accountability. The board is also responsible for approving waivers of certain provisions of the Education Code, reviewing district reorganization plans, implementing federal programs, and adopting regulations to implement legislation. Some of these duties overlap with those of the Superintendent of Public Instruction.

1. *What do you hope to accomplish during your first term as a member of SBE? How will you measure your success?*
2. *In your opinion, what should be the board's top priority for the coming year?*



3. *The Governor's Commission on Education Excellence released a report recently that described education governance as a "crazy quilt." How do you view your role within this structure?*
4. *As a board member, what training have you received regarding conflicts of interest? From whom do you seek advice on potential conflicts?*
5. *As a gubernatorial appointee, do you believe you have a responsibility to always support the Governor's wishes on issues that come before the board?*

### **Accountability**

The Legislature, the Superintendent of Public Instruction, and members of the public testifying at board meetings have all expressed strong support for the view that the board's top priority should be addressing the achievement gap in California.

6. *The State has been criticized for putting too much pressure on schools to "teach to the test" and requiring students to spend too many hours annually taking tests. Is that criticism warranted? How do you, as a board member, evaluate our testing policy and what steps would you take to modify it, if necessary?*
7. *Is an over-emphasis on test results crowding out other objectives?*
8. *Last year the Governor signed SB 219 which asks the SPI and SBE to revise the API to include 8<sup>th</sup> and 9<sup>th</sup> grade dropout rates and hold high schools of origin accountable for the scores and dropout rates of student transferred to "alternative education." Technically the board does not have to implement the law unless the Legislature provides funds for local data collection, but the SPI and SBE may enact these changes of their own accord. Can the board move to enact these changes by 2011?*
9. *How do you respond to the criticism that current test scores are not a true reflection of achievement in California because the lowest performing students have already dropped out and are not being tested?*
10. *The Legislative Analyst recently released a report suggesting that federal and state accountability systems be consolidated so that districts understand more clearly what is expected of them. Do you agree with this recommendation? If so, what are you doing to implement it?*

## No Child Left Behind Act

The federal No Child Left Behind Act (NCLB) requires integration of the state and federal accountability systems. Specifically, federal law requires the state to define student proficiency according to standards-aligned assessments, ensure that all schools make adequate yearly progress toward defined proficiency levels, and intervene with or sanction schools that do not make adequate yearly progress. This is in contrast to California's academic accountability system that annually calculates an academic performance index for all California public schools, including charter schools, and publishes school rankings based on them.

Schools that do not make their growth targets for two consecutive years are designated program improvement schools. Districts that are unable to exit program improvement face corrective action. In March 2008, SBE imposed sanctions for approximately 100 districts under the requirements of NCLB. The board's action required the affected districts to address the sanctions whether or not funding was provided for that purpose.

11. *Some districts have been sanctioned for their failure to reach NCLB goals. In addition, the state board recently increased API growth targets for underperforming subgroups. It is not likely that state funding will increase for these districts given the current budget situation. As you make decisions that affect school districts, how do you factor in the problems that districts face in a difficult budget year?*
12. *The board has approved policy allowing schools to show "adequate yearly progress" by making only negligible improvements in their graduation rates – one percentage point annually. Are you concerned that by placing high expectations on test score improvement and such low expectations on graduation rates, the State may create a perverse incentive for schools to let certain students drop out?*
13. *The board has responsibility for standards and curriculum. It is estimated that all districts will be in program improvement by 2013-14. What is the long-term strategy for developing standards and curriculum for students that address program improvement issues?*
14. *Do you believe that the board is doing everything within its power to assist districts with meeting the requirements of NCLB? If so, what specific steps has the board taken?*

## California High School Exit Exam

Since the 2005–06 school year, all students, excluding students with disabilities, who sought a public high school diploma had to pass the California High School Exit Exam (CAHSEE). The test exemption for students with disabilities ended with the class of 2007 and, until further action is taken, all students, including students with disabilities, must pass both parts of the exam as a requirement for graduation.

15. *There has been extensive discussion on options for students with disabilities who are unable to pass the exit exam. What course of action would you recommend for those students, and what would you propose as a long-term solution?*
16. *Federal law requires an alternative assessment to be provided for students with disabilities, but the board has never authorized one, opting instead to allow local districts to seek a waiver from the test for affected students. Should the board accommodate students who wish to take the test rather than waive the testing requirement?*

## English Learners

The California Department of Education reports that approximately 25 percent of California's K-12 students—about 1.6 million—are English learners. They perform at substantially lower levels on standardized tests than English-proficient students. Last year's test results from CAHSEE for first-time test takers in the class of 2009 (in grade 10) indicate that English learners performed an estimated 41 percent lower than the state's overall passing rate on the English-language arts exam, and 29 percent lower than the state's passing rate on the mathematics exam.

17. *Concerns have been raised that the state's Reading Language Arts and English Language Development framework is not designed to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass CAHSEE. How do you respond to this criticism? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain reading and English proficiency?*
18. *SBE recently reestablished the English Learners Advisory Committee (ELAC). What role will ELAC play in deciding board policy? What is the goal of the committee? Will you be involved with ELAC? If so, how?*



## Algebra 1

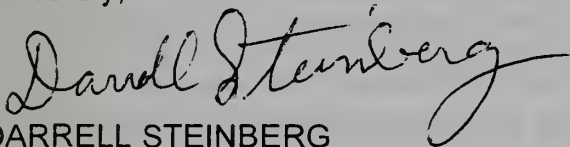
Under your motion, SBE recently voted to make the Algebra 1 California Standardized Test the sole assessment test of record for federal purposes under NCLB for all 8<sup>th</sup> graders. The decision creates a de facto requirement that districts enroll all 8<sup>th</sup> graders in Algebra 1 or face a penalty for not meeting the 95 percent participation rate target required under NCLB. The Superintendent of Public Instruction has estimated the cost to implement the board's action at approximately \$3 billion. A plan has not been provided for execution of this decision, and on October 28, 2008, a temporary restraining order was issued preventing the state board from proceeding with implementation.

19. *What was the basis for your motion to establish the Algebra 1 exam as the 8<sup>th</sup> grade test assessment? Were you provided any research indicating that such a decision would be in the best interest of students?*
20. *Did you seek any input from the field – teachers, principals, parents – before making this decision?*
21. *Does the board have a plan to assist districts in meeting the mandate? If so, could you please explain that plan?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DARRELL STEINBERG

DS:LAR

cc: State Board of Education

1. It is my goal to implement policies that lead to improved academic performance from our kids and close the intolerable achievement gap that exists. Many of our kids are being short changed in this educational experience. Those most impacted are poor and minority children. With over two-thirds of our public school kids falling in that category, there is no more important goal to ensure their future success in either college or the workforce. I would like to see us create better avenues to solicit and hear the voices of high-performing schools, particularly high-poverty public schools, to make better policy decisions by facilitating replication of their best practices. All schools should begin to replicate what has proven to work in these high-performing schools and districts to raise student achievement.

I want my role on the board to help create and implement policies that help, not hinder, this replication and ultimately be measured by increases in academic proficiency for all students and achievement gap closure between minority and poor children and their more affluent counterparts.

2. Our top priority should be creating policies that support closing achievement gaps for African American, Latino, English language learners, and poor students and that focus our schools and districts to get every child to a minimum grade level proficiency every year.
3. I view my role in education governance as an independent, nonpartisan board member who has a voice in policy that has a positive impact on our children and who adds clarity to standards, accountability, and compliance with state and federal education laws.
4. I have taken the online training required by all public officials. In a situation where a state board decision might impact my financial interests or where participating in a state board decision might create the appearance of a conflict of interest, I would seek guidance from our General Counsel.
5. The short answer is no. While I would expect our philosophy to be in sync and I would hope to support that overall philosophy, I fully expect there to be issues that come before the board where the Governor and I will disagree. It is my duty to exercise my best judgment independently from those that appointed me to the board.
6. I do believe there needs to be some balance, education and learning that go beyond test taking. That said, periodic assessments are a critical part of instruction in schools and in accountability for our state education system. High-performing schools across the state tell us that testing is an important tool to be used in evaluating and adjusting instructional programs ensuring they are aligned to the state's content standards.

**Senate Rules Committee**

DEC 31 2006

**Appointments**

When done well, it seems to me there should be little difference between “teaching to the test” and teaching to content standards.

These high-performing school leaders view these tests as an important part of their work to help students reach grade level proficiency.

As a board, we should evaluate based on input from schools, whether they’re getting the kind of timely information they need from the test to adjust instruction for each student to ultimately master the state content standards.

- 7 First, I don’t think there is any other objective more important than raising student achievement--to the degree tests help do that, they are an important tool.

State achievement tests are giving us the critical feedback we need to realize that half of our student population and two-thirds of our ethnic minority and poor kids are not reaching the minimum of grade level proficiency in reading, writing, and math.

That means they won’t graduate from high school ready for college or the workplace. If they can’t read, write, or compute, then the “other objectives” need to be reevaluated.

However, it shouldn’t be acceptable to only meet their goals for the basic skills areas. Getting kids to grade level in all core academic context areas is essential.

8. Honestly, I’m not completely familiar with this, but I believe districts already have this data. What is needed is a willingness at the leadership level to do something with it to help stem the growing dropout problem. So, yes, the SBE can and should require these additional accountability measures so that we have more clarity on real dropout rates and can do something about it.

9. While that calls for some speculation, intuitively I believe that to be true. I have not personally seen data that was comprehensive, timely, and helpful that tells us who is dropping out and what they might achieve if they stayed in school.

Of course, if we’re struggling to get students who are staying in school to grade level then clearly there is a lot of work to do.

I do believe the SBE should take a proactive position on requiring schools to accurately measure dropout and graduation rates so we can catch those who fall through the cracks long before high school.

We should target our focus, resources, and intervention on the students most likely to drop out very early in their education.

10. I believe our accountability system under API is not a particularly helpful tool for schools to improve. The formulas change annually; many people do not understand how API is calculated or how they can affect their scores. And frankly, the growth targets are so minimal that in many cases it would take over 30 years to get all students or a particular subgroup to meet the standards.

An effective accountability system should focus on the rate that schools are getting students to grade level proficiency.

It seems to me we must ask two questions:

1) What happens to a school that is getting all their kids to grade level over a reasonable time and 2) what happens to a school that doesn't? Today, the answers to the questions are fairly weak.

As a board member, I want to work to move our state towards more clearly articulating and measuring schools by how many students are reaching grade level and through attaching effective intervention for lackluster results and real incentives for improvement.

11. I think we must examine the premise. In my view, the premise should not be that districts cannot improve without more money. The fact is there are hundreds of high-performing schools and districts in California that are meeting their achievement targets with today's resources. 1) Nor should we allow the state's budget situation to become an excuse for schools and districts to let up on our relentless focus on closing the achievement gap. High-performing schools hold their students and themselves to high standards. Poor and minority students deserve no less--budget crisis or not. What we learn from these high performers is they know exactly what they would do with more money if they had it. Our goal should be to connect struggling districts with those best practices that are proving to raise academic achievement and closing achievement gaps with current resource so they can replicate what works. 2) There is too much at stake for poor and minority kids to surrender on their behalf because we don't have all the funds we'd like to have.
12. Absolutely. We must raise expectations for grade level proficiency, dropout rates and graduation rates at the same time and hold schools and districts accountable for those results.
13. By saying that "all districts" will be in program improvement by 2013-14 implies and assumes that they have no control over whether they improve or not. Without sounding as if the solutions are simplistic, which clearly they are not, the long-term strategy is to keep our standards high and not yield to the temptation of lowering the bar should they not be met. Instead we should "scale up" and create interventions and incentives for the replication of best practices from districts and schools that are raising student achievement and getting the students to meet the

standards. The fact of the matter is that there are some excellent public schools in this state, many of which serve populations of kids that too many are prepared to write off as incapable of meeting high standards. If the high-achieving schools--seeming "Islands of Excellence"--are possible anywhere, they are possible everywhere.

14. Everyone in public education including the state board can and must do more to help districts and schools raise student achievement and thus meet adequate yearly progress. I believe the SBE took a positive step in clearly defining intervention for the 97 districts that missed the benchmarks for many years in a row. The next step is to focus on improving these districts by replicating practices from across the state and country that are working.
15. My mother was a teacher of students with disabilities for over 20 years. She would say, and I agree, her students do not want to be nor should they be held to lower standards. By doing so, we set them up for failure post graduation without the skills needed for college or the workplace. Of course, there are a small percentage of students with certain very severe disabilities where we need to find a long term accommodation. For the remainder of students classified as having disabilities, we must take a hard look at the level of expectations we have for them, the quality of instruction they are receiving, and how we can do a better job in remediating skill gaps so that they can pass this minimum benchmark for a high school diploma.
16. I believe, notwithstanding a rare exception for some severely handicapped, we should not waive the exit exam. We should assess our teaching methods to help teachers meet the needs of these students so they can pass the test. In limited cases the board should look toward a long-term plan for accommodating the needs of severely disabled students.
17. I think the concerns are warranted to some degree. My concern would be not only about the instructional materials but about the instruction as well. What are the expectations we hold for these students, who is teaching them and how are holding schools accountable when English language learners are not progressing as they should?

If we look at those schools and districts that are getting good results in getting more English learners to pass the exam it can help us create better informed policy about what is needed instructionally.

18. The ELAC committee should not decide board policy but rather inform and advise the board in relation to how to raise academic achievement for English learners. While I'm not working directly with them, I look forward to hearing from them with regards to how we can raise proficiency levels of students who are struggling to learn English while meeting our world class standards.

19. We owe every child the very best education possible. Giving them the skills to compete in a global information based economy is a must for their future. Setting expectations high and holding both them and ourselves accountable is not in any way a detriment to students. Clearly, I am not naïve to the fact that this will be a significant challenge. I firmly believe that it is none-the-less a step we can and must take. While research on this issue has been lacking, there is no shortage of research that suggests that students, like all of us, rise to higher expectations.
20. I have personally talked to numerous people on this subject: students, teachers, administrators, parents, and business leaders. While of course, there is never complete agreement on this or seemingly any other education issue, most people I've talked to, particularly in poor and minority communities, believe the objective is the right one--although agree as I do that much must be done to make it a reality. In addition, the board received substantial input from the field in the form of letters and public testimony that was presented to it.
21. The board's actions in July called for an agreement with the federal government that would have given the state of California sufficient time to develop the capacity to implement this decision. Unfortunately, the board has been enjoined by the court from taking any further action on that agreement. The board is prohibited due to court order from taking any further action to implement its July decision, so planning for implementation is not something the board can do at this point.



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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

--o0o--

WEDNESDAY, FEBRUARY 11, 2009

1:41 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

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STATE OF CALIFORNIA

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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

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WEDNESDAY, FEBRUARY 11, 2009

1:41 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

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23  
24  
25

INDEX

Page

1 Proceedings ..... 1

2 Governor's Appointees:

3 JOSEPH A. FARROW, Commissioner of the California

4 Highway Patrol ..... 2

5 INTRODUCTION BY SENATOR GLORIA ROMERO ..... 2

6 OPENING STATEMENT BY COMMISSIONER FARROW ... 5

7 Questions by CHAIRMAN STEINBERG re:

8 Changes in the CHP under

9 Commissioner Farrow's leadership . 7

10 Chief's disease ..... 9

11 Questions by SENATOR OROPEZA re:

12 Diversification ..... 12

13 911 system ..... 15

14 Question by SENATOR DUTTON re:

15 911 system ..... 19

16 Questions by SENATOR CEDILLO re:

17 Computer-aided dispatch project .. 21

18 Procurement procedures ..... 21

19 Questions by SENATOR AANESTAD re:

20 CHP officers assigned to the

21 Capitol ..... 23

22 STATEMENT BY SENATOR AANESTAD ..... 11

23 STATEMENT BY SENATOR OROPEZA ..... 18

iii

APPEARANCES

MEMBERS PRESENT

- 1
- 2
- 3
- 4 SENATOR DARRELL STEINBERG, Chair
- 5 SENATOR GIL CEDILLO
- 6 SENATOR SAMUEL AANESTAD
- 7 SENATOR ROBERT DUTTON
- 8 SENATOR JENNY OROPEZA

STAFF PRESENT

- 9
- 10
- 11
- 12 GREG SCHMIDT, Executive Officer
- 13 JANE LEONARD BROWN, Committee Assistant
- 14 NETTIE SABELHAUS, Appointments Consultant
- 15 DAN SAVAGE, Assistant to SENATOR CEDILLO
- 16 BILL BAILEY, Assistant to SENATOR AANESTAD
- 17 CHRIS BURNS, Assistant to SENATOR DUTTON
- 18 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

- 19
- 20
- 21
- 22 JOSEPH A. FARROW, Commissioner of the California
- 23 Highway Patrol

Witnesses in Support of Appointee:

- 24
- 25
- 1 JOHN LOVELL, California Police Chiefs
- 2 Association, California Peace Officers
- 3 Association, California Narcotic Officers
- 4 Association ..... 24
- 5 ED PRIETO, California State Sheriffs'
- 6 Association, Yolo County Sheriff's
- 7 Department ..... 25
- 8 AARON READ, California Association of
- 9 Highway Patrolmen ..... 27
- 10 JON HAMM, California Association of
- 11 Highway Patrolmen ..... 28
- 12 JULIE SAULS, California Trucking
- 13 Association ..... 29
- 14 DUNCAN McFETRIDGE, Coalition of Utility
- 15 Employees ..... 29
- 16 BROOKS ELLISON, California Tow Truck
- 17 Association and California Dump Truck Owners
- 18 Association ..... 30
- 19 TIM CHANG, Automobile Club of Southern
- 20 California ..... 31
- 21 PAULA LaBRIE, California State Automobile
- 22 Association ..... 31

iv

ii

1 Witnesses in Support of Appointee (cont.):  
2 BILL DOHRING, Independent Auto Dealers ..... 31  
3 JAMES LOMBARDO, SR., California Motorcycle  
4 Dealers Association ..... 32  
5 CARL BRAKENSIEK, California Association  
6 of Licensed Repossessors ..... 32  
7 --o0o--  
8 Vote-Only Item re Confirmation of:  
9 JON A. EDNEY, Member, Water Quality  
10 Control Board, Colorado River Basin Region  
11 DONALD M. JARDINE, Member, Water Quality  
12 Control Board, Lahontan Region  
13 R. STEVEN BLOIS, Member, Water Quality  
14 Control Board, Los Angeles Region  
15 MADELYN J. GLICKFELD, Member, Water Quality  
16 Control Board, Los Angeles Region  
17 CAROL A. DEAN, Member, Water Quality  
18 Control Board, North Coastal Region  
19 DAVID M. NOREN, Member, Water Quality  
20 Control Board, North Coastal Region  
21 STEVEN M. MOORE, Member, Water Quality  
22 Control Bard, San Francisco Bay Region ..... 34  
23  
24 --o0o--  
25

v

1 Proceedings Adjourned ..... 36  
2 Certificate of Reporter ..... 37  
3 APPENDIX (Responses of Appointees) ..... 38  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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22  
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vi

**PROCEEDINGS**

1  
2 CHAIRMAN STEINBERG: Good afternoon,  
3 everyone. The Senate Rules Committee will come to  
4 order. I want to apologize to everyone for being  
5 late.  
6 SENATOR OROPEZA: You do have a few things  
7 that you're working on.  
8 SENATOR ROMERO: At least it's not 100 days.  
9 CHAIRMAN STEINBERG: I won't make excuses.  
10 Please call the roll.  
11 MS. BROWN: Senator Cedillo.  
12 SENATOR CEDILLO: Here.  
13 MS. BROWN: Cedillo here.  
14 Dutton.  
15 Oropeza.  
16 SENATOR OROPEZA: Here.  
17 MS. BROWN: Oropeza here.  
18 Aanestad.  
19 SENATOR AANESTAD: Here.  
20 MS. BROWN: Aanestad here.  
21 Steinberg.  
22 CHAIRMAN STEINBERG: Here.  
23 MS. BROWN: Steinberg here.  
24 CHAIRMAN STEINBERG: All right. Today we  
25 have one gubernatorial appointee who has been asked

1

1 to appear.  
2 We would like to welcome up Senator Gloria  
3 Romero, our colleague, to introduce the nominee,  
4 Joseph A. Farrow, for commissioner of the California  
5 Highway Patrol. Senator Romero, welcome.  
6 SENATOR ROMERO: Thank you. Thank you. I  
7 wanted to come today, because I know that the  
8 commissioner, when he was meeting with fellow  
9 senators, apparently one question kept coming up and  
10 kept asking, "What about Senator Romero?"  
11 And then I got a few phone calls asking me,  
12 "What about Commissioner Farrow? Are you going to  
13 support him?"  
14 Of course, there's a reason for that. As you  
15 know, both Assemblywoman -- I'd like to acknowledge  
16 her -- Assemblywoman Bonnie Garcia, like myself, we  
17 did -- jointly on a bipartisan basis, we did ask a  
18 number of questions of the role of oversight in this  
19 body about some of the operations within the California  
20 Highway Patrol.  
21 And we know that the CHP is a golden agency.  
22 We're very proud of its tradition and its history. The  
23 men and women who serve and, of course, here in the  
24 legislature, who protect us -- It's a legacy that we  
25 want to make sure is always protected.

2

1 But there have, of course, surfaced over the  
2 past few years a number of questions about procurement,  
3 about contracts, about funding. In particular for  
4 Assemblywoman Garcia and myself, there were concerns  
5 about whistle-blowing and the protection of those  
6 members within the agency who had the courage, I  
7 believe, to step forward and to ask us to do the right  
8 thing.

9 Time has passed. We have seen a couple of  
10 administrations that have come and gone, and I think  
11 it's a new chapter in California's history, and that's  
12 why I wanted to step forward today.

13 I've known Commissioner Farrow for some time  
14 through what I would consider to be bad times and,  
15 hopefully, good times ahead of us as well. I trust  
16 him. I believe he's got the integrity to move this  
17 agency forward. He's committed to making sure that  
18 if there is wrongdoing, it will not be tolerated.

19 But I think more than anything, he understands the  
20 mantle of leadership and is ready to step forward to  
21 lead this agency into a new and even more golden  
22 California than what's existed in the past.

23 So for all of those wondering: What about  
24 Senator Romero? Senator Romero is here to introduce  
25 Commissioner Farrow and to ask for your support for not

3

1 supporters back there who will introduce themselves  
2 in a few minutes as we go along; but I would be  
3 honored if I could make an introductory statement --

4 CHAIRMAN STEINBERG: Of course.

5 COMMISSIONER FARROW: -- to the panel, if  
6 you would.

7 Mr. Chairman, thank you very much for  
8 convening the hearing today to consider my candidacy  
9 to become the commissioner of the California Highway  
10 Patrol.

11 Vice Chairman Aanestad, appreciate you being  
12 here today.

13 Senator Cedillo. Senator Oropeza.

14 The Highway Patrol is a very, very proud  
15 organization, one of which I've been a member for  
16 29 years. I've served very, very proudly in a lot of  
17 different disciplines through the years. We have  
18 done a great job throughout our history, and there  
19 have been times of difficulties. I think those  
20 difficulties are well-chronicled. They've been  
21 spelled out. They've been publicized in many  
22 different arenas.

23 I'm here today with the support of my entire  
24 organization and, really, carrying the weight of  
25 every man and woman who works in this great tradition

5

1 only his confirmation, but really for a very new and  
2 glorious chapter in the history of the California  
3 Highway Patrol.

4 Thank you for allowing me to come.

5 CHAIRMAN STEINBERG: Thank you very much.  
6 Thank you, Senator.

7 SENATOR ROMERO: You're on your own.

8 COMMISSIONER FARROW: Thank you. Thank you  
9 very much.

10 CHAIRMAN STEINBERG: Mr. Farrow,  
11 Commissioner Farrow, welcome to the Rules Committee.  
12 If you would like to take the opportunity to  
13 introduce any member of your family or any other  
14 special guest, please feel free to do so, and we look  
15 forward to hearing from you, sir.

16 COMMISSIONER FARROW: That's very kind of  
17 you. I would like to introduce just a few people I  
18 brought with me here today. My fiancée, Leanne, in  
19 the second row.

20 CHAIRMAN STEINBERG: Welcome to you.

21 COMMISSIONER FARROW: And my two  
22 stepchildren, Jessica and Gregory, they are here.

23 CHAIRMAN STEINBERG: Welcome.

24 COMMISSIONER FARROW: And some members of  
25 the department I did not bring, and I do have some

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1 to tell you that we are very worthy of your support,  
2 we're very worthy of your support, and that we do  
3 understand the difficulties that we've faced over the  
4 years. We've made some mistakes. Not all were  
5 malicious, but they were mistakes made by human  
6 beings who tried to do the right thing, they tried to  
7 work hard, and sometimes we got out of bounds.

8 I think that the history will show that audit  
9 after audit has exposed some weaknesses in our  
10 mechanics, the structure of the organization, but I  
11 think if you visited the Patrol today, you would find a  
12 changed organization, an organization that is very  
13 proud, an organization that has learned from some of the  
14 missteps that we have had over the past.

15 We have put into place many mechanisms to  
16 ensure the public, ensure you that you can trust us,  
17 that when we spend the public tax dollars, we spend it  
18 wisely to the benefit of all the citizens of this great  
19 state and will do so very proudly and will do so under  
20 the contracts and structures that are in place to govern  
21 any state agency.

22 I'm here to answer any questions that you may  
23 have of myself or the organization; but, once again, I'm  
24 here very proudly and very honored to have been  
25 appointed by Governor Schwarzenegger to be the

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1 commissioner of the Patrol. I'm very thankful for the  
2 kind words of Senator Romero. I've gotten to know her  
3 over the last year and talked to her about the Highway  
4 Patrol. But I'm all ears, and I'm here to answer any  
5 questions you may have.

6 CHAIRMAN STEINBERG: Thank you very much.  
7 Maybe I'll begin, if that's all right, with just a  
8 question or two.

9 In your very good written responses, one  
10 thing that obviously stuck out was your comment that  
11 if you were to visit the CHP today, you would find a  
12 proud yet changed organization. What do you mean by  
13 that, and how has the CHP itself changed under your  
14 leadership?

15 COMMISSIONER FARROW: That question, the  
16 "what changed" part, was the question I knew would  
17 come some day when I got this job.

18 CHAIRMAN STEINBERG: Today.

19 COMMISSIONER FARROW: I waited a year for  
20 it. And when I got this job, a very, very smart  
21 gentleman asked me -- He said, "Be prepared for the  
22 question 'What changed within the organization?'"

23 And I think selfishly, or sometimes proudly,  
24 you want to say, "Well, the Highway Patrol is a great  
25 organization. We have done a great job. We have done

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1 the job that people have asked us to do. We are a  
2 traditional organization of 80 years of strength and  
3 commitment to this great state." And what you want to  
4 say is, "Nothing is going to change," because you're so  
5 proud of the organization.

6 The challenge that we made to my top management  
7 and my officers was to recognize that the department had  
8 some issues we had to deal with. We had the mechanic  
9 issues that we had to deal with in terms of how we do  
10 business. And we had to change the culture first by  
11 understanding that the problems we faced were all self  
12 done. They were self-inflicted wounds that we had to  
13 do.

14 There was acknowledgement from not only myself,  
15 but through my executive management, my top management,  
16 and to every man and woman who works for the California  
17 Highway Patrol, to understand we are better. We are a  
18 better organization than what has been portrayed over  
19 the last couple of years. We have accepted that from  
20 the bottom; we've accepted that from the top.

21 I've embraced a lot of the change mechanism.  
22 I've embraced the support of my unions that we work  
23 so closely with. I've embraced the comments and  
24 feedback from my top management to make this change  
25 from the way we do business by simply meaning that:

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1 We are the California Highway Patrol, but we are one  
2 state agency that is governed by the people. It's  
3 governed by yourself, it's governed by the governor  
4 of the state of California that we play by all the  
5 rules, every rule. Everything that we have to do is  
6 transparent, and we do so very, very proudly.

7 What I mean by that, Senator, if you came  
8 over today, what you would see is a very proud  
9 organization who fell to the bottom at one point. We  
10 were down. We were very low. And they're very proud  
11 now, and they get it. They readily admit the  
12 mistakes that we made over the past, and they do an  
13 honorable job. They don't want to fail. They don't  
14 want to fail you, they don't want to fail the  
15 governor, they certainly don't want to fail me. And  
16 that's our commitment. And I feel like I'm carrying  
17 all 11,200 of them in this room, because they're a  
18 very proud organization, and they want to do the  
19 right thing.

20 CHAIRMAN STEINBERG: One issue along those  
21 lines that I think has been a source of discontent,  
22 obviously within the ranks but also among the public,  
23 is the issue of chief's disease. And maybe you can  
24 explain, for those who may not understand what that  
25 term refers to, what it means and what you are doing

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1 to combat it.

2 COMMISSIONER FARROW: Chief's disease in its  
3 most simplistic definition was a phenomenon known as  
4 high-ranking officials who were retiring on  
5 disability retirement at the very end of their  
6 career. There was a series of articles and series of  
7 investigations that were conducted on some  
8 high-ranking members of the organization who retired  
9 at the very end of their career with a disability  
10 retirement.

11 That issue has been looked at for a long, long  
12 time. It actually started back when Commissioner Brown  
13 was here. It was a charter that he had from then  
14 Governor Schwarzenegger who asked Commissioner Brown to  
15 look at that issue.

16 The good news that I want to tell you today,  
17 four years, five years down the road, the last two years  
18 at the California Highway Patrol there has not been one  
19 chief who retired on disability retirement from the  
20 California Highway Patrol. That's not suggesting that  
21 some may have been warranted, and that's not to tell you  
22 that somebody may not retire tomorrow on disability  
23 retirement. But the procedures and practices we put in  
24 place was an identification of really what was going on,  
25 that we understood at times that we depended upon what

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1 we thought were other agencies and other people to work  
2 the system through and allow people to get involved in  
3 that system. We don't do that anymore. Every  
4 disability retirement, every filing of disability, is  
5 closely looked at, closely scrutinized. It goes through  
6 a chain of events that we take a look at to make sure  
7 that what is being filed is appropriate. We have a lot  
8 of mechanisms in place that have been well-chronicled in  
9 the past, and it's something that we take very, very  
10 seriously.

11 But at the same time, those people who have  
12 legitimate injuries, regardless of rank, we want to  
13 make sure that the system is in place to take care of  
14 the injured workers. This is a very dangerous job at  
15 times, so we want to make sure the system we have is  
16 bifurcated in such a way where we make sure that we  
17 take care of somebody who may want to engage in  
18 misconduct, but at the same time providing the  
19 services and the resources necessary for those that  
20 need them.

21 CHAIRMAN STEINBERG: Thank you. Let me ask  
22 the Vice Chair, do you have any questions?

23 SENATOR AANESTAD: No, but maybe a comment  
24 that answers your first question, Mr. Chair, and that  
25 is I reluctantly got involved with the Highway Patrol

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1 yesterday. I appreciate that. We had a good  
2 conversation about something that I would like to ask  
3 you on the record about, and that is the issue of the  
4 diversification of the force, both ethnically and in  
5 terms of gender.

6 There are some real disparities between what  
7 our community looks like and what the force looks like,  
8 and you and, I think, both agree that it's important to  
9 have a diverse workforce, because we're public servants  
10 and we're out there relating -- you're out there  
11 relating on a day-to-day basis with the public.

12 So could you talk with me a little bit  
13 about -- with us a little bit about your view on it  
14 and also what steps you think can be taken to crack  
15 this nut a bit.

16 COMMISSIONER FARROW: I certainly would, and  
17 I did enjoy the conversation with you yesterday. It  
18 was very enlightening for myself.

19 I can tell you this: The growth of the  
20 Highway Patrol is one of the things that we have  
21 concentrated on over the past year. The legislature  
22 and the governor have been very, very kind to Highway  
23 Patrol to allow us to grow just a little bit during  
24 the very difficult fiscal crisis that we have right  
25 now. Being reflective of the communities in which we

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1 a number of years ago over the citing of offices,  
2 special units in my district, and have kept in close  
3 contact with not just that unit, but also the I5  
4 unit, which runs right through the heart of my  
5 district, and the northern people.

6 And I can tell you there is a sense of change,  
7 and it's a renewed sense of pride in the Highway Patrol.  
8 And I believe, as I've told you, Commissioner, in our  
9 offices last week, that he is largely responsible for  
10 that.

11 There is an openness, an ability for the people  
12 in the mid-level management, as well as the officers, if  
13 they have something on their mind, to go to their  
14 superior officer now and let them know what they're  
15 thinking, because I think they know now that they're  
16 going to be heard and listened to, and I think that  
17 changes an organization for the better. And I want to  
18 commend you, and I'm hoping that that will continue.

19 COMMISSIONER FARROW: Thank you very much,  
20 Senator Aanestad.

21 CHAIRMAN STEINBERG: Thank you, Senator  
22 Aanestad.

23 Questions. Senator Oropeza.

24 SENATOR OROPEZA: Thank you so much for  
25 spending some time with me yesterday. It was

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1 work is a paramount goal of my administration, to  
2 make sure that we can do that.

3 Over the last year, I've asked and we've  
4 succeeded, I think, in attracting a lot of qualified  
5 candidates throughout California, but I'm here to  
6 tell you right now that our work is not done. We are  
7 not reflective of California. We still have a lot of  
8 work to do, specifically in targeted groups, that I  
9 really would like to spend some time on. And I've  
10 asked my recruiters to go out and work hard in a lot  
11 of non-traditional ways of trying to recruit people.

12 I think that you probably had the opportunity  
13 to watch one of the videos that we put together  
14 specifically trying to recruit females onto the  
15 California Highway Patrol. While our work isn't done  
16 there, I'm encouraged by the fact over the last two  
17 classes, we have been able to increase the amount of  
18 intake we have with females.

19 There again, if you have an agency in 2009 when  
20 you're only reflective -- about 6 percent of your  
21 workforce is female in uniform ranks, I think we get a  
22 failing grade in that. We have done very well in  
23 attracting some of the other groups, but our work is not  
24 done. I get it. I want to do it. My top management  
25 embraces that throughout, the need to the communities,

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1 and if there were different fiscal times right now, I  
2 would probably be running different commercials and  
3 things like that, but I recognize there isn't a lot of  
4 money, so we do it almost by foot. We go to meetings  
5 and we try to get involved in all the different  
6 communities. I can commit to you this, is that I  
7 understand that. My top management understands it, my  
8 crews understand it, and we're doing everything we  
9 possibly can to make this department be reflective of  
10 those communities.

11 SENATOR OROPEZA: Well -- And I'm pleased to  
12 hear that. I would suggest that you might want to  
13 look at new technologies, you know, YouTube and other  
14 kinds of ways to, at low or no cost, get your message  
15 out there once you produce whatever it is you want to  
16 send out as the message.

17 I think we in the state highly underutilize our  
18 potential relative to technology, and so I would  
19 encourage that, and I am pleased to hear that you feel  
20 that way.

21 Let me just ask briefly also about another  
22 topic that comes up often at the local level when I'm at  
23 town-hall meetings and other places, and I have my own  
24 personal experience, and I know that CHP is just part of  
25 the puzzle, but can you talk to me about the 911 system

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1 legislation a few years back allowing local areas  
2 to -- the local police departments to start  
3 transferring some of those calls. That's a work in  
4 progress. That takes time to be able to do that.  
5 But here, today, we've had 340 departments that have  
6 actually made that transition. There's still many  
7 more that have to come, but they've made that  
8 transition, and they're starting to take away some of  
9 the workload from our CHP dispatchers.

10 SENATOR OROPEZA: So is it that the pressure  
11 point ought to be at the local level? If I want to  
12 see some action in the south basin of L.A. County, is  
13 it the local municipalities that have police -- their  
14 own police departments or --

15 COMMISSIONER FARROW: Not necessarily all of  
16 them yet. This is a work in progress, because for a  
17 local agency to take the calls, to transfer calls,  
18 we have to work very closely with the industry, and  
19 we have to make sure that the industry is able to  
20 transfer those calls. You have to go carrier to  
21 carrier. So there are a lot of things.

22 I can tell you this: There are some local  
23 agencies fully responsible for the 911 calls. It really  
24 depends upon the area you're in, but they will face the  
25 same issues that we did, that the system works fine

17

1 and cell phones, and how it can be that we can pick up a  
2 cell phone, dial 911, and not get anywhere. Can you  
3 share a little bit about what kinds of things are being  
4 done to solve that problem?

5 COMMISSIONER FARROW: I certainly can. The  
6 911 system that you talked about is a system that's  
7 in constant evolution. The California Highway Patrol  
8 on a yearly basis receives about eight million 911  
9 calls per year. The good news about that is under  
10 the current national standards, about 81 -- 91  
11 percent of those calls are answered within the  
12 ten-ring requirement. If you go down to the 15-ring  
13 requirement, we're still at 92, 93 percent. So we do  
14 a pretty good job in terms of getting the normal  
15 calls that come in.

16 Certainly, though, the department is very  
17 aware of the fact that sometimes on some of your  
18 larger incidents where there's an influx of calls,  
19 they can't get through the system, so you're going to  
20 get one of two things. You're going to get a busy  
21 signal, or you're going to get yourself stuck into a  
22 queue. I would imagine those are the calls that  
23 you're talking about.

24 The good news is the legislature has worked  
25 very closely with the patrol industry, and we passed

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1 until there is a major incident where a lot of people  
2 call at one time. The systems have a difficult time  
3 getting those calls through, but that is a work in  
4 progress.

5 And our new radio system, when it is done in  
6 the next two years, will help that a little bit because  
7 it will automatically identify the caller and the  
8 location, which will take away precious time that we now  
9 do, to ask those questions, so we can speed the process  
10 up.

11 So help is en route. Things are happening  
12 as we go along, but the work certainly isn't  
13 completed.

14 SENATOR OROPEZA: Yes, and I appreciate any  
15 efforts to move that ball along.

16 Finally, I will just say that I have  
17 appreciated in my eight and a half years here, the  
18 relationship with the CHP, not only here in  
19 Sacramento but at the district level where we do have  
20 incidents, we do have occurrences where we really  
21 need CHP support, and your guys out there in the  
22 trenches are doing a great job. I want you to know  
23 that. Kudos to them, and I hope that continues. I'm  
24 sure it will under your leadership.

25 COMMISSIONER FARROW: Thank you very much.

18

1 CHAIRMAN STEINBERG: Thank you, Senator  
2 Oropeza.

3 Senator Dutton.

4 SENATOR DUTTON: Just a quick add-on to  
5 Jenny's question about the radio system, because it's  
6 been a while in coming. You said it's a couple more  
7 years. Could you give us a status report of that, a  
8 little more information about where we are with that.  
9 And also there was a concern raised to me just about  
10 an hour ago that it's already an outdated system.  
11 And so maybe you could just comment on that.

12 COMMISSIONER FARROW: The current radio  
13 project -- We have a five-year project, \$497 million  
14 dollar project over five years. We're currently  
15 starting the third year. That project, when it is  
16 done, will completely resolve and solve, for once,  
17 the Highway Patrol's inability to communicate with  
18 other allied agencies. So it will solve the  
19 interoperability program while giving us a  
20 state-of-the art system.

21 That system that we have built and what  
22 we're buying is the best we thought we could do at  
23 the time, and we built onto the current  
24 infrastructure of the Highway Patrol. So the best  
25 way to say it is we took our current radio system,

19

1 project is doing well. We're under budget in every  
2 component, and we've returned millions of dollars  
3 back to the MVA in the first two fiscal years, so the  
4 system, I think, is working quite well.

5 SENATOR DUTTON: Thank you.

6 CHAIRMAN STEINBERG: Thank you.

7 Senator Cedillo.

8 SENATOR CEDILLO: Now tell me, unless you  
9 just did, about the status of the computer-aided  
10 dispatch project.

11 CHAIRMAN STEINBERG: Isn't that the same  
12 thing?

13 COMMISSIONER FARROW: Similar to what we  
14 were just talking about. That's the current BCP  
15 that's going through the system.

16 SENATOR CEDILLO: The next question is:  
17 Tell me about your procurement procedures, how  
18 they've improved.

19 COMMISSIONER FARROW: The procurement of the  
20 patrol was certainly one of the items that was very  
21 newsworthy. We received a lot of attention, not only  
22 this body but a lot of other people.

23 The good news -- what I want to tell you is  
24 this: The Patrol is involved in the procurement of  
25 about six to seven thousand contracts per year, and most

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1 and we're updating all the components of that in a  
2 five-year project to make it state-of-the-art.

3 The question that it's already outdated, I  
4 certainly believe that would be an inaccurate  
5 statement. The system isn't completed yet. We're  
6 still in the process of procuring some of the  
7 components of that. Just this first year we'll be  
8 delivering the deliverables to the patrol-car  
9 environment, where the last two years we've been  
10 actually building the infrastructure of the radio  
11 tower that we're doing.

12 We are running, in this current budget year of  
13 the BCP, the CAD infrastructure, and maybe that's what  
14 somebody is talking about. There is a BCP in place to  
15 upgrade the current CAD system, which is the mechanism  
16 that the dispatchers use, and we're going to try to  
17 enhance that to give them complete ability to use the  
18 mobile digital computers out on the road.

19 Maybe that's what they're talking about,  
20 because we are coming back asking for a few more million  
21 dollars. In the long run, that is a much better deal,  
22 because it actually helps this whole system become more  
23 compliant with one another and makes the transition more  
24 seamless.

25 So I'm happy to tell you I think the radio

20

1 of the contracts have gone through seamlessly. There's  
2 never been an issue with those. They go through exactly  
3 the way the process has always meant to be.

4 We do have some very celebrated cases out there  
5 that people are known to that received a lot of scrutiny  
6 and a lot of questions about it. I can tell you this,  
7 is that we as an organization learn from each and every  
8 one of those audits to make sure that there is a system  
9 in place to bring compliance issues in every one of  
10 those.

11 And I'll tell you maybe the best way to  
12 explain this, Senator, is this, is that the people  
13 who are involved in procurement and the people who  
14 are involved in my information management provision  
15 who actually deal with computers sat down and devised  
16 a way that they could sit down and put down all their  
17 requirements of a procurement, a successful  
18 procurement, and they put it computerized, meaning  
19 that if what we're about to buy doesn't match up to  
20 everything that is involved, everything within the  
21 manual, everything within our own guidelines of the  
22 organization, the system will not allow you to  
23 proceed. And that is a check-and-balance that we put  
24 in place to ensure compliance with all the rules that  
25 we have out there.

22

1 Sole source, sole brand, those are the  
2 questions we dealt with over the last couple years. I  
3 don't want to say they're non-existent, because there  
4 are certain things that you have to buy that they're  
5 going to be sole source, they're going to be sole brand.  
6 It's very rare in the organization. It's very rare for  
7 us to do this. We look for ways to go out and  
8 competitively bid everything. If we get to a point  
9 where we can't do that within our own infrastructure,  
10 those questions have to come all the way up to this  
11 office to make sure what we're about to do is necessary,  
12 compliant, and we've done all the things that we're  
13 supposed to do before we actually go out for bid.

14 SENATOR CEDILLO: Thank you.

15 CHAIRMAN STEINBERG: Thank you, Senator  
16 Cedillo.

17 Senator Aanestad, you had another important  
18 question?

19 SENATOR AANESTAD: Very important,  
20 perplexing question.

21 A lot of the legislators here in the building  
22 are wondering when we see the basement full of all the  
23 Highway Patrol officers checking under our cars and  
24 riding their horses on the grounds and all that, are  
25 they here because this is a plum assignment, or are they

23

1 groups strongly support the appointment of Commissioner  
2 Farrow.

3 One of the things that may be a surprise to  
4 people here is that there are competing egos in law  
5 enforcement -- I know it's a shock -- but one of the  
6 things that is really a distinguishing feature of the  
7 commissioner is his ability to work collaboratively with  
8 all jurisdictional levels of the law enforcement family,  
9 and in times of limited resources that ability becomes  
10 a -- really a functional imperative.

11 I also want to state personally I've known  
12 Joe for over a decade, and there was a period when we  
13 both went around the state and taught police officers  
14 the new laws. You're in a different city every day for  
15 a two-week period. You really get a chance to know  
16 somebody when you're doing that in that kind of intense  
17 environment. This is a guy with an exceptional work  
18 habit, unimpeachable integrity, and someone who really  
19 represents the highest standards of public service.

20 CHAIRMAN STEINBERG: Thank you very much,  
21 John.

22 Next witness.

23 MR. PRIETO: Thank you very much. My name  
24 is Edward Prieto. I'm the Yolo County Sheriff, and  
25 I'm here representing not only the Yolo County

25

1 being disciplined?

2 COMMISSIONER FARROW: I hope the question is  
3 rhetorical, but I can tell you the men and women that  
4 serve this Capitol are honored to be here. They're  
5 honored to be here, and if there's ever a need for  
6 their service, they're here for you, and they'll do a  
7 great job for you.

8 SENATOR AANESTAD: They do.

9 CHAIRMAN STEINBERG: They certainly do.  
10 They'll be around the next couple of days.

11 Let's hear from members from the public  
12 here. Witnesses in support of Commissioner Farrow,  
13 please come up.

14 Senator Wright, are you here for Commissioner  
15 Farrow?

16 SENATOR WRIGHT: I wanted to come to say hello.  
17 He's really good.

18 CHAIRMAN STEINBERG: You know you are always  
19 welcome to take the mic, if you would like.

20 Mr. Lovell.

21 MR. LOVELL: Yes. Senator Steinberg, members  
22 of the Committee, my name is John Lovell, and I'm here  
23 on behalf of the California Police Chiefs Association,  
24 the California Peace Officers Association, and the  
25 California Narcotic Officers Association. All three

24

1 Sheriff's Department, but the California State  
2 Sheriffs' Association, and also as a former member of  
3 the California Highway Patrol. I retired after 31  
4 years of service and was commander, and I'd like to  
5 state I retired for service retirement. I don't want  
6 any questions regarding how I retired. It was not  
7 medical.

8 But I'm here -- I've known Joe for many years,  
9 more on a professional level than a personal level, but  
10 here in the last couple years I've known him as -- on a  
11 personal level. And I would like to say this about  
12 Joe: One of the things I appreciate about him, not only  
13 myself, but the entire sheriffs' organization throughout  
14 the state, is the transparency between him and, perhaps,  
15 the reputation of former commissioners of the CHP.

16 He attends many of our conferences. He's open.  
17 He's responsive to the needs of the sheriffs department  
18 and the unincorporated areas throughout the state. This  
19 was clearly demonstrated when one of my officers was  
20 shot and killed on Father's Day. He extended unlimited  
21 resources to the Yolo County Sheriff's Department. We  
22 were able to capture this individual in about 12 or  
23 13 hours, and a lot of it had to do with the fact that  
24 the CHP responded immediately. We were able to set up  
25 perimeter patrol and capture this individual. But even

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1 subsequent to capturing this individual, the CHP  
2 responded to assist in the funeral preparations.  
3 Yolo County is not a huge organization. We  
4 have about 300 employees. Again, unlimited resources.  
5 And I think one of the concepts about law enforcement is  
6 that we do join a brotherhood and sisterhood, and Joe  
7 clearly demonstrates the support that he's extended to  
8 the Yolo County Sheriff's Department, sheriffs in  
9 general, and law enforcement throughout the state

10 I'm privileged to call him a friend, but I'm  
11 also privileged to know that I get to work hand and hand  
12 with an individual such as Commissioner Farrow.

13 My wife works for Joe Farrow. She speaks  
14 extraordinarily highly of him, and I think he made an  
15 excellent decision in promoting my wife. Thank you.

16 But in all sincerity, I think one of the  
17 important aspects of law enforcement is the fact that  
18 strong leadership means that you have open communication  
19 and that egos are set aside.

20 CHAIRMAN STEINBERG: Thank you very much.  
21 Appreciate it, Sheriff, very much.

22 Mr. Read.

23 MR. READ: May I stand? I have John --

24 CHAIRMAN STEINBERG: Of course.

25 MR. READ: My boss gets to sit down.

27

1 issues going on. And Joe has done this job for over a  
2 year now, and things have changed dramatically.

3 So on behalf of my board and our members, we  
4 are very proud to support Joe, and if morale is  
5 important to this committee, then you've got the right  
6 man here.

7 CHAIRMAN STEINBERG: Thanks very much.

8 MS. SAULS: Senators, Julie Sauls on behalf of  
9 the California Trucking Association. We're here very  
10 much in support of the confirmation of Joe Farrow as  
11 commissioner of the California Highway Patrol.

12 Since his appointment, we have really  
13 appreciated his partnership with our association. He  
14 has been there to acknowledge and recognize our efforts  
15 for safety. He has participated in our conferences and  
16 is very open to our membership, as well as made his  
17 staff very open to our membership. It's a relationship  
18 that we very much appreciate and look forward to working  
19 with him in the future. Thank you very much.

20 CHAIRMAN STEINBERG: Thank you.

21 MR. McFETRIDGE: Mr. Chairman and members,  
22 Duncan McFetridge representing the Coalition of Utility  
23 Employees.

24 On a personal level, I want to voice my strong  
25 support for the commissioner's nomination. And, you

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1 Mr. Chairman and members, Aaron Read  
2 representing California Association of Highway  
3 Patrolmen proudly for 31 years, and I think I have  
4 known Joe for 25 of those years. We go way back.  
5 I'm here to say Joe isn't perfect. I played golf  
6 with Joe. I saw him miss one putt one time. Other  
7 than that, he is perfect.

8 We're delighted to be here in support, and I'm  
9 delighted to have my boss of 25 years, the CEO of the  
10 California Association of Highway Patrolmen, here,  
11 Jon Hamm, and he will express how the officers on the  
12 street feel. Thank you.

13 MR. HAMM: Thank you.

14 Members of this Committee and Mr. Steinberg.  
15 I've known Joe for 25 years, and it's been a pleasure  
16 knowing him. I'm here also on behalf of every CHP  
17 officer that works the street. We have 99 percent  
18 membership, and it's 100 percent voluntary membership,  
19 so our membership is very united. And the CHP has  
20 always been a family. We pride ourselves in working  
21 closely with the department for the betterment of the  
22 citizens of this state.

23 But I can tell you we're also very  
24 knowledgeable of what morale was like just over a year  
25 ago, and we were struggling, frankly. We had many

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1 know, about 12 years ago when I came to Sacramento, one  
2 of the first bills that I worked on was with the  
3 commissioner, and since that time he's been nothing but  
4 professional and diligent in the work that he does.

5 And since being named commissioner, I was very  
6 pleased to hear that the one thing you're always going  
7 to get from the commissioner here is you're going to get  
8 honor, dignity, and he's always going to do the right  
9 thing. So I urge your support for this nomination.

10 CHAIRMAN STEINBERG: Thank you very much.

11 MR. ELLISON: Thank you, Mr. Chairman and  
12 members. Brooks Ellison on behalf of myself, because I  
13 personally know him, and I couldn't give him a stronger  
14 recommendation, and on behalf of two motor-carrier  
15 clients, two clients that are highly regulated by the  
16 department, the California Tow Truck Association and the  
17 California Dump Truck Owners Association. And when we  
18 reached out to them to tell them that Joe had been  
19 nominated, things that come out like integrity,  
20 fairness, dedication, hard work, and to kind of sum it  
21 up, he's just one hell of a stand-up guy, and we really  
22 couldn't urge any stronger support than that. Thank  
23 you.

24 CHAIRMAN STEINBERG: I'm not quite sure how  
25 this hearing is going.

30

1 MR. CHANG: Mr. Chair, members of the  
2 Committee, Tim Chang on behalf of the Automobile Club of  
3 Southern California.

4 I've known Joe for almost ten years. When he  
5 was first with the office as special representative, I  
6 found him to be a very intelligent person highly -- a  
7 person with high integrity; and in subsequent years that  
8 I've known him, I've not altered my view one bit. And  
9 the Automobile Club certainly does fully support his  
10 confirmation today.

11 CHAIRMAN STEINBERG: Thank you, sir.

12 MS. LaBRIE: Mr. Chairman, members of the  
13 Committee, Paula LaBrie on behalf of the Triple A of  
14 Northern California. We too support this confirmation  
15 very strongly.

16 We have worked with Joe for over ten years in  
17 many capacities. I think all the good adjectives have  
18 been taken, so I'll just say I concur with all of those  
19 and we certainly support his confirmation.

20 CHAIRMAN STEINBERG: Thank you.

21 MR. DOHRING: Mr. Chairman and members,  
22 Bill Dohring representing Independent Auto Dealers.

23 I too have had the opportunity to work with  
24 Commissioner Farrow since he became special rep, not  
25 always on the same side, but nevertheless we worked it

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1 Well, I think the testimony summed it up very,  
2 very well, and certainly the way that you have come  
3 across to the Committee, both in private meetings and in  
4 public meetings, it is very consistent with everything  
5 we've heard from the witnesses here today. I'm proud to  
6 support your nomination and look forward to working with  
7 you.

8 Please call the roll.

9 MS. BROWN: Senator Cedillo.

10 SENATOR CEDILLO: Aye.

11 MS. BROWN: Cedillo aye.

12 Dutton.

13 SENATOR DUTTON: Aye.

14 MS. BROWN: Dutton aye.

15 Oropeza.

16 SENATOR OROPEZA: Aye.

17 MS. BROWN: Oropeza aye.

18 Aanestad.

19 SENATOR AANESTAD: Aye.

20 MS. BROWN: Aanestad aye.

21 Steinberg.

22 CHAIRMAN STEINBERG: Aye.

23 MS. BROWN: Steinberg aye.

24 CHAIRMAN STEINBERG: Thank you very much.

25 That will move to the floor probably sometime early

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1 out. And I think Gloria Romero, Senator Romero, said it  
2 all. Ask for your support.

3 CHAIRMAN STEINBERG: Thank you.

4 MR. LOMBARDO: Mr. Chairman and members of the  
5 Committee, Jim Lombardo on behalf of the California  
6 Motorcycle Dealers Association, and we're in support of  
7 Joe as well.

8 CHAIRMAN STEINBERG: Thank you. Appreciate  
9 it very much. Anybody else?

10 MR. BRAKENSIEK: Carl Brakensiek on behalf  
11 of the California Association of Licensed  
12 Repossessors.

13 You've heard many good things about the  
14 commissioner today, and they are all true. He not only  
15 is good himself, but he has developed an attitude within  
16 his staff so that it's just much better and easier to  
17 deal with the Patrol than in the past. So we're very  
18 supportive of his candidacy.

19 CHAIRMAN STEINBERG: Thank you very much.  
20 Anybody else here in support?

21 Are there any --

22 SENATOR OROPEZA: I'll make a motion.

23 CHAIRMAN STEINBERG: Moved by Senator  
24 Oropeza, but first let's take any opposition.

25 No opposition.

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1 next week, and look forward to your confirmation.  
2 Thank you very, very much.

3 COMMISSIONER FARROW: Thank you.

4 CHAIRMAN STEINBERG: We still have a little  
5 business. Governor's appointees not required to  
6 appear.

7 Any questions on any of these nominees?

8 SENATOR AANESTAD: Can we separate out E?

9 CHAIRMAN STEINBERG: Sure. We'll separate  
10 out E. Is there a motion on B, C, D, F, and G?

11 SENATOR CEDILLO: So moved.

12 CHAIRMAN STEINBERG: So moved by Senator  
13 Cedillo.

14 Please call the roll.

15 MS. BROWN: Senator Cedillo.

16 SENATOR CEDILLO: Aye.

17 MS. BROWN: Cedillo aye.

18 Dutton.

19 SENATOR DUTTON: Aye.

20 MS. BROWN: Dutton aye.

21 Oropeza.

22 SENATOR OROPEZA: Aye.

23 MS. BROWN: Oropeza aye.

24 Aanestad.

25 SENATOR AANESTAD: Aye.

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1 MS. BROWN: Aanestad aye.  
2 Steinberg.  
3 CHAIRMAN STEINBERG: Aye.  
4 MS. BROWN: Steinberg aye.  
5 CHAIRMAN STEINBERG: That passes five  
6 nothing.  
7 On E, Madelyn J. Glickfeld, member of the Water  
8 Quality Control Board, Los Angeles region, anything you  
9 want to say, Senator Aanestad?  
10 Moved by Senator Oropeza.  
11 Please call the roll.  
12 MS. BROWN: Senator Cedillo.  
13 SENATOR CEDILLO: Aye.  
14 MS. BROWN: Cedillo aye.  
15 Dutton.  
16 SENATOR DUTTON: No.  
17 MS. BROWN: Dutton no.  
18 Oropeza.  
19 SENATOR OROPEZA: Aye.  
20 MS. BROWN: Oropeza aye.  
21 Aanestad.  
22 SENATOR AANESTAD: No.  
23 MS. BROWN: Aanestad no.  
24 Steinberg.  
25 CHAIRMAN STEINBERG: Aye.

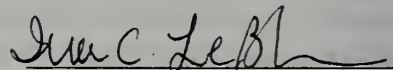
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1 MS. BROWN: Steinberg aye.  
2 CHAIRMAN STEINBERG: That passes three to  
3 two.  
4 (Thereupon, the Senate Rules Committee hearing  
5 adjourned at 2:18 p.m.)

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1 --o0o--  
2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.  
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 12<sup>th</sup> day of February, 2009.

15  
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18 INA C. LeBLANC  
19 CSR No. 6713

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1 APPENDIX  
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## SENATE RULES COMMITTEE QUESTIONS

1. *What are your goals and objectives as CHP Commissioner, and what do you hope to accomplish during your tenure? How should we measure your success?*

*"The challenges we face lay an opportunity at our proverbial doorstep to show our integrity, value, and worth to the State of California."* This statement, one I shared with the men and women of the CHP upon my appointment almost one year ago, is the cornerstone of my vision as Commissioner. In recent years, the proud reputation of the Department has been challenged and the public's trust questioned. It is the public trust that has allowed the Department to become a proud organization. The reputation of the CHP is something I desperately want to protect and build upon. Some may say it cannot be done, but our proud history, our traditions, our people, and our values tell me "we can!"

To effect necessary change within the organization I have looked inward. Although some envisioned my appointment as a simple move from one desk to another, I understood the gravity of the assignment and the absolute necessity to pilot the organization back to being a premiere law enforcement agency. To do so, I have committed to lead, as well as manage the organization; to set the example for others to follow; to be honest; to trust those I work with to do what is right, and take appropriate corrective action when they do not; to be positive; to mentor; to listen and be receptive to new ideas and constructive criticism; to give credit where credit is due; to put the interests of others ahead of my own; and to be consistent in my demeanor, actions, and decisions. In setting the standard for others I have asked in the simplest of terms that we *"do what is right, for the right reasons, at all times."*

To specifically address past issues pertaining to procurement, whistle blowing activities, ethical conduct, and workers' compensation, I strengthened management oversight, as well as internal audits and controls. I appointed an Inspector General at the level of Assistant Commissioner with the responsibility to audit and investigate critical functions within the organization. The Inspector General reports directly to the Office of the Commissioner to ensure maximum independence. The Inspector General has responsibility to audit practices and procedures, as well as management operations and success in achieving strategic goals.

Additionally, I appointed another new Assistant Commissioner with responsibility for leadership development, training, and communications. This individual will ensure the leaders of the organization have the training and knowledge necessary to be successful and properly manage CHP operations. Utilizing information derived from audits conducted by the Inspector General and external control agencies, management training courses are adjusted to address identified areas of weakness and share areas of identified success. Additionally, this individual has begun the process of ensuring the many accomplishments of the CHP are shared with those we serve.

Senate Rules Committee



JAN 15 2009

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Appointments



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As the CHP looks inward, I appreciate the importance of looking outward to the success and failures of other organizations so we may learn and grow from their experiences. In doing so, I have directed the Department seek accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA). CALEA was created in 1979 as a credentialing authority through the joint efforts of law enforcement's major executive associations, such as the International Association of Chiefs of Police (IACP), National Organization of Black Law Enforcement Executives, National Sheriffs' Association, and the Police Executive Research Forum. In seeking accreditation, the policies, procedures, and practices of the CHP will be evaluated against a recognized national law enforcement model. I am confident the process will validate the majority of existing CHP policies and practices, while changing others, and ultimately improving the overall operation of the Department.

If you were to visit the CHP today, you would find a proud, yet changed organization. I also know you would find an organization that has not hidden from criticism. The results of every audit have resulted in contemplation and positive changes to policies, procedures, and practices, where appropriate. More importantly, they have resulted in the necessary changes in management performance and attitude to preclude reoccurrence, whenever possible. Although the CHP strives for perfection, perfection is not always attainable. What is attainable is the effort to try, to do our best, admit mistakes, correct them, and move past them. This has and continues to occur within the organization.

We are an organization proudly based on tradition and we have made great strides and enjoyed many successes throughout our 80-year history. We enjoy a reputation of professional excellence that is often described as "second-to-none." Our service to the public is based on selecting the best people, providing the best and most up-to-date training, and instilling a common belief of professionalism, fairness, honesty, and integrity. It is this reputation I am honored to represent as Commissioner and it is a reputation I will do all within my power to preserve.

Lastly, it was asked how success would be measured. The most important measurement is whether I have the respect of the Governor, Legislature, CHP employees, and public. It is this respect I strive to earn and believe best reflects my performance.

The CHP is an agency worthy of your trust. I am honored to serve as Commissioner and understand I must earn your trust. I am confident I will do so not based on words, but on actions. In a document I provided to all CHP management articulating my goals and expectations, I stated "*A position of command does not define one's leadership abilities – it reveals them.*" I am confident what will be revealed is my sincere desire to do what is right, always.





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## INDUSTRIAL DISABILITY RETIREMENT

2. *What actions, if any, have been taken to address the issue of higher ranking officers going out on disability, also known as “chief’s disease?” To what extent do you believe “chief’s disease” still exists at CHP?*

I acknowledge the “chief’s disease” syndrome has been a core issue within our Department for some time and we have worked diligently to fully address the situation. Starting with the Department’s transition to Commissioner Mike L. Brown in 2004, we initially addressed this issue with a comprehensive review of our own workers’ compensation and disability retirement systems. Based on that review, a report was prepared for the Governor’s Office, wherein we identified a number of internal and external actions which could be taken to assist us in better managing injury cases and reducing associated costs. Additionally, former Commissioner Brown made the difficult decision to refer the findings of specific cases to the Sacramento County District Attorney’s (DA) Office for investigation and prosecution of potential fraud. Although the DA’s investigation did not find any criminal misconduct, it did find violations of departmental policy and procedure.

Prior to the DA’s findings, we had already taken steps to implement all of our recommended internal actions, revised our policies and procedures, and reinforced sound case management practices by all of our commanders, managers, and supervisors. Our goal in reinforcing these policies is to ensure only appropriate injury benefits are provided to eligible employees and to achieve timely provision of benefits and resolution of injury cases. The Department is committed to full disclosure of relevant information to our adjusting agent, the State Compensation Insurance Fund (SCIF), so they may properly determine liability and eligibility for benefits in each and every injury case filed by our employees regardless of rank.

Although legislative reforms have had a positive impact on workers’ compensation costs for all employees, we have taken the following internal steps to enhance our abilities to properly manage injury cases and reduce costs:

- Development of training programs specifically designed for departmental managers at all levels. These training programs concentrate on personal accountability and responsibility for proper injury case management.
- Distribution of monthly open injury-claim reports to assist management in properly managing injury cases by providing a tool to access for regular follow-up and ongoing case management.
- Modification of policy to clearly define roles and responsibilities of all departmental personnel, SCIF, and CalPERS. These policies include guidelines to ensure strict compliance and enforcement of departmental responsibilities to fully and timely complete and submit required injury documentation.



- Establishment of regular meetings between departmental personnel in our Office of Risk Management (Disability and Retirement Unit), SCIF, the California Association of Highway Patrolmen (CAHP), and our Office of Employee Relations. These meetings are utilized to ensure we maintain on-going communications, attempt to identify and resolve issues, and continue to improve the processes established between the various stakeholders.
- Establishment of a legal counsel position primarily dedicated to departmental cases related to workers' compensation, retirement, recruitment, and equal employment opportunity. Additionally, legal counsel is consulted to ensure consistent application of injury case settlement.
- Establishment of policy and procedures to ensure proper handling of claims which appear to be fraudulent. A "tip-line" and an independent investigative unit have been developed to specifically investigate cases of workers' compensation fraud.

Externally, we worked to introduce legislation to further reduce the possibility of fraud and minimize costs associated with injury cases and disability retirements. Although the proposed legislation was not enacted, the Department continues to explore both internal and external methods to improve the workers' compensation process.

The fact is "chief's disease" no longer exists within the CHP. The net effect of the many efforts the Department has taken in the past few years was to create a cultural change where anything other than proper handling of injury and disability retirement cases is unacceptable and one in which "chief's disease" does not, and cannot exist. This conclusion is reflected in a significant reduction in new injury claims, overall workers' compensation costs, and disability retirements for all employees, especially those in the upper management ranks. The culture today almost prohibits a chief or commissioner from seeking a disability retirement, even when one may be justified. It is imperative to the executive leadership of the organization to set the example and not do anything real or imagined that could reflect negatively on the leadership team and the CHP.

**3. *What has been the trend for workers' compensation claims filed by CHP employees in the past few years?***

Let me start by saying the work we do is dangerous and the injuries and associated disability retirements do and will always occur at a disproportionate rate to those of most other employers. As I stated earlier, our numbers show a clear reduction in most injury-related categories as indicated by the following data:

- Overall workers' compensation costs declined 11 percent from fiscal year (FY) 2003/04 to 2007/08 (from \$67,804,243 to \$60,381,188).



- Total workers' compensation costs as a percentage of payrolls declined from 9.97 percent in FY 2003/04 to 6.56 percent in FY 2007/08.
- Labor Code Section 4800.5 (continuation of benefits while on disability) costs declined 46 percent from FY 2003/04 to FY 2007/08 (\$9,277,666 to \$5,988,853).
- Industrial Disability Leave costs declined 71 percent from FY 2003/04 to FY 2007/08 (\$1,174,394 to \$346,761).

The reduction in these cost categories can be credited to aggressive efforts by the Department to return all temporarily disabled employees to work, either limited and/or full duty, as soon as medically appropriate.

- Total new reporting of injury and illness claims declined 33 percent from FY 2003/04 to FY 2007/08 (2,325 claims to 1,563 claims).
- Industrial Disability Retirements (IDR) for the ranks of Assistant Chief and Chief are at zero over the past two years.
- Overall for all uniformed ranks, IDRs declined 48.5 percent from 2003 to 2007 (97 IDRs to 47 IDRs).

In regards to trends for CHP injury cases, we have seen our overall case inventory increase from 6,564 cases in January 2006 to 6,820 in December 2008. Although the total of new claim reports has decreased, we have seen increases in the number of older accepted claims reopened. This situation has occurred because some employees are reopening older claims too seek medical treatment and other benefits. Overall, the statistical trends concerning new claims and total cost show excellent results.

The reductions experienced are the result of concerted efforts to revise our policies and procedures and ensure proper training and education for the managers/supervisors who have a direct impact on injury case management. Additionally, improved communications between our Department and external agencies has brought about more efficiency in resolving injury and disability retirement cases. Finally, our ongoing efforts have produced a cultural change where employees with legitimate injuries can be afforded all benefits prescribed by law and questionable injury filings will receive proper scrutiny.



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## WHISTLE BLOWING AND RETALIATION

### *4. What changes, if any, has CHP made regarding its whistle blowing and retaliation policies?*

As Commissioner, I have embraced the challenge of organizational introspection and improvement. The CHP has an established history of professionalism and the ability to recognize missteps, apply lessons learned, and adapt as we progress toward the future. Consequently, I have promoted training and professional development to reinforce ethical practices throughout the Department. I recently implemented measures to enhance recognition for assessing whistle blower and retaliation concerns raised internally and externally. To that end, I directed the reorganization of the Department's leadership to reflect ethical conduct and accountability. The following positions were created to accomplish this:

The Assistant Commissioner Inspector General position was created to ensure departmental adherence to policy and law with regard to fiscal management and ethical conduct of all employees. This position was created at the Assistant Commissioner level to provide the highest possible degree of independent review. The Assistant Commissioner Inspector General oversees the following departmental programs:

- Office of Investigations — Internal employee accountability.
- Office of Risk Management — Civil liability.
- Office of Inspections — Internal auditing of departmental processes.
- Office of Equal Employment Opportunity — Education, discrimination, and retaliation prevention.
- Information Security Officer — Security and confidentiality of departmental electronic systems.
- Citizen Oversight Committee — An advisory body to the Commissioner responsible for review of departmental policies, procedures, training, reporting, and controls to determine consistency with the demands of public safety, as well as legal, moral, and public expectations. Specific areas of concern include: use of force/enforcement contact issues; citizens complaint investigations; equal employment opportunity issues; management and supervisory practices; personnel practices, including selection and hiring procedures; and public perception/image.

The position of Special Counsel to the Commissioner was created to provide specific legal counsel to the Office of the Commissioner. The position also acts as liaison for issues related to the Fair Political Practices Act and serves as the Department's Ethics Officer. The Office of General Counsel is being expanded to address the varied legal



issues facing the Department, including workers' compensation, equal employment opportunity, risk management, and internal disciplinary and labor relations matters. The goal of these entities is to ensure the Department is always on solid legal footing when addressing the variety of issues we face.

By restructuring the Executive Management team, I believe the Department is more transparent, proactive, and accountable to our stakeholders, the Governor, Legislature, and the public.

***5. What efforts, if any, has CHP made to educate employees about laws regarding whistle blowing and retaliation? Do managers receive any specialized training regarding these issues?***

Educating our employees and managers in the area of ensuring a clear understanding of whistle blowing and retaliation protections is critical to the success of the Department. I created the position of Assistant Commissioner, Leadership Development and Communications in order to enhance leadership development through increased training and comprehensive coaching/mentoring. This position was created at the Assistant Commissioner level to provide the highest possible degree of oversight and decision making ability.

To ensure all employees are aware of their rights, the Department provides an annual notification to all employees, via electronic mail, of the provisions and requirements of the Whistleblower Protection Act, including the right to remain anonymous and remain free from retaliation. Additionally, the Department uses our Management Information System, flyers, posters, briefing items, and most importantly, word-of-mouth to advertise whistleblower laws.

To ensure our supervisors, managers, and commanders are properly trained, the Department has recently incorporated a segment on whistle blower protection and retaliation laws into training for our commanders, managers, and supervisors. The Department is also instituting a new series of courses in order to develop our employees throughout their career. Components of the training will ensure our leaders have been provided the appropriate training in the expected job requirements and competencies.



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## PROCUREMENT PROCESS

### *6. What measures has the CHP taken to ensure compliance with state procurement procedures, particularly for the sole-brand procurement process?*

When asked what measures have been implemented to address procurement concerns, I answer, "What have we not done and what more can we do?" As previously stated, neither I, nor the CHP management team, failed to grasp the gravity of the negative media attention and resulting audit findings over the past four years. Utilizing the January 2008 State Audit Report, as well as other internal and external reviews as a guide, the Department sought to improve its procurement practices to a level beyond that of other agencies. Some of the changes made to date include the following:

- In 2008, an automated requisition preparation system (ReDS) was developed and implemented. ReDS edits the requisition against procurement rules to assist departmental personnel in the proper completion of the requisition, including automation of the approval process and transmission of requisitions to the Purchasing Services Unit (PSU).
- The CHP was selected as one of only four agencies to participate in the new Department of General Services (DGS) **e-Procurement** system. The new system will expedite the processing of requisitions, ensure all procurement rules are followed, and will create an automatic history file for tracking purposes.
- To identify goods and suppliers, the CHP conducts market surveys and, if necessary, uses a Request for Information/Interest which is advertised in the California State Contracts Register.
- In evaluating noncompetitive bid and sole-brand procurements when similar goods exist, an evaluation is conducted to answer why these similar goods are not suitable. When no other brand is identified, the CHP uses the information gathered from similar goods to confirm the cost is fair and reasonable.
- The CHP's delegated purchasing authority from DGS requires noncompetitive bid purchases to have adequate file documentation and approval. The CHP incorporated the requirement to also include all sole-brand purchases. It is interesting to note, DGS just recently added the documentation of sole-brand purchases into its delegated purchasing authority. Since the CHP already implemented this requirement, the transition to the new requirement was seamless.
- The noncompetitive bid and sole-brand procurements are fully documented in the procurement file, along with a justification from the Office of Primary Interest which is reviewed and approved by PSU. The procurement justification, along with the PSU evaluation, is then evaluated by the Administrative Services Division Chief, with the final approval given by the Assistant Commissioner, Staff.



- The CHP began tracking sole-brand purchases in its database and added the sole-brand purchase documentation to its checklist to ensure complete procurement files. Noncompetitive bid purchases have been tracked and reported for the past several years, as required by the DGS delegated purchase authority. The reports consistently show little to no activity.
- The Department has also instituted mandatory procurement training for all approvers of requisitions. Only those individuals who have completed the training are allowed to approve requisitions. In addition, the CHP has added procurement training for those who prepare the requisitions. This ensures the proper procurement process is followed from inception to completion.
- Two checklists, one each for commodities and services, have been developed to assist the buyer/analyst and manager in ensuring all procurement files are complete with proper documentation and approvals.
- Conflict of Interest and Confidentiality Statements have been developed for both CHP employees and vendors. ReDS captures the employee affirmation statements electronically. All other affirmation statements are kept in the appropriate procurement file and are included on the checklists.
- Quarterly self-inspections are performed by Business Services Section management and look at the completed procurement files in order to validate the checklists and files are complete. Remedial training is provided as necessary.
- As a function of the recently created Inspector General, an auditor is being devoted to the on-going review of purchasing, fiscal accountability, and other critical administrative functions.
- Due to the complex nature of the procurement process, the Department's legal affairs function was reorganized and expanded to ensure the availability of legal counsel to review significant procurements, coordinate with Department of General Services Legal, and address staff questions pertaining to procurement law and policy.
- To build a stronger foundation and improve communication, the CHP and DGS created a joint task force to explore best practices. This task force meets monthly to discuss modifications in process of benefit to both departments, identify major procurements, and establish time-lines and responsibilities to promote a clear understanding as procurements proceed.

As illustrated, the CHP has endeavored to ensure practices, policies, and procedures are in place to secure the fiscal resources provided to the Department by the Legislature, Governor, and the public. I understand, as does my management staff, that one of our primary responsibilities is to ensure the public dollar is utilized efficiently and



appropriately. I am confident we are on our way to that objective and our goal of managing resources well within the guidelines of law and state administrative policy.

**7. *What changes, if any, has CHP implemented for major purchases, such as vehicles?***

The CHP manages each purchase as a major purchase. As such, many of the above modifications have enhanced the Department's ability to conduct proper procurements. The most notable changes include the following:

- Because of the unique needs of law enforcement procurements, the CHP and DGS have formed a best practices task force. The CHP and DGS meet monthly to discuss pending issues, coordinate upcoming procurements, and discuss best practices involved in purchases. This is especially beneficial with major purchases such as vehicles, motorcycles, and computer hardware.
- Additionally, the CHP includes all internal and external stakeholders at the beginning of all major purchases to ensure enough time is allowed and comprehensive evaluations are completed for all its purchases. This includes DGS completing preliminary specification reviews to assist us in resolving issues as early in the procurement process as possible.
- CHP personnel have been trained on policy and law pertaining to procurements to ensure an understanding of the requirement for competitive bidding, fair and impartial specification development, use of sole-brand and non-competitive procurements, and conflict of interest law. Given the decentralized nature of CHP procurements, this training, coupled with the automation of purchase orders, automatic policy review, and self-audits has significantly reduced deviations from law and policy.

The Department has gone to great lengths to protect the public dollar. From the automation of budget allocations to subordinate commands, to automated procurement audits, to the creation of simple checklists, every measure has been taken to operate efficiently and professionally. I am confident the CHP procurement process has and continues to improve significantly and concerns previously noted with the procurement of firearms, and other items, have been addressed.





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## SUICIDES

### *8. What are the results of the Bay Area pilot program? Are there plans to expand the program statewide?*

I am pleased to say the Bay Area pilot program, which was developed and implemented under my direction as Deputy Commissioner, to address an alarming increase in suicides among CHP personnel, became the model for a statewide program that has resulted in suicides returning to zero.

Between 2003 and 2007, the CHP experienced the loss of 14 employees due to suicide. Two of these tragic incidents occurred within our Golden Gate Division. As Deputy Commissioner I responded to these tragic incidents and met with the grieving families and co-workers who struggled for an explanation. In discussing the suicide trend with CHP peer support personnel, we recognized the need to assist our employees in requesting help. As a result, the CHP developed and piloted within Golden Gate Division, a program entitled "Not One More." The CHP had previously created an employee assistance team to assist individuals in time of crisis or need. Although the team was available to help employees, it was apparent our officers were not reaching out for help during their own personal crisis. Peace officers take pride in bringing stability to a crisis, resolving problems in the midst of turmoil, and assisting others, and not asking for assistance themselves or even admitting they need assistance.

The program piloted in Golden Gate Division was created to educate employees on the indicators and effects of depression, the impact of suicide on others, and most importantly, how to offer and ask for assistance. The program was developed by CHP personnel in consultation with a trained mental health specialist. Based on the success of the pilot, the program was deployed throughout the state, training all employees, both sworn and nonsworn, in suicide awareness, prevention, intervention, and postvention. This innovative approach had never been accomplished before. By having qualified CHP personnel consisting of dispatchers, officers, sergeants, lieutenants, captains, and chiefs, teach their own, there was tremendous acceptance by all employees.

Since completing the statewide training in mid-2007, the CHP has not suffered another suicide. Those receiving the "Not One More" training were asked to complete a pre-training and post-training questionnaire consisting of five questions. Our employees were asked to rank their confidence levels in recognizing the warning signs of suicide; their ability to identify risk factors associated with suicide; symptoms of depression; their level of confidence in having the skills and tools necessary to intervene successfully with a suicidal co-worker; and to know what to do to assist suicide survivors and the Department in the aftermath of a suicide. Overwhelmingly, our employees said the training was beneficial in arming them with valuable information to respond appropriately and confidently to the issue of suicide.



Since implementation, the CHP has had successes where CHP employees confronted with a potentially suicidal employee have helped the employee get the help they required. One incident in mid-2008 involved an individual who was despondent over a personal issue. CHP personnel identified potential suicidal indicators and put into motion the support system now in place to assist employees in dealing with such issues. Today, the employee remains a proud member of the CHP and an example of the success of a program designed to assist those who save lives, when they themselves need saving.

A cultural shift was necessary to ensure the success of this program. This cultural shift began at the top echelons. As a Department, we have worked diligently to remove the stigma associated with asking for assistance. It takes a tremendous amount of courage to ask for assistance and we encourage our employees to do so by creating an environment that is truly dedicated to helping them return to a state of good mental health. The Department has reinforced that asking for help does not mean the end of a career. The majority of employees obtain the assistance they need and return to full-duty.

The “Not One More” program has been nationally recognized as meaningful, successful, and groundbreaking. In fact, the International Critical Incident Stress Foundation (ICISF) has invited the CHP to present an eight-hour workshop at the February 2009 10<sup>th</sup> World Congress on Stress, Trauma, and Coping. In addition, the Department’s employee assistance team members received the Governor’s Employee Safety Award in 2007 for their accomplishments in conducting the successful “Not One More” training. Recently, the IACP, the Bureau of Justice Assistance, and the United States Department of Justice partnered in producing a computer training disc, which encompasses successful suicide awareness training programs of departments nationwide, to include the CHP. Numerous agencies have requested our training material and protocol including New York State Police, Los Angeles Police Department, Los Angeles County Sheriff’s Department, and the Oakland Police Department to name a few. We are glad to assist our brothers and sisters in law enforcement in not having to experience one more loss due to suicide.

***9. What other measures has the CHP taken, or does it plan to take, to address suicide prevention within its ranks?***

The attention to this important issue did not cease with the end of the statewide training program, rather it was a beginning. The training program continues as part of the curriculum for cadets, new supervisors, and managers. In a partnership with Managed Health Network, a pocket-size guide entitled, “California Highway Patrol Suicide Prevention” was developed and provided to all employees, and continues to be provided to all new employees. The guide contains the same information provided during the “Not One More” training and contact numbers to seek assistance. Employees have found this to be a tool not only for themselves, but also for their family members, as well.

In cooperation with the CAHP, suicide prevention information has been, and continues to be, published in their monthly publication, as well as our own Department publication.



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In utilizing these publications, we ensure the information remains at the forefront and is available to both the employee and their families.

While it is difficult to prove the prevention of a suicide, the results of the training are reflected in the CHP NOT having ONE MORE suicide. For that, the entire CHP family is grateful.



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## RADIO SYSTEM MODERNIZATION

### *10. What progress has been made on the radio modernization project?*

The radio modernization project, or the California Highway Patrol Enhanced Radio System (CHPERS) as it is known within the organization, began under my direction while assigned as Deputy Commissioner. The program followed years of the state working to develop a single radio system, a concept that ultimately proved to be overly complex and cost-prohibitive. The CHP was left with an aging and obsolete radio infrastructure. More importantly, the system was in jeopardy of failure. The CHPERS project was born of a need to maintain radio operability, with interoperability as a secondary objective. I am pleased to say the project, which began in FY 2006/07, is on schedule and within the approved budget, and will provide both the promised operability and interoperability.

The primary goal of the CHPERS Project is to apply modern technologies and methodologies to enhance the CHP's radio communications system while leveraging the existing infrastructure. Simply stated, rather than purchase a new radio system, the CHP elected to build upon the radio system already owned by the state. The CHP is simply replacing obsolete equipment with new current equipment. However, because of advances in technologies, this new equipment is a far more advanced and capable communications system; one that allows for stable radio communications among CHP officers, while providing interoperability with other first responders.

The CHP has realized significant cost savings on equipment purchases due to the bids being awarded at a lower than anticipated individual cost. These cost savings are being returned to the Motor Vehicle Account and are but one example of the CHP's revised procurement practices and working relationship with DGS.

The installation of equipment will begin this FY at local CHP offices and some remote radio sites. Over the next two years, the officers on patrol will begin to realize the benefit of the CHPERS Project. However, it is important to note the CHPERS Project has already brought significant benefit to the CHP and the state.

In 2007, the Department deployed nine rapid response vehicles. These vehicles are equipped with state-of-the-art communications equipment and are capable of interoperability at the local, state, and federal levels allowing agencies to communicate using disparate radio systems as though they were using the same radio. The vehicles have been utilized to enhance command and control during the 2008 California wildfires, the collapse of the maze intersection in the Bay Area, and numerous local incidents. The vehicles are a reflection of the capabilities that will be offered as the CHPERS Project concludes.



***11. To what extent does the CHP's new radio system achieve "interoperability?" If not, why not, and how would lack of communication with other public safety agencies impede emergency response in a major disaster.***

To offer a direct response, the CHPERS Project will deliver interoperability with local, state, and federal agencies. The interoperability will exist at the officer, dispatch, and emergency response vehicle levels.

Although I admit I may not understand all of the technical issues surrounding interoperability, as a peace officer and having served numerous times as an incident commander, I know the ability to communicate with other first responder agencies during a disaster is vital to effective coordination and recovery. For this reason, we have ensured the CHPERS Project considered and implemented where feasible radio interoperability.

The CHPERS Project provides the patrol officer with interoperable communications at the officer-to-officer level; permitting him/her to talk directly to municipal police, deputy sheriff's, and other first responders during small scale interagency incidents. For the first time, a CHP officer will be able to communicate directly via radio with the deputy sheriff a block away. Communication gateways installed in the CHP's dispatch centers will provide interoperable communications at the incident command level. The gateways facilitate large scale interoperability, among multiple agencies, during significant events. And finally, as mentioned previously, the Department has deployed new mobile communication vehicles which facilitate interoperability at the incident command level.

In regards to how communications impact emergency response, the fact is agencies have learned to work without interoperable communications for years out of necessity. With that said, any emergency responder will tell you we work more effectively when we communicate and coordinate. Radio interoperability allows first responders to begin the coordination process before arriving on-scene. Once on-scene, it affords incident commanders of different disciplines the opportunity to effectively plan and deploy resources without having to be in the same location. It is not necessarily that the lack of interoperability impedes effective incident response; incident response is simply more efficient and effective with it.

I have been impressed with the level of interoperability obtained by the CHPERS Project to date. The end result will be a level of communication not envisioned by CHP only a few years ago.



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## RECRUITMENT

### *12. How many line officers are expected to retire in the next few years?*

As Commissioner, I have the privilege to sign the retirement certificates for the men and women of the CHP. In the past, the majority of employees retired after 30-years of state service. Due to an employee's ability to purchase state time, I have noted the retirement years of service have on average declined to the 26-year point. Fortunately, the Governor and Legislature have supported the Department in acquiring additional uniformed positions which has, and will continue to assist the Department in maintaining adequate staffing levels to meet the safety needs of the motoring public. The specific retirement facts are as follows:

- The monthly average uniformed attrition rate is 25. This rate is based upon a three-year monthly average (See chart below, Total Uniformed Attrition All Ranks). Using the monthly attrition rate, the CHP anticipates an average of 300 retirements/separations per year for the next few years.
- The CHP began a concentrated recruitment effort beginning in FY 2006/07. This resulted in an increased class size from 90 in 2006 to 240 in 2008. The estimated graduating class sizes are now approximately 168 (assuming a 30 percent cadet attrition rate) which has had a significant effect on the vacancy rate.
- On July 1, 2008, the CHP had a total of 6,493 authorized officer positions, of which there were 505 fillable officer vacancies. As of November 30, 2008, the fillable officer vacancies was 381. With continued class sizes of 240, the CHP projects a vacancy rate of 195 by June 30, 2009. In FY 2009/10, an additional 240 positions were requested. Including the additional 240 positions and normal attrition, the projected vacancy rate in June 30, 2010, is expected to be 63.



**Total CHP Uniformed Attrition  
All Ranks**

Year	Total Uniformed Attrition	Monthly Average
1989/1990	249	21
1990/1991	216	18
1991/1992	245	20
1992/1993	249	21
1993/1994	245	20
1994/1995	272	23
1995/1996	266	22
1996/1997	291	24
1997/1998	271	23
1998/1999	179	15
1999/2000	272	23
2000/2001	357	30
2001/2002	345	29
2002/2003	298	25
2003/2004	197	16
2004/2005	314	26
2005/2006	272	23
2006/2007	348	29
2007/2008	269	22
<b>3 Year Monthly Average</b>		<b>25</b>

**13. *What is the department doing to recruit and retain new officers?***

Enhanced recruitment follows from active community outreach efforts. This has been my philosophy throughout my career. As part of the reorganization, I brought together community outreach and recruitment under the Assistant Commissioner, Leadership Development and Communications position to emphasize its importance. I recognize the future of our Department rests on the success of our recruitment efforts. Those we recruit today will be the future leaders of our organization tomorrow. The CHP is committed to carrying out a broad-based recruitment effort supporting the concept of "Excellence and Diversity" with a goal of a qualified workforce reflective of the communities the Department serves.

As you know, I made a commitment to the Governor and the Legislature we would fill our vacant positions and expand the number of officers in order to better serve the public. To do so I have stressed the importance of recruitment at all levels and have the commitment of each commander to ensure employees are actively involved in recruiting applicants. As a result of this effort we have been able to achieve and maintain our goal of beginning each cadet class with 240 applicants. To facilitate this unprecedented recruitment effort the Department has done the following to ensure success:

- Increased the number of recruitment personnel in each of the Department's field Divisions. This increase has allowed the Department to become more involved in community events, career fairs, and presentations at colleges and military installations.





- Due to the fact law enforcement operations are similar to military operations, we have significantly increased our working relationship with the military to recruit individuals who have elected to leave military service.
- Streamlined the applicant testing process within the guidelines of law to reduce the amount of time taken to move an individual from submittal of an application to assignment to an Academy class. This has reduced applicant frustration, as well as the number of applicants hired by other law enforcement agencies before CHP could complete the hiring process. This effort included adding additional background investigators in each field Division, working with the State Personnel Board to increase the number of medical staff involved in the review of CHP cases, and a change from quarterly applicant testing to monthly.
- Improved the Department's Internet presence, both on the CHP Internet home page, as well as creation of a contemporary, easily remembered, website specific to CHP hiring known as "CHPCareers.com." In a survey conducted by CHP it was determined a significant number of cadet applicants sought information about the CHP from the Internet. By enhancing our presence, as well as developing and deploying an on-line application, we have realized an increase from an annual average of 18,167 applications per year to 52,398 applications received in the first eleven months of 2008.
- During 2008, the Department completed development of a new recruitment and branding campaign. This campaign, entitled "Expectations," was based on a tremendous amount of research. This campaign is designed to have several focused messages in lieu of one comprehensive message in an effort to reach out to women, ethnic communities, transitioning military personnel, and the traditional law enforcement recruit.
- The Academy has been modified to appropriately train the increased cadet class sizes, while continuing to be the primary training center for all other CHP functions. In addition to increased staffing, additional classrooms were added and existing classrooms modified to appropriately seat the large cadet classes. These efforts have preserved the quality of CHP training, which has been recognized by the Commission on Peace Officer Standards as among the finest in the state.
- The CHP Academy staff has incorporated progressive steps to improve cadet retention and has implemented the following new programs: expanded mentorship through peers and staff, purposeful remediation with the instructor, enhanced learning through adult learning principles, family orientation and website postings, and coping skills for stress and emotional survival. With these enhancements, and record class sizes, the Academy has seen a reduction in their attrition rate.





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- The CHP works in many arenas, neighborhoods, schools, and community-sponsored events to attract qualified cadet applications. With the support of the Governor and the Legislature, I am confident the CHP can continue to aggressively hire, train, and retain new officers. Given the continuing growth of California in terms of population, licensed drivers, and registered vehicles, the support of the Legislature at this time in terms of the growth of the CHP, will ensure the preservation of public safety in the future.

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CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

**SENATE RULES COMMITTEE**

DARRELL STEINBERG

CHAIRMAN

January 14, 2009

Jon A. Edney

Dear Mr. Edney:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Colorado River Basin Regional Water Quality Control Board on February 11, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by February 2, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 2<sup>nd</sup>.

Because of situations that occurred with board appointees in the past, we ask that you provide these responses in your own words, not those of staff.

**Statement of Goals**

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*
2. *What do you believe are the most serious issues facing your board?*
3. *How does your board help the public understand the state of water quality in your region? Do you believe that the information on your website is adequate? Where should the public go for information on water quality issues such as the Salton Sea, the New River, sewage spills, or the overall quality of water in rivers and streams in your region?*

## **State and Regional Board Roles**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time-consuming for board members, particularly considering these are part-time positions.

4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*
5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

## **California State Budget Crisis**

California's dire fiscal situation has affected all parts of state government.

7. *How do you, as a board member, stay informed of the fiscal resources available to your board? How does your board prioritize activities if not all can be undertaken? What are your priorities?*

### **Cleaning Up Polluted Waters**

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and TMDL programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies. Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

8. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*
9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

### **Enforcement of Water Quality Laws**

Several years ago, the office of the Secretary of Cal/EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

10. *What enforcement options do you believe provide the most effective tools for violations of board orders?*
11. *What staff is available to assist you in enforcing water quality laws? Is the number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?*

### **Septic Rule**

Chapter 781, Statutes of 2000 (AB 885, Jackson), requires the state board to develop, adopt and implement statewide regulations for permitting and operation of on-site wastewater treatment systems (OWTS), commonly referred to as the "Septic Rule". The board recently proposed draft regulations which are currently available for public comment until February 9, 2009.

12. *Has the state board articulated a role for the regional boards in implementing this rule?*

13. *How does the board intend to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution?*

### **New River Pollution**

The New River flows north from Mexicali, Mexico, into the United States just west of Calexico. The river has been called the most polluted river in the United States, with raw sewage and industrial waste being discharged into the Mexican portion of the river. In 1998 the regional water board said that the beneficial uses of the New River were impaired by bacteria, volatile organic compounds, nutrients, silt, and pesticides. Two projects in Mexico were developed—Mexicali I and Mexicali II. Mexicali I, which added and upgraded sewage collectors, was completed in 2004. Mexicali II added a 20 million gallon-per-day wastewater treatment plant which is now online.

14. *What progress has been made and what types of water quality impairments still exist? What needs to be done to address the remaining water quality impairments in the New River?*

### **Salton Sea**

The Salton Sea is California's largest inland water body and home to more species of birds than any other place in California. Over 390 species of birds have been identified at the Sonny Bono Salton Sea National Wildlife Refuge. The enrichment of nutrients in the Salton Sea, known as eutrophication, has sufficiently impacted its uses, including recreation, fishing, and wildlife resources. Some of the specific effects include high algal growth, high fish productivity, low clarity, frequent very low dissolved oxygen concentrations, massive fish kills, and noxious odors. External loading of nutrients, particularly phosphorus, is responsible for the eutrophication of the Salton Sea. Approximately 75 percent of the freshwater inflow to the sea is agricultural drainwater from Imperial Valley, which is increasing the sea's salinity.

The Legislature approved the preferred alternative for the restoration of the Salton Sea and provided for \$47 million in funding through Senator Ducheny's SB 187, adopted in the last Legislative session.

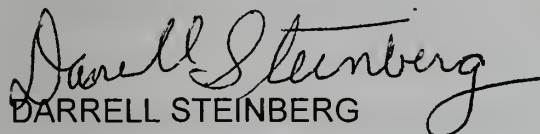
15. *How does the board monitor Salton Sea water quality issues?*
16. *How does the board plan to deal with restoration of the Salton Sea?*

Jon A. Edney  
January 14, 2009  
Page 5

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:KW

cc: Water Quality Control Board, Colorado River Basin Region

1. Introduction

2. Methodology

The study was conducted using a mixed-methods approach, combining quantitative data analysis with qualitative interviews. The quantitative data was collected through a survey of 100 participants, while the qualitative data was gathered from 15 in-depth interviews. The survey data was analyzed using statistical software, and the interview data was analyzed using thematic analysis. The results of the quantitative analysis showed a significant positive correlation between the variables of interest. The qualitative analysis revealed several themes that provide context and depth to the quantitative findings.

The findings of this study have important implications for the field. They suggest that the relationship between the variables is more complex than previously thought. The results also highlight the need for further research in this area, particularly in understanding the underlying mechanisms of the observed relationships.

3. Results

The results of the quantitative analysis are presented in Table 1. The data shows a strong positive correlation between the variables, with a correlation coefficient of 0.75. This indicates that as one variable increases, the other variable also tends to increase. The qualitative analysis identified several key themes that emerged from the interviews. These themes include the importance of social support, the role of community, and the impact of individual experiences. The themes provide a rich understanding of the lived experiences of the participants and help to explain the quantitative findings.

The findings of this study have important implications for the field. They suggest that the relationship between the variables is more complex than previously thought. The results also highlight the need for further research in this area, particularly in understanding the underlying mechanisms of the observed relationships.

The findings of this study have important implications for the field. They suggest that the relationship between the variables is more complex than previously thought. The results also highlight the need for further research in this area, particularly in understanding the underlying mechanisms of the observed relationships.



January 25, 2009

Honorable Darrell Steinberg  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Mr. Chairman and Members of the Committee:

Thank you for allowing me the opportunity to respond to the extensive list of questions concerning my confirmation hearing. I will do my best to answer the questions below.

- 1) I look at my role on the Board as one that can hopefully provide a better understanding for the vast community of which I serve. The area in which the Board covers is large and diverse. As the only current member who resides in the Imperial Valley, it is important that I create a better awareness for those involved with local government as well as the farming community. In my relatively short tenure, I have found that many are unfamiliar with the role, responsibilities, and issues that are faced by a Regional Board. Increased awareness and understanding is my highest priority.
- 2) There are many serious issues facing the Board, but it most significantly can view lack of understanding by the community it serves as number one. Many appearing in front of the Board, are lacking fundamental knowledge of the regulations and enforcement requirements. They also look as the Board as another outside agency from the State coming in to tell them what to do.
- 3) I believe that the website that is in place is quite adequate in providing information on the wide range of issues under the purview of the Board. It is easy to navigate and the wealth of information is excellent. We can certainly do more to increase public knowledge and awareness. One of the ways our Board is doing this is by agreeing to spread some of our meetings throughout the Region.
- 4) The staff of our Regional Board is very helpful and always available to members for assistance with their questions and concerns. There are also a variety of workshops and reading material that are used to enhance our knowledge. One way that could be considered to assist Board Members and the community would be to have Staff available throughout the jurisdiction in which the Regional Board serves. As stated earlier, our area is quite extensive and yet all Staff is located in one central location. In many organizations in which I serve, we have found that more is accomplished when there are more direct relationships established.

**Senate Rules Committee**

JAN 30 2009

**Appointments**

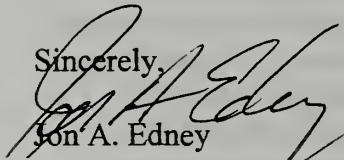
- 5) The conflict of interest training was received prior to my first meeting. The separate roles by the Board are important in their distinctions. As an elected official for the past 10 years, I have always preferred to error on the side of caution when there is even the appearance of a conflict. I have in fact withdrawn from a couple of issues in my tenure. One, when the item concerned the city in which I serve as a council member and the other concerning a school in which my daughter is employed.
- 6) There can be no doubt that the relationship between the Regional Boards and the State Board can be improved. Most importantly, like most aspects of State Government, the bureaucracy is too large and not timely in either its actions or deliberations. I believe increased clarification of the roles and duties are essential. Certainly a complete review of the roles and relationships can serve to better implement strategies and improve efficiency.
- 7) No one can serve a role in California Government and not be aware and concerned with the fiscal problems facing the State. When it comes to priorities, the protection and safety of the public we serve must always be job number one. This must always drive the decisions the Board makes but is critical when fiscal difficulties are so prevalent.
- 8) Our Board is currently updating its list and is scheduled to make recommendations to the State Board during its meeting this month. We have had an extensive public comment period that closed on January 9 of this year. I can't say that adequate resources are available or that many of the tools are in place to complete the necessary improvements. A far more effective outreach and collaboration between State, Federal, and International agencies throughout this region must be implemented for us to be successful. As always, the lack of financial resources will severely impact the results.
- 9) Region 7 has numerous TMDL plans for implementation throughout its region including the New River, Alamo River, and Imperial Valley Drains. The enforcement components require regular testing and strict adherence from local agencies and users. Increased awareness and streamlined requirements will increase cooperation by effected entities.

- 10) This is best determined by who is in violation. A private individual or entity is best resolved through fine and or penalty. This deterrent is likely to present the most effective way to stop the violation and make improvements. For a governmental agency, I would suggest working more collabarately to find solutions to the problem. Public agencies being fined and or penalized serves only to take funding away from improvements in their systems and ultimately harms those we are trying to protect.
- 11) It is quite impossible to ever say that this or any of the Regional Water Boards have enough staff to adequately enforce all regulations. Through the best efforts of staff, they are doing a yeomen's job. Priority is always established in regard to eminent safety to the public. This often times means delaying much needed projects and enforcement.
- 12) I am unclear of the role and responsibilities of the Regional Boards. According to the bills language, the Regional Boards will have the duty to monitor and enforce the new regulations. Unfortunately, no additional staff is allocated at this time and it is not clear as to what enforcement capabilities the Regional Board will have over local agencies. While the concept is noble, we will need additional clarification on implementation. Additionally I have considerable concern in regard to the economic impact of this bill. The estimated costs for improving or replacing existing systems are extensive. Incomplete analysis is provided as to where property owners with OWTS systems are going to come up with the necessary funds.
- 13) The easiest part of the enforcement will come on regulating new systems that are planned or developed. We will need to work closely with the local officials concerning the new regulations in a timely process that begins soon as to provide information and details prior to the 2010 effective date. Existing systems to be monitored present more of a challenge. Once again, no additional staff is identified for the Regional Boards. In addition, it is unlikely that local jurisdictions have staff or funding available to assist with monitoring or enforcement. We often have great ideas in government on how best to fix things; we just never seem to have the funding in order to implement the desired results.
- 14) The original joint plan by the United States and Mexico was a beginning step to assisting the enormous challenge of cleaning up the new river. There has been some improvement and yet it is still likely the most polluted river in the country. There is still raw sewage being dumped into the river from Mexico. The opportunity to increase effectiveness of the clean up has never been greater. The new Governor of Baja is a water and sewer professional by trade. He has both the desire and comprehensive technical knowledge for us to put forth the necessary next steps to solve this problem that has been going on for more that fifty years.

- 15) Certainly there is no more significant issue facing Region 7, then the clean up of the Salton Sea. The Board through its staff and its partners ( IID, Farmers/Growers, USEPA and IBWC) continue to monitor progress concerning the Sea. The success of this effort is incumbent upon total collaboration within these entities.
- 16) The funding received through SB187 is a logical first step to the Sea and its restoration. Unfortunately, providing \$47 million for a project that is estimated to cost in the billions is only putting a band-aid on the problem. We must prioritize issues within the Region and fund the appropriate amounts in order to facilitate the improvements that are needed. We must continue efforts to have increased funding from the Federal Government. Significant issues of the Sea are caused by the situation in Mexico. It high time the Federal Government step up to its responsibilities.

I have answered with some brevity as to the questions presented and have used my own words and knowledge as requested. As a new member to the Region 7 Board, I have much to learn. I appreciate staff of the Board working with me on an ongoing basis to enhance my awareness and knowledge. I am available at your convenience for any additional questions or comments.

Sincerely,



Jon A. Edney

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG

CHAIRMAN

January 14, 2009

Donald M. Jardine

Dear Mr. Jardine:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of Lahontan Regional Water Quality Control Board on February 11, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by February 2, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 2<sup>nd</sup>

Because of situations that occurred with board appointees in the past, we ask that you provide these responses in your own words, not those of staff.

**Statement of Goals**

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*
2. *What do you believe are the most serious issues facing your board?*
3. *How does your board help the public understand the state of water quality in your region? Do you believe that the information on your website is adequate? Where should the public go for information on water quality issues, such as mine waste, sewage spills, or the overall quality of water in rivers and streams in your region?*

## **State and Regional Board Roles**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time-consuming for board members, particularly considering these are part-time positions.

4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*
5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (TMDLs), and enforce permit and discharge requirements, as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

## **California State Budget Crisis**

California's dire fiscal situation has affected all parts of state government.

7. *How do you, as a board member, stay informed of the fiscal resources available to your board? How does your board prioritize activities if not all can be undertaken? What are your priorities?*

## **Enforcement of Water Quality Laws**

Several years ago the Office of the Secretary of Cal/EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

8. *What enforcement options do you believe provide the most effective tools for violations of board orders?*
9. *What staff is available to assist you in enforcing water quality laws? Is the number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?*

## **Septic Rule**

Chapter 781, Statutes of 2000 (AB 885, Jackson) requires the state board to develop, adopt and implement statewide regulations for permitting and operation of on-site wastewater treatment systems (OWTA), commonly referred to as the "Septic Rule". The board recently proposed draft regulations which are currently available for public comment until February 9, 2009.

10. *Has the state board articulated a role for the regional boards in implementing this rule?*
11. *How does the board intend to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution?*

## **Lake Tahoe**

The clarity of Lake Tahoe has been declining for decades. In the 1970s a white disc lowered into the lake could be seen at 100 feet. In 2006 a similar disc could not be seen below 67.7 feet. More than half of the nitrogen-feeding algae growth in the lake comes from air pollution, much of it from nitrous oxide emitted by cars. Fine sediment is also a problem, with studies showing road dust to be a significant factor. According to the University of California, Davis, Tahoe Environmental Research Center, a 35 percent reduction in three types of pollution—nitrogen, phosphorus, and fine sediment—could restore the lake's clarity to the level seen in the 1970s.

By the end of this year board staff was to have completed a draft Final Lake Tahoe TMDL with the adoption of the Final TMDL in Spring 2009. The Lahontan Water Board and Nevada Division of Environmental Protection have stated that they are committed to the Lake Tahoe TMDL, a strategy to return Lake Tahoe to a clarity depth of 80 feet by 2025, and nearly 100 feet eventually.

12. *What plans does the Lahontan board have for restoring the clarity of Lake Tahoe? Specifically, to what degree are nitrogen, phosphorus, and fine sediment loading being addressed in the TMDL process, and what is the timetable?*
13. *When will the clarity standard of 100 feet be achieved?*

### **Lake Tahoe Basin Wildfires**

A major public concern in the Lake Tahoe Basin remains the threat of catastrophic fire. The Angora Fire that erupted in June 2007 destroyed more than 250 homes on the California side of the Tahoe Basin, and over \$141 million in damage occurred. In the wake of this fire, public agencies with environmental and regulatory oversight of the Tahoe Basin were criticized for allowing bureaucratic red tape to hinder the advancement of efforts to prevent such disasters. Heads of various agencies, including the Lahontan Regional Water Quality Control Board, were encouraged to improve their communication with each other and with local residents. Governor Schwarzenegger created the California Nevada Tahoe Basin Fire Commission which, in March 2008, came up with 70 recommendations.

Fuels buildup is another problem that is affecting the Lake Tahoe area. The community of South Lake Tahoe is listed by the federal government as a community at risk.

The board will discuss, at its December meeting, waiving discharge requirements for vegetation management activities regulated by the Tahoe Regional Planning Agency.

14. *What steps is the Lahontan board taking to improve its interagency communication and its communication with local residents so that wildfire prevention efforts progress?*
15. *Which recommendations of the Tahoe Fire Commission has the board implemented? Are there any recommendations that you believe could endanger water quality? If so, how are they being handled?*
16. *What steps should the board take to help reduce fuels buildup, especially in the South Lake Tahoe area? How does the board address water quality concerns when waiving the discharge requirements for vegetation management activities regulated by the Tahoe Regional Planning Agency?*



## **Fee Collection/Timber Harvest Review**

17. *How does your regional board pay for the costs of timber harvest plan review? Does your board collect a fee for review to pay for the regional board's costs associated with the water quality review of such plans? If so, what is the amount of the fee? Does fee revenue stay with the regional board or is it forwarded to the state board?*
18. *Do you have any suggestions as to how to better ensure any fees collected by the regional boards stay with those boards to help pay for staffing and other review and enforcement costs?*

## **Leviathan Mine**

The Leviathan Mine in Alpine County is the former site of intermittent mining operations dating back to the 1860s and open pit sulfur mining operations from the 1950s through the 1960s. Major environmental damage has occurred at the mine, which is surrounded by the Humboldt-Toiyabe National Forest, during the period of open pit mining. Snowmelt, rain, and groundwater interact with the waste rock, creating sulfuric acid, which in turn leaches additional contaminants from the native minerals such as arsenic, copper, nickel, zinc, chromium, aluminum, and iron. The resulting acid rock drainage (ARD) flows into the Leviathan Creek system at numerous points, eventually joining the East Fork of the Carson River. For most of the year, roughly half of the flow in Leviathan Creek is composed of ARD.

Formerly the Lahontan Water Board retained a contractor that operated a treatment system that ran 24 hours a day and 7 days a week. Currently, a new contractor was hired who runs a treatment system that operates Monday through Friday, and only during daylight hours. A multi-year contract for water quality monitoring was executed with the U.S. Geological Survey in August 2008, but has not been implemented because of the Governor's executive order which halted new state contracts.

19. *How is the change in the treatment system operation from a 24/7 to 5 days a week and operating in daylight hours only affecting the Leviathan Creek system?*
20. *Is water quality of the Leviathan Mine site currently being monitored? Will the U.S Geological Survey take over monitoring in the future, or will the board assume this responsibility? How do you, as a board member, stay informed of this issue?*

Donald M. Jardine  
January 14, 2009  
Page 6

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:KW

cc: Water Quality Control Board, Lahontan Region

**1. What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?**

- Encourage more use of recycled water. How - requiring higher quality wastewater, reviewing regulatory program related to use of recycled water to streamline process and ensure consistency. Measure - track use of recycled water in region.
- Increase rate of compliance with water board orders. How - require water board staff to report regularly on violations and pursue a consistent and aggressive enforcement program. Measure - track number of significant violations.
- More consideration for the link between water quality and water quantity

**2. What do you believe are the most serious issues facing your board?**

- Pollution and degradation of ground water that has current uses or may be used in the future to store water as part of conjunctive use projects.
- Addressing statutory mandates, public expectations and discharger requests within the resource allocations provided.
- Addressing groundwater contamination issues in basins that are in overdraft since the most common remediation technique (pump and treat) could exacerbate this situation.
- Establishing a logical and transparent implementations plan for reversing the loss of clarity in Lake Tahoe.
- Developing policies addressing discharges to, remediation of, and conjunctive use groundwater aquifers in the southern portion of the region.
- Maintaining an effective enforcement program that addresses significant violations and sends the appropriate deterrent message given the other demands on the resources provided.

**3. How does your board help the public understand the state of water quality in your region? Do you believe that the information on your web site is adequate? Where should the public go for information on water quality issues, such as mine waste, sewage spills, or the overall quality of the water in rivers and streams in your region?**

- Water Board's web site contains many useful documents:
  - Impaired water body list
  - Results of assessment of water bodies
  - Monthly Executive Officer Reports
  - Information on key projects (e.g. PG&E Clean-up, Tahoe TMDL, Leviathan Mine)
  - Monthly Board meeting agendas
  - List of projects that will be subject to future Water Board actionThe web site was recently revised along with all other water boards in a consistent format, improvements are still possible, but it takes resources to maintain it in a manner that serves the public need.
- Board Tours - As part of Water Board meetings the board hosts public tours of water quality issues (May 2008 meeting included a tour of a fuel reduction project).

**Senate Rules Committee**

JAN 30 2008

**Appointments**

- Staff workshops - Water Board staff have conducted informal public workshops on issues that may come before the board at a future meeting (e.g. PG&E Hinkley permits and remediation projects).
- The Board staff disseminates draft water board actions to a wide interested parties list and agendas for water board meeting agendas are sent electronically and mailed to over 250 persons and agencies.

**4. Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state board's staff might better assist you?**

- I can communicate with our water board executive officer and our staff; however, I need to be cautious of ex-parte communications on adjudicatory matters
- Additionally, the state board provides the water boards with an attorney from the Office of Chief Counsel, David Coupe, that advises us on legal matters.
- State Water Board has provided focused training for regional water board members on many of the programs that we implement and Water Quality Coordinating Committee meetings provide additional forums to learn about current issues.

**5. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?**

- When appointed I received a briefing from the deputy chief counsel of the state board
- At water quality coordinating committee meetings the Chief Counsel of the State Board provides a review of conflict of interest laws
- Our executive officer is aware of my public service and employment and advises me of pending matters that may represent a conflict due to the location or proponent of the project (within the jurisdiction that I represent).
- As an Alpine County Supervisor, I attend periodic, mandated, ethics training AB 1234, and as County Supervisor I have withdrawn from voting on issues.
- I have not needed to withdraw on any Regional Board issues yet.
- Our water board attorney is available to assist in advising me if an issue raises a conflict that warrants that I withdraw from the deliberation and decision process

**6. What is your view of relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?**

- Regional Boards are autonomous bodies that make decisions within the discretion provided both in law and in policy adopted by the State Board and our regional board
- State Board has authority (can overturn regional board decisions on petition or on its own action) and responsibility to ensure consistency of actions by regional boards
- State Board is first line for addressing petitions of regional board actions so there should not be direct communication on project-level decisions so state board can remain unbiased to handle petition

- The State Board can only ensure consistency if it adequately monitors the actions or lack of action by regional boards. Recently implemented data management systems should provide information to assist in this effort

**7. How do you, as a board member, stay informed of the fiscal resources available to your board? How does your board prioritize activities if all not all can be undertaken? What are priorities?**

- Monthly briefings from our executive officer and from our State Water Board liaisons
- The water boards do not have the resources to accomplish all of its legal mandates and expectations so we have always had to prioritize what we do
- Recent expectations for enhanced enforcement to address violations erodes the ability to address other issues (e.g. delay in reviewing older permits, regulating all activities subject to regulations, completing inspections of regulated facilities on an established frequency based on threat to water quality)
- Water quality problems become worse if not addressed in a timely manner, yet water boards only have resources to address the highest priority problems

**8. What enforcement options do you believe provide most effective tools for violations of board orders?**

- There is no one options that is best for all situations
- Penalties provide a deterrent to the discharger to avoid future violations and to other dischargers to avoid similar violations
- Formal compliance schedules in cease and desist orders or clean-up and abatement orders set clear water board expectations for discharger actions to achieve compliance and the basis for penalty actions if timely compliance is not achieved
- Forcing a public agency or company to regularly appear before the regional board to explain why they had violations and what they intend to do to correct the problems sends the message that the regional board is watching the situation and is prepared to act if progress is not being made

**9. What staff is available to assist you in enforcing water quality laws? Is the number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?**

- Our board has established an enforcement unit that is responsible for developing enforcement cases
- We do not have sufficient staff to address every violation. Because of relatively new requirements for separation of prosecutions and advisory functions and the formality of enforcement proceedings, formal enforcement is more resource-intensive than it was in the past.
- Some violations are only single-instances with minimal water quality impacts and do not deserve enforcement. Others receive less formal response
- Our priority is to take the appropriate enforcement action to require dischargers to return to compliance in the shortest possible time. Additionally, we pursue penalty

action when violations cause significant water quality problems, are egregious, or where enforcement has a significant deterrent effect

**10. Has the state board articulated a role for the regional boards in implementing the rule?**

The draft regulations specify a number of roles for the regional boards. These include: developing memorandum or understandings with counties to implement the regulation, receiving notification and reports, and making decision on monitoring

**11. How does the board intend to monitor, enforce and improve septic system that contribute to surface and groundwater pollution?**

Currently the Lahontan Water Board has MOUs with all of our counties. Our counties are doing a very good job of addressing these types of problems.

The Water Board has imposed prohibitions in certain areas where septic use is not appropriate. One example is Eagle Lake and as a result of the prohibition, the two subdivisions have installed ewers and treatment facilities. In the Mustang Mesa area, Inyo County worked with local community and installed monitoring and committed to requiring upgraded systems where they were needed.

**12. What plans does the Lahontan board have for restoring the clarity of Lake Tahoe? Specifically, to what degree are nitrogen, phosphorus, and fine sediment loading being addressed in the TMDL process, and what is the timetable?**

- The draft Total Maximum Daily Load (TMDL) for Lake Tahoe will be released for public review in 2009. Much of the technical support information has been released and is available on our web site.
- The TMDL is a collaborative effort with Nevada Division of Environmental Protection
- Based on staff briefings at water board meetings, The TMDL will identify the need to reduce fine sediment discharges by 55% along with reductions in nitrogen and phosphorus discharges to restore Lake Tahoe's clarity
- The TMDL will be implemented through amended permits for the municipalities and Caltrans. Additionally, staff is collaborating with the Tahoe Regional Planning Agency to ensure that land use controls embedded in its Regional Plan scheduled for adoption in 2011 will further efforts to reduce sediment and nutrient discharges

**13. When will the clarity standard of 100 feet be achieved?**

The water board will be setting a target date for achieving the clarity standard as part of the adopting the Lake Tahoe TMDL in late 2009. Without hearing all the testimony and technical information, it would be premature for me to comment on this important water quality decision at this time

**14. What steps is the Lahontan board taking to improve interagency communication and communication with residents so that wildfire prevention efforts progress?**

- Water board staff participates in an interagency Fuels-Fire Treatment Team (project implementers and regulators) to identify fuel treatment projects, prioritize, plan and permit
- Staff is working cooperatively with the forest service in the development of a joint environmental document for a large fuel treatment project in South Lake Tahoe which will significantly expedite the permitting for this project.
- Staff is working on developing agreements between the water board and other agencies to simplify permitting and identify a single permitting agency (TRPA - Tahoe Regional Planning Agency). These agreements and improvements to the Timber Waiver are slated for board consideration.
- In January 2007 the Water Board adopted a blanket waiver allowing property owners to complete any defensible space actions without notification or obtaining any permits from the Water Board. Staff is working with TRPA staff and fire districts to craft a consistent message on achieving both erosion control and defensible space on private property.

**15. Which recommendations of the Tahoe Fire Commission has the board implemented? Are there any recommendations that you believe could endanger water Quality? If so, how are they being handled?**

- I have served with board member, Amy Horne PhD in 2008 on the Fuels and Vegetation Management Water Board Subcommittee. This subcommittee accepted public input and made recommendations which were acted upon by the full board.
- There were 13 recommendations (one recommendation has 9 elements) that pertain to the water board. We have implemented 10 of the recommendations which include a number of the sub-elements of one recommendation.
- We are in the process of addressing the remaining 4 recommendations which include all but one of the sub-elements.
- The one recommendation involving use of equipment on slopes greater than 30% is being evaluated to determine if there are studies that would support allowing such activities. the board is monitoring staff efforts to bring a scientifically-justified positions to the board for a decision.

**16. What steps should the Board take to help reduce fuels buildup, especially in the South Lake Tahoe area? How does the board address water quality concerns when waiving the discharge requirements for vegetation management activities regulated by the Tahoe Regional Planning Agency?**

- Streamline permitting processes - goal would be one-stop-permitting and reduced or eliminate paperwork for benign projects.

- Review existing regulations and prohibitions to determine if still scientifically justified or if more aggressive fuel reductions methods can be used without causing water quality impacts.
- The Tahoe Regional Planning agency (TRPA) and the water board have identical water quality standards, discharge prohibitions and exemption criteria. the memorandum of understanding between the board and TRPA requires TRPA to notify the board of projects that have a higher threat to water quality, provide for collaboration between staffs to ensure appropriate permit conditions are developed and notification of water quality problems. TRPA also agreed to provide annual reports to the board. Additionally, the board retains its enforcement authority and can impose permit conditions on any project if it deems that such action is needed to protect water quality.

**17. How does your board pay for the cost of timber harvest plan review? Does your board collect a fee for review to pay for the regional board's cost associated with the water quality review of such plans? If so, what is the amount of the fee? Does the fee revenue stay with the regional board or is it forwarded to the state board?**

Timber harvest plan review is funded by the General Fund (non federal lands) and Federal funds (projects on federal lands - USFS or BLM). We do not collect fees to cover any of this effort.

**18. Do you have any suggestions as to how to ensure any fees collected by regional boards stay with those boards to help pay for staffing and other review and enforcement costs?**

- The workload for individual dischargers fluctuates from year to year (Federal permits must be renewed every five years, state permits do not expire yet need to be updated periodically, some dischargers ask for permit modifications, enforcement needs, some discharges are inspected yearly while others once every five years) while fees do not.
- Also, larger dischargers in urban areas have much higher fees. If fees collected stayed in region of origin, rural water boards would likely get a lower share of fees than current allocation. I do not think this is a good idea

**19. How is the change in the treatment system operations from a 24/7 to five days a week and operating in daylight hours only affecting the Leviathan Creek system?**

- Currently, untreated acid mine drainage from three sources are discharged to Leviathan Creek during the winter months. During low creek flow periods, early through mid winter this AMD likely is half of the flow in the creek. However, in spring, creek flows increase. During the summer months most of these flows are captured and treated prior to discharge to the creek. Our pond water treatment system constitutes much of the flow in Leviathan Creek during summer months. The key issue



here is that while AMD does flow into Leviathan Creek, much of that is treated AMD that has resulted in significant improvement in much of the watershed.

- Acid mine drainage (AMD) from the mine workings is collected year-round in ponds. This AMD is stored all winter and during the summer the pond water is treated and released to Leviathan Creek to restore the storage capacity for the upcoming winter.
- The contractor is responsible for treating all the AMD stored in the ponds during summer months and determines the most cost-effective method of completing this task. The contractor is paid based on the number of gallons treated. This last summer the contractor was able to complete the task by operating the treatment system five days per week. When the treatment system is not being operated there is no discharge from the ponds. The days and hours of operation of the treatment system has no effect on the quality of Leviathan Creek since there is no discharge of AMD from the mine workings when the treatment system is not in operation.

**20. Is water quality of the Leviathan Mine site currently being monitored? Will the U.S. Geological Survey take over monitoring in the future, or will the board assume this responsibility? How do you as a board member stay informed of this issue?**

- The contract in question is for flow monitoring. The UDGS has maintained the monitoring network continuously, even in the early part of FY 08-09 when the State did not have a budget.
- The Water Board staff has been doing the water quality monitoring at the site for many years and has every intent to continue this effort.
- I can and do communicate with our water board executive officer and our staff on this issue.
- As part of my duties on the Alpine County Board of Supervisors and as Board member of the Carson Water Subconservancy District, I have taken tours and received periodic updates on this project.

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# Carson Water Subconservancy District

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## Explore Your Watershed



[view interactive map](#)

## What's New!

- Final Regional Floodplain Management Plan
- Final TSS/Turbidity TMDL for the Carson River
- Carson River Report Card Project
- Chronology of Carson River Flooding Website
- Carson River Flooding Emergency Contact
- Carson River Real-time Streamflow
- Current Weather Conditions
- What Can You Do to Prevent NPS Pollution?

## Meeting Information

- CWSD Board of Directors
- Carson River Coalition
- All Watershed Meetings

## Special Events Information

- Carson River Coalition Background Information
- 2009 CRC Weed Forum

## References

- Carson River Stewardship Plan
- Alpine Decree - Judge Thompson 12/18/80 Opinion
- TestBook



Carson Water Subconservancy District  
 777 E. William Street, Suite 110A  
 Carson City, NV 89701



# Carson Water Subconservancy District

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[About CWSD](#)

[CWSD Timeline](#)

[Board of Directors](#)

[Staff](#)

## Who We Are

### About CWSD:

The Carson Water Subconservancy District, or CWSD, is a unique multi-county, bi-state agency dedicated to establishing a balance between the needs of the communities within the Carson River Watershed and the function of the river system. Our thirteen



member Board of Directors consists of representatives from each of the five counties within the watershed plus two representatives from the agricultural community. Granted no regulatory authority of its own, the CWSD's mission is to work within existing governmental frameworks to promote cooperative action for the watershed that crosses both agency and political boundaries. The CWSD strives to involve all counties and communities within the watershed in the efforts to preserve the rich history and unique resources of the Carson River Watershed.

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### Carson Water Subconservancy District

777 E. William Street, Suite 110A

Carson City, NV 89701

(775) 887-7450

For information regarding this website please contact [visionASP](#)



# Carson Water Subconservancy District

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Vision Statement

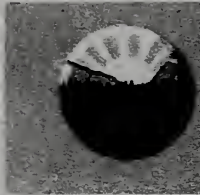
Guiding Principles

Watershed Regions

## Watershed

### Guiding Principles

1. Manage the water's resources for economic sustainability, quality of life, and protection of private and public property rights.
2. Acknowledge and respect the watershed's natural processes in land use decisions.
3. Maintain or improve the quality of the water to support a variety of beneficial uses.
4. Protect the headwaters region as the system's principal water source.
5. Recognize and respect the interests of all stakeholders upstream and downstream by fostering collaborative and mutual respectful relationships.
6. Maintain the riverine and alluvial fan floodplains of the Carson River Watershed to accommodate flood events.
7. Protect and manage uplands, mountain ranges, wetlands, and riparian areas to enhance the quality of surface flow, groundwater recharge, and wildlife habitat.
8. Promote conservation of water from all sectors of the community's water users for the benefit of municipal, industrial, agricultural, domestic, recreational, and natural resources.
9. Encourage management of growth that considers water quality and quantity, open space preservation, and maintenance of agriculture in floodplains.
10. Protect and support opportunities for public recreational access to natural areas throughout the watershed – including the river corridor – where appropriate.
11. Promote understanding and awareness of watershed resources and issues through cooperative education efforts throughout the watershed.



# Carson Water Subconservancy District

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Vision Statement

Guiding Principles

Watershed Regions

## Watershed

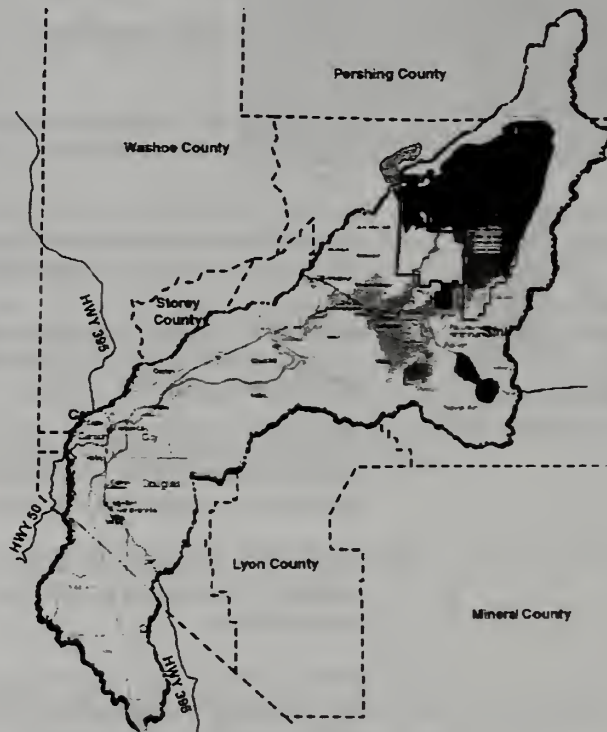
The Carson River Watershed is home to the Carson River, an endangered western river. The watershed which earned the National Outstanding Watershed Award in 1999, crosses the borders of Douglas, Lyon, Carson City and Churchill Counties in Nevada and Alpine County in California and encompasses approximately 3,966 square miles. The Carson River makes a journey of approximately 184 miles beginning at the headwaters in Alpine County and terminating at the Carson Sink in Churchill County. The Great Basin Watersheds are unique in that they never reach an ocean!

Upper Watershed

Middle Watershed

Lower Watershed

## Watershed Regions



Carson Water Subconservancy District  
777 E. William Street, Suite 110A  
Carson City, NV 89701  
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**Alpine Watershed Group**

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- Partners
- Support the Alpine Watershed Group
- What is a Watershed?
- Watershed News
- Watershed Agendas
- Watershed Minutes

## Alpine Watershed Group

### About



#### Mission Statement

The Alpine Watershed Group works to preserve and enhance the natural system functions of Alpine County's watersheds for future generations. The group works by inspiring participation to collaborate, educate, and proactively

implement projects that benefit and steward the County's watersheds.

#### What's a Watershed Group?

A watershed group is a locally organized, voluntary, non-regulatory group established to assess the condition of the watershed and build a work plan to implement restoration and protection activities within the watershed.

#### Healthy Watersheds Help Create Healthy Communities

A healthy watershed helps filter sediment and pollutants while supporting the many living organisms that depend on the eco-system. Healthy watersheds improve the economy and help provide resources for everyone to use and enjoy. The Alpine Watershed Group is committed to providing healthy watersheds for future and current generations.

#### Current Programs:

- Volunteer Water Quality Monitoring
- Alpine Creek Days
- Streambank Restoration
- Markleeville Guard Station Restoration
- Erosion Control Best Management Practices
- Monthly Informational Forums

### Quick Links

- Board of Supervisors
- Departments
- Other County Groups
- County Officials
- County Documents
- Roads and Weather
- Calendar
- County Code
- Site-map
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Display all values

January						
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				1	2	3
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# Steve Blois

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January 27, 2009

Ms. Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Re: Confirmation Hearing  
February 11, 2009

Dear Ms. Sabelhaus,

Thank you for considering my appointment to the Los Angeles Regional Water Quality Control Board by holding a confirmation hearing on the referenced date. In response to the questions posed in Senator Steinberg's January 14<sup>th</sup> letter to me, please consider the following:

1. *What do you hope to accomplish during your tenure as a member of the board?*  
Since my appointment I have been providing the Region 4 Board with a fresh and reasoned perspective that helps to promulgate rules, policies and procedures that foster a spirit of cooperation among all stakeholders and results in the improvement of the water quality in our region. I will continue this approach and encourage our staff to work proactively with our stakeholders. *What goals do you have for the board, and how will you accomplish them?* The Region 4 board needs to be viewed as more responsive to the input of all of our stakeholders, thus helping to ensure that our various actions are as effective as they can be at improving the quality of our waters in Region 4. I have and will accomplish this by asking our stakeholders if our Staff has been cooperative and responsive to their input, and if the rules and orders we promulgate were developed with all stakeholder's input in mind. If our stakeholders feel they had a hand in the crafting of our various rules, they will be much more inclined to help in the implementation of the rules, resulting in improving our water quality sooner than otherwise might happen. *How will you measure your success?* My success will be measured by the positive responses from all of our stakeholders of their perception of our Staff's willingness to listen and consider all reasonable input in the crafting of our various rules, policies and procedures. I will ask our

**Senate Rules Committee**

JAN 30 2009

**Appointments**

stakeholders their perception of the process as we consider our rulings during our meetings.

2. *What do you believe are the most serious issues facing your board?* Our board has been perceived in the past as being somewhat arrogant and not receptive to the input of all of our stakeholders. I have been working hard at changing this perception. Our mission is to improve the water quality in our region. In order to be most effective at accomplishing this overall goal, we must involve the stakeholders from the beginning in the crafting of our various rules, regulations and policies. If we fail in this, we run the risk of promulgating rules that will be perceived as impossible to meet and therefore we will not be effective at improving water quality improvement. If on the other hand we involve our stakeholders early and often, they will at a minimum feel a part of the rulemaking process and will have a stake in the successful implementation of the rules we implement. We cannot afford to be perceived as a punitive and arrogant board, but one that asks our stakeholders to be involved in the process of improving our region's water quality. We must partner with those who are affected by our rules and promulgate those rules so they can be met and followed with proactive attitudes rather than solely with the threat of huge fines and penalties if they are not met.
3. *How does your board help the public understand the state of water quality in your region?* We maintain a website that contains numerous reports, publications, notices and links regarding water quality in our region and how the public can become involved. It is comprehensive, and is linked to the Cal/EPA website and other informational sites. It contains reports on various waterways, past and current board actions, and notices of upcoming public meetings where input is asked for and can be provided by the public. *Do you believe the information on your website is adequate?* Although it is not perfect, I do believe the information contained on our website is adequate. *Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?* Our website is a great place to start; it contains the information cited above, and additionally contains links to many other websites, such as Heal the Bay, Santa Monica Baykeeper, etc. where detailed information can be obtained about the issues cited, such as Heal the Bay's beach report card.
4. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you?* As an engineer and a contractor, I understand many of the complex issues that our board considers, but

when I need help understanding technical issues, the regional board's staff has been very helpful and informative. Depending on the issue, I can talk with scientists, engineers, biologists, or other technical support who are on staff at the regional board. Additionally, the State Water board holds symposiums several times a year where special issues are discussed among all state and regional board members in attendance. These meetings typically tackle two or three relevant and current issues before one or more of the regional boards and/or the state board, and provide a forum to confer with colleagues about water issues across regions. *Do you have any suggestions on how the state water board's staff might better assist you?* Not really. They have already been most helpful, particularly in the legal arena. When I have a particular question, I can go to their website and find the proper staff person, then ask him/her my question. I usually must leave a voice message, but staff has been good at responding quickly.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda?* Two attorneys from the State Water Board staff spent all day training me before my first board meeting, shortly after my appointment. They were very thorough and had a standard agenda which they presumably follow with all new board members. They left me with lots of backup material on the law regarding conflicts of interest. *How do you know when to withdraw yourself from voting on an issue?* From the training mentioned above, I know when there is a possibility of a conflict. Once the possibility is identified, I then call our staff attorney to confirm or deny the existence of a conflict, and withdraw myself from voting on that issue accordingly. *Have you ever done so since being appointed to this board?* I have withdrawn from voting on two occasions, both times following the advice of our legal counsel. At our April meeting, when Calleguas Water District was applying for a permit for their "brine line", I recused myself because my brother's construction company had a contract to build a portion of that pipeline. At our August meeting, our board considered rules for water suppliers; as I am a board member of Crestview Mutual Water Company, I again recused myself. (This actually created a problem for our board; a majority of us had the same conflict, and the board therefore could not take action as no quorum was present!)
6. *What is your view of the relationship between the state board and your regional board?* The State Water Board sets overall policy and is the umbrella group. The Regional Water Boards are subsidiaries and make decisions within the context of the law and the policies and procedures of the State Board and apply those decisions locally. Decisions that cannot be reached at the regional level get pushed to the state level; to the extent that we can, we should strive to reach as

many decisions at the lower level as possible so as not to unduly burden the State Board. This process is not unlike our judiciary system where lower court decisions are appealed to the higher courts. While that can be cumbersome at times, it has served our democracy well over the years and is ultimately a fair and impartial process. *Could coordination and accountability be improved? If so, how?* Yes, coordination and accountability can always be improved; it is a matter of communicating, which is never perfect. That being said, from my limited experience to date, the State Board does a pretty good job of communicating, first by sending one of their members to most of our board meetings, and also by holding semi-annual Water Quality Coordinating Committee (WQCC) meetings. I attended the last WQCC meeting, held in Sacramento last October, and participated in several good discussions with State Water Board members and staff, and also members and staff of other regional boards. The State Water Board's website is also fairly comprehensive and updated regularly, and well linked with the regional websites.

7. *How do you, as a board member, stay informed of the fiscal resources available to your board?* I depend on regional staff's input; they are pretty good at letting us know when they need money and for what. *How does your board prioritize activities if not all can be undertaken?* We have reviewed and discussed our priorities whenever a situation arises where we cannot accomplish everything. I have not yet participated in a formal priority review at our regional board, but I suspect this happens at an annual retreat held for the purpose of setting priorities and goals. I believe this is an effective way to maximize our resources. *What are your priorities?* My priorities are, in order of importance, to protect human life and health, then to protect water quality in the waters of our region, then to ensure adequate and reliable supply for the water users in our region, then to protect the beneficial uses of our various waters, and finally to educate the public about the importance of water quality.
8. *What enforcement options do you believe provide the most effective tools for violations of board orders?* Penalties and fines. These should be structured to be fairly modest for first time violations, but become exponentially greater for repeat offenders. I believe in working proactively with our permittees, but if someone willfully disobeys or ignores our orders, then bring the hammer down!
9. *What staff is available to assist you in enforcing water quality laws?* Our board has an entire enforcement section with a group leader and several divisions. They report to the board in closed session on their results and the level of backlog and actions they take. *Is the number of staff adequate for enforcement purposes?*

Yes. *If you must prioritize enforcement efforts, what are the priorities and how are they determined?* First priority has to be those violations that endanger human life and health. Following, in order of importance, are violations that grossly degrade water quality, then beneficial uses, and repeat offenders.

10. *What impact does the Orange County Superior Court ruling have on your board in carrying out its duties relative to the storm water program? Specifically, what effect has the ruling had on permitting and enforcement activities?* Between July 2<sup>nd</sup> and November 10<sup>th</sup>, 2008, the ruling completely stopped all enforcement and permitting actions of our board. We tried to maintain a presence with all of our permittees to protect water quality, but legally we had no teeth. After November 10<sup>th</sup>, we once again had teeth and have continued enforcement and permitting actions as before. The main impact of the ruling is to re-consider our basin plan during the triennial review process by including the consideration of economic impacts and excluding potential beneficial uses unless they are probable beneficial uses. Our board asked our staff during the “slow” period, when they were legally prohibited from doing many of their usual tasks, to re-direct their efforts toward the triennial review of our basin plan in order to comply with the judge’s order as quickly as possible. This process is ongoing.
11. *Will your board be able to continue to comply with the federal California Toxic Rule, given the recent court ruling?* Yes.
12. *What options does your board have in addressing the court ruling, and what are the possible time frames?* We can appeal the ruling, which we are still considering; we can comply with the ruling and revise our basin plan, which we are required to do anyway under the triennial review process; or we can do both of the above. I am not sure of the legal timetable for appealing the ruling, but do know that our legal staff will keep us apprised of any deadlines. I expect the triennial review of our basin plan to take place later this year; our board was informed by staff that they could be ready for this by summer. My belief is we need to comply with the order and review our basin plan in the manner the judge prescribed, and not spend any more money on legal proceedings unless there is a danger of the ruling tainting the State Board or the other regional boards.
13. *Has the state board articulated a role for the regional boards in implementing this rule?* Not specifically.
14. *How does the board intend to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution?* We currently do these things in

several ways: in Malibu, we have an MOU in place that gives authority to the City of Malibu to issue permits for residential and small commercial systems and to monitor and enforce those permits. (This MOU is currently being re-negotiated.) In all other areas, the regional board monitors and enforces septic systems through our groundwater division. In the El Rio area of Oxnard, for example, which sits on top of a major groundwater infiltration area, our board several years ago banned all septic systems and required the County of Ventura to build a sewer system to replace the septic tanks in that area. Grants were given to facilitate the process, and today it is almost complete. Where the board's monitoring efforts indicate that septic systems are degrading water quality, we will implement similar programs. We also need to encourage the development and approval of efficient, affordable and reliable residential septic systems for use in our region in order to provide a viable alternative for replacement of existing septic systems.

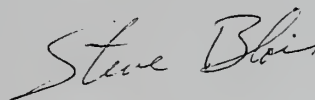
15. *Are you, as a board member, satisfied with the progress made to date?* I am satisfied that the cleanup process is moving forward, and that progress is being made every day. Ideally, the MTBE additive would not have been introduced into the groundwater, but now that it has, the most effective way to remedy the problem is through a cooperative effort of all parties, and that is what is happening.
16. *Under the settlement, will the groundwater be cleaned up, or will treatment be provided to the water used for drinking purposes?* The settlement will result in both cleaning up the groundwater over time and also providing treatment of the drinking water. As the contaminated water is pumped out of the aquifer, new uncontaminated natural supply will fill the aquifer back up, resulting over time in a remediated aquifer that is free of the contaminant. *If wellhead treatment is provided, will the groundwater basin ever be totally cleaned up?* Eventually, yes. The treatment method and location, wellhead or treatment plant, has no bearing on the cleanup of the aquifer. The important fact is that contaminated water will be removed from the aquifer (by pumping) and will be replaced with uncontaminated water. It may take a long time, but eventually the aquifer will be cleaned up.
17. *In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water?* The regional water boards have no official jurisdiction over drinking water standards. That being said, we do work closely with the Department of Public Health in monitoring drinking water quality, as much of our drinking water

supply comes from sources of water over which our board does have jurisdiction. Our board needs to monitor closely what the Department of Health finds, and if and when these new emerging contaminants become a threat to human health, we should work with the Department of Health to establish standard limits and testing. *Should the State Water Board, through regional boards, be working with the California Department of Public Health to require testing and set safety limits for drugs in drinking water?* Not yet. If and when these new emerging contaminants become a threat to human health, we should work with the Department of Health to establish standard limits and testing. In the meantime, we have no lack of tasks we are working on to clean up the waters in our region!

18. *To what degree is your board monitoring these and other emerging contaminants?* We have received two reports on emerging contaminants from our executive officer and senior staff in the executive officer's reports to the board. To date the concentrations of these contaminants have not risen to the level of concern, but we continue to monitor these emerging contaminants.
19. *What other state agencies are involved in this monitoring process? Do you share your information with other drinking water and public health agencies?* The reports we have received to date are public information and thus are shared by all stakeholders. We are aware that several of the other regional water boards have started monitoring and testing for emerging contaminants, and we are following these results closely. I am attending the WQCC meeting in Chino next month, and will ask the other regional board members there about the latest results of their monitoring programs.

Thank you for the opportunity to answer Senator Steinberg's questions. It has been a thoughtful and insightful exercise, one that will help me carry out the mission of the Los Angeles Regional Water Quality Control Board, which is to preserve and protect the quality of the waters in our region. The questions also help to lead me toward issues which are of concern to the Rules Committee members, and will help me better prioritize issues which come before our board. If you have further questions, please do not hesitate to contact me.

Sincerely,



Steve Blois

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## Responses to Questions

### 1. Statement of Goals

I am honored to be appointed as a member of the Los Angeles Regional Water Quality Control Board. This Regional Board has been stalwart in its work to improve the water quality and the beneficial uses of water within this region. The Board and the staff have also worked hard in partnership with permittees and dischargers to find technical and management strategies for meeting water quality standards that can be successfully implemented. It will be my goal to continue the efforts of this Board to bring water quality into compliance with state and federal laws and standards, working with permittees to find solutions that work and will be implemented.

There are three other goals that I hope to move forward while I am a member of the Board. First, it is my goal to place a high priority on the timely and fair enforcement of the law when permittees and dischargers are not following it, and serious water pollution results. I will move forward to accomplish this goal by insuring that progress on major violations is documented and reported to the Board on a regular basis, and that violations are brought through the Board enforcement hearing process in a timely way.

Second, with the current water supply crisis in California, and global climate change making that crisis worse, the Los Angeles Regional Water Quality Control Board can help make significant progress in mitigating the impacts of regional water shortages. As a board member, I will review permits with the goal of minimizing water discharges through reusing and recycling treated water and storing treated wastewater and stormwater underground for future reuse when it is within the legal capacity of the Board to reduce discharges.

Third, the Los Angeles Region is one of the oldest industrialized areas of California and has inherited many brownfields and other industrial pollution sites that continue to endanger public health, particularly in low income and minority communities. The Board and its staff have made a serious commitment to pollution remediation and it is my goal to support those efforts through our permitting and enforcement process particularly when public health of vulnerable populations are involved and when the reuse of polluted sites will contribute to a healthier economy and community.

How will I measure success? First, I will be one of nine voting members and success will be developing a broad consensus among Board members and staff to continued and increased commitment to enforcement of serious water quality violations, more efficient treatment and reuse of water, and remediation of polluted industrial lands. I will measure success in enforcement by seeing that our efforts at enforcement motivate increases in the levels of compliance by all permittees. I will measure success the reuse, recycling and storage of treated wastewater and stormwater when dischargers proudly tell the Board that they are reducing, not increasing their discharges, and when an increased proportion of our local water supply coming from these sources.

### 2. The Most Serious Issues Facing the Regional Board

While I believe that the three goals above-- enforcement; water reuse, recycling and storage; and pollution remediation—are important goals to attain to improve water quality, there are serious challenges to meet to be successful in meeting these and other goals.

The most serious issue at this time is budget and resources to comply with our legal mandates—the over-riding issue for government in California at this time. While it is within the scope of the State Water Board, not the Regional Boards, to allocate budget among the regions, it is the Regional Board’s job to set the priorities within those allocations that will allow us to meet our legal mandates. As non-fee resources dwindle, or as allocations shift to other regions or the state board budget, our ability to set priorities is limited. This makes proactive planning harder and harder to do.

The second challenge will be to improve our stakeholder processes to make all of the key actors, including local governments, feel that they have a stake in improving water quality and that they can succeed within reasonable financial means. I believe that the Board is having some success in collaborating with local governments and this has resulted in fewer cities being involved in litigation, but we need to do more.

The third challenge will be to identify sources of operating funds for stormwater treatment systems that comply with the constitutional amendments adopted through Proposition 13 and their successors. Local governments have taken advantage of capital funds to improve stormwater treatment, but have no continuing sources of funds to operate and maintain those facilities. These operating funds are essential to maintaining systems that reuse, recycle and store treated stormwater for future use.

### 3. How Does the Board Help the Public to Understand the State of Water Quality in the Region?

The Board has a good process for members of the public who are familiar with the Board to participate in public hearing items before the Board. The issuance of tentative permits allows both permittees and members of the public with concerns to communicate those concerns to staff before the staff issues a final report to the Board. The final report to the Board includes detailed responses to all concerns and recommendations made by all parties. This helps the permittee(s) and public to know what is before the Board, and be able to add any concerns that the staff has not addressed. It gives the Board an orderly way to consider all points of view. In addition, on complex issues where there is disagreement between a number of different stakeholders, the Board will hold workshops to hear information and concerns on all sides and make suggestions on ways to consider those concerns. Finally, the Board encourages mediated stakeholder planning efforts meant to balance the concerns of different stakeholders, with staff participation. Through these efforts, it is sometimes possible to develop solutions that meet the needs of beneficial users at a cost that dischargers can afford, as on the Santa Clara River and the salinity TMDL. I believe that all of these efforts lead to better understanding of the many water quality problems in this region.

I do think that the Board can do more to improve public understanding of the issues that are not regularly brought to the board through the hearing process. I recently suggested that the Executive Officer's Report to the Board that details administrative actions and ongoing enforcement actions as well as early warnings about issues to come before the Board be posted on our website –it was done within 24 hours. I think that the maps of impaired waterways and the information about those waterways under the regional watershed management initiative provides a great deal of water quality information as well as information about what is being done about water quality problems, linked to the work of other agencies to improve water quality.

I think that there could be improvement to the website could be designed thought linking each Board Agenda items directly to the supporting tentative and final reports and other information needed by participants in the public hearing. I believe that glossaries of technical/scientific acronyms and terms would also assist new board members and members of the public in participating in hearings. These actions would make the site more accessible and useful to members of the public who are coming to the public hearings for one issue, and are not expert at participation.

I also believe that there is less access for the public to the bulk of the work that is administratively delegated to the Executive Officer and staff. Regional Board dependence on state board staff for website design, while good for statewide education and efficiency, may hinder public access to these regional administrative actions. Information on beach closures, for instance, is on the State Water Board website for all regions, and is only broken down by county. This does not give the public the same kind of information for closures of specific beaches, which may be better displayed by the region for individual beaches. Along the coast in this region and others, the Heal the Bay Beach report card records number of violations of bacterial counts and closures. The website states that reporting any kind of industrial spill or sewage spill is mandatory, but finding records of such spills is very hard to do. That is the kind of public information that government could be providing if there were more financial resources.

4. Who is available at the State Board and Regional Board to help Board Members understand complex issues that come before the Regional Boards? Do you have any suggestions on how the state water board's staff might better assist you?

When I was first appointed to the Board, I had a half day orientation with the Regional Board Staff and attorneys. They gave me an orientation manual about the operation of the Board staff, Board responsibilities, meeting procedures, frequently used acronyms and terms, the Bagley Keene Open Meeting Act, Financial Reporting and conflict of interest information and the Porter Cologne Act. Both the legal staff and the Executive Officer are available, time allowing, to answer questions about technical, scientific and legal issues to help me prepare for the Board hearings. The State Water Board holds two Water Education Workshops per year for Regional Board members on specific legal, scientific and strategic efforts of the State and Regional Boards. For these meetings, the State Board provides

extensive written information (also on the State Board website) about the functioning of the state and regional boards that I use as a regular source of information.

The workshops held by the regional boards before hearings on complex issues, and the comments made by staff about public input both in writing and in public hearing presentation have been helpful. The State Board liaison for this Region has made herself and State Board staff available to answer any questions I have, and has regularly reported on State Board actions that affect Regional Board decisions. Other Board members are also willing to help, within the confines of the Bagley Keene Act. With all of this, it has taken time for me to really learn the history and the science behind each issue before us—experience is the best teacher.

I don't have any suggestions for what the State Board staff could do to better assist me. I think it is up to the Board member to ask for help when they need it. I have asked for help and always received it.

5a. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your Board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this Board?

See #4 above for training I received on conflicts of interest. Because I fill out the Form 700, it is a guide to potential financial conflicts of interest and I use it to determine when I withdraw from voting. I resigned from a nonprofit organization that regularly testifies before the Board to avoid the appearance of bias. I have withdrawn from voting on a single uncontested item on an agenda because of a financial interest in one of the permittees.

5b. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved?

The allocation of staff and budget for the Regional Board is made by the State Board, according to their analysis of need for its own operations and those of each of the regional boards.

Given that the state is so big, the water quality problems so diverse and the scale of basin planning so local, it is necessary to place the regulatory decisionmaking responsibility at the local level where regulators are accessible to all of the regional stakeholders and the public. Recently our Regional Board received a letter from the representatives of a company doing brownfield remediation complementing our staff on the professional way in which the regulatory requirements were set with specific site conditions in mind. This enabled clean up of the brownfield and preparation for redevelopment to proceed in an expeditious manner. While not all permittees before the Board conclude their experience with this result, I believe that the regional board is best able to establish water quality requirements for local permittees with maximum public participation.

I believe that giving participants in Regional Board hearings the right to appeal decisions to the State Board provides the administrative record to protect both Boards in later litigation. However, I do agree that it is a better idea for the State Board to set proactive state policy and water quality standards that can then be applied through the permitting process than it is to decide state policy through the appeals process. I think that the work that the State Board is doing now on the recycled water policy is a good example.

6. What is your view of the relationship between the State Board and your Regional Board? Could coordination and accountability be improved? If so, how?

As noted above, state environmental regulation must recognize the unique circumstances of each region in this diverse state, and be applied with first-hand knowledge of local and regional concerns and issues. There needs to be regionally accessible public meetings and access to staff and information in proximity to the affected permittees and stakeholders. The Porter Cologne Act is a careful balancing of statewide and regional/local concerns and division of responsibilities between the State and Regional Boards.

In principle, the division of responsibilities works well. The coordination efforts made are considerable on every level. The Regional Board Chairs meet monthly with the State Board Chair. The Executive Officers, and legal staff regularly coordinate. The State Board has adopted a strategic plan that sets out a set of priorities to focus regional efforts upon. The twice a year meetings of all regional board members helps us to develop a common knowledge of the problems we address and to understand how other regional boards address those problems.

I do understand that both industry and environmental groups feel that the process is cumbersome and lacks accountability. I think that, to the extent that the State Board sets standards that can accommodate regional diversity, rather than set standards through appeals, the Regional Boards will be able to apply those standards with more consistency and increase the clarity and accountability of the system. I think that the division of State and regional functions make sense, although I would, as a regional board member, like to have our Chair and Executive Officer involved in the decisions about the budget. I would also like our board to have more to say about grants for local financial assistance in this region.

7a. California State Budget Crisis. How do you, as a board member, stay informed about the fiscal resources available to your board?

As stated earlier, the budgets for all the regional boards are established by the State Board. The Executive Officer keeps the Board informed about budget constraints and changes in how staff positions and operating funds are allocated among the different functions of the Board. The Executive Officer lets us know how the budget limits the ability of the Regional Board to equally address all of its legislated responsibilities. Now the Executive Officer is keeping us informed about layoffs in positions not supported by fee revenues, reduction in operating revenues and the effects of furlough days on ability of the staff to accomplish its job. It is an extremely challenging time.

7B. How does your board prioritize activities if not all can be undertaken?

Because everything that the Board does is required under the law, there are no planning and permitting responsibilities that can simply be ignored by the Board. What we have done is “juggle” between priorities under the supervision of our Executive Officer. This means moving staff with agility to address immediate concerns and needs without compromising our basic responsibilities. The state budget crisis is challenging our ability to continue to juggle with agility.

7C. What are your priorities?

Our priorities are meeting the requirements of the law and achieving water quality results that protect public health and the environment. Projects, programs, regulations and permits that have the most impact on water quality in impaired water bodies and groundwater basins are my highest priority.

8. What enforcement options do you believe provides the most effective tools for violation of board orders?

I believe that the careful drafting of board orders to require the kind of monitoring necessary to detect and attribute violations of water quality standards to a specific source is critical to enforcement. Dischargers are unhappy about detailed monitoring requirements that cost them money. However, if the Board doesn't have the data that proves that violations of water quality in a water body are attributable to the permitted source, then enforcement cannot move forward. This is particularly true in Los Angeles, where the density of dischargers is great, and it is challenging to connect pollution in a water body to one of many potential sources without sufficient effluent discharge monitoring requirements.

Once the violation is documented and due process is followed, the ability of the Boards to administratively fine through panel hearings is a very effective way to deter violations.

9. What staff is available to assist you in enforcing water quality laws? Is any number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?

The Los Angeles Regional Board had eight surface water compliance and enforcement staff and seven other enforcement staff under a division chief when I was appointed to the Board in March 2008. Our ability to effectively proceed with enforcement in a region with so many dischargers and municipalities with a limited number of enforcement staff is a continuing challenge. This level of staffing is not nearly adequate to address the volume of minimum penalties under the Migden Act, industrial permits, municipal permits and TMDL violations that this region is experiencing. Monitoring of many different Onsite Wastewater Treatment Systems is extremely staff intensive and cumulative impacts are difficult to assign to a particular source. Finally, a court decision that mandates that the Board and the Executive Officer that advises the Board, cannot have any knowledge of enforcement actions before they come to

the Board for hearing, has had serious consequences for the Board's ability to oversee the enforcement process and set priorities for cases. Our board is concerned about our lack of ability to bring enforcement cases forward to us under the current law, and is searching for ways in which we can improve the enforcement process with our limited staff.

10. What impact does the Orange County Superior Court ruling have on your board in carrying out its duties relative to the stormwater program? Specifically, what effect has the ruling had on permitting and enforcement activities?

Last July, an Orange County Superior Court judge found in favor of the plaintiffs in the *Cities of Arcadia et al v The Los Angeles Regional Water Quality Control Board*. He agreed with the plaintiffs that the Board had not updated the Basin Plan, nor adequately addressed stormwater quality standards in the Triennial Review to allow the Board to establish Total Maximum Daily Loads,(TMDLS), to approve and enforce stormwater permits and regulations. He ordered all activities related to stormwater regulation to cease until the Basin Plan and the Triennial Review was updated to establish or reaffirm the standards for stormwater regulation. This case immediately shut down our entire stormwater permitting and enforcement program. The ramifications were extremely serious. After requests for reconsideration by the Board, the Judge amended the order to allow the Board to continue to issue and enforce stormwater permits while the Board reviews its plans. So, after nearly three months when the Board was unable to discuss, hear stormwater cases, issue permits, issue notices of violations or proceed with enforcement on noticed enforcement cases, the Board regained authority to decide these cases.

11. Will your Board be able to comply with the federal California Toxics Rule, given the recent court ruling?

The Arcadia case did not affect the Board's ability to apply the California Toxics Rule for point sources. When the initial order was in place, we were not able to set numerical limits for industrial sources of stormwater. However, since the court revised its order we can apply numerical limits to industrial stormwater discharges.

12. What options does your Board have in addressing the court ruling and what are the possible time frames?

The discussion about specific actions that the Board might take in this case is subject to the rule of executive session and cannot be disclosed. We are proceeding with the planning reviews and possible plan revisions ordered by the court. Hopefully, the court will approve our revised plans when we submit them and that will resolve the case.

13. The State Board is adopting statewide regulations for the permitting and operation of onsite wastewater treatment systems (OWTS) under AB 885. Has the state board articulated a role for the regional boards in implementing this rule?

The statewide regulations set up the standards under which the Regional Boards and local issuing authorities will regulate OWTS.

14. How does your Board intend to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution?

The Regional Board will use the AB 885 regulations to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution. We also use the Total Daily Maximum Loads for impaired waters to set specific standards for pollutants from septic systems that are affecting impaired waters. We use Memorandums of Understanding (MOU) with local governments to allow them to issue OWTS and to require the development of local systems to monitor and enforce septic system operational standards, and to require review, and if necessary, replacement of obsolete or failing septic systems.

AB 885 and TMDL numerical limits are now requiring OWTS to be much more sophisticated treatment systems than conventional septic systems—some are effectively mini-municipal treatment systems. However sophisticated these systems are, when they are on sites with high groundwater, or on flood plains or too close to water bodies, or have impermeable soils, they can still fail to meet standards, or cumulatively exceed groundwater basin capacity. Currently, there is no legal authorization for the Regional Boards to require properties which are unsuitable for OWTS to discharge their treated effluent on a site that is suited for that purpose. Recycling water as an alternative to discharge is more complex with many OWTS than it is for a single municipal treatment plant.

In addition, while conventional septic systems required very little property owner expertise in design, construction and maintenance expertise and monitoring, these new systems require substantial expertise, and continual monitoring, adjustment, and repair to function properly. There is extremely variable competence of property owners in procuring the right expertise to design and operate these systems, and as properties are sold, the knowledge of buyers about what they are expected to do is variable.

Without requirements for professional design, operation and maintenance, certification of builders and operators and requirements for disclosure of responsibilities to buyers, the Boards and local permitting agencies must devote very large amounts of staff time to monitoring effluent and issuing repeated and chronic notices of violations to many OWTS. In times of budget crisis, Regional Boards must either reduce the time that they devote to this, or risk ignoring other important water pollution control priorities.

15. Are you, as a board member, satisfied with the progress made to date [on MTBE cleanup in the Charnock Basin]?



The progress has been very slow to date. However, under the latest settlement agreement in 2006, progress has been made. It is now expected that Santa Monica will be able to begin to deliver drinking water from the Charnock Basin in 2010.

16. Under the settlement agreement, will the groundwater be cleaned up, or will treatment be provided to the water used for drinking purposes? If wellhead treatment is provided, will the groundwater basin ever be totally cleaned up?

Treatment will be provided at the wellhead to make the water safe for drinking purposes. However, eventually, it is expected that the levels of MTBE in the groundwater will be reduced to the point that the groundwater basin itself will be considered safe as drinking water.

17a. What is the role of regional boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water?

The State Water Board is addressing this issue in at least two ways. First, they have appointed a Blue Ribbon Committee of technical experts to develop analytical techniques and monitoring protocols to allow dischargers to assess the levels of pharmaceuticals in water. Second, while the Blue Ribbon Committee is doing their analytical work, the State Board is developing a water recycling policy that will require that all effluent that is to be used as recycled water be monitored for emerging contaminants. Both the Blue Ribbon Committee analysis and the monitoring data from effluent to be recycled will be used by the State Board to establish standards for emerging contaminants, including pharmaceuticals. These standards will be applied by the Regional Board in planning and permitting decisions.

17b. Should the state water board, through the regional boards be working with the California Department of Public Health to require testing and set safety limits for drugs in drinking water?

The Department of Public Health is very involved with the work of the Blue Ribbon Committee and the State Board recycled water policy.

18. To what degree is your board monitoring these and other emerging contaminants? How are you informed about new sources of pollution?

The Regional Board is working with the Southern California Coastal Water Research Project (SCCWRP), US EPA and some dischargers who are volunteering to monitor their effluent for indicators of emerging contaminants. This will also bring us one step closer to being able to understanding the appropriate techniques for identifying the types and levels of emerging contaminants in effluent, potential treatment approaches, and numeric limits for pharmaceuticals and endocrine disruptors. We are already working with dischargers on education and reduction of the loads of these emerging contaminants before they reach treatment facilities.

19. What other state agencies are involved in this monitoring process? Do you share your information with other drinking water and public health agencies?

As I stated above, US EPA, the State Department of Public Health, SCCWRP and some dischargers are involved in the monitoring process. When we have data to share with drinking water providers and local public health agencies, we will probably hold workshops and disseminate it through outreach.

**CAROL DEAN**

**North Coast Regional Water Quality Board**

**STATEMENT OF GOALS**

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?* I applied for a position on the North Coast Regional Water Quality Control Board as an individual who is concerned about quality of life issues and as a community activist who sees the needs to balance government, regulations and costs to the public. Water is a precious commodity that needs to be conserved and protected for all beneficial uses and users. Water is also important in controlling the economy and quality of life for all those who reside in the North Coast region, California and beyond. I believe everyone should be committed to environmental protection, conservation, reuse and compliance. My goal when I joined the board was to ensure that all communities, large and small, have a level playing field in dealing with governmental regulations and boards. Since serving on the board I have discovered that this is also a goal of the regional board staff as well. We have had to make some painful decisions that we know create hardships but have seen water quality improve. There is no better way to measure success than to see an improvement in water quality. My goal for the board is to see it continue to work on distressed water sheds in a comprehensive and consistent manner.
  
2. *What do you believe are most serious issues facing your board?* At this period of time, I would have to say the budget, and having enough staff to do the work already required and that which the board would like to mandate.
  
3. *How does your board help the public understand the state of water quality in your region? Do you believe that the information on your website is adequate? Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?* Study sessions and workshops help attendees of board meetings understand the complex issues regarding water quality in the region. Staff is also very willing to meet with any individual at additional times to explain and educate those who ask. Our website is quite comprehensive and all documents are easily assessable. The only suggestion might be links to various cities and counties in the region. The web site is a perfect medium for public information. But it cannot be the sole means of information. Beaches must still be posted and in serious health threats or life threatening situations, the paper, radio news and television should still be utilized. City and county websites can also post information for their particular area in the region.

**STATE AND REGIONAL BOARD ROLES**

**Senate Rules Committee**

FEB 03 2009

**Appointments**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time-consuming for board members, particularly considering these are part-time positions.

4. ***Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*** Whenever I have a question, I ask the executive director and since I live close to the office she arranges a meeting with the appropriate staff member to meet with me to go over my questions or concerns, or through e-mail exchanges. To date, I have always been able to get the information I need. If my question is a legal one, one of the attorneys assigned to our region will get back to me either via e-mail or telephone. Going to the EO first gets me routed to where I need to go for information. I find this is an efficient way to obtain the necessary information.
5. ***What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*** When I was first appointed to the board Phil Wyels, the Assisgtant Chief Counsel to the SWRCB came to Santa Rosa and gave me an in depth orientation. At the time I had just been appointed to fill a vacancy on the Santa Rosa City Council so the City of Santa Rosa also provided me with council. My term on the council has expired. If I have any question about my ability to vote on an item I notify the Executive Officer who then asks the appropriate attorney for the board for a ruling. I would rather be safe than sorry. Yes, I have abstained twice from voting.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (TMDLs), and enforce permit and discharge requirement, as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. ***What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*** California is a large state with complex ecosystems which means it is hard to have one regulation that fits all regions. I see the roll of the state board as the overseer and delegator of basic regulations and the regional boards as the implementer of the

regulations based on what is feasible for that particular region. Each area is unique so even within a region one TMDL does not address each watershed in the region. The current set up gives each regional board the ability to really know the region and how best to deal with those particular issues. The current relationship takes the "political" pressure out of the arena and focuses on the health of water quality. They hear complaints as well but understand that no one likes to be regulated.

### **California State Budget Crisis**

California's dire fiscal situation has affected all parts of state government.

7. ***How do you, as a board member, stay informed of the fiscal resources available to your board? How does your board prioritize activities if not all can be undertaken? What are your priorities?*** Most of our resources come from permit fees and penalties the board handles and not much from the general fund of the State. My priority is how to get the biggest bang for the buck. I look to staff to give advice on what can be accomplished, what the results will be vs. costs. Regulatory programs are supposed to support themselves.

### **Enforcement of Water Quality Laws**

Several years ago, the Office of the Secretary of Cal/EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

8. ***What enforcement options do you believe provide the most effective tools for violations of board orders?*** Obviously financial impacts get attention. I am in favor of mandatory fines with significant portion going to mitigation, preferably to a project that will eliminate or reduce the probability of repeat violations. In my short tenure on the board we have threatened referral to the attorney general and are closely monitoring the situations. There are several options available to the regional board and I am in favor of issuing a warning which encourages the violator to comply and then get more aggressive and punitive.
9. ***What staff is available to assist you in enforcing water quality laws? Is the number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?*** From my perception, staff is very responsive to any report of violations and the board is continually updated. Our efforts are to rectify the cause of the violation and to mitigate the impacts of the violation. Penalties are always invoked. Staff has its own council to advise them legally and the board has a separate attorney to make sure we follow the rules and laws. I would say staff functions well but any cutbacks will threaten the board's ability to function at today's standards. Priorities obviously will go public

health and safety. The sheer number of discharges requires more funding than is available for enforcement. Self reporting helps but is not the answer. Enforcement is driven by mandatory minimum penalty directives from the state board. Staffing and funding are the biggest hurdles.

### **Septic Rule**

Chapter 781, Statutes of 2000 (AB885, Jackson), requires the state board to develop, adopt and implement statewide regulations for permitting and operation of on-site wastewater treatment systems (OWTS), commonly referred to as the "Septic Rule". The board recently proposed draft regulations which are currently available for public comment until February 9, 2009.

10. ***Has the state board articulated a role for the regional boards in implementing this rule?*** There is a workshop in Santa Rosa later this month which will help me understand what concerns the public may have. My understanding is that the state will be setting minimum standards which will be incorporated into the various basin plans.
11. ***How does the board intend to monitor, enforce and improve septic systems that contribute to surface and groundwater pollution?*** The regional board and local governmental agency may have more stringent regulations than the statewide standards. The North Coast Regional Board has given the counties the authority to issue permits and deal with violations. The board will continue to coordinate and track the various county programs. Regulation of septic systems is long overdue and as with any new regulation will be closely watched.

### **Nonpoint Source Pollution – Freshwater Creek and Elk River**

At the board's strategic plan workshop last year, one of the most identified pollution sources in the North Coast region was nonpoint pollution, which includes sedimentation.

For at least five years, your board has tried to deal with the issues of water quality specifically due to sedimentation buildup in the Freshwater Creek and the Elk River areas of Humboldt County. Your executive officer has issued orders for technical reports on abatement actions for dischargers who harvest timber in the area. The board has issued cleanup abatement orders on these same timber harvest operators, however, Freshwater Creek and Elk River residents still complain about the impairment of their water, both for agricultural and domestic uses.

12. ***What do you believe the board should be doing to address nonpoint source pollution in these two areas? Specifically should additional action be taken to mitigate the sedimentation buildup? What is the timetable for resolving these issues, and how do you monitor progress?*** As you may know, ScoPac/PalCo filed bankruptcy and the bankruptcy court has approved the purchase of the property to Humboldt Redwood Company who's owners have a proven track record of working with the regional board and achieving results in Mendocino County (Mendocino

Redwood Company). This change of ownership just recently took place. HRC will practice selection harvesting which will be less of an impact, has a good public relation track record and will be particularly mindful of water quality. Future actions planned include, but are not limited to, combining all orders and WDRs into a single WDR, one for Freshwater and one for Elk to comply with the TMDL to be adopted for each area. The TMDLs final adoption is about 18 months away. Funding seems to be limiting factor in expediently dealing with flooding and stream restoration.

#### **Fee Collection/Timber Harvest Review**

13. *How does your regional board pay for the costs of timber harvest plan review? Does your board collect a fee for review to pay for the regional board's costs associated with the water quality review of such plans? If so, what is the amount of the fee? Does fee revenue stay with the regional board or is it forwarded to the state board?* This program is currently funded from the state's general fund. However, our board does charge a \$1226 yearly for each timber harvest plan and the state board collects the fees and puts them into their waste discharge fees fund. The regional board does not receive any allocation from the state board for timber harvest review.
14. *Do you have any suggestions as to how to better ensure any fees collected by the regional boards stay with those boards to help pay for staffing and other review and enforcement costs?* The state board could change its policy to allocate funds from the fees collection to pay for the program.

#### **Harmful Algal Blooms and Klamath River TMDL**

Blue-green algae blooms have been found in the Klamath River, Big Lagoon, and the Eel River. A study by the Center for Integrated Marine Technologies (CIMT) points out that these blooms negatively affect fish, marine mammals, and seabirds. Some algal species cause large fish kills by clogging up or lacerating the fish's gills.

The CIMT report said that there is growing evidence that human contributions of phosphorus and nitrogen are causing the blooms to occur more frequently and contributing to their duration and severity. A presentation to your board on December 11<sup>th</sup> discussed the TMDL process for the Klamath River. Staff said that 76 to 80 percent of the phosphorus and nitrogen would have to be eliminated in the river to achieve TMDL compliance. Staff also indicated that the TMDL would not directly deal with blue-green algae.

15. *What is the extent of harmful algal blooms in inland and marine waters in your region? How serious are the negative effects on fisheries and marine mammals? How does your board determine the seriousness of those effects?* The Klamath River is actually more impaired at its source in the State of Oregon than it is at its outfall in the State of California, which is most unusual. The area of most concern for harmful algal blooms is in the hydro reservoirs on the Klamath River. Blooms are also found in areas below the hydro dams. Blue-green algae toxins have been found

in fish in the Klamath, but we have information that it has been found elsewhere. We consider the algal blooms to be of significant concern.

16. ***Is it feasible to eliminate 76 to 80 percent of the nutrient loading in the Klamath River? What type of restrictions would have to be imposed to achieve this level of reduction?*** As stated above, the Klamath originates in the State of Oregon and the largest portion of nutrient loading of the Klamath originates from Oregon in the Upper Klamath Basin and Lost River watershed which effects and impacts the hydro reservoirs. The Shasta River further impacts the nutrient loading but the Shasta River TMDL implementation has show water quality improvements in the Shasta. Oregon would have to reduce its nutrient loading levels by treatment, infrastructure improvements and long-term restoration projects. If dam removal does not occur, there are some in-reservoir engineered options that may provide some relief. All together it is possible, but will take many years to achieve.
  
17. ***When will the TMDLs for the Klamath River be completed? As information is developed by the board, can it be released to contribute to the discussions and negotiation regarding the Klamath River?*** The regional board's website already contains information regarding the Klamath TMDL and will be updated as new information is available. The current timeline for the TMDL is for public draft to be released this coming May with regional board consideration scheduled in October 2009. From there it will go to the state board for final adoption.
  
18. ***Are the adoption of the Klamath River TMDLs integral to the broader discussion of poor water quality and dam removal on the river?*** Absolutely. When the public draft is released it will show that the technical analysis to be a comprehensive look at water quality – its current condition, causes of impairment and solutions.

### **Emerging Contaminants**

New and emerging contaminants are unregulated. They may be new contaminants present but not detected. Among these are pharmaceuticals and personal care products, industrial chemicals present at low concentrations, and chemicals that may affect the hormone system, referred to as "endocrine disruptors."

Additionally, new testing by independent organizations has turned up pharmaceuticals and over-the-counter medicines affecting drinking water supplies across the country. While the findings reported by the Associated Press in Parch 2008 involve miniscule amounts of various pharmaceuticals, concerns over long-term consequences to human health and possible additional testing have resurfaced.

Under current law, required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water are limited. Beginning in January 2008, several water systems began monitoring under the U.S. Environmental Protection Agency (U.S. EPA) Unregulated Contaminant Monitoring Regulation for contaminants detected from the contaminant candidate lists. These are potential contaminants that the U.S. EPA may



regulate in the future. Federal and state laws give authority to U.S. EPA, the California Department of Public Health, or the regional water boards to regulate contaminants, which could include pharmaceuticals.

The Department of Public Health has developed draft regulations and is proposing to require an analysis of specific unregulated chemicals and report detections for certain groundwater recharge and reuse projects. These chemicals include pharmaceuticals, endocrine disruptors, and other wastewater indicator chemicals.

19. ***In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water? Should the state water board, through regional boards, be working with the California Department of Public Health re require testing and set safety limits for drugs in drinking water?*** I see this as an emerging issue and will need to be hashed out similar to the septic issue. Well users already test their water. As the science improves we will be better equipped to address the issue.
20. ***To what degree is your board monitoring these and other emerging contaminants? How are you informed of new sources of pollution?*** Staff and board members attend workshops sponsored by various national and state water associations such as California Association of Sanitation Agencies.
21. ***What other state agencies are involved in this monitoring process? Do you share your information with other drinking water and public health agencies?*** We are always willing to share information with other state agencies or associations. California Department of Public Health and the state board are great sources of information.

[The page contains several paragraphs of extremely faint, illegible text, likely bleed-through from the reverse side of the paper. The text is too light to transcribe accurately.]

**David M. Noren**

February 2, 2009

Mr. Darrell Steinberg, Chairman  
Senate Rules Committee  
California Legislature  
State Capitol, Room 420  
Sacramento, California 95814-4900

**SUBJECT: CONFIRMATION RESPONSES FOR APPOINTMENT  
NORTH COAST REGIONAL WATER QUALITY CONTROL  
BOARD**

Dear Mr. Steinberg:

The following presents answers to the written questions regarding my confirmation to the North Coast Regional Water Quality Control Board (NCRWQCB) appointment. I have provided the answers in the order they were posed in the January 14, 2009 letter. I am also including an updated Statement of Economic Interest Form 700. My responses are as follows:

1. My goals as a board member of the NCRWQCB is to be a part of the regulatory process in the formulation and passage of the Total Maximum Daily Load (TMDL) for a majority of the impaired water bodies that have been identified in our region. These include the Russian and Klamath Rivers as well as smaller coastal tributaries. The TMDL process is conducted in conformance with Section 303d of the federal Clean Water Act. Many of these water bodies within our region have been identified as being impaired due to a variety of factors that include excess sediments and nutrients, low dissolved oxygen levels, elevated water temperature levels as well as anthropogenic impairments from toxic chemicals. The TMDL process is an overall watershed approach to water quality study and improvement that identifies impaired water bodies and mandates development of the TMDL process as a means to restore these impaired water bodies for full support of beneficial uses.

To date the NCRWQCB has implemented TMDL's with implementation plans for several impaired water bodies. The implementation plan is an important component for the actual work that is needed to meet the

**Senate Rules Committee**

FEB 02 2009

**Appointments**

allocations. These TMDL's include the Garcia River, the Shasta and Scott Rivers. Several impaired water bodies have a technical TMDL that identifies the impairment but have no implementation plan. It is important to have implementation of some form for each of these impaired water bodies.

There has been success in improving water quality using the TMDL process that is quantifiable and measurable. Success of implementation is measured using a combination of metrics including stream and water quality testing, measures of the density and extent of riparian vegetation, fish and aquatic organism surveys, stakeholder participation and others. One important aspect of implementation is to have a sustained effort by all the participants including the agencies along with stakeholders to carry out the various implementation processes in a concerted effort. This includes seeking funding opportunities to allow for large scale improvements where possible. There have been successes and there is commitment from the participants to take the process forward in these water bodies that have the process in place. It is very encouraging to see the success of these programs within specific watersheds and to know that we can take that process and duplicate it on another system with success. I would like to see the TMDL process completed and implemented to the best of our ability in all of the identified water bodies in our region.

Another area of importance is the ongoing permit process for permitted discharges coming up for renewal. As Board members we have an obligation to review and improve upon these permits as they are renewed. The continued compliance for point source dischargers is a first order of compliance that needs to be maintained and improved on a constant basis to include up to date means and methods for permit requirements and permitting structure and function based on a sound scientific basis.

Another area that I want to work on includes permitting of dairy and rangeland entities. We are the last of several Regional Boards to complete a permit process for these operations. The dairy industry in region I is unique in that the sizes of these facilities tend to be small and many are located in coastal settings that experience high seasonal rainfall. Nutrient management is a necessary part of the permitting process to be protective of surface waters as well as measures to be protective of groundwater resources. I have worked with Regional Board staff and stakeholders to begin the development of this process. It is my goal to have this permitting process in place and active in the next 12 months.

Another area of importance to complete is the development of riparian and wetland policies. There are the beginnings of a concerted and coordinated effort between the State Water Resources Control Board (SWRCB), the San Francisco Bay Regional water Quality Control Board and the NCRWQCB to develop a consistent statewide policy for wetlands and riparian zones. This

policy, if enacted, can function synergistically with many of other programs including the TMDL and timber permitting programs. I have been part of the initial discussions for this policy and would like to see a consistent policy developed that can then be applied on a larger basis.

Many additional opportunities for improvement are available.

2. The two most serious current issues facing our Board are the ongoing budget problems and the drought conditions that currently exist on the north coast. The State of California budget woes threaten existing and future programs at the NCRWQCB by constraining the current and long term implementation of many programs that are vital to protecting and improving water quality. There is also the added problem of the economic times that limits the ability of the regulated community to put forth the necessary resources to implement mandated requirements for projects. There has been a great amount of effort and capital that has been expended to implement programs with years of work by agencies and the regulated community that is threatened by the budget crunch.

California is also in a state of continued drought that translates to less water overall and a competition for scarce resources. In many north coast water bodies there is intense pressure for water for human uses that is in direct competition with the natural requirements of these water bodies to support all of the beneficial uses for the long term health of the water body. These pressures are only exacerbated by the current drought conditions.

3. There are many outlets for public information including press releases, web disseminated information, public workshops and public hearings that allow for public participation. The information on our web site is formatted and presented in a consistent format with SWRCB and other Regional Board web sites. As with any web site, there can always be improvements for more information, although I find our web site to be well organized with valuable and up to date content.

Many water quality notifications are overseen by participating public agencies including the Regional Board. In many cases the Regional Board participates by gathering and dissemination public information that is then released through a companion agency. An example of this is the notification of health warnings for human contact for water bodies that are impaired by bacterial contamination that is posted and disseminated by the local Public Health Department. Another example is the posting of the health risk of microcystin in the Klamath River area by the California Office of Environmental Health Hazard Assessment.

4. Our Regional Board staff has been very helpful in providing background information and answering questions for complex issues. The staff of our

Regional Board has been very professional and well informed. As a Board member I am constantly being briefed by staff of upcoming issues which allows for an opportunity to ask questions and have a broad discussion of the issues. I have found the State Board staff to be equally helpful to me as a Board member. The SWRCB has been active in reaching out to the Regional Boards through the Water Quality Coordinating Committee (WQCC) meetings that include the SWRCB and all the Regional Boards. I attending a meeting of the WQCC this past fall and will attend another in February. These meetings are very informative and allow for a better understanding of the participatory role of the SWRCB and the Regional Boards. This process also allows for a better understanding of the complexities of each region and the water quality issues that are specific and unique to each area of the state.

5. I have had numerous publications forwarded to me from the State Board council regarding conflict of interest. In addition we have had presentations and discussions regarding conflict of interest issues at the WQCC meeting. The office of Counsel and our own staff attorneys continues to be available in helping to understand conflict of interest and ex-parte issues. This has been especially important for me as I am an environmental consultant that works in the greater North Bay area on water quality issues. An example of this is the MS4 permit renewal process for the City of Santa Rosa that recently came before our Board in which I recused myself because as a consultant I have performed stormwater sampling and other professional services for this program. Legal counsel is available for Board members where any issue of potential conflict arises.
6. The relationship of the SWRCB and the Regional Boards is very important. The Regional Boards cannot be totally autonomous in the formulation of policies or programs, however: it has been my experience that the Regional Boards are often in a front line position to develop and implement policy. It has also been my experience that each region is unique in it character and geographic complexities. In the short time that I have been on the Regional Board, there has been an ongoing relationship with the SWRCB for the development and implementation of policy. I would recognize that there are always opportunities to improve this process and to have a more consist process. It is not always an easy thing to carry that out in practice.
7. We have had several opportunities to be briefed on the effects of the California budget crisis and potentially what it means to our region, staff and programs. For the Regional Board this information has been presented as part of the Executive Officers report for each meeting. We have also had briefings from State Board at the WQCC meetings. As a Board we have yet to prioritize efforts based solely on the budget issues as this is a fluid issue that has yet to be resolved. My personal belief is that we have an obligation to keep existing programs such as TMDL, enforcement and compliance funded

to the best of our ability. Any new programs would have to be evaluated as to our ability to implement them based on staffing needs and resources.

8. The Regional Board has many enforcement options available depending on the type of problems. It has been my experience that a model of progressive enforcement is the most effective. Enforcement would start with violations through inspections and follow-up to issuance of fines through the process of administrative civil liability. We also have the option of issuing orders including Cease and Desist Orders, Cleanup and Abatement Orders and in recalcitrant cases referral to the Attorney General.

For many permits there are Mandatory Minimum Fines that are imposed for violations of waste discharge requirements. In the case of the NCRWQCB there was a historic backlog of these fines that to my understanding have been largely resolved and brought to manageable levels.

9. There has been a historic problem with adequate funding for staffing to manage and oversee enforcement. With the current fiscal crisis there needs to be a priority to manage and oversee our enforcement efforts. Enforcement should be prioritized for existing permits and programs to ensure compliance both as a means to address violations and make sure that fines when levied are assessed and collected. It is my understanding that there is one person year allocated for enforcement. It has been my experience that at each Board meeting there is enforcement issues that come before us for our review and approval. This includes input from staff and legal counsel if required.

It is my belief that enforcement should be prioritized for existing programs and permits that we have at this time. This includes a priority to enforce for discharge violations in regard to permitted point source facilities as well as to provide progressive enforcement on an as needed basis to dischargers that are not in compliance with applicable requirements or are unwilling to make efforts for improvement. The enforcement model can and should be used as a tool to move the compliance process forward.

10. The State Board is currently circulating the draft regulations for AB 885 for public comment. The role for Regional Boards has not been finalized in the implementation of this program. In the past the NCRWQCB has had a limited role with the permitting and oversight of septic systems. In most cases the authority and oversight for the installation and operation of these systems has been delegated to the local health departments. Our Basin Plan however requires the NCRWQCB to permit and oversee systems that are in excess of 2,500 gallons per day of effluent discharge. It is likely that the NCRWQCB will have a continued limited regulatory role to play in this policy implementation.

11. The way that the septic tank rules are currently written monitoring and enforcement by the Regional Board is mandated for septic systems that are located within 600 feet of a water body that is 303(d) impaired for nutrients. In the current draft regulations, these systems are subject to additional monitoring and inspections for existing systems and more stringent requirements for the siting and operation of proposed systems. The final regulations will likely dictate our role in carrying out this program.
12. The Elk River and Freshwater Creek have a long regulatory history that has been controversial. These watersheds have historically been intensely logged that has resulted in the deposition of large amounts of sediments to these water bodies. The NCRWQCB issued Waste Discharge Requirements for timber permits in these watersheds with limitations on the amount of harvest and enhanced monitoring and reporting to track the impacts to these watersheds.

In the past several months there have been changes in the owners and operators of timber operations in these watersheds with the purchase of the former Pacific Lumber Company by the Humbolt Redwood Company. A recent report to our Board by Humbolt Redwood Company indicated that they have a very different approach and model for timber operations that include selective harvest instead of clear cuts and implementation of improvements to the watersheds through management processes that includes road maintenance and improvement, sediment management and improved public outreach.

It is my understanding there is also a commitment for improvement and maintenance of the drinking water resources of local landowners that have been impacted by the sedimentation in these watersheds. It is also my understanding that the TMDL process is underway for both these watersheds that will result in an implementation of remedial actions to restore these waterways. As with all TMDL's there will likely be many options for the long term improvement of these watersheds that will address sediment and other water quality issues. The timing for the implementation of the TMDL's for these watersheds will depend upon staffing and resources. It is my understanding that options for dealing with sedimentation may include dredging and streambank restoration. With adequate funding the time table for implementation could likely be within the next three to five years.

13. It is my understanding that the fee for the timber harvest program is funded from the state general fund. There is a fee for enrollment upon issuance of Waste Discharge Requirements. I have been recently informed by staff that the fee is \$1,226 for each year the Timber Harvest Plan is enrolled. The fee is prorated in the first year based on enrollment date. I was also recently informed that the SWRCB issued invoices for 412 Timber Harvest Plans in our region that totaled \$436,658 for the past fiscal year with our total program cost being \$1,5521,000 for this time period.



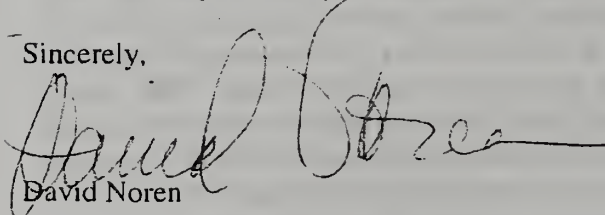
14. It is my understanding that a change to the allocation of monies for this program would require a policy change by the SWRCB.
15. Blue green algae blooms have been an ongoing problem on the main stem of the Klamath River, specifically in the area of the existing dams, and on portions of the Eel River. The bloom of these algae, especially microcystin, has been problematic due to aquatic and systemic toxicity from these organisms. They represent a serious health and environmental issue. There have also been public notification postings for the Klamath River in the area of the dams and the south fork of the Eel River for blue green algae. The public health advisories limit consumption of aquatic species and limit public contact recreation for these impacted areas. Ongoing monitoring has been implemented by companion agencies and stakeholders including the California Office of Environmental Health Hazard Assessment to monitor and provide notifications regarding the effects of blue green algae blooms. This is an ongoing serious issue regarding water quality in these areas.
16. The TMDL for the Klamath River does set large allocations for the reduction of nutrient loading. These reductions are similar to the reductions set forth in the Shasta River TMDL. These are large reductions that need to be managed to restore water quality. In terms of the Klamath River there are both point and non-point sources for these nutrients. There are also sequestered nutrients in Upper Klamath Lake that are historic to the watershed and the result of the Mount Mazama volcanic orogeny that formed this area. To further complicate matters, the Klamath River is an interstate water body that originates in Oregon and flows through California to the Pacific Ocean. There are many permitted point sources that are regulated for nutrients along the Klamath River. Given that many of these point sources are already permitted, the non-point sources are subject to regulation as part of the TMDL. These include nutrient sources from irrigated agriculture, timber and rangeland and others. To achieve these allocations, any and all regulatory tools will have to be used to have success.
17. The TMDL for the Klamath is mandated by the Consent Decree to be completed by December 2010. Complete means that the TMDL is approved by the North Coast Regional Water Quality Control Board, the Office of Administrative Law, the SWRCB and the federal Environmental Protection Agency. It is my understanding that to meet this schedule the TMDL needs to be approved by the NCRWQCB by December 2009 to allow for enough time for the other participating agencies to complete their review and approval processes. We were informed in our monthly Board meeting last week that a draft of the implementation is soon to be released for comment.
18. I think that the adoption of the TMDL for the Klamath River is integral to the water quality issues and the removal of the dams from the Klamath River. As

of yet the NCRWQCB has not had a significant part in the Agreement in Principal for the negotiations for the removal of the dams. Nor has the NCRWQCB had a role in the 401 Water Quality Certificate for relicensing the dams as they are federally permitted as power generating dams and the SWRCB has the authority to issue the 401 permit. As a Board we have a strong desire to have our staff and Board be a part of the discussions with respect to the removal of these dams and the longer term implications for impacts to water quality.

19. The issue of emerging contaminants is new to the regulatory agencies with respect to both drinking water and treated wastewater. There is now a State Board panel that has been formed to explore these substances and how to regulate them. I think the Regional Boards will have a part to play in the implementation of policy that requires testing and perhaps treatment for these compounds. The State Department of Health Services along with other applicable agencies will also need to be part of the mix in regulating these compounds.
20. It is my understanding that there hasn't been a great amount of testing by dischargers in our region for emerging contaminants. As far as I am aware there is very little or no testing required in our existing permits for emerging contaminants. I have recently attended a conference for emerging contaminants sponsored by the California Groundwater Resource Association. I then requested at our next Board meeting what we are going to do in regard to these constituents. There is interest in these contaminants and there has been and will continue to be development of rules and regulations on the State and Regional levels to monitor and regulate these compounds.
21. The California Department of Health Services and the Department of Toxic Substances Control have been involved with the monitoring of these compounds. I think it will be important to work collaboratively with these agencies as information comes forward and policies are developed for emerging contaminants.

I trust this provides the information that you require at this time. If you have any comments or questions, please call me.

Sincerely,



David Noren

Enclosure: Form 700

Senate Rules Committee  
Questionnaire  
Regional Water Quality Control Board Appointment Process  
January 30, 2009

Steven M. Moore  
Member, Regional Water Quality Control Board, San Francisco Bay Region

Statement of Goals

1. What to accomplish during tenure? What goals and how achieve? How measure success?

I would view my tenure as a success if the general awareness of citizens in the Bay region increased with respect to how our daily lives affect the quality of the region's fresh, estuarine and salt waters, and if some vital behaviors shifted accordingly over that time. Similarly I would like to see a shift in the institutional bias of local agencies toward integration – the "turf" of specific agencies related to water supply, flood control and municipal functions needs to be let go in favor of meeting multiple, compatible objectives. I would also like to see certain over-the-counter products substituted with water quality-friendly products because it is unreasonable to expect all citizens to properly dispose of dangerous substances, and, as we have learned, these substances find their way to the water system.

As a Board member I can help bring this message to the people of the region by establishing requirements to renew the drainage infrastructure to prevent pollution, principally through regulation of urban runoff by NPDES permits and regulation of flood control and dredging projects under Water Quality Certifications pursuant to Clean Water Act Section 401. The technical reasons to make these investments relate to integrating water supply, flood control and water quality. By requiring the integration of water quality improvement with the other traditional public works, we assign a cost to removing over-the-counter products of concern after they are used by consumers, and thereby create an incentive for local governments to apply pressure to product formulators in forums such as the California Product Stewardship Council (CPSC).

People need to better understand the linkages between our actions and the infrastructure and water system that sustain our quality of life, including water professionals and elected representatives. In my experience, many people treat such information with natural curiosity and are interested in changing behaviors if the change will make a difference. We saw this in the Bay Area in the late 1980s when communities like Palo Alto began curbside recycling. Landfill expansion slowed greatly when this recycling habit took hold in Bay Area communities, which led to national changes. Part of this awareness that leads to behavior changes includes an understanding that all waters are protected by the rule of law. Even when the Water Boards merely contemplate major increases in regulatory oversight, it can motivate affected parties to seek behavior changes to attain the environmental goal at less overall cost. As a Board member I would

**Senate Rules Committee**

FEB 03 2009

**Appointments**

judiciously use the authorities to provide such motivation, and exhibit flexibility knowing that environmental goals can be achieved through control at the source, treating at the end-of-pipe, or some combination of the two.

I have specific goals related to the untapped potential of the region's natural forces for the benefit of the people of the state. The natural hydrology and topography of the Bay Area make this region globally unique in terms of its ecosystem potential. The dozens of square miles of flat areas naturally subject to tidal action create a template for the most efficient carbon-fixing machine on the planet – tidal salt marsh is as productive at sequestering carbon on a square mile basis as any ecosystem on Earth, including tropical forest. The fundamental force of biological productivity is photosynthesis, translating the sun's energy into food energy that people and wildlife can use. Biological productivity is therefore something that can be put to work in the Bay Area in a powerful, far-reaching manner. This untapped power translates to local food production, recovery of endangered species, flood control, water quality improvement, and incremental reduction of global warming. Food production in San Francisco Bay is not just harvesting fish and shellfish in the Bay, which is currently a relatively narrow enterprise, but supporting early life cycles of commercially important ocean fisheries such as Dungeness crab, California halibut, and sole.

The Water Board's active participation in the Comprehensive Conservation and Management Plan (CCMP) for the San Francisco Estuary shows its commitment to recovering the tidal marshlands of the region for water quality, critical fish and wildlife habitat, and biological productivity. Wetlands restoration has long been a priority in the CCMP and for this Water Board. As a Board member I can make sure this emphasis continues.

I want to see more investment into drainage infrastructure renewal to meet the three-fold, interrelated disciplines of water supply, flood control, and water quality. By renewing infrastructure to meet these three goals together, we will have more reliable, sustainable water systems that improve the quality of life. People naturally want to go down to the water – too many of these resources have been separated from the community by barbed-wire and reinforced concrete. As these systems crumble, we can renew them with our modern understanding of river science and create community assets instead of liabilities. I would measure my success in the miles of restored channel, the acres of marsh restored to the tide and the gallons of local water runoff harvested to offset imported potable water demand. I would measure success in the reduction of the number of sanitary sewer overflows and a lowering of pollutant levels in fish and shellfish that people consume. These targets all relate directly to meeting water quality standards.

As a Board member, I believe I have opportunities in the regulatory programs to accomplish these various measurable benchmarks. As mentioned above, the 401 Water Quality Certifications and Waste Discharge Requirements (WDRs) issued to flood control districts around the region can include provisions for water quality protection, and by extension, local water supply enhancement. Permitting and enforcement in the Water Board's existing NPDES and WDR programs can encourage restoration of stream and

wetland functions, encourage local jurisdictions to harvest local runoff, lower pollutant levels in fish and shellfish through TMDL implementation, and reduce sanitary sewer overflows.

## 2. What are most serious issues facing this Board?

In the water quality discipline, the most serious issues are irreversible, permanent impacts. A lot of pollution episodes are short-lived, ameliorated by natural processes that naturally cleanse pollution such as low oxygen demand, high solids, dangerous bacteria, ammonia, and even metals and some organics. These issues are still important to address, however, especially when there are chronic, recurrent problems. Examples include discharges that carry higher risks of people getting sick or periodic fish or bird mortality attributable to recurrent disturbances that may be related to infrastructure or maintenance issues. Where sources of these types of pollution are currently regulated under Waste Discharge Requirements, some progressive enforcement actions may be needed to spur on needed investments to remedy chronic issues.

The more serious threats from discharges to the creeks and Bay are the ones for which recovery is either impossible or very-long-lived. A good example is plastic debris – the plastic trash that is scoured by urban runoff and sent to the Bay and ocean is accumulating in the Northeastern Pacific Ocean Gyre in an infamous garbage patch the size of Texas and growing. Because this material is not degradable, it accumulates, reducing the flow of energy through the ocean's food web, threatening our food supply. While the region's contribution to this global issue is of concern, so also is the accumulation of these plastics in local creeks and the Bay for the same reasons of fish and wildlife entanglement or malnutrition. In my view urban runoff programs of the region need to review their storm drain systems for opportunities to apply best available technology to remove plastic debris. There are successful retrofit project examples in the region that they can emulate, and I think the NPDES permits should compel these evaluations to curb the discharge of plastics.

Other irreversible impacts from discharges include aquatic invasive species from discharges of ballast water. Once introduced, an aquatic invasive species is impossible to eradicate and sometimes our lives have to change to adapt to their introduction, as is what happened in the Great Lakes/Mississippi Basin with the zebra mussel or is starting to happen in California with the quagga mussel and the mud snail. U.S. EPA has begun to use the NPDES program to address these discharges, and I think the Water Board should advise the U.S. EPA in this process to ensure that appropriate technological controls are implemented as new ships are built.

Synthetic organic pollutants can pose serious risks because organisms did not evolve with their presence in the environment. In some cases like DDT and PCBs, the widespread use of yesteryear is still showing signs of impact almost 40 years after their bans. The ongoing introduction of chemicals into mainstream circulation poses a general risk where chemical characteristics are similar to known toxins but there is insufficient information about the chemicals' thresholds of concern to people, fish and wildlife. Polybrominated

diphenyl ethers (PBDEs) used as flame retardants in this country fit that model. Before registration, all chemicals and drugs should at least be screened for potential water quality and food source impacts. As a member of the Water Board I can bring this perspective to forums such as the Product Stewardship Council and other similar organizations that need support in pushing private industry for product reformulation that would help water quality.

Some behaviors from citizens and businesses are continuing to foster the belief that waterways and ditches are acceptable for waste disposal, and I believe it is a serious issue. When an urban stream or lake is constantly littered with various trash and debris, it sends a message that it is acceptable to use these facilities to dispose of waste. These practices perpetuate problems of toxics and plastic in the creeks, marshes, bay and ocean. Increased regulation of what goes to landfills through the CIWMB only increases the pressure on waterways to be dumping grounds. Citizens and businesses need to understand that waste disposal in waterways is unacceptable, illegal, and undermines our efforts to clean up the waters for their use and enjoyment by people of the state. There is hope for sustained improvement – in communities where waterways have been systematically cleaned up, the local population has been shown to be interested in keeping them clean. As a Board member I can help support such community improvements by allowing flexibility in urban runoff requirements to allow non-structural solutions to move forward where it is demonstrated that an equivalent level of protection can be provided as with more costly capital, structural solutions.

3. How does the Board help the public understand the state of water quality in this region? Website adequate? Where should public go for info.?

As with other states, the Board collects data on water quality with a very limited budget. Discharge permits contain requirements to generate monitoring information to augment the Board's efforts and help define the state of water quality. It is difficult to arrive at scientific conclusions on water quality with a couple of hundred thousand dollars for every 10,000 square miles every year.

In the early 1990s, the Board made an important accomplishment when it partnered with the NPDES dischargers to initiate the Regional Monitoring Program (RMP), administered by the San Francisco Estuary Institute (SFEI). Prior to the RMP, NPDES dischargers had local effects monitoring programs that were not coordinated, but were already costing the local governments money to administer. The RMP is funded through these same monitoring funds, but in a regionally consistent and coordinated fashion. The RMP is nationally recognized as one of the best-coordinated, science-based estuarine monitoring programs. It was funded through the redirection of existing expenditures and did not require significant state or federal funding. The RMP information is the authoritative long-term water quality information for the San Francisco Bay and can be accessed at the SFEI website [www.sfei.org](http://www.sfei.org).

The website for the Water Boards was recently revamped and made it more difficult for regular users, because the hard-wired links to information got redefined. Perhaps it is

easier for the public, but it is geared toward assisting entities to comply with regulations, and not so much to report out on general water quality. The public should go to the Regional Water Board staff contacts for general information because they are the most objective and knowledgeable about the wide range of urban and rural water quality management issues in the region.

For up-to-the-minute information on beaches and such, the county health departments should be the place to go because they handle the day-to-day management of exposure to potential health threats. There are some user-friendly websites operated by non-governmental organizations such as <http://www.earth911.org/waterquality> which take the local county health information and consolidate it across county lines.

#### Board roles

4. What training have you received about conflict of interest? How to know when to withdraw? Have you ever done so?

I received a four-hour training from Board counsel Phil Wyels on conflict of interest issues, and I am confident in my knowledge of when to withdraw. I furnished a list of clients from the company I work for, Nute Engineering, to the Governor's office of appointments. I recuse myself from voting on any matter from this finite list of clients, mostly located in the North Bay area and Marin County. To date I have excused myself from voting on issues related to Novato Sanitary District and Sanitary Dist. No. 5 of Marin County (Tiburon), even when both matters were on the uncontested calendar.

5. What is your view of the relationship between the State/Regional Water Boards? Could accountability and coordination be improved? If so, how?

The relationship is inherently uneasy because the State Water Board is an appeals body for Regional Water Board decisions, and because the State Water Board handles all the fiscal responsibilities. For two-step approval processes like TMDLs and water quality standards, the State and Regional Water Boards have done a better job in the last ten years of coordinating at the staff level to avoid duplicative processes starting from scratch. I have noticed that State Water Board members exert influence on staffing decisions and priorities much more directly than at regions, perhaps due to their full-time employment status. The imbalance of power and money between State and Regional Water Boards will ensure that challenges will be encountered in the future.

Accountability and coordination are improved through simple communication and where State Board staff recognizes the Regional Water Board staff expertise and connections at the local level, and when Regional Water Board staff recognizes that the power to affect change to meet regional goals is augmented through teamwork with State Board staff. This commitment to coordination requires time on the phone, on emails, and in getting together periodically in person. It is also helpful to expose State Board staff and members to the Regions' realities on the ground whenever possible.

In spite of the challenges imposed by the organizational structure, I believe the Water Boards have come a long way in the last 15 years to function as more of a unified agency. An example of the progress and teamwork between regions and the State Board is the stream and wetland policy now being developed by Regions 1 and 2 and State Board as a coordinated effort. This effort is not only between State and Regional Water Board staffs, but between State and Regional Water Board members as well.

### California State Budget Crisis

6. How do you stay informed of fiscal resources available to the Board? How does Board prioritize activities if not all can be undertaken? What are your priorities?

The Executive Officer (EO) and staff do a commendable job keeping Board members informed through the EO's monthly report to the Board and public, periodic emails to Board members from the EO, and in Board hearings. Fiscal limitations are often mentioned in documentation from agenda items.

The Board's work is largely fee- and cost recovery-supported (about 85% or more). As such, the work is prioritized accordingly. The fee-supported programs deserve attention at a level commensurate with the funding they provide and the PYs (person-years) they support. Efforts within these programs are targeted toward persistent pollution problems, whether abatement or prevention, based on the water quality challenges that have been established as priorities working with the regulated community and the interested public.

My priorities are to run the delegated permitting programs effectively and to the satisfaction of State Board and USEPA, including permit re-issuance, compliance monitoring, and enforcement. I also believe in the importance of ambient water quality monitoring to assist in prioritization efforts so that the limited resources are targeted to issues that we have the best hope of solving before they become intractable and all the more expensive to address.

### Enforcement of Water Quality Laws

7. What enforcement options do you believe provide the most effective tools for violations of board orders?

The Water Boards enjoy a host of enforcement options and flexibility, allowing tools to be applied to specific cases with an appropriate level of discretion for maximum effectiveness. The options range from requiring more technical information, issuing notices of violation without fines (a warning), issuing mandatory minimum penalties, cleanup and abatement orders, cease and desist orders, and imposing administrative civil liability (ACL). Significant cases like oil spills can be referred to the Attorney General.



The ACLs can be up to \$10,000 per day and \$10/gallon, which add up quickly as maximum fines, creating a significant deterrent.

To wisely use discretion, Water Boards need to recognize that public agencies under permit to the Water Boards share the mission of the boards. These entities are beholden to the public that supports them through fees, and their stated purpose is to protect water quality through proper operation and maintenance of facilities. For these entities, the ability to use a majority percentage of fines for supplemental environmental projects (SEPs) is the most effective tool to get the needed change in behavior and to maintain a teamwork relationship between the Water Boards and the local government and citizenry. If most of the fine money goes to the Cleanup and Abatement Account, the Water Boards are more likely to be cast as intruders or adversaries in local communities and meet resistance in meeting the letter of requirements.

It is much more effective and efficient to engender trust and keep ratepayer money in the local watershed, allowing the public servants to save face and show something tangible and positive that resulted from the misfortune of an effluent limit violation or something like a fish kill. It doesn't work to just fire personnel if a mistake occurs – there has been too much public investment into the personnel and associated institutional knowledge to just toss the baby out with the bath water. Enforcement actions need to recognize the nuance and not alienate people and communities that are fighting for the same clean water.

For private entities that may benefit economically from noncompliance, the Board needs to use the full range of the Water Code's strict enforcement provisions to make the necessary deterrent to protect the critical water resources that benefit us all.

The policy of progressive enforcement works well in all cases because water quality is a goal that all individuals understand and that good neighbor businesses strive to protect. If the desired performance or behavior change is not achieved after a warning, the progressive increase in enforcement response from notice of violation to cleanup and abatement order or cease and desist order draws more attention to the culprit. The Water Code's maximum penalties are among the strongest globally for water quality protection and provide a significant deterrent. This Board has actively used this progressive enforcement approach to address violations.

In the last decade the Water Boards have been issuing mandatory minimum penalties, which are set at \$3000 per violation, and these have been an effective deterrent for the municipal dischargers, because the frequency of these violations has noticeably declined.

8. What staff is available to assist you in enforcing water quality laws? Is the number of staff adequate for enforcement purposes? If you must prioritize enforcement efforts, what are the priorities and how are they determined?

This Water Board recently reorganized in a fashion to elevate the importance of enforcement actions in the overall work program. The Assistant Executive Officers have

been charged with administering enforcement actions, which has raised the profile of enforcement significantly. There is a division in the agency dedicated to enforcement, and the actions before the Board in 2008 represented an increase in enforcement to a wider variety of perpetrators. While there may not be adequate staff to address all enforcement needs, there are more staff than ever before to assist in enforcement.

I support this new direction of increased enforcement presence and demonstrating that water pollution can come from a wide variety of land uses and discharges. I believe the Water Boards need to hold permit-holders accountable and show the compliant permit-holders that we will seriously pursue the non-compliers who may otherwise have an economic advantage related to noncompliance. This demonstration of follow-through on enforcement needs to touch all facets of the Board's operations, not just major industry and large cities. There needs to be a breadth to the enforcement program in this fashion. Also, there needs to be a depth in the area of prioritizing the most egregious noncompliance and having some enforcement cases that will generate large fines to remind the citizenry that the Water Code is one of the toughest laws in the state. By having large fines ascribed to public agencies, the Water Board will demonstrate that no entity is above the law.

#### Cleaning up Polluted Waters

9. Please describe the status of the Board's TMDL process. Does Board have adequate resources to develop and implement required TMDLs.

This Water Board has adopted a steady stream of diverse TMDL projects over the past year, addressing impairments in the Bay and in watersheds. In 2008 we also approved a conditional waiver program for ranching operations to implement the Tomales Bay pathogen TMDL that was one of the first such regulatory programs in the state. The TMDL process is one of the top priorities in this region with a constant presence in Board agendas.

I recognize that a lot of resources have been made available to develop TMDLs. To address the whole 303(d) list with TMDL projects, more resources would be necessary, but we have accomplished a lot thanks to available funding.

I am concerned about whether there are adequate resources to implement the TMDLs, but I think that staff has been resourceful in leveraging existing regulatory programs as the implementation mechanisms for TMDLs. I believe a lot of the discharges that cause impairment should have been regulated under existing Water Code authorities anyway. We could use more personnel to show field presence for TMDL implementation, or we could look into other mechanisms to deputize citizens, organizations and local agencies to assist the Board in keeping an eye on waters and the programs that are designed to protect them.

10. How will the board monitor and enforce the TMDLs it has or will adopt?

There are existing mechanisms to collect information on attainment of water quality standards, including the 305b assessment, the 303d listing process, SWAMP, local monitoring efforts, and the Regional Monitoring Program of the SF Bay funded by dischargers. Permitting and enforcement will be done through the conditional waiver, waste discharge requirements and NPDES permits programs that are tailored to reach the TMDL targets. Permitting staff have been dialed into the TMDL development processes and anticipate the work. As an example, in 2008, the Board adopted a region-wide NPDES permit for mercury discharged from wastewater treatment plants. This permit encourages collaborative monitoring and assessment amongst the permittees, ensuring consistent and cost-effective monitoring that can drive future decisions.

11. What is the Board's progress in reducing Hg, PCBs, dioxins, pesticides, pathogens, PBDEs, and other pollutants that pose health risks to those recreationally taking fish and shellfish in SF Bay and along the region's coast?

There is progress on reducing pollutants in the Bay. The regulatory structures have been recently adopted to chart the course for improvements related to the persistent bioaccumulative pollutants Hg and PCBs, with the region-wide permit noted in the answer at question 10 a prime example. These requirements set the stage for related action on dioxins and chlorinated pesticides. Strict requirements were adopted in 2008 for the hot spot pathogen area in Richardson Bay and form a template for similar areas on the Bay and ocean. Over-the-counter pesticides are addressed through a TMDL as well, with reporting requirements for municipalities.

Because the bioaccumulative pollution that affects people's ability to consume shellfish or fish is a long-term cleanup effort (>30 years), efforts in the near-term need to focus on communicating with the populations that consume the high-risk organisms like shark, sturgeon, and white croaker, and encouraging them to shift their diet to less dangerous fish. The Board has required a risk communication program that does just that.

The progress for pollutant reduction requires an ongoing commitment to implementing the TMDLs and the Water Boards to partner with local agencies to manage the risk through public outreach as pollutant levels come down over the next decades.

Infrastructure improvements to address pathogen sources should help with the health risk to people that recreationally collect shellfish and fish in those areas.

12. How are you informed about new sources of water pollution in the Basin? How should the Board respond to the increasing problem of PBDE which is being found in harbor seals, fish, bird eggs, peregrine falcons, human breast milk, and the fatty tissue of humans?

The San Francisco Estuary Institute (SFEI) is a science-based organization that manages the Regional Monitoring Program (RMP) for San Francisco Bay. This program looks for signs of accumulating pollution in the Bay, using advanced laboratory analysis

investigation techniques. The Bay Area Pollution Prevention Group (BAPPG) is a partnership between the Water Board and the municipal dischargers and proactively investigates emerging contaminants based on SFEI information and other information from around the world. The BAPPG formulates communication strategies and pollution prevention strategies for communities to implement.

I think the Board should elevate PBDE as a pollutant of high priority for product substitution. It may be appropriate to list the Bay as impaired by PBDEs, since they exhibit similar physical properties and accumulation in tissues as deadly dioxins, PCBs and DDT.

13. In your view, what is the role of Regional Water Boards regarding required testing and standard limits for pharmaceuticals and over-the-counter drugs in drinking water. Should the State Water Board, through Regional Water Boards, be working with the California Dept of Public Health to require testing and set safety limits for drugs in drinking water?

The Regional Water Boards have a secondary role in drinking water protection, as the Dept. of Public Health is the lead agency. The Water Boards become involved at the level of regulating discharges to protect *sources* of drinking water. Most drinking water sources are upstream of regulated discharge points. In cases where the drinking water is downstream of the discharges, then the Water Boards have a role to play to establish effluent limits or other waste discharge requirements to limit pharmaceuticals and over-the-counter drugs to levels in ambient waters that will not contribute to elevated levels at the tap. The main difficulty at this time is determining the “safe” ambient levels – this research is ongoing and can inform future Water Board decisions. Most endocrine disruptors and over-the-counter products that are not explicitly regulated as pollutants do not have numeric thresholds established that Water Boards can use as limits. Many of these compounds may not pose a threat at all to beneficial uses or public health. Much of the discussion to date has been surrounding the fact that they are merely detectable and imagining what the effects may be.

14. Your Board reported working in partnership with community groups on a project promoted locally to collect unused prescription drugs from area residents (no drugs down drain campaign) to help reduce contamination of water supplies. How does the Board review the success of such projects? Do Boards share best practices?

This campaign is derived from the partnership of the BAPPG and Bay Area Clean Water Agencies (BACWA), described above. The project is a success because of the huge amounts of drugs collected. It is a proven strategy in that it works with local agencies to communicate a message that can begin to change a vital behavior in the citizenry of “just flushing it.” The success can be broadened by going out to more communities, and accounting for the weight of all the drugs collected as a quantifiable measure of the mass of this material that did not otherwise reach the Bay. It can be broadened by engaging the medical community more and thereby close the loop on “cradle to grave.”

Board staff work with BAPPG and BACWA to review both progress and obstacles in expanding collection programs like “no drugs down the drain.” And mercury-containing household items, for example. Both of these groups have made regular presentations on their progress to the Water Board.

This Water Board started an annual award program in 2007 to recognize and support local pollution prevention programs, and encourages public agencies to partner with community groups to both publicize the need to properly dispose of prescription drugs and expand take-back opportunities. BACWA and Save the Bay have an ongoing partnership that is working well and creating teamwork between organizations that have been at times adversarial, recognizing the common ground among the NGOs and the agencies.

At this Board, both staff and Board members are enthusiastic about sharing the successful programs and lessons learned along the way with anyone that would listen. Water Board staff participate in roundtables with other regions to share “best practices” and address obstacles.

#### Septic Rule

15. Has the State Water Board articulated a role for the Regional Water Boards in implementing the rule?

As with all statewide policy enacted by the State Water Board, the Regional Water Board is the agency that tailors policy implementation to its region. The Basin Plan would be updated to be consistent with the statewide policy, and Board orders would be modified as they come up to be consistent with the policy. Long-standing agreements with the Bay Area counties could be modified as well. There isn't an explicit need for the State Water Board to articulate a role for the Regional Water Boards; it is self-evident from the language in the proposed policy and the Water Code compels Regional Water Boards to adhere their actions to duly adopted statewide policy.

16. How does the Board intend to monitor, enforce and improve septic systems that contribute to surface and ground water pollution?

On-site systems in the San Francisco Bay Region are regulated by counties via resolutions that were initially enacted in the 1960s and periodically updated since then. The Water Board becomes directly involved in larger individual or community systems, or will assist a County on a case-by-case basis if requested. The intention of the Water Boards would be consistent with its authorities articulated in the Water Code.

Water Districts around the Bay Area have a more rapid response capability than the Regional Water Board in detecting and abating groundwater pollution that could come from septic systems. If these entities are not satisfied with the response of the County,

then the Regional Water Board could assist with monitoring or enforcement related to the failing system(s).

In water bodies impaired by nutrients or pathogens, the Water Board's TMDL process compels the review of on-site systems and whether they are contributing to the water pollution problem, and to repair them, or change the method of disposal if determined necessary. This approach was expressly delineated in the Board's Tomales Bay, Sonoma Creek, and Napa River pathogen TMDLs.

### Sewage Spills

17. Do you believe additional steps should be taken to address the chronic sewage spill issues?

The State Board's general order on discharges from sanitary sewer collection systems provides a statewide, consistent program for addressing the chronic sewage spills, which are derived from aging infrastructure and antiquated design features like overflow weirs. The Water Board has taken enforcement actions on the more egregious spills in the region and will continue to do. The regulated community is paying close attention to its preventive maintenance programs and its notification and cleanup requirements. The additional steps needed are not regulatory, but monetary. More infrastructure renovation dollars are needed to assist local agencies in their rehabilitation work, and this Board is pushing these agencies to secure federal economic stimulus funds that will shortly come to California. Nonetheless, local ratepayers will need to pay a higher share for service to adequately cover this overdue work.

18. Has your Board determined if the combination of storm water and sewage disposal in the same pipe in some communities is contributing to this problem? If so, what should be done?

Yes, the infiltration of groundwater and the inflow of storm water into the sewage collection systems are contributing to the problem in a number of communities in the Bay Area, notably the older communities in East Bay, Marin County, Vallejo and the Peninsula (San Mateo County). A long term maintenance program should be undertaken by all local communities to select a project life interval for its infrastructure assets (say 50 or 80 years) and replace all infrastructure on that long-term schedule. These issues cannot be addressed within a 10 year timeframe, as the rehabilitation of these systems is very disruptive to the community and very expensive.

19. As a Regional Water Board member do you believe all permittees such as Mirant should meet the conditions of their permit in order to continue operating?

Noncompliance with permit conditions is a basis for enforcement actions, fines, and provisions to correct the noncompliance. Noncompliance with such time schedule and action provisions is a basis for subsequent enforcement action. Eventually, along such a trajectory, no business would continue to operate if the monetary obligations related to

enforcement overwhelmed the business's ability to remain profitable. The Water Board does not shut down businesses or agencies that do not comply, but rather takes enforcement actions, such as cease and desist orders, which chart a course for compliance.

It is my understanding that, contrary to press reports, Mirant is in full compliance with the conditions of its permit, but that legitimate concerns over once-through cooling operations in general are being addressed at the statewide policy level. I believe that once-through cooling is damaging to the water ecosystem and am concerned about perpetuating its use where alternatives exist, but to pursue the consistent policy approach suggested in question 4, this Board should wait for the State Board's policy before acting on a discharger that is currently in compliance.

#### Pollution in Suisun Bay

Regional Water Board won't approve cleaning technology that is only 90% efficient and notified Marad of its intent to sue.

20. What is the status of this issue and how are Board members kept informed?

The Water Board decided unanimously to serve notice of its intent to sue the U.S. Maritime Administration (Marad) because of Marad's gross inaction on the matter of controlling pollution from its mothballed fleet. Since the Administration did not implement any controls in response to the notice, the Attorney General, acting on this Board's behalf, has sued Marad and is preparing for court.

The in-bay "scamping" hull cleaning technology that Marad considers effective results in dissolved metal pollution levels that we have seen are over two orders of magnitude (100 times) the level of acceptable levels that we impose on nearby treatment plants. The 90% efficiency claimed by Marad is based on collecting solids, but we are skeptical of that reported efficiency of the in-bay cleaning method. The environmentally responsible approach is to get the old ship into drydock and have it cleaned or dismantled in a controllable working area. Marad has been evasive and holding itself to a different, loose standard than other organizations that work hard to protect the environment. Their foot-dragging was unconscionable and they misrepresented the opinions of other states like Virginia and Texas, alleging that our requirements were unreasonably stringent, when they are in fact based on federal standards. Marad needs to be held to account and this Board intends to carry out that action with State Board and Attorney General support.

The EO regularly reports to the Board on Marad's progress or lack thereof, and the Board has met in closed session to discuss the specifics of the suit.







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STATE OF CALIFORNIA

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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

--oOo--

WEDNESDAY, FEBRUARY 25, 2009

1:40 P.M.

--oOo--

Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713



SENATE RULES COMMITTEE  
STATE OF CALIFORNIA  
--oOo--

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA  
--oOo--

WEDNESDAY, FEBRUARY 25, 2009  
1:40 P.M.  
--oOo--

Reported By INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

APPEARANCES

MEMBERS PRESENT

SENATOR DARRELL STEINBERG, Chair  
SENATOR GIL CEDILLO  
SENATOR SAMUEL AANESTAD  
SENATOR ROBERT DUTTON  
SENATOR JENNY OROPEZA

STAFF PRESENT

GREG SCHMIDT, Executive Officer  
JANE LEONARD BROWN, Committee Assistant  
NETTIE SABELHAUS, Appointments Consultant  
DAN SAVAGE, Assistant to SENATOR CEDILLO  
BILL BAILEY, Assistant to SENATOR AANESTAD  
CHRIS BURNS, Assistant to SENATOR DUTTON  
BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

JOHN G. TELLES, M.D., Member, Air Resources Board  
and San Joaquin Valley Unified Air Pollution  
Control District Board

ALSO PRESENT (cont.)

1  
2  
3 DONALD B. KOCH, Director, Department of Fish and Game

INDEX

	<u>Page</u>
7 Proceedings .....	1
8 Governor's Appointees:	
9 JOHN G. TELLES, M.D., Member, Air Resources	
10 Board and San Joaquin Valley Unified	
11 Air Pollution Control District Board .....	1
12 INTRODUCTION BY SENATOR DEAN FLOREZ .....	2
13 OPENING STATEMENT .....	5
14 Question by CHAIRMAN STEINBERG re:	
15 Balancing transportation of goods	
16 with cleaning the air .....	7
17 Question by SENATOR OROPEZA re:	
18 Reason for working on cleaning	
19 the air .....	9
20 Questions by SENATOR DUTTON re:	
21 Short-term economic impact of	
22 scoping plan implementation of	
23 AB 32 .....	21
24 Impact on small business	
25 community .....	25

1 Conversation with governor	
2 regarding concerns with economic	
3 analysis .....	27
4 Questions by SENATOR AANESTAD re:	
5 Internal work relationship between	
6 ARB board members and staff .....	29
7 Independent review of scoping	
8 plan by board members .....	31
9 Support letters from agricultural	
10 and business communities .....	32
11 Manner in which the governor learned	
12 of Dr. Telles .....	33
13	
14 <u>Witnesses in Support of JOHN G. TELLES, M.D.:</u>	
15 SARAH SHARPE, Fresno Metro Ministry .....	12
16 MARY D. NICHOLS, Air Resources Board .....	14
17 NIDIA BAUTISTA, Coalition for Clean Air .....	15
18 SOTIRIS K. KOLOBOTRONIT, Friend .....	17
19 MARTHA GUZMAN, CRLA Foundation .....	17
20 BILL MAGAVERN, Sierra Club California .....	17
21 MICHELLE GARCIA, Fresno-Madera Medical	
22 Society .....	18
23 KATHRYN PHILLIPS, Environmental Defense	
24 Fund .....	19
25 BONNIE HOLMES-GEN, American Lung Association	
of California .....	19

1 Witnesses in Support of JOHN G. TELLES, M.D. (cont.):

2 DIANE BAILEY, Natural Resources Defense  
Council ..... 19

3 ANDY KATZ, Breathe California ..... 19

4 PETE PRICE, Union of Concerned Scientists ... 20

5 LAURA FULTZ STOUT, Coalition for Clean  
6 Air - Fresno, California ..... 20

7 REY LEON, San Joaquin Valley Latino  
Environmental Advancement and Policy Project,  
8 Mexican-American Political Association ..... 20

9  
10 --o0o--

11 DONALD B. KOCH, Director, Department of  
12 Fish and Game ..... 37

13 STATEMENT BY CHAIRMAN STEINBERG ..... 37

14 OPENING STATEMENT BY DONALD KOCH ..... 39

15 Questions by CHAIRMAN STEINBERG re:

16 Vision for resolving crisis ..... 38

17 Effects of suction dredging ..... 39

18 Due date of recommendations on  
19 science ..... 42

20 Court's ruling ..... 46

21 Protection/restoration of salmon . 50

22 Timetable for increase in salmon  
23 resource ..... 52

24 Fish and Game warden layoffs ..... 53

25 Los Banos farm worker camp ..... 55

v

1 Witnesses in Support of DONALD B. KOCH (cont.):

2 BEN HIGGINS, California Rangeland Trust ..... 75

3 NOELLE CREMERS, California Farm Bureau  
Federation ..... 77

4 JUSTIN OLDFIELD, California Cattlemen's  
5 Association ..... 77

6 JIM WATERS, California Water Fowl Association,  
Suisun Resource Conservation District ..... 78

7 TRACY SCHOHR, California Rangeland  
8 Conservation Coalition ..... 79

9 CINDY GUSTAFSON, Fish and Game Commission ... 81

10

11 Witnesses with Concerns/Opposition to DONALD B. KOCH:

12 PAUL MASON, Sierra Club California ..... 82

13 THOMAS WESELOH, California Trout ..... 86

14 NOAH LEVY, Environmental Protection  
Information Center ..... 91

15 ZEKE GRADER, Pacific Coast Federation of  
16 Fishermen's Association ..... 95

17 MARTHA GUZMAN, CRLA Foundation ..... 99

18 MICHAEL GRABEDIAN, Friends of the North Fork. 103

19 S. CRAIG TUCKER, Karuk Tribe ..... 113

20 DAN BACHER, Editor, *Fish Sniffer* ..... 115

21  
22 --o0o--

23

24

25

vii

1 Question by SENATOR OROPEZA re:  
2 Issuance of permits ..... 43

3 Question by SENATOR CEDILLO re:  
4 Ability to exercise discretion ... 49

5 STATEMENT BY SENATOR AANESTAD ..... 47

6

7 Witnesses in Support of DONALD B. KOCH:

8 RUDOLPH ROSEN, Ducks Unlimited ..... 57

9 MARK THEISEN, The Gualco Group ..... 59

10 RICHARD COLLINS, Natural Heritage Institute . 59

11 TOM GALLIER, El Dorado Irrigation District .. 61

12 JIM KELLOGG, U.A., California State Pipe  
Trades, State Building Trades ..... 63

13 SCOTT WETCH, Labor/Management Committee  
14 of the Wood Products Industry ..... 63

15 P. ANTHONY THOMAS, California Forestry  
Association ..... 65

16 JOHN BERNSTEIN, Pacific Forest Trust ..... 66

17 JERRY KARNOW, JR., California Fish and Game  
18 Wardens Association ..... 66

19 MARK HENNELLY, California Outdoor Heritage  
Alliance ..... 70

20 REED ADDIS, Ocean Conservancy ..... 71

21 DAN TAYLOR, Audubon California ..... 72

22 MELVA BIGELOW, The Nature Conservancy ..... 73

23 KAREN GARRISON, Natural Resources Defense  
24 Council ..... 74

25 TIM SCHMELZER, Wine Institute ..... 75

vi

1 Vote-Only Item re Confirmation of:

2 CHARLES J. KIM, Member, Acupuncture Board ... 118

3 JUDITH N. FRANK, Member, California Health  
Facilities Financing Authority ..... 118

4 RONALD JOSEPH, Member, California Health  
5 Facilities Financing Authority ..... 118

6 ISRAEL RODRIGUEZ, Member, California Student  
Aid Commission ..... 118

7 GERALD E. BELLOWS, Member, San Francisco Bay  
8 Area Water Emergency Transportation  
Authority, Board of Directors ..... 118

9 ANTHONY J. INTINTOLI, JR., Member,  
10 San Francisco Bay Area Water Emergency  
Transportation Authority, Board of  
11 Directors ..... 118

12 CHARLENE H. JOHNSON, Member, San Francisco  
Bay Area Water Emergency Transportation  
13 Authority, Board of Directors ..... 118

14 --o0o--

15 Proceedings Adjourned ..... 118

16 Certificate of Reporter ..... 119

17 APPENDIX (Responses of Appointees and  
18 Witness Statements) ..... 120

19

20

21

22

23

24

25

viii



1 **PROCEEDINGS**

2 CHAIRMAN STEINBERG: Good afternoon, everyone.  
3 I want to welcome the Members and the public to the  
4 meeting of the Senate Rules Committee for February 25th,  
5 2009.

6 Please call the roll.

7 MS. BROWN: Senator Cedillo.  
8 Dutton.

9 SENATOR DUTTON: Here.

10 MS. BROWN: Dutton here.

11 Oropeza.

12 SENATOR OROPEZA: Here.

13 MS. BROWN: Oropeza here.

14 Aanestad.

15 SENATOR AANESTAD: Here.

16 MS. BROWN: Aanestad here.

17 Steinberg.

18 CHAIRMAN STEINBERG: Here.

19 MS. BROWN: Steinberg here.

20 CHAIRMAN STEINBERG: Very good. Nice to be  
21 back to the regular business of the legislature. Try  
22 not to put any bills on call, motions on call.

23 SENATOR OROPEZA: No lockdown today.

24 CHAIRMAN STEINBERG: Why don't we begin with  
25 Dr. Telles. I think we'll do that. We'll begin with

1

1 John D. Telles, physician member, San Joaquin Valley  
2 Unified Air Quality Management District and also up for  
3 confirmation for the State as a member of the State Air  
4 Resources Board.

5 I know we've got Senator Florez here, the  
6 majority leader, to welcome Dr. Telles, and please come  
7 forward. And we welcome you both.

8 SENATOR FLOREZ: Thank you. Mr. Pro Tem and  
9 Members, it's my pleasure to introduce you, and I know  
10 you've extensively gone through Dr. Telles's resume, but  
11 as you probably know --

12 Let me give a little bit of a context to air  
13 quality in the Central Valley, where we are and where  
14 we're going, in particular at the ARB level and the  
15 statewide level.

16 Living in the Central Valley isn't the easiest  
17 place to live, and particularly the air quality issues  
18 we face. We have many, many issues, many, many  
19 problems; and we were thankful that even in the budget  
20 bill, there was some relief and one program being  
21 expanded for farm equipment. But I can tell you that it  
22 is a very tough place for any member to be.

23 And when Dr. Telles was appointed by the  
24 governor to serve his interim year, there could not have  
25 been any more significant challenges facing him, whether

2

1 it was diesel rules, whether it was implementation of  
2 some bills we put forward on air quality.

3 To be honest with you, Members, I was very  
4 skeptical of Dr. Telles. I didn't believe in many cases  
5 that it was going to be possible for a gubernatorial  
6 appointment for a very tough place, for the Central  
7 Valley, that might use the kind of captured board to be  
8 both even-keeled and very forthright in terms of facing  
9 the issues; but I was pleasantly surprised that the man  
10 I'm sitting next to actually was very balanced.

11 I don't always agree in many cases with the  
12 board, or in some of these cases, votes, but Dr. Telles  
13 has always been someone who, in my view over the last  
14 year, has displayed a remarkable sense of balance. And  
15 I think it's very difficult to do that in a very tough  
16 place where we have agricultural interests and developer  
17 interests, and we're doing everything we can to try to,  
18 in essence, clean the air with the very, very strong  
19 environmental justice groups. To walk that line in the  
20 Central Valley is extremely difficult.

21 I can tell you that Dr. Telles does it very  
22 well and is very balanced, and I'm here to ask you to  
23 please support him in his nomination not just for our  
24 local board, but at the ARB level, because I believe the  
25 governor has made a very, very good choice, a very

3

1 strong choice, with Dr. Telles. And I just wanted to  
2 stop by and say most of us particularly concerned with  
3 air quality over the last eight years are very happy  
4 that he will be a wonderful member on both boards, and I  
5 thank you for that.

6 CHAIRMAN STEINBERG: Thank you very much,  
7 Senator Florez. I really appreciate you taking the  
8 time. Appreciate it a lot.

9 Is it "TELL-us" or "TAY-is"?

10 MR. TELLES: It's a Portuguese name, and it  
11 could be pronounced "Sa-TAY-jes," but I've been called  
12 "TELL-us." It's mostly pronounced "TELL-us."

13 CHAIRMAN STEINBERG: Dr. Telles, welcome to  
14 you. If there's any member of your family or anybody in  
15 particular that you want to introduce, please feel free  
16 to do so.

17 MR. TELLES: Well, the person who has been most  
18 helpful to me in this pursuit is my wife Jolene, who is  
19 is here, and one of my sons -- I have four sons, and one  
20 of my sons, Rainer, is also here, who is much wiser than  
21 he looks at his age, but he's my resource.

22 And I also have three of my staff here,  
23 Jaime Mevi and Eileen Saldivar and also Janis Thornton,  
24 who have been very helpful with me managing my practice  
25 while I'm in Sacramento at the local board. I'd like to

4

1 introduce them.

2 CHAIRMAN STEINBERG: Very good. If you would  
3 all stand and take a bow, we would like to welcome you.  
4 Welcome to the family and staff.

5 If you would like to make a brief opening  
6 statement, then we'll open it up for questions from the  
7 Members.

8 MR. TELLES: I don't have a prepared statement,  
9 and I've been thinking about what to say for probably  
10 the last ten years. But first of all, and foremost, I'm  
11 a cardiologist. My comfort zone is in the cath lab at  
12 night with somebody having a heart attack. I feel a  
13 little bit uncomfortable here with everybody looking at  
14 me, even though I get into some hairy --

15 CHAIRMAN STEINBERG: It's not so bad.

16 SENATOR OROPEZA: You look good.

17 MR. TELLES: Thank you.

18 As a cardiologist I got involved in this  
19 because of the health issue. I feel that the San  
20 Joaquin Air Pollution Control District and ARB are -- my  
21 primary view of them is they're public health  
22 committees. Their primary purpose is to improve the  
23 public health of the people they serve. And in our  
24 area, we have a public health crisis with air pollution,  
25 as Senator Florez mentioned.

5

1 partner of my practice. So I do have economic-backed  
2 credentials. But my biggest economic credential is that  
3 I see the economy every day come into my office. I take  
4 care of some of the richest and some of the poorest  
5 patients in our region, and I'm totally aware that the  
6 biggest health risk a person can have -- it's not air  
7 pollution. It's the loss of their jobs. There's no  
8 bigger stress on a person than to lose their job, from  
9 all points of healthcare, and I'm totally aware of that  
10 in my position on these boards.

11 And with that, I'm ready for any questions you  
12 may ask.

13 CHAIRMAN STEINBERG: Thank you. I suppose the  
14 last part of your statement sort of leads to the first  
15 question, which is: How, with some degree of  
16 specificity, do you balance the two? How do you balance  
17 job creation and maintaining jobs and the ability to  
18 transport goods with the necessity of cleaning the air?

19 MR. TELLES: The -- There's many ways to  
20 balance it. No matter how you look at it, it will cost  
21 something to clean the air. And the way to pay for  
22 those costs have to be balanced and distributed  
23 throughout society in a way that it's affordable to do.

24 The recent truck rule that was done was  
25 probably the biggest thing that I was involved in in

7

1 From a cardiology point of view, you would  
2 think: Why would a cardiologist be involved in this?  
3 Mostly, this is respiratory. But that's not true. Most  
4 of the mortality that occurs with air pollution is  
5 actually cardiovascular death. And if you look at our  
6 area, the morbidity related to cardiovascular illness  
7 perfectly templates upon the air-pollution problem that  
8 we have, and we have the highest cardiovascular-death  
9 rate in the state in the San Joaquin Valley.

10 I certainly bring the medical credentials to  
11 this. Some of the senators that I talked to earlier  
12 today and yesterday were concerned about my economic  
13 credentials, being concerned about the economic impacts  
14 of these positions, members on these two boards.

15 I am a long-time life resident of the San  
16 Joaquin Valley. I come from an agricultural family. My  
17 family was involved in growing multiple different types  
18 of crops, including lettuce, strawberries, cotton,  
19 citrus, almonds. We had a dairy. We had a large number  
20 of diesel trucks to service this farm. So I'm familiar  
21 with the economics of agriculture, and I'm also familiar  
22 with the potential sources of pollution from  
23 agriculture.

24 I'm also -- have been a board member of a  
25 health insurance company, and I am also a managing

6

1 trying to figure out a balance on this. The way that  
2 that is supposedly to be able to be paid for is there's  
3 some incentives from the government, and then also  
4 private business will help pay for this.

5 The incentives, to me, and this is my own  
6 feeling, is the incentives oftentimes don't parallel the  
7 source of the pollution, and they're not paid for by the  
8 proper -- proper means of payment. An example of that  
9 is that the -- the incentives for the truck rule is  
10 about \$1.2 billion dollars. The truck rule is going to  
11 cost 5.5 billion. From my trucking friends, it's  
12 probably going to cost more in the range of 8 to 12 --  
13 to 10 billion dollars, and how to pay for that -- I  
14 think we have to look at other ways to do that. I  
15 suggested, via comments from other truckers, that it be  
16 paid for somewhat by a tax on a diesel fuel, which in  
17 this climate is very difficult to do. I understand  
18 that.

19 CHAIRMAN STEINBERG: Seems we talked about that  
20 recently.

21 MR. TELLES: There's 17 billion miles that the  
22 diesel trucks travel in California each year, and if you  
23 put a small tax on that, you could easily come up with  
24 \$5.5 billion dollars. There's other things, too, that  
25 could be done.

8

1 CHAIRMAN STEINBERG: Okay. Very good. Let's  
2 see if there are questions from other members around the  
3 dais. Senator Oropeza.

4 SENATOR OROPEZA: Yes. I want to thank you,  
5 Doctor, for the time that we shared a little earlier  
6 today. I found it really interesting. And this notion  
7 of connecting the quality of our air with the health of  
8 our bodies is something that I think everybody in this  
9 room knows is dear to my heart, no pun intended, but I  
10 was interested to learn the facts about heart trouble  
11 versus, say, cancers or other kinds of mortal diseases.

12 I wonder if you could share with us -- You  
13 referenced not only in our meeting, but in your opening  
14 remarks today, ten years, that you've been thinking  
15 about this ten years, and I wonder if you can share with  
16 us why it is that you decided to apply for this, and  
17 does it go back to something that happened ten years  
18 ago. Or what's the ten-year connection?

19 And give me a reason, if you have a specific  
20 one, why you decided to join forces here with others on  
21 cleaning our air.

22 MR. TELLES: Okay. The short answer is I just  
23 think it's the right thing to do. And I'll explain why  
24 I came to that conclusion.

25 In our area, we have had for years a problem

9

1 with air pollution. I got involved in thinking about  
2 this probably 20 years ago when I was a soccer coach,  
3 and I mentioned to some of you, a lot of my kids had  
4 asthma, and I carried around their inhalers in my  
5 pockets, and it kind of made me start thinking about  
6 this.

7 I've had personal difficulty in recruiting  
8 physicians to my practice. We've had difficulty  
9 recruiting a neurosurgeon to Fresno at times in our  
10 city, in our region, which has over a million people in  
11 it. We don't have a neurosurgeon on call, because the  
12 neurosurgeon doesn't want to come and live in an area  
13 which is polluted, and indirect severe detriment and  
14 deterioration of the access to healthcare in our area  
15 related indirectly to health pollution.

16 All these things kind of coalesce, and  
17 everybody says, "Well, we ought to do something about  
18 it," and I started doing a series of talks up and down  
19 our valley about the effects of air pollution, and  
20 trying to just kind of make people aware of it so they  
21 can modify their own lifestyles to help improve our  
22 issues.

23 When the seat came up for the San Joaquin  
24 Valley Air Pollution Control District, I thought I would  
25 be the natural person to go into that seat because of my

10

1 experience and my position in the community. I really  
2 wasn't. I wasn't supported by anybody. And some of  
3 that --

4 SENATOR OROPEZA: Probably shows why you were  
5 just right.

6 MR. TELLES: Well, I shouldn't say I wasn't  
7 supported by anybody. I did have some people support  
8 me, but as far as the big health and environmental  
9 groups in the industry, and agriculture groups, because  
10 I was kind of in between them all, I wasn't strongly  
11 supported by either one of those groups. Somehow I  
12 popped up out of the process, and I told the people the  
13 story about that the other day. I don't think I will  
14 bring that up right now.

15 But, really, it comes down to public service.  
16 And my father was very much involved in the public life,  
17 even though he was a private citizen, and I think it's  
18 something that I inherited from him.

19 SENATOR OROPEZA: That's a great answer, and I  
20 think on the ARB board, you can provide a very vital  
21 role not only as a physician but as a layperson too.

22 The political aspects of these boards,  
23 although -- I'm sure that there are politics to the  
24 local board as well, but I think having someone who is  
25 in the middle is not such a bad thing, and I think

11

1 having somebody who listens to all sides and then goes  
2 away and makes their own judgment after absorbing all  
3 that information is a good way to make decisions. And I  
4 think you've given one of the best answers on how you do  
5 that, or that you do that, and that's how you see  
6 yourself, that I've heard thus far as a member of the  
7 Rules Committee, so I'm very delighted when the  
8 appropriate time comes to make the recommended motion on  
9 this.

10 CHAIRMAN STEINBERG: Thank you very much,  
11 Senator. Are there other questions and comments? If  
12 not, let's hear from witnesses in support.

13 I'm sorry. Senator Dutton.

14 SENATOR DUTTON: Go ahead. I can ask later.

15 CHAIRMAN STEINBERG: Okay. Let's hear from  
16 witnesses in support or any witnesses in opposition and  
17 ask people to be extremely thorough and very brief.

18 MS. SHARPE: Good afternoon, Honorable Chair  
19 Steinberg and Committee Members. My name is Sarah  
20 Sharpe, and I'm the environmental health director for  
21 Fresno Metro Ministry. I'm also here to represent the  
22 Central Valley Air Quality Coalition legislative  
23 committee, because we were strong supporters of SB 719,  
24 which was the legislation that created this position on  
25 the local air board for a doctor and a scientist to join

12

1 that, and for the governor to appoint them, and we  
2 definitely fought very hard to make sure there was a  
3 Senate confirmation as part of that process.

4 We are pleased to be here and to support  
5 Dr. Telles in his confirmation, although he did mention  
6 we didn't officially support him in his nomination to  
7 both the San Joaquin Valley Air Pollution Control  
8 District Board and to represent the San Joaquin Valley  
9 on ARB.

10 Over the past year, Dr. Telles has offered a  
11 tremendous amount of oversight and accountability to  
12 both boards. By Dr. Telles's relationship with the  
13 agricultural industry, we have found him to be a very  
14 thoughtful and fair voice on both boards. Although we  
15 may not always agree with Dr. Telles, as Senator Florez  
16 mentioned, his decisions, we can be assured that he has  
17 thoroughly reviewed the materials and deliberated on the  
18 issue at hand, which is somewhat unique to some of these  
19 boards.

20 And, finally, over the past year, we believe  
21 that Dr. Telles has brought an invaluable medical  
22 knowledge and public health perspective, which he  
23 mentioned earlier, to his new positions, and we urge you  
24 to confirm his appointments, and we look forward to  
25 working with Dr. Telles as he continues his leadership

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1 their expertise in particular areas, and Dr. Telles  
2 fills one of those expert positions on the board.

3 He is very, very helpful as a member of the  
4 board in sharing his expertise and his information with  
5 us when we're hearing testimony about public-health  
6 issues, whether it's from the staff or from the advocacy  
7 organizations, people that come in with studies, and  
8 counter-studies, and so forth. His ability to bore into  
9 those and to raise issues that might not otherwise come  
10 to the floor is something that has turned out to be  
11 very valuable to the board.

12 So I think the fact that this body, the  
13 legislature, that is, added the position of physician to  
14 the San Joaquin Valley District and that the governor  
15 chose the person in that position to sit on the Air  
16 Resources Board will stand us in very good stead. Thank  
17 you.

18 CHAIRMAN STEINBERG: Thank you very much,  
19 Ms. Nichols.

20 MS. BAUTISTA: Honorable Chair, Members of the  
21 Committee. My name is Nidia Bautista. I'm with the  
22 Coalition for Clean Air. We're a statewide air quality  
23 organization, and we're also members of the Central  
24 Valley Air Quality Coalition, a coalition that actually  
25 pushed for and was really driven by valley voices to

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1 in the air quality arena. Thank you.

2 CHAIRMAN STEINBERG: Thank you very much.  
3 Appreciate it. Next.

4 MS. NICHOLS: Hi. Good afternoon. My name is  
5 Mary D. Nichols, and I wanted to come over this  
6 afternoon to lend my support, not because I think that  
7 Dr. Telles needs it, particularly, but I just wanted to  
8 share with you that I didn't know him before he was  
9 appointed. Well, actually, we spoke on the phone  
10 briefly, I guess, while he was being interviewed for the  
11 position, and I came away from that extremely impressed  
12 by the quality which I think has surfaced here today,  
13 which is his independence of mind.

14 And when I read the written statement that he  
15 submitted in response to the Committee's questions,  
16 there were times in which my eyebrows went up, probably  
17 to my hairline, because there were things that he stated  
18 there that would not have been said by somebody who had  
19 been coached politically about what to say; and the fact  
20 that he did this on his own and shared his own views and  
21 ideas candidly, I think, is a fairly typical thing about  
22 him as a member of the Air Resources Board.

23 I think you know we have a board that is made  
24 up of a mix of people who are elected officials at the  
25 local level and people who are appointed because of

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1 ensure that there would be a doctor representing them on  
2 these issues at their local air board.

3 And we're really pleased to see that through  
4 this process, that a year from now -- We can reflect on  
5 the past year and know that there's been a very  
6 appropriate representative not only to the San Joaquin  
7 Valley Air District Board, but also to the governing  
8 board of the ARB representing the San Joaquin Valley  
9 interest.

10 I think as has been shared, Dr. Telles has been  
11 very balanced in his approach and also very thorough in  
12 his approach, and I can't speak enough to that. He  
13 reads every item before the board, really listens to the  
14 concerns that are being raised and really studies the  
15 issues. I would love to say that all board members from  
16 all agencies that we interact with do this, but that's  
17 definitely not the case. He's very rare, indeed, in  
18 that regard.

19 But more than that, he's very willing to raise  
20 the questions that need to be raised during these very  
21 challenging issues at times, but knowing full well that  
22 the right thing to do is move forward in cleaning up our  
23 air, making progress there. And I think his  
24 appreciation for how that impacts our bodies is  
25 particularly important.

16

1 So with that, we want to support him, and we  
2 ask for your support as well.  
3 CHAIRMAN STEINBERG: Thank you very much.  
4 Appreciate your testimony.  
5 Keep coming. If you can, again, keep it  
6 relatively brief, we'd appreciate it.  
7 MR. KOLOBOTRONIT: Good afternoon, Honorable  
8 Chairman, Members of the Committee. Sotiris  
9 Kolobotronit, Sacramento, California. I'm friends with  
10 Dr. Telles and his family, and I'm here to express my  
11 feelings about him and my beliefs. I think he's the  
12 right man for this job and would be very proud if you  
13 confirmed him. And I urge you strongly to confirm him.  
14 Thank you.  
15 CHAIRMAN STEINBERG: Thank you very much.  
16 MS. GUZMAN: Martha Guzman with California Real  
17 Legal Assistance Foundation, also members of the  
18 Central Valley Air Quality Coalition, and we are very  
19 happy today to support, and we are also looking forward  
20 to Dr. Telles's expertise in really evaluating the  
21 balance of the toxic air contaminants, pesticides, and  
22 their contribution to toxicity, as well as to smog.  
23 CHAIRMAN STEINBERG: Very well. Thank you,  
24 Mr. Guzman.  
25 MR. MAGAVERN: Bill Magavern of Sierra Club,

1 -- in that he holds everyone accountable across  
2 the board. So when there isn't enough information, he  
3 ensures that all the information is brought forth.  
4 Thank you.  
5 CHAIRMAN STEINBERG: Thank you very much,  
6 Ms. Garcia. Next.  
7 MS. PHILLIPS: Kathryn Phillips with  
8 Environmental Defense Fund. Ditto. We support.  
9 MS. HOLMES-GEN: Bonnie Holmes-Gen with the  
10 American Lung Association of California, and we're  
11 pleased to support Dr. Telles as the second physician  
12 member to the Air Resources Board.  
13 I would have to say having two physician  
14 members has made a very big difference in bringing  
15 public health into the discussions at the board level.  
16 We strongly support Dr. Telles, and he has really made a  
17 big difference on the board.  
18 CHAIRMAN STEINBERG: Thank you.  
19 MS. BAILEY: Good afternoon. My name is Diane  
20 Bailey. I'm representing the Natural Resources Defense  
21 Council, and we're here in strong support of Dr. Telles.  
22 Thank you.  
23 CHAIRMAN STEINBERG: Thank you very much.  
24 MR. KATZ: Good afternoon. Andy Katz, Breathe  
25 California, also testifying in support of Dr. Telles.

1 California, in support of Dr. Telles's confirmation for  
2 both boards.  
3 And at a time when some of the flaws in  
4 California's system of governance have recently gotten a  
5 lot of attention, I want to draw attention to the fact  
6 that here's a situation where the system is working very  
7 well. The Senate reformed the San Joaquin board,  
8 created the position for a doctor. The governor made an  
9 excellent choice in choosing Dr. Telles, and by virtue  
10 of that he now also sits on the State board. He's  
11 independent, hard working. He's incredibly well-  
12 qualified, and he's doing a good job. Thank you.  
13 CHAIRMAN STEINBERG: Thank you very much.  
14 Welcome.  
15 MS. GARCIA: Thank you. Hi. My name is  
16 Michelle Garcia, and I'm the air quality director for  
17 the Fresno-Madera Medical Society. I'm here to give my  
18 support to Dr. Telles.  
19 It's been an honor and a pleasure to work with  
20 him. He's been very instrumental in public health, and  
21 so it's definitely been a breath of fresh air to have  
22 him representing us and definitely a breath of fresh air  
23 in the sense --  
24 CHAIRMAN STEINBERG: So to speak.  
25 MS. GARCIA: Yes. No pun intended.

1 CHAIRMAN STEINBERG: Thank you.  
2 MR. PRICE: Mr. Chairman, Pete Price with the  
3 Union of Concerned Scientists. I just want to echo all  
4 the excellent comments in support of Dr. Telles, and we  
5 urge your support.  
6 MS. STOUT: Laura Fultz Stout for the Coalition  
7 for Clean Air based in Fresno, California. I just  
8 wanted to let you know that Dr. Telles is very  
9 accessible to everyone and willing to bring environment  
10 and industry together to dialogue and find common  
11 ground. We appreciate that.  
12 CHAIRMAN STEINBERG: Thank you.  
13 MS. STOUT: Thank you.  
14 MR. LEON: Good afternoon. Rey Leon,  
15 co-founder and vice chair of the Central Valley Air  
16 Quality Coalition, and director of the Latino  
17 Environmental Advancement and Policy Project, as well as  
18 associate president of the Mexican American Political  
19 Association, and on behalf of all these groups, here in  
20 strong support of Dr. Telles.  
21 It's been a long struggle to get a medical  
22 expert on the air district board, five years, and  
23 finally we see the fruits of our labor, so to speak.  
24 And I'm here in very strong support, because we need  
25 that expertise, that perspective, to really create the

1 district, the agency, into a public health agency and  
2 not so much a corporate economic development agency,  
3 which it has been, to a good extent, for the previous  
4 years. So we're looking forward to Dr. Telles's  
5 continued leadership as he has done. So thank you very  
6 much.

7 CHAIRMAN STEINBERG: Thank you very much.  
8 Any other witnesses? Any witnesses in  
9 opposition to the confirmation of Dr. Telles?

10 SENATOR OROPEZA: Can I move both appointments?

11 CHAIRMAN STEINBERG: Yes, you can. Can we move  
12 them concurrently?

13 I know Senator Dutton has some questions and  
14 maybe Senator Aanestad as well.

15 Senator Dutton.

16 SENATOR DUTTON: I have questions not on the  
17 San Joaquin board, but more in your role on the Air  
18 Resources Board. The Air Resources Board is responsible  
19 for the implementation of AB 32. I can talk a little  
20 bit louder.

21 Anyway, AB 32's scoping plan -- scoping  
22 plan --

23 CHAIRMAN STEINBERG: You heard the dog bark.

24 SENATOR DUTTON: Actually, I did.

25 Just recently, that was reviewed and so forth,

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1 how to implement AB 32. But I think when it gets down  
2 to the details of doing the regulations, I think it's  
3 going to be less vague, and I think all the economic  
4 issues will be looked at and assessed, and make sure  
5 that it does what the economic analysis says it's going  
6 to do and not screw up the economy.

7 SENATOR DUTTON: So you don't feel that it's  
8 going to have a negative impact on the economy based on  
9 what you've been given?

10 MR. TELLES: I don't feel that if it's --

11 SENATOR DUTTON: On a short-term basis. I  
12 understand the potential long-term gain. On a  
13 short-term basis.

14 MR. TELLES: On a short-term basis, it probably  
15 will have a negative impact, and that may be counter to  
16 distinction of what the ARB says, but I don't see how it  
17 cannot have a slight negative impact in electricity  
18 prices and things like that.

19 Now, there are ways to mitigate against the  
20 rise in electricity prices by conservation, and other  
21 ways to get there. But I think in the implementation of  
22 this, there will be some -- probably some negative  
23 financial impact.

24 The implementation is not next year. It's  
25 years down the line, so hopefully we'll be out of this

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1 in December, and I was curious. You did have a chance  
2 to go through that before the action of the board, and  
3 as you and I were discussing, I have some concerns about  
4 the economic -- short-term economic impact and some of  
5 the findings of the report. I was curious if you could  
6 share with me your thoughts on that matter.

7 MR. TELLES: The economic impact report that  
8 was done by the staff at ARB suggested that  
9 implementation of the scoping plan would have no  
10 negative impact and perhaps even a slightly positive  
11 impact on the State economics. There's been independent  
12 review of that suggesting that that's not true.

13 The scoping plan -- You have to understand that  
14 the scoping plan is just a blueprint on how to get  
15 there, and each regulation is going to come up, and each  
16 regulation is going -- To implement the scoping plan  
17 will have its own economic review, and I think it's a  
18 piece in work rather than completion.

19 When an issue comes up, I mean, it's going to  
20 be reviewed, and I think the economics will be reviewed  
21 in much more specific detail than the scoping plan. In  
22 all fair defense of the people who wrote the economic  
23 analysis, it's very vague. If you read it, it's very  
24 vague, and it's the reason why the scoping plan itself  
25 is somewhat vague, just giving a broad-brush stroke of

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1 economic problem by the time things are starting to roll  
2 on that. I think it will certainly affect what comes  
3 out of the plan based on what the economy is at the time  
4 that the regulations are actually written.

5 SENATOR DUTTON: I understand that there's a  
6 Dr. Robert -- or statements from Harvard University  
7 based on his analysis of the report that was given to  
8 all of you to review. It says, quote, "I have come to  
9 the inescapable conclusion that the economic analysis is  
10 terribly deficient in critical ways and should not be  
11 used by state government or the public for the purposes  
12 of addressing or assessing the likely cost of CARB's  
13 plans. I remain willing to help CARB in the future if  
14 they wish to develop an economic analysis that is truly  
15 useful and reliable."

16 I also have comment that the report was  
17 reviewed by Matthew Kahn from UCLA. He also actually is  
18 one of the supporters of the governor's AB 32 goals.  
19 And according to him, "I am troubled by the economic  
20 modeling analysis that I have been asked to read.  
21 AB 32 is presented as a riskless free lunch for  
22 Californians. The net dollar cost of each of these  
23 regulations is likely to be much larger than what is  
24 reported in the plan. The bottom line is that the  
25 economic supplement provides an incomplete report on

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1 what we know and need to know about the economic  
2 consequences of this important regulation." And also,  
3 we've got a couple others here too. Even the LEO was  
4 critical of the analysis.

5 Now the question that I have, given all that,  
6 what was the thinking? Because you as well as the other  
7 board members just went ahead and actually approved  
8 everything, went forward with regs. I would have  
9 thought this would have given you enough concern that  
10 you'd want to say, "Hey, wait a minute. Maybe we better  
11 recheck some of these things to make sure that we're not  
12 doing something that's going to cause even greater  
13 problems."

14 I mean, we're already starting in a downhill  
15 slide. We've got a problem with the economy. It's not  
16 just California. It's all over. We certainly don't  
17 need any more discouragement, especially in the small  
18 business community. So I'm a little concerned about  
19 what appears to be the lack of concern for the small  
20 business community. So maybe you can address that for  
21 me and give me a comfort level.

22 MR. TELLES: It's obviously a difficult  
23 question. I'm not an economist. I did read the report  
24 from the staff, as well as summaries of the report that  
25 you're talking about, and I know that they're in

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1 disagreement, and I think probably there's someplace in  
2 between where the true reality is.

3 If you look at economic analyses for our  
4 country, you know, five years ago, I don't think anybody  
5 was predicting that we were going to be where we are  
6 now. And I think it's difficult to predict the economic  
7 impact of something like this, but I think it has to be  
8 done on a regulation-by-regulation basis. If the  
9 regulation doesn't work, if the economic impact is too  
0 high, it shouldn't be done.

1 SENATOR DUTTON: How do you know that being  
2 they each have to fit in with each other? I mean, they  
3 don't operate independently.

4 MR. TELLES: No.

5 SENATOR DUTTON: This is different, different  
6 kind of plan.

7 MR. TELLES: No. And there's only been a few  
8 regulations done so far in regards to the scoping plan,  
9 and one of them was done on the same day as the truck  
0 rule, and it's a regulation to help streamline large  
1 trucks to make them more fuel efficient. And it works  
2 and it doesn't work. It depends on -- By that I mean  
3 some trucks are already doing that, because it is a  
4 fuel-efficient thing, and some trucks are not doing that  
5 because it hasn't been a fuel-efficient thing for their

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1 particular fleet. And that particular rule was pulled  
2 out to be re-looked at by the ARB board and staff  
3 because of those concerns.

4 And I thought in that particular instance that  
5 the ARB board did the right thing in that they looked at  
6 this and said, "Some truckers, this just doesn't work,  
7 some it does, so we better look at this," and that's  
8 going to be re-looked at.

9 SENATOR DUTTON: Didn't the ARB board decide  
10 they were going to have the economic analysis  
11 reevaluated or something? I recall reading that  
12 someplace.

13 MR. TELLES: Yes.

14 SENATOR DUTTON: If that's the case, why  
15 wouldn't you want to wait until that re-analysis is done  
16 before you decided to go forward on some -- AB 32 in  
17 itself, when it moved through the legislative process,  
18 even provided for provisions in the event of economic  
19 crisis or downturn, or concerns, that there was the  
20 ability of the governor, obviously, to delay the  
21 timetable.

22 But you're a governor's appointee. Have you  
23 talked to the governor about any of the concerns that  
24 you have about the economic analysis?

25 MR. TELLES: I haven't had any conversation

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1 with the governor since I've been in this position.

2 CHAIRMAN STEINBERG: He's been busy.

3 MR. TELLES: And nor has he -- He hasn't phoned  
4 me up and said, "Hey, it's not going to work."

5 To be honest with you, I don't know all the  
6 details of the law that you're talking about. I know  
7 that there were certain timelines that had to be met to  
8 implement AB 32, and one of the timelines was to have a  
9 scoping plan on the table by the time that it came on  
10 the table.

11 Knowing that it's not a perfect document,  
12 knowing that going ahead with it doesn't mean that  
13 everything has worked out, I think things are going to  
14 be worked out more specifically when the regulations are  
15 done rather than the -- I read that document five times.  
16 I think if you have problems with insomnia, I suggest  
17 you read it. And it's really vague and....

18 SENATOR DUTTON: So you wouldn't necessarily  
19 use that as a prescribed way to do some kind of surgical  
20 procedure on the heart or anything like that.

21 MR. TELLES: No.

22 SENATOR DUTTON: You wouldn't take the  
23 vagueness of this report and the guidelines and actually  
24 put that in practice as a medical physician.

25 MR. TELLES: No, not at all. When I get it on

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1 a case-by-case basis, I'll do the right thing.

2 SENATOR DUTTON: All right.

3 CHAIRMAN STEINBERG: Thank you.

4 Senator Aanestad.

5 SENATOR AANESTAD: Thank you, Doctor, for our  
6 snappy discussion that we had this morning in my office,  
7 and I hope you enjoyed it as much as I did.

8 MR. TELLES: I did.

9 SENATOR AANESTAD: And I appreciate your  
10 candor. The ARB would not make the admission that there  
11 might even be short-time economic harm that you just  
12 made, and yet we all in this room know that's probably  
13 true, which brings me to just a follow-up on one of the  
14 things that Senator Dutton said.

15 When the legislative analysts put out their  
16 reports on the scoping plan, they basically make the --  
17 not only was it a rather negative report and report card  
18 on the ARB, they basically said that there was so little  
19 cooperation that they couldn't even get any information  
20 from the ARB.

21 What kind of input do you, as an ARB -- would  
22 you, as an ARB member, have in relationship to your  
23 board -- I mean, to your staff? For example, could I  
24 call you up, and could you get me that information?  
25 Since the leg. analyst could not get the information out

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1 SENATOR AANESTAD: Will we, as the legislature,  
2 however, ever hear about that independent review by the  
3 board members, or are we going to just hear a  
4 reiteration of what the staff has put up? Because we  
5 haven't heard from the individual members. All we've  
6 seen is a unified front between staff and board on what  
7 I consider to be a poor response to the scoping plan  
8 question that we brought up.

9 MR. TELLES: One of the things which I  
10 addressed in my written comments is the lack of  
11 communication between board -- or ARB and legislature.  
12 And I became more aware of this --

13 I was duck hunting the other day with one of  
14 the assemblymen --

15 SENATOR AANESTAD: You just got Bob Dutton's  
16 vote.

17 MR. TELLES: Good. We had a good day. We got  
18 our limit.

19 One of the assemblymen was there -- and I won't  
20 mention his name. We weren't talking about this stuff.  
21 We were talking about what we were doing that day, and  
22 he started talking about this, and my realization was  
23 that he really didn't know what ARB was doing, and he  
24 was prying me for comments and the same thing that  
25 you're doing.

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1 of staff, I'm just wondering how the legislature or the  
2 legislative analyst, the non-partisan analyst for the  
3 legislature, would have access, because there was a  
4 certain amount of uncooperation to begin with, and then  
5 a rather negative report based on the data they did  
6 have.

7 I guess my question really involves the  
8 internal work relationship between you as a member and  
9 the staff and who's in control.

10 MR. TELLES: All right. That's a good  
11 question. And that was brought to my attention as far  
12 as board-staff relationship by one of the people that  
13 supported me in getting to where I am. That's Bill  
14 Jones, who is one of our local previous senators and  
15 Secretary of State, a friend of mine. He cautioned me  
16 to be careful about staff. Staff has their agenda, and  
17 that's the role of the board, to look at what staff is  
18 creating and whether it's a workable thing. And I feel  
19 it's the responsibility of the board not just to rubber  
20 stamp what the staff does.

21 I think it's a great staff at ARB, and I think  
22 we're blessed by the quality of the people that are  
23 there, but sometimes the way they see the world is going  
24 to be different than a panel of, hopefully, independent  
25 people looking at it and reviewing it.

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1 And I think it's important to have a better  
2 system of communication of what this agency is doing  
3 with the legislature so they can stay in tune and move  
4 ahead on some of these things together rather than all  
5 of a sudden having a shockwave come over that this is  
6 happening without you knowing it.

7 Now, I know ARB may not want to do that -- I  
8 was talking to our legislative person -- and I'm in  
9 disagreement with that, that we should inform the  
10 legislature on what's going on, not to get their tacit  
11 approval or anything, but -- and not to be afraid to  
12 inform them because we don't want them to mix any of the  
13 things that are going on over at ARB, but I think they  
14 need to be informed because this is such an important  
15 committee that I think it just needs to be better  
16 communication between the board and the legislature.

17 SENATOR AANESTAD: I notice all the support  
18 that you got, and I've seen the letters in the packet.  
19 What was missing -- and I also will say I didn't see any  
20 opposition. But what's missing, in my opinion, is  
21 anything from the agricultural community and anything  
22 from the business community, the Chamber of Commerce.  
23 Can you explain that?

24 MR. TELLES: I didn't solicit any support  
25 letters at all. I'm happy that the people came by and

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1 said that -- and said what they did say. I'm -- I  
2 didn't ask for any assistance.  
3 Some of that is, I think, you need to be  
4 independent. In talking with -- We talked earlier. I  
5 don't think I'm not supported by the trucking industry.  
6 One of the persons who runs the CTA here, she asked me  
7 if I wanted a letter of support, and I said no. And I  
8 didn't call up any of the farm bureau people that I  
9 know, or Manuel Cuma (phonetic), to ask for letters of  
0 support. I have him on my speed dial. I can give him a  
1 call right now.

2 CHAIRMAN STEINBERG: Let's do Phone-a-Friend  
3 here.

4 SENATOR AANESTAD: One last question.

5 MR. TELLES: And Manuel, by the way, often  
6 calls me on my speed dial on some of these issues.

7 CHAIRMAN STEINBERG: Let's see if we can wrap  
8 this up.

9 Go ahead.

0 SENATOR AANESTAD: How did the governor learn  
1 about you? How did he find out about you?

2 MR. TELLES: Okay. This is kind of a good  
3 story.

4 CHAIRMAN STEINBERG: Briefly.

5 MR. TELLES: Briefly. It will probably be the

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1 you pride yourself on your independence, and I would  
2 point out to anybody who might be a skeptic that in  
3 terms of his balance, which is always important, you  
4 were specifically appointed to the physician spot on the  
5 board here, and we would hope that the physician  
6 appointee to the board is one who pays special attention  
7 to the health impacts of air quality. And so we want  
8 the balance, of course, in how you make your decisions;  
9 but you were appointed to a very important and specific  
10 slot, and I think that's important to keep in mind.

11 Senator Dutton, Senator Oropeza, asked that we  
12 divide the question.

13 SENATOR OROPEZA: That's fine with me.

14 CHAIRMAN STEINBERG: If that's okay. Take  
15 first the San Joaquin Valley Air Quality Management  
16 District. Take that motion first.

17 Please call the roll.

18 MS. BROWN: Senator Cedillo.

19 SENATOR CEDILLO: Aye.

20 MS. BROWN: Cedillo aye.

21 Dutton.

22 SENATOR DUTTON: Aye.

23 MS. BROWN: Dutton aye.

24 Oropeza.

25 SENATOR OROPEZA: Aye.

35

1 most entertaining thing you'll have all afternoon.

2 As I mentioned, I didn't have a lot of support  
3 from the ag. community at the beginning, or the medical  
4 community. I didn't have friends like Bill Jones and  
5 people like that, and Jim Coss, to write letters, people  
6 I've known for a long time, and that kind of helped open  
7 the door, but I didn't have the level of support needed  
8 to get to where I am.

9 My wife came up with the idea to send a picture  
0 to the governor. I have a picture in my office of the  
1 governor holding up a patient of mine with one hand, who  
2 this patient was a Mr. America in 1930 who later on  
3 developed the Universal Gym, you know, the  
4 weight-training things, and he was holding up, with one  
5 hand, his grandson. This was in a swimming pool in  
6 Fresno.

7 So when I came to the appointment, I said,  
8 "This is who I am. I'm the guy who takes care of that  
9 guy," and that's how I got here.

0 CHAIRMAN STEINBERG: Good story. Wow!

1 Well, let me just make a comment or two, and  
2 then I want to make a request to Senator Oropeza in  
3 terms of the motion, if we might.

4 I think you did a terrific job here today. I  
5 think you did demonstrate thoughtfulness, the fact that

34

1 MS. BROWN: Oropeza aye.

2 Aanestad.

3 SENATOR AANESTAD: Aye.

4 MS. BROWN: Aanestad aye.

5 Steinberg.

6 CHAIRMAN STEINBERG: Aye.

7 MS. BROWN: Steinberg aye.

8 CHAIRMAN STEINBERG: That is approved five to  
9 nothing, will go to the Senate floor.

10 Now let's take Senator Oropeza's motion on  
11 Dr. Telles's appointment to the State Air Resources  
12 Board.

13 Please call the roll.

14 MS. BROWN: Senator Cedillo.

15 SENATOR CEDILLO: Aye.

16 MS. BROWN: Cedillo aye.

17 Dutton.

18 Oropeza.

19 SENATOR OROPEZA: Aye.

20 MS. BROWN: Oropeza aye.

21 Aanestad.

22 SENATOR AANESTAD: Aye.

23 MS. BROWN: Aanestad aye.

24 Steinberg.

25 CHAIRMAN STEINBERG: Aye.

36

1 MS. BROWN: Steinberg aye.  
2 CHAIRMAN STEINBERG: Very good. That motion  
3 passes as well, and the nominations for both will go to  
4 the floor.

5 And thank you very, very much for your public  
6 service, Doctor.

7 MR. TELLES: Thank you.

8 CHAIRMAN STEINBERG: Let us take a five-minute  
9 break, okay?

10 (Recess taken.)

11 CHAIRMAN STEINBERG: All right. Let us resume  
12 after a short recess.

13 I would like to ask Donald Koch to come  
14 forward, who is the nominee as the director of the  
15 Department of Fish and Game.

16 Welcome to you, sir.

17 MR. KOCH: Thank you, sir. Is this on?

18 CHAIRMAN STEINBERG: We want to welcome you and  
19 ask if there's anybody -- member of your family or any  
20 other special guest that you would like to introduce  
21 before we get started.

22 MR. KOCH: No, thank you, sir. My wife of 29  
23 years and a friend for a little longer is not here  
24 today, and working, so....

25 CHAIRMAN STEINBERG: Okay. Very, very good.

37

1 forward here, if you're confirmed, what's your vision  
2 for resolving this crisis? What is it that you need in  
3 order to resolve the crisis?

4 There also have been some specific concerns  
5 raised about the suction dredge mining issue, which  
6 we're going to want to get into in some detail, and a  
7 few other issues.

8 So with that opening, we genuinely do welcome  
9 you and ask if you would like to make a brief opening  
10 statement.

11 MR. KOCH: Thank you, Senator.

12 I prepared a statement so I could calm down,  
13 basically, and read it for you, but I think just based  
14 on what you said, perhaps maybe we ought to start with  
15 questions, because I do look forward to trying my best  
16 to answer some of those and explain some of my history  
17 with the department and why I came back from retirement.

18 Indeed, I did inherit the job, but I was also  
19 part of the organization for 30 years, and I love it  
20 dearly, and I have a high passion for the resource.  
21 That's why I came back. But perhaps maybe it would be  
22 most expeditious to start.

23 CHAIRMAN STEINBERG: Let me begin and go from  
24 sort of the specific to maybe the broader issue.

25 The issue of suction dredging. The code is

39

1 Very, very good.

2 I want to make a brief opening comment. You --  
3 People say very positive things about you, sir,  
4 Mr. Koch, so I think today we want to have some probably  
5 pretty detailed discussions not only about you and your  
6 directorship, but also about the direction of the  
7 department itself, both the department you inherited and  
8 the department that you are now responsible for  
9 managing, because the concern that has been expressed to  
10 Members of the Committee is not so much about you, but  
11 it is about the department, that we have many laws on  
12 the books, but whether it's staffing shortages or lack  
13 of will, there's a feeling that many of the laws don't  
14 have real meaning if they can't be enforced.

15 We understand that 98 Fish and Game wardens  
16 were just given notice that they may lose their jobs.  
17 We're particularly interested and obviously concerned  
18 about the fisheries resource, that wild populations of  
19 Coho salmon are less than 1 percent of what they were in  
20 the 1940s, that commercial and recreation salmon fishing  
21 seasons were completely closed last year. The governor  
22 himself declared the closure would have a \$255 million  
23 dollar impact and a loss of an estimated 2,200-plus  
24 jobs.

25 So I think the big question is: As you move

38

1 pretty clear. It's 5653(b) of the Fish and Game Code,  
2 and it states that the department may only issue a  
3 permit for suction dredging, quote, "...if it determines  
4 the operation will not be deleterious to fish."

5 So I guess the first question is: Has the  
6 department determined that this practice of suction  
7 dredging is not damaging to fish as required by the  
8 section? And, if not, how can this practice be allowed  
9 to continue?

10 MR. KOCH: Certainly. I think that the same  
11 series of sections there directed the department to  
12 promulgate regulations to issue those permits, which we  
13 did in the past, and at that time we closed numerous  
14 waters in the state because we had determined there were  
15 deleterious impacts, timing, season changes, a variety  
16 of constraints on that activity to protect the fish.

17 Subsequent to that -- those adoptions of  
18 regulations to allow people to suction dredge, we've had  
19 interactions with a group tribe, Cal Tribe, and others  
20 who brought data to the department that said, "We  
21 believe deleterious effects may be occurring in these  
22 waters, climate watershed salmons and associated trips."

23 Our fisheries biologist looked, met with them  
24 and worked with them and said, "Good point. There are  
25 deleterious effects in this water."

40

1 So the process that we went from and that was  
2 in litigation, I may add -- The process we went through  
3 to adopt those regulations is the same process we're  
4 going through now, and that is it's a regulatory process  
5 that CEQA is applying. So to change those regulations,  
6 all the counsel I've had is that we need to go through  
7 the CEQA process, the environmental review process, to  
8 change those regulations. That's an expensive process.  
9 It's a long process. We....

0 CHAIRMAN STEINBERG: Isn't it true, though,  
1 that under the regulations, that you as the director  
2 have the authority to declare an emergency?

3 Let's cut to the chase here. The item of  
4 controversy, and I know you'll hear today from the  
5 representatives of the tribal nation, the Karuk  
6 petition. Why wasn't it granted, and what was the  
7 thought process that went in to your thinking on that  
8 issue?

9 MR. KOCH: The first thing I did was go back to  
0 the same biologists that issued declarations that said  
1 they were deleterious and asked them their opinion from  
2 a biological standpoint. I'm a scientist, and that's  
3 one of the reasons that I came back, to make sure that  
4 happens.

5 Their statements to me was, yes, there are

41

1 deleterious effects. Is it at the level of an  
2 emergency, in other words, those impacts from suction  
3 dredging, not the impacts that are going on in the  
4 environment that have continuing cause and effect to  
5 salmon, but the impacts from suction dredging of those  
6 watersheds didn't rise to the level of an emergency.

7 The second tier of that decision was working  
8 with our general counsel to ask what criteria do I use  
9 to declare an emergency. And the counsel I got there  
0 was that the Administrative Procedures Act defines what  
1 that is and defined those criteria.

2 So it was really a two-step process. I was  
3 going back to the scientists, the fisheries biologists  
4 and asking them was it a biological emergency, did we  
5 need to take action to close the watersheds of the  
6 petition by the Coho tribe and Cal tribe, and they said  
7 no, the process we're going through will result in  
8 scientifically based recommendations to change that.  
9 And from a legal perspective, I was counseled.

0 CHAIRMAN STEINBERG: When are those  
1 recommendations due on the science?

2 MR. KOCH: The environmental review process --  
3 We receive funding from the legislature, graciously a  
4 million dollars in last year's budget, so late  
5 September. The contract has been issued to conduct --

42

1 excuse me -- the bid process is closed to conduct an  
2 environmental review. It's a statewide environmental  
3 review to analyze suction dredging statewide that should  
4 be completed -- the contract expires in October of 2010.

5 CHAIRMAN STEINBERG: 2010. So it may take  
6 another year and a half --

7 MR. KOCH: That's correct, sir.

8 CHAIRMAN STEINBERG: -- to finish the analysis  
9 before the regs can potentially be changed, regulations  
10 can potentially be changed to address the particular  
11 issue. Okay.

12 Senator Oropeza on that.

13 SENATOR OROPEZA: On that point of what you  
14 were told are the criteria for the emergency-level  
15 declaration, is there something in between a full-on  
16 declaration of emergency and status quo operation?

17 In other words, do you issue permits for this  
18 behavior?

19 MR. KOCH: Um-hmm.

20 SENATOR OROPEZA: Wouldn't it make sense to  
21 suspend the issuance of the permits, perhaps, as a  
22 mitigation against any further deleterious effects  
23 beyond what you have already permitted? Would that fit?

24 MR. KOCH: I asked that question, because it's  
25 a very valid question, and to change the regulations

43

1 that are in place which allow us to authorize the  
2 permit, the statute directs us to adopt -- to pass  
3 regulations which are in place. To change those, I  
4 can't be essentially -- I need to go through the  
5 environmental process to do that.

6 SENATOR OROPEZA: You mean counsel tells you  
7 there is no way for you as director to suspend the  
8 issuance of further permits pending some kind of factual  
9 gathering of information? Counsel tells you that? It's  
10 either all or nothing? I mean, you can't do anything?  
11 Your hands are tied?

12 MR. KOCH: I think we are doing something, but  
13 counsel advise that the action -- I could not declare an  
14 emergency based on....

15 SENATOR OROPEZA: Understood.

16 MR. KOCH: So that was --

17 SENATOR OROPEZA: Understood. I understand you  
18 can't declare an emergency without meeting the criteria.  
19 What I'm saying is: What in the law or code tells you  
20 as director of an agency that you can't suspend the  
21 issuance of new permits until such time as these other  
22 facts are found out as to whether it is, in fact, an  
23 emergency, it isn't, what the merit is. Well, it is an  
24 emergency -- it's not an emergency. But what the merit  
25 of the actual facts are in evidence and what you're

44

1 going to find out. Isn't there any middle ground?  
2 CHAIRMAN STEINBERG: If I may, because I think  
3 you're --  
4 SENATOR OROPEZA: Help me, Mr. Chair.  
5 CHAIRMAN STEINBERG: Maybe we can cut -- This  
6 is the issue that I think is troublesome on this, is  
7 that there's an environmental process pending, an EIR  
8 pending, and so the department allows the practice to  
9 continue while the environmental analysis is pending  
10 when you already have an opinion from your biologist  
11 that there is a deleterious effect on fish. So why  
12 wouldn't it be the opposite, that we only allow it to go  
13 forward -- we stop it now -- we only allow it to go  
14 forward if the environmental impact report in fact says  
15 that there isn't a harm or that the harm can be  
16 mitigated. That's, I think, the question.  
17 SENATOR OROPEZA: Thank you.  
18 MR. KOCH: I appreciate that. I think the  
19 issue has been there's three avenues for that emergency.  
20 One is judicial. That's how we sort of entered this  
21 process. That question has been in front of the court.  
22 They directed us, basically, they had the opportunity to  
23 suggest it was an emergency. Based on the declarations  
24 that was not done. We were instructed to do the  
25 environmental review document, which I'm bound -- As

45

1 the tools to do that. What I believe sincerely is that  
2 I'm required -- Even though I know they're deleterious,  
3 that doesn't mean there's an emergency. There are a lot  
4 of deleterious effects in the environment, and those  
5 three -- two watersheds with some of their trips, if it  
6 rose to an emergency, I would be there in a heartbeat,  
7 sir. I mean, that's my passion.  
8 The process we're going through is to look at  
9 that practice statewide in all state waters to allow the  
10 amendment of the regulations that authorize those  
11 permits.  
12 CHAIRMAN STEINBERG: Okay. Let's -- We'll move  
13 on, because we're going to hear testimony on this issue,  
14 and maybe we can get back to it.  
15 Senator Aanestad, if you have a question, go  
16 ahead.  
17 SENATOR AANESTAD: I guess -- See if this  
18 analogy would explain. I'm an oral surgeon licensed,  
19 permitted by the State of California to practice. I  
20 passed the test and am under the control of the State  
21 dental board. A patient makes a complaint against me,  
22 but the dental board finds no emergency. Therefore,  
23 does the dental board have the right or even the moral  
24 obligation to suspend my practice? My answer would be  
25 no. Your answer would be no, because that's what the

47

1 frustrating as it is by me with that process, that tool  
2 is a very valuable tool that says -- it brings science  
3 to the table. It brings....  
4 CHAIRMAN STEINBERG: But the court didn't say,  
5 "Allow the practice to continue while the environmental  
6 report goes on," correct?  
7 MR. KOCH: The question in front of the court  
8 at times was, yes, should there be --  
9 Their original -- I'm not an attorney -- I  
10 believe, prayer for relief asked for that.  
11 CHAIRMAN STEINBERG: And the court granted the  
12 prayer for relief?  
13 MR. KOCH: No. It was withdrawn.  
14 CHAIRMAN STEINBERG: So that court did not  
15 order the department to allow the practice to continue  
16 pending the EIR, correct?  
17 MR. KOCH: I believe it was silent on that  
18 issue.  
19 CHAIRMAN STEINBERG: It was silent on the  
20 issue. Go ahead. You said there were three things. Go  
21 ahead.  
22 MR. KOCH: I'm sorry. Thank you for doing  
23 that.  
24 Legislative option in terms of that kind of  
25 relief that would provide the tools or the department

46

1 law says.  
2 SENATOR OROPEZA: What about the deleterious  
3 behavior, though?  
4 SENATOR AANESTAD: But the board or the  
5 department found no emergency.  
6 SENATOR OROPEZA: Right.  
7 SENATOR AANESTAD: That's the difference. He  
8 just got done saying that if he found an emergency, he  
9 would have issued it in a heartbeat; but he and his  
10 biologists and his lawyers found no emergency. And  
11 therefore, I believe that the people who are doing the  
12 suction dredging and have the permit have the right to  
13 continue until that emergency is found, or until  
14 scientific data and a review of the regulations proves  
15 otherwise.  
16 CHAIRMAN STEINBERG: I think it is about the  
17 definition of emergency, and it is gradations because --  
18 not to get too far afield, but if there was a reasonable  
19 suspicion or probable cause, or use whatever legal terms  
20 you want, that you were violating your licensing  
21 requirements as oral surgeon, the board might have very  
22 well suspended your license.  
23 SENATOR AANESTAD: They would have found an  
24 emergency.  
25 CHAIRMAN STEINBERG: I'm not sure that the term

48

1 is what's at issue. What the discretion of the  
2 department is, either allow it to go forward or not  
3 allow it to go forward. And maybe we ought to hear from  
4 our lawyer here at some point regarding -- so that we  
5 fully understand and have some common ground with the  
6 director as to what his and the department's discretion  
7 actually is or isn't before we make a judgment as to  
8 whether or not he did or did not use that discretion  
9 wisely.

10 Senator Cedillo.

11 SENATOR CEDILLO: I think it's how you frame  
12 the question. Another question is: Are you prohibited  
13 from exercising discretion? Are you prohibited? Is  
14 there a ruling? Has there been a direction from the  
15 court that prohibits you from exercising discretion to  
16 halt the practice? And given that you've got some  
17 notice, not to the level of emergency, do you have or  
18 are you prohibited in any way from exercising  
19 discretion, given the circumstances, given the totality  
20 of the circumstances, from terminating the practice?  
21 Not of the particular person that has the licenses, but  
22 issuing that.

23 So that's the question before all of us. It's  
24 a judgment question that comes before us in terms of  
25 your ability to -- some of us may think -- to be prudent

49

1 What is your position on supporting necessary changes  
2 before the Board of Forestry? Is there a timetable  
3 involved in any proposed action that you might take?

4 MR. KOCH: Sure, sure. The Board of Forestry  
5 is currently reviewing its rules in relationship to the  
6 timber harvest plan. The scientific review that was  
7 done on the adequacy of those rules and the science  
8 regarding forest practice and salmon is completed. We  
9 were active in that.

10 We just worked with the Board of Forestry and  
11 their staff to develop a new joint Board of Forestry and  
12 Fish and Game Commission policy that clearly articulates  
13 the position of the department, of Cal Fire, the Board  
14 of Forestry, and Fish and Game, our commissioners will  
15 see at their meeting next week, late next week, that  
16 raises the bar, so to speak, to a conservation standard  
17 and that we're making progress. Those were difficult  
18 discussions. That was completed recently.

19 We are now actively in the process of working  
20 with the review team as they evaluate those rules in  
21 front of the board. I believe they will happen soon  
22 with the Board of Forestry involved.

23 To do that, one of the things I've done since  
24 I've been director is to bring what I feel is one of the  
25 most qualified and talented program managers in terms of

51

1 about your exercise of discretion.

2 CHAIRMAN STEINBERG: Go ahead and answer, and  
3 then I'm going to want to move on, and we'll probably  
4 come back to this issue.

5 MR. KOCH: Thank you. I think that is a very  
6 valid discussion, and that issue was raised in court by  
7 the other four parties that ultimately filed in that  
8 process. And their point was it was an emergency, and  
9 you need to go through this process. That's where I  
10 stated -- The court had a decision at one point either  
11 to immediately go to trial or try to do the  
12 environmental document.

13 I fully understand the frustration of  
14 everybody, including the department, and the timeline,  
15 because it took us almost two years to get funding.

16 But that issue was -- There were other parties  
17 who weren't silent, including the department. The  
18 original -- One of our declarations filed by Mr. Mangey  
19 was in a settlement to, in fact, close those waters. We  
20 were immediately back in court to go through the process  
21 to close them.

22 CHAIRMAN STEINBERG: Let's talk about the  
23 salmon for a moment, sir, the big-picture issues. Do  
24 you intend to propose any rule changes that would  
25 protect and restore the salmon resource in this state?

50

1 our forestry, as well as salmon, bring them to the  
2 department and work directly with the director to try  
3 and make sure, where it's effectively possible, those  
4 rule changes are proposed in front of the board now that  
5 are pending in front of the board.

6 CHAIRMAN STEINBERG: You heard me cite, and I  
7 don't know if you agree with the statistic, in my  
8 opening statement about the comparison of the salmon  
9 resource from the 1940s to today. Do you have a  
10 timetable for how you would like to see or intend to see  
11 that percentage increase, if not to the 1940's level,  
12 somewhere closer?

13 MR. KOCH: Sure. Like everybody in this room,  
14 I think I would like it to be tomorrow. But one of the  
15 things, when you look at salmon resources in the state  
16 of California -- In the '30s, major water projects were  
17 put in. Those blocked 40 percent of the available  
18 habitat of all salmon. The Klamath Dam is 380 miles of  
19 salmon habitat.

20 It took a long time for those habitat losses.  
21 All the other changes have occurred to the environment  
22 because of human pressures to catch up with the salmon,  
23 who are very resilient. It's going to take a long time  
24 to recover to those levels. We've done a lot of really  
25 good things in the interim to do that. Unfortunately, a

52

1 lot of those things take time to show themselves in  
2 population response.  
3 Some of the greatest things we've done since --  
4 I want to write down my career is working with 26-plus  
5 very disparate parties in agriculture, there's  
6 commercial fishermen, Native American tribes,  
7 conservation groups. We've come to an agreement in  
8 principle to remove four of those dams, 380 miles of  
9 habitat.

10 We've successfully worked with a similar type  
11 of coalition on Battle Creek, 42 miles of streambed,  
12 closed waters, and numerous projects in the south part  
13 of the state, trying to make sure we open access to  
14 historic steelhead ranch, San Clemente Dam, and others.

15 So we're doing a lot of things. I can't give  
16 you a time frame how quick it will happen, because it's  
17 going to be slow. Wildlife populations respond over  
18 time. Ocean conditions are a part of that, certainly  
19 not all of it.

20 CHAIRMAN STEINBERG: Last area of question --  
21 Well, two other quick areas, and we'll turn it over.

22 Fish and Game wardens. Ninety-eight -- Is it  
23 true that 98 wardens have just been given layoff  
24 notices?

25 MR. KOCH: Sir, one of the most difficult

53

1 things that I've done in my 30 years was about a week  
2 ago, signing letters to 406 department employees  
3 advising them because of the State's budget situation,  
4 that they may be subject to a reduction in force. And I  
5 want to emphasize "may."

6 I have gone through that twice in my career,  
7 sat across from people, and know how difficult that was.  
8 It's obviously the most painful thing I've done.

9 The fact that we notified those people is the  
10 fact that they were the last 20 percent hired by the  
11 department, regardless of classification, job duty, or  
12 anything else. It's just a fact of seniority.

13 If we have to move forward with layoffs in the  
14 department, at that time we would do a reduction plan  
15 that's based on a variety of civil-service regulations  
16 which allow us to look at classifications, geographic  
17 scope. So, yes, they did receive them and....

18 CHAIRMAN STEINBERG: The resolution of the  
19 budget last week, does that now alleviate -- do you now  
20 withdraw the notices?

21 MR. KOCH: No, sir, we haven't been instructed  
22 so far to withdraw the notices. I would indicate the  
23 really good news in last week's budget that you folks  
24 worked so hard on, there are 50 new wardens in that  
25 budget, from direction of Fish and Game preservation

54

1 fund, and one new forensic pathologist.

2 CHAIRMAN STEINBERG: I knew there was something  
3 good in that budget.

4 MR. KOCH: I was trying to top Dr. Telles.

5 CHAIRMAN STEINBERG: Go ahead.

6 MR. KOCH: Okay.

7 CHAIRMAN STEINBERG: Last issue, on the  
8 Los Banos farm-worker camp. There has been a complaint  
9 from CRLA and other farm-worker groups that it has taken  
10 three years for the department to improve a temporary  
11 drinking water supply connection to a farm-worker  
12 housing development near Los Banos. What can you tell  
13 us about that, and what are you doing to resolve that?

14 MR. KOCH: The good news is I hope it is  
15 resolved. We received engineering plans from the  
16 engineer for the Housing Authority for Merced County, I  
17 believe yesterday, saying based on their flush test that  
18 we're required by -- to do the hookup. There were no  
19 changes needed. We responded that as far as we were  
20 concerned, that was great. The other conditions that  
21 they had worked out with a variety of people was to  
22 receive funding for a long-term solution. My comment to  
23 to them was, "As long as grant funds are held up, that's  
24 reasonable."

25 So I believe they received permission either

55

1 yesterday evening or this morning from the City of  
2 Los Banos to connect.

3 CHAIRMAN STEINBERG: That's a great outcome,  
4 and I appreciate it. And not to put a damper on it, but  
5 why did it take so long?

6 MR. KOCH: I think for a variety of reasons.  
7 One is I think the Housing Authority built a facility  
8 fully intending to use groundwater in the area, and it  
9 didn't pan out. There was water quality issues. Their  
10 other alternative was a line that was in the area that  
11 went out to the department's wildlife area. That water  
12 is used for a public facility as well as dwellings and  
13 fire protection. The line was built in the '70s,  
14 substandard, didn't meet current fire code, so we  
15 expressed concern at that time. There was some question  
16 at the beginning who owned the line, if it was Fish and  
17 Game or the City.

18 It took time. There was a lot of people  
19 working on it to try to work, I think, at various times.  
20 There were starts and stops by all the parties involved.

21 CHAIRMAN STEINBERG: One of the common  
22 complaints about government, you know, is that it just  
23 takes too darn long, and I would hope that if you are  
24 confirmed that you will look at issues like these and  
25 champion them. Sometimes it takes one person to just

56

1 corral all the disparate forces and the different  
2 bureaucracies and different jurisdictions and just plain  
3 make it happen. Lock people in. Lock people in for  
4 hours, if you need to.  
5 SENATOR AANESTAD: Just tell them to bring  
6 their toothbrush.  
7 CHAIRMAN STEINBERG: All right. Are there  
8 questions from other Members? We'll take the public  
9 testimony, and that may open up more questions. Why  
10 don't we do that.  
11 You're welcome to sit at the table. Let's take  
12 witnesses in support here.  
13 Go right ahead.  
14 MR. ROSEN: Thank you, Mr. Chair, and Members  
15 of the Committee. My name is Rudolph Rosen, and I'm  
16 director of western operations for Ducks Unlimited, a  
17 wetlands conservation and water fowl conservation  
18 organization.  
19 We do support the appointment of Mr. Koch  
20 today. We found him to be accessible and proactive when  
21 it comes to wetlands conservation issues.  
22 In addition to that, I would like to make a  
23 personal observation. If you confirm Mr. Koch, he'll  
24 join a small fraternity of fish and wildlife  
25 professionals who have been directors or are directors

57

1 of Fish and Game agencies. And I'm a member of that  
2 group, having been director of two state Fish and Game  
3 agencies in the past. The decisions he makes will not  
4 be approved by everyone. In fact, some decisions he  
5 makes may be unapproved by everyone.  
6 Work in the environment on ecosystems and  
7 ecosystems that have been affected, it's not a black and  
8 white sort of thing. Biological decisions are rarely  
9 black and white. They're very often very difficult.  
10 Consider, for example, that wetlands in the  
11 state of California have been destroyed to the extent  
12 of -- 95 percent of all wetlands have been destroyed.  
13 Think about the fact that we're looking at the impacts  
14 of climate change now. 95 percent of the wetlands in  
15 California have been destroyed. That's catastrophic.  
16 These are the kinds of issues that Mr. Koch and his  
17 staff have to work with. It's very difficult. It's  
18 very challenging.  
19 And in my personal opinion, Mr. Koch is up for  
20 the challenge based on experience and just based on the  
21 observations that my staff and I have made since he's  
22 taken office. He's been very, very accessible, and  
23 that's a key ingredient to being successful.  
24 CHAIRMAN STEINBERG: Thank you very much.  
25 Appreciate the testimony. Let's continue. Let's move

58

1 through efficiently, if we can. Thank you.  
2 MR. THEISEN: Chairman Steinberg, Members of  
3 the Committee. Good afternoon. Mark Thiesen with the  
4 Gualco Group. I'm just here very briefly to reiterate  
5 and underscore the reasons nine of our clients indicated  
6 in their correspondence to you dated February 13th.  
7 Those nine entities come from agriculture, business,  
8 labor, the environment, the entertainment industry, and,  
9 last but not least, water, and certainly are indicative  
10 of the broad base of support for Mr. Koch. And,  
11 certainly, he's the man for this particular job, given  
12 the challenges that this committee just discussed.  
13 Thank you very much.  
14 CHAIRMAN STEINBERG: Thank you very much.  
15 Next.  
16 MR. COLLINS: Mr. Chairman, Members. I'm  
17 Richard Bruce Collins. I'm the legal director for a  
18 public interest law firm called Natural Heritage  
19 Institute in San Francisco. I'm here to testify in my  
20 personal capacity, not on behalf of clients, some of  
21 whom are here to testify directly.  
22 I've gotten to know Mr. Koch through the  
23 Klamath negotiations in particular, and I offer you this  
24 testimony based on that experience. The proposed  
25 agreement there, when final, will resolve water wars

59

1 that date back decades and that threaten the stability  
2 of one of our most important watersheds. Every party  
3 and every negotiator in that effort deserve credit, but  
4 there's a handful who made it happen, and Mr. Koch is  
5 one of them.  
6 He is dedicated to the mission of this  
7 department, so dedicated that he was, if you'll excuse  
8 the phrase, crazy enough to come out of retirement to  
9 take what is almost mission impossible. He is  
10 principled, he's trustworthy, he speaks plainly. When  
11 he tells you what he's going to do, he does it. He  
12 relies on science, as he understands it, and he is  
13 creative.  
14 The solution that we're developing in the  
15 Klamath will require public investment but will  
16 ultimately be less than the emergency relief which is  
17 currently being paid while these resources collapse. I  
18 think that he is an extraordinary candidate, and I hope  
19 you support him.  
20 If I may, Mr. Chairman, offer one last thought.  
21 The programmatic challenges that you described for the  
22 department are more than budget. They also go to  
23 authority. The department currently does not have clear  
24 authority to enforce many of the provisions of efficient  
25 income in the Section 5900 series related to diversions,

60

1 screening, and so forth. If the department had clear  
2 authority to issue administrative orders rather than  
3 rely on district attorneys, the enforcement could be  
4 much more efficient.

5 CHAIRMAN STEINBERG: Authority from who?

6 MR. COLLINS: Authority from this legislature  
7 in the form of clarification that it may enforce those  
8 provisions directly through administrative orders.

9 CHAIRMAN STEINBERG: Interesting. Thank you.

10 MR. COLLINS: Thank you.

11 CHAIRMAN STEINBERG: Next.

12 MR. GALLIER: Thank you, Mr. Chairman, Members  
13 of the Committee. My name is Tom Gallier. I'm the  
14 general manager of El Dorado Irrigation District. We  
15 serve about 100,000 people with water utility services  
16 in El Dorado County. We also have a 20-megawatt  
17 hydropower project that includes reservoirs up in the  
18 high Sierras up in Alpine and Amador counties.

19 The reason I'm here today is because last  
20 summer we had a crisis. We had an emergency with one of  
21 our reservoirs, a failing outlet gate structure, that  
22 essentially required us to, unfortunately, drain most of  
23 that reservoir. That is a trojan fishery up there.  
24 There were many issues that were impacted by Department  
25 of Fish and Game rules and regulations.

61

1 appreciate it.

2 Mr. Kellogg. Good afternoon.

3 MR. KELLOGG: Good afternoon, Senator. Thank  
4 you for this opportunity. Mr. President and Senators.  
5 Gil. I'm here representing two or three different  
6 groups.

7 CHAIRMAN STEINBERG: You didn't wave to --

8 MR. KELLOGG: I see Dutton all the time. I  
9 just had to say hi to him.

10 Look, I represent the California State Pipe  
11 Trades, as you know. I'm also secretary-treasurer of  
12 the State Building Trades, and I'm representing them as  
13 well today, 300,000-plus construction workers in the  
14 state of California. We unanimously support Don Koch's  
15 confirmation.

16 I also am vice president of the State Fish and  
17 Game Commission, and I was appointed back in Gray  
18 Davis's day, so I've been here longer, through four  
19 different directors now. And I'm not going to take up a  
20 lot of time. As you know, I'm not that dynamic a  
21 speaker anyway, but I just want you to know -- most all  
22 of you know me, and I'm here to tell you that out of all  
23 the directors I've sat through, Don's only been director  
24 since April, he's done a tremendous job with the  
25 multitude of issues that we have.

63

1 We had to move extremely quickly so we could  
2 initiate those repairs and have them completed before  
3 the winter set in. It was a matter of public health and  
4 safety risk and environmental damage that potentially  
5 could have been caused downstream. To be honest, the  
6 initial reactions we got were a little bureaucratic. As  
7 you mentioned, Senator Steinberg, that can happen with  
8 some agencies.

9 I placed a direct call to Director Koch, got  
10 him on the phone and in about a ten-minute conversation  
11 explained the situation we were dealing with. He pulled  
12 the right people together in a room, as you said, and  
13 from that point on we had outstanding cooperation from  
14 the Department of Fish and Game. They coordinated a  
15 three-way effort between my district and Fish and Game  
16 and volunteers.

17 We did two major fish rescues, pulled thousands  
18 of fish out of Cables Lake, moved them over into other  
19 lakes, got the reservoir drained. Repairs were  
20 completed in November. It would not have happened  
21 without this gentleman's assistance and direction.

22 CHAIRMAN STEINBERG: Thank you very much for  
23 coming to testify.

24 MR. GALLIER: Thanks.

25 CHAIRMAN STEINBERG: Very valuable. We

62

1 And I would only add that had he decided to  
2 take a direct decision and stop what the people are  
3 complaining about him not stopping, you would have had  
4 just as many letters from the people that he stopped and  
5 be questioning him from the other direction on the same  
6 issue. Thanks.

7 MR. WETCH: Mr. Chairman and Members. Scott  
8 Wetch on behalf of the labor/management committee of the  
9 Forest Products Industry, comprised of the Association  
10 of Western Pulp and Paper Workers, the California  
11 Conference of Machinists, the California State Council  
12 of Carpenters, the Western Council of Industrial  
13 Workers, and Woodworkers District Lodge No. 1 in strong  
14 support of Mr. Koch.

15 We've had a long relationship with Mr. Koch  
16 prior to his retirement when he was the director of  
17 region one. He's a collaborative type of manager,  
18 somebody who brings everybody into the room.

19 We've been a party to most of the resource/  
20 forestry-related battles here before the legislature  
21 over the last decade, and there's one thing I think that  
22 both sides of those battles could agree on, and that is  
23 at the end of the day, all you can ask is that the  
24 science carries the day.

25 And this is the first time we've had a director

64



1 of the Department of Fish and Game, in at least the last  
2 20 to 25 years, who is a scientist and who is a  
3 biologist. And I think equally important, you have  
4 somebody who has come out of retirement, who has come  
5 out for the sole purpose of providing public service,  
6 who has no other horizon before him to color his  
7 judgment other than to look at the data and make the  
8 best decision.

9 So based on that and all the aforementioned  
10 organizations, we urge your confirmation. Thank you.

11 CHAIRMAN STEINBERG: Thank you very much,  
12 Mr. Wetch.

13 MR. THOMAS: Good afternoon, Mr. Chairman and  
14 Members. Anthony Thomas, vice president of government  
15 and legislative affairs for the California Forestry  
16 Association.

17 I just want to echo some of the comments of the  
18 previous speakers, and the Forestry Association believes  
19 that Mr. Koch -- his leadership with the Department of  
20 Fish and Game will be in very, very good hands.

21 The commission that he references is just a  
22 testament of some of his leadership skills and items  
23 that he will be doing to further the proper policies  
24 insofar as Fish and Game is concerned, and we urge your  
25 confirmation.

65

1 burden today to deliver what I'm going to deliver, but  
2 it needs to get out there.

3 Basically -- And you guys understand, because  
4 of the recent furloughs of the Fish and Game Wardens  
5 and -- in addition, more than 30 percent of all of the  
6 patrolling game wardens in California received surplus  
7 layoff letters this past week. The wardens association  
8 wanted to not endorse this government's appointee. With  
9 no disrespect, and I believe at no fault to Director  
10 Koch, I'm saddened that I have to make this stance on  
11 behalf of game wardens. I believe he is a victim of  
12 this circumstance.

13 CHAIRMAN STEINBERG: What stand -- Are you in  
14 opposition to the nomination?

15 MR. KARNOW: For director.

16 CHAIRMAN STEINBERG: We were still hearing the  
17 support.

18 MR. KARNOW: We are also -- I got about two  
19 minutes to go through this to put it in perspective the  
20 best that I can to bring forth the thoughts of the  
21 Wardens Association, if I may.

22 CHAIRMAN STEINBERG: Go on.

23 MR. KARNOW: Thank you. I believe he's the  
24 victim of this circumstance. The Wardens Association is  
25 pleased that Director Koch is a Department of Fish and

67

1 CHAIRMAN STEINBERG: Thank you, Mr. Thomas.  
2 Next.

3 MR. BERNSTEIN: Mr. Chairman, Members of the  
4 Committee. John Bernstein. I'm the vice president of  
5 Pacific Forest Trust. Our president couldn't be here.  
6 She got called away.

7 As many of you folks know, there's a large  
8 network of non-profits, such as land trusts and other  
9 conservation groups, that tremendously extend the work  
10 of all you folks here. The agencies leverage the work  
11 that agencies do. And I have to say on behalf of  
12 Pacific Forest Trust, that Don Koch has been a great  
13 partner to us, has been very helpful and successful in  
14 working with the state agencies.

15 I'll just say in passing also that I've been  
16 the head of a state environmental agency, and there's  
17 lots of tough judgment calls that create hot-button  
18 issues in front of the legislature, but I think if you  
19 ask him, he probably has some judgment calls that he  
20 thinks are pretty good ones that he'll be happy to tell  
21 you about.

22 CHAIRMAN STEINBERG: I'm sure. Thank you.

23 MR. KARNOW: Chairman, Committee Members,  
24 Director Koch. Jerry Karnow with the California Fish  
25 and Game Wardens Association. I kind of have a heavy

66

1 Game veteran employee and also that thus far he has been  
2 a great advocate of game wardens and their mission  
3 without question, and we're trying to explain that to  
4 the wardens in the field.

5 So we do not oppose his confirmation, but at  
6 this time the Wardens Association will not offer an  
7 official endorsement to any director appointed by this  
8 governor. The governor's proposal a year ago to  
9 eliminate 38 wardens is also troubling. Not until the  
10 governor makes a tangible commitment to his game wardens  
11 to maintain or increase law enforcement personnel will  
12 we offer support.

13 Game wardens are defined by the California  
14 Penal Code as peace officers whose authority extends to  
15 anyplace in the state. This is the same, for example,  
16 as California Highway Patrol and other State peace  
17 officers who have already been exempted from these  
18 layoffs and furloughs. In addition, all wardens are  
19 federally deputized by the United States Department of  
20 Interior to enforce even broader laws. To top it off,  
21 there are roughly 220 game wardens statewide, the worst  
22 per-capita ratio in the United States and all of North  
23 America.

24 The word "surplus" in the recently received  
25 layoff letters is an insult to the profession. The

68

1 letter actually states "You have been designated as  
2 surplus and have priority hiring preference for open  
3 positions for which you qualify."

4 It is well known there has been a campaign to  
5 expose a brewing crisis of too few game wardens and how  
6 that negatively affects public safety and California  
7 resources. Wildlife crime habitat destruction and water  
8 pollution are out of control in this state. Warden  
9 investigations document the illegal take of wildlife  
10 with regularity. Our work establishes there is both a  
11 statewide and worldwide network in the illegal trade of  
12 fish and wildlife. Water pollution continues to plague  
13 our state, and game wardens are there to hold  
14 accountable individuals and companies that ignore  
15 pollution laws. It's tragic our state professes to be a  
16 leader in the green movement yet will not hire nor  
17 maintain enough staffing to protect our natural  
18 resources.

19 Some of you may have recently seen media  
20 coverage from several high-profile poaching cases in the  
21 past weeks. Sadly, half the investigating officers that  
22 conducted surveillance, served search warrants, and  
23 arrested those criminals received layoff letters.

24 Personally, I wish you all the luck, and I hope  
25 you can stick around.

69

1 He relies very much on science, which we always want to  
2 hold up as one of the most important factors, and he's  
3 always been able to bring together various groups that  
4 don't always agree with each other and come up with  
5 common-sense, consensus-based approaches.

6 We are very happy that he is bringing to the  
7 table about 30 years of experience within the  
8 department. We think that will serve him well in this  
9 capacity, and we strongly urge you to approve him.  
10 Thank you.

11 CHAIRMAN STEINBERG: Thank you very much.

12 MR. ADDIS: Thank you, Mr. Chair and Members.  
13 Reed Addis on behalf of the Ocean Conservancy. We're  
14 here in support today. We know this department has had  
15 challenges, and we've had challenges with that  
16 department over the years and probably will continue to.  
17 However, we have been -- the Ocean Conservancy in  
18 particular has been focused on marine policy and has  
19 been working with the department over the last several  
20 years on the implementation of the Marine Life  
21 Protection Act.

22 The department has done a very good job in  
23 dealing with a very complicated and difficult law and  
24 implementation of that law. We have appreciated working  
25 with Mr. Koch on that implementation and feel it's very

71

1 So I hope that makes sense to you guys.

2 CHAIRMAN STEINBERG: Clear as mud. Perfect.  
3 It actually does make sense. We understand.

4 SENATOR AANESTAD: What's the saying? Friends  
5 like that....

6 CHAIRMAN STEINBERG: We understand you came  
7 up -- had to come up to make the appropriate statement  
8 on behalf of your members, and you distinguished your  
9 feelings on the situation from your feelings about  
10 Mr. Koch, and I think we all get that. Thank you.  
11 Appreciate it.

12 MR. KARNOW: Thank you.

13 CHAIRMAN STEINBERG: Work toward better days.  
14 This is all support.

15 MR. HENNELLY: Mr. Chairman and Members. Mark  
16 Hennelly with California Outdoor Heritage Alliance. We  
17 represent over 30 hunting and wildlife conservation  
18 groups statewide, and we've had the privilege of working  
19 with Mr. Koch over the last ten years on a variety of  
20 fish and game issues, including Klamath River basin  
21 water issues, public use of the Department of Fish and  
22 Game's lands, and private land conservation programs,  
23 and we've found that Mr. Koch has always demonstrated a  
24 very in-depth knowledge of the, frankly, often  
25 controversial and complicated issues facing the state.

70

1 important to keep him in that position to help, and  
2 continue to keep the Marine Life Protection Act on  
3 schedule and to implement it in time. Thank you very  
4 much.

5 CHAIRMAN STEINBERG: Thank you very much.  
6 Next.

7 MR. TAYLOR: Mr. Chair and Members of the  
8 Committee. Thank you very much. I'm Dan Taylor, policy  
9 director for Audubon California. Today I speak for  
10 Audubon together with my colleague organization,  
11 Defenders of Wildlife, in support of the confirmation of  
12 Mr. Koch.

13 As has been said by others, we believe his  
14 career experience provides a unique perspective for him  
15 to take the department forward. We've been impressed  
16 with the openness and transparency that Mr. Koch has  
17 brought to his job and to the department. And,  
18 specifically, we're in conversations now to create some  
19 legislative direction on the whole question of poaching,  
20 which you heard about earlier, and Mr. Koch has brought  
21 forth professionals in the law enforcement branch of  
22 Fish and Game to work with us in developing strategies  
23 and solutions which will make a difference in the real  
24 world. Not every prior director of Fish and Game would  
25 have been willing to do this. We appreciate that.

72

1 I'm also thankful that the Klamath Restoration  
2 Agreement has been put on the table and discussed here.  
3 Don is one of the unsung heroes of that very landmark  
4 opportunity to rescue what has often been seen as a lost  
5 cause.

6 Obviously, Fish and Game is an important agency  
7 for our organizations and for the people of California.  
8 We do not for a moment discount the very tough questions  
9 which your -- which the dialogue earlier gave reference  
10 to, and I believe -- we believe it's incumbent on all of  
11 us, be it agency professionals, interest groups, public  
12 citizens, elected officials, to remain on our toes in  
13 dealing with these very, very tough, difficult issues  
14 that the department faces and the wildlife faces in  
15 California. But we believe that Don Koch is the right  
16 person for the job, and we're happy to endorse his  
17 candidacy.

18 CHAIRMAN STEINBERG: Thank you very much.  
19 Appreciate the testimony.

20 Next.

21 MS. BIGELOW: I'll be quick.

22 CHAIRMAN STEINBERG: Okay.

23 MS. BIGELOW: Mr. Chair and Members. My name  
24 is Melva Bigelow, and I'm here representing The Nature  
25 Conservancy, and I will not echo all of the points that

73

1 have been raised by my colleagues in the conservation  
2 movement.

3 I would just like to point out that like most  
4 of our public servants/administrators, this man has an  
5 almost impossible job.

6 CHAIRMAN STEINBERG: We wouldn't know anything  
7 about that.

8 MS. BIGELOW: You do know that. Most public  
9 servants in California have equally impossible jobs. I  
10 would just like to say what he cannot. Do what you can  
11 to help him with this difficult job.

12 CHAIRMAN STEINBERG: Very good. That's  
13 helpful. Thank you, Ms. Bigelow.

14 Next.

15 MS. GARRISON: Mr. Chairman, Members of the  
16 Committee. Karen Garrison, co-chair -- co-director of  
17 the Natural Resources Defense Council oceans program.  
18 We're supportive of this candidate, and I'd like to  
19 follow Melva's comment.

20 We take very seriously the concerns raised by  
21 our conservation, fishing, and tribal colleagues. We  
22 think the Committee deserves an explanation and  
23 commitments to address those issues going forward, but  
24 based on our experience Director Koch has been  
25 accessible to all interests. He's shown a commitment to

74

1 improving the department's fiscal helm, and he works  
2 well with the commission. And all of those strengths  
3 are important foundations for making the department more  
4 effective, more accountable, and strengthening its  
5 ability to defend our precious natural resources.

6 CHAIRMAN STEINBERG: Thank you.  
7 Sir.

8 MR. SCHMELZER: Mr. Chairman and Members.  
9 Tim Schmelzer representing the Wine Institute. We  
10 represent over 1100 members throughout California.  
11 We're here in support of the nomination of Mr. Koch, and  
12 I just wanted to say we have profound respect for the  
13 experience that he brings to the table. Notably, we  
14 have great appreciation for his reliance on science  
15 and -- which is very important to my members.

16 We're very encouraged by his ability to bring  
17 disparate parties together to forge solutions, and we  
18 have great faith that he will take a balanced approach  
19 in tackling the difficult issues before him. Thank you.

20 CHAIRMAN STEINBERG: Thank you very much.  
21 Mr. Higgins.

22 MR. HIGGINS: Mr. Chairman, Members of the  
23 Committee. My name is Ben Higgins, chief operating  
24 officer of the California Rangeland Trust. It's a  
25 pleasure to be here today and speak on behalf of the

75

1 organization in support Mr. Koch's confirmation.

2 Briefly, our organization has now had the  
3 opportunity to see this man on the job, and we are  
4 convinced that he has the scientific background, the  
5 institutional knowledge, and the ability to work with  
6 divergent interests that are going to serve the agency  
7 and conservation interests as well. He understands the  
8 important role the private landowners play and ranchers,  
9 in particular, in resource management, and we feel in  
10 many issue areas he adopts a very appropriate balance  
11 between the needs of farmers and ranchers, sensitive  
12 species, important resources, and the public welfare.

13 We have in this state a growing interest by  
14 landowners and ranchers in conservation. We have the  
15 opportunity, our organization does, to protect an  
16 additional 500,000 acres in this state right now. Our  
17 ability, however, to protect these landscapes hinges  
18 largely on the capacity and willingness of state  
19 agencies and the Department of Fish and Game in  
20 particular, to brand new partners in conservation.

21 We are confident that Mr. Koch will not only  
22 serve as an important partner, but also a capable and  
23 careful steward of California's natural resources. We  
24 encourage his speedy confirmation.

25 CHAIRMAN STEINBERG: Thank you,

76

1 MS. CREMERS: Good afternoon. Noelle Cremers,  
2 California Farm Bureau Federation. Most of what I was  
3 going to say has already been said, so I won't repeat  
4 it; but I did want to make the point that Mr. Koch  
5 recognizes the importance of partnerships and working  
6 with private landowners on a voluntary basis to help  
7 them preserve the state's resources. And I think it's  
8 very important that we have a director of the Department  
9 of Fish and Game that recognizes that and realizes that  
10 it will take these partnerships to make sure that  
11 California's resources stay strong. Thank you.

12 CHAIRMAN STEINBERG: Thank you.

13 MR. OLDFIELD: Good afternoon, Mr. Chairman  
14 and Members of the Committee. My name is Justin  
15 Oldfield. I'm with the California Cattlemen's  
16 Association, and CCA strongly urges you to confirm  
17 Mr. Koch as director of the Department of Fish and Game.  
18 California's ranchers and beef --

19 THE REPORTER: Please slow down.

20 MR. OLDFIELD: -- are stewards of our state's  
21 land, wildlife, and water resources, and manage nearly  
22 31 million acres --

23 CHAIRMAN STEINBERG: Slow it down for the  
24 reporter.

25 MR. OLDFIELD: I apologize.

77

1 District. Both those organizations are run by  
2 biologists, and we really appreciate Don being involved  
3 in the department as a scientist.

4 I don't have to remind you that as the largest  
5 state in the union, with the most population, the most  
6 threatened and endangered species and the close  
7 proximity of both, we have a lot -- Don will have a lot  
8 of work ahead of him. We urge you to support him and  
9 confirm him.

10 CHAIRMAN STEINBERG: Thank you.

11 MR. WATERS: Thank you.

12 CHAIRMAN STEINBERG: Welcome.

13 MS. SCHOHR: Good afternoon. My name is  
14 Tracy Schohr, and I'm here this afternoon on behalf of  
15 the partners of the California Rangeland Conservation  
16 Coalition steering committee in support of Mr. Koch's  
17 confirmation.

18 The Rangeland Coalition is an unprecedented  
19 group of over a hundred organizations representing  
20 California ranchers, environmentalists, and local state  
21 and federal agencies. Together we're working to  
22 preserve private working ranches, support the long-term  
23 viability of the ranching industry, and to protect and  
24 enhance California grasslands for protected and  
25 endangered species.

79

1 -- thirty-one million acres of California  
2 rangeland.

3 Working side by side with Mr. Koch, he has  
4 continuously demonstrated his willingness to work with  
5 landowners, ranchers, and other stakeholders to develop  
6 solutions for some of the state's most controversial  
7 issues.

8 You know, in addition to his commitment to  
9 maintain a collaborative attitude, Mr. Koch has also the  
10 necessary understanding of the policy and natural  
11 resource issues, and I think that he has the ability to  
12 manage the department in a very successful and effective  
13 way.

14 That being said, CCA does urge you to join us  
15 and other stakeholders to support Mr. Koch in his  
16 efforts to work with all stakeholders to develop a  
17 sensible and feasible solution to our state's most  
18 challenging natural resource issues, which many of you  
19 heard of today, and confirm him as director. Thank you.

20 CHAIRMAN STEINBERG: Thank you. Couple more  
21 witnesses.

22 MR. WATERS: Mr. Chairman and Members of the  
23 Committee, my name is Jim Waters, and I'm a member of  
24 the board of directors of the California Water Fowl  
25 Association and also the Suisun Resource Conservation

78

1 Our coalition, and in particular the steering  
2 committee, have had the opportunity to work with  
3 Mr. Koch on numerous endeavors in his position as acting  
4 director. During the short time he has made significant  
5 strides in encouraging staff to be become engaged in a  
6 partnership recognizing the importance of private lands  
7 for wildlife habitat.

8 Furthermore, Mr. Koch has been supportive of  
9 the department finalizing a new program designed to  
10 improve natural resources on private working ranches.  
11 This will be the first program offered by the department  
12 encouraging private landowners to improve habitat for  
13 threatened and endangered species. Thus, it's supported  
14 by everyone from private landowners to the defenders of  
15 wildlife.

16 In addition, Mr. Koch has committed to working  
17 with our members to address the barriers to cooperative  
18 conservation that is having a direct effect on the  
19 voluntary enhancement of fish and wildlife habitat on  
20 private land.

21 In conclusion, Mr. Koch's tenure with the  
22 department has included various leadership roles that  
23 serve as a strong foundation for his appointment as  
24 director. These past experiences coupled with his  
25 willingness to address conservation barriers, work with

80

1 private landowners, and support collaborative  
2 conservation initiatives such as the Rangeland Coalition  
3 is why I'm here today in support of his confirmation.

4 CHAIRMAN STEINBERG: Thank you very much for  
5 your testimony.

6 Last but not least.

7 MS. GUSTAFSON: Thank you, Mr. Chair and  
8 Members. I'm Cindy Gustafson, and I'm honored and  
9 privileged this year to serve as the president of the  
10 California Fish and Game Commission.

11 Even though the gentleman that spoke before me,  
12 Mr. Kellogg, has many more years on the commission, I  
13 would like to think I have a lot of experience now in my  
14 four and a half years on that commission.

15 These are unparalleled challenges to the  
16 resources of this state, and there is not one of us on  
17 the commission or in the department that doesn't  
18 recognize that. These challenges are insurmountable in  
19 many ways. We are trying to balance the impacts of man  
20 and the environment, and how we best balance that.

21 Don being willing to do this is something that  
22 I have questioned his sanity. Did he really want to do  
23 this in coming back? And, obviously, this man is  
24 passionate about what he's trying to accomplish here.  
25 Not only that, but he has been willing to sit down with

81

1 me and with members of the commission and brainstorm  
2 what can we do to be more effective, because we know  
3 their challenges that we're not being as effective as we  
4 could be and protecting the resources.

5 Don has been willing to look at those issues  
6 and look at how he can change this department into a  
7 solution-oriented department. They are now asking what  
8 they can do to be better. We really appreciate that.  
9 He is open and willing to work with all groups and all  
10 sides. He's a humble man, a man of integrity and of  
11 science, and I couldn't think of a stronger leader for  
12 this department. So I want to thank you all for your  
13 time.

14 CHAIRMAN STEINBERG: Thank you very much for  
15 coming to testify.

16 The reporter and I, and maybe others, need  
17 another five-minute break. We'll take a five-minute  
18 break and come back and hear from the opposition.

19 (Recess taken.)

20 CHAIRMAN STEINBERG: The Committee will come  
21 back to order.

22 Let's hear from the opposition to the  
23 confirmation of Mr. Koch. Witnesses in opposition.

24 MR. MASON: Good afternoon, Chairman Steinberg,  
25 Members of the Committee. Paul Mason for Sierra Club of

82

1 California. Just to be clear at the outset, we don't  
2 have --

3 CHAIRMAN STEINBERG: Just a second.  
4 (Discussion off the record.)

5 MR. MASON: Again, Paul Mason with Sierra Club  
6 of California. We don't actually have either a support  
7 or opposed position. We do have some serious concerns,  
8 and I want to focus on a couple of those and make sure  
9 those are out in the full light of day, and it goes back  
10 to the question of salmon protection, and particularly  
11 on forested landscape, how the Board of Forestry and the  
12 department interact to fix the known deficiencies with  
13 the forest practice rules.

14 This could be a really long bit of testimony,  
15 but it's already fairly late, so I'll try to make it as  
16 condensed as possible.

17 CHAIRMAN STEINBERG: Please.

18 MR. MASON: A couple of years ago, Secretary  
19 Chrisman proposed significant new rules to address the  
20 fact that salmon across California, pretty much  
21 everywhere, are in serious decline. So this came before  
22 the Board of Forestry. The department was a strong  
23 proponent of taking a more conservative and more  
24 proactive approach to salmon protection.

25 In the face of strong industry opposition at

83

1 the board, those got whittled down, and whittled down,  
2 and whittled down until at long last they adopted a set  
3 of rules that rather than taking a proactive protection,  
4 the Board of Forestry adopted rules that, in our  
5 opinion, set a cap on how much conservation would  
6 happen, and only for Coho salmon, and only if the  
7 logging was so bad it was actually going to kill fish.  
8 There was no proactive habitat protection involved at  
9 all. Sierra Club and other organizations challenged  
10 those rules.

11 After that happened, we got into last year's  
12 really dramatic crash of salmon where the governor  
13 declared an emergency. All salmon fishing was shut  
14 down, and that's when the fishery service came out with  
15 new salmon returns that showed that across the coast,  
16 not just in areas where we have the big dam problems and  
17 the delta problems, but throughout all the coastal  
18 streams in California, returns for Coho were down about  
19 75 percent compared to three years ago. So we were in a  
20 major and we still are in a major salmon crisis.

21 Given that, Sierra Club's Environmental  
22 Protection Information Center in California Trout  
23 brought in an emergency petition to the Board of  
24 Forestry based on the rules that they had previously  
25 supported and saying, "Look, we have an emergency here.

84

1 We can't be waiting years to go through this long  
2 literature review. Let's take a more cautious approach  
3 now, and we can continue to have this literature review,  
4 but salmon are going extinct in California on our  
5 watch."

6 We had discussions with the department, with  
7 the National Fishery Service, in advance of this hearing  
8 and fully expected both of them to show up and be in  
9 enthusiastic support, because these were modest changes  
10 long identified as essential. The day of the hearing,  
11 we have the Bush administration's National Fishery  
12 Service standing up there saying that "There is an  
13 extinction crisis in California. You should absolutely  
14 adopt these rules. It's critical that we not keep  
15 waiting."

16 And, unfortunately, we had the Department of  
17 Fish and Game get up and their representative sort of  
18 say, "Well, you know, things are basically working out  
19 fine the way they are," and it was tragically  
20 disappointing. As somebody who worked on this issue for  
21 well over a decade and had expected the department to  
22 step up and take advantage of this opportunity, very,  
23 very disappointing.

24 The reason that I'm not here in strong  
25 opposition but rather raising this as a concern is that

85

1 the north coast manager for California Trout, and I drew  
2 the organization's short straw for today.

3 I've known Don for a long time, and it's very  
4 difficult for me to get up here and not be able to  
5 support him. We also are in a similar position of  
6 Sierra Club and opposing, but we do have some concerns.

7 Paul just very clearly articulated some of  
8 them, and they go back a lot longer than that for me. I  
9 was actually appointed by the resources secretary back  
10 in 1995, I believe, to a coastal salmon initiative that  
11 was to deal with these types of issues on behalf of the  
12 state to deal with the implementation of the federal  
13 listing. There were seven environmental and fishery  
14 representatives, and three of them are dead, three of  
15 them are retired, and I'm the only one that's left doing  
16 this anymore.

17 I'm a little bit concerned about the timelines  
18 that we look at when we look at processes. This led to  
19 the State listing that was supposed to be a one-year  
20 process. I submitted that petition myself in 2000. It  
21 just finished going to the Supreme Court this last year.

22 The regulations that Paul spoke of were being  
23 discussed back in 1995. They were actually recommended  
24 for adoption when the species went through candidate  
25 status and, through a variety of circumstances, still

87

1 I don't doubt that Director Koch has a commitment to  
2 salmon. I have concerns about what his bosses have for  
3 a commitment to salmon. I don't think the department  
4 did a 180-degree turn on their intention to support  
5 these rules based just on the director's intention.

6 They have an opportunity to rectify this  
7 problem, because, as the director noted, the Board of  
8 Forestry is currently revising these rules. They have  
9 tasked a very competent staff person to be fully engaged  
10 over at the Board of Forestry. He's doing a good job.  
11 For the last couple of months, I would be quite pleased;  
12 but given recent history, I want to make sure this  
13 committee and the Senate is aware that -- it's kind of  
14 like Lucy and the football over there. You think that  
15 you're about to make progress, but at the last minute  
16 you're back to square one and you make no progress. So  
17 those are our concerns.

18 CHAIRMAN STEINBERG: I really appreciate the  
19 testimony. I think it's very thoughtful.

20 I'm not sure if I want to ask Mr. Koch for a  
21 response now or not. I probably don't. Let's get  
22 through the rest of the opposition. You can address the  
23 concerns or not in your closing.

24 Next.

25 MR. WESELOH: Good afternoon. I'm Tom Weseloh,

86

1 have not been adopted. The Lucy-and-the-football  
2 analogy is basically something I've been saying for  
3 years.

4 I understand a lot of these issues are not the  
5 director's. He's inherited them. He may have been  
6 given advice on how to deal with some of them that may  
7 not be under his control.

8 I want to state that your opening remarks about  
9 the deep concern of the fish, of the forest practice  
10 rules, of the mining, you were right on the mark with  
11 those, and while --

12 CHAIRMAN STEINBERG: Wrote them myself,  
13 actually.

14 MR. WESELOH: I wasn't -- I was born in '61,  
15 and when I was a kid I could fish for salmon -- Coho  
16 salmon that swim between my legs, catch them on the fly,  
17 and they were abundant fishing.

18 When we started the coastal salmon initiative  
19 process, that's when fishing ceased in the ocean,  
20 fishing ceased in the river. There's been generations  
21 of Coho, three or four now, that we've not fished for at  
22 all, and they haven't returned.

23 During all of this, what surprises me is the  
24 burden of proof is always on the fish. They're all  
25 always on the fisherman. The precautionary principle of

88

1 protecting species before they're disappearing really  
2 isn't paid attention to, and that's what I thought I  
3 heard you discussing. And in the suction dredge mining  
4 issue, to me, when I hear that we have a patient, as far  
5 as the analogy goes, that's the fish, and you are  
6 responsible for your patient, and yet the fish is being  
7 harmed. We know there's deleterious effects, and we're  
8 not going to do something about it until we go through  
9 another process.

0 I've been processed to death. I feel like  
1 Velveeta cheese. Like I said, I'm not going to hold the  
2 director responsible for all these. I've worked with  
3 Don for a long time, and I think I've been on a  
4 first-name basis with directors for 20 years, but there  
5 are deep-rooted fundamental problems. And I believe  
6 most of the Committee members, if not all of you, have  
7 this. This is a report that Cal Trout commissioned.  
8 It's called "Native Fish Crisis."

9 That's where we are. We're in a crisis. And  
10 it has recommendations, and some of them go to the core  
11 problems that we have. The department has too many  
12 mandates, not enough funding, not enough support,  
13 doesn't have the authorization, as Richard Bruce Collins  
14 testified, to implement some of the protective measures  
15 they need in the Fish and Game Code, and our concerns

89

1 are that these become a priority and a proactive  
2 precautionary principle basis.

3 And I think Don knows for the most part we  
4 don't have these deep-rooted fundamental differences in  
5 philosophies on what we need to do to protect our fish,  
6 but we are very concerned with the lack of resources  
7 that the department has, that we put that precautionary  
8 principle first, and we make sure whenever we have a  
9 deleterious effect, whenever we have something that's  
0 causing a problem with our fish, halt it before they  
1 disappear.

2 The healthiest population in Marin County this  
3 year has less fish than there are people in this room  
4 for Coho salmon. South of San Francisco, same way.  
5 They are disappearing.

6 So whatever you can do to help us, I'd greatly  
7 appreciate. You put some wonderful laws on the books.  
8 We need to enforce them. And if confirmed, we look  
9 forward to doing that.

0 CHAIRMAN STEINBERG: Thank you very much for  
1 your testimony.

2 SENATOR DUTTON: I'm confused. Are you neutral  
3 or are you opposing? You're protesting the department,  
4 more or less, or practice, not necessarily the  
5 applicant.

90

1 MR. WESELOH: Correct, and we do have some  
2 differences of opinion, but --

3 SENATOR DUTTON: Do you feel you can work with  
4 him, though?

5 MR. WESELOH: Yes.

6 SENATOR DUTTON: Okay. Thank you.

7 SENATOR OROPEZA: That's fair.

8 CHAIRMAN STEINBERG: Next.

9 MR. LEVY: Mr. Chairman --

10 SENATOR OROPEZA: They make those chairs to be  
11 uncomfortable.

12 MR. LEVY: I didn't tip all the way.

13 Mr. Chairman, Members of the Committee. Thank  
14 you for the opportunity to speak today in opposition to  
15 the confirmation to Mr. Koch.

16 My name is Noah Levy. I'm president of EPIC,  
17 the Environmental Protection Information Center, based  
18 in Humboldt County, and I want to thank you too for your  
19 opening remarks. I don't want to repeat things that  
20 have been said or will be said, but to give a few  
21 specific examples of why we are concerned about this  
22 appointment.

23 For the past 30 years, EPIC has worked to  
24 secure the protection for fish, wildlife, forest, and  
25 watersheds that the people of California have sought to

91

1 provide through our Constitution and our Assembly. It  
2 has never been more important that the Department of  
3 Fish and Game be led with the vision, leadership, and  
4 force of character necessary to turn back the entrenched  
5 interests who would accept the loss of species as the  
6 cost of doing business.

7 Unfortunately, Mr. Koch's role in shaping the  
8 Department of Fish and Game's policies and practices in  
9 Northern California leave us with no confidence that  
10 Mr. Koch would lead the department to uphold its vital  
11 public trust responsibilities, which are to protect our  
12 fish and wildlife, our waters, and our central habitats  
13 from needless and lasting degradation.

14 Most of you know the story of the Headwaters  
15 Forest and the role the State played in protecting a  
16 last fraction of our ancient redwood forests. Assembly  
17 Bill 1986 provided some \$245 million dollars for the  
18 acquisition of important habitat areas and a plan to  
19 ensure logging in the area would not harm already  
20 imperiled species, including marbled Murrelets and  
21 salmon. However, under Mr. Koch's guidance, the  
22 department took the position that it need not review  
23 timber harvest plans to ensure compliance with AB 1986.  
24 Mr. Koch personally signed off on decisions allowing  
25 logging of the highest quality Murrelet habitats around

92

1 headwaters. Today's steep decline in Murrelet  
2 populations is clearly tied to habitat loss. Had the  
3 department worked harder to protect habitat, the species  
4 might have better prospects today.

5 Similarly, our salmon suffered a host of  
6 impacts such that most of our mainlands are protected  
7 under both the California and federal Endangered Species  
8 Act. The Assembly has required, and Fish and Game Code  
9 Section 5937, that dams and diversions maintain flows  
10 sufficient to ensure survival for salmon and trout.  
11 During Mr. Koch's tenure, the department's own game  
12 wardens were instructed not to enforce the law in the  
13 Scott and Shasta River basins. The result, according to  
14 game wardens quoted in a 2001 *San Francisco Chronicle*  
15 article, was the loss of essentially all of the  
16 anadromous fish in those rivers at that time.

17 I'd also refer very briefly to the more recent  
18 matter that Mr. Mason noted in his comments that over  
19 the last year, due to the department's failure to  
20 protect Coho salmon from the effects of logging roads,  
21 EPIC and other organizations finally filed suit seeking  
22 better rules, and as part of the settlement agreement  
23 with the department, we proposed emergency rules to the  
24 Board of Forestry that the department promised to  
25 support. Unfortunately, the department reversed its

93

1 support for the proposed rules just before the hearing.  
2 This failure of leadership has cost the state precious  
3 months in responding to an ongoing extinction event and  
4 will continue to cost our organization and the state a  
5 great deal of time and resources that would be better  
6 devoted to fixing the actual problems.

7 Finally, I would call your attention to the  
8 story of the Scott Bar and Siskiyou Mountain  
9 salamanders. In 2005, scientists announced they had  
10 discovered Siskiyou Mountain salamanders, a species  
11 listed as threatened under the California Endangered  
12 Species Act, actually consisted of two different  
13 species. The new species, christened the Scott Bar  
14 salamander, was by far the less numerous and widespread,  
15 with only a few dozen known populations.

16 Nevertheless, the department, in a position  
17 Mr. Koch directly approved, decided that it would be  
18 perfectly acceptable to allow the clearcut logging of  
19 nearly a third of those known salamander sites, areas of  
20 old growth forest which had been specifically set aside  
21 to protect those same salamanders when they had a  
22 different name. The agency's justification was that the  
23 newly named species was not on their list of protected  
24 species. Only prompt legal action prevented the  
25 logging. A subsequent court ruling made it clear that

94

1 DFG had acted beyond its legal authority.

2 EPIC would respectfully suggest that in none of  
3 these cases has Mr. Koch demonstrated the commitment to  
4 the protection of California's precious fish and  
5 wildlife that the department needs at this historic  
6 juncture. These are not isolated instances, but  
7 examples of Mr. Koch's sometimes cavalier attitude  
8 towards the laws the department is charged with  
9 upholding and his willingness to do the bidding of  
10 powerful interests. We need a Department of Fish and  
11 Game director who will uphold the public's trust and  
12 restore integrity to the department.

13 Thank you, Mr. Chairman and Members of the  
14 Committee.

15 CHAIRMAN STEINBERG: Thank you very much.  
16 Next.

17 MR. GRADER: Thank you, Mr. Chairman and  
18 Members of the Committee. My name is Zeke Grader, and  
19 I'm the executive director of the Pacific Coast  
20 Federation of Fishermen's Association. We represent  
21 working men and women in our commercial fishing fleet.  
22 We are, in fact, the largest commercial fishing  
23 organization on the U.S. West Coast, and among others we  
24 represented what were working salmon fisherman.

25 Our position today is a lot like that of the

95

1 game wardens, which was elaborated earlier, that there's  
2 an extreme amount of frustration in our organization,  
3 but there is no official position either of opposition  
4 or support. But there are some very serious concerns.

5 Let me say at the outset a number of my members  
6 along the north coast have had experience working with  
7 Mr. Koch when he was director of region one and had good  
8 working relations with him, particularly trying to  
9 resolve some touching land issues in that. However, I  
10 think where we are right now, in an ongoing frustration,  
11 and, obviously, we have to look beyond just whether or  
12 not a person is a decent person, a good person, an  
13 accessible person, but what's been the performance of  
14 the agency. As Harry Truman said, "The buck stops  
15 here," and that's what we have to look at, is what  
16 exactly is happening.

17 Now, there's been a great deal of frustration  
18 with my members just about the lack of performance by  
19 the Department of Fish and Game. In fact, they've often  
20 wondered who are they out there representing, because at  
21 times the feeling has been that they only not care about  
22 fishermen, they don't even care about the fish much of  
23 the time.

24 Now, obviously, that can't be blamed on  
25 Mr. Koch. He's only been there since last April.

96



1 However, we have been concerned at the lack of progress  
2 since that time, particularly at looking at department  
3 funding. The department has been in continual fiscal  
4 crisis now for probably as far back as I can remember,  
5 and I've been at this job now 33 years. So it's  
6 something that we've attempted time and again, not only  
7 ourselves, but a number of coalitions, to try and help  
8 the department find a way out of its financial morass.

9 The problem we get into is while it becomes a  
10 convenient claim, "We can't do this; we can't do that.  
11 We don't have staff for this or that because of no  
12 funds," yet when we go and attempt to find funding for  
13 the department, there's absolutely not a finger lifted  
14 to try to help itself. It's as if this has become a  
15 convenient excuse to do nothing, and that's, in fact,  
16 what they've done in a great many areas, is nothing.  
17 And so as a result, many of our fisheries are in crisis  
18 because of that, and people are losing jobs.

19 The latest example, the one that really is  
20 stuck in the craw right now, is the fact that we can't  
21 even get an audit on our salmon snap program. This is a  
22 program the fisherman came to the legislature with about  
23 30 years ago, got the thing passed, offered to tax  
24 themselves -- now, there's not many people who offer to  
25 tax themselves -- to front specific things. And,

97

1 indeed, in its first years, it was beneficial. It  
2 actually paid for itself by the fact we saw increased  
3 salmon production.

4 However, in recent years we have not been able  
5 to find out what the status of that report is. We can't  
6 get an account. We can't get an audit. We don't know.  
7 All we're being told is that there's no money. We know  
8 fisherman are paying into it. There's got to be money  
9 someplace.

10 So this is -- Again, it's not a problem  
11 directly related to Mr. Koch, but it is something that  
12 has been ongoing and still hasn't been resolved, and we  
13 do need to get these financial issues resolved,  
14 particularly is first and foremost getting an audit on  
15 these snap programs that fisherman have come forward and  
16 offered to pay themselves. How often is it when you  
17 have taxpayers willing to tax themselves to put in these  
18 programs? And yet, this is the way it's treated. So  
19 that's got to be changed.

20 CHAIRMAN STEINBERG: Wrap up.

21 MR. GRADER: Yeah, I'm wrapping up here.

22 My feeling is that, again, this is not so much  
23 a judgment on Mr. Koch, but really in a sense you may  
24 have here a good man in a bad department. And I think  
25 more than anything else, this is really -- you almost

98

1 need to look at this as a confirmation of the department  
2 as a whole, and if this administration will not give it  
3 the authority it needs to enforce Fish and Game laws,  
4 and if it does not get the financial support from this  
5 legislature, then I would simply state the department  
6 gets no confirmation. Thank you.

7 CHAIRMAN STEINBERG: Thank you.

8 Ms. Guzman.

9 Mr. Koch can talk about the resolution of the  
10 housing issue and the clean water issue. Do you have  
11 any more comments on that?

12 MS. GUZMAN: Yes. For those who don't have the  
13 background, this is a migrant camp just outside the city  
14 of Los Banos. It's about 250 people, about 50 units,  
15 and it's open from May to November. And for three  
16 years -- another issue that you've inherited -- we've  
17 been trying to work with Fish and Game to hook up to a  
18 temporary line there.

19 And, unfortunately, I'm here with a bit of  
20 skepticism that this is going to happen, because -- I  
21 wish I had a picture to show you of the lines, because  
22 you can weld these lines together in probably a matter  
23 of hours. In fact, I could probably weld them together  
24 in about four hours or so.

25 It's atrocious that we have a solution to

99

1 provide 250 human beings safe drinking water, and it  
2 takes a matter of hours to do that, and we haven't been  
3 able to do it because of what I think are false reasons.

4 And I just want to share one of those false  
5 reasons that happened last year under Mr. Koch's tenure,  
6 that one of his regional directors said during a phone  
7 call, and fortunately at the time we had one of the  
8 local county supervisors on the call, who was a  
9 Republican, and he called him out on it, and what he  
10 said at the time was -- because as you notice, Senator,  
11 that one of the first criteria that Fish and Game was  
12 putting on the community before hooking them up was that  
13 they had a secure source of funding for the long-term  
14 connection, the 12-inch line to the city of Los Banos.  
15 And, fortunately, DPH really stepped up and did  
16 something that they hardly ever do and said, "We're  
17 going to commit to you," and I think the director even  
18 called the director himself and said, "This lady is  
19 going to come here. It's Prop 84 money," and you guys  
20 know that story.

21 So after that point we were on a call to figure  
22 out what we needed to do, flush the line, whatever else  
23 needed to happen. And at that point, the regional  
24 director said, "One of the other things that we're going  
25 to be adding to the MOU is that we're not going to

100

1 connect the line until you guys can secure funding for  
2 us to connect to that future line."

3 And, basically, fortunately at the time  
4 Supervisor O'Banyan called him out and said, "Are you  
5 really saying what I think you're saying here, and  
6 you're going to leverage the health of 250 individuals  
7 until you can get a secured connection to a line that,  
8 you know, is going to be there in the future?"

9 So I just want to share with you this anxiety  
10 that I have where we've heard this story before, that  
11 this connection is going to happen, and, you know, your  
12 staff, since before -- Bill Craven has been working on  
13 this issue for three years, and I really do -- would  
14 respectfully request that, again, this is a connection  
15 that takes no more than a day. It's a couple-hour  
16 connection. And if we can't get this connection done,  
17 it doesn't make any real sense to me. The City of  
18 Los Banos has always been supportive. They have  
19 reaffirmed that recently. And I would respectfully ask  
20 that you at least hold this appointment confirmation on  
21 the floor, at a minimum, until that connection takes  
22 place.

23 I have no knowledge whatsoever about the fish  
24 and wildlife issues. I'm really just speaking on behalf  
25 of these 250 individuals that -- and, in fact, for the

1 MR. GARABEDIAN: Good afternoon, Mr. Chairman  
2 and Senators. I'm Michael Garabedian representing  
3 Friends of the North Fork, that's the north fork,  
4 American River. The president stripped the part about  
5 five years ago "to protect that river."

6 We want to thank you for this essential  
7 opportunity to air these critical issues of concern. I  
8 think we would sum up our comments this way: What our  
9 experience in the north fork is, the Department of Fish  
10 and Game -- When it comes to streambed and riverbed  
11 protection, Department of Fish and Game does not have a  
12 regulatory culture.

13 Examples of what I mean by that are: We have  
14 looked to streambed alteration permits as an opportunity  
15 to participate. Well, as I'm sure you know, they're not  
16 really permits. The public has no role. There's no  
17 public hearing. There's no public appeal. Same thing  
18 when it comes to the suction dredging permits. There's  
19 no public role, no appeal, no hearing. The \$32.75  
20 permit, cheaper than a hunting permit talked about --  
21 hunting license -- earlier, is what's being used, as  
22 I'll cover a little bit later, to mine our riverbeds.  
23 And I'll talk about how we come into these very quickly  
24 and I think to the point.

25 The north fork has populations of the

1 local government who have paid about 40,000 a year to  
2 pay for bottled water -- to try to provide some sort of  
3 potable water to the community.

4 So I think it's -- you know, I'm sure some of  
5 the workers would go down and weld it themselves, if  
6 that was the issue. So the flushing has been done.  
7 There's nothing holding this up at this point. It's  
8 just a matter of...

9 CHAIRMAN STEINBERG: But you were told this  
10 morning from the Housing Authority and Fish and Game  
11 that it's all done but the hookup itself?

12 MS. GUZMAN: That's correct.

13 CHAIRMAN STEINBERG: So the hookup has to  
14 occur.

15 MS. GUZMAN: Correct.

16 CHAIRMAN STEINBERG: You're waiting for  
17 confirmation. In other words, you want to see it  
18 hooked.

19 MS. GUZMAN: I would just love for the workers  
20 to come back in May with a safe drinking water supply,  
21 and I think you have the power right now to make that  
22 happen.

23 CHAIRMAN STEINBERG: Okay. Thank you.

24 MS. GUZMAN: Thank you.

25 CHAIRMAN STEINBERG: Next.

1 yellow-legged frogs, a species with special concern  
2 and --

3 SENATOR CEDILLO: Sir, this is very  
4 interesting, and I appreciate it, but we've heard a  
5 series of indictments of the department. I think with  
6 all due respect, without any position on the director,  
7 there should be a nexus between the director's conduct  
8 in the course and scope of his duties and performance as  
9 it relates to the department.

10 CHAIRMAN STEINBERG: I was going to get to all  
11 of that. This is the last witness, or is there one more  
12 witness? Two more witnesses. Three more witnesses.

13 SENATOR CEDILLO: You've been very generous.

14 CHAIRMAN STEINBERG: What's that?

15 SENATOR CEDILLO: You've been very generous.

16 CHAIRMAN STEINBERG: I'm going to ask the  
17 remaining witnesses to be very brief, because I think we  
18 have heard a lot of it. And I want to suggest a course  
19 of action.

20 SENATOR CEDILLO: I get a sense people don't  
21 like the department, but that's not the issue.

22 CHAIRMAN STEINBERG: Right, but in a way there  
23 is. In a way there is. So let me suggest --

24 SENATOR CEDILLO: Some nexus between --

25 CHAIRMAN STEINBERG: Some nexus. Let me --

1 I will suggest a course of action as soon as  
2 we're done, but let's -- I'm not saying you're  
3 repeating, but we understand the complaint about the  
4 suction dredge mining, the easy permitting, the  
5 environmental review ongoing while the practice is  
6 allowed. We've heard all of that, so lets --

7 MR. GARABEDIAN: Well, the nexus in our case,  
8 Senator, is that we are looking to you to receive from  
9 the appointee assurances that he will bring the  
0 regulatory culture to the department.

1 For instance, for the outstanding dredging  
2 permits, we would love to see the department send a  
3 letter to the holders of the permits asking them to  
4 document how they met the conditions of the permit, for  
5 instance, their Clean Water Act discharge permits, and  
6 so forth. And we don't see why the department couldn't  
7 revoke the permits without the other obstacles that  
8 they're talking about here.

9 I just want to mention, at least briefly, in a  
0 paragraph or two, the north fork issues. This is an  
1 unregulated stream with no dams on it. Eight-inch  
2 dredging, suction dredging, is allowed on this river,  
3 which is far more than -- a huge portion of the volume  
4 of that river. It does not make any sense for that  
5 river.

105

1 The Department of Fish and Biologists surveyed  
2 the north fork and dredging. They found the channel is  
3 disturbed in numerous areas by suction dredging  
4 activities. What I found hiking up that canyon ten  
5 years ago is -- are huge pits. There is no restoration  
6 being done on these permits. There are mercury issues  
7 in this area.

8 Two years ago our lawyers prepared a memorandum  
9 explaining issues that -- I won't repeat the issues  
0 here, but the need for waste discharge permits, the need  
1 to enforce streambed alteration agreements around these  
2 dredging issues.

3 A little over a hundred years ago,  
4 Teddy Roosevelt and the Congress made the first efforts  
5 in this country to legislate wildlife protection on our  
6 public and other lands. California needs to. And if  
7 you don't act, we aren't going to have restoration. We  
8 need a director who will commit to undertake real  
9 regulation, and we're counting on you.

0 CHAIRMAN STEINBERG: We got the message. Thank  
1 you, sir.

2 Okay. Three more witnesses. Briefly.

3 With all due respect, your written, long-winded  
4 statement, we don't want to hear it. We don't want to  
5 repeat the testimony. Okay?

106

1 SENATOR DUTTON: I'd like to know if they  
2 actually got something about the director.

3 CHAIRMAN STEINBERG: We're going to get to that  
4 in moment. I understand. But it is also the purview --  
5 Let me just say it before we hear the rest of it.

6 Look it. There would be a question to ask this  
7 director, which I think would be an unfair question at  
8 this point, which is: Are these your decisions, or are  
9 these the decisions -- some of these decisions being  
10 called into question of others higher up in the  
11 administration?

12 I would choose personally not to ask that  
13 question, but what I would choose to do, and maybe this  
14 could obviate the need for the rest of this testimony  
15 today, is -- Your year is April 21st. Okay? We have a  
16 little bit of time here. We're not down to the last  
17 week. I would like to put the nomination over, and I  
18 would like the opportunity to be able to meet with  
19 Mr. Chrisman, Secretary Chrisman -- other Members might  
20 want to do the same -- and to meet with the governor and  
21 other members of the administration and, frankly,  
22 explore some of these policy issues, because they are  
23 troubling.

24 Mr. Koch, everybody says -- and I believe what  
25 I'm hearing. You've come out of retirement. You didn't

107

1 have to do it. You're a dedicated public servant, and  
2 people respect you, rightfully so. But what you've  
3 heard today is that while we are discussing your  
4 confirmation, and we will get to that, it's not just  
5 about you. It's about the direction of the department.

6 And rather than put you on the spot and say  
7 that "You or this X,Y, Z upstairs," I would prefer to  
8 put this over, given that we have until April 21st, and  
9 I would like to explore some of these questions with the  
10 appropriate cabinet secretaries and others in the  
11 administration, and let's gain a better understanding of  
12 how we, in the end, pump up, so to speak, the regulatory  
13 enforcement when it comes to suction dredge mining and  
14 when it comes to the restoration of fisheries, and,  
15 particularly, the salmon in the state of California.  
16 That's our obligation.

17 SENATOR DUTTON: I think that's a good idea,  
18 but I'm going to need more information. So are we going  
19 to have a full informational hearing about the  
20 Department of Fish and Game?

21 CHAIRMAN STEINBERG: What we may do -- I mean,  
22 some of this is going to explore -- We'll explore  
23 member -- anybody else is welcome to as well -- member  
24 to administration official. I heard you whisper  
25 earlier, Senator Dutton, that maybe what we do in the

108

1 interim --

2 And we're going to be very cognizant of the  
3 April 21st date. Don't worry. Don't worry.  
4 Maybe what we do here is that we do refer some  
5 of these questions to the appropriate policy or budget  
6 subcommittee and ask them to put on a hearing. I'm not  
7 sure the Rules Committee is necessarily the venue for  
8 it, but I think that this is important.

9 And you're -- You may be caught in the middle,  
10 you may not be caught in the middle, but we'll do right.  
11 But let's take the time and make sure we get complete  
12 answers to these questions.

13 Does that suffice?

14 Senator Aanestad.

15 SENATOR AANESTAD: In listening to the  
16 gentleman from Cal Trout and looking at the book, the  
17 answer is right here. The agency is awash in unfunded  
18 mandates. It's being asked to do too much with no  
19 funding and no authority.

20 Now, those aren't things that are going to be  
21 covered in a hearing. They're going to be covered with  
22 legislative action and budgetary considerations over  
23 months and months. So I personally don't see holding up  
24 this nomination, this particular person.

25 We've heard one person in the last two hours

1 Aanestad, I think you make a very good point. Senator  
2 Aanestad says, "Well, to change the entire department  
3 or move it in the direction you want may take a long  
4 time" --

5 SENATOR AANESTAD: Let me say one more thing.

6 CHAIRMAN STEINBERG: Go ahead, and then I want  
7 to respond.

8 SENATOR AANESTAD: When I was an assemblyman, I  
9 had several meetings with the Department of Fish and  
10 Game, not this gentleman, but I represent most of the  
11 area that everybody is talking about up here, from  
12 Sacramento up to Oregon, out to the coast in Crescent  
13 City and over to the Tahoe National Forest.

14 The number one agency that I received  
15 complaints on from my constituents was the California  
16 Department of Fish and Game. Let me tell you there has  
17 been a marked difference in the last two years, and I  
18 cannot say that they're now even in the top three or  
19 four of the complaints with my agency, and I think it's  
20 a result of a new thinking in the leadership reflected  
21 by this person.

22 So I would urge you to go ahead with this  
23 confirmation, and let's give California Fish and Game  
24 the funds -- let's give them the priority of the  
25 mandates, and then let's give them the authority and the

1 speak in opposition to the director's personal conduct.  
2 Everybody else who has complained has complained about  
3 the department, but they've accepted this person and  
4 said, "Hey." In fact, one man complained we're putting  
5 a good man in a bad department. I think that's what we  
6 want to do, and the sooner the better.

7 So I would rather see us vote this confirmation  
8 out this afternoon, say that we have a man here who is  
9 capable of carrying the message of what I just read in  
10 the Cal Trout book here, and then if you want to have  
11 hearings -- but this is going to take legislation to do  
12 away with unfunded mandates and to give them the moral  
13 authority to become a regulatory agency.

14 CHAIRMAN STEINBERG: Fair point.

15 Senator Oropeza.

16 SENATOR OROPEZA: Very briefly, I support the  
17 approach of laying it over to the next meeting, to  
18 whenever, at some point that is timely. I do hope that  
19 in the course of the investigation that continues from  
20 here, that there be some attention given to the question  
21 that was raised about the interpretation of the laws  
22 relative to someplace in between emergency and doing  
23 nothing, and what the authority is and all that. I  
24 would really be grateful for that information.

25 CHAIRMAN STEINBERG: In response to Senator

1 funding to do it.

2 CHAIRMAN STEINBERG: I get your point, but this  
3 is not just sort of a generalized discussion about  
4 philosophy or the direction of the department. There  
5 was some specific things mentioned today.

6 Tom Weseloh talked about a regulatory action  
7 before the Board of Forestry, allegedly, that the Bush  
8 administration strongly supported doing everything  
9 possible to restore the fisheries, and the department  
10 sort of turned on a dime, apparently, and took a little  
11 bit more of a middle-ground position, let's say, is the  
12 way I interpreted it.

13 Now, we don't know whether that was from  
14 Mr. Koch or higher up in the administration. We don't  
15 know that, but that's something we can explore in the  
16 short term.

17 The suction-dredge-mining issue is a timely  
18 issue, and I'm still confused about the legal issues  
19 around whether or not an environmental impact report  
20 should be completed first before it's allowed, versus  
21 allowing it while the EIR is being done.

22 Third, while although it seems to be going in  
23 the right direction, there's the issue of connecting the  
24 pipe for the farm workers of Los Banos. These are three  
25 things.

1 I'm not saying that we terminate confirmation  
2 necessarily based on these three things, but I do think  
3 they are illustrative of some of the larger issues being  
4 raised by members of the public. So it's not any  
5 prejudice to Mr. Koch or his nomination. It is just to  
6 take a breath, take a couple weeks. I want to meet with  
7 the secretary, and I want to see where some of this  
8 direction or lack of direction is coming from. I think  
9 that's the prerogative of the Committee.

10 We do have other witnesses in opposition, but,  
11 please, it's 4:30. We've heard it all, and there's  
12 going to be another hearing, so....

13 MR. TUCKER: I'll go as fast as the reporter  
14 will let me.

15 Senator, I appreciate the opportunity. I know  
16 you guys have a reputation for having --

17 SENATOR CEDILLO: Can we also ask that  
18 witnesses don't read. If you're going to give typed  
19 documents, just give them to us to read.

20 CHAIRMAN STEINBERG: Submit it for the record.  
21 Do the best you can to testify. We don't want to cut  
22 you off, but you've got to read the Committee here, and  
23 we're ready.

24 MR. TUCKER: I work for the Karuk Tribe. We're  
25 the second biggest tribe in the State of California,

113

1 4200 members for the middle Klamath region. The  
2 suction-dredge issue is phenomenally important to us.  
3 Tribal holders tell me when there's no more salmon,  
4 there's no more Karuk. That's why it's important.

5 The program is illegal by state rules and by  
6 federal rules. You started out by reading Section 5953,  
7 I think it is, that says "There will be no issuance of  
8 permits unless you find that it's not deleterious to  
9 fish." We have sworn affidavits from the department  
10 saying it is deleterious to fish.

11 Also, DFG's own rules and regs say it has to  
12 comply with federal law. In order to comply with  
13 federal law, suction dredgers should have to have a  
14 Section 402 water quality permit to comply with water  
15 quality standards. There are no permits. This is  
16 illegal.

17 So we think Mr. Koch has the authority right  
18 now, today, to shut down suction dredge mining statewide  
19 and refund the permits that have already been sold this  
20 year, and there's no reason that when we brought this  
21 issue in 2005 and won a lawsuit, we have not seen any  
22 change from status quo despite this activity being shown  
23 to be deleterious to fish in the utter collapse of our  
24 fishery. And I think I'll leave it at that.

25 CHAIRMAN STEINBERG: Very good. We will have

114

1 further time to explore this.

2 Any other witnesses in opposition?

3 Is this the last witness? Okay. Last witness  
4 in opposition

5 And briefly, sir. Thank you.

6 MR. BACHER: I have a letter I will submit. My  
7 name is Dan Bacher. I'm the editor of *Fish Sniffer*  
8 magazine, and I support many of the contentions the  
9 people in opposition have mentioned, and, you know, I  
10 oppose Koch's confirmation for a number of reasons.  
11 I'll just list them real briefly.

12 First, I agree entirely with the Karuk Tribe  
13 that the department, under his direction, has yet to  
14 take any meaningful action to reverse the decline of  
15 salmon.

16 Second, the DFG still hasn't started a process  
17 to comply with the December 2006 court order to complete  
18 an EIS and overhaul its regulations regarding suction  
19 dredge mining.

20 Fourth, and this is something -- these are --  
21 The next couple things are something that haven't been  
22 pointed out. Mr. Koch has failed to provide leadership  
23 necessary to address litigation that the department  
24 conduct an environmental review of his fish planting  
25 programs. As a result, nearly 175 fish or lakes weren't

115

1 being planted.

2 Fifth, the DFG did a fall 2008 midwater trawl  
3 survey on the delta that documented the lowest-ever  
4 recorded abundance of delta smelt, Sacramento splittail,  
5 threadfin shad, and American shad, and an alarmingly low  
6 abundance of longfin smelt and juvenile striped bass.  
7 These fish are headed over the abyss of extinction  
8 unless the DFG takes a more aggressive, more proactive  
9 approach to dealing with the three main factors that are  
10 responsible for this decline: increases in water  
11 exports, toxics, and invasive species.

12 CHAIRMAN STEINBERG: Sum it up, please.

13 MR. BACHER: Sum it up.

14 In essence, this is -- Like many of the other  
15 speakers have talked about, this is not as much an  
16 indictment on Mr. Koch, but on the department and its  
17 actions over the past year and --

18 CHAIRMAN STEINBERG: Very good. Thank you,  
19 sir.

20 Okay. Mr. Koch -- No more. That's it.

21 Mr. Koch, do you want -- You don't have to make  
22 a closing statement. I don't know if you want to  
23 respond or leave it alone for now, because you've done a  
24 good job. But I think it is the best course here to  
25 again put this over for a few weeks, and, you know,

116

1 allow us to explore some of these issues. But the floor  
 2 is yours.

3 MR. KOCH: First of all, I'm certainly not  
 4 going to argue with you in terms of the decision.

5 I just want to close with two quick things,  
 6 because everybody has to go. One is, I came back as a  
 7 passion. I'm a biologist. I have always tried and will  
 8 always try to make decisions based on sound science that  
 9 are durable, that get the biggest long-term benefit for  
 10 the fish.

11 And the one thing -- and it's just a sensitive  
 12 thing, because I've been around for 30 years. We have  
 13 the greatest department employees on the face of the  
 14 earth, and they're all dedicated. So the department may  
 15 not please everybody all the time, but our folks, you're  
 16 not going to find a finer crew.

17 CHAIRMAN STEINBERG: That says a lot about you  
 18 as a leader right there.

19 Anyway, we will put this over, and we will  
 20 notify you when it's time to reset it. We won't go  
 21 through the whole hearing, but we'll think about it a  
 22 little. But we appreciate very much your time and look  
 23 forward to seeing you again. Okay?

24 MR. KOCH: Thank you, Mr. Chairman.

25 CHAIRMAN STEINBERG: Thank you very much, sir.

1 --o0o--  
 2 I, INA C. LeBLANC, a Certified Shorthand  
 3 Reporter of the State of California, do hereby certify  
 4 that I am a disinterested person herein; that the  
 5 foregoing transcript of the Senate Rules Committee  
 6 hearing was reported verbatim in shorthand by me,  
 7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
 8 State of California, and thereafter transcribed into  
 9 typewriting.

10 I further certify that I am not of counsel or  
 11 attorney for any of the parties to said hearing, nor in  
 12 any way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
 14 this 3rd day of March, 2009.

*Ina C. LeBlanc*

18 INA C. LeBLANC  
 19 CSR No. 6713

20 --o0o--

1 Okay. Very good.

2 Okay. Not required to appear, we've got file  
 3 items C through I. Is there a motion on items C through  
 4 I? Moved by Senator Oropeza.

5 Please call the roll.

6 MS. BROWN: Senator Cedillo.

7 SENATOR CEDILLO: Aye.

8 MS. BROWN: Cedillo aye.

9 Dutton.

10 SENATOR DUTTON: Aye.

11 MS. BROWN: Dutton aye.

12 Oropeza.

13 SENATOR OROPEZA: Aye.

14 MS. BROWN: Oropeza aye.

15 Aanestad.

16 SENATOR AANESTAD: Aye.

17 MS. BROWN: Aanestad aye.

18 Steinberg.

19 CHAIRMAN STEINBERG: Aye.

20 MS. BROWN: Steinberg aye.

21 CHAIRMAN STEINBERG: All right. That will pass  
 22 to the Senate floor.

23 (Thereupon, the Senate Rules Committee hearing  
 24 adjourned at 4:31 p.m.)  
 25 ////

1 APPENDIX  
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February 10, 2009

Senator Darrell Steinberg  
Chairman, Senate Rules Committee  
Room 420  
State Capitol  
Sacramento, California 95814

Dear Senator Steinberg,

I look forward to meeting you and other members of the Senate Rules Committee. During the last 10 months that I have been a member of the San Joaquin Air Pollution Control District and the California Air Resources Board I have developed a deeper understanding and appreciation of Government and the difficult issues that the Legislature and Governor face on a daily basis. I see my appointment to these Boards as both a great honor and a great responsibility. The questions that the Senate rules committee prepared are both fair and thorough. I hope that my answers will convey to you my understanding and position on issues of air pollution and climate change with which these Boards deal. With this letter I will supply written answers to the questions in the letter you sent to me on January 22, 2009.

### **AIR REOURCES BOARD Questions**

#### **Background and goals**

*Question 1. Why did you believe that you were not the right person for the ARB? Do you still believe so? Have you reconsidered your plans to resign?*

At this time I have no plans to resign. In my first San Joaquin Valley Unified Air Pollution Control District board meeting I stated that the ARB is a great training ground for an aspiring local elected official who wants to learn about state wide issues. Since I have no desire to become a publicly elected official I thought that my membership on the ARB would be denying one of our elected officials that opportunity. Since making that statement I have had overwhelming support by my community and my patients to remain

**Senate Rules Committee**

FEB 12 2009

on the board. As a physician and long standing valley resident I have seen the negative health effects of air pollution on a daily basis and I can speak for the San Joaquin Valley at the ARB level with great authority.

*Question 2. If you do not plan to resign, what do you hope to accomplish during your tenure as a member of ARB? What are your goals and objectives as a member of the board? How will you measure your success? What specific policies do you promote to maintain the boards tradition as a leader and pacesetter in clean air policy?*

As a member of the ARB my primary goal is the same as my physician goal—that is to improve the health of the people of the state of California by working to improve air quality. I also believe that my generation is the trustee for the environment of the next generation and that out of respect for our children we as a society must confront air pollution and climate change. As a member of the ARB I eagerly look forward to helping develop practical policy to address these challenges with full knowledge that what we do at the ARB may be used as a blueprint for national policy. To accomplish these goals I feel that the ARB needs to remain appreciative and respectful to the industries that have built this great California economy so that we can move ahead with plans which do not stifle economic growth and innovation. We need to work hard to develop balanced approaches to move ahead. A necessary ingredient for our success is to have the public and government behind us. It has been my observation that the public is inadequately informed of the important direction and policies developed by ARB and that we need to devise better tools to convey this progress to our ultimate appointing authority i.e. The Public.

*Question 3. How do you view your role as one of the state's chief air regulators and as a pleasure appointment of the Governor? Do you believe you have sufficient independence to act in the public interest without undue interference from your appointing authority?*

It was a great honor to be appointed by a governor who has shown such great leadership in both air pollution and climate change issues. Certainly his passion and vision on these issues is commendable and should be emulated. Having said that, I would like to point out that the Governor's office has not given me any specific direction on any issues that we deal with in any of the two Boards to which he appointed me. Furthermore I have no political ambitions and I am not paid for these positions. I see my greatest authority on these boards is to independently act in the public interest.



### **Attainment of State and Federal Air Standards**

*Question 4. Is the administration on track to meet this goal? If not, where does it stand? What specific measures is the board taking to meet the Governor's goal? Please specify the emission reductions from each measure.*

*Question 5. What is the status of the state's compliance with the State Implementation Plan (SIP)? What additional measures need to be taken to achieve attainment of federal ambient air standards to the SIP?*

*Question 6. How much longer is needed after 2017 to achieve the remaining 10 percent compliance? Can it be done prior to the 2024 deadline? If so, should the deadline be accelerated to an earlier date? What types of air pollution sources should be targeted in order to achieve the remaining 10 percent?*

For many years air pollution in the State has been aggressively attacked by both strict regulations (as outlined in the State Implementation Plan) and incentives (such as Goods Movement Funds and Carl Moyer funds). These tools have been effective in reducing air pollution in some respects. For example, in the San Joaquin Valley the number of days over the 1 hour and 8 hour ozone standard has decreased by about 40% over the last 10 years. However the PM 2.5 three year annual average has not improved and has actually worsened.

In April of this year ARB staff will update the Board on the status of the 2007 SIP. The Board has asked to review in about six months The Heavy Duty Diesel Truck Rule, an important recent addition to the SIP. Additional measures that need to be taken to achieve attainment of federal ambient air standards to the SIP are such measures as the "Fast Track Measures" outlined by a special task force reporting to the SJVAPCD. These measures include such things as short sea shipping, high speed rail, inland ports and heat island mitigation. Other important measures will be developing programs which assist employers in encouraging ride sharing among their employees. If all these things are done we may obtain attainment before the 2024 deadline.

### **Heavy-Duty Diesel Trucks**

*Question 7. What factors did you consider in deciding to vote for this regulation? How do you balance the need to protect the public health and the needs of business and industry?*

*Question 8. What more should be done to lower emissions from heavy-duty diesel trucks?*

*Question 9. At the same hearing you mentioned the idea of implementing a tax on diesel fuel as a means for raising revenue to help fund compliance with this regulation. Please describe what the tax plan would entail and how the revenue would be allocated.*

Since diesel trucks are responsible for more than 30% of the State's air pollution it has been extremely important to target this emission source. The California trucking industry is vital to our economy. There are almost 1,000,000 large diesel trucks operating in California. That is 1 truck for every 36 people in the State. There is probably no economy in the world that has such a high ratio of trucks per capita. From a regulatory point of view this industry is unique not only because of its size and importance to our economy but also because over 30% of truckers are small business owners that have all their life savings tied up in their truck. It would be bad public economic policy to write a regulation that wipes out the economic future of all these small businesses. Furthermore it would be bad public health policy to write a regulation that strangles this industry because this would lead to wide spread unemployment and as a consequence increased financial and emotional stress on a large segment of our population. This increased stress would lead to deterioration of public health, and at the same time unemployment, and thus a loss of health insurance leading to decreased access to health care. What I am saying is that with this regulation we not only have to be sensitive to the economic health of truckers but to be considerate also to their physical health.

The Truck Rule is aggressive and if it stays on target, it will meet our emission goals. I am concerned that the rule is much more expensive than the 5.5 billion dollars that the

staff estimated and that it has the potential to be derailed by the current severe economic downturn. To help mitigate the cost of the rule some truckers have suggested to me that there be an added tax to diesel fuel which goes specifically to help pay for the rule. The tax revenue would be used for those truckers and bus companies (especially school buses) who are having the most difficulty complying with the rule. At the ARB meeting in December and the SJVAPCD meeting in January I proposed that such a tax be pursued. The SJVAPCD Board voted this to be a legislative goal. Given that the vehicle miles traveled per year for diesel trucks in California's 17 Billion miles, a 20 cent tax per gallon would raise approximately 5.5 billion dollars over 5 years. Since the December ARB meeting I have had conversations with truckers. My impression is that unfortunately many of them feel that their attendance and testimony at the meeting was not appreciated or respected. As a consequence it may be more difficult for the trucking industry to buy into this concept of a diesel tax. Nevertheless, for the success of the rule the tax should be pursued.

In regards to what can be done to lower emissions from heavy-duty diesel trucks, I think an important initiative is to pursue transportation policy which allows our trucking industry to move goods more efficiently. Major components of this policy would be short sea shipping and greater use of "piggy back" containers on rail.

#### **SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT Questions**

*Question 1. SB 719 (Machado), Chapter 728, Statutes of 2007, created four new positions on the SJVAPCD governing board that includes your new seat as a practicing physician with expertise in the health effects of air pollution. What are your goals as one of the two, new, non-local government positions on the districts governing board? How will you measure your success?*

As a physician on the SJVAPCD governing Board I have the unique opportunity to directly inform my fellow board members of the health effects of air pollution. From my medical and scientific background I feel that I can be a resource to fellow board members to help them understand some of the complicated technical and health issues with which we deal. On the other hand I have found board members very helpful in educating me on complicated aspects of local land use, transportation and CEQA issues. I have been impressed by the quality of our board members. As a physician who sees thousands of patients a year and a life long valley resident with a web of contacts in different social and economic levels, I have the unique opportunity to sample from the public its perception of the operations, successes or failures of the district. My goal is to use all

Senator Darrell Steinberg

February 10, 2009

Page 6

these experiences to help make the district function more effectively and efficiently. For years in our area there has been an unhealthy and uncooperative relationship between environmental/health groups and industry/agriculture interests. I see one of my roles to be a bridge between these occasionally bellicose opponents and to thereby help create inclusive policy that advances the interest of both groups. I will feel successful every time I see two opposing groups sitting down in the same room together trying to understand each other's issues and thereby coming up with something that works to advance the public health.

*Question 2. As a member of the district's governing board, you are appointed because of your medical expertise. As a member of the California Air Resources Board (ARB), you are appointed to represent the SJVAPCD as a whole. How do you approach your dual roles/responsibilities at the local and state levels regulating air quality? Do you consider issues from the same perspective?*

As a member of the SJVAPCD governing board I represent the SJVAPCD as a whole. I go to ARB with full knowledge that the air pollution problems of our valley are the most challenging in the state because of our unique meteorological conditions, our rapidly expanding population and our lack of adequate funding to address this challenge. Since most of our air pollution emissions are not from the stationary sources the district regulates but from the mobile sources the state regulates it is very important that our district have a strong voice in the State regulatory arena, i.e. ARB. As a physician that can directly convey the health concerns of our district to the ARB, I think I will be effective in getting this message to the state level. My approach to the state level is the same as the local level. The building of consensus between the regulated industry and health groups, environmental and environmental justice communities and local and state government remains crucial to success.

As a member of ARB I represent not only the concerns of the San Joaquin Valley but the interest of the entire state. This responsibility will require working with other ARB members to fairly distribute the resources of the ARB throughout the state.

Over the recent years ARB has been given the responsibility to direct the Climate Change Plan for our state, which will potentially be the blueprint for the federal plan. I strongly believe that for this to work there has to be a buy-in by the public, industry and local government. I do not think ARB is doing enough to keep these entities informed in this process. As a representative of a local district I will continue to bring this message to the ARB.

In summary then, I see it as my role to bring to ARB the local health concerns and planning concerns to the state level.

## AGRICULTURE

*Question 3. Please explain what you believe is a balanced approach for solving agricultural air quality issues in the San Joaquin Valley.*

*Question 4. What steps does the agricultural industry need to take to help reduce its share of air pollution? What should the district do to encourage or enforce these actions?*

Over a year ago in an interview with an environmental/health group I was asked, what is the most effective way that agriculture can help reduce air pollution in the San Joaquin Valley. My answer then was that agriculture has to stay economically as strong as possible. If San Joaquin Valley agriculture falters it will not only have the financial resources to apply air pollution control measures on the farms, but also the value of farm land will plummet. With cheap land the San Joaquin Valley becomes a bigger target for urban developers. If our valley is urbanized like other parts of the state, there will be no amount of air pollution control measures sufficient to mitigate the effects of an even more rapidly expanding population. There are technological solutions to agricultural generated emissions. Farmers have rapidly changed out old diesel pumps on their farms for cleaner diesel pumps or electric pumps. Change out to electric pumps has been slow because many of our farms are not supplied from our local utilities adequate electricity to run these large pumps. A few farmers without any financial subsidies have gotten around the inadequate supply of electricity to their farm by generating their own electricity with photovoltaic cells. Some dairy men are also generating their own electricity by harvesting methane from their manure lagoons and using it to power generators to make electricity. Methane harvesting on dairies not only reduces air polluting emission but can also significantly reduce green house gas emission. There are also "green" tractors being produced with Nox and particle filters. Unfortunately all these technologies are expensive and at this time many San Joaquin Valley farmers are not financially capable of acquiring this technology. The price of milk has drastically fallen. A former dairyman told me that because of economic disaster three San Joaquin dairymen have recently

committed suicide. Also, the biggest water district has announced it will not have any water to deliver to its farmers. This will idle thousands of acres.

The farmers who do survive these natural and economic disasters will not have the capital or ability to borrow to buy new equipment. With the deteriorating financial state of our farms there have already been many layoffs of farm workers. A recent UC study has suggested that because of lack of water over the next year the valley economy will lose over 1.6 billion dollars and 60,000 agricultural based jobs. With this some of our farm communities will be facing over 20% unemployment. Consequently, our farmers will need a large source of funding to help them transition to less polluting farms. Unfortunately at this time there is no funding available. I believe that both the SJVAPCD and the ARB need to find this source of funding if they expect significant reductions in agricultural emissions.

Now what do I mean by a balanced approach to addressing these problems? For years there have been shots traded back and forth between farm groups and environmental groups in the op-ed section of our local newspapers. To have a balanced approach these two groups must respect each other. An environmentalist in a past op-ed article in one of our local newspapers has implied that farmers have been willfully poisoning our air. A farmer's response in a letter to the editor basically declares this environmentalist and the like to be incompetents. None of these comments generate respect and mutual cooperation. In that our economy is driven by agriculture, every one in the valley is an agriculturist. In that the San Joaquin Valley has some of the worst air in the nation, every one in the valley must be stewards of our air quality. A balanced approach is to have these two groups work together to help clean our air. This can occur only with direct communication between these groups.

*Question 5 Are you still on the TRI Farms or TRI Citrus boards of directors? If so, do you believe there may be an occasion when a conflict of interest may arise? Who advises the district's board members of conflict of interest issues?*

I have not been a member of these boards in over ten years. The district's legal department advises board members on conflicts of interest.

### **Public Health/Children's /Asthma**

*Question 6. As a physician, what do you believe is the most effective way for the district to help these children diagnosed with asthma? What actions does the district plan to take in 2009 to address this issue?*

The most effective way the district can help children with asthma is to fulfill its mission to improve the air quality.

*Question 7 how does the district coordinate with local school districts to ensure that children are not outdoors during bad ozone days? What are the most effective actions the district can take to improve ozone and particulate matter air pollution?*

The district informs schools of bad air days. The schools are to restrict outdoor activity on bad air days. I have been informed by some of the volunteers that make this program work that some school districts are less than cooperative. The SJAPCD needs to find ways for this program to be functional and actively supported by every school in the valley

The most effective action the district can take to improve ozone and particulate matter air pollution is to make sure that the district's ozone and particulate plans succeed.

### **ENVIROMENTAL JUSTICE**

*Question 8. How do you factor the socioeconomic needs of the valley while fulfilling the mission to improve public health through air quality control, particularly in environmental justice communities.*

*Question 9 What steps do you support to reduce air pollution impacts in EJ communities? What specific assessment and mitigation tools does the district use so EJ communities do not suffer disproportionately from air pollution?*

The recent "Hall" report suggests that environmental justice communities in the valley are not as disproportionately affected as EJ communities is the South Bay Air Pollution Control District. In the central valley, air pollution is more of an equal opportunity health spoiler. Nevertheless, the more wealthy communities, because they have better access to health care and air conditioning can deal better with the adverse impacts of air

pollution. This disproportional protection from air pollution between wealthy and EJ communities, has motivated the District to increase efforts to assure that pollution is rapidly reduced in environmental justice communities. One way it tries to accomplish this goal is to spend a disproportionately high amount of the Carl Moyer funds in EJ communities and outreach to school districts in these areas to help them change out old school buses.

If the air district makes such strict rules that businesses lay off people or leave the area, this loss of employment would have a greater negative effect on health in EJ communities than in wealthy communities. Because of this concern, air districts always have to move cautiously to improve the air but not at the same time cause mass unemployment.

#### **TRANSPORTATION: Proposition 1B Funding**

*Question 10.* What is the status of these funds? What is the most effective use of these funds for the San Joaquin Valley? How much air pollution do you expect to be reduced in the valley because of these funds?

Because of the current California State Budget crisis, bond money at this time is not available. The 1B Bond money the valley gets will help replace about 5000 heavy duty diesel trucks. There are approximately 80,000 diesel trucks that transit through the valley each day. Heavy duty diesel trucks are the biggest Nox producers in the valley at approximately 170 tons per day. The \$250,000,000 dollars of 1B money available to the valley will help and is much appreciated, but as you can see from these numbers we still have a long way to go.

#### **SJVAPCD's Climate change Action Plan**

*Question 11.* Why did you change your position on the plan? Do you still have any of the same concerns you raised in June?

*Question 12.* Do you believe this plan is prudent for the district to considering that ARB, of which you are a member, just adopted the AB 32 Scoping Plan on December 11, 2008? How does the CCAP work in relation to the AB 32 scoping Plan?

*Question 13.* How much funding and staff time has been redirected for purposes of the CCAP? What is the projected amount of funding and staff time to be spent in 2009? How should these funds and staff time be spent?



*Question 14. Have you addressed this issue to the state yet? Have you requested additional help in funding? Given the current fiscal crisis of the state and the substantial amount of funds appropriated to the district through various sources, such as Proposition 1B and the Carl Moyer Program, why should the state provide additional funding to the district because the district decides to create a local climate change plan?*

In the Climate Change Draft Scoping Plan released by CARB in June 2008 there was not a clear delineation of the role Air Pollution Control Districts were to play in the implementation of the Climate Change Plan. Because of local district expertise in monitoring and regulating emissions, it was my feeling that Air Pollution Control Districts would have a large role in the Climate Change Plan implementation. However, in June it was premature for the district to move ahead with its own plan without coordination with ARB. I did not want the district to go through the expense of developing a plan that potentially would be rejected and not funded by CARB. At about that time I phoned senior CARB executives and expressed my concern. These actions helped spur Carb to incorporate a clearer role for the Air Pollution Control Districts in the final rendition of the Climate Change Plan.

After discussion with SJVAPCD board members I came to the realization that it is important for districts to help CARB develop policies which will deal with local land use and transportation. Because of CEQA, local air districts will probably be the lead agencies in evaluating carbon emissions and eventually verifying carbon banking. Local districts must be at the table when techniques for accomplishing this goal are developed. It will be important for all the Air Pollution Control Districts, CAPCOA, and ARB to work closely on these issues to develop procedures which work statewide and reduce inefficient redundancies. I have discussed with ARB senior staff both privately and publicly at an ARB meeting the importance of funding local air district efforts to participate in the climate change plan. This funding is important so that local air districts do not divert funds away from their primary effort to reduce air pollution. It is only reasonable that the State should reimburse the efforts of local districts since these districts will be doing a lot of the foot work necessary to implement the California State Climate Change Plan. This funding will most likely come from funds generated by CARB from a carbon tax or cap and trade program.

The coordination of Local Air Pollution Control District climate change plans and ARB climate change plan is still a work in progress.

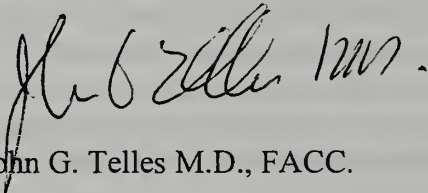
Senator Darrell Steinberg  
February 10, 2009  
Page 12

*Question 16. Do you believe the definition of significance for GHG emissions should be determined at the local or state level? For what reasons?*

GHG emissions from whatever source are disruptive to world climate. Therefore in a perfect world of justice and equality, each person in the world should be responsible for reducing their carbon footprint to a level that will prevent catastrophic climate disruption. This threshold would best be determined by an international organization such as the International Panel on Climate Change (IPCC). GHG emission reduction goals for each nation and each state should be determined by current emissions of a population. IPCC was not able to have participating countries come to such an agreement. Nevertheless some countries have seen it as their responsibility to the world environment and human health that their governments need to proceed with national climate change plans designed to hit IPCC goals of reducing GHG emissions by 80% by 2050. For the United States it would make most sense for these thresholds to be set by the national government in coordination with state governments. Given that at this time there are no national thresholds, each state is left to determine their thresholds themselves. This process will obviously translate down to the local community level, and for the process to work, local government have to be at the table to help figure out this difficult issue.

I hope that the above discourse has been helpful in your evaluation of my candidacy to membership on both the San Joaquin Valley Air Pollution Control District and the California Air Resources Board. I look forward to answering any further inquiries you may have in regards to my understanding of and positions on any of these or related issues.

Respectively Yours,



John G. Telles M.D., FACC.



## DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

1416 9th Street

Sacramento, CA 95814

916-653-7667



February 10, 2009

Honorable Darrell Steinberg, Chairman  
 Senate Rules Committee  
 State Capitol, Room 420  
 Sacramento, California 95814

Attn: Nettie Sabelhaus, Appointments Director

Dear Senator Steinberg:

The honor of Governor Schwarzenegger's appointment to serve as director of the Department of Fish and Game brought me out of retirement and back to an organization where I was fortunate to have had a career that spanned more than 30 years. During that time I served as a wildlife biologist and held positions at various management levels working with dedicated people to conserve the state's fish and wildlife resources. I accepted the appointment to become director because I have an unwavering passion for the department's mission and a deep personal concern for the natural resource legacy that we will leave for future generations. I bring to this job a keen understanding and firsthand perspective of the department's functions, challenges, and potential. I am humbled by the trust and responsibility the position will afford me should the Senate choose to confirm me.

Thank you for the opportunity to share with you my goals as director as well as other information in response to the Committee's written questions. Also attached is my updated Form 700, Statement of Economic Interest.

- 1. What do you hope to accomplish during your tenure as Director of the Department of Fish and Game? What goals do you have for the department, and how will you accomplish them? How will you measure your success?***

My goal is to strengthen the department's ability to carry out its public trust obligation. This requires significant attention to climate change, habitat and natural community conservation planning and water management. It also requires finding stable funding, developing future leaders within the Department, and cultivating constructive relationships. During the past 10 months, I have taken several steps in this direction.

For example, I have established the Ecosystem Conservation Division within the department to focus our commitment to large-scale, multi species habitat and natural community conservation planning. The division also provides leadership in addressing climate change impacts and promoting renewable energy in a manner that conserves

Senate Rules Committee

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133

Appointments

fish and wildlife resources. It includes the department's Water Branch, which plays a key role in addressing water-related issues that affect fish and wildlife. The department is also involved in important conservation efforts throughout the state, such as those currently under way for the Delta and renewable energy projects. Additionally, I established a drought task force to identify ways to minimize the impacts of drought on fish and wildlife resources.

I am cultivating constructive relationships with a variety of constituencies. In order to excel in its mission now and into the future, the department must have partners in stakeholders and nongovernmental organizations, federal, state, and local governments, and within the Legislature. We can accomplish more for our diverse natural resources if we collaborate in finding solutions to the complex challenges we face. The Klamath Agreement in Principle for the largest dam removal project in the nation's history, the decommissioning of fish barriers and improved flow in Battle Creek, and the Lake Davis pike eradication project are recent examples of this.

I have also elevated the issue of workforce succession planning. The department needs to expand its workforce leadership capabilities and I have initiated actions to begin doing just that.

**2. *What do you believe are the most serious issues facing your department?***

The department's responsibilities have significantly increased since it was created more than 100 years ago. Although our mission remains the same, we are continuously working to effectively adapt to our ever expanding role, the state's growing population, and the diversity of our constituencies.

One of the most serious issues facing California's fish and wildlife is climate change. Scientists suggest changes in precipitation patterns and more frequent droughts, like the one we currently face, will change the landscape and place new pressures on the state's fish and wildlife populations. In addition, impacts of climate change will likely create conflicts among fish, wildlife, agricultural and urban water users. Effectively adapting to these impacts will require close coordination and cooperation between a diverse group of agencies and stakeholders.

Another serious issue is the department's lack of stable funding. The department is blessed to have public-private partnerships that assist us in our efforts. However, we need stable funding to support our mission and critical core functions.

Those functions, including monitoring and assessment of fish, wildlife and their habitats, cannot continue to be subject to fluctuating financial cycles and fiscal uncertainty. In light of increasing human pressures and climate change, we must have reliable information about those resources. While this subject matter might seem mundane, it is fundamental to the department's success as a scientific organization charged with public trust responsibilities.

Stable funding is also essential for the department's Law Enforcement Division. With this in mind, we are educating district attorneys and judges on pertinent laws in an effort to increase fines and enhance penalties for poaching and other violations. With ever increasing mandates and an expanding human population, this core department function must be adequately equipped to keep pace.

Succession planning must be a priority for the department to help ensure continuity and stability in carrying out its public trust responsibilities in the years to come. The value and dedication of the department's employees cannot be overstated. However, approximately 19 percent of the department's workforce is 55 years of age and older. Considering the statewide average retirement age of 60, these employees will likely retire in the next three to five years. With these retirements go vast amounts of institutional memory, experience, and connection to communities and stakeholders. This seriously impacts the department's ability to carry out its public trust responsibilities. Therefore, recruitment and retention of quality individuals, as well as training, mentoring and development of the department's current workforce, is essential.

**3. *How do you stay informed of the fiscal resources available to your department? How do you prioritize activities if not all can be undertaken? What are your priorities?***

I take responsibility for the department and its fiscal resources. The Chief Deputy Director and Deputy Director for Administration assist me in that effort by keeping me informed on a daily basis along with the Department of Finance and others in the Administration.

Under the current budget and economic circumstances, prioritizing the department's activities is a particularly sobering task. The department has a variety of responsibilities and mandates (both funded and unfunded) and is supported by a variety of fiscal resources, including dedicated and non-dedicated funds, fees, grants, and the state's General Fund.

When prioritizing activities, my goal is to preserve the department's critical core functions. We must get the "biggest bang for our buck" in terms of long-term benefits for fish and wildlife. In prioritizing, I consider statutory constraints (e.g., dedicated funding, fees), core functions, public health and safety, maintaining investments (e.g., wildlife areas, ecological reserves) and revenue generation.

4. ***How do you grade your own department on how it has carried out its public trust responsibilities? What areas do you believe need improvement so the department can carry out its mission to “maintain native fish, wildlife, plant species and natural communities for their intrinsic and ecological value and their benefits to people? This includes habitat protection and maintenance in a sufficient amount and quality to ensure the survival of all species and natural communities.”***

Given its available resources and the many demands placed upon it, I think that the department does a very good job in carrying out its mission. We operate on many fronts to achieve our mission with lands, water, fisheries, wildlife, conservation planning, enforcement, and spill prevention and response programs. These operations have contributed significantly to the conservation, protection, and management of the state's native fish, wildlife, plants, and their habitats.

However, there is always room for us to improve and more must be done. With greater emphasis on large-scale habitat and natural community conservation planning, climate change adaptation, and water management, and by engaging with our various constituencies in constructive problem solving, the Department can achieve more for the state's natural resources with the limited resources it has. This is essential given the demands of a growing population combined with the challenges of climate change impacts and unpredictable budget cycles.

5. ***What percentage of your budget is supported by General Fund monies and what percentage comes from fees and permit applications? Given the reductions in General Fund support for the department, how do you prioritize the many duties you have? Do you have any proposals for increasing revenue to the department?***

The General Fund portion of budget is decreasing while the Fish and Game Preservation Fund (FGPF) portion is increasing. From this fiscal year to next, General Fund support will be reduced from 17.9 percent to 16.5 percent of the budget, while license fees and permits have increased from 22.5 percent to 25.8 percent. Thus far, when the department's budget has been cut, we have been able to redirect critical functions, such as enforcement, from the General Fund to FGPF.

Ensuring more stable funding for the department is essential to the department's ability to carry out its public trust responsibilities. In the face of the state's fiscal crisis I am welcoming discussion with all those who have a stake in the solution.

**6. *Please describe the department's activity in trying to better understand the open water fish decline.***

The department is actively engaged in numerous activities to address the decline of open water (pelagic) fishes. Our long-term monitoring surveys since the late 1950s were instrumental in detecting the marked declines of four pelagic fishes in the upper San Francisco Estuary. The department continues to conduct annual monitoring surveys. Since 1972, the department has been a leader and major participant of the Interagency Ecological Program (IEP), a collaboration of three state and six federal agency partners working together in the San Francisco Estuary and Delta to coordinate monitoring and research. The IEP formed a Pelagic Organism Decline work team to examine the potential causes for the pelagic fish decline. The department is working tirelessly to examine the interaction of multiple stressors in the Bay Delta and the decline of pelagic fish populations.

**7. *When do you expect the department will have enough information to begin adopting management strategies that will first stabilize and then recover fishery populations? Is recovery of these species an identified objective of the department, and if so, in which documents is this objective identified?***

The department is already using several management strategies based on existing information to recover fishery populations through its implementation of the CALFED Ecosystem Restoration Program (ERP). The ERP has developed a conservation strategy for the Bay Delta and Suisun Marsh, which includes recovery targets from existing recovery plans that are being updated for Delta native fishes and developed for Central Valley salmonids. The conservation strategy includes habitat restoration to restore ecological processes and enhance productivity within the Delta. It also addresses other stressors and recognizes the need to change where and how water is exported from the Delta. The department supports the fish recovery goals of the ERP.

The department is also actively participating in the Bay Delta Conservation Plan (BDCP). This effort is a multi-agency and stakeholder planning and environmental permitting process, under the federal and state Endangered Species Acts and the state's Natural Community Conservation Planning Act, to restore habitat for fisheries in the Delta and improve water delivery reliability in California. The Delta Regional Ecosystem Restoration Implementation Plan, consisting of conceptual models for many aquatic species, habitats, and stressors in the Delta, is presently being used to test potential BDCP conservation actions. These models incorporate the current state of knowledge and understanding of fish species and ecological processes.

**8. *Has your department been working with the state and regional water boards to address the issue of increased ammonium in the Sacramento-San Joaquin Delta? What are the possible solutions to address this issue?***

The department, through its participation in the Interagency Ecological Program, has been working with the State Water Resources Control Board and the Central Valley

Regional Water Quality Control Board to investigate if there is a link between the Pelagic Organism Decline (POD) and ammonia. The department is participating in discussions next month with the CALFED Science Program and the Central Valley Regional Water Quality Control Board to determine future studies needed to better assess the role of ammonia in the Delta. Finally, the department is joining other agencies, including the State and Regional Water Quality Control Boards, in the "Ammonia Summit" scheduled for June 2009.

The State Water Resources Control Board, along with the department, the Natural Resources Agency, California Bay-Delta Authority, and the California Department of Water Resources, is an active state participant on the BDCP Steering Committee. Ammonia is one of a number of possible stressors that is being looked at within the context of the BDCP process.

**9. *To what degree are headquarters and regional offices experiencing retirements from top-management and manager-level employees? If such retirements are occurring, do you have succession plans?***

There are 98 employees in the department at supervisory and top management levels who are over the age of 55. That is more than 30 percent of all supervisors and managers. Since 2006, the department has experienced 32 retirements from first line to senior management levels. This is approximately 16, or five percent of supervisors and managers retiring per year.

As I've mentioned, the department's succession planning is one of my top priorities. This includes leadership development and supervisory training, mentoring of up and coming leaders, and filling positions as early as possible to allow for adequate transition.

Under my direction, the department's succession planning activities are already underway. The department's Human Resources Branch is actively working with managers to develop the most effective methods to ensure the department's future management team and workforce. I have also begun to expand this effort to include internal and interagency cross-training opportunities where employees take temporary assignments to gain different perspectives and learn about other functions within and outside the department. During my tenure as director, employees will take advantage of leadership training, temporary assignments and exchange opportunities that will afford them a firsthand understanding of different points of view, roles, responsibilities, and challenges.

**10. *Are headquarters and regional offices experiencing any problems with employee retention or pay equity? Please describe how the department plans to reconcile these issues.***



Generally, the department has not lost a significant number of employees to other state agencies or to other public or private sector jobs. However, pay equity continues to be a concern with the Fish and Game Warden classification as compared to other state peace officers including those in Bargaining Unit 7, Protective Services and Public Safety. Fish and Game Warden salaries significantly lag behind other law enforcement classifications that have the same responsibilities. Warden cadet recruitment would improve and may bring in a more diverse group of individuals if the salaries were comparable to other peace officers in the state.

Additionally, pay disparities for employees in the Biologist classification relative to employees in Environmental Scientist classification is also a concern. Currently, pay for Biologists lags behind pay for Environmental Scientists, although the responsibilities for these classifications are very similar. In addition, much like the Warden classification, pay for professional scientists lags well behind pay for state jobs and duties for analogous scientific and technical classifications.

**11. *What effect has the four-year pay increase had on retention and hiring of new wardens? How many wardens are currently available in the field, and what is the approximate size of the area each is expected to cover? Are you satisfied with the current warden staffing levels? What should the warden staffing level be to adequately protect the state's natural resources?***

The four-year pay increase has had a positive impact on retention of wardens, most notably in the ranks of those eligible to retire. Though the number of wardens eligible to retire remains very high, (more than 60 wardens in the current year and an additional 36 wardens in the next three year period), the rate of retirement has slowed with the pay incentive. However, the retention benefit with the salary increase will diminish at the end of this calendar year for those 50 years of age and older.

Hiring of new wardens is at a slight increase due to a combination of factors. The department has implemented an aggressive recruiting program. In addition, there was the four-year pay increase. Although there remains a significant salary disparity between wardens and other peace officers throughout the state, the salary increase was helpful in attracting new recruits. Finally, the department's new Peace Office Standards and Training Fish and Game Academy at Butte College offers an associate's degree in Wildlife Law Enforcement to self-sponsored cadets, which is an added incentive.

Wardens make, in many cases, in excess of 50 percent less in salary and benefits than other state peace officers. With the 10 percent reduction in pay due to the recent furlough, the Law Enforcement Division expects retention difficulties to increase. It will force some wardens to migrate to more traditional and higher paying law enforcement agencies.

Warden coverage varies greatly throughout the state. Some warden districts cover an entire county, while others have several wardens assigned to a small geographic area

where there is a significant population requiring a tremendous workload and additional staffing. The 370 allocated warden positions cover 159,000 square miles, including 30,000 miles of rivers and streams, 4,800 lakes, an 1,100 mile coastline with jurisdiction that extends 200 miles from shore, 66,000 fish businesses, one million registered vessels, habitat protection responsibilities to support all wildlife species, and all off-highway pollution events impacting wildlife and waterways.

California ranks lowest in the nation for the number of wardens per capita and among the lowest for the number of wardens per square mile of land. As examples, the State of Florida has a similar marine component as California with Marine Protected Areas and approximately the same number of registered boaters, but much less diversity of ecosystems and land mass. Florida has only 15 million residents as opposed to California's 38 million, but they have 753 game wardens. Texas, which has approximately 80-90% of its land held privately, as opposed to California's similar percentage in public land holdings, employs 540 wardens. If the department were to have coverage equal to states of similar size and resources, we estimate that well over 1,000 wardens would be needed to protect the state's wildlife resources.

**12. *What is the extent of harmful algal blooms in inland and marine waters? How serious are the negative effects that fisheries and marine mammals experience?***

Harmful and nuisance blue-green algal blooms have been known to occur in many California inland waters during at least the past 50 years. Blue-green algal blooms generally have the potential to cause indirect negative effects such as warmer temperatures, higher turbidity, increased nutrient loads and organic matter, and lower oxygen levels within reservoirs and the rivers they feed. These indirect effects can adversely affect fish by impeding growth and decreasing survival.

Harmful algal blooms negatively affect California's marine environment by producing certain algae of domoic acid or other toxins. These toxins subsequently build up in shellfish and smaller fish that utilize the algae as a food source. These toxins then bioaccumulate and can have lethal toxic effects on marine birds, mammals, and humans. Other negative effects include oxygen depletion that can cause fish die-offs.

**13. *How does the department plan to address this issue of negative impacts to inland and marine species?***

With respect to addressing the inland waters issue, the department consults regularly with state and federal agencies responsible for implementation of water quality regulations. We actively engage the State Regional Water Quality Control Boards to address sources of nutrients or contaminants in impaired waters such as the Klamath River.

In the marine environment, the department often responds to fish kill events to determine whether the fish kill was the result of a spill or a harmful algal bloom.

Additionally, the department assists the California Department of Public Health in collecting water samples to help track biotoxin impacts.

**14. Do you believe that the regulations adopted by the Board of Forestry and Fire Protection are adequate to restore the Coho populations? If not, what additional measures should be taken?**

The department and the Board of Forestry and Fire Protection (Board) recognize that restoring coho salmon populations will require additional measures. Currently the Board is considering improvements to the Threatened and Impaired Watershed Rules. The department is actively engaged in providing support to that process. We have reason to be optimistic that these results will lead to better protection for coho salmon, as well as an improved rate of recovery for coho salmon habitat. Improvements may include measures to improve water temperature, large woody debris recruitment and reduction of sediment delivery to streams from roads.

Additionally, earlier this month, the Board unanimously approved a revised Joint Policy Statement on Pacific Salmon and Anadromous Trout, which establishes comprehensive goals to recover anadromous fishes. The department was active in developing the policy and supports it. I am requesting that the Fish and Game Commission consider it for adoption at its March meeting.

**15. What are the current explanations for the decline in the state's salmon and trout populations? What can the department and other state agencies do to restore the health of the state's native fishes?**

Salmonid populations have declined within California due to a combination of factors that have adversely impacted the quality and quantity of their habitat. These factors include alteration of natural stream flow patterns, floodplains and channels; physical impediments to fish passage, sedimentation, urban and rural waste discharges, loss of genetic diversity, introduction of non-native species and poor ocean conditions.

While ocean conditions will always play a significant role in influencing salmon population conditions, fresh water habitat protection and restoration is a key to restoring salmonid populations statewide. The department shares this goal with landowners, conservation, sport and commercial fishing interests, tribes, and federal, state, and local agencies. The department is working with these interested stakeholders now to fund and implement effective habitat restoration projects, conduct monitoring, and address impacts of habitat conversion, water management, and other stressors. The department is also implementing other recovery actions and developing conservation plans.

In conclusion, I am humbled by opportunity to serve as Director of the Department of Fish and Game. I look forward to further addressing these issues and any other concerns you may have during my confirmation hearing later this month.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Koch". The signature is fluid and cursive, with the first name "Donald" written in a larger, more prominent script than the last name "Koch".

Donald B. Koch

Attachment

cc: Hon. Sam Aanestad  
Hon. Gilbert Cedillo  
Hon. Robert Dutton  
Hon. Jenny Oropeza

January 26, 2009

Nettie Sabelhaus  
Appointments Director  
Senate Rules Committee  
Room 420, State Capitol  
Sacramento, CA 95814-4900

Dear Ms Sabelhaus:

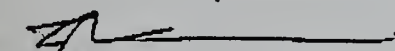
Per your request I am sending you my answer for the questions you have sent me. Because I am a new appointee to the board I am not qualified to answer some of the questions, however I did try to give my answers as much as I can.

If you have any question or need more information please feel free to contact me.

The original copy will be mailed to you today.

Thank you.

Sincerely,



Charles Kim  
Appointee  
Acupuncture Board

**Senate Rules Committee**

JAN 27 2009

**Appointments**

CALIFORNIA LEGISLATURE

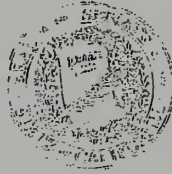
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SAM AANESTAD  
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT  
SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

**SENATE RULES COMMITTEE**

DARRELL STEINBERG  
CHAIRMAN

January 6, 2009

Charles J. Kim

Dear Mr. Kim:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Acupuncture Board on Wednesday, February 18, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by January 27, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 27<sup>th</sup>.

**Goals**

1. *What are your goals and objectives as a member of the Acupuncture Board? What do you hope to accomplish during your tenure? How will you measure your success?*
2. *What are the highest priorities of the board? How will they be accomplished?*

**Public Outreach and Access**

The Acupuncture Board has responsibility for licensing and disciplining acupuncturists. Its 2007–08 annual report indicated that there were 8,500 licensed acupuncturists in the state. By statute, protection of the public is the board's highest priority. Once considered an alternative medicine, the use of acupuncture for ailments from migraines to sports injuries is becoming more mainstream. This, in turn, has led to an increase in the number of consumers seeking treatment, many of whom have little prior familiarity with the practice.

3. *How does the board ensure that members of the public—including those with limited English proficiency—can participate in or access information about its activities? What effort does the board make to educate and inform consumers regarding the regulation of acupuncture, where to file a complaint, check a license, etc.?*
4. *The Acupuncture Board posts meeting agendas and minutes on its Web site; meeting materials may be separately obtained upon request. Other boards, such as the Board of Behavioral Sciences and the Board of Pharmacy, post their meeting materials on their Web sites, in addition to agendas and minutes. Has the board considered posting its meeting materials online? If not, why not?*

### **Oversight Issues**

In 2004 a Little Hoover Commission report urged the board to develop consumer protections for herb products. Although the formal regulation of herbs is beyond the board's purview, California does include herbs in the scope of practice for acupuncturists. Acupuncturists are required to receive training in drug and herb interactions as part of their core curriculum. Another section of the commission report raised public safety concerns about disease protection. In response, the board banned the use of reusable needles and now requires sterile, single-use, disposable needles.

5. *How does the board enforce the single-use needle requirement? What staff are available to you for enforcement?*
6. *Do you believe the board's enforcement program is meeting the board's public protection mandate?*

### **Board Member Training**

Business and Professions Code Section 453 requires that every newly appointed board member shall, within one year of assuming office, complete a specified training and orientation program offered by the Department of Consumer Affairs. We are advised that you have already attended the training.

7. *What is your assessment of the usefulness of the training? Do you have suggestions on how the training could be improved?*

## **School Approvals**

Current statute requires that an applicant for a California license to practice acupuncture must complete an education and training program that is (1) approved by the board, and (2) offered by a school that was approved by the former Bureau for Private Postsecondary and Vocational Education. However, the bureau was sunset in 2007 and, therefore, no longer provides school approval services.

The Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) is the nationally recognized accrediting agency for the field of acupuncture and oriental medicine. While many other states defer to ACAOM accreditation as being a sufficient condition for applicants to take the licensing exam in their states, California does not accept accreditation by ACAOM, nor does it require graduation from an accredited school as a condition of being eligible to take the licensing exam. Instead, it conducts its own approval process of schools.

There are approximately 60 acupuncture schools throughout the U.S., 35 of which are approved by the California Acupuncture Board. Nineteen of the California-approved schools are located in California and 16 in other states.

8. *What actions has the board taken in response to the sunset of the bureau?*
9. *How have acupuncture schools and students been affected by the bureau's sunset?*

## **Licensing Exam**

The board currently develops and administers its own licensing exam. Conversely, most states automatically accept applicants who have passed a national exam administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

The California licensing exam is offered several times per year and is offered in Mandarin, Korean, and English.

In 1991 the board rejected a recommendation of the Department of Consumer Affairs' Office of Examination Resources to administer the exam in English only, but voted to continue to evaluate issues stemming from administering the exam in languages other than English, including the consistency of exam results. Despite continued disparity in exam results, the board has continued to offer the exam in all three languages.



However, in response to concerns that lack of fluency in English could result in patient harm, the board recently began efforts to add an English competency component to the exam.

10. *How does the board monitor public comment about the board's decision to require an English competency exam?*
11. *Has the board identified any problems with administering the licensing exam in languages besides English? If so, what steps is the board taking to address those problems?*
12. *Do you believe the board should continue to offer the licensing exam in multiple languages?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:TS

cc: Acupuncture Board

## Goals

### 1. What are your goals and objectives as a member of the Acupuncture Board? What do you hope to accomplish during your tenure? How will you measure your success?

- Goals and Objectives
  - Make sure that the public and the consumers are protected.
  - Establish the policy guidelines and regulations for the schools to provide quality education for acupuncture students and practitioners.
  - Implement the policies mandated by the legislature.
  - Inform and seek support from legislators in the areas that need new legislation.
  - Continuously find ways to improve the quality of the medical services.
  - Improve and modify the enforcement procedures.
  - Regularly review the contents of the licensing exam and adjust to reflect the needs of the public and to improve the quality of the exam.
  - Monitor consumer complaints and make necessary adjustments.
  
- Hope to accomplish
  - Improve the quality of the acupuncture schools by strengthening the school recertification process and require ACAOM accreditation as a requirement to teach acupuncture.
  - Improve the quality of the licensing exam
  - Improve English proficiency of the students by requiring higher TOEFL test scores
  - Promote better communication between the practitioners and the consumers.
  - Make sure that the materials are free from any chemical or toxic contamination.
  - Improve the quality of the website and make it more user friendly.
  
- Measures your success?
  - Compile and compare the key statistical information.
  - Increasing number of English speaking practitioners and consumers.
  - Organize an annual acupuncture summit or retreat inviting all the stakeholders.
  - Strengthened and increased enforcement activities.

2. What are the highest priorities of the board? How will they be accomplished?

- Highest priorities
  - School accreditation and the monitoring the quality of education
  - Language proficiency.
  - Eliminate/diffuse lack of communication between acupuncturists, the public and the board.
  - Address lack of information in English and Misinformation.
  - Address lack of enforcement and quality control staffs.
  - Improve inefficient board meeting and the quorum requirement – all five members must attend, not majority.
  - Making acupuncture as the secondary and alternative medicine and getting mainstream recognition.
  
- How to accomplish?
  - Strengthen the school approval process and strengthen the recertification of existing schools.
  - Require higher TOEFL scores
  - Require wall information and regulation poster.
  - Develop more English language information materials
  - Increase the number of staffs by adding few more dollars to the fee
  - Change the quorum requirement from 5 members to simple majority and hold board meetings at least 4 times per year if not every two months.
  - Convince mainstream insurance companies and western medical centers to accept acupuncture as an alternative medicine.

Public Outreach and Access

3. How does the board ensure that members of the public – including those with limited English proficiency – can participate in or access information about its activities? What effort does the board make to educate and inform consumers regarding the regulation of acupuncture, where to file a complaint, check a license, etc.?

- Information access
  - Upgrade the acupuncture board website by adding Korean and Chinese translation for the Korean/Chinese speaking consumers and practitioners.
  - Three language wall poster.

- Standard brochures and information literature in at least three languages
- Email notification network
- Educate and Inform Consumers
  - Require all clinics to post the rights and the responsibility poster including self addressed envelopes
  - Maximize the ethnic media network for the dissemination of recent press releases.
  - Require practitioners to explain the treatment plan and the complain
  - Operate 24 hour hotline in three languages, English, Korean and Chinese
- 4. The Acupuncture Board posts meeting agendas and minutes on its website; meeting materials maybe separately obtained upon request. Other boards, such as the Board of Behavioral Science and the Board of Pharmacy, post their meeting materials on their websites, in addition to agendas and minutes. Has the board considered posting its meeting materials online? If not, why not?
  - Posting the board meeting material?
    - Two board meetings I've attended, I don't believe the board discussed this issue when I attended the meeting.
    - Unless the legal counsel objects I don't have any problem posting the meeting materials.
    - Except some personnel and legal matters I do support uploading the meeting materials

### Oversight Issues

- 5. How does the board enforce the single-use needle requirement? What staff are available to you for enforcement?
  - Require the clinic to post the single-use needle requirement notice in every treatment room. I don't think we have enough manpower to enforce this requirement. We can only rely on the consumer's complain and random site visits by the staff. Unless the requirement is well communicated it is almost impossible for the board to monitor and enforce the requirement. I really feel that we need more enforcement staff to right the many wrongs.
- 6. Do you believe the board's enforcement program is meeting the board's public protection mandate?

- No. Not enough manpower and also hard to catch the violations. More than anything else the materials to make herbal medicine are imported from China. According to some of importers many are contaminated with heavy metal and sometimes fertilizers and other toxic materials.
- To guarantee the quality and safety of the materials FDA and the state agencies need to closely monitor and find a way to protect the health of the patients.

### Board Member Training

7. What is your assessment of the usefulness of the training? Do you have suggestions on how the training could be improved?

- The usefulness of the training
  - It was very useful for me to learn the do's and don'ts. Especially the meeting rules and regulations, conflict of interests and also meeting the staff in charge was helpful.
- How to improve the training
  - Too much information for me to digest in one day.
  - Not enough time to ask more specific questions.
  - Online refreshing course and update on the changes will be very helpful.

### School Approval

8. What action has the board taken in response to the sunset of the bureau?

- Any action for the sunset of the bureau
  - As a newly appointed board member. I don't have any idea what actions has been taken. Last two board meetings I've attended the executive officer mentioned about the sunset of the bureau. I am not sure the chair of the board is working on the sunset or not. I do not have any knowledge about this.

9. How have acupuncture schools and students been affected by the bureau's sunset?

- Impact on the schools and the students
  - It will be detrimental to the future of the acupuncture profession, especially the schools and the profession. Without the bureau and the board it will be chaotic. The schools will not be able to

provide career guide for the future acupuncturists and the students, the curriculums and the certification of the licensees also will be affected.

- It took many years of struggles and fight for acupuncture to earn this much respect and to stabilize as a source of alternative medicine.

### Licensing Exam

#### 10. How does the board monitor public comment about the board's decision to require an English competency exam?

- English competency exam
  - There are mixed public opinions. Many are in favor of the requirements and also there are many who oppose. Whenever we have a board meeting many representatives come and join us to express their support and opposition on certain matters. By listening to the speakers we can learn a lot about public opinion.
  - In general the public, especially Chinese and Koreans, feel that Koreatown and Chinatown are overly saturated with acupuncturists and herbal medical doctors.
  - For the acupuncture industry to become a major medical services provider certain level of minimum English requirement is necessary in near future.
  - The board already discussed the need to require higher TOEFL score for the clinic. We really need acupuncturist who can communicate in English fluently.

#### 11. Has the board identified any problems with administering the licensing exam in language besides English? If so, what steps is the board taking to address those problems?

- Not that I know of. I know in the past there were some problems, however, many students do learn better and understand better if they are taught and took test in their own mother language.

#### 12. Do you believe the board should continue to offer the licensing exam in multiple languages?

- Yes. The student can learn better and the teachers can teach better. It is important for a patient to meet a good doctor not necessarily a good speaker. There are many good practitioners who can not communicate in their own languages.
- At least Korean and Chinese language licensing exam should be there.

CALIFORNIA LEGISLATURE

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SECRETARY OF THE SENATE  
NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIRMAN

December 18, 2008

Judith N. Frank

Dear Ms. Frank:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the California Health Facilities Financing Authority (CHFFA) on February 18, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by January 9, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 9<sup>th</sup>.

**Accomplishments and Goals**

1. *You previously served on this body from 2002-2004 and have recently served since 2007. Please provide a brief statement of your accomplishments as a member of CHFFA.*
2. *What are your goals and objectives as a member of CHFFA? What do you hope to accomplish? What challenges do you anticipate to meeting these goals? How will you measure your success?*
3. *What do you believe are the most pressing issues that CHFFA is currently facing?*



### **Children's Hospital Bonds**

Under the Children's Hospital Program, CHFFA awards grants to certain children's hospitals to fund capital improvement projects. This program was created by:

- Proposition 61, passed by California voters on November 2, 2004, which enabled the State of California to issue \$750 million in General Obligation bonds.
  - Proposition 3, passed by California voters on November 4, 2008, which enables the State of California to issue \$980 million in General Obligation bonds.
4. *How does CHFFA monitor the Children's Hospital Program?*
  5. *Have all Proposition 61 funds been awarded? If not, what is the timeline for awarding and issuing the remaining Proposition 61 funds?*
  6. *What is the projected timeline for issuing Proposition 3 funds?*
  7. *What projects are in the pipeline to receive these grant funds?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:MB

cc: California Health Facilities Financing Authority



*JUDITH FRANK*

January 9, 2009

Nettie Sabelhaus  
Senate Rules Committee  
Appointments Director  
Room 420  
State Capitol  
Sacramento, CA 95814

**Senate Rules Committee**

JAN 09 2009

**Appointments**

Dear Nettie:

As I enter my seventh year on CHFFA, I am amazed at the changes that have taken place over the years. What started as a bit of a "rubber stamp" group has now emerged as a vital partner in addressing the State's health care issues, financial problems, and administration of several new funding programs entrusted to the Authority. More recently, we have found ourselves in the middle of state and federal financial crises. I believe we have responded promptly, helping our borrowers weather numerous storms.

In preparation for the Senate Rules Committee confirmation hearing on February 18, 2009, let me respond to Mr. Steinberg's letter dated December 18, 2008.

**Accomplishments, Goals, and Issues**

CHFFA operates as a collaborative body among its voting members and the staff. The accomplishments cited below reflect the results of this approach.

*Accomplishments*

- Participated in resolving a contentious and difficult issue related to pass-through savings achieved by large hospitals through the issuance of CHFFA-approved tax exempt financing.
- Increases loan amounts available through our HELP II Program. Over the years, the HELP II program has been very successful in providing vital help to small health care facilities throughout the State.
- Participated in establishing criteria and regulations for authorizing the issuance of grants in connection with the Children's Hospital Bond. CHHFA acted very quickly after Proposition 61 was passed (November 2004) to adopt and implement the enabling regulations.

1/6/2009

1

- Established applicant and administrative criteria for \$40+ million Anthem-Wellpoint Grant Program. Funds were distributed to 151 health care facilities in amounts averaging approximately \$275,000.
- Provided emergency loans to several rural facilities during the 2008 budget crisis. Borrowers promptly repaid these short term loans as soon as the State budget was passed.
- Participated in emergency meetings during 2008 to help our biggest and most prestigious borrowers weather the bond Insurance crisis.
- Established new policies and procedures relative to public testimony and submission of position papers during CHFFA meetings. These changes have given public comments more balance and resulted in more cogent public presentations.
- Reduced paper work associated with HELP II application.
- As interest rates dropped over the years, CHFFA actively assisted existing HELP II borrowers lower their debt service by allowing them to re-finance as opportunities arose. CHFFA fees were kept to a minimum so that the benefits of the refinancing could be maximized.
- Helped establish a "continuing education" policy for CHFFA members regarding intrastate relationships such as Cal-Mortgage and external market forces such as bond insurance issues. Briefing presentations are now a regular part of CHFFA meetings

### *Goals and Objectives*

- Increase Outreach of Help II Program
- Prudently distribute the existing and new Children's Hospital Bond Fund
- Explore new program opportunities that traditionally have been outside the normal scope of CHFFA's programs, particularly as other State funding programs face challenges.
- Improve our oversight of real estate and facilities issues related to financing requests. In many cases, it appears that applicants could improve their transactional and regulatory skills if CHFFA presentations required slightly more information about these aspects of the proposed financing.

### *Most Pressing Issues*

- Expand Bond Market Share  
The most pressing issue we now face is how to prudently increase our 'market share' of large bond offerings. CHFFA is, in a sense, a "Robin Hood" organization. We depend on the bond fees generated by the large hospital bonds to fund CHFFA operations and the HELP II program. Now that the uncertainty of the pass-through issue is generally resolved, CHFFA needs to be sure that health care institutions know that CHFFA is once again competitive and "open for business".

- Vigilance of Financial Markets  
Continued monitoring and vigilance of financial markets and the State's financial condition.

## **Children's Hospital Bonds**

### *CHFFA Monitoring Procedure*

CHFFA monitors specific projects which are directly related to the Grant authorizations. This consists of staff oversight and review. The Authority members do not typically get involved in this procedure once the specific projects have been described to the members as part of the application and funding approval process.

### *Proposition 61 Status*

As of December 2008, a total of approximately \$341 million or 50% of the available \$750 million had been distributed. The hospitals have until 2014 to request grant funds. UCI, UCSF, and UCSF have not submitted applications for these funds. There are no current applications pending for these remaining funds.

### *Proposition 3*

CHHFA expects to use the same application procedure as was utilized for Proposition 61. As of this date, there are no pending applications, although the Children's Hospital of Los Angeles has indicated that it plans to file this month.

Please express my enthusiasm to the Senate Rules to continuing being a member of CHFFA. If there are any additional questions, please be sure to call.

Very truly yours,



Judith Frank

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SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIRMAN

December 18, 2008

Ronald Joseph

Dear Mr. Joseph:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Health Facilities Financing Authority (CHFFA) on February 18, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by January 9, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 9<sup>th</sup>.

**Goals**

1. *What are your goals and objectives as a member of CHFFA? What do you hope to accomplish? What challenges do you anticipate to meeting these goals? How will you measure your success?*
2. *What do you believe are the most pressing issues that CHFFA is currently facing?*

**Children's Hospital Bonds**

Under the Children's Hospital Program, CHFFA awards grants to certain children's hospitals to fund capital improvement projects. This program was created by:

- Proposition 61, passed by California voters on November 2, 2004, which enabled the State of California to issue \$750 million in General Obligation bonds.

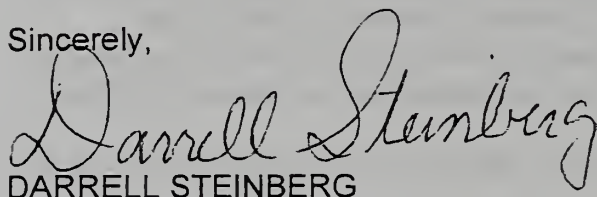
Ronald Joseph  
December 18, 2008  
Page 2

- Proposition 3, passed by California voters on November 4, 2008, which enables the State of California to issue \$980 million in General Obligation bonds.
- 4. *How does CHFFA monitor the Children's Hospital Program?*
- 5. *Have all Proposition 61 funds been awarded? If not, what is the timeline for awarding and issuing the remaining Proposition 61 funds?*
- 6. *What is the projected timeline for issuing Proposition 3 funds?*
- 7. *What projects are in the pipeline to receive these grant funds?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:MB

cc: California Health Facilities Financing Authority

The Honorable Darrel Steinberg  
Chairman  
Senate Rules Committee  
State Capitol  
Sacramento, Ca. 95814

January 9, 2009

Ron Joseph  
Responses

Dear Senator Steinberg,

I am pleased for the opportunity to present my views on the work of the California Health Facilities Financing Authority (CHFFA) in response to your letter of December 18, 2008.

As a member of CHFFA, it is my goal to bring my experience in public health care programs to positively impact delivery to California's residents. Within the context of CHFFA programs, that can most directly be accomplished by working with my colleagues to maintain the agency's momentum in building strong working relationships with the community of health care providers that are served by its programs. The CHFFA has made real strides in this effort, especially in its bond financing program sector, and the result is an improved environment of opportunity for the facilities that form a vital part of California's health care delivery system. I am pleased to say that I have found the staff and its leadership in the State Treasurer's Office to be dedicated to these principles. They have effectively promoted CHFFA programs among public and non-profit health care providers by working to remove barriers and make the programs more efficient in serving the aim of providing adequate infrastructure for the delivery of health care. It is my intention to work closely with staff and the provider community in order to assure that we maintain and enhance the program efficiencies which best serve the public's interest.

Beyond this, I believe that CHFFA has a responsibility to recognize that the current environment, both in health care and in the broader economy, will call on us be open to offering unique solutions to issues that arise. A recent example of the type of creative flexibility that must be pursued is found in the administration of CHFFA's HELP II Loan Program. This program has historically operated to make loans available to eligible facilities for capital expenditures, such as for the acquisition of equipment or for construction. During the protracted budget impasse of 2008-09, many community clinics and rural hospitals were facing severe hardship, and possible closure, because of cash flow problems resulting from the interruption of their Medi-Cal reimbursements. Working with these entities, CHFFA was able to make HELP II resources available for the first time ever for the purpose of funding the operating expenses that were necessary for these facilities to keep their doors open, while avoiding the need for expensive commercial loans. This is the type of creative partnership with the provider community that should become a standard for the agency as we face the future.

Senate Rules Committee

JAN 09 2009

Commitments

Clearly, the most pressing issues before CHFFA are the same as those faced by all agencies that are dependent on a stable economic environment to best plan for the future; i.e. the unsettled state of the economy and the credit markets upon which we rely. While CHFFA is not in the position to influence the direction that those markets take, it must certainly engage in an effort to evaluate likely events in the markets, and determine how we can best work with, and advise, our clients as they establish their plans for serving their communities.

Concerning bond funding made available to the thirteen Children's Hospitals through Proposition 61, you are well aware that the amount of funding for each of the hospitals was specified by the language of the proposition, which also specified that funds were required to be committed by 2014. Currently, approximately \$402 million of the original \$750 million has been scheduled for disbursement to the hospitals based upon approved projects, with no applications currently pending approval by CHFFA. At this time, only the Children's Hospital of Los Angeles has applied for all of its Proposition 61 funding. This reflects the complex planning that goes into hospital development, as well as a measured approach being taken by the eligible hospitals in developing the necessary plans to best serve the needs of their individual populations. CHFFA works closely with the hospitals during each stage of project development leading up to the application being submitted. That enables the actual application to be processed expeditiously, once it has been received. Once the project is underway, CHFFA staff will monitor the project through review of records and through site visits in order to assure that expenditures are being made in accordance with the approved application.

The timeline for scheduling disbursement of the remaining Proposition 61 allocations, as well as all of those approved by Proposition 3 of 2008, which also allocated specific amounts to the Children's Hospitals, is dependent upon the eligible hospitals completing their planning processes and submitting proposals to CHFFA. CHFFA is in regular contact with these hospitals concerning the status of their project planning and the availability of funds, and also maintains ongoing communication with, and through, the California Children's Hospital Association. At this time, CHFFA expects to receive up to three applications for funding in January, 2009, with more anticipated throughout the year.

Again, the coming years will almost certainly prove to be turbulent for the financial markets, and for those who rely on those markets to deliver programs. It will be incumbent upon public agencies, including CHFFA, to do their utmost to partner with those who provide vital services to our residents, so that the programs deliver maximum value. I hope to provide a positive contribution to that effort, and appreciate your consideration of my appointment to the California Health Facilities Financing Authority.

Sincerely,



Ron Joseph



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NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG

CHAIRMAN

January 15, 2009

Israel Rodriguez

Dear Mr. Rodriguez:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Student Aid Commission (CSAC) on February 18, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by February 3, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 3<sup>rd</sup>.

**Background**

The California Student Aid Commission (CSAC) is the principal state agency responsible for administering state and federal financial aid programs for students attending public and private colleges and vocational schools in California. The commission and its nonprofit loan auxiliary, EdFund, administer over \$2.4 billion in grants and loan guarantees.

**Goals**

1. *Please provide a brief statement outlining the goals you hope to accomplish while serving on the California Student Aid Commission. How will you measure your success?*

## California State Budget Crisis

California's dire fiscal situation has affected all parts of state government.

2. *How do you, as a commission member, stay informed of the fiscal resources available to your commission? How does your commission prioritize activities if not all can be undertaken? What are your priorities?*

## Rising Costs of Attending College

California financial aid policies historically have focused on providing financial assistance to cover student fees. According to a report by the National Center for Public Policy and Higher Education, non-fee costs of attending college are escalating. The report cites that textbook costs for California community college students are roughly equal to what a full-time student pays in annual fees.

3. *Is the commission developing any policies that address the rising costs of attending college in California, especially the growth of non-fee-related expenses? What policy changes might CSAC consider in response to this growing need?*
4. *How does the commission determine the student budget for attending a California college or university? How does this budget keep pace with the growth of college-related expenses, such as books and supplies?*
5. *When developing the student budget for determining financial aid, does the commission take into account the different costs of living in various parts of the state?*
6. *Higher college costs and steep losses in college savings plans are forcing students and their parents to borrow more money to finance their postsecondary education. As a CSAC commissioner, do you believe there is a role for the commission in addressing the borrowing and debt that many students and their families now assume as a means for completing their college education? If so, what should the role be?*

## The Future of State Financial Aid Programs

In 2001 the Cal Grant entitlement program went into effect. This program significantly changed the Cal Grant A and B programs by guaranteeing an award to recent high school graduates and community college transfer students if they meet specified income and academic requirements. This guarantee has been a cornerstone of the state financial aid program.

A report prepared by the Institute for Higher Education Policy found that overwhelmingly counselors and college-qualified students *who did not* enroll in college pointed to college costs and the availability of financial aid as primary obstacles to college enrollment. Barriers to college enrollment range from insufficient financial aid to mixed messages about admission and financial-aid application processes to limited community encouragement.

7. *As a CSAC commissioner, what specific policy recommendation do you have for making improvements to the Cal Grant A and B programs that will allow them to more effectively serve California students?*
8. *What CSAC-sponsored outreach activities do you believe are most effective in advising prospective college students about the Cal Grant and other financial aid that is available to low- and moderate-income students?*
9. *How does CSAC measure the effectiveness of its financial aid programs? How do you, as a board member, evaluate this effectiveness?*

### **Federal Focus on College Affordability**

Last year Congress passed and President Bush signed into law a major student aid package, the College Cost Reduction and Access Act. The new law makes changes to federal student aid programs by reducing lender subsidies to private lenders by approximately \$20 billion over five years and redirecting all but \$750 million toward student aid.

10. *What are the major policy and fiscal implications for California's student aid programs following the passage of this new law? Should California be made aware of these changes?*

### **Proposed Sale of EdFund**

SB 89 (Committee on Budget and Fiscal Review), Chapter 182, Statutes of 2007, authorized the director of the Department of Finance to either sell the state's student-loan-guarantee program's assets and liabilities or enter into an alternative financial arrangement regarding these assets and liabilities. Subsequent legislation—AB 519 (Committee on Budget), Chapter 757, Statutes of 2008—extends the date by which the Department of Finance is authorized to sell EdFund to January 2011.

11. *What effect, if any, has the proposed sale of EdFund had on the commission's ability to perform its daily activities, with respect to administering state and federal financial aid programs and providing college-access outreach activities?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:LG

cc: California Student Aid Commission

**RESPONSE TO THE SENATE RULES COMMITTEE'S QUESTIONS  
FOR APPOINTMENT TO THE CALIFORNIA STUDENT AID COMMISSION**

**ISRAEL RODRIGUEZ  
REPRESENTATIVE OF THE INDEPENDENT COLLEGES AND  
UNIVERSITIES**

**GOALS**

In my role as a commissioner overseeing and supporting the needs of the California Student Aid Commission and other services provided by CSAC to students, I have established do-able goals that I intend to accomplish during my term of service to the state of California and the Commission. They are as follows:

1. Represent the Association of Independent California and Universities (AICCU) at all commission meetings, community outreach programs and conferences of the California Association of Student Financial Aid Administrators (CASFAA).
2. Promote the importance of a college education among all students with emphasis on students of low income and the first to go to college in their families.
3. Increase the number of low income California students who are academically prepared to meet the curriculum challenges at the four year college level and require financial assistance.
4. Inform students and their parents about educational opportunities available beyond high school and the availability of financial assistance to meet the cost of education according to their financial aid need.
5. Work collaboratively with members of segmental representatives, commissioners, and commission staff to provide up to date information to all segments on matters that will impact the student financial aid delivery.
6. My success as a commissioner will be determined by results from my performance in carrying out goals and objectives that I have established. These goals may change from time to time due to changes in federal and state regulations that are currently unforeseen. My twenty two years as financial aid administrator at Pepperdine University taught me the importance of being discipline-focused on my responsibilities in serving the needs of students enrolled at the college level.

**CALIFORNIA STATE BUDGET CRISIS...STAYING INFORMED**

The following are activities and resources available to keep me and other commissioners well informed on fiscal matters related to the functions and responsibilities of the commission and commissioners. They are as follows:

1. Weekly and sometimes more often reports and news items related to CSAC are transmitted to the commissioners by e-mail. The executive director and commission staff are diligent making sure that reports needed by commissioners are sent promptly.
2. Regular state budget updates are provided at commission meetings and/or sent by e-mail before meetings by commission staff.
3. Regular legislative updates are also made available to commissioners on need basis.
4. In addition, I make it a point to stay in touch with members of the AICCU financial aid

Senate Rules Committee

FEB 03 2009

167

Appointments

professionals located in California to share updates or to inquire about their needs related to the financial aid delivery programs.

## RISING COST OF ATTENDING COLLEGE

1. The California Student Aid Commission (CSAC) has supported efforts to increase the size of access award to provide Cal Grant B recipients funds to cover the cost of attendance beyond tuition and fees. The current Cal Grant B Access award has not been increased from its current level of \$1,551 for many years. The commission supports current fee and policy that has sought to cover increases in tuition and fees with increases in financial aid. The commission and the state should advocate for increased higher education opportunities by providing all students financial access to a postsecondary education of their choice. The cost of completing a postsecondary education continues to rise and cultivate legislative and budget actions that protect, strengthen, and increase the state's General Fund commitment to student financial aid programs.

## HOW DOES THE COMMISSION DETERMINE STUDENT BUDGET FOR A CALIFORNIA COLLEGE?

1. The commission in working with all five segments of California higher education administers the Student Expense and Resource Survey (SEARS) to obtain data on actual expenses and financial resources of California college students. This survey is administered to approximately 70,000 college students attending Community College, University of California, California State University, and Independent Colleges and Universities and Private Career College. Data from the SEAR survey are used to produce the Nine-Month student expense budget which includes room and board, transportation, personal expenses, books and supplies, computer related expenses, etc. The commission staff is in the process of reviewing the SEARS process and questionnaire to determine its continued viability and possible alternatives.

## DETERMINING STUDENT BUDGET BY COMMISSION STAFF

Data from SEARS is used to calculate average Nine-Month budgets for students living on campus, off campus, and at home with parents. These Nine-Month Student Expense Budgets are adjusted during the Non-Survey Years by using the California Consumer Price Indices prepared by the Office of Finance. However, colleges and universities are not required to use the budget established by the Commission, instead, each institution is permitted to establish their own budget which can state actual students expenses in their area.

## HIGHER COLLEGE COST AND STUDENT LOAN BORROWING

1. Federal law guarantees the availability of a Federal Family Education Loan (FFEL) to all eligible students. Students who are unable to secure a loan for credit reasons are able to obtain a guaranteed student loan under the Lender of Last Resort (LLR) program. The commission through its auxiliary, EdFund, designates eligible lenders to

serve as LLR or the commission itself must serve in that capacity. The commission is designated as the State's Guarantee Agency in conjunction with its auxiliary, EdFund, is in compliance with directives relating to the LLR program issued by the U.S. Department of Education. The Commission and EdFund have sent letters to California institutions of higher learning assuring them that their student borrowers can secure loans needed to complete their education.

## THE FUTURE OF STATE FINANCIAL AID PROGRAMS

The commission has supported legislative efforts to increase the availability of Cal Grant awards to students, most recently legislation by Assembly Member Hector De La Torre, which increased from 24 to age 27, for Cal Grant Transfer Entitlement awards. These kinds of efforts are needed to assist students who are struggling financially to complete their academic goals. The following recommendations are now being proposed by the financial aid community and supported by CSAC and commissioners. They are as follows:

1. The Free Application For Federal Student Aid (FAFSA) needs to be made more user friendly (Simplified). The current form is cumbersome and intimidating even by parents who completed their college education. This simplification will require the support from the U. S. Department of Education and input from the financial aid community.
2. Continue the effort of working with colleges and universities and high school counselors to streamline the grant delivery process. For example, maximizing the use of electronics in submitting grade point averages of high school student applicants for Cal Grant A or B program.
3. Link the Cal Grant and application for specialized programs such as the Assumption Loan Program for Education APLE, SNAPLE, etc. to FAFSA Website. The commission is currently exploring these proposals with the U. S. Department of Education and financial aid community.

## Effective Sponsored Activities By CSAC

The California Student Aid Commission has been actively involved in promoting and conducting several effective outreach programs intended to create a greater awareness of the Cal Grant and other financial aid programs available to students. The following is a brief summary:

1. CALIFORNIA CASH FOR COLLEGE. This is one of the most effective awareness programs conducted each year to assist students and their parents apply for financial assistance. The central mission is to help low-income and first generation students and their parents complete the various forms needed to apply for financial aid programs. More than 500 free California Cash For College workshops will be conducted throughout the state from January 2, through March 2, 2009. These workshops are conducted by partners from high schools, community colleges, universities, businesses, and community groups. Approximately One Thousand Financial Aid Experts, outreach staff, and trained community volunteers will assist in the completion of application for financial aid. High school seniors who attend a 2009 Cash For College Workshop could receive an extra \$1,000.00 scholarship. These workshops have increased the

- number of Cal Grant recipients enrolling in college this coming academic year.
2. The commission also administers the California Student Opportunity and Access Program (Cal-SOAP) which by statute requires Cal-SOAP projects be designed to increase the accessibility of postsecondary educational opportunities for any of the following elementary and secondary school students: A. Students who are from low-income families. B. Students who will be the first in their families to attend college. C. Students who are from schools or geographic regions with documented low-eligibility or college participation rates. The commission currently funds 15 Cal-SOAP projects or consortia throughout the state. These two major programs sponsored by the California Student Aid Commission have increased the number of low-income students who have been first students in their families to attend a college or university of their choice.

#### FEDERAL FOCUS ON COLLEGE AFFORDABILITY

The following are changes to the Federal Student Aid program outlined in the College Cost Reduction and Access Act (CCRAA).

1. CCRAA eliminates the tuition sensitivity provision in the Higher Education Act (HEA) and includes an appropriation of \$11 million for academic year 2007-2008 to pay for changes
2. Increases the Pell Grant awards, to be further increased by the Higher Education Opportunity Act (HEOA), and possibly during the forthcoming federal economic stimulus package.
3. Lowers the interest rate for a five year period for undergraduate subsidized Stafford Student Loans for the FFEL and Direct Loan programs.
4. Provides Loan Forgiveness for public employees.
5. Increases the income protection allowance.

#### MAJOR POLICY AND FISCAL IMPLICATION FOR CALIFORNIA STUDENT AID PROGRAMS.

##### Federal Issues

1. Most nonprofit, private and state-based lenders in the student loan program employ financial models similar to mortgage lenders to raise operating capital to make additional student loans. These lenders have for the past two consecutive years experienced significant reductions in the FFEL program subsidies from the federal government as a result of the Higher Education Reconciliation Act and the College Cost Reduction and Access Act.
2. The national economic conditions and associated credit crisis have drastically impacted the willingness and ability of lenders to participate in the FFEL program.
3. Major national and regional lenders exiting the FFEL program are causing current FFEL program schools to move or consider moving to the Federal Direct Loan Program.

##### Voluntary Flexible Agreement (VFA)

4. Congress stipulates that VFA must be Cost Neutral and according to EdFund cuts to



the financial model for guaranty agencies as part of the CCRAA means that existing VFAs are no longer Cost Neutral.

5. In October of 2007, U.S. Department of Education had determined to terminate all VFAs on December 31, 2007. However, Legislative language included in the Omnibus Appropriation Bill led to the renegotiation of the VFAs with FFEL program guaranty agencies no later than March 31, 2008. CSAC has taken the lead in the negotiations and is confident of a successful conclusion.

Should California Be Made Aware Of These Changes?

6. Yes! The State of California should be made aware of these changes. The Commission's Governmental Relations staff work to inform the legislators of these changes and what they mean. Communications of these changes, in the past, have been communicated to the financial aid community through training and Operational Alerts provided to colleges and high school counselors and financial aid staff.
7. The commission's executive director communicates recent changes in financial aid policy and operations through a regular electronic newsletter, FAST BLAST. This electronic newsletter is transmitted statewide to the financial aid and outreach communities. It is also available on the commission's website.

#### PROPOSED SALE OF EDFUND

The sale of EdFund will be difficult given the unstable national economy and credit market crisis that has impacted the profit side of the student loan industry for private investors. EdFund as an auxiliary unit of CSAC can be of great value in providing needed loan services to students enrolled in colleges and universities in California. It is my candid opinion that EdFund be kept operating at a high level of service to students and CSAC thereby increasing its values to private investors in the future. The following is a brief summary of the services provided by EdFund to CSAC:

1. EdFund continues to provide mailroom services to CSAC.
2. EdFund provides some needed support on the new telephone system that was purchased because the shared system no longer worked after EdFund relocated to a new building.
3. Technology services have been reduced because CSAC had to move its server to the state data center to mitigate any problems due to the move of EdFund.
4. EdFund continues to support other necessary shared services that have been customarily been provided.

As a commissioner and former University Financial Aid Director, I appreciate the professional services provided by EdFund and CSAC to current and future students in California. One of my objectives as a commissioner is to make the partnership between EdFund and CSAC stronger and working in a spirit of collegiality in serving the needs of all students enrolled in colleges and universities in our great State of California. It is also important to recognize that if and when EdFund is sold CSAC will require additional funds from the state to make up the loss of income and services now provided by EdFund.

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January 25, 2009

Nettie Sabelhaus, Appointments Director  
Senate Rules Committee  
Room 420, State Capitol  
Sacramento, CA 95814

Dear Ms. Sabelhaus;

In response to your letter of January 8, I have provided my answers to the Rules Committee's questions. Also included per your request is an updated Form 700, Statement of Economic Interest. Please feel free to contact me if you or the Rules Committee require any additional information for the confirmation hearing.

### **Statement of Goals**

#### **1. *What are your goals and objectives as a member of the San Francisco Bay Area Water Emergency Transportation Authority?***

My goal is to move forward with the WETA mission of developing and operating a comprehensive Bay Area public water transportation system and to provide water transportation services in response to natural or manmade disasters. This will be accomplished by establishing and operating a regional ferry system that connects communities, reduces congestion, and provides an emergency response capability. We developed this mission statement at our retreat last year.

My objectives include a commitment to:

- building the most environmentally friendly water-transit system in the country using state of the art technology;
- operating a cost-effective, convenient, and reliable public water transit system to increase Bay Area regional mobility and transportation options, starting with the South San Francisco/Oakland service;
- providing a comprehensive and coordinated emergency water transportation system in the event of a disaster within the San Francisco Bay Area by linking our plan with those of other agencies and establishing MOU's with commercial operators.

My experience, in many areas of the Maritime Industry and years of following the progress of the Bay Area public water transportation system, can be utilized to good effect as a member of the WETA Board of Directors. I have 25 years sailing experience in the merchant marine, 5 years working in ship repair and construction, 3 years teaching experience at California Maritime Academy, and numerous consulting projects including maritime security, emergency preparedness, business continuity, and ship modernization.

**Senate Rules Committee**

JAN 30 2009

**Appointments**

**2. *What do you hope to accomplish during your tenure? How should we measure your success?***

Working diligently with the other Directors and WETA staff, I hope to accomplish the following:

- Develop an Emergency Water Transportation Plan coordinating emergency activities for all water transportation services in cooperation with other agencies. This was one of my primary reasons for desiring to serve on the WETA.
- Consolidate the Vallejo and Alameda Ferry Services under WETA, per the Transition Plan presently in development
- Increase regional transportation options by adding 7 new ferry routes to triple ferry ridership by 2025. The immediate priorities are the South San Francisco to Oakland and Berkeley/Albany to San Francisco ferry services.

Success should be measured by the accomplishment of the above items consistent with the resources made available to accomplish them. Funding from the State may be jeopardized by the current budget crisis. Other sources are being explored on the Federal level, and an infusion of infrastructure development funds could allow us to continue with projects that had to be put on hold by the withdrawal of State funding. I have notified the Staff of points of contact in the Federal government who may be able to assist with this. WETA is committed to reaching out to the community, thereby building a strong base of stakeholders to support these efforts. The lack of opposition is an indicator of the success of these efforts. The overwhelming public support is perhaps a more vibrant measure of success.

### **Strategic Planning**

**3. *Is WETA on track to complete the transition/consolidation plan and the emergency water transportation system management plan by July 1, 2009? What steps have been taken to date?***

WETA staff have been meeting with the Cities of Vallejo and Alameda and with the Metropolitan Transportation Commission (MTC), among other stakeholders, to develop the Transition Plan for transferring the City of Vallejo and the City of Alameda ferry services to WETA. The Plan is on schedule to be completed and adopted by July 1, 2009. The internal draft is in preparation for internal review. WETA staff should release the draft Transition Plan to the public for comment in March.

The Emergency Water Transportation System Management Plan is also being drafted with input from all stakeholders, including the State Office of Emergency Services, and MTC, and Bay Area Emergency Management and Response organizations. The internal draft is under review. This Plan is also on schedule to be completed and adopted by July 1, 2009, with WETA staff releasing the draft Plan to the public for comment in March.

## Local Concerns

4. ***Have the concerns of Vallejo and Alameda officials been addressed by SB 1093? Is WETA working with those officials to help facilitate a smooth transition?***

Since both cities supported passage of the legislation, I believe the cities' concerns were addressed. Both cities agreed to the language in SB 1093 following extensive discussions between representatives of the cities and WETA.

As mentioned above, the draft Transition Plan is being developed jointly by a core planning team that includes the Cities of Vallejo and Alameda, as well as WETA and MTC. WETA is committed to addressing the issues raised by all stakeholders and reaching agreements that meet their needs. Public hearings on the Plan will also be held in Vallejo, Alameda and San Francisco to provide broad public input.

5. ***At the August 21, 2008, meeting, the board conducted a closed session on the Vallejo litigation. What is the status of the City of Vallejo's lawsuit against the state?***

According to our lawyers, the lawsuit has been dismissed "with prejudice" against all the defendants, including both the State and WETA. By dismissing the case "with prejudice" the City of Vallejo has legally waived its right to file another lawsuit asserting the same claims. The dismissal of the lawsuit followed a several month period after the filing of the lawsuit during which the parties agreed to stay further proceedings in the litigation, pending the outcome of the Legislature's deliberation on SB 1093. Following enactment by the Legislature and signature by the Governor of the bill, the parties agreed that since the legislation had substantially addressed the issues raised in the litigation, the case should be dismissed.

## Proposition 1 B Funding

6. ***Has WETA received these Proposition 1B funds? What is the status of the projects that are targeted for Proposition 1B funding?***

- WETA has received an award of \$25 million Prop 1B funds, but these funds are available on a reimbursable basis, so only a portion of the \$25 million has been received to date. Through December 14, WETA had spent \$785,000 on Prop 1B projects and had requested reimbursement for this amount.
- WETA received notice from OHS on December 23 that all Proposition 1B funds were suspended from December 15 forward. Because of this WETA has had to suspend work on contracts with Proposition 1B funding. The affected projects include:

- Environmental studies of Richmond, Redwood City, Antioch and Martinez service sites;
- Preliminary planning of the Central Bay Maintenance facility site and system floats (maintenance barge and floats);
- South San Francisco terminal construction;
- South San Francisco vessel construction is proceeding with other funding sources, but vessels delivery could be delayed without the Proposition 1B funds.
- Planning continues for the North Bay/Vallejo maintenance facility site with other funds but the project design must be suspended if Proposition 1B funds are not available;
- Final terminal design for the Berkeley or Hercules terminals is planned to begin as early as Summer 2009 for Berkeley and in Winter 2009 for Hercules provided that Proposition 1B funds are available. At present they are still under environmental review.

**7. Does WETA plan to apply for additional Proposition 1B funding?**

WETA has submitted timely applications with the Office of Homeland Security for an additional \$25 million (\$50 million total) FY 2008/09 Proposition 1B funds to support the following projects:

<u>Project</u>	<u>Amount</u>
1. Preliminary Investigation/Environmental Review Redwood City, Richmond, Antioch and Martinez	1,250,000
2. Final Design for Berkeley Terminal/Service	2,500,000
3. SF Berthing Facilities	4,000,000
4. Maintenance Barge and Berthing/Floats	10,250,000
5. Maintenance Facilities	<u>7,000,000</u>
Total	25,000,000

Project review by WETA and OHS staff was completed on December 19, but final grant award was not been made by OHS due to the Proposition 1B program suspension.

**Other Sources of Funding**

**8. Has WETA submitted an application to MTC for the \$600,000 in Regional Measure 2 funds? How quickly do you anticipate that MTC will allocate the funds? Does WETA have a specific expenditure plan for these funds?**

Yes, WETA has submitted an application for the \$600,000 in RM2 funds to MTC, who took action to allocate these funds to WETA on November 26, 2008.

These funds will be used to support the transition expenses associated with the consolidation of existing Vallejo and Alameda ferry systems under WETA management.

The estimated allocation of the funds is as follows:

\$250,000 Consultant Assistance  
\$325,000 Staff/Attorney Assistance  
\$ 25,000 Other Miscellaneous Expenses

**9. Has WETA submitted an application to MTC for the \$750,000 in Regional Measure 2 funds? Please describe the Spare Vessels Program and how the anticipated funds will be spent.**

Yes, WETA submitted an application for the \$750,000 in RM2 funds in order to support the Spare Vessel Operating Program. This spare vessel utilization program charters the WETA spare vessels to the City of Alameda for use in their contract services with the Blue and Gold and Harbor Bay Maritime ferry services. The funds will be spent on the following:

- Harbor Bay maintenance dredging
- Float/Ramp modifications
- Float additions
- Harbor Bay maintenance augmentation
- Crew training
- Urea storage and use
- Hull insurance

An additional benefit of this program is that by preparing the facilities and personnel to use WETA vessels, the vessels can be redeployed in an emergency to support response measures.

**10. Given that current statute does not provide for state funding for WETA, and that the Legislature--for the second year in a row--redirected 2008-09 transit funds to General Fund programs, what other sources of funding is WETA pursuing at the local and regional levels?**

According to our staff, current statutes do not prohibit WETA from receiving state funding. State sources of funding such as the Transportation Development Act (TDA) and State Transit Assistance (STA) funds are generally only available to transit systems with operating services. As a result, WETA does not currently receive TDA or STA funds, so the redirection of FY 2008/09 transit funds has not had a direct impact on WETA's operating budget this year.

WETA had anticipated receiving a share of Revenue-based STA funds in future years, to support the operating and capital needs associated with Vallejo and Alameda ferry services that will be taken over by the organization. A permanent loss

of STA funds for transit in general, would have an adverse impact on WETA's ability to support the ongoing needs of these systems.

\$18.3 million annual Regional Measure 2 operating funds were approved by the voters for WETA ferry transit planning and operations. These funds are provided to WETA by MTC through their annual allocation. Anticipating future operating shortfalls associated with the Vallejo and Alameda ferry systems, WETA has initiated discussions with MTC staff to obtain a higher level of future year RM2 operating funds over the next few years, with the provision that MTC allows for maximum flexibility in the use of these funds.

## **Federal Economic Stimulus**

### ***11. Is WETA positioning itself to take advantage of an economic stimulus package passed by the federal government in 2009? Has WETA begun identifying projects or programs that such federal dollars could be used for in California? If so, could you identify those priorities?***

WETA is positioning itself to take full advantage of any economic stimulus package developed in 2009. Projects have been identified and submitted to both our local metropolitan planning organization, MTC, and to Caltrans.

The projects that could benefit from the Federal funding include:

- Ferry Vessel Repowering and Rehabilitation
- South San Francisco Ferry Terminal Construction (impacted by the loss of Prop 1B funds)
- South San Francisco Vessel Construction (impacted by the loss of Prop 1B funds)
- North San Francisco Bay Maintenance Facility Construction
- New Ferry Vessel Construction (for Berkeley/Albany – San Francisco service)
- Ferry Terminal Construction (Berkeley/Albany)
- Rehabilitate/Replace existing Ferry Terminal Floats (impacted by the loss of Prop 1B funds)
- Central San Francisco Bay Maintenance Facility Construction
- San Francisco Ferry Terminal and Berthing Expansion (impacted by the loss of Prop 1B funds)

WETA is also working with our legislative advocate in Washington, DC, to help ensure that the Federal Ferry Boat Discretionary Program is the recipient of a portion of the Stimulus Package funds when they become available.

## **Transportation in a Post-AB 32 World**



**12. Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate-change concerns into the planning and programming of WETA projects?**

Even before the passage of AB 32 and SB 375, WETA proved itself a leader in emission reduction. In 2002 the WETA required that all newly constructed ferries have exhaust emissions that were 85% better than EPA Tier II (2007) standards. Please note that the California Air Resources Board (CARB) utilized the WETA emission reduction specification as the standard for their newly enacted (01 January 2009) Commercial Harborcraft Regulation. WETA remains well ahead of all current legislation in addressing climate-change by incorporating emission reduction mandates into the planning all of WETA projects.

**13. What role do you think WETA should play in helping to achieve the goals of A6 32 and SB 375?**

During my tenure at WETA, we will *continue* being a leader in emission reduction in the maritime community. Not only did WETA successfully implement the most stringent emission reduction specifications for all our newly constructed ferries, but WETA continues to research and test new technologies, such as fuel cells and solar panels, to determine their technical feasibility, economic practicality, and environmental responsiveness while operating in the harsh marine environment. This was one of my fundamental motivations for desiring to serve on the WETA.

Thank you for your kind attention and please don't hesitate to contact me if you or the Rules Committee require any additional information.

Sincerely,

  
Gerald Bellows

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January 27, 2009

Nettie Sabelhaus  
 Appointments Director  
 Senate Rules Committee  
 Room 420, State Capitol  
 Sacramento, CA 95814

**Senate Rules Committee**

JAN 27 2009

**Appointments**

Dear Ms. Sabelhaus:

This letter is in response to Senator Darrell Steinberg's letter of January 8, 2009, in which he requested responses to the following questions. As requested, I have also attached an updated Form 700 Statement of Economic Interest. Please do not hesitate to contact me should the Rules Committee require any additional information prior to the February 11 confirmation hearing.

**Statement of Goals**

**1. What are your goals and objectives as a member of the San Francisco Bay Area Water Emergency Transportation Authority?**

As a member of the WETA Board of Directors, it is my intention to move as quickly as possible to expand ferry service in the Bay Area and, in so doing, relieve congestion, promote smart growth and provide an enhanced emergency response capability. At a WETA Board retreat held in July, 2008, the Board adopted a mission statement that recognizes our responsibility to develop and operate a comprehensive Bay Area public water transportation system that can provide a response to natural or manmade disasters. The system we create will increase regional mobility and transportation options in a cost-effective, convenient and environmentally friendly manner. WETA is committed to building the cleanest water-transit system in the world.

Specific priorities adopted at the aforementioned Board Retreat include the following:

- Increase regional mobility by adding 7 new ferry routes to triple ferry ridership by 2025. Our initial focus is on SSF and Berkeley/Albany service
- Coordinate emergency activities for all water transportation services in cooperation with MTC and other agencies consistent with the provisions of a Emergency Water Transportation Plan to be adopted by July 1, 2009
- Consolidate Vallejo and Alameda Ferry Service under WETA, consistent with the provisions of a Transition Plan to be adopted by July 1, 2009
- Provide the infrastructure to deliver the above priorities.

**2. What do you hope to accomplish during your tenure? How should we measure your success?**

During my tenure on the Board of Directors, I hope to see significant progress in implementing WETA's mandate to provide the type of regional water transportation system

envisioned in the current legislation. Our biggest challenge may be in developing the funds needed to build and operate the system successfully. Success can also be measured by the degree to which WETA moves forward to implement its plans, given its available resources and WETA's success in identifying and pursuing new sources of funding to permit both completion of new capital facilities and, most importantly, operation of the planned services in a sustainable manner. The successful assumption of the existing ferry services provided by Vallejo and Alameda and the creation of new services as provided in WETA's Implementation and Operations Plan are additional ways to measure WETA's success over the next several years. WETA's achievements in marketing ferry services on the Bay and increasing ferry ridership over the same period can also be a significant measure of our success.

WETA's progress can also be determined by our continuing to build a strong constituency of stakeholders who are convinced that the ferry is a smart, efficient and environmentally sound way to cross the Bay. WETA has continued with a Community Advisory Board, made up of representatives of each of the major bay area cities and counties. WETA also enjoys the broad-based support of the San Mateo County Transit Advocates, who provide input and support for ferry service in San Mateo County. WETA will continue working with these stakeholder groups and seek to form similar transit advocacy groups in Contra Costa County and other counties as ferry services in these areas moves closer to reality.

**3. *As a member of both the former San Francisco Bay Area Water Transit Authority (WTA) and the new WETA, what do you see as the strengths and weaknesses of the new authority as opposed to WTA?***

The governing structure provided in the current legislation has increased our efficiency. Additional changes may be required or helpful as the Authority matures. In addition, WETA's expanded responsibilities regarding emergency response provide possible enhanced funding opportunities. As our system grows, it will be important that WETA remain accountable to the various stakeholders in the system, such as ferry passengers, local governments and those organizations charged with response to manmade or natural disasters.

### **Strategic Planning**

**4. *Is WETA on track to complete the transition/consolidation plan and the emergency water transportation system management plan by July 1, 2009? What steps have been taken to date?***

- Yes, WETA is on track to complete both plans by July 1, 2009. As required by the legislation, WETA is developing an internal draft of the Transition Plan for transfer of the City of Vallejo and the City of Alameda ferry service assets to WETA, with input from the primary stakeholders including the cities of Vallejo and Alameda and MTC. The Plan is scheduled to be prepared and adopted by July 1 of this year under the requirements of SB 1093. Following completion of the internal document review, WETA staff will release the draft Transition Plan to the public for comment in March.
- The Emergency Water Transportation System Management Plan is also being drafted with input from a variety of Bay Area Emergency Management and Response organizations, including the State Office of Emergency Services and MTC. Once the

internal draft and review is completed, this plan will also be released for public comment in March.

## Local Concerns

### **5. *Have the concerns of Vallejo and Alameda officials been addressed by SB 1093? Is WETA working with those officials to help facilitate a smooth transition?***

- Yes, WETA is working with both cities to achieve a smooth transition. Both cities ultimately agreed to the language in SB 1093, following extensive discussions between representatives of the cities and WETA. We believe the cities' concerns were addressed by the bill, since both cities supported passage of the legislation.
- With respect to the second question, we anticipate that the draft Transition Plan will address substantially all the issues raised by the cities of Alameda and Vallejo and that, subject to reaching agreement with the cities on any open issues, WETA will be successful in meeting the deadline established by SB 1093.
- The Cities of Vallejo and Alameda are closely involved with WETA in preparing the Transition Plan and, along with WETA and MTC, make up the core planning team members. The Core Transition team has been meeting regularly as a group and individually with our consultant to ensure their concerns are reflected in the Transition Plan. Once the draft plan is completed, public hearings on the Plan will be held in Vallejo, Alameda and San Francisco to solicit broad based public input.

### **6. *At the August 21, 2008, meeting, the board conducted a closed session on the Vallejo litigation. What is the status of the City of Vallejo's lawsuit against the state?***

The lawsuit has been dismissed "with prejudice" against all the defendants, including both the state and WETA. By dismissing the case "with prejudice" the City of Vallejo has legally waived its right to file another lawsuit asserting the same claims. The dismissal of the lawsuit followed a several month period after the filing of the lawsuit during which the parties agreed to stay further proceedings in the litigation, pending the outcome of the Legislature's deliberation on SB 1093. Following enactment by the Legislature and signature by the Governor of the bill, the parties agreed that since the legislation had substantially addressed the issues raised in the litigation, the case should be dismissed.

## Proposition 1B Funding

### **7. *Has WETA received these Proposition 1B funds? What is the status of the projects that are targeted for Proposition 1B funding?***

- Yes, WETA has received an award of \$25 million Prop 1B funds to support the projects outlined. However, these funds are available on a reimbursement basis, so only a portion of the \$25 million has been received to date.
- Through December 14, WETA spent \$785,000 on Prop 1B project activities and has requested Proposition 1B reimbursement for this same amount.

- WETA received notice from OHS on December 23 that all Proposition 1B funds were suspended from December 15 forward. WETA has, in turn, suspended work on contracts associated with projects funded with Proposition 1B. The effect of this is as follows:
  - Environmental investigation of Richmond, Redwood City, Antioch and Martinez service sites has been suspended;
  - Preliminary investigation of a Central Bay Maintenance facility site and system floats (maintenance barge and floats) has been suspended;
  - South San Francisco terminal construction advertisement is on hold until funding options or alternatives to Proposition 1B can be identified and secured.
  - South San Francisco vessel construction is proceeding with other funding sources for now, but delivery of vessels could ultimately be delayed without Proposition 1B funds.
  - WETA staff continues to work with Vallejo staff on finalizing plans for the North Bay/Vallejo maintenance facility site. Sufficient other funds are available to keep the project design moving forward in the short-term while Proposition 1B funds are suspended.
  - Final terminal design work has not yet started for the Berkeley or Hercules projects as they are still under environmental investigation and review. Provided that Proposition 1B funds are available, design work for Berkeley could begin as early as Summer 2009 for Berkeley and in Winter 2009 for Hercules.

**8. Does WETA plan to apply for additional Proposition 1B funding?**

- Yes, consistent with the Office of Homeland Security's grant application process and timeline, WETA submitted applications for an additional \$25 million (\$50 million total) FY 2008/09 Proposition 1B funds in December 2008, to support the following program of projects:

<u>Project</u>	<u>Amount</u>
1. Preliminary Investigation/Environmental Review Redwood City, Richmond, Antioch and Martinez	1,250,000
2. Final Design for Berkeley Terminal/Service	2,500,000
3. SF Berthing Facilities	4,000,000
4. Maintenance Barge and Berthing/Floats	10,250,000
5. Maintenance Facilities	<u>7,000,000</u>
Total	25,000,000

- This program largely compliments the FY 2007/08 program and serves to further WETA's program to expand ferry operating capacity on the San Francisco Bay.
- Project review was completed with WETA and OHS staff on December 19. However, final grant award has not been made by OHS due to the Proposition 1B program suspension.

**Other Sources of Funding**

- 9. Has WETA submitted an application to MTC for the \$600,000 in Regional Measure 2 funds? How quickly do you anticipate that MTC will allocate the funds? Does WETA have a specific expenditure plan for these funds?**

- Yes, WETA has submitted an application for the \$600,000 in RM2 funds to support Transition expenses associated with the consolidation of existing Vallejo Baylink and AOFS ferry services under WETA management.
- MTC took action to allocate these funds to WETA on November 26, 2008.
- These funds will be used to pay for WETA and city staff time, attorneys and consultants required to develop the transition plan, and any other reasonable expenses incurred by the cities to support the transition effort, as required per SB 1093.
- While the funds allocated were flexible, WETA estimated the \$600,000 expenses to be approximately as follows:

\$250,000 Consultant Assistance  
 \$325,000 Staff/Attorney Assistance  
 \$ 25,000 Other Miscellaneous Expenses

**10. Has WETA submitted an application to MTC for the \$750,000 in Regional Measure 2 funds? Please describe the Spare Vessels Program and how the anticipated funds will be spent.**

- Yes, WETA has submitted an application for the \$750,000 in RM2 funds to support the Spare Vessel Operating Program and received an award of funds in November 2008.
- To provide some background, regional Measure 2 (RM 2) provided capital funds to support construction of two spare vessels for use by WTA and/or other ferry operators in the Bay Area providing public transit ferry services. In April 2006, WTA entered into a contract with Nichols Brothers Boat Builders to build two 150-passenger ferry vessels to serve as the spare vessels envisioned in RM2.
- At the time that the contract was awarded, WTA envisioned that the delivery date of these vessels was such that they would likely first be used in WTA's new South San Francisco (SSF) service until SSF vessels could be built. However, the SSF terminal construction has been delayed and service will not likely start until late 2010, which required WETA to develop an alternative plan for use of the spare vessels.
- WETA developed a spare vessel utilization plan that prioritizes providing the WETA spare vessels to the City of Alameda for use in their contract services with Blue and Gold and Harbor Bay Maritime for the provision of Alameda/Oakland and Harbor Bay ferry services, respectively. WETA's bareboat charter agreement with the City of Alameda placed the *Gemini* into Alameda/Oakland ferry service shortly after delivery in December 2008. *Gemini* has also been used by Blue and Gold to support public transit ferry services between Tiburon and San Francisco. The bareboat charter agreement for *Pisces* will place it into Harbor Bay Ferry Service upon delivery in March 2009.
- WETA's interest in utilizing bareboat charters for the spare vessels is to ensure that the vessels are operated in service during the first year warranty period. This will allow identification and correction of any engineering or operating issues with the new vessels, which, per the warranty, will be paid for by the vessel manufacturer. This also allows WETA the opportunity to identify design changes to improve future vessel plans.

- The Alameda/Oakland and Harbor Bay ferry services managed by the City of Alameda have limited operating revenues to support day-to-day operations. WETA's approach to the bareboat charter of its spare vessels have been to secure additional available RM2 funds to support the incremental cost of utilizing the spare vessels in the City of Alameda services, so that this is a "no cost" endeavor for the City.
- The expense items associated with utilizing the spare vessels in City of Alameda services include activities to modify terminal facilities to accommodate WETA vessel design and the added cost of housing and operating these additional regional vessels. Identified cost items are as follows:
  - i. Harbor Bay maintenance dredging
  - ii. Float/Ramp modifications
  - iii. Float additions
  - iv. Harbor Bay maintenance augmentation
  - v. Crew training
  - vi. Urea storage and use
  - vii. Hull insurance
- An additional benefit of the program is that by preparing the facilities and services to use WETA vessels, in the event of an emergency, the vessels will be available for redeployment in support of emergency response measures.

**11. Given that current statute does not provide for state funding for WETA, and that the Legislature--for the second year in a row--redirected 2008-09 transit funds to General Fund programs, what other sources of funding is WETA pursuing at the local and regional levels?**

- Current statute does not prohibit WETA from receiving state funding. However, state sources such as Transportation Development Act (TDA) and State Transit Assistance (STA) funds are generally only available to transit systems currently operating services. As a result, WETA does not currently receive TDA or STA funds, so the redirection of FY 2008/09 transit funds has not had a direct impact on WETA's operating budget this year.
- WETA has anticipated receiving a share of Revenue-based State Transit Assistance funds in future years, to support the operating and capital needs associated with Vallejo and Alameda ferry services to be assumed by the organization. A permanent loss of STA funds to transit in general, would have an adverse impact on WETA's ability to support the ongoing needs of these systems.
- \$18.3 million annual Regional Measure 2 operating funds were approved by the voters for use to support WETA ferry transit planning and operations. These funds are provided to WETA by the Metropolitan Transportation Commission through annual allocation action. In order to address anticipated future operating needs and shortfalls associated with the Vallejo and Alameda ferry operations, WETA has initiated discussions with the Metropolitan Transportation Commission staff to secure a higher level of future year RM2 operating funds than previously provided. These funds should be sufficient to support system operation in the next few years, provided that MTC allows for the maximum flexibility in the use of these funds.



## Federal Economic Stimulus

**12. Is WETA positioning itself to take advantage of an economic stimulus package passed by the federal government in 2009? Has WETA begun identifying projects or programs that such federal dollars could be used for in California? If so, could you identify those priorities?**

- Yes, WETA is positioning the agency to take advantage of a future (2009) economic stimulus package. Projects have been identified and submitted to both our local metropolitan planning organization, MTC, and to Caltrans.
- The projects that have been submitted that would benefit from the federal dollars are:
  - i. Ferry Vessel Repower and Rehabilitation
  - ii. South San Francisco Ferry Terminal construction (impacted by the loss of Prop 1B funds)
  - iii. South San Francisco Vessel construction (impacted by the loss of Prop 1B funds)
  - iv. North San Francisco Bay Maintenance Facility construction
  - v. New Ferry Vessel construction (for Berkeley/Albany – San Francisco service)
  - vi. Ferry Terminal construction (Berkeley/Albany)
  - vii. Rehabilitate/Replace existing ferry terminal floats (impacted by the loss of Prop 1B funds)
  - viii. Central San Francisco Bay Maintenance Facility
  - ix. San Francisco Ferry Terminal and Berthing expansion (impacted by the loss of Prop 1B funds)
- WETA is also working with our legislative advocate in Washington, DC to help ensure that the Federal Ferry Boat Discretionary Program is the recipient of a portion of the Stimulus Package funds when they become available.

## Transportation in a Post-AB 32 World

**13. Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate-change concerns into the planning and programming of WETA projects?**

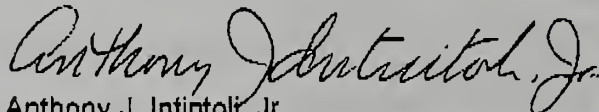
- Prior to the passage of AB 32 and SB 375, WETA proved itself as a leader in emission reduction as in 2002 the WETA required that all newly constructed ferryboats to have exhaust emissions that were 85% better than EPA Tier II (2007) standards.
- It is important to note that even the California Air Resources Board (CARB) utilized the WETA emission reduction mandate as the standard for their newly enacted (01 January 2009) Commercial Harborcraft Regulation.
- WETA is well ahead of the current legislation in addressing climate-change concerns by incorporating emission reduction mandates into the planning and programming of WETA projects.

**14. What role do you think WETA should play in helping to achieve the goals of A6 32 and SB 375?**

The role WETA should play is to *continue* being a leader in emission reduction within the maritime sector. Not only did WETA successfully implement the most stringent emission reduction mandate on all our newly constructed ferries, but WETA also continues to research new technologies such as fuel cells, and test existing technologies, such as solar panels, to determine their technical feasibility, economic practicality and environmental responsiveness operating in the hostile marine environment.

Again, please do not hesitate to contact me should you have any additional questions. I appreciate the opportunity to serve on the WETA Board.

Sincerely,



Anthony J. Intintoli, Jr.  
Vice Chair, WETA Board of Directors

A Professional Corporation

Law Offices  
**HALLISEY AND JOHNSON**

415-433-5300

300 Montgomery Street  
San Francisco, California 94104

January 28, 2009

Hon. Darrell Steinberg  
President Pro Tem  
Chair  
Senate Rules Committee  
Room 420, State Capitol  
Sacramento, CA 95814

Attn: Nettie Sabelhaus  
Appointments Director

Subject: Senate Rules Committee Confirmation Hearing of Charlene Haught  
Johnson as Chair of the Board of Directors of the Water  
Emergency Transportation Authority

Dear Ms. Sabelhaus:

As requested by President Pro Tem and Chair of the Senate Rules, Hon. Darrell Steinberg in his letter of January 8, 2009, please find enclosed my responses to the 14 questions propounded. I also include an updated Form 700 Statement of Economic Interest which is attached.

**Statement of Goals****1. What are your goals and objectives as a member of the San Francisco Bay Area Water Emergency Transportation Authority?**

The Board has recently adopted its mission statement which reflects my goals and that of the Board.

"WETA is a regional agency with responsibility to develop and operate a comprehensive Bay Area public water transportation system and to provide water transportation services in response to natural or manmade disasters. We will establish and operate regional ferry service that connects communities, reduces congestion and provides an emergency response capability."

My objectives and goals to implement the mission statement are:

**Senate Rules Committee**

JAN 29 2009

**Appointments**

A. I want to establish an affordable world class commuter ferry service for the Bay Area.

B. I want to increase the Bay Area's emergency response capabilities through the availability and use of ferries for commuter service, and stand alone projects designed specifically for emergency response.

C. I want to consolidate the Vallejo and Alameda ferry services and all future new commuter ferry services under WETA

D. I want sufficient funds to accomplish all of the foregoing and enough money to further expand the system as time goes by.

E. I want WETA to receive funding, like most transit agencies, up front rather than on a reimbursable basis in recognition of WETA's cash flow constraints. This would allow WETA to operate professionally and to expedite project delivery.

F. I want to Increase regional mobility by adding 7 new ferry routes to triple ferry ridership by 2025. Our initial focus is on implementing ferry service from South San Francisco to Oakland's Jack London Square and ferry service from Berkeley/Albany to San Francisco.

G. Coordinate emergency activities for all water transportation services in cooperation with MTC and other agencies consistent with the provisions of a Emergency Water Transportation Plan to be adopted by July 1, 2009

H. Consolidate Vallejo and Alameda Ferry Service under WETA, consistent with the provisions of a Transition Plan to be adopted by July 1, 2009

I. Provide the infrastructure to deliver the above priorities. The infrastructure includes additional docks at the San Francisco Ferry Terminal and Oakland's Jack London Square, and additional fueling and maintenance facilities

**2. What do you hope to accomplish during your tenure? How should we measure your success?**

I want to continue building public support for the commuter ferry service and an awareness about the importance of water transit for improved emergency response and regional mobility. This means we must work to accomplish the following:

- **Remain a leader in building the most environmentally friendly ferries in the nation.** In December, 2008, we held a highly successful press conference, boat christening and open house to announce the launch of our first ferry, Gemini. Congresswoman Barbara Lee, Matthew Bettenhausen, Director of the Governor's

Office of Homeland Security, Bill Dodd, Chair of MTC's Board of Directors, and Diane Howard, Chair of WETA's Community Advisory Board were on hand to christen Gemini in San Francisco. In local, state, and national press Gemini has been heralded as meeting the most stringent emissions requirement of ferry in the nation. With the arrival of our next ferry, Pisces, in March, 2009 and two more vessels by the end of 2009, WETA will have built four new ferries- more than have been built for the bay area in the last 10 years. Gemini and Pisces will initially be used on regular ferry runs on the Tiburon and Alameda/Oakland routes and as spare vessels in the event of an emergency. The four WETA vessels will eventually be available for use on the South San Francisco and Berkeley/Albany ferry routes when these ferry services begin.

- **Consolidate Vallejo and Alameda ferry services under WETA.** As stated in question # 4 below, the legislature mandated a Transition Plan which will be completed by July, 2009. Working with the Cities of Vallejo and Alameda, we hope to create a seamless and efficient transition that maintains and ultimately increases ferry ridership. We want to continue the excitement around ferries for water transit by focusing on ferry commuting as a smart and efficient transit option.
- **Increase the role of ferries in improving regional mobility and our region's emergency response capability.** We will continue to work on delivering new ferry routes, focusing initially on South San Francisco and Berkeley/Albany ferry services, and related infrastructure. The role of ferries in emergency response will be highlighted in our Emergency Response Plan, which will be completed July, 2009.
- **Continue building WETA's broad coalition of stakeholder support for ferries.** WETA has a Community Advisory Committee (CAC), made up of elected officials from each of the major bay area cities and counties, which was established with WTA. The CAC will continue to provide input to WETA as we move forward with expanded and more comprehensive ferry service. WETA enjoys broad-based support from county-wide water transit advocacy groups like the San Mateo County Transit Advocates who provide input and support of ferry service. WETA will continue to work with these advocacy and other stakeholder groups.

All of these goals can only be realized if we can find additional funding sources. We need additional capital funds to continue to build new ferries, terminals, docks maintenance and fueling facilities, and additional operating funds to operate existing and expanded planned services in a sustainable manner. As discussed below, we will continue to look for additional local, state and federal funding sources and in the short term we hope that Prop 1B funds are released soon so that our current projects are not impacted further or further delayed.

3. **As a member of both the former San Francisco Bay Area Water Transit Authority (WTA) and the new WETA, what do you see as the strengths and weaknesses of the new authority as opposed to WTA?**

I appreciated the leadership and support from the previous WTA Board, which included a broad cross section of highly experienced elected officials, union leaders, environmental and transit professionals. The broad perspective was important to shaping the mission of WTA from infancy and garnering stakeholder support. While we now have a smaller board, the current WETA board members bring similar experiences. Also the continuity provided by two additional former WTA Board members is a strength of the current board. Given that our mission has expanded, a smaller board makes it easier to leverage each other's strengths and move forward more efficiently. This structure will be even more important as we work towards consolidating Vallejo and Alameda ferry services. Our expanded stakeholders will include ferry passengers, more local governments and those organizations charged with response to manmade or natural disasters. An experienced, nimble Board will be critical to our success at being responsive to their needs.

#### **Strategic Planning**

4. **Is WETA on track to complete the transition/consolidation plan and the emergency water transportation system management plan by July 1, 2009? What steps have been taken to date?**

Yes, we are on track to complete both plans as required. Drafts of the Transition Plan and Emergency Response Plans are nearing completion, with ongoing input from the cities of Vallejo and Alameda, MTC and a variety of Bay Area Emergency Management and Response organizations, including the State Office of Emergency Services and MTC. Following completion of internal draft reviews and discussions at a WETA Board meeting in early March, WETA will release the draft Transition and Emergency Response Plans for public comment. Public hearings are scheduled in Alameda, Vallejo and San Francisco (as part of WETA's Community Advisory Committee meeting) in March. Comments will then be incorporated and adopted by July 1, 2009.

#### **Local Concerns**

5. **Have the concerns of Vallejo and Alameda officials been addressed by SB 1093? Is WETA working with those officials to help facilitate a smooth transition?**

Yes, WETA worked closely with Vallejo and Alameda on the language in SB 1093, which addressed Vallejo and Alameda concerns. In developing the Transition Plan, WETA recognized that a smooth transition would only be possible if Alameda and

Vallejo helped us to draft the Transition Plan. Hence, WETA staff and consultants formed a Core Transition Team, comprised of the Cities of Vallejo, Alameda and MTC who have been meeting regularly as a group and individually, on the Transition Plan contents since we began. In this way we anticipate that the cities' concerns are being addressed as the Transition Plan is being developed. Alameda and Vallejo staffs also attend WETA Board meetings. We will continue to solicit input from Alameda and Vallejo officials, ferry riders and community groups at the public hearings described above.

**6. At the August 21, 2008, meeting, the board conducted a closed session on the Vallejo litigation. What is the status of the City of Vallejo's lawsuit against the state?**

Once SB 1093 passed the legislature and the Governor signed the bill, all parties agreed that all issues raised in the litigation were addressed. Vallejo subsequently dismissed its action "with prejudice" In so doing Vallejo legally waived its right to file another lawsuit asserting the same claims.

**Proposition 1 B Funding**

**7. Has WETA received these Proposition 1B funds? What is the status of the projects that are targeted for Proposition 1B funding?**

Yes. WETA has received an award of \$25 million Prop 1B funds for fiscal year 07/08. However, these funds are only available on a reimbursement basis. As of December 14, 2008 WETA had requested reimbursement for \$785,000. On December 23, OHS notified us that all Proposition 1B funds were suspended from December 15 forward. WETA has, in turn, suspended work on contracts associated with projects funded with Proposition 1B. The list of projects originally funded and the status is summarized below:

- \$5 million for environmental studies for Richmond, Redwood City, Antioch and Martinez ferry service. The environmental studies are suspended.
- \$ 5 million for Berkeley/Albany Ferry and Hercules Terminals. Final terminal design work has not yet started for the Berkeley or Hercules projects as they are still under environmental investigation and review. Provided that Proposition 1B funds are available, design work for Berkeley could begin as early as summer 2009 for Berkeley and in winter 2009 for Hercules.
- \$10million for terminal and vessel construction for South San Francisco. South San Francisco vessel construction is proceeding with other funding sources for now, but delivery of vessels could ultimately be delayed without Proposition 1B funds. South San Francisco terminal construction advertisement is on hold until funding options or alternatives to Proposition 1B can be identified and secured.

- \$5 million for Maintenance Barges and Emergency Floats. Preliminary investigation of a Central Bay Maintenance facility site and system floats (maintenance for barge and floats) has been suspended;
- \$5 million for Maintenance Facility in Vallejo. WETA staff continues to work with Vallejo staff on finalizing plans for the North Bay/Vallejo maintenance facility site. Sufficient other funds are available to keep the project design moving forward in the short-term while 1B funds are suspended.

#### 8. Does WETA plan to apply for additional Proposition 1B funding?

Yes. We applied for additional Prop 1B funding for FY 2008/2009 for the following projects totaling \$25 million:

<u>Project</u>	<u>Amount</u>
1. Preliminary investigation/Environmental Review Redwood City, Richmond, Antioch and Martinez	1,250,000
2. Final Design for Berkeley Terminal/Service	2,500,000
3. SF Berthing Facilities	4,000,000
4. Maintenance Barge and Berthing/Floats	10,250,000
5. Maintenance Facilities	<u>7,000,000</u>
Total	25,000,000

These projects build upon our mission of expanding ferry service and related infrastructure to increase our region's emergency response capability. However, final grant award is on hold due to the Proposition 1B funds suspension.

#### Other Sources of Funding

#### 9. Has WETA submitted an application to MTC for the \$600,000 in Regional Measure 2 funds? How quickly do you anticipate that MTC will allocate the funds? Does WETA have a specific expenditure plan for these funds?

Yes. WETA has submitted an application for the \$600,000 in RM2 funds to support Transition Plan expenses associated with the consolidation of existing Vallejo and Alameda ferry services. MTC took action to allocate these funds to WETA on November 26, 2008.

These funds will be used to pay for WETA and city staff time, attorneys and consultants required to develop the Transition Plan, and any other reasonable expenses incurred by the cities to support the transition effort, as required per SB 1093. These expenses



include: consultant expenses (\$250,000); staff/attorney assistance (\$325,000); and other miscellaneous expenses (\$25,000).

**10. Has WETA submitted an application to MTC for the \$750,000 in Regional Measure 2 funds? Please describe the Spare Vessels Program and how the anticipated funds will be spent.**

Yes. WETA submitted an application for the \$750,000 in Regional Measure 2 (RM2) funds to support the Spare Vessel Operating Program. When RM2 was drafted, it included capital funds to support construction of two spare vessels for use by WTA and/or other ferry operators in the Bay Area providing public transit ferry services. Hence WTA's first two 149 passenger vessels- Gemini and Pisces- were to serve as the spare vessels envisioned in RM2.

Originally, our intent was to put these two vessels into regular service on our new South San Francisco (SSF) service until South San Francisco vessels could be built and they would be available as spare vessels in the event of an emergency. However, the SSF terminal construction has now been delayed, and this required WETA to develop an alternative Spare Vessel Program for day to day use of the Spare Vessels.

Our Spare Vessel Program requires a bareboat charter agreement with the City of Alameda. This agreement stipulates that WETA spare vessels will be used by the City of Alameda in their contract services with Blue and Gold and Harbor Bay Maritime for the provision of Alameda/Oakland and Harbor Bay ferry services, respectively. This agreement also ensures that the vessels are operated in service during the first year warranty period. In this way, engineering or operating issues with the new vessels will be identified and corrected and design changes to improve new vessels will be identified.

The Alameda/Oakland and Harbor Bay ferry services managed by the City of Alameda have limited operating revenues to support day-to-day operations. WETA is working to secure additional available RM2 funds to support the incremental cost of utilizing the spare vessels in the City of Alameda services so that there are no additional costs to the City.

The specific cost of utilizing WETA's spare vessels in Alameda's services is not certain. WETA and City of Alameda staffs have estimated the following potential cost items for each vessel placement: Harbor Bay maintenance dredging; float/ramp modifications; float additions; Harbor Bay maintenance augmentation; Crew training; urea storage and use; and hull insurance

**11. Given that current statute does not provide for state funding for WETA, and that the Legislature--for the second year in a row--redirected 2008-09 transit funds to General Fund programs, what other sources of funding is WETA pursuing at the local and regional levels?**

As discussed above, funding is the primary challenge to our success. We have staff, and state and federal lobbyists focused on trying to secure expanded revenue sources. We also engage the support of our stakeholder groups to work with us to leverage more funding. Our local and regional funding sources include:

**State Sources.** Because Transportation Development Act (TDA) and State Transit Assistance (STA) funds are generally only available to transit systems currently operating services, we do not get TDA or STA funds, so the redirection of FY 2008/09 transit funds has not had a direct impact on WETA's operating budget this year. We do hope to get a share of Revenue-based State Transit Assistance funds in future years to support the operating and capital needs associated with Vallejo and Alameda ferry services to be assumed by the WETA. A permanent loss of STA funds to transit in general, will have an adverse impact on WETA's ability to support the ongoing needs of these systems.

**Regional Funds.** \$18.3 million annual Regional Measure 2 operating funds were approved by the voters for use to support WETA ferry transit planning and operations. These funds are provided to WETA by MTC through annual allocation action. In order to address anticipated future operating needs and shortfalls associated with the Vallejo and Alameda ferry operations, WETA has initiated discussions with MTC to secure a higher level of future year RM2 operating funds than previously provided. These funds should be sufficient to support system operation in the next few years, provided that MTC allows for the maximum flexibility in the use of these funds.

**Local Sales Tax Funds.** Ferry Service is included in two current county sales tax measures: \$30 million is included in the San Mateo County Measure A Program for South San Francisco and Redwood City ferry service. \$40 million is included in the Contra Costa County Measure J sales tax measure for Richmond and/or Hercules service. Our immediate priority is to secure \$15 million in sales tax funding for the South San Francisco ferry service and we are working closely with San Mateo County Transportation Authority to secure this funding.

#### **Federal Economic Stimulus**

**12. Is WETA positioning itself to take advantage of an economic stimulus package passed by the federal government in 2009? Has WETA begun identifying projects or programs that such federal dollars could be used for in California? If so, could you identify those priorities?**

Yes. The following projects have been identified and submitted to MTC and to Caltrans for consideration of 2009 Stimulus Package funds:

- Ferry Vessel Repower and Rehabilitation
- South San Francisco Ferry Terminal construction (impacted by the loss of Prop 1B funds)
- South San Francisco Vessel construction (impacted by the loss of Prop 1B funds)
- North San Francisco Bay Maintenance Facility construction
- New Ferry Vessel construction (for Berkeley/Albany – San Francisco service)
- Ferry Terminal construction (Berkeley/Albany)
- Rehabilitate/Replace existing ferry terminal floats (impacted by the loss of Prop 1B funds)
- Central San Francisco Bay Maintenance Facility
- San Francisco Ferry Terminal and Berthing expansion (impacted by the loss of Prop 1B funds)
- 

### Transportation in a Post-AB 32 World

**13. Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate-change concerns into the planning and programming of WETA projects?**

Air quality and climate-change concerns are already incorporated into the planning and programming of WETA projects. These concerns were fully addressed in WETA's Final Implementation and Operations Plan approved by the California legislature in July, 2003. This plan was built on our two major principles: taking the leadership role in protecting the bay and developing clean marine technology. As a result WETA's ferries are 10 times cleaner than current ferries and achieve unprecedented engine emissions reduction using existing technology. All newly constructed ferryboats must include the following features:

- Exhaust emissions that are 85% better than EPA Tier II (2007) standards.
- Incorporate selective catalytic reduction and solar (renewable energy) technology
- Operate on a blend of biodiesel and ultra low sulfur fuel

**14. What role do you think WETA should play in helping to achieve the goals of AB 32 and SB 375?**

In developing our plan for expanding ferry service in the bay area, we built partnerships with our supporters and found common ground with local environmental activists and elected officials and other stakeholders to find innovative ways to approach old problems. As a result, we are leading the nation with cost-effective, achievable environmental solutions for the challenges of building and operating new

ferries on the bay. With WETA's leadership, our region came together to develop ferries that set the benchmark for the entire nation. In fact the California Air Resources Board (CARB) utilized the WETA emission reduction mandate as the standard for their newly enacted (01 January 2009) Commercial Harbor craft Regulation.

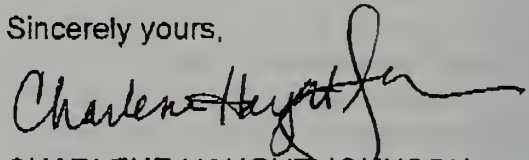
WETA will continue to play a leadership role in solving environmental problems associated with the maritime industry. Our ferries will achieve unprecedented marine engine emissions reduction on all our newly constructed ferries, and we will continue to research the applicability of fuel cells and other new technologies while expanding the use of existing technologies, such as solar panels, where applicable and economically feasible as we expand and consolidate bay area ferry services.

Hopefully, my answers are fully responsive to Senator Steinberg's questions.

I appreciate your consideration and that of the entire Senate Rules Committee. Should I be confirmed, I would look forward to working with you and other elected officials.

Please do not hesitate to contact me should you or the Rules Committee desire any additional information prior to the February 11 confirmation hearing. I can be reached at (415) 433-5300 or [haughtjohnson@yahoo.com](mailto:haughtjohnson@yahoo.com).

Sincerely yours,



CHARLENE HAUGHT JOHNSON

Honorable Darrell Steinberg  
Senate Rules Committee  
State Capitol, Room 205  
Sacramento, CA.

Re. February 25 Senate Confirmation hearing for DFG Director Don Koch.

I am writing you regarding Don Koch's confirmation as the Director of the Department of Fish and Game by the Rules Committee.

I urge a no vote on Koch's confirmation for the following reasons.

First, Koch has failed to proactively address the biggest fisheries crisis in California history. In 2008, recreational and commercial salmon fishing was closed for the first time in history in ocean waters off the California and Oregon coast. Recreational salmon fishing was also closed on the Central Valley rivers, with the exception of a two month season on a short stretch of the Sacramento. It is expected that the same closures will be implemented this year, since only 66,264 natural and hatchery adult fall Chinooks returned to the Sacramento River basin in 2008, a record low number.

Just two years earlier in 2006, commercial salmon fishing off California and southern Oregon was severely restricted, due to the decline of Klamath River salmon spurred by the Klamath fish kills of 2002, where hundreds thousands of juvenile salmon and over 68,000 adult salmon perished in low, warm conditions.

As part of his disaster proclamation, Governor Arnold Schwarzenegger directed state agencies and departments to take various actions in response to this crisis, including directing the DFG and the Resources Agency to "address the long term restoration and management of salmon in California.

I agree entirely with the Karuk Tribe that the Department under Koch's direction has yet to take any meaningful action to reverse the decline of salmon.

Second, the DFG still has not started a process a process to comply with a December 2006 court order to complete an environmental analysis and overhaul of its regulations governing suction dredging mining practices. To address the mining's impact upon coho salmon and other ESA listed species, a coalition of fishery, tribal, environmental and watershed groups petitioned the DFG for emergency interim rules.

However, the DFG Director denied the petition, in apparent denial of the dire strait of California's steelhead and salmon populations.

Third, the DFG Director has refused to support long overdue logging reforms needed to prevent the extinction of coho salmon in California, in spite of the fact that the National Marine Fisheries Service has documented a 73 percent decline in returning adults in 2007-2008 compared to the same cohort in 2004-2005.

I agree entirely with California Trout that "Mr. Koch ignored sound science, capitulated to the forestry industry, and allowed logging interests to supersede those of the natural resources with which he is charged to protect and restore."

Fourth, Mr. Koch has failed to provide the leadership necessary to address litigation that the Department conduct an environmental review of its fish planting programs. As a result, nearly 175 lakes will no longer receive fish plants, creating economic devastation to mountain and foothill communities that depend on trout fishing for their livelihood. This could have been avoided if Mr. Koch had been "more pro-active, strategic and forward looking," in the words of California Trout.

Fifth, the Department of Fish and Game's fall 2008 midwater trawl survey on the California Delta documented the lowest ever recorded abundance of Delta smelt, Sacramento splittail, threadfin shad and American shad and an alarmingly low abundance of longfin smelt and juvenile striped bass. These fish are headed over the abyss of extinction unless the DFG takes a more aggressive, more proactive approach to ~~delaying~~ DECLINE WITH the three main factors responsible for this decline (1) increases in water exports (2) toxics and (invasive species).

I urge a no vote on Koch's confirmation for his failure to proactively address the salmon crisis, support badly needed restrictions on suction dredge mining practices, adopt timber harvest regulations that protect and restore coho salmon, conduct a timely review of trout planting programs and take action to reverse the Delta Pelagic Organism Decline.

At the same time, I urge the Senate to conduct investigative hearings into Department of Fish and Game operations and management structures in order to make the DFG a more effective organization that better serves the public trust. After all, the mission of the DFG is "to manage California's diverse fish, wildlife and plant resources and the habitats upon which they depend, for their ecological values and for the use and enjoyment of the public."

Perhaps the DFG needs to become separated from the Resources Agency so that the Department of Water Resources doesn't play such a huge role in influencing DFG decisions.

Thanks

Dan Bacher  
Editor, Fish Sniffer Magazine  
3201 Eastwood Road  
Sacramento, CA. 95821  
(o) 916-487-4905

---

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# Karuk Tribe



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February 25, 2009

## **Karuk Tribe Testimony before Senate Rules Committee**

RE: Confirmation of Don Koch as California Fish and Game Director

### **Introduction**

My name is S. Craig Tucker and I am a Natural Resources Policy Advisor for the Karuk Tribe.

I have a Ph.D. in Biochemistry from Vanderbilt University but have worked for the past ten years as an advocate for environmental and social justice for several organizations.

For the past five years I have been a full time employee of the Karuk Tribe, the second largest federally recognized tribe in California with over 4,200 members.

Many Karuk Tribal members still reside in aboriginal territory which comprises over 1.4 million acres of land in what is today Siskiyou and Humboldt counties. Over 90 miles of the Klamath River and hundreds of miles of tributaries flow through Karuk aboriginal territory. The Karuk Tribe was federally recognized in 1979 however Tribal oral histories as well as anthropological evidence indicate that the Karuk are among California's first residents.

### **Fisheries in Decline**

Today California's salmon and trout populations are in steep decline. Numerous recent scientific studies and news reports tell us that many species are on the brink of extinction and runs of commercially valuable fish are so low that recreational and commercial fishing seasons are being restricted or completely banned regularly.

This has a significant economic impact on California at a time when state government and local businesses struggle to contend with an international economic crisis. The economic impacts from loss of sport-fishing opportunities alone may reach the billions of dollars. According to the American Sport-fishing Alliance, There are 2.4 million licensed anglers in California who support annual fishing equipment sales of \$2.4 billion per year. The sport fishing industry's economic impact on the state is \$4.9 billion annually.

The sport-fishing industry supports a total of 43,000 jobs amounting to \$1.3 billion in wages and salaries annually.

The commercial fishing industry contributes billions more.

For Native Tribes such as the Karuk the loss transcends economics. The Karuk's cultural identity is inseparable from the salmon. Karuk cultural and traditional religious practices revolve around the annual returns of salmon, steelhead, sturgeon and lamprey. Many members of the Karuk and neighboring tribes rely on subsistence fishing to keep food on their families' dinner table.

### **Suction Dredge Mining**

There are many factors contributing to the decline in fish populations and Mr. Koch cannot solve the entire problem by himself. But he can take responsibility to address factors under his control. In Mr. Koch's case, one such factor is suction dredge mining.

Suction dredges are powered by gas or diesel engines that are mounted on floating pontoons in the river. Attached to the engine is a powerful vacuum hose which the dredger uses to suction up the gravel and sand (sediment) from the bottom of the river. The material passes through a sluice box where heavier gold particles can settle into a series of riffles. The rest of the gravel is simply dumped back into the river. Often this reintroduces mercury left over from historic mining operations to the water column threatening communities downstream. Depending on size, location and density of these machines they can turn a clear running mountain stream into a murky watercourse unfit for swimming.

Suction dredge mining is almost exclusively a recreational activity popularized by mining clubs.

### **Fish and Game's Suction Dredge Program does not comply with state law**

Fish and Game Code Section 5653 authorizes the Department of Fish and Game to issue permits for in-stream suction gold dredge mining, but only after it has determined that the operation, pursuant to regulations it has adopted, will **not** be deleterious to fish and amphibians.

In the last 15 years, a number of California species impacted by suction dredging have been given special and protected status, including coho salmon, chinook salmon, some runs of steelhead, green sturgeon, Klamath River lamprey, river lamprey, hardhead, arroyo toad, speckled dace, red-legged frogs, and yellow-legged frogs. But the regulations have not been changed to protect these fish and amphibians.

In 2006, the department itself admitted in sworn statements that suction dredge mining in the Klamath, Scott and Salmon river watersheds under existing regulations was having a deleterious effect on Coho salmon and therefore the department was "not in compliance" with Section 5653 (attached).



The department agreed in a court settlement that it would revise the regulations by July 2008. The CEQA review for that revision has not even started; new regulations are years away.

After filing suit over this issue in 2005, winning, and yet not realizing any immediate changes to status quo mining operations to date, the Karuk Tribe along with Cal Trout and others supported AB 1032 in 2007. This legislation would have essentially enacted modest restrictions on where and when suction dredge mining could take place. The goal of AB 1032 was to protect the most critical habitats of ESA listed species and species of 'special concern' under the California Endangered Species Act.

AB 1032 passed the legislature, but the Governor refused to sign it arguing that the Department of Fish and Game already has authority to enact restrictions on suction dredge mining. The Governor's veto message reads in part:

*"Current law gives the Department of Fish and Game the necessary authority to protect fish and wildlife resources from suction dredge mining. It has promulgated regulations and issues permits for this activity. Permits for suction dredge mining must ensure that these operations are not deleterious to fish and allow the Department to specify the type and size of equipment to be used. In its regulations, the Department may also designate specific waters or areas that are closed to dredging."*

So not only do we assert that as Fish and Game Director Mr. Koch has the legal authority to protect fish from suction dredge mining, the Governor does too.

### **Fish and Game's Suction Dredge Program does not comply with federal law**

In addition, the Department's own regulations require suction dredge permit holders to be in compliance with federal law. This was a condition adopted in the 1993 DFG biological opinion to avoid jeopardy to special status species. Suction dredging is an activity regulated by the federal Clean Water Act, in particular section 402. No section 402 (discharge) permit has ever been issued, either on a general or individual basis, for suction dredging activities in the state. This means that all permit holders have been in violation of federal law, yet the Department has failed to enforce this condition and continues to issue permits with full knowledge of this fact.

### **Taxpayers subsidize suction dredge program**

Finally, it is worth noting that while we are the midst of not only a fisheries crisis but a financial crisis, the Department operates the suction dredge program at a loss - the Department has said that it spends \$1.5 million annually administering the program, but only takes in \$200,000 in permit fees. This means that taxpayers are subsidizing the destruction of their own fisheries resources!

While all of you were desperately finding ways to close the states budget gap, making painful decisions on what programs to cut and how to increase revenues, the Department failed to help by cutting the dredging program.

### **CEQA is not required to change suction dredge rules**

Recently, it has come to our attention that some Department staff are arguing that they can't change the rules or simply cut the program altogether without a CEQA process.

We assert that this is not a legally viable argument. Fish and Game Code sections 5653 and 5653.9 only authorize the issuance of permits *if* the Department first makes the determination that no deleterious impact is caused to fish from suction dredge mining. The Department has made the express determination that deleterious impact does, in fact, cause harm to fish, including endangered fish such as the Coho salmon. Therefore the Department does not have the authority to issue permits – and their continued issuance of permits violates both the Fish and Game Code and CEQA.

An agency does not do a CEQA review to determine *if* it should comply with the law. It does an environmental review to determine *how* to comply with the law.

### **Conclusion**

For the above stated reasons, the Karuk Tribe humbly urges this committee to not take a vote to confirm Mr. Koch until and unless he takes action to halt further issuance of suction dredge permits and he rescinds and refunds any existing permits issued to miners for  
2009.



# State Water Resources Control Board



## Executive Office

Tam M. Dodec, Board Chair

1001 I Street • Sacramento, California 95814 • (916) 341-5615

Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100

Fax (916) 341-5621 • <http://www.waterboards.ca.gov>

Arnold Schwarzenegger  
Governor

Linda S. Adams  
Secretary for  
Environmental Protection

December 18, 2007

California Department of Fish and Game  
Attn: Suction Dredge Mining Program  
1416 Ninth St., 12th Floor  
Sacramento, CA 95814

To Whom It May Concern:

### RESPONSE TO DEPARTMENT OF FISH AND GAME REQUEST FOR INFORMATION REGARDING SUCTION DREDGE MINING

Thank you for the opportunity to comment on the potential environmental impacts of suction dredge mining on water quality. The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards) implement programs established by Federal and State laws to protect beneficial uses of California's surface water and groundwater. As such, we have become aware of environmental concerns regarding pollution from suction dredge mining activity. In response to these concerns, the State Water Board held a public workshop on June 12, 2007 to take public comment on the effects of suction dredge mining on water quality. The workshop was well attended, and in conjunction with that workshop, the State Water Board received nearly 200 written comments. We appreciate Department of Fish and Game (Department) staff's attendance at that workshop.

Many of California's rivers and streams are listed as impaired under Clean Water Act section 303(d) because they are not currently meeting water quality objectives for mercury and sediment. There are approximately 6,900 stream miles that are listed as impaired for mercury or sediment, most of which are listed as impaired for sediment. We are especially concerned that no further degradation of water quality occur in these streams due to suction dredging activities, which contribute to both mercury and sediment impairments.

Suction dredge mining should be regulated to control impacts to beneficial uses of the State's waters. Many of these beneficial uses are based on the need to protect habitat of fish, including rare, threatened, or endangered species. Suction dredging causes localized

*California Environmental Protection Agency*



plumes of sediment (turbidity plumes). Turbidity plumes are known to cause significant environmental impacts in surface waters by burying or interfering with the life processes of biota and otherwise contributing to sediment impairment. Suction dredging also results in disturbance or removal of stream gravels, which eliminates spawning habitat, and may also destroy juvenile fish or eggs within the gravels.

Suction dredging should also be regulated to control impacts from mercury remobilization and transport in streams. We consider mercury pollution to be a high priority because of health risks due to bioaccumulation in fish consumed by humans and wildlife. Additionally, there are significant environmental justice concerns with respect to consumption of contaminated fish. Mercury is both a naturally-occurring and human-added contaminant in California's water bodies. Research suggests that most mercury is bound to sediment but appreciable amounts are found as a liquid (its elemental state). Suction dredging re-suspends mercury-enriched sediment and "flours" elemental mercury into tiny droplets which are both easily transported downstream. This mercury can be expected to re-deposit in environments where it is converted to methylmercury, which then enters the benthic food web. Methylmercury is then concentrated as it is taken up through the food chain beginning in bottom-dwelling organisms and eventually affecting fish that is consumed by humans.

In October the Governor included the following message when he vetoed Assembly Bill 1032 (Wolk): "Permits for suction dredge mining must ensure that these operations are not deleterious to fish and allow the Department to specify the type and size of equipment to be used. In its regulations, the Department may also designate specific waters or areas that are closed to dredging. It is unclear why this bill specifically targets a number of specific waterways for closure or further restrictions. The listed waterways represent only a small fraction of the waters in our State where suction dredging is occurring. The benefit or protection from such a minor closure is negligible and supports the notion that scientific environmental review should precede such decisions." State Water Board staff support the Governor's message and are coordinating with the Department with the ultimate goal of protecting all, not just a small fraction, of the waterways that are threatened by this activity.

We are pleased to have begun to explore with Department staff an integrated approach for regulating suction dredge mining within available resources. While the Department's program focuses on protecting fish and aquatic habitat (Fish & G. Code, § 5653.), the State Water Board would pursue water quality protection based on the Clean Water Act (33 U.S.C. § 1342(a)(1).) and the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13160, 13263, subd. (a).). By coordinating our regulatory programs, we hope to achieve stronger protections for the aquatic environment, as is our mutual concern. We also hope to accomplish administrative and enforcement efficiencies, given our limited resources.

*California Environmental Protection Agency*



Recycled Paper

To Whom It May Concern

-3-

Thank you again for the opportunity to comment. Should you have any questions or need further assistance, this issue is under the direction of Ms. Elizabeth Haven, Acting Deputy Director of the Division of Water Quality, State Water Board, and she can be reached at (916) 341-5457 (lhaven@waterboards.ca.gov).

Sincerely,



Dorothy Rice  
Executive Director

*California Environmental Protection Agency*



Recycled Paper

# Smallest fall run of chinook salmon recorded

Jane Kay, Chronicle Environment Writer

Wednesday, February 18, 2009



**(02-18) 20:50 PST** -- The smallest number of Pacific Ocean salmon ever recorded swam back to the Sacramento River via San Francisco Bay last fall, the latest evidence of the decline of the storied fish along the West Coast, officials said Wednesday.

The Pacific Fishery Management Council, a federal body that regulates commercial and sport fishing, estimated that only 66,286 adult salmon returned to the Sacramento River to spawn. Six years ago, the peak return was 13 times higher.

In 2007, only 87,881 of the fish returned to spawn in the river, falling far short of the agency's goal of 122,000 to 180,000 fish.

The latest count comes as officials consider imposing fishing restrictions off California's coast again this summer.

Chinook - also known as king salmon - are the prized fish of Northern California streams, once proliferating in four genetically distinct runs, or races.

For centuries, they have fought their way up the Sacramento and San Joaquin rivers and their tributaries to bear young, which hatch in the rivers, swim through the bay and live in the ocean until they return three years later to spawn and die in their natal streams.

The fish have supported an economy worth hundreds of millions of dollars and supplied restaurants and retailers with a local source of heart-healthy protein famous for its rich, buttery flavor.

The Sacramento River fall run, the bread-and-butter chinook run, is the one facing collapse, although Lagunitas Creek in Marin County this year had its smallest run of coho salmon ever recorded.

Scientists believe warmer ocean conditions in 2005 and 2006 led to a lean food supply as young salmon were entering the ocean. That played a part in the low spawning returns in 2007 and 2008.

In addition, in 2004 and 2005, the years the chinook were born and traveled to the ocean, the federal Central Valley Project and the State Water Project exported record amounts of Sacramento-San Joaquin River Delta water to urban and agricultural customers throughout the state, documents show.

Federal researchers also blame 50 years of water management in California for the decline of the fish. The state and federal water projects constructed dams and conveyance systems that separated the fish from their habitats. Pumps, canals and hatcheries built to make up for lost water also depleted once-diverse runs, at one time the pride of the state.

Next week, the management council, which is made up of representatives of states and tribes as well as government agencies and fishing groups, is expected to release numbers estimating the chinook salmon available in the ocean, agency spokeswoman Jennifer Guilden said Wednesday.

Based on stock assessments from the National Marine Fisheries Service and other federal agencies, the management council then will set quotas for the fishing season, which typically begins in May.

Last year, the low estimates resulted in a ban on commercial fishing off California and Oregon, the first time all seasons were closed in California history. Similar restrictions are expected this year, according to officials who have seen the stock assessments.

"Almost for certain there will be no fishing this year," said Zeke Grader, executive director of the Pacific Federation of Fishermen's Associations, which represents commercial fishermen. The industry has received some financial aid, which Grader says may have to carry over to this season as well.

His group was lead plaintiff in a 2004 lawsuit asking the federal government to deem the winter and spring runs of salmon in jeopardy of extinction. The fish are listed under the federal Endangered Species Act.

The system in the Klamath and Trinity rivers had 31,000 returning spawners, a better return than in the Central Valley, but still short of its management goal of 40,700 fish, according to the Pacific Fishery Management Council.

According to the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center in Santa Cruz, the fall run appears to have suffered from "poor ocean conditions when the juveniles left the fresh water to enter the

ocean," said Churchill Grimes, fishery biologist and a leader of the group preparing a paper on causes of the decline.

But the ultimate cause of the decline is "sort of by 1,000 cuts" related to habitat destruction of the delta, once 1,500 square kilometers of rearing habitat, he said.

"It was a huge marsh, habitat for all of the runs. Now it's been diked, levied and rip-rapped until it's not more than a big ditch," Grimes said. Dams, pumping water by the state and federal water projects and the operation of hatcheries all contribute to the problem, he said.

E-mail Jane Kay at [jkay@sfchronicle.com](mailto:jkay@sfchronicle.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/02/18/MN9I160HP4.DTL>

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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

<p><b>KARUK TRIBE OF CALIFORNIA and LEAF HILLMAN,</b></p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p><b>CALIFORNIA DEPARTMENT OF FISH AND GAME; and RYAN BRODDRICK, Director, California Department of Fish and Game,</b></p> <p style="text-align: right;">Defendants.</p>
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Case No. 05211597

**DECLARATION OF NEIL MANJI IN SUPPORT OF OPPOSITION TO THE OBJECTIONS OF THE NEW 49'ERS, INC., AND RAYMOND W. KOONS TO THE PROPOSED STIPULATED JUDGMENT**

Date: January 26, 2006  
 Time: 9:00 a.m.  
 Dept: 512 (Hayward)

The Honorable Bonnie Sabraw  
 Trial Date:  
 Action Filed: May 6, 2005

**DECLARATION OF NEIL MANJI**  
 CASE NO. 05211597

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**DECLARATION OF NEIL MANJI IN SUPPORT OF ENTRY OF STIPULATED JUDGMENT**

I, Neil Manji, declare as follows:

1. I am currently employed by the California Department of Fish and Game ("Department") as a Supervising Biologist and I participated in settlement negotiations in the above captioned matter in that capacity. The matters set forth in this declaration are within my personal knowledge and if called on to testify to these matters I would and could so testify.

2. In my current job at the Department, I serve as the Fisheries Program Manager for the eight counties that comprise the Northern California-North Coast Region ("Region") of the Department. I oversee all fisheries programs within the Region, including programs involving: 1) fisheries habitat restoration; 2) inland and anadromous fisheries resource assessment and monitoring; 3) watershed assessment; and 4) salmon, steelhead and trout hatcheries. I hold a Bachelor of Science (1986) with a major in Fisheries from Humboldt State University and have worked as a fishery biologist since 1989. I worked on the Klamath River specifically in that capacity from 1984-1986, and from 1999 through present. Among other work during that time, I conducted spawning ground surveys and monitored adult and juvenile salmonids on the mainstem and tributaries to the Klamath River. I have also reviewed and edited several manuscripts documenting research and monitoring within the Klamath River Basin. Finally, I am a member of the Klamath Basin Fishery Task Force, Klamath Fishery Management Council and Trinity River Management Council.

3. Based on my experience with the Department, and in my professional opinion as a fishery biologist, the existing regulations governing suction dredging, which are found in sections 228 and 228.5 of Title 14 of the California Code of Regulations, serve to permit suction dredging activities while, at the same time, providing protection for spawning adult salmonids, including chinook salmon, and the developing eggs and larvae of such species, which remain in the gravel following spawning. The existing regulations provide this protection by establishing watercourse-specific closures and seasonal restrictions on suction dredging activities. For example, under the existing regulations, suction dredging on the mainstem of the Klamath River is allowed from the mouth of the mainstem to the Salmon River from the fourth Saturday in May through September 30

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DECLARATION OF NEIL MANJI

CASE NO. 05211597

1 (Class G); from the Salmon River upstream to 500 feet downstream of the Scott River throughout  
2 the year (Class H); from 500 feet downstream of the Scott River upstream to Iron Gate Dam from  
3 the fourth Saturday in May through September 30 (Class G). From Iron Gate Dam to the Oregon  
4 Border, no suction dredging is permitted at any time (Class A). (See Cal. Code Regs., tit. 14, §  
5 228.5, subd. (d)(49).)

6 4. The additional restrictions agreed to by the Department in the Stipulated Judgment  
7 at issue in this proceeding are structured in the same manner as the existing regulations. Those  
8 restrictions are detailed in Exhibit 1 to the Proposed Stipulated Judgment, and the information  
9 document the Department is including with all 2006 suction dredge permit applications. A true and  
10 correct copy of that document is attached hereto as Exhibit A.

11 5. From a biological standpoint, the additional restrictions were designed to substantially  
12 lessen the potential for significant impacts on various fish species that suction dredging could cause  
13 in the Klamath, Scott, and Salmon River watersheds. In particular, the additional restrictions will  
14 protect and benefit coho salmon, steelhead, green sturgeon, and lamprey.

#### 15 Spawning

16 6. Chinook and coho salmon and steelhead are anadromous salmonids that spawn in  
17 gravel substrates throughout the Klamath Basin at various times of the year. Surveys conducted by  
18 the Department and other public agencies indicate that, in the Klamath Basin, chinook salmon spawn  
19 from September through December, and coho spawn from November through January. Steelhead  
20 can spawn over a longer temporal period from December through June. It is critical during those  
21 periods that spawning adults and redds are not disturbed by instream activities, such as suction  
22 dredging. Physical disturbance of adults and redds during pre- and post-spawning activities can  
23 reduce the spawning success and subsequent survival of progeny.

24 7. Based on existing evidence regarding the distribution and abundance of coho salmon  
25 and steelhead in the Klamath River Basin, the additional restrictions will reduce direct conflict  
26 between suction dredging activity and spawning adult coho salmon and steelhead. Further, redds  
27 created on dredge tailings have been shown to scour following high flow events more so than redds  
28 created on undisturbed substrates. Redd scouring will negatively affect the survival of incubating

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DECLARATION OF NEIL MANJI

CASE NO. 05211597

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1 eggs. The additional restrictions are also expected to limit suction dredge-related disturbance to  
 2 spawning substrates immediately prior to spawning activity. This, the Department expects that the  
 3 additional restrictions will reduce the potential for such related incidental impacts.

4 **Emergence**

5 8. It can take several months for salmonid eggs to develop and for the sac fry to emerge  
 6 from the gravel. Emergence of chinook fry occurs from November through March. Coho fry  
 7 emergence can occur from February through June. Steelhead emergence generally occurs from April  
 8 through July. As mentioned above, it is critical that the developing eggs and sac fry are not disturbed  
 9 during those emergence periods. The additional restrictions are intended to reduce those potential  
 10 impacts.

11 9. Summer steelhead migrate to freshwater in late spring and oversummer in cool  
 12 tributaries until they spawn in early to mid-winter. Tributaries important to summer steelhead were  
 13 identified and prioritized and classified accordingly based on summer steelhead abundance from  
 14 several years of surveys.

15 **Juvenile Salmonids and Rearing Habitat**

16 10. Unlike chinook salmon, juvenile coho reside in tributaries for a year or more before  
 17 migrating to the ocean. Due to a flexible life history, steelhead can reside for numerous years  
 18 without migrating to the ocean. Oversummering habitat is thus critical to the survival of juvenile  
 19 coho and steelhead. Through reports, survey data, and other information available to Department  
 20 biologists and other fisheries scientists from other public agencies and Native American tribes,  
 21 tributaries in which juvenile coho rear were identified. Many of the tributaries in the Klamath basin  
 22 either run dry by late summer or have temperatures that exceed the lethal threshold for salmonids.  
 23 Prioritization of tributaries containing critical rearing habitat was based on professional judgment  
 24 and the presence of juvenile coho or steelhead and the quality of the habitat (e.g., a stream that  
 25 maintains connectivity with the mainstem is of a higher quality than a stream that loses connectivity  
 26 or has high temperatures). The Department agreed to close to suction dredging (Class A) high  
 27 priority tributaries and habitats as part of the Stipulated Judgment to protect those habitats, as well  
 28 as to eliminate direct conflict between suction dredging activity and juvenile coho or steelhead.

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DECLARATION OF NEIL MANJI

CASE NO. 05211597

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**Sturgeon**

11. Sturgeon are long-lived anadromous fish that reportedly reach reproductive maturity at approximately 10-15 years of age. Like salmon, sturgeon spawn in fresh water streams and rivers. Green sturgeon have been documented to occur and spawn successfully in the Salmon River, a tributary to the Klamath River. Spawning occurs from April through July while emergence occurs from April through August. Again, it is critical that spawning adults and the developing eggs are not disturbed. The additional closures and seasonal restrictions will protect the peak spawning period of adult sturgeon in areas where spawning activity has been reported by Department biologists and other agency biologists and scientific literature. Recently emerged juveniles are reportedly poor swimmers that remain close to cover while undergoing a downstream migration to rearing habitats. The additional restrictions will reduce direct conflict of the early-emerged juveniles with suction dredging activity and, where tributaries are now closed to suction dredging year round, protect spawning, incubation, early life history stages, and juvenile rearing habitat.

**Lamprey**

12. Lamprey are also anadromous fish that spawn in the gravel of streams and rivers. Lamprey spawning occurs from April through July. It is critical that spawning adults are not disturbed. The additional restrictions will reduce or eliminate conflict between spawning lamprey and suction dredging activity, as well as provide protection for the developing eggs. The ammocetes (i.e., lamprey larvae) can remain in the gravel for several years which makes them extremely vulnerable to impacts caused by suction dredging. The additional restrictions will provide greater protection for all freshwater life history stages for lamprey.

**Thermal Refugia**

13. It has been documented that juvenile salmonids use cold water thermal refugia around the mouths of numerous tributaries to the Klamath, Shasta, Scott, and Salmon Rivers from about May 15 through late September. As water temperature in the mainstem of the rivers reaches critically high levels, these cold water refugia become extremely important to salmonid survival. Information from Department biologists identified thermal refugia areas during field investigations that include fish kill investigations and juvenile fish surveys. In addition, there have been several

1 studies and observations conducted by other state, federal, and tribal biologists that have identified  
 2 and quantified thermal refugia within the Klamath River Basin. These summer rearing areas were  
 3 prioritized based on a review of current thermal refugia data and information from other agency  
 4 biologists, as well as professional judgment from direct observations. Designated thermal refugia  
 5 are closed to suction dredging year round under the additional restrictions to avoid potential  
 6 displacement or disturbance of juvenile coho or steelhead that may result from suction dredging  
 7 activities.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed in Redding, California on January 20, 2006.

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Neil Manji

DECLARATION OF NEIL MANJI

CASE NO. 05211597

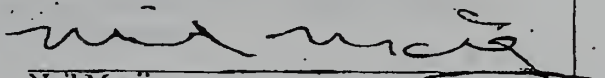
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1 studies and observations conducted by other state, federal, and tribal biologists that have identified  
 2 and quantified thermal refugia within the Klamath River Basin. These summer rearing areas were  
 3 prioritized based on a review of current thermal refugia data and information from other agency  
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 Neil Manji

DECLARATION OF NEIL MANJI

CASE NO. 05211597

**DECLARATION OF SERVICE BY U.S. MAIL and FAX**

Case Name: *Karuk Tribe of California and Leaf Hillman  
v. California Department of Fish and Game, et al.*

No.: 05 211597

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 20, 2006, I served the attached

**DECLARATION OF NEIL MANJI IN SUPPORT OF OPPOSITION TO THE  
OBJECTIONS OF THE NEW 49'ERS, INC., AND RAYMOND W. KOONS TO THE  
PROPOSED STIPULATED JUDGMENT**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004, addressed as follows:

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2930 Lakeshore Ave., Suite 408  
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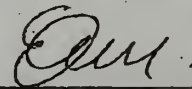
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Stein & Lubin LLP  
600 Montgomery Street, 14<sup>th</sup> Floor  
San Francisco, CA 94111  
(415) 981-4343

James Wheaton  
Environmental Law Foundation  
1736 Franklin Street, 9th Floor  
Oakland, CA 94612  
(510) 208-4562

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 20, 2006, at San Francisco, California.

Elza Moreira  
Declarant

  
Signature





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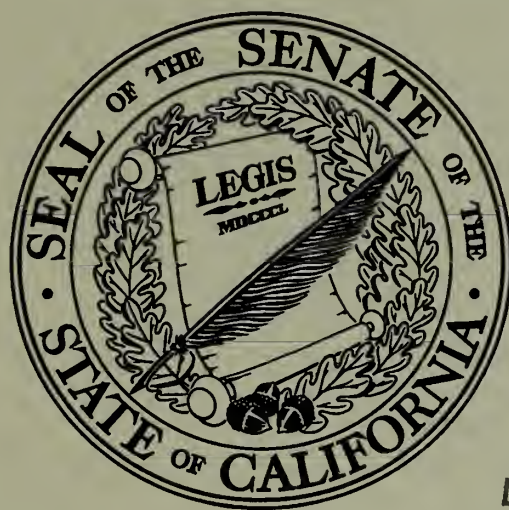
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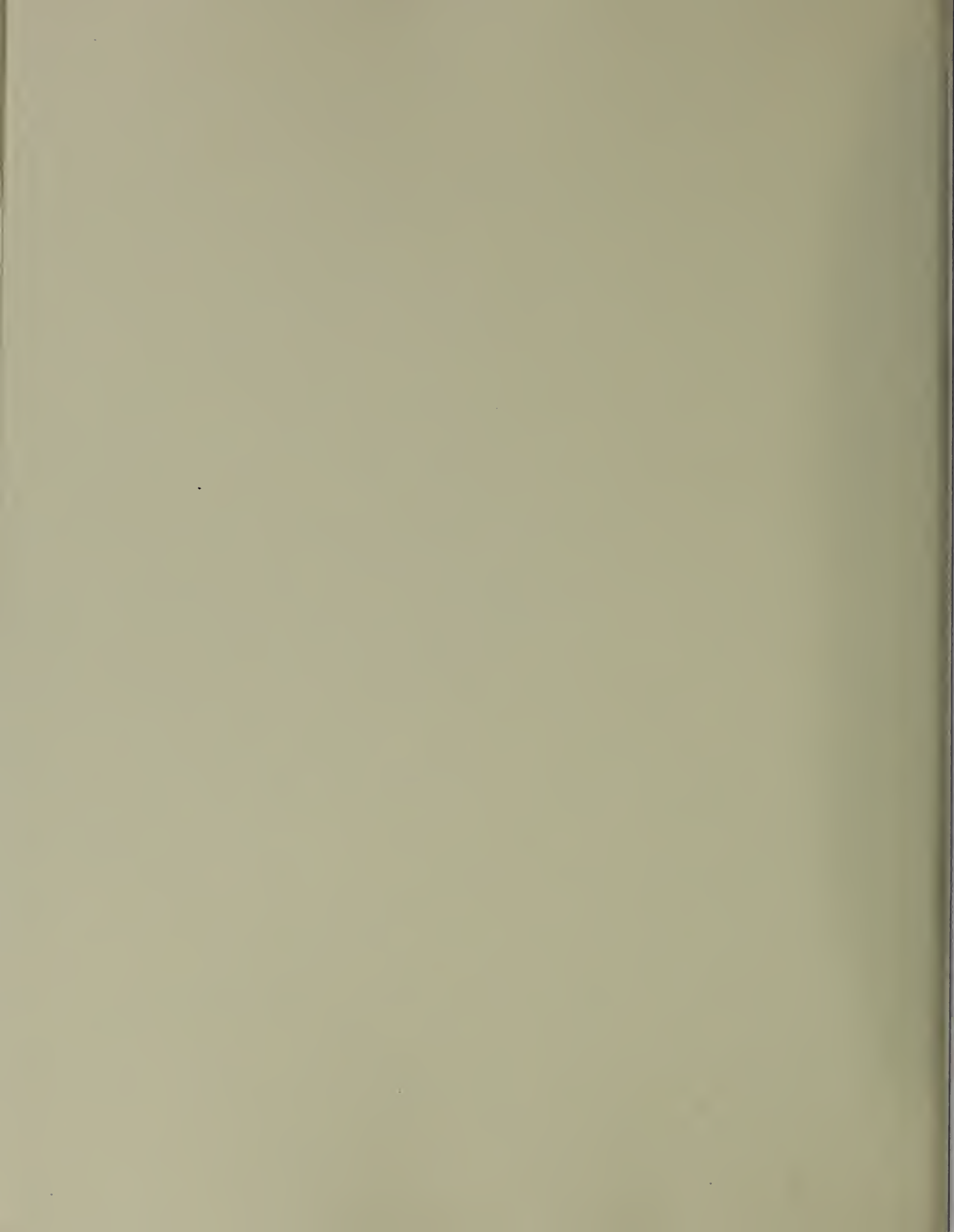


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WEDNESDAY, MARCH 4, 2009

1:43 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713



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STATE OF CALIFORNIA  
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HEARING

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA  
--oOo--

WEDNESDAY, MARCH 4, 2009  
1:43 P.M.  
--oOo--

Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

APPEARANCES

MEMBERS PRESENT

SENATOR DARRELL STEINBERG, Chair  
SENATOR GIL CEDILLO  
SENATOR SAMUEL AANESTAD  
SENATOR ROBERT DUTTON  
SENATOR JENNY OROPEZA

STAFF PRESENT

GREG SCHMIDT, Executive Officer  
JANE LEONARD BROWN, Committee Assistant  
NETTIE SABELHAUS, Appointments Consultant  
DAN SAVAGE, Assistant to SENATOR CEDILLO  
BILL BAILEY, Assistant to SENATOR AANESTAD  
CHRIS BURNS, Assistant to SENATOR DUTTON  
BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

WILLIAM S. HARAF, Ph.D., Commissioner of  
Financial Institutions  
BOB CLARK, Director, Office of Real Estate Appraisers  
BONNIE M. REISS, Member, The Regents of the  
University of California

	INDEX	
		<u>Page</u>
1		
2		
3	Proceedings .....	1
4	Governor's Appointees:	
5	BONNIE M. REISS, Member, The Regents of the University of California .....	2
6		
7	INTRODUCTION BY SENATOR JACK SCOTT .....	2
8	INTRODUCTION BY SENATOR GEORGE RUNNER .....	3
9	INTRODUCTION BY SENATOR ROY ASHBURN .....	5
10	OPENING STATEMENT .....	7
11	Question by SENATOR CEDILLO re:	
12	Undocumented immigrants in the	
13	U.C. system .....	11
14	Questions by SENATOR DUTTON re:	
15	Gainful employment of undocumented	
16	U.C. students .....	14
17	Rehiring U.C. employees after	
18	voluntary separation/early	
19	retirement .....	15
20	Question by SENATOR AANESTAD re:	
21	Recruiting/retaining faculty .....	17
22	Question by CHAIRMAN STEINBERG re:	
23	Articulation between the K-12	
24	system and the U.C. system .....	19
25	////	

1	<u>Witnesses in Support of BONNIE M. REISS:</u>	
2	JULIAN POSADAS, Vice President, AFSCME 3299 .	22
3	MICHAEL A. BOLDEN, AFSCME, AFL-CIO .....	24
4		
5		
6		
7	WILLIAM S. HARAF, Ph.D., Commissioner of Financial Institutions .....	25
8	OPENING STATEMENT .....	26
9	Questions by CHAIRMAN STEINBERG re:	
10	Defining success or failure of	
11	the Department of Financial	
12	Institutions .....	29
13	Meaning of "measured approach	
14	to supervision" .....	31
15	Foreclosure statistics of	
16	DFI-regulated institutions .....	32
17	Appropriateness of measured	
18	approach to supervision .....	34
19	Implementation of SB 7 and	
20	SB 1137 .....	44
21	Questions by SENATOR OROPEZA re:	
22	Assistance/protection for consumers	
23	of money-transmitter entities .....	35
24	Complaint form .....	37
25	Gender balance of staff .....	47

1 Question by SENATOR AANESTAD re:  
2 Bush administration's economic  
3 stimulus package ..... 40  
4 Question by SENATOR DUTTON re:  
5 Funding/budget ..... 47  
6 Witnesses in Support of WILLIAM S. HARAF, Ph.D.:  
7 MAURINE PADDEN, California Bankers  
8 Association ..... 49  
9 EZRA LEVINE, The Money Services Round  
10 Table ..... 49  
11  
12  
13  
14 MARGARET GLADSTEIN, California Independent  
15 Bankers ..... 50  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

--o0o--

14 BOB CLARK, Office of Real Estate  
15 Appraisers ..... 52  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

16 OPENING STATEMENT ..... 53  
17 Questions by CHAIRMAN STEINBERG re:  
18 Appraiser involvement in  
19 fraudulent transactions ..... 56  
20 In-house legal counsel ..... 58  
21 Audit program ..... 58  
22 Legitimacy of accrediting and  
23 educational courses for  
24 appraisers ..... 60  
25 Scope of appraiser investigators . 63

v

1 Question by SENATOR OROPEZA re:  
2 Ethics training ..... 64  
3 Questions by SENATOR DUTTON re:  
4 Money owed the Office of Real  
5 Estate Appraisers by the General  
6 Fund ..... 65  
7 Performance of loan appraisals ... 66  
8 STATEMENT BY CHAIRMAN STEINBERG ..... 68  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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11 Proceedings Adjourned ..... 71  
12 Certificate of Reporter ..... 72  
13 APPENDIX (Written Responses of Appointees) .. 73

vi

**PROCEEDINGS**

1  
2 CHAIRMAN STEINBERG: Call the Senate Rules  
3 Committee to order. Good afternoon.  
4 Please call the roll.  
5 MS. BROWN: Senator Cedillo.  
6 Dutton.  
7 SENATOR DUTTON: Here.  
8 MS. BROWN: Dutton here.  
9 Oropeza.  
10 SENATOR OROPEZA: Here.  
11 MS. BROWN: Oropeza here.  
12 Aanestad.  
13 SENATOR AANESTAD: Here.  
14 MS. BROWN: Aanestad here.  
15 Steinberg.  
16 CHAIRMAN STEINBERG: Here.  
17 MS. BROWN: Steinberg here.  
18 CHAIRMAN STEINBERG: Very good. Welcome to  
19 everyone, Members, staff, members of the public.  
20 Without objection, we want to start with number  
21 two -- with number two, and start with Bonnie Reiss as a  
22 member of The Regents of the University of California.  
23 And I understand that Ms. Reiss has a couple of esteemed  
24 people who want to introduce her, so please come on up.  
25 Senator Ashburn, I understand you're here as

1

1 well. We can find a third chair. Come right on up.  
2 Good. Very good. Please.  
3 Welcome to Senator Scott, President Scott,  
4 Assembly Member Scott, Chancellor Scott.  
5 SENATOR SCOTT: Yeah. Okay. Maybe one day I  
6 can hold a job long enough to get a permanent title.  
7 I really am extremely pleased today to  
8 introduce Bonnie Reiss, who I think all of you know as a  
9 Regent of the University of California.  
10 The University of California is one of the  
11 great treasures of the State of California. And we're  
12 so proud of the research that's done there and the  
13 education that occurs there, and I think Bonnie Reiss is  
14 just ideal to be a Regent. She has a wealth of  
15 experience.  
16 I think a lot of us got very well acquainted  
17 with her when she served in the governor's office, and I  
18 did, certainly, as chair of the Education Committee in  
19 the Senate, because she was such a firm supporter of  
20 education and often had excellent ideas to offer to me,  
21 and I would often bounce some things off of her and  
22 always found her to be so thoughtful, intelligent,  
23 pragmatic, and always optimistic.  
24 Bonnie's that way. She has a long history.  
25 She served as president of the Earth Communication

2



1 Office from 1988 to 1992; she's been very active in  
2 environmental causes and, of course, is very active in  
3 that today. But she also served on the Board of  
4 Education. And so she not only brings a grasp of higher  
5 education, but she has this grasp of K through 12. And  
6 linking K through 12 and the university system I think  
7 is terribly important.

8 She has spearheaded and given a particular  
9 drive to after-school programs, first as president of  
0 the After-School All Stars and then by launching the  
1 governor's program. And she still serves on the board  
2 of directors.

3 I'm not going to go into all of the things that  
4 Bonnie Reiss has done, because we'd be here for a very  
5 long time. But I can tell you as a former senator and  
6 as chancellor of California Community Colleges, I'm very  
7 proud to have Bonnie Reiss as a regent, and certainly I  
8 enthusiastically endorse her confirmation.

9 CHAIRMAN STEINBERG: Thank you very much,  
0 Senator Scott.

1 Senator Runner, welcome.

2 SENATOR RUNNER: Thank you for letting me come  
3 before you, and it certainly is a pleasure to be here  
4 for Bonnie Reiss.

5 You all know Bonnie and have worked with her.

3

1 My notes -- This is a thing that staff put together.  
2 More than 25 years' experience in business/entertainment  
3 law, political organizing, finance, event production, as  
4 well as management of nonprofits.

5 And I was just thinking, I don't remember being  
6 at any of those political organizing meetings with you  
7 earlier.

8 MS. REISS: It was all --

9 SENATOR RUNNER: No. Earlier. Earlier.

0 Earlier.

1 So I got to know Bonnie in a much more  
2 pragmatic way as she then represented the governor. And  
3 I found with Bonnie an individual who was always willing  
4 to come and figure out how to get through an issue, was  
5 very open on issues, would be glad to tell you what she  
6 thinks about what's going on, but then very much one who  
7 would listen too. So I appreciated that so much about  
8 her.

9 And her ability to represent the governor well  
0 in a host of issues, and the ones primarily I think that  
1 we were dealing with were oftentimes around the issue of  
2 education, issues that she did so well with the governor  
3 in representing those areas of education.

4 So I think, again, what I think is the skill  
5 that she has is the ability to foresee issues, to try to

4

1 work through issues, and, again, that skill -- there's  
2 probably not a greater skill in almost any phase of  
3 operation in the state of California today, the  
4 challenges that we face at every level in every  
5 institution, that ability to be a problem solver and how  
6 to work through issues, and I have great confidence that  
7 that's the kind of skill that Bonnie brings to her role.  
8 And it's certainly a privilege for me to want to endorse  
9 her confirmation.

10 CHAIRMAN STEINBERG: Thank you very much,  
11 Senator Runner.

12 Senator Ashburn. Welcome.

13 SENATOR ASHBURN: Thank you. Mr. Chairman and  
14 Members of the Rules Committee, I'm going to offer short  
15 remarks. There's no one more qualified to offer short  
16 remarks.

17 CHAIRMAN STEINBERG: How many times have you  
18 used that?

19 SENATOR ASHBURN: Not nearly enough.

20 Bonnie Reiss is a -- is someone I know, and  
21 Bonnie Reiss is a friend of mine. And there's only one  
22 Bonnie Reiss. And that's why I wanted to be here today,  
23 to urge your favorable consideration in her  
24 confirmation.

25 First, you look for qualifications. Is Bonnie

5

1 Reiss qualified to be a member of the Board of Regents?  
2 There's absolutely no question about the qualifications.

3 Is she a person of integrity and honesty?  
4 Sometimes she's so honest that she makes the point. And  
5 so she's incredibly honest.

6 And, thirdly, Is she independent? And I think  
7 on a board like this where you have a strong  
8 administrative structure, what you're looking for are  
9 strong board members who are going to ask the tough  
10 questions and hold people accountable. I have no doubt  
11 that Bonnie Reiss will ask those tough questions and  
12 hold people accountable, and for those reasons I ask for  
13 your favorable consideration.

14 CHAIRMAN STEINBERG: Thank you very much,  
15 Senators. All three. Appreciate it. Good  
16 recommendations.

17 Ms. Reiss.

18 MS. REISS: Thank you. Thank you, Senators.

19 CHAIRMAN STEINBERG: Bonnie, but for the  
20 formality of the hearing.

21 MS. REISS: Thank you.

22 CHAIRMAN STEINBERG: We welcome you. Is there  
23 anybody else before we begin that you want to introduce,  
24 special guests or anybody else who is here? Family,  
25 friend, foe?

6

1 MS. REISS: There are friends here. Thank you.  
2 Jane Imperato, Nick Kislinger, Diane Griffiths, from  
3 U.C., are friends of mine that are here today. Thank  
4 you.

5 CHAIRMAN STEINBERG: Very very good. Very very  
6 good.

7 Welcome to the Committee.

8 Would you like to make an opening statement?

9 MS. REISS: Thank you. First I want to, of  
10 course, thank Senator George Runner and Roy Ashburn and  
11 Jack Scott for the great honor they paid me, to be here  
12 today to introduce me and support me for this position.  
13 Leaders like that, that have worked and cared so much  
14 about education issues, to come forward and show me the  
15 respect of being here really means a lot to me, so I  
16 want to thank them.

17 And I want to thank all of you for your time  
18 and your consideration, and the time you each gave me in  
19 private meetings that I had leading up to this.

20 I'll try to be brief in my opening comments out  
21 of respect for your time and the other issues you have  
22 to deal with. So I think the most important thing for  
23 me to address in my opening comments would be why I want  
24 to be a U.C. Regent, and why I'm passionate about it,  
25 and why I think it's a very, very important position

7

1 in my family that got a postgraduate degree, law degree,  
2 hopefully using it for good. And I just saw how,  
3 really, firsthand, that opened the doors for me and for  
4 my family.

5 I think it's -- So I think on both levels, I  
6 think a great public education is both important to  
7 America, for democracy, for California, in every way, to  
8 creating an informed citizenry and creating a citizenry  
9 that's able to be competitive and to work in the jobs  
10 and compete in the global marketplace, but also on the  
11 individual level for people to be able to each achieve  
12 their dreams. And, really, that's how it's done. So  
13 that's what motivates me. That's why I find this so  
14 important in general with education.

15 And U.C., of course, according to the master  
16 plan, is supposed to be the institution in our state  
17 that takes the top academically suited candidates and  
18 gives them a great education. It's leading in research.

19 I know that decades ago -- In talking with some  
20 of you, we talked about how decades ago, there was no  
21 question that U.C. by far was the leading educational  
22 institution in the country, and that's been somewhat  
23 impacted in a negative way. And I want to vow to see  
24 that I do all I can and bring everything I can and have  
25 within me as I serve as a Regent to see that U.C.

9

1 that I will take very seriously, both the privilege and  
2 the responsibility of it.

3 And that really deals with when I first studied  
4 about the creation of our country and the debate, and  
5 reading the Madison papers and the debate of our great  
6 visionaries that started our country, and how Thomas  
7 Jefferson spoke to -- was the one who had the vision  
8 saying that "For this emerging democracy to be great, we  
9 need to provide an excellent public education, not just  
10 for the rich and powerful landowners and children of  
11 them, but for everybody." And I remember that struck me  
12 then, and here we are hundreds of years later, and as  
13 more -- the greater our population is, the more our  
14 country has changed, nothing's remained more true.

15 I believe that there's probably nothing -- If  
16 this isn't the most important thing that's -- tenet  
17 that's important for America to achieve its true promise  
18 of democracy, to provide a great public education to the  
19 children of this country, nothing else is more  
20 important. K through 12, community college, Cal State,  
21 U.C., all of that play into that.

22 In my own life, how that worked, my parents  
23 were high-school graduates. They didn't go to college.  
24 My dad was in World War II. And my sister got a college  
25 education and became a teacher. And I was the first one

8

1 remains second to none in delivering a quality education  
2 to undergraduates, graduates, continues to be a leader  
3 in research and innovation. And that's what I pledge to  
4 everyone here today and to the citizens -- to the  
5 current students, future students, and citizens.

6 And with that, I thank you for your time, and I  
7 will just open it up to comments and questions.

8 CHAIRMAN STEINBERG: Thank you very much,  
9 Ms. Reiss.

10 This appointment is important for all the  
11 reasons you just stated, but in addition it's a ten-year  
12 appointment. Twelve. Serves until -- well, until  
13 March 1st, 2020, so it's 11 to go, right? Eleven to go.  
14 It's a 12-year appointment, so it's very significant  
15 here.

16 Let's open it up to questions from the Members,  
17 and I have a few myself, but I'll begin with --

18 SENATOR OROPEZA: Mr. Chair, I actually have no  
19 questions for this applicant, because I know her well,  
20 have worked with her and feel that -- as a former  
21 trustee in the CSU, know when I see a good academic  
22 leader. And I think she's one, so I've got no  
23 questions.

24 CHAIRMAN STEINBERG: Very good. Very good.  
25 Senator Cedillo.

10

1 SENATOR CEDILLO: Obviously, I'll state -- I'm  
2 a big fan, for the record, so I'll state the bias up  
3 front.

4 Since there is this rare opportunity when we  
5 have another meeting with a Regent later on today, let's  
6 talk about this question of immigrants in the  
7 U.C. system.

8 We've held hearings on the need, Del Meyers,  
9 U.S.C., Peter Schregg, many others have written books on  
10 the changing demographic and the changing economy and  
11 the need for us to prepare the new workforce. That new  
12 workforce, in large part, is going to be immigrant. And  
13 a publication out of U.C.L.A. called "Underground  
14 Undergrads" talks about AB 540 students within the U.C.  
15 system. We have these dream students who invariably  
16 seem to be the best and the brightest. As challenging  
17 as their circumstances are, they invariably are the best  
18 and the brightest.

19 The Regents have supported my legislation in  
20 the past to permit them to apply for scholarships. That  
21 effort has been frustrated. And so now we're at the  
22 point, and this is a long-term appointment, immigration  
23 reform will be on the horizon at some point. I trust it  
24 will be accomplished before your term is up. But before  
25 that, what are your thoughts on that situation and how

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1 we address it, how we make sure that these students are  
2 given the resources, given that we are providing them  
3 the opportunity to attend, and given that they are  
4 performing well, and given that we anticipate they're  
5 going to be leaders in our society.

6 MS. REISS: Senator, I'm assuming -- allow me  
7 to clarify. Are you referring to the undocumented  
8 immigrants?

9 SENATOR CEDILLO: Yes.

10 MS. REISS: Well, I guess there's a few ways to  
11 look at that. One, there's litigation going on now  
12 about the issue of the in-state tuition, so I don't know  
13 how that, obviously, is going to end up. That's a whole  
14 legal issue where that goes, so let me address the  
15 philosophy.

16 SENATOR CEDILLO: And the policy.

17 MS. REISS: Okay. Philosophically, I believe  
18 that if a -- I don't believe in punishing a child for  
19 the acts of their parents, first of all. I believe in  
20 doing things legally, in the right way, and going  
21 through all the things you're supposed to do. With that  
22 said, I don't -- but I don't believe that young people  
23 should be punished for the acts of their parents.

24 Setting aside whatever the legal issues are, I  
25 think that on policy in a state like California with the

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1 high drop-out rate that we're seeing, that if a student  
2 is not only able to graduate a California high school,  
3 but able to have the high academic standards to get into  
4 U.C., I think that the State should be doing what it can  
5 to support that student in getting through U.C. and  
6 getting educated. I think on policy, I think it's  
7 helpful to the state.

8 SENATOR CEDILLO: I --

9 CHAIRMAN STEINBERG: Okay. Thank you.  
10 Senators Aanestad and Dutton.

11 SENATOR DUTTON: Yeah, I guess --

12 CHAIRMAN STEINBERG: No requirement to speak.

13 SENATOR DUTTON: I wasn't going to. I can't  
14 resist now.

15 One of the challenges --

16 SENATOR CEDILLO: You should know this is not a  
17 two-thirds.

18 SENATOR DUTTON: I understand, but it still  
19 goes to a deeper issue, and that's a problem we do have  
20 in court, issues taking place, and I'm not going to  
21 bother asking you about that, because it's still pending  
22 some legal determinations, which I find kind  
23 of -- Certainly, it tells another kind of story  
24 altogether.

25 There is a bigger problem. Forget about the

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1 issue of whether or not somebody who is undocumented or  
2 not should be attending the college. One of the big  
3 challenges that I'm hearing about, is that because they  
4 have a questionable legal status, they have trouble even  
5 obtaining a job once they do get trained and educated.  
6 So it seems to me that it's kind of like putting the  
7 cart before the horse. You might actually be causing  
8 people who actually are here legally, whether they came  
9 from immigration or not, it doesn't matter, but there is  
10 this other problem, and we're using resources and stuff  
11 to train somebody who can't actually get a job once  
12 they're educated.

13 So do you have some type of system where you're  
14 going to help them become legal so they can actually be  
15 gainfully employed or --

16 MS. REISS: I wish I had the power to figure  
17 out how to solve the immigration problem in the United  
18 States.

19 SENATOR DUTTON: That's my point. I realize  
20 it's a big job, but that really is the challenge.  
21 That's why I have some concerns. And it also may end up  
22 costing the state some substantial dollars if the legal  
23 challenge goes against it, which it did once on appeal,  
24 and it may go against us again.

25 The other thing I'm concerned about is --

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1 Recently, there was a story, I believe it was in  
2 *The Chronicle*, about some recent discharges among  
3 employees. They were given some kind of golden  
4 handshake to leave the headquarters and they end up  
5 going to someplace else. Now, whether this is  
6 legitimate or not, I want to say that somehow we're  
7 becoming more efficient, doesn't give me a great deal of  
8 comfort to know that that kind of thing took place.  
9 This is in San Francisco.

10 MS. REISS: This is the Linda Williams case.

11 SENATOR DUTTON: I wish you would maybe  
12 comment --

13 MS. REISS: I actually do want to comment on  
14 that, because I have a feeling we're probably all  
15 unanimously equally opposed to what happened with that  
16 situation.

17 The history of that was that Bob Dynes was  
18 president of U.C. There was an effort to reduce the  
19 staff in the president's office, and a voluntary  
20 separation program was established by Bob Dynes. And  
21 then when Mark Yudof came in -- Mark Yudof came in about  
22 the same time I was appointed to be a Regent.

23 A number of people took advantage of that  
24 voluntary separation program, and a few of them, in  
25 taking the voluntary separation program, then got

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1 the new policy, and I support that fully.

2 SENATOR DUTTON: Thank you.

3 CHAIRMAN STEINBERG: Very good.

4 Senator Aanestad, do you have any questions?

5 SENATOR AANESTAD: I want to thank you for our  
6 conversation earlier. We touched on a couple of things  
7 of mutual interest and interesting in the University of  
8 California. You didn't have to repeat decades and  
9 decades in your opening statement when you were  
10 referring to how long ago I went to school.

11 I'm concerned about faculty. I had, 40 years  
12 ago, great faculty, Nobel Prize winners, teaching  
13 assistants that won TA of the Year through the whole  
14 university system, all of whom are either gone now or  
15 gone to other great universities, no longer with U.C.

16 I'm wondering what your thoughts are  
17 regarding -- I know the legislature and I especially  
18 have differences of opinion regarding the conduct and  
19 the philosophy of the administration, but they're not  
20 the ones who teach those students. It's the faculty.  
21 And when I went to U.C., it was -- there was no  
22 question -- the premier university system in the world.  
23 I think even over our Ivy League. I don't know if we  
24 can say that today. And a lot of it has to do with our  
25 ability to recruit and retain faculty. And I would just

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1 rehired at a U.C. campus in another high executive  
2 position.

3 I think that's wrong, and I know Mark Yudof as  
4 well -- the new president also thinks that's wrong.

5 The Linda Williams case is one, if you read the  
6 paper correctly, that I'm further troubled by the fact  
7 that it seems that the U.C. Berkeley spokesperson lied  
8 about the situation as well. So that's another  
9 troubling issue.

10 I don't think that -- I think that U.C., in  
11 living up to its high reputation and in earning back  
12 some of the respect with the citizens of California and  
13 the legislative leaders of California, really can have a  
14 zero tolerance for that.

15 President Yudof in his -- will be proposing new  
16 policy, which, in talking with the president's office I  
17 hear is thinking of -- you know, it's an open issue, and  
18 whether he feels the Regents need to vote on it or not.  
19 I feel the Regents should vote on it to show how  
20 important we feel it is to say that if, in fact, you  
21 take voluntary severance, voluntary early retirement,  
22 that you do not get hired back.

23 CHAIRMAN STEINBERG: Or you get hired back and  
24 you pay it back.

25 MS. REISS: Correct. And that's going to be

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1 be interested in your thoughts.

2 MS. REISS: As we discussed in the meeting, I  
3 100 percent agree with that.

4 What's interesting is, in the U.C. Regents  
5 meetings that I've attended so far, the first thing when  
6 there's the public comment period, and the students are  
7 always a part of our public comment period, the students  
8 agree with that. So even though the students are  
9 opposed to tuition and fee increases, and they speak  
10 about that and the hardships that creates, particularly  
11 with the cost of housing and the other costs associated  
12 while you're living in college, and they speak against  
13 some of the executive compensation, they also support  
14 the faculty. And they supported the lowest paid service  
15 workers as well.

16 So it's interesting, because I think there is a  
17 fair consensus of opinion when it comes to that. I  
18 think it's very important. You know, again, it's a  
19 budget issue. I know that when President Yudof put  
20 forth the freeze on executive compensation, he exempted  
21 faculty, because, again -- and I'm pleased, because I  
22 think that does recognize the point you're making, is  
23 that for U.C. to remain excellent, it better be able to  
24 continue to attract great faculty.

25 And the other issue I've already started

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1 looking into since our meeting was -- Housing is a big  
2 issue, particularly in many of the regions U.C. campuses  
3 are at, and while U.C. has some programs where they help  
4 some faculty, there might be more that can be done.

5 We were strategizing earlier that that spurred  
6 a thought I had, that maybe in crises there's  
7 opportunity. That maybe with all the federal money  
8 going to bail out so many banks right now, and with  
9 foreclosures, that maybe there's an opportunity for both  
10 Cal State and U.C. to sit with some of these banks and  
11 to see if part of that money connected with some of the  
12 foreclosures can be turned into a program for faculty in  
13 our state universities.

14 So I'm going to look into that and any other  
15 way we can look at to see -- to remain competitive in  
16 how we can make packages to attract faculty.

17 SENATOR AANESTAD: Thank you.

18 CHAIRMAN STEINBERG: Thank you. I have my one  
19 question or one topic that I would like you, if you  
20 would, to talk a little bit about, and that is the point  
21 Senator Scott raised in his introduction, and that is  
22 the articulation between the K-12 system and the U.C.  
23 system.

24 Specifically, the University of California is  
25 responsible for the promulgation for certifying

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1 high school that have these A to G classes will, in  
2 fact, be qualified to do well in college.

3 So if that's the goal of what A to G is  
4 supposed to be, then rather than be rigid in educrat  
5 thinking, we need to realize that in the global  
6 marketplace we're living in, and in particular now with  
7 the economy that we have, that California is an  
8 innovative -- the United States and California is a  
9 meritocracy, and therefore it encourages innovation.  
10 And innovation in this year we're living in and in a  
11 global marketplace, and the look towards how to get off  
12 dependence on Middle East oil, and renewable energy,  
13 that we have to be open to exploring the dialogue for  
14 what other kinds of classes teach algebra. Is there  
15 only one kind of class to teach algebra, or are there  
16 ten kinds of classes to teach algebra?

17 It's like the funny story I told you about what  
18 Colonel Bucky Peterson said in our Troops to College  
19 initiative, that, you know, "Are we so rigid that when  
20 that soldier," he said, "came back from Iraq, after  
21 studying all the computers and all the different  
22 training that he had," he goes, "You know, just because  
23 he didn't have that one blankety-blank algebra class,  
24 does that mean he's not qualified to be in college?"

25 I think it's that, and it's a lot of other

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1 so-called A to G courses, which are the prerequisites to  
2 admission to the University of California, and there's  
3 this dynamic tension between the advocates for career  
4 technical education and the, quote, high standards  
5 advocates as to what should be preeminent.

6 I believe, of course, it shouldn't be a choice  
7 and that we have to be much -- U.C. has to be much more  
8 aggressive about joining this movement to help develop  
9 and then approve rigorous applied academic courses and  
10 apply it to various career pathways. I said I was going  
11 to ask a question, but I just made a statement.

12 Your thoughts on the relationship, because I  
13 know when you were with the governor, Bonnie, you spent  
14 so much of your time working on K-12 issues, K-14  
15 issues, even. How do you see the relationship and how  
16 do we create a much more dynamic partnership than what I  
17 believe exists now?

18 MS. REISS: As you know from how excited I got  
19 when you brought that up in the meeting, it is something  
20 I feel very passionate about, that California can really  
21 lead the country in this. And it really is recognizing  
22 that we can keep A to G without reducing standards,  
23 because what is the goal of A to G? The goal of A to G  
24 is to say there are certain classes that must be taken  
25 so we can be assured that the students graduating from

20

1 things. So I actually do believe that, and that's why  
2 we discussed bringing in the academic senate, bringing  
3 in the faculty, bringing in the people that understand  
4 rigorous standards that are part of the U.C. group that  
5 approves what are the A to G classes, so that this  
6 dialog can start happening, because I actually think  
7 that we could create a new model that will lead the  
8 country in the next decades on this.

9 CHAIRMAN STEINBERG: Look forward to working  
10 with you on that and more. Thank you very much.

11 Witnesses in support. Briefly. Yes.

12 Today I've chaired, now, four or five of these  
13 meetings, and I'm learning as I go. We want to ask the  
14 witnesses, especially those who are from in or around  
15 Sacramento, to be brief in their testimony. If you've  
16 come from out of town and you have something a little  
17 longer to say, of course, please do so.

18 Go ahead.

19 MR. POSADAS: Good afternoon. My name is  
20 Julian Posadas. I'm the executive vice president for  
21 AFSCME Local 3299. I'm also a principal food service  
22 worker at U.C. Santa Cruz.

23 Good afternoon, President Pro Tem, Senator and  
24 Members of the Senate Rules Committee. It's a pleasure  
25 to be here today. On behalf of 20,000-plus members of

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1 AFSCME, which is American Federation of State, County,  
2 Municipal Employees, Local 3299, I would like to express  
3 our support of the confirmation of Bonnie Reiss as a  
4 member of the University of California Board of Regents.

5 As many of you know, over the past 18 months,  
6 the members of AFSCME Local 3299 have been in contract  
7 negotiations for 11,500 patient care and 8,500 service  
8 workers. Throughout our contract fight, we have  
9 attempted to reach out and educate many of the U.C.  
10 Regents on our issues. Unfortunately, many of the  
11 Regents chose not to meet with us and hear our story on  
12 how poverty wages and short staffing at U.C. hospitals  
13 were hurting U.C. in all of California.

14 We were fortunate to meet with and discuss our  
15 issues with Regent Reiss. In our discussions, she  
16 actually voiced her concern about our issues and said  
17 that she believed workers deserved fair and just  
18 contract settlement that would address these issues.

19 We feel that Regent Reiss is truly concerned  
20 about everyone that makes up the U.C. family and that  
21 she is willing to engage on solving the tough issues  
22 that U.C. faces.

23 Based on our past interactions and future  
24 interactions with Regent Reiss, we are pleased to be  
25 here today and support her confirmation to serve as a

23

1 Steinberg.

2 CHAIRMAN STEINBERG: Aye.

3 MS. BROWN: Steinberg aye.

4 CHAIRMAN STEINBERG: Thank you very much. This  
5 will go to the Senate floor. And thank you for your  
6 public service and for your commitment.

7 MS. REISS: Thank you, Senator. Thank you all  
8 for yours.

9 CHAIRMAN STEINBERG: Okay. Very good. Let us  
10 now move on -- thank you -- and ask Mr. William Haraf,  
11 who is up for confirmation as commissioner of the  
12 Department of Financial Institutions.

13 Let me welcome you and ask you before you make  
14 an opening statement if there's any member of your  
15 family or any special guests that you would like to  
16 introduce to the Committee.

17 MR. HARAF: Yes, Mr. Chairman. I'm really  
18 pleased to be able to introduce my wife of 34 years,  
19 Jo Haraf. She's here with me, as well as many close  
20 best personal friends, Kay and Bob Hyatt, David  
21 Greenberg, Kelly Fuller, Ted Young, and also some  
22 colleagues of mine from the department, and many  
23 associates and people that the department has occasion  
24 to interact with in the course of our normal duties.

25 CHAIRMAN STEINBERG: Very good. Welcome to all

25

1 member of the U.C. Board of Regents.

2 CHAIRMAN STEINBERG: Thank you very much for  
3 coming to testify. We appreciate it.

4 Next.

5 MR. BOLDEN: Good afternoon, Mr. Chair and  
6 Members. Michael Bolden representing the American  
7 Federation of State, County, and Municipal Employees  
8 also in support.

9 CHAIRMAN STEINBERG: Thank you very much.

10 Other witnesses in support?

11 Are there any witnesses in opposition? If not,  
12 we will take a motion by Senator Oropeza.

13 Please call the roll on the nomination.

14 MS. BROWN: Senator Cedillo.

15 SENATOR CEDILLO: Aye.

16 MS. BROWN: Cedillo aye.

17 Dutton.

18 SENATOR DUTTON: Aye.

19 MS. BROWN: Dutton aye.

20 Oropeza.

21 SENATOR OROPEZA: Aye.

22 MS. BROWN: Oropeza aye.

23 Aanestad.

24 SENATOR AANESTAD: Aye.

25 MS. BROWN: Aanestad aye.

24

1 of you, and please proceed with a brief opening  
2 statement.

3 MR. HARAF: Thank you. I appreciate the  
4 opportunity to testify before this Committee, and I'm  
5 grateful to Governor Schwarzenegger for nominating me to  
6 this position. It's a big responsibility in this  
7 environment, and I take it very seriously.

8 I joined the department in April of last year  
9 at a time when we were really in the early stages of  
10 what's become a serious financial and economic crisis.  
11 The focus back then was on subprime and nontraditional  
12 mortgages, and I was pleased to learn our licensees, our  
13 banks and our credit unions, were really not very active  
14 in that market.

15 Since then, of course, the dimensions of this  
16 crisis have grown much broader and deeper, and more  
17 global in nature, and all of our licensees are feeling  
18 the impact. But despite everything that you've heard  
19 about the condition of the largest banks in the country,  
20 the vast majority of the licensees of our department, of  
21 the financial institutions of our department, are  
22 healthy at this time. Even though many of them are  
23 losing some money in a very difficult environment, they  
24 came into this situation with a very healthy capital  
25 cushion, by and large, a healthy capital cushion that

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1 exceeds by a significant margin the capital cushions of  
2 the very largest money center banks.  
3 This is not to say there aren't any problems  
4 out there. The environment is as difficult as anything  
5 that we have seen in our lifetime. The number of  
6 licensees that we have that are classified as problem  
7 licensees has almost doubled. The number of enforcement  
8 actions we put in place has risen commensurately. Over  
9 the past year, four banks have failed, two credit unions  
0 have failed, and we'll see more of those failures in the  
1 future.

2 So with all of this going on, you may wonder  
3 about the longer-term future of the smaller,  
4 state-chartered banks, credit unions, money  
5 transmitters, that we supervise. And let me say that  
6 although they are facing stiff headwinds right now, they  
7 are here to stay.

8 Our licensees serve people in every corner of  
9 California, some focusing on cities, towns, and rural  
0 communities, others focusing on ethnic populations of  
1 almost every type.

2 Community banks and credit unions with their  
3 relationship-based models of community involvement have  
4 proven their value in this very difficult time. To  
5 illustrate that, I recently completed a survey of all of

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1 our licensees with respect to their mortgage exposure  
2 and the extent of their foreclosures, and what we  
3 discovered is that over the first three quarters of  
4 2008, about one fifth of 1 percent of the mortgages  
5 outstanding were in foreclosure. Of course, at that  
6 period of time, a far smaller percentage from what we've  
7 seen from the big, large, large-scale servicers  
8 operating in California. And, by the way, those same  
9 institutions modified about 3.3 times the number of  
0 houses on which they foreclosed. So I think their track  
1 record is very good.

2 Let me briefly conclude by talking about some  
3 of the initiatives that I've taken since I've been at  
4 the department. We've moved to a risk-based examination  
5 calendar -- schedule rather than a calendar-focused  
6 examination schedule in this environment. We've  
7 enhanced our risk-screening methodologies off site to  
8 enable us to focus in on the more troubled situations.  
9 In addition, we have taken a more targeted approach to  
0 the examinations we do perform, focusing much more  
1 closely on safety and soundness issues.

2 I put in place a new policy toward enforcement  
3 actions, and we substantially increased our usage of  
4 enforcement actions since I've been on the job. And  
5 I've initiated a complete review of all of our policies

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1 and procedures in the department, because I discovered  
2 that some of those procedures and policies were way out  
3 of date.

4 And then, finally, and perhaps most  
5 importantly, I've devoted considerable personal time and  
6 attention to institutions that are moving toward  
7 failure, working with them and potential acquirers to  
8 ensure that depositors, borrowers, and employees at the  
9 failing institution get the best outcome possible, and  
10 we've got a very good track record on that regard.

11 When I came to the department, I wasn't quite  
12 sure what to expect about the quality of the people  
13 there, and what I have come to appreciate is the high  
14 level of integrity and the commitment of employees of  
15 our department. We have a great responsibility,  
16 especially in times like these, and I'm very proud of  
17 the way everybody has stepped up and delivered in a  
18 really difficult, challenging environment.

19 I'm happy to take any questions you may have.

20 CHAIRMAN STEINBERG: I have a few, but I have a  
21 long list on the sheet here. I won't ask all of them.  
22 I actually want to ask sort of an overriding question as  
23 to how you define success or failure of the department.

24 Would you -- If a state-regulated DFI fails, do  
25 you view that as your department's failure, or are there

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1 things outside of your control, given staffing, given  
2 the regulatory -- the tools that you have to deal with,  
3 that might result in such a result even with you doing  
4 everything in your power to stop it?

5 MR. HARAF: Mr. Chairman, the sad truth of it  
6 is that the financial institution failures are a long  
7 part of our history. They are inevitable. We can't  
8 stop failures from occurring. In my view and the  
9 department's view, the most important thing we need to  
10 do is to make sure that the system overall is healthy  
11 and is well-regulated. And when an institution does get  
12 into trouble, we try our best to rehabilitate it; and if  
13 that's not possible, we try to seek the best possible  
14 outcome for those institutions.

15 I did have one of my people look into what was  
16 happening back in the 1930s, and in 1933 alone, the  
17 superintendent of banking failed 33 banks and conserved  
18 22 others, quite a substantial workload, but that was in  
19 the middle of the Great Depression.

20 I'm not predicting that we're going to see  
21 anything like that rate of failure currently. In fact,  
22 as I said in my opening statement, I feel pretty good  
23 about the condition of our institutions; but the  
24 economic environment and financial environment is such  
25 that failures will occur.

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1 CHAIRMAN STEINBERG: In terms of your approach  
2 to regulation, maybe one can read too much into  
3 adjectives, but your December 2008 monthly bulletin  
4 says, and I quote, "DFI continues to offer the charter  
5 of choice in California as a result of its thoughtful  
6 and measured approach to supervision."

7 The word "measured" bothered me just a little  
8 bit. Given the -- Just given the environment that we  
9 are living through right now, what do you mean by that?

10 MR. HARAF: Well, you know, what I am proudest  
11 of in the way we approach the management of our  
12 institutions is that we are not bureaucratic. We have a  
13 very good management team, a very thoughtful management  
14 team. We try to take each financial institution,  
15 evaluate the condition of that institution on its  
16 merits.

17 We have deeper knowledge of those institutions,  
18 because of our closeness to them, than you would  
19 typically find among federal regulators of, say,  
20 nationally chartered banks. And we have to make  
21 decisions every day about what is the right thing to do,  
22 and those decisions require a lot and, in my view, a  
23 measured approach.

24 We don't want to be too hard on licensees that  
25 are in a condition that can be rehabilitated on our own.

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1 MR. HARAF: Okay. Mr. Chairman, the statistics  
2 that you read are broader statistics about loan losses  
3 across the loan portfolios of our banks and credit  
4 unions and so on.

5 The statistics that I referenced in my opening  
6 statement refers to losses from mortgage portfolios and  
7 foreclosures on residential mortgages. The conditions  
8 of our institutions has taken a hit in this period of  
9 time; but, as I mentioned, they came into this period  
10 very well capitalized, far better capitalized than they  
11 were in the last period of financial failures of banks  
12 in the late '80s and early '90s. They have a big  
13 capital cushion in place, and it permits most of them to  
14 absorb substantial losses and still remain  
15 well capitalized as defined under the federal  
16 regulations.

17 So they're not at all contradictory. You can  
18 expect in an environment like this one that losses are  
19 rising. Nonetheless, the capital cushions are such that  
20 they're able to absorb those losses and still remain  
21 well capitalized.

22 CHAIRMAN STEINBERG: So you don't expect  
23 failures during the next period of time?

24 MR. HARAF: No, to the contrary. I can foresee  
25 some failures in the near term. I don't foresee a very

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1 We don't want to add unnecessary burdens; but when we  
2 have to make tough choices, we will make those tough  
3 choices.

4 CHAIRMAN STEINBERG: Now, I may not have heard  
5 you correctly, but you talked in your opening statement  
6 about a recent audit which indicated that the problem,  
7 at least of foreclosure, among DFI-regulated  
8 institutions was not nearly as bad as what one might  
9 expect. Is that right?

10 MR. HARAF: That's correct.

11 CHAIRMAN STEINBERG: The information I have in  
12 front of me -- Let me ask you to respond to the  
13 following: The condition of DFI-regulated banks is  
14 weakening with an increase from 7 percent to 26 percent  
15 of banks rated less than satisfactory. There has been  
16 an increase in problem assets with past due loans and  
17 leases from 5 percent of capital to 21 percent of  
18 capital, that foreclosed property increased from  
19 54 million as of December 31, 2006, to 427 million as of  
20 September 30th, 2008.

21 Are those correct statistics?

22 MR. HARAF: Those are correct statistics.

23 CHAIRMAN STEINBERG: So how do you reconcile  
24 the reduced rate of foreclosure, at least as you  
25 described it, with these statistics?

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1 substantial number of failures at this time, but an  
2 awful lot depends on the economy, how deep this  
3 recession becomes, and how long lasting it becomes.

4 CHAIRMAN STEINBERG: Last question, and I'll  
5 turn it over. Not to go round and round in this, but,  
6 again if --

7 You're saying there's capital cushion; there  
8 are some warning signs; and you, in fact, do expect some  
9 institutions, people's assets obviously being invested  
10 in those institutions, to fail. So my last question  
11 gets back to this issue -- this adjective of a measured  
12 approach.

13 Why is a measured approach appropriate? Is it  
14 not more appropriate to take an aggressive posture,  
15 especially with those institutions that you believe are  
16 more likely to fail?

17 MR. HARAF: I absolutely agree. We should take  
18 an aggressive posture with respect to those institutions  
19 that are likely to fail, and that's been the policy of  
20 our department. Nonetheless, there are a lot of gray  
21 areas that we have to deal with on an everyday measure.  
22 The use of the term "measured" was intended to reflect  
23 the thought we give to those gray situations.

24 CHAIRMAN STEINBERG: Fair enough.  
25 Senator Oropeza.

34



1 SENATOR OROPEZA: I wanted to ask you about --  
2 In doing our homework on this, I was very interested in  
3 two areas, and they actually sort of dovetail with each  
4 other. One is the area of money-transmitter entities,  
5 and there -- I understand there are 54 of them that are  
6 licensed by your department.  
7 MR. HARAF: Um-hmm.  
8 SENATOR OROPEZA: These are the companies that  
9 wire money internationally often?  
10 MR. HARAF: That's correct.  
11 SENATOR OROPEZA: And I would say a fair number  
12 of these customers are individuals of -- who are either  
13 immigrants -- well, who are immigrants --  
14 MR. HARAF: Yes.  
15 SENATOR OROPEZA: -- who may not speak the  
16 language well, English, may not speak English well, and  
17 also may be economically challenged.  
18 And so what is the role of the department once  
19 the initial application is approved in terms of  
20 providing any kind of assistance or protections for  
21 these consumers?  
22 MR. HARAF: Well, our primary role under the  
23 statutes is really to ensure the safety and soundness of  
24 those institutions and to ensure that they're in  
25 compliance with federal and state laws.

1 We examine these institutions not just for  
2 safety and soundness, but also for their -- their BSA  
3 anti-money laundering programs and the like. And with  
4 respect to consumer protections, we respond to consumer  
5 complaints primarily. And I have to say we track our  
6 consumer complaints by program, and the number of  
7 consumer complaints we receive regarding our money-  
8 transmitter program is about 10 percent of the total  
9 number of complaints.  
10 SENATOR OROPEZA: Well, I would just suggest to  
11 you that it seems like there's a vulnerability there in  
12 terms of the clientele, and that to the greatest extent  
13 possible within the parameters of your charge, it seems  
14 like there ought to be some oversight or some kind of  
15 something that assures that people are not, for  
16 instance, being charged outrageous fees.  
17 I don't know the answer to that question, if  
18 there are or aren't, but it just seems like sort of a  
19 natural horse-sense kind of thing to be concerned about.  
20 MR. HARAF: Sure. I appreciate your concern,  
21 Senator, and we share that concern. The best data that  
22 we have, though, shows that fees have been coming down.  
23 In addition, we see a lot of different types of  
24 providers operating in these markets. The market is  
25 pretty competitive, in my own experience, anecdotal

1 though it is, about the customers of these institutions,  
2 is the information flow about who is charging what and  
3 whether you're going to get a fair deal from one  
4 organization as compared to the next is pretty good.  
5 And those institutions that haven't done a good job  
6 serving their customers, or have gouged their customers,  
7 have experienced substantial declines in the  
8 transmission vibes. And the word on the street gets out  
9 pretty quickly.  
10 SENATOR OROPEZA: And you mentioned that you  
11 receive complaints when there are problems.  
12 MR. HARAF: Yes.  
13 SENATOR OROPEZA: Some complaints. Ten percent  
14 of your complaints, you say.  
15 MR. HARAF: That's correct.  
16 SENATOR OROPEZA: And it's my understanding  
17 that in 2008, there were 1285 complaints and 802 calls.  
18 Of those, it was gleaned that 351 of them were actually  
19 licensees, DFI licensees --  
20 MR. HARAF: That's correct.  
21 SENATOR OROPEZA: -- who there were complaints  
22 against.  
23 I have to say we went online to look at the  
24 complaint form.  
25 MR. HARAF: Um-hmm.

1 SENATOR OROPEZA: I'll pass them around so that  
2 Members can see what the form looks like.  
3 I am a little troubled by the lack of contact  
4 information for the department on this form. There's no  
5 place on this form where somebody can call and talk to  
6 somebody. There's also no place where you can request  
7 an application in other than English. This document is  
8 in English, and I wonder -- and also, there's no little  
9 box to check under "Complaint Type" for what we were  
10 just talking about.  
11 So I can imagine there's only 10 percent,  
12 because they really have to figure out the system in  
13 order to complain on these kinds of transactions, these  
14 money transmitters. Your complaint types are cash,  
15 check cashing, consumer fraud, account charges, mortgage  
16 loans, auto loans, general checking, and financial  
17 privacy. So it's not even on the form. You really have  
18 to sort of figure your way through it.  
19 So have you all thought about the accessibility  
20 of your forms and the accessibility of your programs and  
21 maybe making some adjustments that might make it more  
22 user friendly for Californians.  
23 MR. HARAF: Senator, I haven't personally  
24 reviewed the form since I became commissioner, but I  
25 think you have some very good ideas, and we would be

1 delighted to take a look at those ideas.

2 SENATOR OROPEZA: I'd love that. I think that  
3 would be a very responsible thing to do. We'll give you  
4 a copy.

5 MR. HARAF: I think I can get one. Thank you  
6 very much.

7 SENATOR OROPEZA: You know, because there's  
8 this thing called garbage in, garbage out. If you don't  
9 have a system that is open to providing people the  
10 access, then you get sort of garbage in terms of your  
11 data on how many complaints and what the complaints are  
12 about, because you don't really -- you get my point,  
13 right?

14 MR. HARAF: Yes.

15 SENATOR OROPEZA: Then the question is: What's  
16 really happening out there?

17 So I would be very appreciative of you taking a  
18 look at it and also considering the issue of language.  
19 In the state of California today, with financial  
20 institutions serving multilingual populations, that the  
21 complaint form -- and also a contact number would be  
22 good, or some kind of reference on there where people  
23 can call. Not everybody is computer savvy. And also,  
24 maybe they just have a question, you know.

25 MR. HARAF: You raise some very terrific and

39

1 institutions to the Treasury Department and offered them  
2 a very substantial amount of money. My recollection is  
3 something like \$200 billion dollars, and this was,  
4 "You must take the money. No questions asked. We're  
5 not going to review your financial condition. Just take  
6 it, and in exchange we will accept preferred stock in  
7 your companies."

8 And later, the Treasury Department made the  
9 announcement that this program would be available to  
10 banks of all sizes, and later a set of policies were  
11 established for submitting applications. And this was a  
12 policy that was established and conducted through the  
13 federal regulators into the Treasury Department.

14 The result of that process turned out to be  
15 much more rigorous for the types of community banks we  
16 generally supervise within the department, and the  
17 standards to which banks were held in order to receive  
18 that money was quite high. And in addition, there were  
19 subsequent conditions that were imposed on the receipt  
20 of this capital that made it unattractive to some of our  
21 licensees.

22 So when the program was announced, I  
23 encouraged, through communications to all of our bank  
24 licensees, that they all apply for those capital  
25 infusions. About 155 of our banks did make those

41

1 valid suggestions, and we will follow up on that.

2 SENATOR OROPEZA: Superb. You gave me the  
3 right answer on that.

4 CHAIRMAN STEINBERG: That's one of the great  
5 values of this process, actually.

6 Thank you for raising the issue, Senator.

7 Senator Aanestad.

8 SENATOR AANESTAD: In our conversation earlier,  
9 I had asked the question, and the answer was a surprise,  
10 and I just thought it was something that would be  
11 interesting to other Members of the Committee.

12 Last October, the Bush administration passed  
13 out the multibillion-dollar economic stimulus package.  
14 I noted that of the 60-some banks in California that had  
15 applied for, 22 had already received funding. And a  
16 couple were in my district. And I was concerned that  
17 the ones who had received funding from that package in  
18 my district were in trouble, and yet you assured me that  
19 probably the opposite was true.

20 Would you care to just give them a little  
21 information how that process works.

22 MR. HARAF: Yes, Senator. Thank you.

23 You may recall back in the fall of last year,  
24 the secretary of the treasury, the chairman of the  
25 Federal Reserve, called nine large financial

40

1 original submissions out of 220 banks. Later, about  
2 40 of those applications were withdrawn for a variety of  
3 reasons. Some of them were forwarded along to Treasury  
4 Department by the federal regulators. And, ultimately,  
5 about 38 were approved, with a total of \$1.7 billion  
6 dollars in funding for those institutions in total.

7 So the program is rigorous in terms of the  
8 evaluations that were applied. And the funding levels,  
9 despite the amounts that were provided to the very large  
10 institutions, were pretty small in relation to their  
11 size.

12 SENATOR AANESTAD: But in effect, what you told  
13 me -- and let me see if I have this straight -- is that  
14 the banks that might need the money weren't stable  
15 enough to get it, and the banks that did receive the  
16 money in my district were probably the most solid banks.

17 MR. HARAF: Well, some of the banks that didn't  
18 apply may not have applied for one of a couple of  
19 reasons. They might not have applied because they  
20 thought they were financially sound and didn't need the  
21 capital and didn't want to pay the Treasury Department a  
22 5 percent dividend. Some of them may have decided they  
23 couldn't get through the process and didn't want to have  
24 the embarrassment of being rejected.

25 So it's hard to read from the numbers exactly

42

1 what the motivations were. But, in fact, you're exactly  
2 right. The institutions that were funded among  
3 community banks were institutions that were our  
4 healthiest and well-capitalized institutions.

5 It's a very different process. The community  
6 banking world, it's a tough world out there, and the  
7 kinds of protections that have been provided to our very  
8 largest financial institutions by and large are not  
9 available to them.

10 SENATOR AANESTAD: Thank you.

11 I had that when I was young. I was a student,  
12 I needed a car loan, and I couldn't get it. Now that I  
13 don't need the money, I can get all the loans I want.

14 MR. HARAF: I can put you in touch with one of  
15 our credit unions, Senator.

16 CHAIRMAN STEINBERG: Senator Dutton.

17 SENATOR DUTTON: More of a comment than  
18 anything else.

19 In going over your resume I was so impressed.  
20 I appreciate the time you spent with me going over --  
21 there's a lot of different issues. I think your  
22 background, both on the federal level as well as here in  
23 the state, and your educational background and what  
24 you've done as experience, as far as doing in the  
25 economy and so forth, I think you're just the real right

43

1 person for the job. So I just wanted to make that  
2 comment, because we talked a little bit about some of  
3 the issues, and your background is extremely impressive.  
4 And if I was actually hiring you for my company, I would  
5 hire you in a heartbeat.

6 MR. HARAF: Thank you, Senator. I appreciate  
7 that.

8 CHAIRMAN STEINBERG: It's good to know that you  
9 have another job offer.

10 MR. HARAF: I would be worried about Chris,  
11 though.

12 CHAIRMAN STEINBERG: Senator Cedillo.

13 SENATOR CEDILLO: No, I don't have anything.

14 CHAIRMAN STEINBERG: One final question for  
15 you, sir. And that is, as you know, the legislature  
16 over the past six months or so has passed two very  
17 significant foreclosure laws, one, SB 7, which was  
18 passed two weeks ago tomorrow at 7:00 a.m. --

19 SENATOR AANESTAD: 5:30.

20 CHAIRMAN STEINBERG: 5:30. Sorry about that.  
21 Time warp.

22 -- 90-day delay in foreclosure unless the loan  
23 servicer has a copy of its loan modification file, and  
24 of course last year, Senator Perata's bill, SB 1137,  
25 requires servicers to contact borrowers prior to

44

1 foreclosure.

2 General question: What are you doing to  
3 implement those laws since you do have regulatory  
4 authority? And maybe as importantly, given the  
5 difficult economic times and the risks, do you have  
6 enough staff in order to be aggressive in implementing  
7 these laws and performing the rest of your functions?

8 MR. HARAF: Yes. So with respect to our  
9 ability to put in place a program to deal with the  
10 foreclosure legislation, we met on Monday with the  
11 Department of Corporations, Department of Real Estate,  
12 to discuss matters in which -- the steps that we will  
13 need to take in order to implement this.

14 I have taken a personal interest in this,  
15 especially because, as I mentioned, the foreclosure  
16 rates among our licensees are really quite small, and in  
17 particular I noted that 75 percent of our licensees have  
18 fewer than 500 mortgages outstanding that they're either  
19 servicing or that they own, and the foreclosure rates  
20 among those institutions is really small.

21 So it's truly the case for those institutions.  
22 They would be dealing with less than a handful of  
23 foreclosures in a typical year, so for them in  
24 particular, I want to make sure that we can establish a  
25 process that doesn't put undue regulatory burden on

45

1 these small institutions. And beyond that, we're  
2 looking at ways to take advantage -- to look at the law  
3 and implement programs that make sense for our larger  
4 institutions as well.

5 Regarding the staffing, we've been very  
6 careful, long before I came into the department, about  
7 staffing resources and making sure that we were  
8 well-equipped for the changing environment we were  
9 operating in. Over the past three years, we've had  
10 several budget-change proposals in place that have led  
11 to approvals for 44 additional positions. We fully  
12 hired up in connection with those approvals.

13 We have an additional proposal in the  
14 governor's budget for four additional bank examiner  
15 positions, and we will probably revisit our staffing  
16 needs again in the coming months in the light of this  
17 foreclosure legislation and in the light of the  
18 deteriorating situation in the economy. But for now I  
19 think -- given the steps that I've taken to reallocate  
20 resources and deal with our most pressing requirements,  
21 I think we're going to be okay. We'll revisit it again  
22 in a few months.

23 CHAIRMAN STEINBERG: We'll have our budget  
24 committee take a close look at that and work with you,  
25 Senator Oropeza.

46

1 SENATOR OROPEZA: Just a very quick question on  
2 staffing. Not including your support staff, can you  
3 give me an idea of the gender balance?  
4 MR. HARAF: Not off the top of my head,  
5 Senator, but one of the things I'm most proud of is that  
6 our department looks like the United Nations. We have  
7 great ethnic diversity, a good balance between men and  
8 women, and many, many language skills within the  
9 department, and a lot of willingness on the part of our  
10 employees to volunteer, using their language skills, to  
11 help with foreclosure workshops, the Bank on California  
12 and any other initiatives around the state.  
13 SENATOR OROPEZA: Great. That's good to hear.  
14 It won't be any trouble, then, translating that form.  
15 CHAIRMAN STEINBERG: Exactly. I think that  
16 will be done pretty quickly, actually.  
17 Senator Dutton, last question.  
18 SENATOR DUTTON: Yeah, just one follow-up.  
19 Your department is actually primarily funded  
20 with a special fund. It's not part of the general fund.  
21 MR. HARAF: That's right.  
22 SENATOR DUTTON: And your fund balance that you  
23 have currently, you have sufficient money at this time  
24 to actually hire any personnel you need to do things,  
25 correct?

47

1 MR. HARAF: At this time, that's right. We're  
2 going to be reviewing our assessments again this spring,  
3 in fact, next month.  
4 SENATOR DUTTON: As I recall, there's quite a  
5 few special funds that the State has transferred money  
6 or borrowed. What is the status of the loan that's  
7 outstanding from the general fund to your department?  
8 MR. HARAF: The general fund in 2002-2003  
9 budget year borrowed \$2 million dollars from our banking  
10 program and \$2.7 million dollars from our credit union  
11 program. The banking program was repaid out of the  
12 general fund the next year, but the credit union loan  
13 remains outstanding, and we're hopeful that we'll get  
14 repaid in this budget year.  
15 SENATOR DUTTON: Do you require those funds in  
16 order to be able to hire the additional personnel to do  
17 some of these --  
18 MR. HARAF: Yes, sir.  
19 SENATOR DUTTON: So it would behoove us to make  
20 sure we get that back to you.  
21 MR. HARAF: Yes, Senator.  
22 CHAIRMAN STEINBERG: Let's make sure, Senator  
23 Dutton, you're on the Budget Committee -- I'm serious --  
24 that we look at that and make sure that we resolve that.  
25 SENATOR DUTTON: I will.

48

1 CHAIRMAN STEINBERG: Thank you.  
2 Witnesses in support.  
3 Welcome.  
4 MS. PADDEN: Good afternoon, Senators.  
5 Maurine Padden on behalf of California Bankers  
6 Association representing over 80 percent of the banks  
7 doing business in California.  
8 On behalf of the state-chartered members, we  
9 strongly support Bill Haraf for his qualifications and  
10 urge you to vote in favor of his nomination as  
11 commissioner of the Department of Financial  
12 Institutions.  
13 I can say personally, for the 20 years that  
14 I've been doing business in and around the Capitol, I  
15 have not seen a more qualified candidate for this very  
16 important role as a supervision -- a supervisory and  
17 regulatory oversight that needs to be done today. We  
18 strongly support his candidacy.  
19 CHAIRMAN STEINBERG: Thank you very much for  
20 your testimony.  
21 Next.  
22 MR. LEVINE: Mr. Chairman, Members of the  
23 Committee. My name is Ezra Levine, and I am counsel to  
24 The Money Services Round Table, which is the  
25 organization representing the large national non-bank

49

1 money transmitters, and I'm here in support of the  
2 confirmation. Thank you.  
3 CHAIRMAN STEINBERG: Thank you, sir.  
4 SENATOR OROPEZA: Transmitters.  
5 MS. GLADSTEIN: Margaret Gladstein on behalf of  
6 California Independent Bankers. We also support his  
7 nomination. We think he has done an excellent job in  
8 establishing relationships with our community banks. We  
9 represent 150 community banks in California, and we've  
10 had a -- our members have had a very good working  
11 relationship with him. He's reached out to them,  
12 establishing communications, and has been helpful for  
13 institutions that do need assistance.  
14 CHAIRMAN STEINBERG: Thank you. Appreciate it.  
15 Any witnesses in opposition to the nomination? If not,  
16 I'll say I'm pleased to support your nomination.  
17 Senator Dutton said you have an outstanding  
18 record, and we appreciate your responsiveness. We just  
19 want to make sure you are not shy about asking for what  
20 it is you need in order to do everything you can to  
21 prevent failure, because I know failure may be  
22 inevitable in some circumstances, but these are  
23 people's -- you know, these are Californians' assets  
24 here, and, you know, we would hope, especially in this  
25 environment, that you would err on the side of being

50

1 aggressive to prevent failure. That's one member's  
2 opinion, the Chair's opinion too.  
3 MR. HARAF: Mr. Chair, can I say something  
4 about that?  
5 CHAIRMAN STEINBERG: Yes, please.  
6 MR. HARAF: I take that responsibility very  
7 seriously. Let me give you an example of a case that we  
8 just recently dealt with, the case of County Bank, a  
9 bank in the Central Valley with 40 branches, very  
0 important to the Central Valley economy, and  
1 unfortunately it got into trouble with residential  
2 and construction lending, and we had to fail that bank.  
3 I personally worked very hard to ensure that  
4 the acquiring institution took all of the deposits, not  
5 just the insured's deposits, the loans, the branches,  
6 the employees, and merged it into the acquiring  
7 institution, in this case, WestAmerica.  
8 That transaction went very smoothly, and I  
9 think it's exactly the kind of thing we try to  
0 accomplish in every one of these situations.  
1 CHAIRMAN STEINBERG: Good. Troubleshoot.  
2 All right. We have a motion in support by  
3 Senator Aanestad.  
4 Please call the roll.  
5 MS. BROWN: Senator Cedillo.

51

1 SENATOR CEDILLO: Aye.  
2 MS. BROWN: Cedillo aye.  
3 Dutton.  
4 SENATOR DUTTON: Aye.  
5 MS. BROWN: Dutton aye.  
6 Oropeza.  
7 SENATOR OROPEZA: Aye.  
8 MS. BROWN: Oropeza aye.  
9 Aanestad.  
0 SENATOR AANESTAD: Aye.  
1 MS. BROWN: Aanestad aye.  
2 Steinberg.  
3 CHAIRMAN STEINBERG: Aye.  
4 MS. BROWN: Steinberg aye.  
5 CHAIRMAN STEINBERG: Thank you. That will move  
6 to the floor of the State Senate to be taken up within a  
7 week -- two weeks. Two weeks.  
8 MR. HARAF: Thank you.  
9 CHAIRMAN STEINBERG: Thank you very much,  
0 Mr. Haraf. Appreciate it.  
1 We're going to take a five-minute break.  
2 (Recess taken.)  
3 CHAIRMAN STEINBERG: All right. We will  
4 resume.  
5 I would like to welcome Mr. Bob Clark, who is

52

1 up for confirmation as director of the Office of Real  
2 Estate Appraisers.  
3 Mr. Clark, welcome to you.  
4 MR. CLARK: Thank you, Senator.  
5 CHAIRMAN STEINBERG: Is there any member of  
6 your family or any special guest you would like to  
7 introduce?  
8 MR. CLARK: Yes. I would like to introduce my  
9 lovely wife, Carolyn.  
10 CHAIRMAN STEINBERG: Carolyn.  
11 MR. CLARK: Carolyn's encouragement and support  
12 allows me to have a public service career, and I love  
13 her dearly.  
14 CHAIRMAN STEINBERG: Thank you very much, and  
15 welcome to you.  
16 SENATOR OROPEZA: Very nice to hear.  
17 CHAIRMAN STEINBERG: All right, Mr. Clark. A  
18 brief opening statement, and then we have some questions  
19 for you.  
20 MR. CLARK: Thank you, Senator. Good  
21 afternoon, Mr. Chairman and Members of the Committee. I  
22 appreciate the opportunity to appear before you today to  
23 discuss my qualifications for leading the Office of Real  
24 Estate Appraisers.  
25 With the current condition of our state and

53

1 national economies, it's imperative that OREA administer  
2 a vigorous appraiser enforcement program to ensure that  
3 the public and business communities are protected from  
4 incompetent and unethical appraisal practice.  
5 I have a wide range of private- and  
6 public-sector experience that has prepared me to fulfill  
7 the requirements for this position. My appointment as  
8 director of OREA provides an opportunity to utilize the  
9 abilities I've developed over my business career to  
10 provide a positive impact on the appraisal profession  
11 and to contribute to the recovery of the real estate  
12 markets.  
13 I spent the first 25 years of my career in the  
14 private sector working many of the disciplines of the  
15 real estate profession, including multifamily  
16 development, acquisitions, property management,  
17 brokerage, and commercial and residential appraisals.  
18 I started my public service career in 1999 with  
19 the Sacramento Regional Transit District, worked for  
20 five years for the Department of General Services, and  
21 was employed by the Wildlife Conservation Board for over  
22 two and half years. My public agency experience has  
23 included real property acquisitions, management of  
24 professional staff, as well as review and  
25 recommendations on urban, rural, and conservation land

54

1 appraisals.  
2 Integrity and ethics are what I most highly  
3 value, focusing on a strong work ethic, example to my  
4 colleagues, encouraging and empowering the staff for  
5 which I'm responsible, always endeavoring to maximize  
6 productivity while minimizing costs.  
7 I have specific goals and ideas I wish to  
8 implement at OREA to improve on the regulatory program  
9 and successfully attain full compliance with the  
10 standards of the appraisal subcommittee, the federal  
11 oversight agency responsible for appraisal licensing and  
12 enforcement. These ideas include measures to shorten  
13 the time frame for enforcement-case closures,  
14 enhancements to our information technology systems to  
15 increase efficiencies and lower costs, and increasing  
16 California's role in national appraisal issues by  
17 expanding OREA's participation in the Association of  
18 Appraisal Regulatory Officials.  
19 Mr. Chairman, I'm honored by the opportunity to  
20 be considered for confirmation, and with that I'm all  
21 yours for any questions that you may have.  
22 CHAIRMAN STEINBERG: Thank you very much,  
23 Mr. Clark. I know I have a couple.  
24 Interesting fact that was brought to our  
25 attention, unrelated to you specifically, but it may

55

1 speak to the commitment or lack of commitment that this  
2 administration and previous administrations, frankly,  
3 have had to this office.  
4 You are the first director appointed since  
5 1993, and the director's office has, in fact, been  
6 vacant for ten years. There have been acting directors.  
7 And so, again, in this very, very difficult economic  
8 time that involves real estate, I'm glad we now have a  
9 permanent director, but it's something that's very, very  
10 noteworthy.  
11 Here's -- In your written responses to our  
12 questions, you sort of laid out the challenges that your  
13 department faces. You report to us that there has been  
14 an increase in the past several years of appraiser  
15 involvement in fraudulent transactions.  
16 MR. CLARK: Yes, sir.  
17 CHAIRMAN STEINBERG: No money down with cash  
18 back to a buyer, straw buyers, flips, and stolen  
19 identities. There's also been a significant increase in  
20 the number of false certifications where a supervising  
21 appraiser has falsely asserted inspection of a  
22 property -- pretty outrageous. Didn't happen -- and of  
23 electronic signature theft by trainee appraisers. And  
24 you lay out a few other problems.  
25 And I guess the opening question here is: What

56

1 is your department doing proactively to address what you  
2 report as an increase in these very disturbing patterns?  
3 MR. CLARK: I would like to say we're going  
4 after the bad guys, vigorous enforcement of the laws  
5 that are in place.  
6 We have struggled to complete a large number of  
7 enforcement cases in large degree because of -- well,  
8 there are several factors. One, our staff has been  
9 minimal. We have quite a high ratio of licensed  
10 appraisers -- I'm sorry -- property appraisal  
11 investigative staff to licensed appraisers.  
12 We also have struggled with people being  
13 willing to come forward and make complaints against  
14 appraisers that have done unethical or fraudulent work.  
15 We do have on our Web site -- which we have  
16 improved in the last day to make it very clear to  
17 complainants -- as to how to file a complaint. We also  
18 just -- We encourage anonymous complaints. We prefer,  
19 obviously, if someone will come forth and testify for  
20 us. That makes it easy for us to obtain a judgment  
21 before the Office of Administrative Hearings. But if  
22 someone comes forth with an anonymous complaint and they  
23 have sufficient evidence, then we can proceed with an  
24 action.  
25 So vigorous enforcement is what we're going

57

1 for.  
2 CHAIRMAN STEINBERG: Okay. You talked about  
3 staff, and obviously when it comes to these sorts of  
4 disturbing criminal violations, really, when these sorts  
5 of things happen, you have no attorney on staff.  
6 MR. CLARK: This is correct.  
7 CHAIRMAN STEINBERG: You know, not just because  
8 I'm an attorney do I think that's important. Yeah,  
9 sure. But, I mean, that seems odd to me.  
10 MR. CLARK: It's astounding to me, Senator, and  
11 we have, in fact, asked in a budget change proposal  
12 going forward for a staff legal counsel and also four  
13 additional appraiser investigator positions.  
14 CHAIRMAN STEINBERG: So that's another one,  
15 Senator Dutton --  
16 SENATOR DUTTON: I was going to ask.  
17 CHAIRMAN STEINBERG: Mr. Watchdog here, let's  
18 help the good director get what he needs here.  
19 The other piece of that, and I don't know  
20 whether the four additional investigators solves the  
21 problem, but apparently you react to complaints as you  
22 just described, but there is no audit program where you  
23 sort of spot-check these appraisals.  
24 MR. CLARK: The only form of an audit program  
25 we presently have is the monitoring of individuals that

58

1 have been disciplined where they have to submit a log of  
2 appraisal experience every three months, and we pull  
3 samples from that log and review that work. That's the  
4 only auditing function we do right now. We haven't had  
5 sufficient staff. It's my understanding that -- I  
6 think it was probably eight or ten years ago, they  
7 started an audit program but did not have sufficient  
8 staff to actually devote the resources to that effort.

9 CHAIRMAN STEINBERG: Are the five positions you  
0 seek, in part, to remedy that?

1 MR. CLARK: Yes, sir.

2 CHAIRMAN STEINBERG: So you will be able to do  
3 spot audits if you get the four additional  
4 investigators?

5 MR. CLARK: We're actually in the BCP for three  
6 additional investigators, Senator. We have to be  
7 careful here, because we're seeing our licensing numbers  
8 come down, and I don't want to be in a position a year  
9 from now to be way on top of the enforcement program and  
0 have too much staff.

1 There are two factors in this, not only  
2 additional staff, but having in-house legal counsel  
3 should help us to get more on top of this enforcement  
4 program as well to triage the legal aspect of these  
5 cases.

1 Appraisal Qualifications Board course approval program.  
2 We go the extra step and also review those that have not  
3 yet been approved by the AQB program.

4 CHAIRMAN STEINBERG: So your review is limited  
5 to those that have not been reviewed by the --

6 MR. CLARK: I wouldn't say -- we also review  
7 the --

8 I would say there's not as in depth a review of  
9 those course providers that have been approved by the  
10 AQB program, but we do look at the course materials as  
11 well there.

12 CHAIRMAN STEINBERG: You do look at the course  
13 materials at the very beginning or sort of on a spot,  
14 random basis after --

15 MR. CLARK: One of the things I've initiated  
16 since I started, Senator, is all of our appraiser  
17 investigators are licensees as well, and they must take  
18 continuing education. And I put out a directive that  
19 every appraiser investigator, when they take a  
20 continuing education course, they must write a review,  
21 an audit, if you will, an audit report on the course  
22 provider's continuing education course.

23 CHAIRMAN STEINBERG: So your method is to hope  
24 that the best in the business will report negatively, if  
25 appropriate, that a particular continuing education

1 CHAIRMAN STEINBERG: Are you going to be able  
2 to do random audits if you get the staff you requested  
3 in this year's BCP?

4 MR. CLARK: I don't know yet. I want to start  
5 that program. My most immediate concern is getting our  
6 caseload down and getting within the appraisal  
7 subcommittee guidelines of closing enforcement cases  
8 within 12 months of receipt of complaint.

9 CHAIRMAN STEINBERG: That's all fine. I  
0 just -- you know, I think by experience, when the  
1 industry knows that they could be spot-checked --

2 MR. CLARK: Absolutely.

3 CHAIRMAN STEINBERG: -- I think that's a better  
4 deterrent than just being complaint-driven.

5 MR. CLARK: I agree with you, I share your  
6 concern, and it is a very important aspect of what we're  
7 doing for me as well.

8 CHAIRMAN STEINBERG: What about accrediting and  
9 educational courses for appraisers; do you check to see  
0 whether those are legit?

1 MR. CLARK: Yes, sir. We -- There are quite a  
2 number -- I forget exactly. There are 2,155 approved  
3 appraisal courses with 196 approved appraisal education  
4 providers that our staff has reviewed. A lot of those  
5 course providers are actually approved under the

1 course is not up to standard?

2 MR. CLARK: If they're not up to standard, we  
3 would take measures --

4 SENATOR OROPEZA: How would you know, though,  
5 if they're not up to standard? Excuse me. I'm sorry.

6 CHAIRMAN STEINBERG: No, no. That's fine.

7 MR. CLARK: Based on an audit report that we  
8 would have from our staff.

9 SENATOR OROPEZA: Do you do audits?

10 MR. CLARK: I'm sorry. Let me backtrack here.

11 When our appraiser investigative staff goes to  
12 a continuing education course, the new directive is "Not  
13 only do I want you to take the course and understand the  
14 material, but I also want you to review and write an  
15 audit report on that course provider's material for the  
16 course." So it's kind of a first step into an audit  
17 program, at least for the course providers.

18 CHAIRMAN STEINBERG: I think I understand.

19 SENATOR OROPEZA: I see.

20 CHAIRMAN STEINBERG: You're not relying on your  
21 limited staff to provide you the report. You're  
22 actually relying on the consumer to report back whether  
23 they thought the audit -- it's like if you go to a  
24 conference. It's the participants doing an evaluation.

25 MR. CLARK: It's the consumer that happens to

1 be one of our employees, an investigator. Those are the  
2 individuals.

3 SENATOR OROPEZA: They send the investigators  
4 to the courses.

5 CHAIRMAN STEINBERG: Oh, I see.

6 MR. CLARK: Our appraiser investigators are all  
7 licensed appraisers themselves, and they have the  
8 continuing education requirement. It is a --

9 CHAIRMAN STEINBERG: You have eight of them?

10 MR. CLARK: Yes, sir.

11 CHAIRMAN STEINBERG: How much -- What's their  
12 breadth?

13 MR. CLARK: I'm sorry?

14 CHAIRMAN STEINBERG: How far and wide are they  
15 able to get in terms of the numbers of --

16 MR. CLARK: I'm not sure. I would have to get  
17 back to you again on that.

18 CHAIRMAN STEINBERG: Again, it begs the  
19 question about whether or not you are adequately staffed  
20 to meet the new and emerging trend that you are seeing  
21 in the business.

22 MR. CLARK: I would agree.

23 SENATOR OROPEZA: And I would say almost the  
24 emergency situation in a sense -- I mean, this has been  
25 a piece -- The appraisals of property has been a piece

63

1 and are a continuing piece of the challenging real  
2 estate market now which is part of our whole economic  
3 crisis. So I feel a sense of urgency, Mr. Chair, about,  
4 you know, some accountability on the skill levels, the  
5 appropriateness of the training, and I was going to  
6 mention also that lack of ethics training as part of  
7 what's required.

8 CHAIRMAN STEINBERG: Ethics for the staff or --

9 SENATOR OROPEZA: Ethics for appraisers. As I  
10 understood it, it's not approved as any of the courses  
11 that are required, ethics.

12 MR. CLARK: I misstated that in my meeting with  
13 the Senate Rules staff the other day. Actually,  
14 ethics -- Ethics is a huge thing in the Uniform  
15 Standards of Professional Appraisal Practice. There are  
16 four statements at the beginning of the Uniform  
17 Standards, and the number one -- There are four rules,  
18 and the number one rule is the ethics rule, and it is  
19 also covered in our basic education required of  
20 appraisers. There's an appraisals principles course  
21 that includes a module on appraisal ethics.

22 SENATOR OROPEZA: So there's a module of a  
23 course on ethics?

24 MR. CLARK: And also in the Uniform Standards,  
25 which is pretty much the appraiser bible.

64

1 SENATOR OROPEZA: In terms of their training --  
2 You know, I don't know if everybody reads the whole  
3 bible, but they certainly pass the test.

4 MR. CLARK: Senator, the Uniform Standards has  
5 to be taken and retaken every two years. Appraisers are  
6 required to.

7 SENATOR OROPEZA: Okay. So they have to be  
8 able to basically say what those are.

9 MR. CLARK: Yes. That's correct.

10 SENATOR OROPEZA: Okay. All right.

11 CHAIRMAN STEINBERG: Okay. Questions.

12 SENATOR DUTTON: I have just a couple.

13 CHAIRMAN STEINBERG: Senator Dutton.

14 SENATOR DUTTON: Just following up with your  
15 charge as the watchdog.

16 CHAIRMAN STEINBERG: You're the watchdog.

17 SENATOR DUTTON: What kind of money -- In your  
18 department, you're also special fund. It's funded  
19 solely by the fees that you're paid by licensees and so  
20 forth. So what kind of dollars does the general fund  
21 owe your department?

22 MR. CLARK: Right now, there is \$19.6 million  
23 dollars on loan to the general fund.

24 SENATOR DUTTON: Nineteen million?

25 THE WITNESS: Yes, sir.

65

1 SENATOR DUTTON: That will hire a lot of  
2 investigators.

3 MR. CLARK: That would be great.

4 SENATOR DUTTON: We'll see if we can do  
5 something about getting that money to you. You wouldn't  
6 have to actually increase fees at this point if you got  
7 that money back to fund your program.

8 MR. CLARK: That is correct. That is correct.

9 In fact, in this budget, we have a \$5-million-dollar  
10 payback if that is approved.

11 SENATOR DUTTON: Also, to carry on a little bit  
12 more with Senator Oropeza's question regarding  
13 appraisers who do loan appraisals, those appraisals  
14 aren't so much about value as it is about justifying the  
15 loan. I mean, it sounds kind of strange, but they're  
16 generally hired by the underwriter, the mortgage broker.  
17 They're not hired by the borrower. And, primarily,  
18 based on guidelines that are handed out by Fannie Mae  
19 or FHA and so forth, they write them based on those  
20 guidelines, which for the most part seem like they're  
21 almost having to deal with justifying the loan that's  
22 being made more so than an actual true indication of  
23 value.

24 MR. CLARK: What we're really talking about is  
25 unlawful pressure on appraisers, which unfortunately

66



1 does occur. I'm sure you're aware of SB 223 that was  
2 signed into law in October '07 that addresses that  
3 issue.

4 SENATOR DUTTON: That's where we need to have  
5 some strict enforcement on that, because that's actually  
6 part of the staffing.

7 MR. CLARK: One of the things I have initiated  
8 since I started work at OREA is I met with the  
9 commissioners of the Department of Financial  
10 Institutions, Department of Real Estate, and the  
11 Department of Corporations, to come out with a combined  
12 statement of examples of what would actually constitute  
13 unlawful pressure on appraisers.

14 Most folks out there believe that, Well, that's  
15 the appraisers' law, and so it's the appraisers that are  
16 breaking that law. As a practical matter, it's more  
17 likely individuals that are licensees of those other  
18 departments that are breaking the law, because they have  
19 the interest in driving that value to make the loan.

20 So my colleagues in the other departments have  
21 been very -- they're just great to work with in putting  
22 together a combined effort to get that message out to  
23 our licensees.

24 SENATOR DUTTON: It's important that we clean  
25 it up, because if we don't someone is going to clean it

67

1 up for us.

2 MR. CLARK: Absolutely.

3 SENATOR DUTTON: Thank you.

4 CHAIRMAN STEINBERG: Any other questions?  
5 Senator Cedillo, Senator Aanestad?

6 I support your nomination. You're actually  
7 very committed, and all the background checks out very  
8 positively. And besides, you worked for Regional  
9 Transit in Sacramento. I was on that board for six  
0 years, so there we go.

1 I do want to make a statement. Maybe it's less  
2 directed to you and maybe more to the agency under which  
3 this department exists, and that is BT&H. And the  
4 context of it is the fact that we brought out a moment  
5 ago that you're the first director appointed in ten  
6 years.

7 My message to BT&H, whoever may be watching  
8 this today, is that you need to provide more help to  
9 this small office. I mean, with respect, you shouldn't  
0 be sitting here worrying about whether or not the three  
1 FTEs plus the attorney you may get is going to be enough  
2 to be able to do sort of spot random audits. That  
3 should be a practice of the agency, especially as you  
4 are reporting this increase of problematic behavior in  
5 the midst of a real-estate foreclosure/financial crisis.

68

1 I mean, it just should be -- The public should  
2 be assured that you have the ability to be able to do  
3 the job, not just reactively, but, frankly, proactively.

4 You know, frankly, you have inherited a small,  
5 and at least for the past ten years, a much too ignored  
6 agency, a much too ignored entity. And my message to  
7 the agency, and I'll transmit this to the governor and  
8 his staff, is that we expect the administration to offer  
9 you more help. And I think we can say we would be in a  
10 position that we would support giving you more help, and  
11 to make sure that they keep working at getting you that  
12 help.

13 I want to ask Senator Negrete McLeod, in her  
14 Business and Professions Committee, of which she is the  
15 chair, to look deeper into this matter.

16 Senator Dutton, again, as part of your  
17 responsibilities with the Budget Committee, if you could  
18 as well, because I'm just not convinced that the three  
19 FTEs plus the single attorney is enough. It may be, but  
20 I would like to see the spot checks and, you know, that  
21 sort of proactive audit going on, because I don't think  
22 you've overstated the problem here. These are odd  
23 times.

24 So with that, I'm happy to support the  
25 nomination. Take a motion. Move to support by

69

1 Senator Oropeza.

2 MS. BROWN: Senator Cedillo.

3 SENATOR CEDILLO: Cedillo aye.

4 MS. BROWN: Cedillo aye.

5 Dutton.

6 SENATOR DUTTON: Aye.

7 MS. BROWN: Dutton aye.

8 Oropeza.

9 SENATOR OROPEZA: Aye.

10 MS. BROWN: Oropeza aye.

11 Aanestad.

12 SENATOR AANESTAD: Aye.

13 MS. BROWN: Aanestad aye.

14 Steinberg.

15 CHAIRMAN STEINBERG: Aye.

16 MS. BROWN: Steinberg aye.

17 CHAIRMAN STEINBERG: Thank you very much,  
18 Mr. Clark. Look forward to working with you.

19 MR. CLARK: Thank you.

20 CHAIRMAN STEINBERG: Thank you.

21 This will go to the Senate floor and should be  
22 taken up in the next two weeks.

23 MR. CLARK: Thank you.

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1 (Thereupon, the Senate Rules Committee hearing  
2 adjourned at 3:27 p.m.)

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APPENDIX

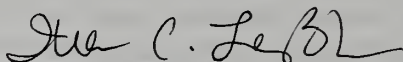
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1 --o0o--  
2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 9<sup>th</sup> day of March, 2009.

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INA C. LeBLANC  
CSR No. 6713

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72

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

BONNIE REISS  
Regent

Pegasus Capital Advisors  
3110 Main Street, Suite 220  
Santa Monica, CA 90405  
(310) 581-5475  
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February 3, 2009

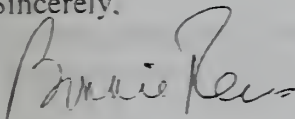
Nettie Sabelhaus  
Appointments Director  
Senate Rules Committee  
State Capital, Room 420  
Sacramento, CA 95814

Dear Ms. Sabelhaus:

In advance of my confirmation hearing before the Senate Rules Committee on February 18, 2009, I have attached a copy of my responses to the questions posed by Senate President pro Tempore Darrell Steinberg on behalf of the committee. I am remitting electronically and in hard copy form (via Federal Express overnight delivery) my responses to the questions and my Form 700, Statement of Economic Interests, that was filed when I was appointed because there have not been any substantive changes to my statement since that time.

I hope that this is responsive to the request put forth by the Senate President pro Tempore, and I look forward to meeting with members of the committee on February 18<sup>th</sup>. Should you have any questions, feel free to reach me at (310) 292-0118.

Sincerely,



Bonnie Reiss

Attachments

**Senate Rules Committee**

FEB 04 2009

**Appointments**

## Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the University of California Board of Regents. How will you measure your success?*

First, I want to express what a great honor it is to serve on the University of California Board of Regents. UC has a long and proud history dating to 1868 and has achieved the highest standards in serving both students and the community. I pledge to honor this proud history and commitment.

I believe that maintaining UC's reputation as a world-class education institution by offering the best possible education to give our students the skills they will need to succeed at both the undergraduate and postgraduate level is the most important goal as a Regent. Equally important is making sure that UC remains accessible and affordable, reflects the diversity of our state, and does not close the doors on any worthy student that is capable of meeting the highest standards of UC. Another goal I have as a Regent is to support UC's success and unparalleled reputation in the area of research and innovation. UC's leadership in this area has helped attract the most talented students and faculty and has led UC to become a global leader in innovation. The UC "hubs" of research excellence have also helped California attract innovative companies and capital looking to leverage this talent, which has contributed much to the economy of the state.

I will measure my success by the achievement of these goals from tangible evidence of patents, awards, advances in medicine and science and technology; improvements in the diversity of the student body; accomplishments of the faculty; availability of financial aid packages. The less tangible results are harder to measure, but equally as important.

2. *You have been assigned to serve on the following committees: Compliance and Audit, Educational Policy, Grounds and Buildings, Long Range Planning. What specifically would you like to accomplish while serving on these committees?*

### *Committee on Compliance and Audit*

One of the critical reforms the Board instituted after UC's recent executive compensation crisis was the establishment of a Senior Vice President for Compliance and Audit. This new position is specifically authorized in the Bylaws to implement all necessary actions to ensure strong ethics, compliance and audit programs.

Members of this Legislature have offered the opinion that the University is good at identifying problems, but less adept at fixing them. My background in corporate audit taught me the critical ingredient of following up on mechanisms put in place to address identified compliance failures. As a Regent, I will work with the Chair of the Compliance and Audit Committee and the Senior Vice President to ensure that the University's compliance efforts are robust, policies and preventive mechanisms are in place, and the Board has sufficient reporting information to ensure that problems have or will be addressed. I believe accountability and transparency are the most important issues to address in this committee so UC lives up to its promise.

**Senate Rules Committee**

### *Committee on Educational Policy*

The University must offer each student the opportunity to achieve the best possible education available. The Committee on Educational Policy offers a unique opportunity to work with the University administration to ensure our educational mission remains committed to the highest possible standards.

As a Regent, I want to ensure that all students, regardless of income, have access to the University. The President's Blue and Gold Opportunity Plan is a significant demonstration of the University's commitment to low-income students. All eligible financially needy undergraduates with incomes up to the median for California households (\$60,000) will have UC systemwide fees covered by scholarship or grant awards. This is a substantial investment in California's future. But we must remain mindful of middle-class students as well. The University must not close the door on any student capable of meeting the highest standards of UC. As a Regent, I will work with the President to ensure the University remains affordable for all.

I will also continue to work with the President and my colleagues on the Board to improve the diversity of the student body of the University.

### *Committee on Grounds and Buildings*

I wanted to serve on the Committee of Grounds and Buildings for a variety reasons. First and probably most significant is my belief that strategically planning ahead to build the infrastructure to meet the needs of our students in the next 30 years is critical to the success of UC and incumbent upon us to serve both UC and California. Since there is not unlimited capital, strategic decisions must be made as to what priorities we should fund. Issues such as: how much student housing is needed to ensure we meet growing enrollment, as well as provide affordable housing; do we need more laboratories and facilities for stem cell research, or for supercomputers, nanotechnology, and renewable energy; do we need more medical schools and medical centers and, if so, which communities have the greatest need.

In making these strategic decisions, I believe it is essential we do so in cooperation with the local community and our state leaders, to make sure we are supportive of our shared goals and do so in a fiscally responsible manner.

I'm also proud that UC has adopted a policy to follow sustainable practices and all new construction seeks LEED certification. Building new construction that takes into account how to be energy efficient and water efficient is both financially smart and environmentally important.

### *Committee on Long Range Planning*

This committee is somewhat unique among Board committees: it has a wider horizon than most and offers the opportunity for deliberate discussion and consideration of a range of issues. The committee offers the Board the opportunity to identify – and hopefully address – issues on a proactive basis, rather than reacting to the most pressing crisis. As a Regent, I will work to

strengthen the strategic planning process of the University so the regents can effectively shape the future of the University without micromanaging the details of the administration of the University.

While maintaining UC's high academic standards, we also have a responsibility to remain accessible and affordable to all young people who can meet these standards. Like many state universities, the financial support for the University of California from the State budget has been decreasing as a percentage of the total need and this is a critical issue that must be addressed in long range planning.

UC cannot achieve any of its worthwhile goals—including student diversity, research, attracting the best and brightest in students, faculty and staff, or paying service workers a fair wage—if we cannot find the financial support.

3. *The university plays a critical role in every part of California's cultural and economic life. In a difficult economy and a time of state budget reductions, how do you, as a regent, help the UC sustain its critical role? How are you able to focus on this important "big picture" issue as a UC Regent?*

The State of California's economic crisis is overwhelming. But the University is a key ingredient in the solution and must be viewed as such. Constricting educational opportunity in the name of budgetary expediency is deeply distressing, but that is exactly the dilemma every member of the Board faced in the decision to cut student enrollment in 2009-2010. There are more hard choices ahead but it is critical that members of the Legislature, business leaders, and all stakeholders recognize that UC is a key economic engine of the State. UC is a global leader in innovation and invention. The excellence of our faculty and the products of our campuses have helped California attract visionary companies and capital looking to leverage that talent. UC is highly regarded throughout the world; we have a large number of Nobel Prize winners, authors, and we are playing a leading role in solving issues around climate change. We offer hope to young people who see attending UC as a path to achieving their dreams. The Regents must do all we can to make the case to the State's political leaders, US congressional leaders, business leaders, and philanthropic leaders to maximize the financial support needed to continue our great mission. Invest in UC and you invest in the future of the State of California.

4. *Thousands of young people drop out of high school and middle school in California. What role should the UC play in addressing this serious problem and what role does it play? How do you, as a regent, weigh in on what should be done?*

The issue of California high school dropouts is a \$46 billion dollar-per-year problem, and University of California researchers are deeply engaged in finding solutions to this crisis. The California Dropout Research Project, a project of the California Linguistic Minority Research Institute at UC Santa Barbara, recently conducted a review of 25 years of research—based on 203 published studies—to identify statistically significant individual and institutional predictors of high school dropout or graduation. Four individual factors predicted whether students would

drop out or graduate: 1) educational performance, especially grades, beginning as early as elementary school; 2) behaviors, such as student engagement—going to class, doing homework, participating in extramural activities; 3) attitudes, specifically how far a student expected to go in school; and 4) background, most significantly participation in preschool, which was highly correlated with high school completion, as well as being cost-effective.

Several institutional factors—such as families and schools—also predicted dropout or graduation. Positive family influences on graduation rates included having high educational aspirations for their children, monitoring school progress, and communicating with the school. School influences that improved high school graduation rates included small classes in grades K-3 (15:1); strong academic climate, as measured by more students taking academic courses and doing homework; and requiring students to attend school beyond age 16. Conversely, a poor disciplinary climate, as measured by student disruptions in class or school, was correlated with higher dropout rates.

I believe there is nothing more important to the good of a great democracy than a superb public education system, K-12 and higher education. While California colleges are excellent, our own K-12 system is failing way too many young people. While UC cannot solve the problems of K-12, we certainly have a role to play. Having spent over 10 years running after-school programs in the lowest-income schools and having served on the State Board of Education, I have a grasp of the magnitude of the needs of the K-12 community. UC can look at adopting schools, perhaps offering credits for students to “tutor and mentor” at failing schools, or sponsor charter schools on or adjacent to some UC campuses. We can work more closely with State Board of Education, CDE, CCC, and CSU to explore solutions to this problem in a more coordinated fashion.

The future of California’s children is the future of California. The President is committing to lead UC to address pressing K-12 issues. I serve on the Committee on Educational Policy, the committee with jurisdiction for such programs, and look forward to working with President Yudof, state leaders and the other higher education segments to address this pressing need.

## **Admission to the University**

The UC admitted a record number of freshman students for the fall 2008 term. Admission offers were sent to 60,008 California high school seniors, a 4.7 percent increase of admitted students over the fall 2007 term. African Americans, American Indians, and Chicano/Latinos make up 25.1 percent of the university admits, up from 22.9 percent from fall 2007. The fall 2008 freshman class was expected to be the largest in the university’s history.

5. *The university decided to admit all eligible freshman this past fall, even without new funding specifically for enrollment growth. How did this decision impact the number of eligible transfer students that could be admitted? How do you as a regent balance the needs of these two groups?*

UC sets separate targets for freshmen and transfers, acknowledging in both cases a number of factors including policy goals (such as increasing transfer enrollments and our commitments under the Master Plan); campus capacity in terms of both physical facilities and educational resources such as teaching staff; and state funding levels. Targets are set before each year's budget is known (for example, we set targets and made decisions for Fall 2008 in the winter of 2008, but final funding levels were not reached until October). In 2008, we set targets assuming that the enrollment levels in the Governor's compact would be funded. These targets provided full access for eligible applicants at both the freshman and the transfer levels. For 2009, faced with enrollment of 11,000 students for whom we receive NO state funding, the Regents have endorsed President Yudof's recommendation that we begin to scale back at the freshman level – curtailing freshman enrollment by 2,300 students in 2009-10 – while still providing a seat for all eligible students who choose to enroll. At the transfer level, however, we are increasing our enrollment targets by 500 students. (This would decrease freshman enrollment from around 37,600 new freshmen in 2008-09 to around 35,300 for 2009-10, while new transfer enrollments would increase to about 16,300 in 2009-10.) This action recognizes the significant benefits to the state of continuing to provide access to these students as well as a substantial increase in transfer applications for Fall 2009. Transfer is a high priority for the President that I support for a variety of reasons including improving student diversity.

6. *What is the university doing to increase the number of competitively eligible applicants to UC from disadvantaged backgrounds? How do the regents monitor the effectiveness of university K-12 academic outreach programs in preparing these students to become competitively eligible to attend UC campuses? Are you satisfied that these programs are preparing students to succeed once enrolled at a UC campus?*

The University of California has a longstanding commitment to raise the academic achievement of educationally disadvantaged students, offering programs and strategies (some reaching back more than 30 years) that improve college opportunity for thousands of students.

In recent years, the University has revamped many of these programs and strategies to ensure that they can continue to meet the academic preparation needs of California students. The University's current goals, strategies and accountability expectations for its programs support K-12 goals for student academic achievement while ensuring rigorous and centralized accountability for all of its programs.

Each of the University's academic preparation programs operates in accordance with the Student Academic Preparation and Educational Partnerships Accountability Framework, developed in concert with state policymakers, which establishes common goals and assessment expectations for the programs. The goals for these programs are focused on student achievement across a broad range of academic preparation and college readiness indicators.

Program assessment and evaluation are integral to the University's academic preparation efforts, and the University has made significant investments over time in data collection and systems, data analysis and external evaluations. All programs are required to submit performance reports



describing their progress toward meeting specific programmatic goals and objectives, and individual programs are subject to comprehensive summative evaluations by both internal and external evaluators as funding permits. While I have not yet reviewed this data I believe it is important for Regents to exercise oversight to insure that our outreach programs are effective.

UC's programs are reaching students who attend the state's lowest performing schools, are accountable for their efforts, and are achieving their goals. For example, 65% of students in our academic preparation programs go on to postsecondary education compared to 46.3% of California high school graduates, and their retention and graduation rates are similar to those of similarly situated students who did not participate in these programs. Studies on the University's programs have focused on more difficult but generally more rigorous longitudinal analysis of program participants. These studies clearly document programs' effectiveness in promoting student achievement, in fostering students' rigorous course-taking patterns, and in promoting their college enrollment.

In coming months the Board of Regents will discuss a proposal to revise university admission requirements. This proposal was recently approved by the Board of Admissions and Relations with Schools, which is comprised of faculty members. Included in the proposal is the elimination of the requirement that applicants take two SAT subject tests, and a revision of the guarantee of admission for those who are in the top 12.5 percent of California high school graduates to instead apply to only about the top 10 percent of graduates. The proposal would also allow individual campuses and majors to recommend certain subject tests and guarantee that students who are eliminated from consideration because of technical problems with their applications (such as a failure to take an SAT subject test) would have their application reviewed and evaluated.

7. *Critics of the proposal worry that the plan could decrease diversity because the number of underrepresented students who fall within the 12.5 percent guarantee would decline under the more restrictive admissions pool. What are your views regarding the proposed policy and its impact on underrepresented minority students?*

Although it is true that the pool of students *guaranteed* admission will be smaller and slightly less diverse, many students will be selected from the larger, more diverse pool of students who will be Entitled to a Review. The Academic Senate has studied this issue extensively and it is their view that the proposal has the potential to expand access for underrepresented students by bringing into that larger pool many thousands of underrepresented students who would not previously have been guaranteed a full and comprehensive review. The President agrees with this position and endorses the proposal as a way to expand access without diminishing the quality of students who enroll. While I have not yet made up my mind on this proposal I support comprehensive review as the fairest way to evaluate students. Comprehensive review provides the opportunity to assess students in the context of opportunities and challenges they have experienced. I will need to feel confident that the standards of UC are being maintained, that there is transparency for all applying students and that the goals of the Master Plan are being honored.

8. *The current admissions policy is fairly transparent in that applicants are considered eligible for guaranteed admission to the UC system if they are in the top 12.5 percent of California high school graduates and they meet other specified criteria. The new plan proposes that a smaller percentage of students be guaranteed admission, but that another 12 percent or so of high school graduates be allowed to apply without any promise of admission. How do you respond to concerns that the proposed changes undermine the transparency in the UC admissions process by making it more difficult to understand admission requirements and thereby blurring the lines of eligibility?*

I don't believe the differences between the two policies are significant in terms of transparency. Most students understand that being eligible under the current policy does not guarantee them admission at the campus of their choice, but rather ensures that if none of the campuses they apply to admit them they will still receive an offer. They understand that to be admitted to the campuses they want to attend, they still have to be competitive in each campus's comprehensive review process. That will not change. What will change is that a slightly smaller percentage (10.1% rather than 13.4%) will also have the guarantee of admission through the referral pool.

Statistics show that only a small number of those offered referral admission accept that offer. It can also be argued that the proposal simplifies our requirements by eliminating the SAT subject examinations which few other institutions require and which many college-bound students don't take.

### **Student Fees, Financial Aid, and College Affordability**

In 2008 the UC Board of Regents approved a 7.4 percent student fee increase for the 2008–09 school year for undergraduate, graduate, and professional students. The university will redirect 33 percent of revenues generated by the fee increase to financial aid, supplementing other financial aid sources such as the Cal Grant program. The new fees also include the continuation of a temporary \$60 surcharge on all students for the next five or six years to cover approximately \$40 million the university lost as a result of a court finding that it improperly imposed higher tuition five years ago on 46,000 students.

9. *How is the UC addressing the growing concerns about college affordability? What do you believe are the challenges in crafting a student fee and financial aid policy that balances the need to keep fees reasonable, while providing sufficient financial aid to help low- and moderate-income students?*

The issue of approving a student fee increase was on the agenda of my first meeting as a Regent and it was an extremely difficult vote.

I'm very concerned that student fees have increased almost every year over the past 10 years. Although Cal Grants, Pell Grants, and UC grants generally cover fee increases for low-income UC students, rising fees can discourage middle- and high-school students who are unaware of the financial aid available to them, and who may feel that a UC education is not within their reach.

UC currently does a good job of ensuring access for low-income students. Nearly 90% of all grants and scholarships received by UC students are awarded based on financial need. Fees and other types of student expenses have increased rapidly in recent years but increased resources for financial aid have moderated the impact of these cost increases for many low- and middle-income students. Grant and scholarship support for UC undergraduates grew from about \$500 million in 2002-03 to nearly \$900 million in 2007-08. When fees increased in 2008-09, the University set aside one-third of all new fee revenue to augment its need-based grant program, as it has in previous years. These funds, together with the State's Cal Grant program, provided enough additional funding to cover the fee increase for low-income students. In addition, a portion of the funds were used to cover one-half of the fee increase for students whose parents' income was below \$100,000 and whose fee increase was not otherwise covered by the Cal Grant program or the University's primary grant program.

But it is not clear that families understand that a UC education is within reach of all capable students. That's why The Regents will be considering the Blue and Gold Opportunity Plan at our meeting this week. The Blue and Gold Plan, if approved, will send a clear message to these families about the availability of grants and scholarships to fully cover fees for families earning up to \$60,000, the median household income in California. The Regents will also consider a provision in the proposal to increase the amount of new fee revenue set aside for financial aid in order to fully fund this program without reducing the aid available to other students. I believe this is an important investment in expanding access to UC for low-income students.

I am also concerned about the impact of fee increases on middle-income families. Families earning between \$60,000 and \$100,000 get at least a portion of their fee increase covered, but a portion of the increase may not be covered. When this fee increase is added to the cost of living, many hard-working middle-class families are being 'priced out' of UC. The fact that two parents who might be nurses, teachers, small business owners, or state or county workers fall in this middle income category and are not eligible for financial aid to cover these increases is a problem for UC and for the State and one I hope to address as a Regent.

Obviously student fees are not just impacted by the University of California budget decisions, including collective bargaining, but also by the level of State support. I will support and encourage our new president to engage in meaningful discussions with legislative leaders about the future of higher education in California, and how we can best achieve our mutual goal and levels of funding needed to do this. I believe we should do this in cooperation with CSU and CCC and have serious, honest, and open discussions about our future and the shared responsibility in meeting our goals together.

10. *Are the regents exploring what can be done to help students cover other fast-growing, non-fee costs, such as books and supplies, room and board, transportation, and health care? What options are you reviewing, if any?*

The Regents understand that the total cost of attendance is a critical measure of affordability since neither Federal Pell Grants or Cal Grants fully cover non-fee costs.

Unlike tuition increases, which are covered by additional grants for lower income students, non-fee cost increases impact all students, and can create a barrier for attending UC to middle and lower income families. Family income defines eligibility for UC financial aid and grants. UC is working to increase aid for all eligible students. Federal Pell Grants are typically available only to families earning less than about \$45,000 per year. The income ceiling for Cal Grants varies by family size, but tops out at around \$80,000.

But UC grants do not have a fixed-income ceiling – they are available to any student with sufficient need that is not met from Pell Grants or Cal Grants. Most UC grant recipients have a parent income below \$60,000, but some UC grant recipients have incomes of \$100,000 or higher. These higher-income families typically have unusual circumstances (e.g., more than one child in college at the same time). In general, higher-income families are expected to cover the cost of attendance through their federal parent contribution and a manageable level of work and borrowing by the student. Federal student and parent loans are available to students at every income level. So-called “subsidized” loans (for which interest does not accrue while the student is enrolled) are reserved for students with financial need – typically students with a family income of less than \$120,000 – but all federal loans are “subsidized” in the sense that they offer below-market interest rates and other desirable features not available in the private loan marketplace. Scholarships are also available to students at every income level.

In addition to expanding aid to students, UC is exploring other options to address cost increases in other areas. For example, UCOP is exploring a systemwide graduate student health insurance plan.

In my capacity as a Regent serving on the Committee on Grounds and Building I would like to look into prioritizing some low-cost student housing which can address one of the more significant non-fee costs associated with room and board.

11. *Does the university take into consideration federal financial aid programs – particularly the federal tax credit programs such as Hope and Lifetime Learning – in setting fees?*

The University’s decisions about fees are based entirely on the need to maintain the quality of the academic programs and services that it provides to students. When fees rise, a portion of the new fee revenue is also set aside for financial aid in order to help maintain access to the University for financially needy students.

While federal aid programs do not influence the University’s fees, they play an important role in the University’s financial aid programs. At the undergraduate level, the University covers a student’s total cost of attendance – not just fees, but also room and board, books and supplies, health care, and other expenses – through a combination of an expected parent contribution, a student contribution from work and borrowing, and grant assistance from university, state, and federal sources. This assistance included over \$160 million in Pell Grants and \$12 million in

federal SEOG grants in 2007-08. In addition, UC undergraduates received nearly \$20 million in federal scholarships last year, which reduced their need to work and borrow.

UC does not generally view tax credits as a financial aid “program,” but they do provide relief to eligible middle-income families. The University tries to provide timely and helpful information to students and families in order to help them apply for any education tax credits for which they might be eligible. However, so many factors influence a family’s eligibility for these credits that the University cannot know how many UC families qualify for the credits or the total value of the credits that they receive.

12. To what extent should the Legislature and Governor be part of UC’s decisions about fees?

Given the large influence that the Legislature has on UC’s overall budget, it would seem that the Legislature and the Governor already have significant impact on UC’s decisions about setting fees. As UC is a state university with significant responsibility to the people and future of California, our relationship with the Governor and Legislature is very important. The issue of fees is part of the larger issue of budget, UC’s and the State’s, and as such cannot be looked at in isolation. UC, like other state universities, has seen ever-decreasing financial support from the State over the past 20 years and, and this is a very alarming trend which must be discussed in a thoughtful, open, and honest way with State leaders.

### **University of California Retirement Plan**

In most public employment systems, the employer and the retirement board of the associated retirement system are separate entities. Unlike other public systems, the UC Regents have fiduciary responsibility over UC’s retirement system. In 2007, the Legislature passed SCR 52 (Yee), Resolution Chapter 126, Statutes of 2007, which requests the Regents of the University of California to provide for shared governance of the UC Retirement Plan (UCRP). The regents have responded by proposing to establish a shared advisory structure for the UCRP to provide comment, advice, and recommendations on the governance of UCRP.

13. *How will the shared advisory structure be able to address issues such as conflicts among fund managers, fund micromanagement, and the declining fund balance that have plagued the UC retirement system in recent years?*

In general, the Regents support a revised UCRP governance structure that will allow the different employee groups with an obvious interest in the UCRP to have meaningful input, and I agree with this.

I believe the overall number one goal of the UCRP should be to get the greatest return on investment and have a long-term financial plan that provides the promised retirement income. This must be done in a way that is open and transparent and avoids conflicts of interest

and micromanagement. The following information was provided to me by the UC Office of the President in response to these questions:

- The Regents' response to shared governance would be the creation of a University of California Pension Benefits Board (UCPBB). The UC Pension Benefits Board would replace the UC Retirement System Advisory Board. The Pension Benefits Board would have 11 members, including faculty, management, retirees, represented staff, and non-represented staff.
- This new body would provide recommendations on all operational aspects of UCRP to the Board of Regents. This could include recommendations on plan administration, benefits changes, the restart of employee contributions and the amount of employee contributions. The UCPBB would also make a recommendation to the Board of Regents for a person to be appointed as its representative to the Regents' Investment Advisory Group. As is the case with the Committee on Investments, the Board of Regents, in its role as Plan Sponsor and Fiduciary, would retain the responsibility to approve these recommendations.
- There is a clear articulation of accountability for UCRP – the Board of Regents has the ultimate fiduciary responsibility for the plan. The Regents set policy, guidelines, and asset allocation for the investment portfolio of plan funds.
- The Office of the Treasurer's mission is to implement these policies and guidelines by selecting, executing, and monitoring investment strategies designed to add value over established benchmarks in a risk-controlled framework. The current structure prevents perceived or actual conflicts of interest in the selection of fund managers and avoids fund micromanagement.
- The UC Retirement Plan has paid out over \$17 billion in benefits and has also avoided normal cost plan contributions of more than an additional \$17 billion since 1990 (all amounts in 2007 dollars).
- While the funded ratio of the plan has declined, UCRP was still over-funded at the end of our last fiscal year (103% as of 7/1/08), despite this combined \$34 billion provided by the fund's surplus over the past 18 years. However, it should be noted that the funded status has declined significantly since 7/1/08 due to the steep decline in financial markets.

## **UC Governance and Decision-Making**

For the last several decades, the UC has been criticized for not fully disclosing compensation packages provided to top management that have been well above the amount publicly reported as their base salaries. In response, the university has repeatedly committed to maintain full public disclosure, transparency, and accountability. In early 2008, the Western Association of Schools and Colleges (WASC) reported that the UC system has significant problems in governance, leadership, and decision-making. It reported confusion surrounding the roles and responsibilities of the university president, the regents, and the 10 campus chancellors.

As part of an effort to restructure and downsize the central administrative operations of the UC system, the university offered a Voluntary Separation Program to employees at

the Office of the President in January 2008. Some employees who accepted a financial buyout to leave the Office of the President were immediately re-employed elsewhere in the university with no impact on the amount of their buyout.

14. *How do the regents stay informed of the university's compensation policies? What is the university's policy regarding rehiring retired pensioners? Do you believe regents are kept sufficiently informed regarding campus hiring practices?*

The Regents review and approve all policies and compensation actions for members of the University's Senior Management Group (SMG), as well as compensation actions for other employees with salaries over \$275,000. This amounts to approximately 374 employees in senior leadership positions. The Voluntary Separation Program (VSP) was a program designed to reduce headcount and long-term salary costs specifically at the Office of the President, and was not offered to SMG members or employees at the campuses. While The Regents were made aware of this program, they did not need to approve it, nor were all the details shared with them prior to implementation.

Upon learning of the situation where employees collected their VSP payments and then found jobs at the campuses, I was concerned about the design of this plan feature, and I think the message it sends regarding budget concerns is not a good one. I believe The Regents should be kept better informed in the future about programs of this nature.

If this program is offered again in the future, the President and The Regents believe it should be structured differently, and I agree. The President has said that if the program is offered again, we will include provisions requiring repayment of any buyouts on a pro rata basis for employees finding new work elsewhere within the University. Our Compensation Committee Chair had suggested the same approach. I agree wholeheartedly with them that this action is important to ensuring the public's trust in our stewardship of resources.

#### New Policy on Reemployment of Retired Employees

In order to ensure the effectiveness of UC's practices regarding the reemployment of retirees, UC reviewed its policies governing such rehires, including the conditions under which retirees may be rehired. The new policy on rehiring retirees was adopted by The Regents in September 2008 subject to Presidential review of Academic Senate comments. The Senate's comments have been reviewed, and the amended policy is coming back to The Regents for approval at the February 2009 meeting. Key elements of this policy are as follows:

- Limited appointment percentage
- Restricted duration of reemployment
- Required approvals
- Documentation of University needs
- Reporting

15. *What remains to be done to meet the university's commitment to full public disclosure, transparency, and accountability?*

While I am a newly appointed Regent, I am aware of the concern surrounding these issues previously raised by the public and the Legislature in the past few years. I believe strongly in full disclosure, transparency, and accountability and will do everything I can as a Regent to see that UC properly addresses these issues on an ongoing basis.

To both be properly briefed and to be responsive to this question, I asked the Office of the President to provide me an update on its progress in this area. Their response follows:

- The University of California continues the effort to fulfill its commitment to full disclosure, transparency, and accountability; and to address the recommendations of the Task Force on UC Compensation, Accountability and Transparency and related audits.
- Significantly reformed practices have been established to provide a basis for full and proper disclosure, as described more fully in the March 2008 Legislative Report on Compensation Policies and Practices. (This is an annual legislative report, and the March 2009 report will be provided next month.) These include:
  - Use of a standardized definition of "total compensation" for clarity on the appropriate elements of compensation and which elements require Regental approval.
  - Continuation of the practice of voting on all compensation recommendations in open session by the Regents' Committee on Compensation.
  - Use of a systemic and rigorous process for collecting, validating and certifying of individuals' total compensation information reported on the Annual Report on Total Compensation.
  - Collection of information from individuals for the preparation of the Annual Report on Compensated Outside Professional Activities, which is certified as complete and accurate by each individual required to report such activities to The Regents.
  - Use of a standard template for reporting of total compensation for senior leaders.
  - Public posting of all compensation actions approved by The Regents.

#### Annual Reporting on Total Compensation

- The University continues to use the new expanded format for the Annual Report on Total Compensation, which is sent to The Regents and the Legislature each March.
- For 2007, this report included compensation details on 519 incumbents and former incumbents in senior leadership positions, including those in acting capacities. The report for 2008 will be sent to the Legislature following the March 2009 Regents meeting.

#### Other Reforms

- On an ongoing basis, compliance with compensation and related policies will be a routine part of the internal audit and compliance monitoring activities of the office of the Senior Vice President – Chief Compliance and Audit Officer appointed in 2007. The findings of these activities will be shared with senior leadership and the appropriate committees of The Regents.
- During 2007, the University completed the rollout of the web-based ethics briefing to all University employees. The training will continue as part of the UC-wide Ethics and Compliance Program, also under the auspices of the Senior Vice President – Chief Compliance and Audit Officer.



- In September 2007, The Regents received and reviewed a report on actions taken under both the *University-wide Corrective Action Plan* and the *Campus/Laboratory Corrective Action Plans* which addressed plans to correct specific and systemic errors in compensation practices. Regular monitoring of these plans continues to be done at the Office of the President.

New Accountability Program

- Additionally, President Yudof has launched an accountability program aimed at providing better information to the public and policy-makers about the performance of the UC system for the people of California.
- The effort will include an annual public report that will evaluate the University's performance on a range of dimensions, including its management performance and administrative operations.

16. *What steps is the Board of Regents taking to address WASC's concerns regarding UC's governance structure and business practices?*

As a new Regent this was another question I needed to address to the University of California Office of the President. The answer they provide follows:

The final report from the Western Association of Schools and Colleges (WASC) commended the University for the many steps it has taken to address the compensation issue raised in recent years and for its awareness of the need to maintain transparency and conformity with policies while continuing to recruit the best personnel possible. In light of that conclusion, the changes made are not detailed here, but can be provided if the Committee so requests.

Regarding governance, the University commissioned a working group (chaired by a campus chancellor and facilitated by an independent consultant) to evaluate the proper roles of Regents, the President, and the campuses. The Board's Committee on Governance endorsed this report in January 2008.

The Board created the Committee on Governance to re-evaluate Board governance principles. As a result of the committee's work, the Board has adopted new policies governing Regental education and evaluation as well as new standards governing expectations of individual Regents and the Board.

The Board established a new senior vice president for compliance and audit as a direct report to the Board for the specific purpose of ensuring a more robust audit system and proper review of transactions for policy compliance.

The Board adopted a detailed process for evaluation of the President's performance (and that of other direct reports to the Board).

**Research Funding**

According to information submitted to the Senate and Assembly Budget Committees, the UC receives tens of millions of dollars a year in state funds (e.g., General Fund,

Public Interest Energy Research Funds, Natural Gas PIER Funds, etc.) for energy, climate, and clean-fuels-related research.

While there are excellent research projects funded through these programs, there does not appear to be any overarching coordination between UC energy and climate-related research and the key climate and energy research priorities established in law by the Legislature.

Both the Governor and Legislature have articulated the importance of transitioning the state from a high carbon economy to a new energy economy. Green technology may be the next "high tech industry" that fuels California's economic engine. Yet there appears to be a need for greater coordination and strategic investment of state research development and demonstration funds to meet state energy and environmental priorities.

*17. Should the regents act to improve deployment and expenditure of state research, development, and demonstration funds to meet state energy and environmental challenges?*

As a citizen of California I am very proud of our leadership in addressing energy and environmental challenges. The challenges our state, nation and world are facing in climate change, energy, water, ocean policy etc. are enormous, and so are the opportunities for our state and UC to use our brilliance in innovation and research to find solutions. Many of these solutions will not only help address climate change and improve our air quality and water quality, protect our beautiful coast and oceans, but also address our need for water storage, energy independence and renewable energy and in so doing create tremendous economic opportunity and job growth.

It is the responsibility of UC and Regents to make sure we do all we can to maximize every dollar, federal, state, public or private, including the funding that we get for research and development in the areas of energy and environmental research. The University's extensive research in these areas can help the state meet its energy and environmental challenges, particularly in coordination with the work being done by state agencies like the California Air Resource Board, the California Energy Commission, that play a key role in shaping state environmental and energy policy.

Last year, the University of California supported a legislative proposal that would have created a California Climate Institute to catalyze and fund research and workforce education in areas related to climate change. The institute could serve as a vehicle for extending and improving deployment and expenditure of R&D funds in research areas that would help the state meet its ambitious goals related to carbon reduction and climate change mitigation. That bill was not signed into law, but I understand that there may be renewed efforts this year to create such an Institute. Obviously, I do not yet have details about any such proposal, but this is one kind of creative effort in which the University can be involved to help ensure that research funding is directed toward areas that can help the state meet its energy and environmental challenges. I hope to be actively involved in the University's efforts on this front.

18. *What steps has the UC taken to coordinate private and publicly funded energy and environment Research, Development, and Demonstration to ensure the state achieves the greatest benefit from those expenditures?*

Energy and environmental-related RD&D takes place throughout the University of California system. Much of that research is funded by Federal funds (over half of total UC research funding comes from the federal government and an additional 20% from private sources). For federal funds, and for much of the privately funded research, University researchers prepare research proposals in response to requests for proposals for research in a specific substantive area. While issues of interest to the nation are likely also of interest to California, the University does not have the flexibility to shift the emphasis of a research grant to allocate more research funding to California priorities, such as climate and energy research.

Many of the existing energy and climate-related research projects conducted at the University do focus on problems of relevance to California, since the results of investigations into broad areas like alternative fuels and carbon emissions, for example, can be used to help address California goals such as reducing carbon emissions. There are also more targeted R&D programs that focus specifically on research questions of relevance to California – such as research funded by UC's California Institute for Energy Efficiency, which has done work specifically related to California's Global Warming Solutions Act, regional carbon sequestration projects, hydropower within California, and many other research areas directly related to State needs.

I consulted with Vice President for Research and Graduate Studies Steven Beckwith, who informed me that a number of coordinated UC research programs focus on issues relevant to energy and climate change. Multi-campus research programs facilitate multidisciplinary and collaborative research by faculty, professional researchers, postdoctoral scholars and scientists. With core budgetary support from the University, multicampus research programs leverage external funds from the federal government and various governmental agencies, private and corporate foundations, and industry. This helps maximize and extend the benefits of state expenditures. Because such programs facilitate systemwide communication and coordination on these issues, and deploy expertise from multiple campuses, they provide a way to facilitate coordinated responses to state needs. Although the University is in the process of conducting a new competition to determine which new multicampus research programs and initiatives to establish in the future, some of the current relevant coordinated programs include:

- **University of California Energy Institute (UCEI)** is a multi-campus research unit (MRU) that started in 1980. Among its goals are to conduct interdisciplinary energy research and policy-related studies on critical energy issues affecting California, the nation, and the world. UCEI provides centers for discussion of energy issues and dissemination of energy information through activities such as public lectures, conferences, extension services, and studies. UCEI cooperates with other research institutions and with state and federal agencies on studies aimed at solutions of energy problems.

- **California Institute for Energy and the Environment (CIEE)** is an innovative UC partnership of energy agencies, utilities, building industry, non-profits, and research entities designed to advance energy efficiency science and technology for the benefit of California and other energy consumers and the environment. CIEE's mission is to support public-interest energy research in California. CIEE accomplishes this mission through research planning, research project administration, and technical coordination of research projects.
- **Institute of Geophysics and Planetary Physics (IGPP)** includes branches at UCLA, UC Riverside, UC San Diego, UC Santa Cruz, and the UC Department of Energy National Laboratories at Los Alamos and Livermore. One focus of research concerns fundamental questions of global environmental change, such as climate change and stratospheric ozone depletion. IGPP is an integrated approach that combines field and laboratory measurements with modeling and theoretical studies.
- **The Institute of Transportation Studies (ITS)**, a University of California organized research unit, with branches at UC Berkeley, UC Davis, UC Irvine, and UCLA, was established to foster research, education, and training in the field of transportation. ITS is also part of the UC Transportation Center (UCTC), one of ten federally-designated centers for transportation research and education, and a member of the Council of University Transportation Centers, (CUTC). Research at ITS covers a broad spectrum of transportation issues, many with implications for energy and climate change (e.g., planning an evaluation of public transportation systems), and often includes work specific to addressing California needs.

In order to ensure that such multicampus research programs meet the highest standards of excellence, the University's Office of the President is using merit-based peer review as the basis for selecting new programs for funding.. This kind of coordinated approach helps the University ensure that state funds are being used wisely to support meritorious research programs.

19. *How do you, as a regent, assure that UC's research agenda is robust and directed at assisting in maintaining a strong California economy without interfering with respected principles of academic freedom? Please be as specific as possible.*

I am proud to serve as a Regent for a university that is universally recognized as a world-class research institution, with faculty who are leaders in their fields across a variety of disciplines. I am also proud that University research has long played an important role in maintaining a strong California economy, helping to develop new technologies, services, products, and medical treatments that benefit the people of the state and also creating new jobs, spawning new companies and even entirely new industries.

I believe that maintaining the strength of our faculty is the key to ensuring that the University's research agenda remains robust, in the areas of both basic research and research that is more applied. Academic freedom is, indeed, a core University value, and it is essential to ensure that faculty are free to pursue and disseminate knowledge in their chosen areas of inquiry. As a

Regent, I am committed to upholding that freedom, and I do not believe that conflicts with ensuring that UC's research agenda remains robust.

The University has been very successful in leveraging state funds, obtaining federal and private funds to conduct research that benefits the State. Some research collaborations between UC campuses and private enterprise have been deliberately cultivated through public-private partnerships. For example, the four California Institutes of Science and Innovation are a good example. They were launched with state matching funds to foster economic growth through joint UC-industry research in biomedicine, nanotechnology, telecommunications, information technology and other technologies.

Another mechanism for encouraging research in areas that can help address issues of critical importance to California is through targeted funding for research initiatives. Clearly, the state's current economic crisis is very serious, but it is my hope as a Regent that it may be possible in the near future to include targeted research initiatives as part of future University of California budget proposals. My belief is that funding for research is an excellent investment that contributes to the state's economy and to the quality of life of its people.

## **Labor Negotiations**

In September 2008 the UC presented the American Federation of State, County, and Municipal Employees (AFSCME) with a package proposal that would provide a minimum \$20.3 million in wage increases for UC's 8,000 service employees over the next 28 months. The following month, the university announced that it had reached a tentative agreement with AFSCME's 11,000 patient-care employees for a new five-year labor contract.

20. *What is the current status of contract negotiations between the UC and AFSCME? How are the regents kept informed of contract negotiations?*

As a Regent, I believe we must be able to offer competitive salaries and benefits if we are to attract the talent we need to remain a leader in higher education, patient care and research, and to provide wages that employees can live on. I was very pleased that on January 28, 2009, UC and AFSCME reached tentative agreement on a new, five-year labor contract for UC's more than 8,000 service employees which provides for wage increases totaling over \$64 million over the life of the contract, and increases in minimum hourly rates from \$10.28 to \$14.00 by the end of the contract. In addition, when contributions to the UCRP resume, as with other employees, service employees will have their current contributions to the UC Defined Contribution Plan redirected to UCRP, thus resulting in no reduction in take home pay. Ratification of the tentative agreement by AFSCME union membership is expected by mid-February.

The Regents are briefed on the state of collective bargaining during closed sessions at the Regents meetings. I and other Regents ask many probing questions and receive responsive answers. We are often kept apprised of pressing issues which arise during negotiations and between Regents meetings via e-mail from the Office of the President.

21. *Will proposed mid-year budget cuts have an impact on the system's pending contract negotiations? If so, how will the university reconcile the proposed cuts with pending contract negotiations and agreements?*

Because state funding is UC's single largest source of funding for systemwide salaries, wages for campus-based employee groups are impacted both directly and indirectly by the state budget. As you know, the University's budget from the State does not provide for salary increases in 2008-09 and further mid-year budget cuts from the State are anticipated.

While I understand that UC has difficult budget decisions to make in light of the State's reductions in financial support, the University must strike a delicate balance between the needs of the UC and meeting its priority to pay competitive wages to its lowest earning employees. In order to accomplish this, the wage increases recently negotiated with AFSCME are contingent upon funding from the State in the latter years of the contract. This ability to revisit wage increases in the absence of state funding is often negotiated into union contracts.

Senate Rules Committee  
Confirmation Questions and Answers  
William S. Haraf  
Commissioner, Department of Financial Institutions  
1/27/08

## Goals and Objectives

### 1. *What are your goals and objectives as commissioner of DFI? What do you hope to accomplish? How will you measure your success?*

As Commissioner of the Department of Financial Institutions (DFI), my goals are to:

- Protect and serve California citizens through effective regulation and supervision of DFI licensed financial institutions;
- Maintain public confidence and trust in the state financial services system;
- Provide leadership, direction and oversight to DFI management and staff and to the management and boards of directors of our licensees when needed; and
- Ensure that the DFI continues to be seen as a leading state bank regulator known for effective and quality supervision.

#### *Accomplishments to Achieve as Commissioner of DFI*

- Provide a measured approach to the supervision of our licensees in a challenging economic and financial environment;
- Bring prompt and appropriate attention to problem institutions through the use of informal and formal enforcement actions and other mechanisms;
- Ensure that DFI is responsive to the concerns of consumers and other customers of our licensees;
- Promote the Administration's "Bank on California" initiative and continue DFI efforts to promote financial literacy and home preservation through community outreach;
- Streamline processes and utilize technology to enhance efficiency and reduce unnecessary regulatory burdens on licensees; and
- Improve communications with our various stakeholders, as well as DFI executives and staff.

#### *Measurements for success as Commissioner of DFI*

The DFI measures its success through a combination of performance metrics directly associated with established goals.

- Financial health and viability of DFI licensees as measured by a variety of financial indicators,<sup>1</sup> including a goal that at least 90% of bank licensees are rated Satisfactory or better.
- Enforcement actions issued in a timely manner and in numbers commensurate with the number of problem licensees:
  - Exam reports issued within 30 days of the completion of the examination; and

**Senate Rules Committee**

<sup>1</sup> As discussed later in this report, Attachments A and B provide an analysis of the number of the critical metrics we track.

- Enforcement actions issued or pending in relation to number of problem institutions.
- Prompt attention to and appropriate resolution of consumer complaints, including:
  - Response to telephone calls within 48 hours and to written complaints within five to seven business days.
- The level of satisfaction experienced by licensees with the examination process:
  - Goal is for 80% or more of our licensees to rate us in the top two tiers for effectiveness of communication, the timing, objectives and results of the examination, the competency and availability of personnel, and the overall supervision of the examination process.
- Completion of the DFI's process improvement initiatives, including:
  - Establishment of an application status monitor to ensure the timely processing of applications; and
  - An early warning system to alert management to deteriorating licensee trends.
- Rated in the top decile in accreditation reviews of the DFI by the Conference of State Bank Supervisors and the National Association of State Credit Union Supervisors.

## **2. What are your top priorities for DFI in the next two to three years?**

### *Top priorities for DFI in the next two to three years*

- Enhance risk-based examination programs to ensure DFI resources are deployed effectively based on the condition of our licensees in the current economic and financial environment.
  - During the past year, the banking, credit union and money transmission programs have developed new risk-based examination schedules and priorities. Resources are directed toward financial institutions that are showing signs of financial stress and the key risk areas in the current environment.
  - These proactive regulatory measures are necessary to adequately address the rapid decline in the health of the financial services industry and to maintain the safety and soundness of the financial institutions under DFIs' supervision.
- Implement a consistent system of post-examination follow-ups for corrective action, standards for the imposition of formal and informal enforcement actions and exception and escalation processes.
- Continue to participate in homeownership preservation efforts through the Governor's Task Force and by attending community workshops to assist homeowners.
- Implement Electronic Banking Program to enable DFI to provide oversight and supervision of the electronic processes used in our licensees' operations to ensure the integrity and privacy of customer data.



- Promote the Bank on California initiative and financial literacy through education outreach efforts and partnerships with financial institutions, government entities, and community based organizations. DFI will:
  - coordinate the annual California Financial Literacy Month in April;
  - continue to form new partnerships with state, federal, non-profit and community organizations to increase education and outreach;
  - continue to work with the Department of Corporations on financial literacy tools; and
  - continue to work with the California Council on Economic Education (CCEE) to develop financial literacy information for consumers.

## Monitoring Banks and Credit Unions

### ***3. What is the overall status of the health of state chartered depository institutions in California? How frequently does DFI evaluate the Health of Depository Institutions?***

DFI is experiencing a significant increase in problem licensees caused by the slowing economy and significant disruptions in capital markets. This has resulted in sharply lower earnings and a significant deterioration in asset quality. However, relatively strong capital ratios at the majority of our depository institutions have somewhat mitigated these effects to date.

State and federal financial institution regulatory agencies use a rating system known as **CAMELS** (**C**apital, **A**ssets, **M**anagement, **E**arnings, **L**iquidity, **S**ensitivity) to evaluate the condition of a financial institution based on a scale of 1 to 5, with 1 and 2 rated financial institutions considered to be in satisfactory condition and financial institutions rated 3 to 5 to be in from "less than satisfactory" to "unsafe and unsound" condition.

## Condition of State Chartered Banks

Since December 31, 2007, the percentage of banks rated less than satisfactory has increased from 7% of bank licensees to a current 26% of bank licensees. We expect this percentage to continue to grow in the coming months. At this time, it is unknown whether problem institutions will approach the 48% level of 1993 precipitated by the savings and loan crisis.

### Capital

Generally strong bank equity capital ratios coming into the current economic downturn have provided banks with some protection against operating losses. However, deteriorating loan portfolios will result in increasing loan charge offs and the need to further augment reserves. This will continue to put downward pressure on capital ratios. The ratio of equity capital to assets for all bank licensees was 12.8% as of December 31, 2006, and it has declined to 11.5% as

of September 30, 2008. Additional information about the dispersion of capital ratios and other key indicators of bank safety and soundness by quintile and by asset size can be found in Attachment A.

#### Asset Quality

Banks have experienced substantial increases in problem assets. Total past due loans and leases (loans and leases 30 days or more delinquent) have increased from \$1.4 billion as of December 31, 2006 (5% of capital) to \$5.7 billion as of September 30, 2008 (21% of capital). Foreclosed property increased from \$54 million as of December 31, 2006 to \$427 million as of September 30, 2008.

Of particular concern are concentrations of commercial real estate, in general, and construction and land development loans in particular. Banking regulators have issued guidance for financial institutions with commercial real estate loan concentrations in excess of 300% of equity capital and construction and development loan concentrations in excess of 100% of equity capital. The guidance requires more robust credit risk management practices and strong capital and loan loss allowance levels. Attachment A shows the exposure of our bank licensees to these lending categories as a share of their equity capital by quintile. In sum, 65% of DFI licensed banks have commercial real estate exposure greater than 300% of equity capital, and 42% have construction and development loans in excess of 100% of equity capital.

Despite substantial increases in provisions for loan and lease losses, the reserve for such losses has not kept pace with the increase in noncurrent loans. While the reserve as a percentage on noncurrent loans was 241% on December 31, 2006, as of September 30, 2008 it represents only 68% of noncurrent loans and would not cover substantial losses incurred on noncurrent loans.

#### Earnings

Profitability peaked in 2006 when DFI's bank licensees reported total net income of \$2.7 billion and a return on assets (ROA) of 1.3%. Profitability slipped to \$2.2 billion in 2007 and the ROA declined to 1.0%. For the nine months ended September 30, 2008, banks incurred a net loss of \$478 million and a ROA of minus 0.3%. The primary cause of the losses has been the substantial increase in loan loss provisions from \$237 million in 2006 to \$566 million in 2007 and to \$1.94 billion for the nine months ended September 30, 2008. Other items affecting profitability include a decrease in non-interest income, largely attributable to a decrease in loan fees, and an increase in non-interest expenses.

#### Liquidity

Liquidity refers to a financial institution's ability to meet its obligations as they come due. Events over the past year, including the conservatorship of Indy Mac Bank, have increased the level of public concern about the safety of their deposits in banks. As a result, publicity about problems at particular institutions has resulted in liquidity problems for them, requiring close monitoring to ensure these institutions can meet deposit demands. Additionally, in recent years, many banks have become more reliant on wholesale funding sources such as brokered deposits and Federal Home Loan Bank advances to fund their operations. A

bank's ability to access these sources of liquidity can become impaired if its capital ratios and other indicators of financial health deteriorate.

### **Condition of State Chartered Credit Unions**

The credit union industry in California has been adversely affected by the significant decline in residential real estate values, household net worth and the general economy. The percentage of credit unions rated less than satisfactory is currently 22%. DFI anticipates that the number of problem credit unions will continue to increase in the coming months.

#### Capital

The strong capital position of most credit unions coming into the current economic downturn has provided them with some protection against operating losses. The capital/asset ratio for all credit union licensees was 10.7% as of December 31, 2007, and has declined only marginally to 10.5% as of September 30, 2008. However, DFI expects that capital ratios will decline further as credit unions recognize credit losses and add to their reserves in this challenging environment. Additional information about the dispersion of credit union capital ratios and other key indicators of credit union safety and soundness by quintile and by asset size can be found in Attachment B.

#### Asset Quality

Credit unions have experienced a substantial increase in total delinquent loans, defined as loans past-due 60 days or more. Delinquent loans have increased from \$245 million as of December 31, 2006 to \$673 million as of September 30, 2008. Foreclosed and repossessed assets increased from \$22 million as of December 31, 2006 to \$38 million as of September 30, 2008. While credit delinquencies are increasing in most loan categories, of particular concern is the existing portfolio of real estate loans and home equity lines of credit (HELOCs) secured by single family residences.

#### Earnings

Credit union profitability peaked in 2003 when DFI's credit union licensees reported total net income of \$595 million and a ROA of 1.1%. Profitability declined to \$218 million in 2007 and ROA declined to 0.3%. For the nine months ended September 30, 2008, credit unions had a profit of \$33 million and a ROA of 0.06%. The primary cause of the decline in earnings has been a substantive increase in the loan loss provisions which increased from \$226 million in 2003 to \$483 million in 2007 and to \$627 million for the nine months ended September 30, 2008.

### **Evaluation Frequency**

DFI uses several methods to evaluate the health of the depository institutions we supervise. Licensees are required to file quarterly reports on their financial condition. DFI has an Early Warning System which our managers use to analyze unfavorable trends. Depending upon circumstances, licensees may be required

to submit financial information more frequently, including daily reporting on liquidity when a licensee is experiencing difficulties. For licensees in satisfactory condition, this information is reviewed by senior staff, including the commissioner, at least quarterly, and more frequently when an institution is in less than satisfactory condition.

Examinations, however, are the essential fact finding function of financial institution supervision. The purpose of periodic examinations is to assess the condition of a financial institution and to require management to take steps to correct weaknesses or unsafe and unsound conditions when needed.

Examinations will help disclose:

- o The current asset condition of the institution;
- o The institution's ability to meet the demands of depositors and other creditors;
- o The adequacy of the institution's capital structure ;
- o An institution's earnings ability and future prospects;
- o The level of competency of management; and
- o The extent of compliance with applicable laws and regulations.

DFI management assimilates the information obtained from examinations, financial reports, and knowledge obtained from experiences with other supervised financial institutions to determine the need for, and extent of, supervisory actions. DFI coordinates extensively with our federal regulatory counterparts on such matters. The extent of the corrective actions required or supervisory advice given varies from institution to institution.

The Financial Code establishes DFI's authority to examine every bank and trust company at least once every twelve to eighteen months. Banks ranging in quality from less than satisfactory to banks in danger of failure are generally examined at least annually and additional visitations are performed when deemed necessary. Currently, CAMEL 3 rated banks are examined annually. CAMEL 4 and 5 rated banks receive additional visitations as needed.

The Financial Code provides that the commissioner may at any time investigate the affairs and examine the books, accounts, records, and files used in the business of every credit union. The financial condition of all state chartered credit unions is reviewed off-site on at least a quarterly basis, with the credit unions of higher concern reviewed each month. On-site examinations are conducted based on the assessed level of risk at a particular credit union, and may occur as frequently as bi-monthly.

**4. What steps has DFI taken to protect the financial interests of depositors, borrows, shareholders, and consumers?**

First, with respect to consumers, in 2008 DFI processed 802 calls and received 1,285 complaints by mail, 351 of the 1,285 were against DFI licensees. Through the Department's complaint process, a total of \$38,618 was reimbursed to consumers in 2008. In addition, to better share information regarding consumer complaints, DFI recently entered into an information sharing agreement with our

federal regulatory counterparts, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (FDIC).

Our Department has also taken firm action to deal with the decline in the condition of our licensees in the current environment.

- DFI has taken a proactive and systematic approach to informal and formal enforcement actions to ensure that our licensees address significant problems noted in examination reports in an expeditious manner. The goal of these actions is to ensure that management is taking effective steps to stabilize and improve the condition of their institutions so that they are healthy enough to help drive economic development in California. Since December 2007, the number of enforcement actions outstanding and/or pending has gone from 29 to 122 presently.
- In addition, on July 1, 2008, DFI directed managers and supervisors to schedule and conduct examinations based on the Department's assessment of the degree of risk at any particular institution rather than to ensure compliance with the Financial Code.
- No financial institutions with composite ratings of 1 or 2, or with a stable or improving 3, are examined simply because they are statutorily required. Rather, DFI's limited resources are being directed to examining financial institutions that are showing signs of financial stress and/or a deteriorated financial condition. These proactive regulatory measures are necessary to maintain the safety and soundness of the financial institutions under our supervision in the current environment.
- In addition, DFI's programs have reoriented exam priorities at each institution to address the greatest risks. This has resulted in expanded reviews of loan portfolios and lending policies and greater scrutiny of liquidity risks and liquidity risk management processes.

**5. *What corrective actions does DFI take when it determines that a bank or credit union does not meet solvency standards?***

Banks

The Financial Code provides that the commissioner, whenever it appears to him or her that any of the conditions described below exist, may take possession of the property and business of the bank and retain possession until the bank resumes business or its affairs are finally liquidated:

- The tangible shareholders' equity of the bank is less than: (1) In case the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars; or (2) In case the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars;
- The bank has violated its articles or any law of this state;

- The bank is conducting its business in an unsafe or unauthorized manner;
- The bank refuses to submit its books, papers, and affairs to the inspection of any examiner;
- Any officer of the bank refuses to be examined upon oath touching the concerns of the bank;
- The bank has failed to pay any of its obligations as they came due or that is reasonably expected to be unable to pay its obligations as they come due;
- The bank is in a condition that it is unsound, unsafe, or inexpedient for it to transact business;
- The bank neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of the order is restrained in a proceeding brought by the bank.

Normally, the Department takes possession of the bank, orders its liquidation and then tenders the bank to the FDIC as receiver.

### Credit Unions

The Financial Code provides that if the commissioner finds that any of the factors set forth below are true with respect to a California credit union, he or she may by order, without any prior notice or hearing, take possession of the property and business of that credit union:

- The credit union has violated any provision of this division, of another applicable law, of any order issued under this division, or of any written agreement with the commissioner, or has committed a material violation of any regulation of the commissioner;
- The credit union is conducting its business in an unsafe or unsound manner;
- The credit union is in such condition that it is unsafe or unsound for it to transact credit union business;
- The credit union has inadequate capital or is insolvent;
- The credit union failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due;
- The credit union has ceased to transact credit union business;
- The credit union has, with the approval of its board, requested the commissioner to take possession of its property and business.

Similar to a bank closing, DFI normally takes possession of the credit union, orders its liquidation and then tenders the credit union to the National Credit Union Administration (NCUA) as receiver.

In 2008, DFI took possession of one bank, Security Pacific Bank, and three credit unions, Cal State 9, Sterlent, and Valley Credit Union. These decisions were made following close consultations and in cooperation with federal regulatory counterparts. In each of these cases, most or all of the assets and liabilities were transferred to another financial institution over the course of a weekend with no disruption in service. Security Pacific Bank was absorbed by Pacific Western Bank, Cal State 9 and Sterlent credit unions were absorbed by Patelco Credit Union, and Valley Credit Union was absorbed by Citizens Equity First Credit

Union. The Department expects to take an increased number of such actions in 2009.

**6. *What is necessary to ensure financial safety and security of state-chartered financial institutions?***

As discussed in answers to Questions 4 and 5, DFI must provide oversight and leadership in regulatory matters, be responsive to the needs of its licensees, protect the interests of depositors, creditors, customers and security holders of licensees, and perform in an efficient, quality-conscious, cost-effective, competitive and businesslike manner. Active regulatory supervision with timely enforcement actions to correct deficiencies is the key. Additionally, maintaining a strong focus on examiner education and training is important, especially in the current high risk areas and troubled asset administration.

**Underserved Areas**

**7. *Do you believe small towns and rural customers in California are underserved by banks? If so, what role can you play, if any, in improving this situation?***

There are communities in California that have challenges supporting a full-service financial institution branch, as well as other service providers such as medical, dental, legal or accounting practices.

To facilitate the ability of banks to meet community financial service needs, DFI eliminated an application procedure to establish new branches and instead now requires only a notification to the Department of the intent to establish a new branch facility. Credit unions have similar notification only requirements.

In addition, when considering an application for a new charter, the Department carefully assesses community needs and the availability of other financial services providers.

DFI may also play a role when a bank files a notice to discontinue a branch. The process is the same whether the branch is in an urban area or in a rural environment. In most cases, but not all, there are alternative financial institutions available in the vicinity of the branch. DFI considers many factors in attempting to balance the right of a bank to make a business decision to discontinue a branch versus the impact on public convenience or advantage. The Financial Code and Federal law also require a bank to give notice of the discontinuance of a branch office to its customers.

**8. *What is DFI doing to monitor and enforce the commitment of banks and credit unions to rural and low-income communities?***

The Community Reinvestment Act (CRA), enacted by Congress in 1977, requires each appropriate federal financial regulator to assess an institution's record of

helping to meet the credit needs of the communities in which the institution operates, including low and moderate income neighborhoods, consistent with safe and sound operations of the institution. The law applies to all banks and thrifts that meet the asset size threshold (currently \$1.033 billion). The federal regulatory agencies maintain examination staffs that specialize in such compliance reviews.

An institution's CRA record is taken into account when regulators, including the DFI consider an institution's application for deposit facilities, including mergers and acquisitions. The DFI reviews all CRA compliance examinations reports during our examination of financial institutions. DFI examination reports describe financial institutions' efforts to comply with any federal directives for areas in need of improvement.

In addition, in assessing applications for a new license, DFI is obligated by statute to make a careful investigation of the need for new facilities, giving particular consideration to the adequacy of existing facilities, and to determine that the public convenience and advantage will be promoted by the establishment of the proposed institution.

Credit unions are not subject to CRA. A credit union is a cooperative, organized for the purposes of promoting thrift and savings among its members, creating a source of credit for them at rates of interest set by the board of directors, and providing an opportunity for them to use and control their own money on a democratic basis in order to improve their economic and social conditions. As a cooperative, a credit union conducts its business for the mutual benefit and general welfare of its members with the earnings, savings, benefits, or services of the credit union being distributed to its members as patrons.

## **Bank on California**

### ***9. What low-cost bank products and services will be offered?***

"Bank on California" will help working families save money by allowing them to reduce their reliance on high-cost financial services such as pay day lending and affording them greater access to basic financial services that others may take for granted. The purpose of the program is to help working families get ahead and grow California's economy at the same time. "Bank on California" is a collaborative voluntary initiative that involves financial institutions, city mayors, federal bank regulatory agencies, and community groups. The initiative will:

- Develop and market starter accounts with features that work for unbanked consumers;
- Educate Californians without bank accounts about the benefits of account ownership and encourage them to open accounts;
- Help Californians build their money management skills;
- Form diverse coalitions of financial institutions, regulators, city mayors and nonprofits in key markets statewide to market the accounts to unbanked Californians.



**10. What role will DFI play in the Bank on California program? What is your plan for outreach for participation in the program?**

DFI promotes the Bank on California initiative, financial literacy and home preservation through education outreach efforts. DFI became a partner of "Bank on California" immediately following the Governor's announcement in January 2008. On December 12, 2008, DFI participated in a press conference at the State Capitol held by Governor Arnold Schwarzenegger officially launching "Bank on California," and hosted the chief banking supervisors from New York, North Carolina, Pennsylvania and Washington at this event.

To date, five cities: Fresno, Los Angeles, Oakland, San Francisco, and San Jose, are participating in the Bank on California program. Representatives from DFI, including myself, have participated in several of these events. To date, thirty-two financial institutions are officially participating in the Bank on California program. Close to half of the participating financial institutions are state-chartered banks and credit unions licensed and supervised by DFI.

**Federal Economic Recovery Efforts**

**11. What role will DFI play in implementation of the Emergency Economic Stabilization Act?**

While the States have not been given a specific role under the terms of the Act, we have been consulted by our federal regulatory counterparts regarding the program and the applications of particular banks to participate in the Capital Purchase Program (CPP). In addition, DFI must process all corporate requirements for state-chartered banks to participate in the Troubled Asset Relief Program (TARP). Those activities include processing amendments to articles of incorporation, approval of certificates of determination to allow the banks to issue preferred stock to the US Treasury, and an overall approval to consummate the sale of stock by the bank to the federal government.

**12. What steps has DFI taken in order to implement the act?**

First, DFI issued a blanket order of exemption allowing its banks to issue stock to the federal government, thereby streamlining the process for capital investment. Second, DFI centralized the processing of related corporate requirements in its Sacramento office increasing the efficiency of processing those documents and allowing banks to quickly turn around processed documents for filing at the Secretary of State's office in the same city as required by law.

Third, on January 23, 2009, DFI issued guidance to certain banks that require the approval of the Commissioner to issue dividends. The California Financial Code requires banks to obtain the prior approval of the Commissioner when they are unprofitable. Many of the Department's new bank licensees are in this situation.

Due to the stabilizing effect of the CPP, the DFI determined that it would generally be appropriate to approve a dividend distribution through a reduction of contributed capital if the bank shows evidence of the following:

- The bank's shareholders' equity is adequate (as defined by California Financial Code) after the distribution;
- The bank is "Well Capitalized" (as defined under Federal Prompt Corrective Action) after the distribution;
- The bank's performance trends are positive; and
- The bank's shareholders have approved the distribution.

**13. *What effect, if any, has the TARP program had on California's state-chartered banks?***

It is too soon to tell what effect the TARP money will have on California state-chartered banks. The processing of CPP applications has been slower than anticipated. As of mid-January, 62 California licensed banks and 44 holding companies of California licensed banks had informed us of their CPP applications. Of those, 22 have received funding totaling \$1.6 billion. You will find their names in Attachment C. DFI licensed applicants that have been approved for CPP investments account for less than 1% of the \$187.5 billion that the Treasury Department has committed to CPP.

**Outreach- Financial Literacy and Foreclosures**

**14. *What education and outreach efforts has DFI conducted since you were appointed commissioner?***

- DFI is a member of the Governor's Task Force on Non-Traditional Mortgages. Since 2008, the Department has participated in 30 homeownership preservation/foreclosure prevention workshops.
- In addition, DFI has attended community events throughout California providing information on DFI licensees, consumer services, federal deposit insurance (FDIC, NCUA), homeownership preservation and other financial literacy information.
- DFI coordinates the annual California Financial Literacy Month in April, and we are working with the Department of Corporations and the California Council on Economic Education (CCEE) to develop financial literacy information for consumers.
- In partnership with The Center for Student Credit Card Education, Inc. (CSCCE), DFI is currently distributing the 2009 edition of *The ABCs of Credit Card Finance (ABCs)*, a free credit card literacy program for high school juniors, seniors and college freshmen.
- We continue to form new partnerships with state, federal, non-profit and community organizations to increase education and outreach.

Attachment D has detailed information regarding our education and outreach efforts.

**15. Does the department have specific plans to conduct outreach on the foreclosure crisis and/or bank closure?**

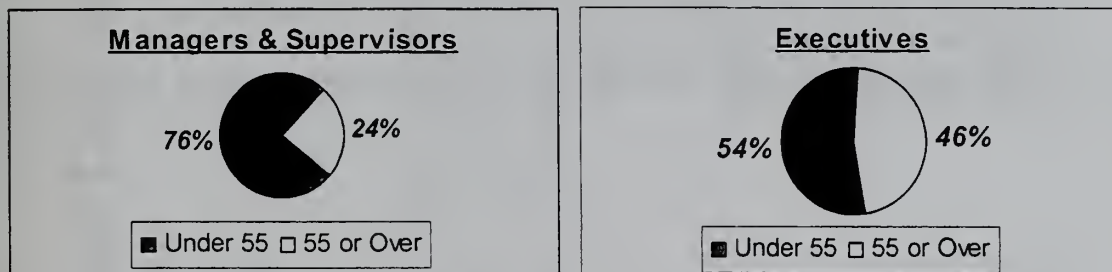
DFI plans to continue participating in foreclosure prevention and homeownership preservation events throughout the state in 2009. We will continue to communicate to the public about these events through the DFI website and community workshops.

It is worth noting that based on a survey DFI conducted a year ago, our bank and credit union licensees have not been significant originators of nontraditional and higher priced mortgage products -- about 40 banks and 80 credit unions had some exposure to these products on their books. Together these licensees held approximately \$7.4 billion.

### Workforce and Succession Planning

**16. What proportion of management and other staff of DFI are expected to retire in the next five years? Is DFI facing the same staffing shortages caused by retirements that are affecting other departments?**

As the charts below illustrate, the DFI is facing similar staffing shortages caused by retirements to those affecting other departments.



**17. What is DFI doing regarding succession planning to fill vacancies due to expected retirements? Does DFI have a personnel succession plan in place?**

Recognizing the need to develop future leaders and retain highly trained professional staff, DFI initiated measures to address succession planning and workforce development. For example, we initiated a Leadership Academy in 2001 to systematically train potential leaders to ensure continuity for all key positions within the department.

To date, a total of 71 employees have graduated from the DFI Leadership Academy. A key aspect of our program is a requirement that each class work on an identified DFI need and propose a solution to executive management for implementation. Examples of this include streamlining application processes, developing our new employee survey, developing critical examination manuals,

and implementing examination procedures for IT banking, bank secrecy, privacy, and predatory lending laws.

The 2008 Leadership Academy Class focused on the issue of DFI's workforce and succession planning needs. The class identified specific programmatic workforce issues and gathered pertinent workforce data on examiner salary disparities and turnover rates. The proposed solution included recommendations to address the workforce/succession challenges.

Based on the recommendations of the class, the DFI implemented the following measures including:

- Formal and on-the-job training for technical and "soft" skills;
- Developing strategies that promote retention and recruitment;
- Requesting the Strategic Planning Committee address workforce development and succession planning as a department goal and objective;
- Thorough analysis of our examiner's Individual Development Plans and Performance Appraisal forms in order to determine where training is most needed;
- Utilizing open selection systems for certain classifications to broaden recruitment efforts;
- The creation of task forces and committees which help employees network and practice leadership and project management skills;
- Opportunities for entry level examiners to transition into the roles of examiner in charge, supervisor, technical expert, instructor, etc.;
- Regular employee opinion surveys; and
- Regular executive level meetings that focus on staffing needs and training.

**Attachment A**  
**Equity Capital / Assets by Quintile\***  
**State Chartered Commercial and Industrial Banks**

**As of September 30, 2008**

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion	\$2 Billion and More	All asset sizes	
Number of Banks	21	91	43	21	52	228
First Quintile	20.1	16.9	12.2	12.2	44.8	27.5
Second Quintile	14.6	12.8	10.2	10.4	26.9	14.5
Third Quintile	13.7	10.7	9.4	10.0	20.6	11.6
Fourth Quintile	12.6	9.7	8.4	9.3	16.2	9.9
Fifth Quintile	11.2	8.5	6.8	8.3	12.2	8.2
Total	15.6	12.5	9.9	11.5	17.4	11.6

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

# Commercial Real Estate Loans / Tier 1 Capital by Quintile\*

## State Chartered Commercial and Industrial Banks

As of September 30, 2008

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion and More	All asset sizes		
Number of Banks	21	91	43	21	52	228
First Quintile	531.7	762.8	844.7	744.4	407.2	756.5
Second Quintile	407.1	574.3	685.8	618.6	236.0	547.8
Third Quintile	364.5	478.1	536.3	570.1	177.8	415.4
Fourth Quintile	262.3	367.6	406.2	403.6	131.8	274.0
Fifth Quintile	52.9	185.1	239.6	173.3	77.0	102.0
Total	308.7	456.8	479.6	415.3	273.5	420.4

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

# Construction and Land Development Loans / Tier 1 Capital by Quintile\*

## State Chartered Commercial and Industrial Banks

As of September 30, 2008

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion	\$2 Billion and More	All asset sizes	
Number of Banks	21	91	43	21	52	228
First Quintile	170.8	225.2	301.2	196.0	139.0	234.8
Second Quintile	120.4	143.7	176.3	133.3	82.7	135.7
Third Quintile	72.6	99.5	122.8	73.6	40.4	84.5
Fourth Quintile	48.5	55.5	66.8	40.9	24.3	42.9
Fifth Quintile	4.5	8.9	19.8	16.6	4.6	8.4
Total	84.3	102.4	133.4	101.4	133.1	109.7

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

# Noncurrent Loans & Leases / Total Loans & Leases by Quintile\*

## State Chartered Commercial and Industrial Banks

As of September 30, 2008

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion	\$2 Billion and More	All asset sizes	
Number of Banks	21	91	43	21	52	228
First Quintile	5.2	4.9	7.4	4.6	4.6	5.8
Second Quintile	1.8	2.3	3.1	1.9	0.6	2.3
Third Quintile	0.9	1.1	1.8	1.5	0.0	1.1
Fourth Quintile	0.1	0.5	1.0	1.0	0.0	0.3
Fifth Quintile	0.0	0.0	0.3	0.4	0.0	0.0
Total	2.0	1.9	3.3	2.0	2.9	2.2

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.



# Reserves for Loans/Noncurrent Loans & Leases by Quintile\*

## State Chartered Commercial and Industrial Banks

As of September 30, 2008

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion	All asset sizes	Total	
Number of Banks	21	91	43	21	52	228
First Quintile	∞	∞	1058.7	278.8	∞	∞
Second Quintile	828.0	322.6	154.9	131.4	∞	959.4
Third Quintile	146.5	122.0	77.2	93.2	∞	141.7
Fourth Quintile	63.1	67.5	47.6	73.3	318.3	70.2
Fifth Quintile	40.1	36.2	26.0	36.6	46.8	33.7
Total	107.7	81.3	61.6	76.7	24.2	70.4

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

## Return on Assets by Quintile\* State Chartered Commercial and Industrial Banks

Annualized year-to-date through September 30, 2008

Asset Size	Over 3 years of operation			< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$500MM to \$2 Billion	All asset sizes		
Number of Banks	21	91	43	21	52	228
First Quintile	0.4	1.4	1.2	1.2	-0.1	1.2
Second Quintile	0.2	0.7	0.8	0.9	-1.1	0.6
Third Quintile	-0.2	0.3	0.4	0.7	-2.2	0.1
Fourth Quintile	-1.5	0.0	-0.1	0.1	-3.2	-0.9
Fifth Quintile	-3.1	-2.4	-1.4	-6.6	-6.7	-4.7
Total	-0.7	0.1	-0.3	-0.2	-0.7	-0.2

\* Ratio is annualized. Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

# Net Interest Margin by Quintile\*

## State Chartered Commercial and Industrial Banks

Annualized year-to-date through September 30, 2008

Asset Size	Over 3 years of operation		< 3 yrs ops.		Total
	Less than \$100MM	\$100 to \$500MM	\$2 Billion and More	All asset sizes	
Number of Banks	21	91	43	21	228
First Quintile	5.2	4.9	4.6	4.4	4.9
Second Quintile	4.4	4.2	4.1	3.9	4.1
Third Quintile	3.9	3.9	3.7	3.6	3.7
Fourth Quintile	3.4	3.5	3.3	3.0	3.2
Fifth Quintile	2.0	2.7	2.7	2.6	2.4
Total	4.3	3.8	4.0	3.2	3.4

\* Ratio is annualized. Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.



Attachment B

Net Worth / Total Assets by Quintile\*

State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than \$10MM	\$10 to \$50MM	\$50 to \$100MM	\$100 to \$500MM	\$500MM to \$1 Billion	\$1 Billion** and More	Total
# of Credit Unions	26	49	21	54	18	21	189
First Quintile	23.4	17.6	15.8	14.7	12.6	12.4	18.1
Second Quintile	18.1	13.6	13.2	12.3	10.1	11.6	13.1
Third Quintile	14.5	12.0	9.4	10.7	9.7	10.3	11.0
Fourth Quintile	10.0	10.9	8.6	9.6	8.5	9.7	9.7
Fifth Quintile	8.0	9.0	7.9	8.6		8.0	8.1
Total	13.1	12.6	11.1	11.2	10.2	10.4	10.6

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

## Real Estate Loans / Net Worth by Quintile\* State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than	\$10 to	\$50 to	\$100 to	\$500MM	\$100 to	\$500MM to	\$1 Billion	Total
	\$10MM	\$50MM	\$100MM	\$500MM	\$1 Billion**	and More	Total		
# of Credit Unions	26	49	21	54	18	21	21	189	
First Quintile	135.8	468.2	489.9	551.1	665.5	679.9	598.2		
Second Quintile	52.0	307.0	332.9	412.9	541.5	526.1	403.5		
Third Quintile	0.0	203.5	202.4	316.7	442.0	441.7	255.8		
Fourth Quintile	0.0	121.0	139.8	228.6	251.2	284.2	147.6		
Fifth Quintile	0.0	60.2	76.0	126.6	205.4	35.1	35.1		
Total	72.4	232.9	245.8	330.8	453.8	442.2	414.4		

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

# Delinquent Loans / Total Loans by Quintile\*

## State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than	\$10 to	\$50 to	\$100 to	\$500MM	\$1 Billion to	\$1 Billion	Total
	\$10MM	\$50MM	\$100MM	\$500MM	\$1 Billion**	and More		
# of Credit Unions	26	49	21	54	18	21	189	
First Quintile	9.1	2.8	2.2	2.5	1.4	2.3	3.5	
Second Quintile	3.1	1.7	1.4	1.4	1.1	1.6	1.6	
Third Quintile	1.5	1.0	1.1	1.0	0.8	1.3	1.1	
Fourth Quintile	0.4	0.4	0.7	0.8	0.5	0.8	0.7	
Fifth Quintile	0.0	0.1	0.4	0.5		0.4	0.2	
Total	2.6	1.3	1.3	1.4	0.9	1.4	1.3	

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

# Loss Reserves / Delinquent Loans by Quintile\*

## State Chartered Credit Unions

As of September 30, 2008

Asset Size	Number of Credit Unions					Total
	Less than \$10MM	\$10 to \$50MM	\$50 to \$100MM	\$100 to \$500MM	\$500MM to \$1 Billion and More	
# of Credit Unions	26	49	21	54	18	189
First Quintile	304.8	270.5	153.5	209.2	149.2	265.2
Second Quintile	104.1	99.8	104.2	131.6	106.6	118.0
Third Quintile	50.7	58.1	92.5	90.4	86.4	82.4
Fourth Quintile	25.1	38.2	42.4	69.6	51.7	53.6
Fifth Quintile	9.3	16.3	14.2	49.5	42.5	23.0
Total	49.4	65.1	91.8	95.6	87.1	89.6

\* Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups



# Return on Average Assets by Quintile\*

## State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than	\$10 to	\$50 to	\$100 to	\$500MM	\$1 Billion**	\$1 Billion and More	Total
	\$10MM	\$50MM	\$100MM	\$500MM	\$1 Billion**	and More		
# of Credit Unions	26	49	21	54	18	21		189
First Quintile	1.5	1.0	0.5	0.7	0.6	1.0		1.1
Second Quintile	0.3	0.5	-0.2	0.3	0.1	0.4		0.4
Third Quintile	-0.1	0.2	-0.6	0.0	-0.1	0.2		0.0
Fourth Quintile	-0.4	-0.2	-1.1	-0.6	-0.3	-0.3		-0.5
Fifth Quintile	-2.6	-1.4	-1.6	-1.8		-1.0		-1.8
Total	-0.6	0.0	-0.6	-0.4	0.1	0.2		0.1

\* Ratio is annualized. Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

## Net Interest Margin by Quintile\* State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than \$10MM	\$10 to \$50MM	\$50 to \$100MM	\$100 to \$500MM	\$500MM to \$1 Billion**	\$1 Billion and More	Total
# of Credit Unions	26	49	21	54	18	21	189
First Quintile	5.9	4.7	4.1	4.4	3.3	3.8	4.8
Second Quintile	4.6	4.0	3.9	3.7	3.1	3.3	3.9
Third Quintile	4.0	3.8	3.4	3.4	2.8	3.1	3.4
Fourth Quintile	3.2	3.2	2.6	3.2	2.5	2.7	3.0
Fifth Quintile	2.6	2.7	2.0	2.7		2.3	2.4
Total	4.3	3.7	3.3	3.4	2.9	3.0	3.1

\* Ratio is annualized. Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

# Return on Average Equity by Quintile\*

## State Chartered Credit Unions

As of September 30, 2008

Asset Size	Less than \$10MM	\$10 to \$50MM	\$50 to \$100MM	\$100 to \$500MM	\$500MM to \$1 Billion	\$1 Billion** and More	Total
# of Credit Unions	26	49	21	54	18	21	189
First Quintile	8.0	7.5	3.1	5.3	4.8	8.6	7.7
Second Quintile	1.9	3.8	-1.7	2.3	1.0	3.6	2.9
Third Quintile	-0.7	2.1	-5.5	-0.3	-0.9	1.4	0.1
Fourth Quintile	-4.5	-1.5	-9.9	-5.1	-2.8	-2.8	-3.8
Fifth Quintile	-24.0	-13.4	-16.9	-18.0	-11.4	-17.7	-17.7
Total	-4.2	-0.2	-5.0	-3.7	0.9	2.0	0.6

\* Ratio is annualized. Quintiles of equal sizes are created by dropping off first the highest then the lowest ratio in each group until the number of institutions is divisible by 5.

\*\* Due to the small population in this category, the number of institutions was divided into four equal sized groups

Attachment C

Transaction Report - Capital Purchase Program - California State Chartered Banks  
for the period ending January 16, 2009

Date	Name of Institution	City	Subsidiary Bank	Transaction Type	Description	Price Paid	Pricing Mechanism
11/14/2008	Bank of Commerce Holdings	Redding	Redding Bank of Commerce	Purchase	Preferred Stock w/Warrants	17,000,000	Par
11/14/2008	UCBH Holdings, Inc.	San Francisco	United Commercial Bank	Purchase	Preferred Stock w/Warrants	298,737,000	Par
11/21/2008	Heritage Commerce Corp.	San Jose	Heritage Bank of Commerce	Purchase	Preferred Stock w/Warrants	40,000,000	Par
11/21/2008	Nara Bancorp, Inc.	Los Angeles	Nara Bank	Purchase	Preferred Stock w/Warrants	67,000,000	Par
12/5/2008	Bank of Marin Bancorp	Novato	Bank of Marin	Purchase	Preferred Stock w/Warrants	28,000,000	Par
12/5/2008	Cathay General Bancorp	Los Angeles	Cathay Bank	Purchase	Preferred Stock w/Warrants	258,000,000	Par
12/5/2008	CVB Financial Corp	Ontario	Citizens Business Bank	Purchase	Preferred Stock w/Warrants	130,000,000	Par
12/5/2008	East West Bancorp	Pasadena	East West Bank	Purchase	Preferred Stock w/Warrants	306,546,000	Par
12/5/2008	Oak Valley Bancorp	Oakdale	Oak Valley Community Bank	Purchase	Preferred Stock w/Warrants	13,500,000	Par
12/12/2008	Center Financial Corporation	Los Angeles	Center Bank	Purchase	Preferred Stock w/Warrants	55,000,000	Par
12/12/2008	SVB Financial Group	Santa Clara	Silicon Valley Bank	Purchase	Preferred Stock w/Warrants	235,000,000	Par
12/12/2008	Wilshire Bancorp, Inc.	Los Angeles	Wilshire State Bank	Purchase	Preferred Stock w/Warrants	62,158,000	Par
12/19/2008	Exchange Bank 1/	Santa Rosa	Exchange Bank	Purchase	Preferred Stock w/ Exercised Warrants	43,000,000	Par
12/19/2008	First California Financial Group, Inc	Westlake Village	First California Bank	Purchase	Preferred Stock w/Warrants	25,000,000	Par
12/19/2008	Pacific City Financial Corporation 1/	Los Angeles	Pacific City Bank	Purchase	Preferred Stock w/ Exercised Warrants	4,000,000	Par
12/19/2008	Santa Lucia Bancorp	Atascadero	Santa Lucia Bank	Purchase	Preferred Stock w/Warrants	8,500,000	Par
12/19/2008	Summit State Bank	Santa Rosa	Summit State Bank	Purchase	Preferred Stock w/Warrants	10,400,000	Par
12/23/2008	Citizens Bancorp 1/	Nevada City	Citizens Bank of Northern California	Purchase	Preferred Stock w/ Exercised Warrants	5,500,000	Par
12/23/2008	Mission Valley Bancorp 2/	Sun Valley	Mission Valley Bank	Purchase	Preferred Stock	11,600,000	Par
12/23/2008	Pacific Coast Bankers' Bancshares 1/	San Francisco	Pacific Coast Bankers Bank	Purchase	Preferred Stock w/ Exercised Warrants	4,060,000	Par
12/23/2008	Pacific Commerce Bank 1/	Los Angeles	Pacific Commerce Bank	Purchase	Preferred Stock w/ Exercised Warrants	1,800,000	Par
12/23/2008	Seacoast Commerce Bank 1/	Chula Vista	Seacoast Commerce Bank	Purchase	Preferred Stock w/ Exercised Warrants	6,815,000	Par
1/9/2009	Security California Bancorp 1/	Riverside	Security Bank of California	Purchase	Preferred Stock w/ Exercised Warrants	5,803,000	Par
1/9/2009	Security Business Bancorp 1/	San Diego	Security Business Bank	Purchase	Preferred Stock w/ Exercised Warrants	5,500,000	Par
1/9/2009	Valley Community Bank 1/	Pleasanton	Valley Community Bank	Purchase	Preferred Stock w/ Exercised Warrants	2,550,000	Par
1/16/2009	Community 1st Bank 2/	Roseville	Community 1st Bank	Purchase	Preferred Stock w/ Exercised Warrants	1,747,000	Par
1/16/2009	Community Bank of the Bay 1/	Oakland	Community Bank of the Bay	Purchase	Preferred Stock	3,800,000	Par
1/16/2009	Redwood Capital Bancorp 1/	Eureka	Redwood Capital Bank	Purchase	Preferred Stock w/ Exercised Warrants		Par
Total						\$1,657,216,000	

28

1/ Privately-held financial institution. Treasury received a warrant to purchase additional shares of preferred stock, which it exercised immediately.  
2/ To promote community development financial institutions (CDFIs) Treasury did not require warrants as part of the investment.

## THE DEPARTMENT OF FINANCIAL INSTITUTIONS HOME PRESERVATION OUTREACH PROGRAM

August 2008

### Consumer Home Mortgage Information

#### Governor's Task Force on Non-Traditional Mortgages

In 2007, Governor Schwarzenegger formed the Interdepartmental Task Force on Non-Traditional Mortgages making California one of the first states in the nation to form a task force to examine the alarming developments in the non-traditional mortgage market. The task force consists of leadership from two cabinet agencies – Business, Transportation & Housing Agency and State & Consumer Services Agency – and numerous departments responsible for all aspects of this complex issue.

The task force successfully lobbied Congress to raise federal loan limits so that more California families can take advantage of these secure products, rather than relying on subprime loans. Currently, the task force is working to ensure California homeowners and organizations see their fair share of the recent federal counseling funding package. The task force will continue to advise the Governor on ways to increase protections for Californians who own or plan to purchase homes and to expand affordable housing opportunities.

A consumer Web site was developed in English and Spanish:

[www.yourhome.ca.gov](http://www.yourhome.ca.gov)

[www.sucasa.ca.gov](http://www.sucasa.ca.gov)

#### Governor's Press Releases

12/11/2008

[Governor Schwarzenegger Announces Additional \\$7.8 Million Federal Grant to Help California Homeowners](#)

11/5/2008

[Governor Schwarzenegger Prescribes Solutions to Keep Californians in their Homes](#)

10/29/2008

[Governor Schwarzenegger Highlights Subprime Mortgage Agreement's Progress in Preventing Foreclosures](#)

7/21/2008

[Governor Schwarzenegger Launches "Community Stabilization Home Loan Program" to Help Communities Hard-Hit by Foreclosures](#)

7/8/2008

[Governor Schwarzenegger Signs Legislation to Help Protect Homeowners from Foreclosure](#)

7/2/2008

[Gov. Schwarzenegger Issues Statement on Home Foreclosure Legislation](#)

4/17/2008

[Gov. Schwarzenegger Issues Statement Applauding Actions Boosting Mortgage Availability in California](#)

3/19/2008

[Gov. Schwarzenegger Applauds Federal Agreement to Provide Additional Financial Support to U.S. Mortgage Market](#)

3/5/2008

[Gov. Schwarzenegger Applauds Federal Announcement of Higher Loan Limits in California](#)

2/27/2008

[Gov. Schwarzenegger Announces \\$8 Million Grant to Expand Counseling Services to Homeowners at Risk of Foreclosure](#)

2/25/2008

[Governor Schwarzenegger Pushes for Federal Action on Key Priorities for California](#)

2/12/2008

[Gov. Schwarzenegger Issues Statement Regarding Federal Mortgage Plan Announcement](#)

1/30/2008

[Gov. Schwarzenegger Announces More than \\$72 Million in Awards to Increase California Homeownership](#)

#### Governor's Task Force Activities

California has been impacted more than any other state by the national home foreclosure crisis, and the state has taken aggressive steps to help homeowners facing problems with their mortgages. To help those hit hard by the housing crisis, the Governor has:

- » Signed legislation to help protect homeowners by requiring a mortgage holder to provide a 30-day notice to a borrower prior to filing any default notice leading to the foreclosure. The new law also provides tenants of foreclosed properties a minimum of 60 days notice to move and requires holders of foreclosed properties to maintain the property.

- Awarded \$73 million for affordable housing projects in Proposition 1C and Proposition 46 funds to help more than 1,600 California families rent or purchase affordable housing.
- Announced \$69.5 million in permanent low-interest loans from the Proposition 1C housing bonds to jumpstart 14 affordable multi-family projects up and down the state, helping more than 1,000 California families and individuals realize the dream of an affordable rental home.
- Announced \$5.6 million to help mortgage and banking industry workers laid off as a result of the subprime crisis make career transitions to high-demand jobs in other industries.
- Announced more than \$72 million in federal HOME Investment Partnerships Program funds to provide assistance to first-time homebuyers, reduce the number of bank owned homes and increase the number of rental properties.
- Led a town hall meeting with U.S. Treasury Secretary Paulson in Stockton to discuss help for homeowners facing foreclosure.
- Joined the OneCalifornia Foundation to announce a bridge loan fund for homeowners facing foreclosure in Oakland.
- Awarded \$8 million to community based mortgage counseling providers around the state to help avoid foreclosures.
- Launched a \$1.2 million public awareness campaign to help educate homeowners about options that can help them avoid losing their homes to foreclosures.
- Announced an agreement with major loan servicers to streamline the loan modification process for subprime borrowers living in their homes.
- Established the Interdepartmental Task Force on Non-traditional Mortgages to ensure a comprehensive and coordinated approach to the issues raised by subprime loans.
- Signed legislation to increase protections for Californians who own or plan to purchase homes and to expand affordable housing opportunities.

### Consumer Outreach

Business, Transportation and Housing Agency (BTH) departments, including the Department of Financial Institutions (DFI), Department of Real Estate (DRE) and Department of Corporations (Corp) participated in events focusing on preventing foreclosures in dozens of cities located throughout California that were hit hardest by the mortgage crisis.

Credit counselors, loan servicers and lenders as well as federal and state regulatory agencies offered on-site assistance and information. Most events were hosted by district representatives. The events ranged in size from smaller events of 25 people to more average size events with 200 people to very large events with over 800 people attending.

#### List of events that DFI attended in 2008.

##### December 2008

- DFI participated in the HOPE NOW Homeownership Preservation Fair - Get Help to Save Your Home (Adobe PDF) event held on December 4, 2008 at the Sacramento Convention Center, 1400 J Street, Ballroom, 3rd Floor, Sacramento, CA 95814. HOPE NOW is a partnership between lenders and non-profit housing counselors.

##### November 2008

- DFI participated in a foreclosure prevention workshop hosted by the Los Angeles Neighborhood Housing Services (LANHS) in Rancho Cucamonga, California on November 21, 2008.

##### September 2008

- DFI participated in a foreclosure prevention workshop hosted by the Los Angeles Neighborhood Housing Services (LANHS) in Reseda, California on September 12, 2008.

##### August 2008

- Los Angeles Neighborhood Housing Services (LANHS) in Culver City on **August 2** and in Carson on **August 13**. There are several events being coordinated by LANHS and DFI is coordinating participation with DRE. Daphne Porter, Financial Institutions Manager represented the Department and provided information on DFI and its licensees.

##### July 2008

- DFI attended an event hosted by the Federal Reserve Bank of San Francisco, "Stabilizing Communities: Addressing the Negative Impacts of Foreclosure" on **July 15 and 16** in Los Angeles. This symposium is part of a broader Federal Reserve System series, "Recovery--Renewal--Rebuilding," that seeks to develop and disseminate innovative strategies and policies that can help to address the broad range of challenges related to the rise in mortgage delinquencies and foreclosures. Matthew Velasquez and Kristine DeYoung represented DFI at the event.
  - DFI attended an event hosted by FDIC Chairman Sheila C. Bair, "Face Your Finances road show" on **July 22** in San Francisco. The meeting was with community leaders to discuss deposit insurance, the costs and benefits of banking services, and the consumer protections resulting from federal regulation of the banking industry. Panel discussions also addressed bank services as they relate to building assets and accessing mainstream credit services, including mortgage loans.

## June 2008

- DFI participated in the HOPE NOW Homeownership Preservation Workshop on **Saturday June 14**, 9:00 a.m. to 2:00 p.m., Cultural Arts Center, 183 N. Main Street, Lake Elsinore. Matthew Velasquez (bilingual English/Spanish) represented DFI and provided information and materials for consumers on DFI and DFI licensees.

## May 2008

- Assemblywoman Cathleen Galgiani, D-Livingston, has scheduled several workshops where free counseling will be offered. Lenders also have been invited. DFI will participate in the **May 3** event in Los Banos City Council Chambers, 520 J St., Los Banos, CA. Matthew Velasquez, bilingual volunteer, represented DFI and provided information and materials.
- DFI participated in the foreclosure prevention consumer workshop hosted by Senator Denise Ducheny and Assemblymember Mary Salas on Thursday, **May 15**, 4:00 p.m. to 8:00 p.m. at Rancho del Rey Middle School, 1174 East J Street, Chula Vista, CA. Kain Macy represented DFI and provided information and materials on DFI and its licensees.
- DFI participated in the Foreclosure Prevention Workshop hosted by Governor Schwarzenegger's Task Force on Non-Traditional Mortgages, The City of Elk Grove, and Department of Real Estate on **Thursday, May 29**, 5:30 p.m. - 8:30 p.m., Wackford Community Center, 9014 Bruceville Road, Elk Grove, CA 95758. Rachel Ruff, Consumer Services Representative, represented DFI and provided information and materials for consumers on DFI and licensees.
- DFI participated in the Foreclosure Prevention Workshop hosted by Governor Schwarzenegger's Task Force on Non-Traditional Mortgages, Senator Darrell Steinberg, County Supervisor Jimmie Yee, Sacramento Housing and Redevelopment Agency, Councilwoman Lauren Hammond, **Saturday, May 31**, 10:00 a.m. - 1:00 p.m., Monsignor Kavanagh Community Center, 5905 Franklin Blvd., Sacramento CA 95824. Alana Golden, Public Information Officer, represented DFI and provided information and materials for consumers on DFI and licensees.

## April 2008

- DFI participated in a homeowners foreclosure workshop hosted by Assemblymember Maze in Visalia on Saturday, **April 2**, 10:00 a.m. - 12:00 p.m. at the Tulare and Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292.
- DFI participated in a homeowners foreclosure workshop hosted by Assemblymember Maze in Visalia on Saturday, **April 5**, 10:00 a.m. - 12:00 p.m. at the Tulare and Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292. DFI Assistant Chief Examiner Catherine Nahnsen-Robison provided a brief description of the Department and its licensees.
- DFI participated in a homeowners foreclosure workshop hosted by Assemblymember Huffman in Rohnert Park on Saturday, **April 12**, 10:00 a.m. - 12:00 p.m. at the Rancho Cotate High School Multi-Use Room, 5450 Snyder Lane, Rohnert Park, CA 94928. Matthew Velasquez represented DFI.
- Assemblywoman Cathleen Galgiani, D-Livingston, has scheduled several workshops where free counseling will be offered. Lenders also have been invited. DFI will participate in the **April 19** event in Los Banos City Council Chambers, 520 J St., Los Banos, CA. Matthew Velasquez, bilingual volunteer, represented DFI and provided information and materials.
- DFI Commissioner Haraf participated in the roundtable meeting (9:00 am) with FDIC Chairwoman Sheila Bair at the Foreclosure Prevention Workshop hosted by Governor Schwarzenegger's Task Force on Non-Traditional Mortgages, **April 26**, California Science Center, Wallis Annenberg Building, Erteszek Family Foundation Muses Roo at Exposition Park, Los Angeles, CA 90037.
- DFI participated in the Foreclosure Prevention Workshop hosted by Governor Schwarzenegger's Task Force on Non-Traditional Mortgages, **April 26** (10:00 am - 2:00 pm), California Science Center, Wallis Annenberg Building, Erteszek Family Foundation Muses Roo at Exposition Park, Los Angeles, CA 90037. Daphne Porter, Manager, represented DFI and provided information and materials.

## March 2008

- DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Senator Alex Padilla and Assemblymember Felipe Fuentes on Saturday, **March 15**, 10:00 a.m. - 2:00 p.m., Cesar Chavez Recreation Park, 208 Park Ave., San Fernando, CA 91340. DFI representative Matthew Velasquez (bilingual) attended and provided information and materials.
- DFI participated in a homeowners foreclosure workshop hosted by Assemblymember Maze in Visalia on Saturday, **March 22**, 10:00 a.m. - 12:00 p.m. at the Tulare and Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292.
- DFI participated in the Foreclosure Prevention Consumer Workshop hosted by the City of Modesto and The ModestoBee, Saturday, **March 29**, 9:00 a.m. - 3:00 p.m., Modesto Centre Plaza, 1000 K St., Modesto, CA 95354. DFI representative Alana Golden attended and provided information and materials.

## February 2008

- DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Councilman Tony Young in San Diego on Saturday, **February 13**. DFI representatives Carol Rhyne, Manager, San Diego Office and Rina Zepeda (bilingual) attended and provided information and materials.
- DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Senator Darrell Steinberg in Sacramento on

Saturday, **February 16**. DFI representative Alana Golden attended and provided information and materials.

- » DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Senator Bob Dutton in Riverside on Saturday, **February 23**. DFI representative Matthew Velasquez (bilingual) attended and provide information and materials.

January 2008

- » DFI Financial Institutions Manager, Daphne Porter, participated in a foreclosure prevention event sponsored by the LANHS in Los Angeles on Saturday, **January 12**.
- » DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Senator Roy Ashburn in Bakersfield on **January 24**. DFI bilingual representative Matthew Velasquez attended and provided information and materials.
- » DFI participated in the Foreclosure Prevention Consumer Workshop hosted by Assemblyman Mike Villines in Fresno on **January 26**. DFI bilingual representative Matthew Velasquez attended and provided information and materials.

Consumer events were also held during 2007.

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Welcome to the  
**STATE OF CALIFORNIA**  
**Department of Financial Institutions**

## Consumer Events

DFI Home Preservation Outreach Program - California has been impacted more than any other state by the national home foreclosure crisis, and the state has taken aggressive steps to help homeowners facing problems with their mortgages.

### March 2009

- March 26 - Elder Financial Protection Network - "Call to Action" Conference, San Francisco
- March 7 (9:00 am - 3:00 pm) - DFI will participate in a foreclosure prevention workshop in Rancho Cucamonga, CA. The events is sponsored by the Office of Senator Bob Dutton.

### December 2008

- December 6 (10:00 am to 2:00 pm) - Lanhs Foreclosure Prevention Workshops and Fairs (Adobe PDF) - Foreclosure Prevention Fair, In partnership with Vermont Village CDC, and Crenshaw Christian Center, Barfield Elementary, 7901 South Vermont Avenue, Los Angeles, CA 90010
- December 6 - Free Foreclosure Prevention Fairs (Adobe PDF) Hosted by Los Angeles Neighborhood Housing Services - Central Los Angeles Foreclosure Prevention Fair. For information about any of these events, contact Ian McMahon or Nina Kihlman at [imcmahon@lanhs.org](mailto:imcmahon@lanhs.org) or [nkihlman@lanhs.org](mailto:nkihlman@lanhs.org).
- December 4, Thursday (3:00 pm to 9:00 pm) - Homeownership Preservation Fair - Get Help to Save Your Home (Adobe PDF) - No fee - Sacramento Convention Center, 1400 J Street, Ballroom, 3rd Floor, Sacramento, CA 95814. HOPE NOW is a partnership between lenders and non-profit housing counselors.

### November 2008

- November 22 (9:00 am to 2:00 pm) - Foreclosure Prevention Town Hall, Celebration Hall at Victoria Gardens Cultural Center, 12505 Cultural Center Drive, Rancho Cucamonga, California. Sponsor by Senator Dutton, Assemblyman Emmerson, and City of Rancho Cucamonga
- November 16 (6:00 pm to 8:30 pm) - Lanhs Foreclosure Prevention Workshops and Fairs (Adobe PDF) - Foreclosure Prevention Clinic, In partnership with Congresswoman Grace Napolitano, Barfield Elementary, 2181 N. San Antonio Ave, Pomona, CA 91767
- November 13 (8:00 am - 5:30 pm) - Professional Business Women's Conference, Sacramento Convention Center, 1400 J St. - Fifth annual conference for Professional Business Women of California. More info at [www.pbwc.org](http://www.pbwc.org) or 1(888)554-2695. The conference provides a day of learning, networking and inspiration. Local and national experts will shared the latest strategies for career advancement, leadership, communication, work/life balance, women's health, personal finance, entrepreneurship, and more. Keynote speakers include Lisa Ling, Jackie Speir, Naomi Tutu, Lynne Twist and Stephanie Brown-Trafton.
- November 1 (10:00 am to 1:00 pm) - Lanhs Foreclosure Prevention Workshops and Fairs (Adobe PDF) - Foreclosure Prevention Clinic (Registration begins at 9:30am), In partnership with West Angeles Community Development Corporation, West Angeles Villas Senior Housing Facility, 6028 Crenshaw Blvd. Los Angeles, CA 90043

### October 2008

- October 21 - Financial Literacy Meeting - California Jump\$tart Coalition Meeting, Los Angeles
- October 23 - Financial Literacy Meeting - California Jump\$tart Coalition Meeting, San Francisco
- October 21 and 22 - The California Women's Conference, Long Beach Convention Center, October 21 and 22, 2008. DFI will participate as an exhibitor and provide information on state banks and credit unions, careers at DFI, deposit insurance, FDIC 75th anniversary information and more.

### September 2008

- September 20 - Homeownership Preservation Fair (Adobe PDF), Long Beach Convention Center, 300 E. Ocean Blvd, Long Beach, CA 90802
- September 13 - Foreclosure Counseling Fair (English) (Spanish) (Adobe PDF), Free Event, Valley Vineyard Church, 6642 Reseda Blvd., Reseda, CA 91335, 10:00 am to 1:00pm. Homeowner presentation at 10:15 am.
- September 13 - Free Foreclosure Prevention Fairs Hosted by Los Angeles Neighborhood Housing Services - San Fernando Valley Foreclosure Prevention Fair. For information about any of these events, contact Ian McMahon or Nina Kihlman at [imcmahon@lanhs.org](mailto:imcmahon@lanhs.org) or [nkihlman@lanhs.org](mailto:nkihlman@lanhs.org).

**August 2008**

- August 18 (8:00 am - 5:00 pm) - White House Conference on Faith-Based and Community Initiatives Networking Session, Sacramento Convention Center, 1400 J Street, Sacramento, CA 95814, 916-808-5291
- August 13 - Free Foreclosure Prevention Fairs Hosted by Los Angeles Neighborhood Housing Services - Carson Foreclosure Prevention Workshop. For information about any of these events, contact Ian McMahon or Nina Kihlman at [imcmahon@lanhs.org](mailto:imcmahon@lanhs.org) or [nkohlman@lanhs.org](mailto:nkohlman@lanhs.org).
- August 2 - Free Foreclosure Prevention Fairs Hosted by Los Angeles Neighborhood Housing Services - Culver City Foreclosure Prevention Fair, Veteran's Auditorium. For information about any of these events, contact Ian McMahon or Nina Kihlman at [imcmahon@lanhs.org](mailto:imcmahon@lanhs.org) or [nkohlman@lanhs.org](mailto:nkohlman@lanhs.org).

**June 2008**

- June 14 (9:00 am - 2:00 pm) - HOPE NOW Homeownership Preservation Workshop (Adobe PDF)

**May 2008**

- May 29 (5:30 pm - 8:30 pm) and May 31 (10:00 am - 1:00 pm) - Governor Schwarzenegger's Task Force on Non-Traditional Mortgages is sponsoring 2 workshops at the end of May. One is in Elk Grove (Adobe PDF) on May 29th and the other is in Sacramento (Adobe PDF) on May 31st.
- May 28 (6:00 pm - 7:00 pm) - Korean Churches for Community Development Provide Free Foreclosure Workshops in Los Angeles County. Every second and fourth Wednesdays. KCCD Office, 3550 Wilshire Blvd., Ste 922, Los Angeles, CA 90010. Seats are limited. Please call and make a reservation. Free Counseling and Assistance are Available: 213-985-1500.
- May 21 (10:00 am - 3:30 pm) - The California and Nevada Youth Involvement Network (CNYIN), free "Train-the-Trainer" workshop, at the California and Nevada Credit Union Leagues' offices, 9500 Cleveland Avenue, Suite 200 in Rancho Cucamonga. Workshop is for teachers who currently use or would like to use the National Endowment for Financial Education's (NEFE) High School Financial Planning Program (HSFPP). It also is open to CNYIN members. CNYIN board chairman Marissa Lott at (323) 930.3404 or by e-mail at [mlott@figcu.org](mailto:mlott@figcu.org). Deadline to register is May 1. For more information, contact Cathy Arra in the Leagues' Credit Union Development Department at (800) 472.1702, ext. 3486, or by email at [catherinea@ccul.org](mailto:catherinea@ccul.org).
- May 15 (4:00 pm - 8:00 pm) - Chula Vista Foreclosure Prevention Workshop (Adobe PDF) with lenders and HUD approved credit counselors, Hosted by Department of Real Estate, Senator Ducheny, and Assembly Member Mary Salas, Rancho Del Rey Middle School, 1174 East J Street, Chula Vista, CA 91915
- May 6 (5:00 pm) - Book Drive Community Event, Teichert Branch Boys and Girls Club, 5212 Lemon Hill Avenue, Sacramento, CA 95824. Participating agencies include the CHP, Department of Housing and Community Development, and DFI. Participating community organizations include the Stanford Home for Children; The Hmong Women's Heritage Association; La Familia; and Buena Vista Rancheria, Me-Wuk.

**April 2008**

- April 29 - National Teach Children to Save Day, Umpqua Bank Learn to Earn Program, Wheatland and Olivehurst Elementary Schools.
- April 26 (10:00 am - 2:00 pm) - Hosted by Governor Schwarzenegger's Task Force on Non-Traditional Mortgages, California Science Center, Wallis Annenberg Building, Erteszek Family Foundation Muses Roo at Exposition Park, Los Angeles, CA 90037.
- April 23 - Homeowners' workshop - Home loan counselors from JPMorgan Chase will give advice on preventing mortgage default and foreclosure from 6:30 p.m. to 8:30 p.m. April 23 at Regency Park Elementary School, 5901 Bridgecross Drive, Sacramento. The Sacramento Housing and Redevelopment Agency is sponsoring the event. Call the agency at (916) 264-1500 for more information.
- April 23 - California Summit on Financial Literacy at the Sacramento Convention Center
- April 20 - 26 - Redwood CU Seminars (Adobe PDF) and Festivities (Adobe PDF) for National Credit Union Youth Week
- April 19 - Foreclosure Prevention Workshop hosted by Assemblywoman Cathleen Galgiani. Free counseling will be offered. Lenders also have been invited. April 19 in Los Banos City Council Chambers, 520 J St., Los Banos, CA.
- April 17 (12 noon - 1:30 pm) - Financial Literacy Seminar - Presentation by Ellen Seidman, Director of the New America Foundation's Financial Services Project, on the state of consumer financial literacy in the nation in the Eureka Room (basement), State Capitol, Sacramento. Please RSVP, California Research Bureau at 916-653-7843.
- April 12 - Home Foreclosure Assistance Workshop hosted by Assembly Member Jared Huffman - Agenda, Press Release
- April 10 and 26 - Consumer Workshops Focusing on Preventing Foreclosures
- April 10 - Napa foreclosure prevention forum - A forum on preventing foreclosure for Napa County homeowners and tenants will be held from 1:30-5 p.m. Sunday, April 13, at St. John the Baptist family hall, 924 Napa St., Napa. Free workshop and one-on-one counseling sessions, presented in both Spanish and English. To register for the free workshop and reserve an individual counseling session call 253-4219 or send an e-mail to [ForeclosureForum@co.napa.ca.us](mailto:ForeclosureForum@co.napa.ca.us); or contact Puertas Abiertas, 952 Napa St., Napa,

CA, at 224-1786; or Napa Valley Community Housing, 251-1064.

- April 5 - Foreclosure Prevention Workshop hosted by Assemblymember Maze in Visalia on Saturday, April 5, 10:00 a.m. – 12:00 p.m. at the Tulare and Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292.
- April 2 (10:00 am – 12:00 pm) - Assemblyman Bill Maze will be hosting a Homeowner Foreclosure Workshop at the Tulare & Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292.
- April 2 - State Controller's First Annual Financial Literacy Fair at the State Capitol, Sacramento (Invitation (Adobe PDF), Parking Information (Adobe PDF))

### March 2008

- March 29 - Consumer Workshop on Preventing Foreclosures, Saturday, March 29, 9 a.m. to 3 p.m., at Modesto Centre Plaza, 1000 K St., Modesto.
- March 29 - Foreclosure Prevention Workshop hosted by the City of Modesto and The ModestoBee, Saturday, March 29, 9:00 a.m. - 3:00 p.m., Modesto Centre Plaza, 1000 K St., Modesto, CA 95354.
- March 27 - Elder Financial Protection Network, "Call to Action", San Francisco, California
- March 22 - Foreclosure Prevention Workshop hosted by Assemblymember Maze in Visalia on Saturday, March 22, 10:00 a.m. – 12:00 p.m. at the Tulare and Kings Counties Builder's Exchange building located at 1223 South Lovers Lane, Visalia, CA 93292.
- March 15 and 29 - Consumer Workshops Focusing on Preventing Foreclosures
- March 4 - 5, 2008 - Cyber Safe California Summit - Burbank Airport Marriott Hotel & Convention Center, Presented by California Department of Consumer Affairs, California Office of Privacy Protection, State and Consumer Services Agency.
- March 3 - 7, 2008 - HOPE NOW, NeighborWorks® America and 90 Days of HOPE Homeownership Preservation forums (Adobe PDF)
- March 2 - 8 - National Consumer Protection Week - Theme: Financial Literacy, a Sound Investment

### February 2008

- January/February - Statewide Foreclosure Prevention Consumer Workshops - Flyer (Adobe PDF)

### January 2008

- January 26 - Housing Fair, County Fairgrounds in Victorville, sponsored by County of San Bernardino, Department of Community Development and Housing; and Fair Housing Council of Riverside County, Inc.
- January 26 - Foreclosure Prevention Seminar in Ontario, sponsored by County of San Bernardino, Department of Community Development and Housing; and Fair Housing Council of Riverside County, Inc.
- January 12 - 10 am to 1 pm, Homeownership Fair, City of Inglewood. Sponsored by Los Angeles Neighborhood Housing Services.
- January 12 - Foreclosure workshop, hosted by Mayor Ron Dellums, 10 a.m. to 1 p.m. at City Hall, 1 Frank Ogawa Plaza, Oakland, CA. Representatives from the State and Consumer Services Agency and the Business, Transportation and Housing Agency will present workshops on preventing foreclosures. Contact Kelly Rayburn at 510-208-6435 or [krayburn@bayareanewsgroup.com](mailto:krayburn@bayareanewsgroup.com).
- January 10 - Insurance Commissioner's Insurance Recovery Forum - Flyer (Adobe PDF)

### December 2007

- December 12 - Homeowners Mortgage Clinic (Adobe PDF), Rancho Cordova City Hall, sponsored by Ken Cooley, Councilmember and the Neighborworks of Sacramento County and the County Human Rights and Fair Housing Commission.

### November 2007

- November 30 - 10 am to 1 pm, Congresswoman Maxine Waters will be hosting a congressional hearing and homeownership preservation fair at the California Science Center
- November 17 - Aleman High School, Mission Hills
- November 10 - San Bernardino Valley College

**Senate Rules Committee  
Confirmation Questions and Answers  
Bob Clark  
Director, Office of Real Estate Appraisers  
January 23, 2009**

**Goals**

**1. *What are your goals and objectives as Director of the Office of Real Estate Appraisers? What is your strategy for reaching your goals? How will you measure your success?***

My primary goal as Director of the Office of Real Estate Appraisers is to improve and maintain the integrity of the appraisal profession by administering an effective licensing and enforcement program. The main focus of this effort will be strong enforcement to ensure compliance with the Real Estate Appraisers' Licensing and Certification Law and the Uniform Standards of Professional Appraisal Practice (USPAP). Proper professional education is also a critical factor in attaining this goal. If appraisal professionals are properly educated and trained, we will realize a reduction in the number of fraudulent and unethical appraisals being prepared.

Upon my appointment in April of 2008, I identified several key areas which OREA could improve to better serve the public and its licensees including restructuring and strengthening enforcement, improvement of IT systems, raising OREA's profile within the Association of Appraiser Regulatory Officials (AARO), collaborating more closely with other California authorities and increasing contact with the appraisal licensee community.

**Restructuring and Strengthening Enforcement.** OREA enforcement staff initiates disciplinary investigative cases upon receipt of formal complaints or upon notification of possible violations of the law from public agencies, lending institutions, news reports, etc. A confidential investigation is conducted, resulting in a report that either recommends closing of the case, a warning, or disciplinary action. Disciplinary cases are either settled with an appropriate sanction, or they are referred to the Office of the Attorney General (AG) to initiate legal action under the Administrative Law process. If an enforcement case results in such referral, this substantially increases the amount of time it takes to complete the enforcement case. It is extremely rare for an enforcement investigation that results in an administrative law hearing to be completed within a year as required by the Appraisal Subcommittee (ASC).

Accordingly, OREA's most immediate objective is to reduce the timeframe for completion of investigative cases and disciplinary actions to less than 12 months. Several steps have been taken to address this issue, including the following.

**Senate Rules Committee**

JAN 23 2009

- **Sharpen Focus of Investigations.** Management staff has been directed to more clearly define the scope of investigation of enforcement cases, concentrating on specific issues within a complaint or appraisal report that will meet a standard of proof that is required by the administrative law process to successfully prosecute a disciplinary action and to not delay completion of the investigation over an in-depth investigation of other potential minor violations.
- **Telecommuting.** In conjunction with the Caltrans 'Fix I-5' project in June and July, a pilot telecommute program for five appraiser investigators was initiated, authorizing them to work at home two days per week. The case closure average for said staff has increased by more than 50% as a result of this program. Because of this improvement, continuance of the telecommute program has been authorized.
- **Automated Data Collection.** OREA recently negotiated a new contract for residential comparable sales data that provides information that is critical to completing enforcement investigations. This new data source not only improves staff efficiencies in searching public records, but also provides a projected savings of more than 60% from the previous data provider contract.
- **Budget Change Proposal (BCP) for Three Investigators and Legal Counsel.** ASC has specifically questioned whether OREA's enforcement staffing was adequate to meet the outstanding and increasing enforcement workload. OREA has submitted, and Department of Finance has recommended approval of, a BCP for fiscal year 2009-10 adding three property appraiser investigators and a staff legal counsel. OREA currently has 17,545 licensees and only 8 investigators, a ratio of 2,193 to one. The three additional investigators requested in the BCP would bring the ratio down to a more acceptable 1,595 to one. By way of guidance, ASC has indicated that Texas was previously non-compliant, but is now adequately staffed with 5 full-time investigators supervising 6,655 licensees, a ratio of 1,331 to one. Additionally, as stated above, referral to the AG usually delays completion of the disciplinary action significantly beyond the ASC-mandated 12 month period. Approximately one third of the disciplinary actions taken by OREA are currently referred to the AG. The AG billed OREA approximately \$355,000 in 2007-08. The hiring of a staff legal counsel will enable OREA to shorten the timeframe for legal action, specifically in the settlement of enforcement cases and is expected to result in significant cost savings to OREA. Should the additional recommended positions not be sufficient to satisfy the ASC, an additional BCP may be forthcoming.

**Improvement of IT Systems.** OREA's next objective is to improve its use of Information Technology (IT) by:

- Expanding its online license renewal capabilities to all initial and renewal license applications (currently only one license application type of six types is processed via the online system). Electronic processing of license applications will eliminate a degree of possible data entry error and the need for paper file

storage. It will also free up additional staff to focus on increased enforcement and education.

- Initiating electronic storage of all licensing files to eliminate inefficient, costly paper storage.
- Reconfiguring its current database system to eliminate multiple entries by licensing staff, and to provide more efficient access to license and enforcement records.
- Initiating an online notification system of course completion and examination results by education and testing providers to further support electronic data storage.
- Continuing improvements/enhancements to OREA's website, including the recent initiation of an appraiser's e-mail subscription list in December 2008, that is now being utilized to provide notifications of appraisal industry news bulletins.

An IT Feasibility Study Report was contracted for in June 2008, and the final report contained recommendations that should enable OREA to complete IT projects within existing budget authority to meet several specific objectives.

**Raising OREA's Profile Within The Association Of Appraiser Regulatory Officials (AARO).** Another objective is for OREA to become more actively involved in national appraisal issues by expanding its participation in AARO, the mission of which is to improve the administration and enforcement of real estate appraisal laws in the United States through communication, research, education and cooperation. Participation in this organization provides significant contact with other state appraisal regulatory agencies, the ASC and the Appraisal Foundation, which should enable California to have more of a voice in national appraisal regulatory guidelines, education, and enforcement issues. This increased involvement will also facilitate the exchange of best regulatory practices.

**Collaborating More Closely With Other California Authorities.** Additionally, in order for OREA to be more involved in the ongoing dialogue over the impact of the appraisal profession on mortgage fraud, OREA's new Deputy Director and the Chief of Licensing & Enforcement have been assigned to take part in a mortgage fraud task force recently initiated by the U.S. Attorney's Office in Sacramento. The Chief has prepared a presentation for the task force on appraisal enforcement issues that OREA is currently experiencing. The Department also cooperates with city and county jurisdictions throughout the state to assist and advise on appraisal regulatory and enforcement issues. Additionally, OREA is working closely with the Department of Real Estate (DRE), the Department of Corporations (DOC), and the Department of Financial Institutions (DFI) to educate real estate professionals and the public on what constitutes unlawful influence of appraisers to insure consistent application of SB 223 across different licensee populations.

**Increasing Contact With The Licensee Community.** With the downturn in the real market it is critical for OREA to effectively communicate to licensees, to other real estate professionals, and to the public that our mission is to protect the public by

ensuring the competency and integrity of licensed real estate appraisers, and that effective, vigorous enforcement of the Real Estate Appraisers' Licensing and Certification Law is the key to maintaining a high standard of professional appraisal practice. While OREA also needs to convey a message of cooperation and service, it is also incumbent upon the Department to consistently emphasize ethical appraisal practice, compliance to USPAP, and to encourage reporting of violations of the law.

An important element of OREA's communication with appraisal professionals and the public is to renew publication of *The California Appraiser*, scheduled to occur in April 2009. Due to staffing cutbacks and an increase in the licensing and enforcement workloads, OREA discontinued this biannual publication three years ago. It will contain important and relevant appraisal and real estate industry news, information on education and any changes to federal requirements. It will also report the facts surrounding disciplinary actions taken against appraisal licensees, alerting others to potential pitfalls and providing deterrence.

OREA also participates in one or two public appearances per month before professional appraisal organizations, updating them on current enforcement issues that OREA is experiencing in its disciplinary efforts. This sort of public outreach will be increased as staffing becomes available and will be expanded to other real estate professional groups in the future, specifically to the end users of appraisal reports, in order to educate such professionals about SB 223, and what is deemed improper influence of appraisers.

**Measurements.** Success for the attainment of these goals and objectives will be measured by:

- Reduction in the existing open enforcement caseload and a reduction of the timeframe for closing complaints to less than 12 months, bringing OREA into compliance with the federal mandate,
- Conversion of OREA's current paper filing storage to a secure data base, eliminating the need for inefficient and costly file room storage,
- Availability of an online system for all appraisal license applications and for payment of licensing fees,
- Electronic notification to OREA of the successful completion of all appraisal education classes and of examination results, and
- Reduction in the number of enforcement complaints in the future, as a result of OREA's public outreach and emphasis on vigorous enforcement and appropriate appraisal education.

## **2. What are the highest priorities of OREA? How will they be accomplished?**

As previously stated, OREA's highest priority is to reduce the enforcement case backlog, and to resolve complaints in a timely manner and to comply with the ASC guideline requiring enforcement case closure within 12 months of receipt of complaint.

The other objectives mentioned above are also high priorities. Additionally OREA continues to improve the quality of its investigations.

- Enforcement staff now opens an investigative case on every complaint received. Previously, there was a screening process that did not always result in an opened investigation. All complainants now receive a notification of the opened investigation, and there is better case tracking within the enforcement database.
- Upon opening an investigation a demand letter requesting a respondent's appraisal report and related work file is now immediately generated and tracked by enforcement support staff to gather the most up to date evidence.
- All enforcement form letters have been automated and are contained in a database that automatically fills out a respondent's name and address and other pertinent information into the letters, increasing staff time efficiencies. Previously, form letters were individually filled out by enforcement staff; this function is now completed by support staff.
- OREA recently executed a contract with DMV that provides information on appraisal licensees that have not informed OREA of address changes. This has improved our ability to contact enforcement respondents that have not replied to requests for information.

Another important priority is for OREA to interact with and support the Appraiser Qualifications Board (AQB) and education providers in assuring that a high standard of course offerings (both basic and continuing education) are maintained and available to appraisal professionals. Appraisal educational requirements also need to be clearly communicated to appraisal professionals.

***3. Is the training/education of appraisers sufficient? What, if any, curriculum changes would you recommend?***

The education of appraisers is a continually evolving process. New AQB mandated training and educational requirements just took effect in 2008 (limiting the number of trainees that a certified appraiser can work with to three, and increasing the educational requirements by 67% for new license applicants). The new AQB examinations are more difficult than previous examinations, with an emphasis on practice-based situations and questions. OREA should be able to assess their sufficiency and make recommendations next year by comparing the new examination results with the education completed by the applicants.

OREA will provide specific guidance to course providers, emphasizing compliance with the new AQB guidelines, and will be more actively involved with the AQB and AARO. If staffing becomes available, OREA may develop and offer courses in: a) OREA's rules & regulations, b) the roles of supervising and trainee appraisal licensees, c) enforcement issues, with an emphasis on specific issues that appraisers need to avoid to comply with USPAP, and d) a USPAP renewal class for appraisal licensees. OREA's Chief of Licensing & Enforcement is recognized by the members of AARO and the AQB as an extremely qualified appraisal



education resource, and he has been directed to take on a more active role in the appraisal education dialogue.

OREA also intends to initiate an audit program of education providers. In preparation, OREA's management staff has been directed to develop a reporting format for our investigators to submit an audit report whenever they complete an appraisal continuing education class, wherein they will critique the quality and content of the course.

## **Mortgage Crisis**

### ***4. What role does OREA have in preventing over-inflated appraisals?***

OREA's primary role in preventing over-inflated appraisals is to administer an assertive enforcement program, and to continue the emphasis on appraisal education. OREA keeps the appraisal industry informed regarding the compliance issues that get appraisers in trouble, and continually encourages appraisers, industry professionals, and the public to report illegal and unethical appraisal practice. In fact, existing OREA regulations spell out a formal complaint process that allows any person to allege the particular acts or omissions he/she believes constitute unethical or unprofessional conduct by a licensed appraiser. Public awareness of the disciplinary actions taken against unlawful appraisal practices will be raised through postings on OREA's and ASC's websites, and through appropriate press notifications, when warranted. OREA is also collaborating closely with DRE, DOC, and DFI to implement SB 223 consistently and to provide information and outreach to all licensees regarding what may constitute unlawful influence of appraisers.

### ***5. What efforts has OREA taken to assure appraisers are acting responsibly and ethically when conducting appraisals?***

OREA will continue to administer a strong enforcement effort, and to emphasize education. Implementation of a new proactive audit program would help assure that all appraisers are acting responsibly and ethically. Such an audit could consist of contacting appraisal licensees by OREA enforcement staff, and a thorough review of appraisal reports and work files, to assess compliance with USPAP and appraisal law. However, staffing constraints have not allowed the start of such a program in the past and investigations have been largely complaint driven. The addition of enforcement staff in the next fiscal year may enable OREA to initiate an audit program. Such program would likely improve appraisal performance, as any appraiser could be asked by OREA at anytime to produce appraisal reports to verify compliance with appraisal law.

### ***6. What efforts has OREA made to assure appraiser independence, consistency and competency?***

OREA focuses on the requirement for appraiser independence, consistency and competency in presentations to professional appraisal organizations. The issues of ethical standards, conformance with USPAP, and ongoing education are particularly emphasized at such presentations. OREA also provides a significant amount of information on its website, and consistently requests that licensees refer to it for appraisal industry updates. OREA recently initiated an e-mail subscriber's list in December, and has begun sending relevant notifications on industry issues to appraisal licensees. Such notifications include updates on FHA appraisal requirements, the implementation of the Home Valuation Code of Conduct, new requirements promulgated by the AQB, how to report violations of SB 223, etc. Additionally, renewed publication of *The California Appraiser* is planned this Spring.

**7. *Have you noticed a trend in the type or number of complaints OREA has received in the past three years?***

There has been an increase in the past several years of appraiser involvement in fraudulent transactions such as: a) no-money-down with cash back to a buyer, b) straw buyers, c) flips, and d) stolen identity. There have also been a significant number of false certifications (wherein a supervising appraiser has falsely asserted inspection of a property), and of electronic signature theft by trainee appraisers. There is a consistent pattern for years of inappropriate highest-and-best use analysis, and the use of inappropriate comparable sales in appraisal reports. From 2002 until the beginning of 2007, the average number of open enforcement complaints was approximately 200-220. This number has increased markedly in the past year, with approximately 400 open complaints currently being investigated. OREA's enforcement staff gives priority to the most egregious violations, those that may include significant financial loss by lending institutions or the public, and obvious cases of fraud. The department also cooperates with inquiries from law enforcement agencies and other California departments.

**Federal Appraisal Standards**

**8. *If the guidelines are adopted as proposed, how would appraisal practices change in California?***

If adopted as proposed, the Proposed Interagency Appraisal and Evaluation Guidelines contain no discernible changes in appraisal practice or methodology. The guidelines mainly reinforce sound collateral valuation practices and the importance of appraiser independence.

**9. *Does OREA intend to submit comments on the proposal?***

OREA has submitted comments addressing the need for clarification of technical appraisal issues and definitions. (These comments are attached hereto.)

**10. Does OREA intend to seek additional action at the state level to enhance the federal effort?**

No additional actions are anticipated by OREA at this time.

**Reporting Improper Influence of Appraisers**

**11. In addition to the information on the OREA website, is OREA making other efforts to educate its licensees regarding SB 223?**

California appraisal licensees are very aware of SB 223; however, it is difficult to prove violations of this law. Appraiser pressure typically occurs in a phone conversation between the appraiser and the individual that orders the report. At all public presentations, OREA encourages its licensees to report violations of SB 223, and has been working with DRE, DOC, and DFI to insure consistent application of the law to all licensees and to provide information and outreach to all licensees regarding what may constitute unlawful influence of appraisers.

**12. Do you believe the law requiring licensees to report violations is adequate or would you recommend changes? What would you recommend?**

The law and regulations governing appraisal practice do not specifically "require" licensees to report violations of appraisal law. Some individuals and business entities are hesitant to file complaints against licensees, likely out of concern for civil liability. OREA consistently encourages the reporting of violations by licensees, real estate and lending professionals, and the public. We also accept anonymous complaints as further incentive to enforce our laws and regulations. OREA does not recommend any changes at this time. Mandatory reporting would be extremely difficult to enforce, and the aforementioned civil liability issue could discourage compliance.

**13. How have you worked with the other state licensing entities to implement SB 223?**

I have personally been working with the Commissioners of DRE, DOC, and DFI to develop specific examples of fact patterns that may constitute violations of SB 223 for distribution to all licensees and to the public as appropriate. This collaboration is expected to be completed shortly. As a practical matter, it is most likely that few appraisal licensees would be found in violation of SB 223. Appraisers can be pressured, and such pressure may come from a mortgage broker, an Appraisal Management Company, or a bank lending department. That is why it is important that DRE, DOC, DFI and OREA are working closely together to consistently enforce SB 223 across each department's licensee population.

**14. Is there anything else that you believe can be done to reduce the incidence of improper influence between real estate appraisers and their clientele/professional associates?**

With the increasing use and influence of Appraisal Management Companies in the real estate lending and appraisal business, there is a growing nationwide effort to license or register them. OREA is reviewing this issue with specific concern over circumstances where appraisers who have been disciplined or who have lost their license go on establish, or to work for such companies.

**15. Have you taken any disciplinary actions under the law?**

OREA has not taken any disciplinary actions under SB 223. As stated above, violation of this statute would most likely occur through improper influence of appraisers by licensees of other state departments, not appraisal licensees. Accordingly, as mentioned above, OREA is closely coordinating the implementation of SB 223 with DRE, DOC, and DFI.

#### **Real Estate Appraisers Recovery Account**

**16. What is the status of the Real Estate Appraisers Recovery Account and the associated regulations?**

Under B&P 11412, in 2002 OREA's former Director reviewed the number of cases likely to have been eligible for recovery under such a fund and, at that time, determined that such a fund was unnecessary. Accordingly, regulations were not adopted. OREA is reviewing current market conditions to determine if they now warrant issuance of regulations and will promptly issue them if appropriate. It is anticipated that current market conditions are likely to support issuance.

**17. Has the 5 percent reduction been placed into the Recovery Account? If so, what is the balance on the account?**

As stated in question #16, the Recovery Account has not been funded.

**18. Have funds from the Recovery Account been expended? If so, on what have they been spent?**

As stated in question #16, the Recovery Account has not been funded.

#### **Criminal Background Checks**

**19. Does OREA check the criminal history of all of its applicants and licensees, or are those that were licensed prior to implementation overlooked?**

Since its inception, OREA has performed a criminal background check on every applicant for appraisal licensing. We also receive Subsequent Arrest Notices from the Department of Justice on all existing licensees and license upgrade applicants in order to ensure that they are not in violation of criminal law.

**20. *If all prior licensees have not been screened, what steps have been taken to correct the oversight?***

Not applicable – see question #19.

## **Public Outreach and Enforcement**

**21. *What other efforts has OREA made to educate and inform consumers regarding the regulation of appraisers, where to file a complaint, check a license, etc.?***

The main source of information regarding OREA's licensees is provided on its website, which lists appraisal licensee status, the complaint filing process, existing laws and regulations, disciplinary actions taken, etc. We consistently seek feedback on our website from appraisers and members of the public by including a Customer Survey form. OREA staff answers the phone from 8:00 AM to 5:00 PM, with no lunch hour interruption. At public presentations, we inform attendees of existing appraisal laws, how to contact OREA, how to file a complaint, etc. As additional staffing becomes available OREA also intends to attend various public homebuyer events.

**22. *Given that OREA has licensed over 18,000 real estate appraisers, do these statistics reflect an appropriately vigorous enforcement program? What staff is available to you for enforcement purposes?***

As previously stated, OREA has struggled with staffing issues and has a pending BCP to add three investigators and a staff counsel. However, many increases in efficiencies have already been achieved and many more are planned as detailed above to continually enhance enforcement.

## **Workforce and Succession Planning**

**23. *Is OREA facing the same staffing shortages caused by retirements that are affecting other departments?***

OREA is potentially facing an enforcement staff shortage within the next several years, with approximately half of its investigators currently at, or exceeding retirement-eligible age and the remaining half reaching this age within six years. However, OREA retirements may be slower than other departments because, regardless of age, several of the enforcement staff have only 1-3 years of state service credit.

**24. Does OREA have a personnel succession plan in place?**

Upon the recent hiring of the new Deputy Director in November, I initiated a leadership development program, initially focusing on supervisory staff leadership, which will subsequently shift into identification of leadership potential within the non-supervisory staff. Should OREA be successful in securing additional enforcement staff in the next fiscal year, these new personnel will also be encouraged to train and apply for promotions as seasoned personnel retire.

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SACRAMENTO, CA 95811-6539

January 16, 2009

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 1-5  
Washington, DC 20219Re: Proposed Interagency Appraisal and Evaluation Guidelines  
Docket ID OCC-2008-0021

## To Whom It May Concern:

The State of California, Office of Real Estate Appraisers (OREA) appreciates the opportunity to comment on the proposed Interagency Appraisal and Evaluation Guidelines that reaffirm supervisory expectations for sound real estate appraisal and evaluation policies for federal financial institutions. While we applaud the additional detail for expectations for appraisal independence, we do have concerns over the following issues contained in the proposed guidelines:

- Under "Independence of the Appraisal and Evaluation Program" on page 20, the guidelines address valuation processes for small or rural institutions. It is stated that "In such cases, another loan officer, other officer, or director of the institution may be the only person qualified to analyze the real estate collateral." This statement seems to indicate that a non-appraiser could perform an appraisal. The actual performance of an appraisal should always be by a licensed or certified appraiser.
- Under "Minimum Appraisal Standards" on page 26, the guidelines state that appropriate deductions and discounts should be utilized in the analysis of raw land. Raw land is typically identified as land with no approvals or entitlements for improvement. As a result, deductions and discounts are not necessarily appropriate. A definition of raw land should be included in the Glossary of Terms, Appendix C.
- Under "Appraisal Reports" on page 30, restricted appraisal reports are referenced as a "...reporting option that merely states..." The verbiage states that "less detailed reports" may be appropriate in certain cases, which is indicative of a restricted report. Please note that for an appraiser to select this reporting option, they are asserting that there is only one intended user of the report. This is a requirement of the Uniform Standards of Professional Appraisal Practice (USPAP), and should be noted in the proposed language in order to clarify this standard for the intended user.

- Under "Evaluation Content" on page 34, the reference to "more detailed evaluations for higher risk...transactions" is somewhat vague. There are no reporting options for evaluations. It is recommended that a definition of "more detailed evaluations," and their required contents, be included in Appendix B.
- On page 36, "Third Party Arrangements" are discussed. It is recommended that the term Appraisal Management Company (AMC) be inserted in this paragraph as an alternative term for third party arrangements. AMCs are currently the most notable example of a third party, acting as agent for a financial institution.
- The section "Reviewing Appraisals and Evaluations" is discussed from page 36 to page 39, wherein it is stated that an appraisal review must comply with USPAP. It is recommended that this be edited to specifically state that the appraisal review must comply with Standards Rule 3 of USPAP. From a state regulatory perspective and OREA's experience, appraisal reviews are grossly misunderstood. We believe the specific reference to Standards Rule 3 is an important element in encouraging appraisers to be competent and to act in compliance with USPAP in the appraisal review process.

We respectfully request that you consider these comments in the final version of the Interagency Appraisal and Evaluation Guidelines. Should you have any questions, or wish to discuss the issues raised herein, please contact Mr. Greg Harding, Chief of Licensing, Enforcement and Education at the address noted above, or by calling him at (916) 440-7874.

Sincerely,



Bob Clark  
Director  
Office of Real Estate Appraisers





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