

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA
MONDAY, AUGUST 31, 2009
2:33 P.M.

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

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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
- JULIE NYSTROM, Assistant to SENATOR AANESTAD
- CHRIS BURNS, Assistant to SENATOR DUTTON
- BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

- JAN C. STURLA, Director, Department of Child Support Services
- KEN YEAGER, Ph.D., Member, Air Resources Board
- ROBERT PACHECO, Member, Occupational Safety and Health Appeals Board

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1 and Robert Pacheco, our former colleague, as a member of
2 the Occupational Safety and Health Appeals Board.

3 We will go in the order of the agenda, and
4 we'll ask Jan Sturla to please come forward.

5 Welcome, Mr. Sturla. How are you doing?

6 MR. STURLA: Thank you. Very well, Senator.

7 CHAIRMAN STEINBERG: Good, good, good.

8 It is the sort of tradition of the Rules
9 Committee, we want to give every appointee the
10 opportunity to introduce your family or any special
11 guest who might be in the audience.

12 MR. STURLA: Thank you very much. I have my
13 wife of 40 years, Sandra, in the audience today.

14 CHAIRMAN STEINBERG: Welcome. Thank you for
15 being here today. Very good.

16 Why don't you, if you don't mind, make a brief
17 opening statement, and then we have a series of
18 questions for you.

19 MR. STURLA: Thank you very much.

20 Chairman Steinberg and Senators, it's an honor
21 to appear before you today for consideration of my
22 appointment as the director of the Department of Child
23 Support Services.

24 First, I want to express my gratitude to the
25 governor and Secretary Belshe for the confidence they

1 have shown in me by selecting me for this position and
2 for the opportunity to guide California's child support
3 program.

4 The mission of California's child support
5 program is to promote the well-being of children and the
6 self-sufficiency of families by assisting both parents
7 to meet the financial, medical, and emotional needs of
8 their children through the delivery of quality child
9 support establishment, collection, and distribution
10 service. As our economy struggles, that mission could
11 not be more important than it is now.

12 Child support not only benefits families but
13 also helps offset the cost of CalWORKs and foster care.
14 The investment in child support yields savings to the
15 State through cost avoidance. Families who receive
16 regular payments of child support are far less likely to
17 need public assistance.

18 The department faces many challenges in the
19 coming months and years in increasing collections, as
20 well as improving on the federal performance measures.
21 It is my goal to reconfigure a child support program
22 that has been focused on the implementation of
23 automation for almost a decade to one that focuses on
24 collection and performance. We must cultivate a culture
25 in which the 52 county child support agencies operate in

1 coordination and collaboration with each other and with
2 the State. We must continue to leverage our automation
3 so staff can do more.

4 In addition to increasing performance, my
5 primary goal is to seek more efficient and effective
6 business models, thereby increasing the cost
7 effectiveness of the program. We must think about how
8 best to meet the needs of all our customers with the
9 resources available to us.

10 I spent the last 17 years in my professional
11 life in the child support program and pledge that I will
12 continue to use my best efforts to fulfill the mission
13 of the department and faithfully serve the people of our
14 state. Thank you.

15 CHAIRMAN STEINBERG: Thank you very much,
16 Mr. Sturla. You are relatively new to this position,
17 and by all accounts and references and backgrounds,
18 you're a fine person who is doing a fine job.

19 And so my line of questioning really goes,
20 however, to the performance over the years and what you
21 specifically intend to do as the director to change what
22 I think by most accounts would be considered to be
23 woeful -- woeful numbers and performance, especially
24 compared with the rest of the country.

25 Here are some of the statistics, and if I'm

1 wrong in terms of the facts here, you'll correct me; but
2 I'm really more interested in what you're going to do to
3 change this.

4 California has decreasing cost effectiveness
5 when it comes to the collection of child support
6 dollars. It was as high as \$2.78 in fiscal year 2000;
7 2.23 in '02; 2.12 in '04; 2.03 in '06; 2.01 in '07;
8 rebounding to 2.04 in '08.

9 What steps will the department undertake to
10 increase what many consider to be the poor performance
11 of California in current collections?

12 Let me go back. We rank 46th of 51 states,
13 including the District of Columbia, at 52.8 percent
14 collection rate. The national average is 61.9 percent.
15 Pennsylvania is as high as almost 80 percent. The
16 arrearage collection performance, 41st out of 51st at
17 59 percent, the national average 63; Pennsylvania,
18 again, almost 80. And then what I was speaking about a
19 moment ago, the cost effectiveness performance, for
20 every dollar we spend, we get X in return. 51st out of
21 51 with a \$2.04 rate for fiscal year 2008. The national
22 average is \$4.28. South Dakota is as high as \$10.27.
23 California's ranked 30th out of 50th with an
24 80.2 percent rate of paternity establishment.

25 What's going on here, and what is it that you

1 can do as the relatively new leader of this entity, this
2 department, to improve those numbers?

3 MR. STURLA: Let me start with the bottom, the
4 cost effectiveness, and this is an area, certainly from
5 the day I came on board in January, that's been of great
6 concern to me. I don't think we need to reinvent the
7 wheel to become more cost effective; and, in fact, some
8 of the states that you've mentioned, for example,
9 Pennsylvania, I've gone and I've asked three questions
10 as I surveyed the states that do so much better than we
11 do. And those three questions were: Are they doing
12 something differently than what we're doing? Number
13 two, Is what they're doing different responsible for
14 their superior performance and cost effectiveness? And
15 number three, Can we take some of those practices back
16 to California and improve our business practices?

17 And I think the answer to those three questions
18 is: Yes, they are doing something different; yes, it is
19 contributing to their cost effectiveness; and, finally,
20 we can bring those strategies back here in California.

21 Now, I think this is a subject of such -- some
22 urgency, and of course we need to get going on it right
23 away. I have convened a group of child support
24 directors, some of our most experienced county directors
25 as well as state staff. We met for the first time

1 approximately two weeks ago to discuss the various
2 things that are being done in other states to improve
3 cost effectiveness. We're meeting again tomorrow. We
4 have about six items that we are going to be assessing
5 as far as value to California, and we're going to be
6 creating an implementation plan that we should have by
7 the beginning of October. And I intend to move forward
8 on that implementation plan.

9 CHAIRMAN STEINBERG: How close are we to losing
10 federal incentive funds, given our performance?

11 MR. STURLA: Last year, because we fell under
12 two dollars, we lost federal incentive funds for the
13 cost effectiveness measure; however, we did receive
14 incentive funds for the other four measures.

15 CHAIRMAN STEINBERG: How much money did we
16 lose?

17 MR. STURLA: Approximately \$3 million dollars.

18 CHAIRMAN STEINBERG: Okay. I want to know --
19 Say, three years from now you are called before a Senate
20 policy committee or budget committee. How will you
21 assess your own performance in that testimony? By what
22 measure will you determine whether or not you have
23 succeeded in this job?

24 MR. STURLA: We will look at six things.
25 Number one, we'll look at collections. We'll look at

1 how many dollars we have actually collected and
2 distributed to California families, and we will look at
3 the five federal performance measures. We'll look, of
4 course --

5 We do very well in paternity establishment.
6 Actually, we're over 100 percent. Order establishment,
7 80 percent. We can increase that. Certainly,
8 collections on support I'm expecting to be -- to
9 increase that measure as well, and that will be
10 something that will be objectively reported.

11 CHAIRMAN STEINBERG: We have paternity
12 establishment, at least in my notes here, California,
13 80.2 percent, which ranks us 30th out of 50.

14 MR. STURLA: That is actually the number for
15 cases with support orders.

16 CHAIRMAN STEINBERG: When you referred to
17 100 percent, what were you referring to?

18 MR. STURLA: I'm referring to paternity
19 establishment, and that's the -- one of the federal
20 performance measures. How that is calculated and the
21 way that can exceed 100 percent is because it's based
22 upon the number of out-of-wedlock births compared with
23 the number of judicially established court orders and
24 voluntary acknowledgments of paternity.

25 CHAIRMAN STEINBERG: I'm going to turn it over

1 in a moment, but I kind of want to lay out what I think
2 is the appropriate way for any executive or any
3 legislative leader, if you will, anybody to be measured
4 when it comes to this sort of a job, and that is
5 establishing for yourself and for the department your
6 actual goals and timetables.

7 In other words, if we are 41st out of 51st when
8 it comes to arrearage collection performance, which, as
9 you know, is a big issue, if we're 51st out of 51st at
10 \$2.04 for cost effective performance, over what period
11 of time do you expect us to move from 41st to 20th, from
12 20th to 5th, from 51st out of 51 to 25th, to 20th. At
13 what point do you expect us to go from \$2.04 to \$3.04 or
14 \$4.04?

15 What -- Do you intend, as part of your efforts
16 going forward here, to establish those kinds of specific
17 benchmarks that will allow us and yourself to measure
18 whether we're making genuine progress?

19 MR. STURLA: Absolutely, Senator. What we do
20 each year is we set goals, performance goals for the
21 state for our local agencies, as well as statewide
22 goals, and as we move forward with development of our
23 strategic plan, we will in fact put goals into that
24 strategic plan.

25 CHAIRMAN STEINBERG: What about consequences

1 both at the state level and at the county level for
2 those goals -- specific goals not being met?

3 MR. STURLA: Certainly, if we fail to meet
4 federal performance standards, there are penalties
5 associated with that. I would expect that we will
6 certainly meet at least the necessary standards on all
7 the federal measures. I don't expect us to fall below
8 the cost effectiveness measure like we did this year,
9 but I expect that each year we will increase our
10 performance in each measure.

11 CHAIRMAN STEINBERG: Okay. Let me turn it over
12 to the other members of the Committee. Senator Aanestad
13 then Senator Oropeza.

14 SENATOR AANESTAD: Welcome, sir. Two
15 questions, just following up on the chairman's question
16 about goals.

17 California is a different state, let's say,
18 from North Dakota or Kansas. Can we ever hit 25 out of
19 50? Can we ever hit the middle of the national average,
20 with the diversity, the cultural problems, the language
21 problems, the mobility, the size? What is your opinion
22 as to can we -- Can we hit the national average.

23 MR. STURLA: I think we do have some unique
24 issues in California that of course do make us different
25 than many of our smaller states. As you indicated, we

1 are quite diverse. We do have certain issues with our
2 high current assistance caseload. These are our clients
3 that are currently receiving public assistance, which
4 makes it more difficult to achieve levels that have been
5 achieved in some other states. However, with that said,
6 I think there are strategies and tactics that we can use
7 to significantly increase the performance on those
8 performance measures.

9 Right now we're going through a difficult
10 economic time, and of course that makes it even more
11 difficult as we deal with these issues. However, I do
12 think we can increase our performance significantly,
13 Senator.

14 SENATOR AANESTAD: Good, because I think that
15 has to do with my next question, and that is: You are
16 the third director in three years. And I understand the
17 complexities of the job, and the Chairman has just
18 outlined some of the real problems of the department.
19 But are there other -- maybe other issues? I don't know
20 the history of the leadership of the department other
21 than you're the third in three years. How do you expect
22 the result to last longer than a year like the others
23 have?

24 MR. STURLA: I think I'm in a very unique
25 position as the fourth director, actually, in the

1 history of the department. The first three directors
2 were primarily concerned with the implementation of
3 automation, statewide automation in California.
4 California was paying over \$200 million a year in state
5 general fund penalties for our failure to implement
6 statewide automation.

7 I am now the first director who can now focus
8 on federal performance measures, collections, increasing
9 cost effectiveness. So I'm very happy to have this
10 opportunity, and I think my job is different in many
11 respects than the prior directors had.

12 SENATOR AANESTAD: Is there anything internal
13 in the department itself regarding personnel or
14 logistics that would prevent you from optimizing the
15 goals you just stated?

16 MR. STURLA: No, Senator. I don't believe so.

17 SENATOR AANESTAD: Thank you.

18 CHAIRMAN STEINBERG: Senator Oropeza.

19 SENATOR OROPEZA: Thank you very much.

20 Let me -- I'm sort of sitting in between two
21 microphones here.

22 I'd like to follow up, really, on a couple of
23 the questions asked by both our Chair and Vice Chair.

24 In your testimony you mentioned or stated that
25 there -- you believe that there are methods that can be

1 employed to improve our cost effectiveness, and I was
2 kind of hoping that you would go a little beyond that
3 and say "such as" or "to include," and then tell us
4 about a couple of those. Would you do that now.

5 MR. STURLA: Certainly.

6 I've looked at Pennsylvania, one of the states
7 that Chairman Steinberg mentioned as one of the top
8 performing states, and I have looked at their system.
9 We now currently in California train -- Each county has
10 a training staff that conducts training for that
11 individual county. By centralizing training, we have
12 the opportunity to reduce the number of staff that
13 trains statewide and provide uniform training for all
14 staff. I think that's one of the things.

15 One of the things we've also worked with is
16 creating centralized phone centers so that each
17 individual county agency need not answer the phone.
18 We're doing that on a pilot basis right now. We have
19 several counties that are engaged in that. Butte County
20 is answering calls from another smaller county. San
21 Mateo County is answering phone calls, or soon will be,
22 for Marin, San Benito, and Santa Cruz County; and Orange
23 County is taking Imperial County's calls. Now we've
24 just started that, but we found what that has done is
25 free up caseworkers to do more productive activities.

1 Also, Pennsylvania makes extensive use of
2 administrative process in establishing their court
3 orders as opposed to using the same processes that we
4 use in California, which are judicial processes, and
5 those are quite a bit less expensive.

6 SENATOR OROPEZA: I see. Okay. Well, along
7 this same line of becoming more effective, more cost
8 effective and effective -- Well, starting with effective
9 in terms of enforcement and how that impacts our state
10 socially, talk for a minute about how you see that
11 happening and how your duties as -- directing this
12 program help resolve, perhaps, or address some of these
13 issues in our state.

14 MR. STURLA: This program forms an important
15 lifeline to so many families, families that actually
16 need regular monthly child support in order to pay their
17 bills. If we do our job well, those dollars are
18 received by those families, and those families don't
19 have to look to public means to support themselves. So
20 it's very important in that respect.

21 On the other hand, we also owe a duty to the
22 noncustodial parents that pay support to promptly and
23 effectively make sure that the amount of the child
24 support orders that they are paying is in accordance
25 with the guideline and in accordance with what they can

1 afford to pay. Both sides of the equation are necessary
2 to make sure that the child support system works.

3 We find that if child support orders are too
4 high in this economy, with people becoming unemployed
5 and underemployed, it's incumbent upon us to act quickly
6 to make sure that those orders are adjusted to
7 accurately reflect the ability of the individuals to
8 pay. As long as we do that, then we will maintain the
9 cooperation of our noncustodial parents who pay child
10 support, and we'll be more effective.

11 SENATOR OROPEZA: Well, that is so interesting
12 to me, that second piece of what you said. You know,
13 I'm a child of divorce, and my mother experienced
14 difficulties at times with child support, and at that
15 time, I mean, a long time ago, I -- I don't think,
16 although I could be wrong about this, it was very
17 different, or at least it appeared to me, that at least
18 on its face was different relative to the rights -- who
19 had the right to change an order, for instance, on the
20 amount and, you know, the timing. I had no -- I need to
21 learn more about this aspect, because it is -- appears
22 to be very different than it was a while back.

23 Another thing that I think is different is that
24 we, today, have much more of an opportunity to utilize
25 technology, and I understand that the department spent

1 some goodly amount of money to -- you know, for the
2 automation system that we use now, yet it does not
3 interface with many of the other state agencies that
4 would be so helpful, it seems to me, in locating and
5 working with the noncustodial parent on this.

6 Can you talk to me a little bit about -- or to
7 us a little bit about this \$1.5 billion dollar, as I
8 understand it -- correct me if I'm wrong about the
9 numbers or any part of what I've said -- this
10 \$1.5 billion dollar investment that does not interface
11 with the basics, like the DMV, the Department of
12 Insurance, the CDCR. These are, it seems like, logical
13 places that you might find some of these folks that need
14 to be found.

15 MR. STURLA: We have identified probably about
16 80 separate interfaces that would be helpful in the
17 child support world. As part of the development and
18 implementation of the system, since these interfaces
19 were not required for federal certification, some of
20 those interfaces or many of those interfaces were not
21 created during that time.

22 Many of the interfaces now are data-exchange
23 interfaces, meaning we get the data but the system
24 doesn't do anything with the data except present it
25 in the system to a caseworker. These are all things

1 that need to be improved as we go forward to improve the
2 functionality of the system, because, of course, the
3 ideal interface is one that receives the data and takes
4 the next appropriate step in dealing with that data so
5 that no caseworker intervention is necessary. But we --
6 Each one of those interfaces is something that we are
7 aware of and that we are working on.

8 SENATOR OROPEZA: You are. And what's your
9 view -- again, it's a timing question like the Chair had
10 on some matters. What's your view on the timing on
11 engaging some of these agencies like DMV and Department
12 of Insurance and others?

13 MR. STURLA: We have discussions with those
14 departments about creating the interface. Right now,
15 defining what data we wish to have and how we wish to
16 use that data in our system is subject to analysis and
17 design.

18 SENATOR OROPEZA: All right. Okay. Thank you.
19 Thank you, Mr. Chair.

20 CHAIRMAN STEINBERG: Thank you. Let's hear
21 from witnesses in support of the nominee. Come on up.
22 If there are other witnesses in support, come on up as
23 well.

24 MS. RODRIGUEZ: Good afternoon. I'm Iliana
25 Rodriguez, president of the Child Support Directors

1 Association and director in San Mateo County.

2 On behalf of the board of directors of
3 California's Child Support Association, thank you,
4 Senator Steinberg and Senators of the Rules Committee,
5 for the opportunity to speak today at the confirmation
6 hearing of the director of the California Department of
7 Child Support Services, James Sturla. I also want to
8 welcome Mr. Sturla to the department.

9 Our association, which represents the local
10 child support directors of California's 58 counties,
11 has had a long relationship with the Department of Child
12 Support Services over the years, and we look forward to
13 growing and strengthening that relationship still
14 further under Mr. Sturla's leadership.

15 I have had the honor of working with Mr. Sturla
16 when he was the local child support director in Orange
17 County and during his tenure as a board member and past
18 president of the Child Support Directors Association in
19 California. He has battled passionately on behalf of
20 this program in his 17 years. His ideas and ideals are
21 stamped on many an issue.

22 In his short term as director of California's
23 Department of Child Support Services, Mr. Sturla has
24 demonstrated his desire to work in a strategic,
25 thoughtful, and collaborative manner to increase

1 collections and improve performance in California.

2 Under Mr. Sturla's leadership, you can be
3 confident that California's child support program will
4 be led by a man who is extremely knowledgeable about the
5 program and its issues, who is steadfast in his purpose
6 to attain the highest level of performance, is outcome
7 focused, and who holds himself to the highest standards.
8 For these reasons, Mr. Sturla has the support of the
9 local directors who look forward to working with
10 Mr. Sturla on the many issues, some of which you've
11 mentioned today, that confront the program. Thank you.

12 CHAIRMAN STEINBERG: Thank you very much.
13 Appreciate you coming.

14 Are there any witnesses in opposition? Okay.

15 SENATOR DUTTON: I've got one follow-up.

16 CHAIRMAN STEINBERG: Go ahead, Senator Dutton,
17 and I would like to suggest a direction here.

18 SENATOR DUTTON: Okay. I'm curious on the
19 CCSAS system that we're doing. I understand it was the
20 maintenance and operation phase that created some of the
21 problems, the overrun and so forth, the cost overrun.

22 MR. STURLA: Yes. While we were implementing
23 the system, we were also operating two other systems, a
24 cases system and an ARS system, and they had to be
25 maintained and operated until CSC was finally

1 implemented in November of 2008.

2 SENATOR DUTTON: So how much will the upgrades
3 cost?

4 MR. STURLA: The upgrades -- the cost to the --
5 initial cost of the system was approximately \$800
6 million dollars, and there was approximately
7 \$100 million dollars in change requests that were made
8 to the system during the ten-year development and
9 implementation schedule.

10 SENATOR DUTTON: So how much are we going to
11 need now to finish it?

12 MR. STURLA: Well, as we go forward, we have a
13 change request, which are -- Changes to the system come
14 in three basic varieties: Number one, changes in law
15 that necessitate it; two, changes to our judicial forms
16 which our judicial counsel does; and changes in
17 functionality, which are changes to make the system more
18 cost effective and work better.

19 SENATOR DUTTON: I can appreciate all that.
20 I'm trying to get a grasp on what's it going to cost
21 me to finish the job with the upgrades and stuff. We've
22 obviously got a little financial problem here, so I'm
23 just trying to figure out what it is, if you can give me
24 a dollar amount, and then I'd also like your thoughts as
25 to where we're going to get the money.

1 MR. STURLA: Right now -- We are developing our
2 budget right now. I will say that we expect to have
3 significant savings. This past year we spent \$223
4 million dollars on our automation costs. I expect
5 substantial savings in next year's budget from that.

6 SENATOR DUTTON: You can't give me hard
7 numbers?

8 MR. STURLA: I don't have a hard number for
9 you, Senator. I'm sorry.

10 CHAIRMAN STEINBERG: All right, Mr. Sturla.
11 Thank you again for coming today and your public
12 service. Your 365th day is the 5th of January, and you
13 come before this committee, as I said earlier, with
14 excellent credentials. And I look forward, hopefully,
15 to casting a yes vote in support of your confirmation,
16 but I'm not ready to do so today, because the
17 conversation that we have had here illustrates, I think
18 for me, at least as chair of the committee, and I would
19 expect for my colleagues as well, that we want goals and
20 timetables that are specific, because you're now the
21 third administrator in three years. And everyone does,
22 in fact, get up and say, you know, they're optimistic.
23 You know, we've all read and know of strategic plans and
24 master plans and all of that, and yet you look at these
25 statistics that you're not responsible for, this has

1 been a long history, and it speaks to the need for
2 aggressive action to improve performance.

3 And so I will be prepared to vote for you and
4 encourage the committee to do the same after we receive
5 from you and your office a more specific detailing of
6 goals and timetables around the following: When do you
7 expect California to improve on its national ranking of
8 46 out of 51 on current collections? By what time
9 period can we expect that ranking to jump to where?

10 And I encourage you to be conservative. Don't
11 just tell us what we want to hear. We'd like you to
12 report in six months it will go from 41st to first, but
13 make it credible, make it realistic, as long as it
14 demonstrates real improvements over time. The same with
15 arrearage collections, the same with the timetable for
16 improving cost effectiveness.

17 And Senator Oropeza I thought asked a very
18 important question about the integration of these
19 various modes of technology that allow us to work with
20 the DMV and the Department of Corrections and the
21 various departments of social welfare so that you have
22 access to as much information as possible to be able
23 to help counties find someone who is not paying the
24 child support that they owe.

25 In other words, this process, which it sounds

1 like you're going through anyway now, we would like to
2 see it, and we would like to see it with as much
3 specificity as possible so that we can say together that
4 three years from now, we improved our ranking by
5 100 percent, or we improved our ranking by 50 percent,
6 and here's what we did to get there. I think it will
7 make your job and the mission of all who work with you
8 that much more focused, that much more direct, and
9 together we can be on the same page.

10 Do you think you can do that over the next
11 month or two?

12 MR. STURLA: I believe I can, Senator.

13 CHAIRMAN STEINBERG: Okay. Thank you very
14 much.

15 So without objection, unless somebody wants to
16 vote, I would like to put it over without prejudice.
17 And, again, I look forward to voting for you, but let's
18 get that information so that we are specific about where
19 we want to go with this department.

20 MR. STURLA: Thank you.

21 CHAIRMAN STEINBERG: Thank you very much, sir.

22 All right. Let us move next to Ken Yeager as a
23 member of the Air Resources Board.

24 Mr. Yeager, how are you?

25 MR. YEAGER: I'm fine, thank you.

1 CHAIRMAN STEINBERG: Good. Welcome, welcome,
2 welcome. Any member of your family, or friend or foe,
3 that you would like to introduce?

4 MR. YEAGER: No. They're all back in San Jose
5 listening to this online.

6 CHAIRMAN STEINBERG: Okay. Well, very good.
7 Hi, everybody.

8 Please go ahead with an opening statement.

9 MR. YEAGER: Thank you. Chairman Steinberg and
10 Members of the Rules Committee, thank you for this
11 opportunity to come before you today for your
12 consideration of my appointment to the California Air
13 Resources Board.

14 It has been my distinct honor to serve on the
15 Air Resources Board for the last eight months. I feel
16 fortunate to have been appointed by Governor
17 Schwarzenegger to the ARB at such an historic time. It
18 is my hope that I can contribute to the implementation
19 of AB 32, given my academic background, my years of
20 experience in local government, and my passion for
21 improving the physical well-being of California
22 residents, particularly children. I believe the
23 evidence is clear that poor air quality contributes to a
24 higher incidence of asthma in children and leads to
25 unintended secondary health problems, such as obesity

1 and diabetes.

2 My six years as a member of the San Jose City
3 Council and almost three years on the Santa Clara County
4 Board of Supervisors gives me insight into the role that
5 local government has in reducing greenhouse gas
6 emissions. One significant way we can reduce our carbon
7 footprint is through better land-use planning and to
8 understand the cause-and-effect relationship between
9 smart growth, vehicle miles traveled, and clean air.

10 As Santa Clara County's representative on the
11 Bay Area's Metropolitan Transportation Commission, on
12 the Association of Bay Area Governments, I advocate for
13 policies that promote such planning, as well as those
14 that advance the principles of SB 375.

15 CHAIRMAN STEINBERG: You got my vote.

16 MR. YEAGER: As the recession continues to
17 reduce --

18 SENATOR OROPEZA: Good call there.

19 MR. YEAGER: Nothing like a little bit of
20 homework from the college professor, I guess.

21 As the recession continues to reduce the number
22 of jobs in California, I will be working with our local
23 building trades unions and our community colleges to
24 help train people to gain the skills they need for
25 green-collar jobs. As the representative on the Bay

1 Area Air Quality Management District, on the ARB, and as
2 a county supervisor from the Silicon Valley, I hope to
3 be a link between the ARB and innovative companies in
4 Silicon Valley that are at the forefront of our new
5 green economy.

6 I believe very strongly in the mission of the
7 California Air Resources Board. Global warming and
8 climate change are two of the most critical issues of
9 our time. As a nation, we must do all we can to limit
10 our dependence on foreign oil. As consumers, we must
11 prioritize and value energy conservation. As
12 policymakers, we must encourage and promote the use
13 of alternative energy sources. And as stewards of the
14 lands, we must protect our forests, oceans, rivers, and
15 lakes.

16 The foremost in my decision-making process when
17 I vote on regulations at ARB meetings is how our actions
18 will improve the quality of air for our most vulnerable
19 populations, namely children, seniors, and the infirm.
20 The impact of poor air quality on the health of these
21 populations is staggering in both human and economic
22 terms. For children it means higher rates of asthma,
23 and for seniors it means higher rates of chronic
24 pulmonary diseases. For us as a state and a nation, it
25 means higher medical costs.

1 In contrast, cleaner air increases the overall
2 health of our population, resulting in increased
3 physical activity which can lead to wide-range impacts
4 on health by decreasing obesity, cardiovascular
5 diseases, cancer, and improving the overall quality of
6 life.

7 As a member of the ARB, I hope to bring more
8 attention to these issues, especially the impact the air
9 quality has on public health and our physical
10 well-being.

11 Thank you again for your consideration of my
12 appointment. I'm now happy to answer your questions.

13 CHAIRMAN STEINBERG: Thank you. Is it Doctor
14 or Mister?

15 MR. YEAGER: Doctor.

16 CHAIRMAN STEINBERG: Dr. Yeager. Very good.

17 Senator Dutton, would you happen to have any
18 questions?

19 SENATOR DUTTON: How do you feel about SB 295?
20 Sure.

21 Back when we met in June, I had asked you if
22 you had a chance -- Well, first of all, let me back up
23 just a tad. Let me ask you a question that came up in a
24 hearing the other day. Do you happen to feel small
25 business is expendable with regards to enacting the

1 Climate Change Act?

2 MR. YEAGER: I don't believe they are
3 expendable.

4 SENATOR DUTTON: Thank you. Appreciate that.

5 In our last meeting when you and I met back in
6 June, I asked you if you had an opportunity to take a
7 look at some of the peer reviews of the AB 32 economic
8 analysis that was done, and you indicated to me at that
9 time that you had not. I just wondered if you now had a
10 chance to look at them.

11 MR. YEAGER: Senator, I happen to have a copy
12 of the latest report that I believe that you were making
13 reference to during our conversation.

14 SENATOR DUTTON: That's not the Sac State one,
15 is it?

16 MR. YEAGER: This is the Sac State one.

17 SENATOR DUTTON: That's not the one. That
18 wasn't out. The ones I'm talking about is -- There was
19 a UCLA professor by the name of Matt Kahn who noted that
20 the cost of regulations is likely to be much larger than
21 what was recorded, and this is in the economic analysis
22 done by CARB. And also you have Harvard professor
23 Robert Stavins who noted that the economic analysis was
24 terribly deficient in critical ways and should not be
25 used by state government or the public for the purposes

1 of assessing the likely cost of CARB's plans. That's
2 his quote. Those were the two reports. And of course
3 our own LAO had noted, when they did a review of the
4 report, the economic analysis, that the valuation of the
5 cost and savings were inconsistent and incomplete.
6 Those are actually the three that I talked to you about.
7 Have you taken a look at any of those three?

8 MR. YEAGER: Yes, I have, Senator.

9 SENATOR DUTTON: And what's your opinion?

10 MR. YEAGER: You know, it's a very worthy
11 conversation that goes on with these studies. I think
12 certainly with my academic background, you realize there
13 are many ways to look at various issues, and I certainly
14 value research.

15 As California is in the forefront of many of
16 these decisions, I think it's important that we do it
17 right. I think trying to get to the goal line is never
18 easy. I think it's important for all of us again to
19 look at the studies to see what they say and to really
20 come up with -- as close as we can to the right answers
21 that we have.

22 As I think you know, we will be receiving a
23 report from ARB staff in December with another look at
24 the economic analysis, and certainly at that time we can
25 see what they've included as far as the studies that you

1 have reported, and certainly the conversation will
2 continue on from there.

3 SENATOR DUTTON: In the meantime, we've lost
4 another 750,000 jobs right now, and regulatory heaviness
5 is one of the things cited as one of the causes, and
6 it's also one of the things I'm hearing. I don't
7 understand if you said you do not feel that small
8 businesses are expendable, why wouldn't you want to put
9 a high level of importance on the economic analysis and
10 make sure we get it right.

11 As you just pointed out, the one that was just
12 put out by Sac State, those professors, they estimate
13 that the AB 32 will cost each small business in
14 California nearly \$50,000 and will add 1.1 million
15 people to our unemployment lines.

16 Now, I don't understand why you feel that we
17 shouldn't be taking a real serious look at this, because
18 even if it's remotely true that this could be possible,
19 I think I'd be really concerned if I was about to embark
20 on a new regulatory scheme with fees and everything
21 else. I would want to make sure I kind of got it right.
22 And right now, I don't have the confidence that it is
23 right, and I'm really concerned that you -- as a member
24 of the board, you don't seem to feel that some of these
25 small business operators -- and I'm not talking about

1 the giants, the big boys. I'm talking about the small
2 guys. I don't see why they don't seem to be getting
3 more of a fair hearing when they're dealing with ARB.

4 MR. YEAGER: I hope I've stated that I do take
5 this issue very important, and certainly as someone who
6 represents many of these small businesses in San Jose
7 and Santa Clara County, I certainly understand that --
8 the impact that the recession and many of the government
9 regulations is having on them.

10 My feeling is that the ARB staff and certainly
11 the board takes this whole issue very seriously. I know
12 again in December we will be discussing the new economic
13 analysis. I'm not sure exactly when it will be out, but
14 I know these things take time to be able to get the
15 information and to do it right. So I don't believe
16 anybody is dragging their feet on this.

17 SENATOR DUTTON: Well, I just want to remind
18 you I was around here when AB 32 was passed, and there's
19 probably about 12 or 13, maybe 14 references about the
20 economic liability of what our action plan was going to
21 be. And now it's supposed to be of critical importance,
22 and yet I see CARB just keep going on. It's almost like
23 you're trying to take -- and this is strictly my own
24 personal opinion. It's certainly not shared with the
25 majority, probably, on this committee, but, you know,

1 right now, what I'm concerned about, we're creating a
2 whole bunch of problems right now that people are having
3 trouble dealing with on top of a recession, okay, and
4 supposedly we're supposed to be setting an example for
5 the rest of the world. Well, I've got to tell you, if
6 we don't get it right, nobody's going to follow this
7 example. And then the only thing we've accomplished at
8 this point, we've prolonged the recession, we've
9 actually created a lot of economic hardship on people,
10 and for no good reason, because if we don't get it
11 right, nobody else is going to follow us.

12 MR. YEAGER: I agree.

13 SENATOR DUTTON: That was my concern I
14 expressed to you back in June. I still have it.
15 Frankly, I'm a little disappointed that CARB hasn't
16 actually been more proactive in making sure we get it
17 right.

18 CHAIRMAN STEINBERG: How much -- Just to follow
19 up, because it's a very important line of questioning,
20 how much time do you or does CARB spend on the green
21 economy, on the opportunity that we all talk about to
22 create high-wage green jobs? Is that a frequent topic
23 of discussion at CARB meetings, how to integrate the
24 importance of the economy with a good healthy climate?

25 MR. YEAGER: Absolutely. We have many business

1 representatives testifying at our meetings. Certainly,
2 with all the workshops and the outreach that ARB staff
3 does, certainly includes local businesses. I think ARB
4 staff has done a great job holding workshops throughout
5 the state making sure that they receive input from
6 people. Certainly, again, for those of us who are
7 elected officials on the ARB board, I've been very aware
8 of the need for more green jobs, for the training of
9 people. We certainly have done some things in the
10 community colleges in the Santa Clara County area.

11 So, again, we have lost so many jobs, and so
12 many people are looking for jobs, we know that this is
13 one of the sectors that certainly can grow, and we need
14 to make sure that our workforce is ready for those jobs
15 when they become open.

16 CHAIRMAN STEINBERG: Over time, I know that
17 AB 32 planning process and all that it entails and all
18 the controversies, that it's enough work to do for a
19 board, but, really, the opportunity to turn Senator
20 Dutton's legitimate concerns on their head I think is to
21 be much more bold about jump-starting a green economy.
22 I mean, who's looking at our public finance system?
23 Who's looking at our tax incentives? Who's looking at
24 our bonds and the way that we pass bonds? We're looking
25 at it, to be honest with you, some of it; but, you know,

1 in the midst of this fiscal crisis, et cetera, ARB is in
2 a perfect place to expand its scope to not have it be an
3 either/or, because it can't be either clean air and
4 healthy climate or a good strong jobs base. I would
5 encourage more thought and more bold action.

6 MR. YEAGER: Thank you. I know there's a
7 number of members of the ARB staff here in the audience
8 today, and I'm sure they've heard your comments. And
9 I'll certainly take them back to Chairman Nichols and
10 everybody on the board.

11 CHAIRMAN STEINBERG: Appreciate it.

12 I want to ask you, as the Bay Area
13 representative, your view on inner-basin pollution
14 transport, having nothing to do with the fact that I
15 represent Sacramento in the State Senate. That means
16 that, you know, it's been a long-held topic of
17 discussion about as the Bay Area improves its air
18 quality, air quality of the Sacramento-San Joaquin basin
19 gets worse, and your view on how to balance two very
20 important regions of our state.

21 MR. YEAGER: It's interesting with the RTAC
22 coming up with their goals for the cleaner standards for
23 each of the regions, we're still sort of waiting for
24 them to issue that report, which will certainly happen
25 in September, and at this point we don't know whether

1 it's going to be overall goals for the state or whether
2 they're going to do it by region. Certainly, the Bay
3 Area has better air quality as opposed to the San
4 Joaquin Valley and more of the inland areas, and so it's
5 a question of how you sort of balance that all together.
6 Certainly, some of the regulations will affect the
7 Valley more than they do on the coast.

8 I think, again, all of us are sort of waiting
9 for the RTAC to make their decisions, and I think that
10 will help guide our decisions better.

11 CHAIRMAN STEINBERG: My last question: Impact
12 on the three-day furloughs on the ARB staff. What can
13 you tell us about what you have seen as a member of the
14 board?

15 MR. YEAGER: It has taken a big toll. As you
16 can imagine, this is a very critical year for ARB
17 working with many of their regulations, certainly trying
18 to continue on with their public input, and to lose
19 those three days a month I think caused a lot of
20 frustration and a lot of stress on the organization.
21 Senator Dutton was saying we need to do it right, and
22 this certainly takes a lot of staff time away from the
23 critical work that they're doing.

24 CHAIRMAN STEINBERG: Okay. Thank you,
25 Supervisor. All right.

1 Are there other questions?

2 SENATOR AANESTAD: Sure.

3 CHAIRMAN STEINBERG: Senator Aanestad.

4 SENATOR AANESTAD: Doctor Yeager, thank you for
5 being here. I don't buy a lot of, you know, this green
6 economy. Maybe in the year 2050 we can achieve some of
7 the goals that the legislature has been talking about,
8 but the fact of the matter right now is hundreds of
9 thousands of jobs, real jobs, not green jobs but real
10 jobs, are being lost, and a lot of them, in my district,
11 due to decisions made by CARB.

12 I can tell you that of the three largest
13 trucking firms in the 4th Senate District, two are going
14 out of business -- well, one is moving to Oregon, the
15 other is going out of business -- because they cannot
16 comply with the economic facts of life based on the set
17 of regulations that came out of the staff of CARB that
18 you laud and I fault for doing poor research, not having
19 research available for the legislature to look at,
20 especially the legislative analysts being very critical
21 when they're trying to do their projections and can't
22 even get the information.

23 How can you sit there as the director and say
24 that you have such faith in the CARB staff? I happen to
25 think that maybe three furlough days isn't enough. The

1 less we make the CARB staff come to work, maybe the
2 better off the economy of California will be. That's
3 how hard line I am on this position.

4 I have some questions based on some of your
5 opening statements. First of all, where does CARB find
6 in any of its mandate getting into issues such as land
7 use planning and smart growth? Is not CARB based on --
8 to set air quality standards, especially regulating
9 mobile sources of pollution and then working with the
10 local air districts on the stationary? Isn't that their
11 charge? Is land-use planning and smart growth part of
12 their overall charge? I can't find it anywhere in AB 32
13 or anywhere else where this is really the purview of the
14 air quality board, and yet it has a lot to do with their
15 past performance.

16 I'd like to have you respond to: Where do you
17 find that charge?

18 MR. YEAGER: Senator Steinberg might be able to
19 help me out here, but SB 375 specifically gave some of
20 the regulation authority to ARB to carry out the mission
21 of SB 375.

22 CHAIRMAN STEINBERG: More specifically, if I
23 may, that's exactly right. This bill, of course, passed
24 both houses of the legislature last year, signed by the
25 governor into law, went into effect January 1st, and it

1 specifically gives ARB the obligation to set targets,
2 air-quality targets, for the 17 metropolitan planning
3 organization regions of the state, so the ARB is written
4 directly into the law.

5 SENATOR AANESTAD: Second question: You made
6 the statement that we need to do all we can do to become
7 less dependent on foreign oil. Do you personally
8 support increased oil production coming from Los Angeles
9 County, specifically, let's even say, off of
10 Santa Barbara?

11 MR. YEAGER: I am not in support of offshore
12 drilling off the coast of California.

13 SENATOR AANESTAD: So you are not in support of
14 all we can do to get less dependent on foreign oil.

15 MR. YEAGER: I believe with our efforts with
16 renewable energy, with better conservation, with
17 hydropower, any number of sources that we have here,
18 that we'll be able -- I hope to be able to create enough
19 raw energy that it does lessen our dependence on foreign
20 oil.

21 SENATOR AANESTAD: But you know that's not
22 happening. Solar, wind, biomass, all of these have been
23 environmentally challenged in the courts,
24 technologically so expensive that we can't afford to do
25 it without government subsidy. This is what your green

1 economy and all your new green jobs or so-called green
2 jobs are going to be based on, and yet we can't get a
3 single biomass plant up and running in the area where
4 California has its forests because of environmental and
5 legislative restrictions. It's all pie in the sky.
6 It's all double-talk. And in the meantime, real jobs
7 are being lost every day in this state, and much of that
8 is the direct result of the lack of foresight by the
9 Air Resources Board, which you seem to support, in
10 considering the economic question to some of the
11 decisions they're making regarding air quality
12 standards. How do you react to that?

13 MR. YEAGER: You are correct. I am a supporter
14 of the California Air Resources Board. I think it can
15 always do better. It can always receive as much input
16 as it can from the public and from businesses so that
17 they can do the best regulations as best they can. I
18 think there's a tremendous sense that, again, we need to
19 do it right here first. Other states, other countries
20 are looking at what we're doing. We are certainly
21 paving new territory on all of these issues.

22 Again, I think all of us take very seriously
23 the issues of global warming and the impact it's had on
24 the environment. All of us are trying to do as good of
25 a job as we can, and that often again means more

1 dialogue, more research. But I think certainly the
2 legislature and the voters of this state have certainly
3 asked us to do all we can to deal with these very
4 important issues.

5 SENATOR AANESTAD: I guess I'd just make one
6 more comment. In these new green jobs that you're
7 talking about -- Let's talk about biomass. You know,
8 I'm thinking about a year ago, in one day, the amount of
9 carbon put in the air in my 4th Senate District alone
10 from uncontrolled forest fires, over 1,000 of them
11 starting in one night, much of which could have been
12 reduced had we had some honest effort in reducing
13 biomass from the floor of the forest, an effort which
14 has not even a year later started. Maybe we need
15 instead of thinking about -- and the result of all that
16 carbon in the air --

17 You can pass all the regulations you want,
18 because China is putting much more than that in the air
19 every day that's coming over here. How can you expect
20 that anything that you do as far as the kinds of
21 decisions that have been made are going to have any
22 impact whatsoever on global warming until you get
23 compliance and control of all of these wild fires, all
24 of the carbon coal in the air from China, everything
25 that Europe is doing, which, by the way, they've gone

1 backwards on their air resources regulations as of six
2 months ago.

3 It seems like we're not leading the world.
4 We're kind of like being the tail that's kind of
5 following wherever the dog is going.

6 CHAIRMAN STEINBERG: We'll take it, as Senator
7 Aanestad indicated, as a comment and a very strong
8 opinion. I'll let you wrap it up in your closing.

9 Let's see if there are witnesses -- Do you have
10 a question, Senator Oropeza? Sorry.

11 SENATOR OROPEZA: Just -- Shouldn't take long,
12 Mr. Chair.

13 First of all, Dr. Yeager, I want to express my
14 appreciation for the time that we spent talking.

15 MR. YEAGER: Thank you.

16 SENATOR OROPEZA: And many of my questions were
17 answered there.

18 I'd like to ask you sort of a big-picture kind
19 of question, and it's not on policy. It's on your own
20 view of yourself and the board that you seek to continue
21 on. And -- okay.

22 Yourself, the board, and then sort of the
23 people of California as the beneficiaries or the
24 recipients of the product that you all put out there in
25 terms of the regulation enforcement, et cetera.

1 It's not a big question, but how do you view
2 how you will fit, where you will fit, going down the
3 road for potentially a little bit of time or potentially
4 quite a bit of time? How do you view your role in the
5 context of these other sort of groupings, which is your
6 board? How do your view your relationship and what you
7 will do as a board member, what your responsibility is,
8 what the board's responsibility is, then, to the public
9 at large?

10 MR. YEAGER: I believe we have a very
11 impressive 11-member board, and each member brings a
12 different perspective, which I think we certainly need
13 to make better decisions. Because of the years that I
14 have spent in local government, I believe that's one of
15 the perspectives that I bring, and I want to make sure
16 that before passing a new rule or regulation, that the
17 board and staff understands the impact it will have on
18 local government.

19 Those of us who deal with land use and
20 transportation understand how it really works when the
21 rubber hits the road and certainly want to make sure
22 those are incorporated well into the regulations that we
23 have.

24 Like you, I work very much on public health
25 issues and children's issues. It's one of the reasons

1 that I wanted to serve on this board. I care about
2 public health and making sure the air quality is good.
3 It promotes physical activity, outdoor physical
4 activity, and so I want to make sure that all of the
5 regulations that we pass are tied into that.

6 There's a third part, and maybe it's the
7 professor side of me coming out. I think many people
8 don't quite understand a lot about ARB and how it
9 operates and who's even on the board. And I've been
10 working very hard, certainly in my county and the nine
11 Bay Area counties, to get out that information so people
12 can respond, and they can read up, and they can be part
13 of the discussion that is being held.

14 SENATOR OROPEZA: Just to quickly follow up on
15 that, understanding that you view that as, you know,
16 sort of your relationship to the world, so to speak,
17 this world, how would -- how would your agenda of -- you
18 mentioned children and the other things that you
19 mentioned earlier as concerns -- manifest themselves?
20 How do you see yourself contributing beyond, or do you
21 just think it is sharing your input and your point of
22 view, which I concur is extremely valuable.

23 MR. YEAGER: I believe ARB staff and our
24 director are certainly responsive to the board, as they
25 should be, and, again, each of us bring a different

1 perspective and, certainly, areas that we need to go
2 forward with the regulations. Again, these are very
3 complicated, so, again, you want to make sure that you
4 do it right. And a lot of it, of course, is all of us
5 doing our homework, being very active participants of
6 the issues that are going on. And, again, understanding
7 the repercussions that many of them have, and I
8 certainly understand Senator Dutton's concerns as well.
9 So it's, again, going as deep as we can in understanding
10 what the overall impact of our regulations will be.

11 SENATOR OROPEZA: Thank you. And just finally,
12 I would share with you my hope that as a member of this
13 board for between whenever it gets approved on the floor
14 to 11 years, which we figured out was about max that you
15 could potentially serve -- oh, no. It wasn't 11.

16 MR. YEAGER: It would be about nine.

17 SENATOR OROPEZA: It's a goodly amount of time.

18 MR. YEAGER: It is.

19 SENATOR OROPEZA: In that time, do you see a
20 time when actual board members would bring proposals, or
21 would it be more of a reaction to what the legislature
22 brings to you all and also what is sort of generated by
23 staff as a result of conversation that board has?

24 MR. YEAGER: Again, I think those of us
25 particularly who served in local office, but certainly

1 here at the state level as well, we're not there to be a
2 potted plant, you know. We have many of our own ideas,
3 and it's our obligation to bring those forward and have
4 it as part of the discussion. Certainly, many of the
5 times it is responding to staff; but, again, we all need
6 to be very active participants. And there certainly
7 will be issues that I see and concerns that I will raise
8 that other board members or staff won't, because that's
9 not their perspective or they're dealing with other
10 issues at the time.

11 SENATOR OROPEZA: So I'm sort of leading you to
12 water, but -- So you would see yourself potentially
13 bringing issues in the areas that you've expressed, and
14 perhaps others, to the board itself for direction to the
15 staff?

16 MR. YEAGER: Absolutely. Absolutely. And,
17 again, that's part of what excites me about serving on
18 the ARB board, being able to be that type of
19 participant.

20 SENATOR OROPEZA: Thank you.

21 CHAIRMAN STEINBERG: Thank you, Senator.
22 Anybody else? Senator Cedillo.

23 SENATOR CEDILLO: My regular stuff. Since you
24 guys are -- mission is to address concerns about mobile
25 sources of air pollution, you know, in our state -- This

1 isn't a comment, but a question about your perspective
2 or when are you guys going to weigh in. We actually
3 don't permit 2-1/2 million motorists to drive with a
4 license, and as a result we have over 10 percent of the
5 motoring public driving the oldest vehicles on the road,
6 and they're the most polluting vehicles. So given this
7 is your mission and your concern, I'm wondering if you
8 have done any studies measuring the impact of that
9 policy on both the economic and public health of the
10 State of California, concerns about it. I'd like to
11 hear from you on it.

12 MR. YEAGER: Senator, in the eight months that
13 I've been on the board, I don't recall that issue coming
14 up before, so I'll get back to you as soon as I can talk
15 to staff and answer that question.

16 SENATOR CEDILLO: I'm excited that you're
17 professorial about this and that you would have a
18 professorial approach to figuring out that 10 percent
19 seems to be a significant amount, a measurable amount,
20 and they're driving the most polluting vehicles. We do
21 a lot of things to try to improve the quality of air on
22 our highways, congestion pricing, try to encourage
23 behavior for carpooling, we encourage hybrids, all those
24 we go to great pains to measure what their impact is on
25 our public health. Here is 10 percent, we know for

1 sure, given a different circumstance, would be driving
2 newer cars, less polluting, more efficient, and yet we
3 continue to be kind of -- I'll say agnostic about the
4 impact, forcing 10 percent of our motoring public, 2-1/2
5 million people, to drive the oldest vehicles in the
6 state.

7 MR. YEAGER: I assume that was part of the
8 philosophy behind the Cash for Clunker program, to get
9 some of those vehicles off.

10 SENATOR CEDILLO: Right. That's precisely my
11 point. So you take initiatives like this Cash for
12 Clunkers, that's the basis for it, and yet on the other
13 hand we have policies that don't permit 2-1/2 million
14 people to participate in that.

15 MR. YEAGER: I understand.

16 CHAIRMAN STEINBERG: Thank you, Senator.

17 Are there witnesses in support of the nominee?
18 Come on up. Take them all, all at one time. Briefly,
19 if you might. Thank you.

20 MR. MAGAVERN: Chairman Steinberg, Senators.
21 Bill Magavern with Sierra Club California just here to
22 say a few brief words in support of the confirmation of
23 Dr. Yeager.

24 The bar has been set high for the Bay Area
25 seat on the board. The last two occupants were

1 Mark DeSaulnier and Jerry Hill, who were clean-air
2 champions, and we think Governor Schwarzenegger chose
3 wisely in appointing Dr. Yeager. He does a lot of the
4 important work in between meetings to make sure he's
5 prepared, asks good questions, and in the eight months
6 he's been on the board, we think he's done an excellent
7 job. He understands the connections among land use and
8 transportation and emissions. He focuses on health and
9 making sure that we base decisions on the best
10 information.

11 For example, when the board was considering the
12 low carbon and fuel standard, Dr. Yeager came out
13 strongly for considering all of the life-cycle emissions
14 that go into the production of fuel, which was an
15 important step forward. So we're happy to support his
16 confirmation.

17 MS. HOLMES-GEN: Mr. Chairman and Members, I'm
18 Bonnie Holmes-Gen with the American Lung Association of
19 California, and we're also very pleased to support
20 Dr. Yeager's confirmation. And we want to say we are
21 really impressed with his commitment to improving air
22 quality and public health, and to reducing the suffering
23 of individuals with asthma and other chronic lung
24 illnesses in California.

25 We also find Dr. Yeager very accessible to

1 address -- to listen to and address our issues and
2 concerns, and we find that he's committed to ambitious
3 and workable solutions to reduce global warming and
4 promote smart growth. As you can see, he takes time to
5 deeply study the issues and understand them from all
6 sides. We think he's a very strong addition to the
7 board.

8 CHAIRMAN STEINBERG: Thank you.

9 Next.

10 MS. BAUTISTA: Nidia Bautista with the
11 Coalition for Clean Air. We also support Dr. Yeager's
12 appointment.

13 When we look at board members to serve on this
14 very important agency, we want to make sure that they're
15 accessible, that they're informed, and that they're
16 engaged, and we feel very confident that Dr. Yeager
17 meets that criteria. And we do look forward to the ARB
18 board being an aggressive champion for clean air but one
19 that's willing to engage the communities to assure that
20 they are protected as well.

21 So with that, we just want to express our
22 support and commitment to Dr. Yeager's nomination.
23 Thank you.

24 CHAIRMAN STEINBERG: Thank you very much.

25 MS. MILLER: Yes, Mr. Chair, Members,

1 Roxanne Miller here today representing our mayor,
2 Chuck Reed, and our city of San Jose.

3 Mr. -- The mayor has known Ken since he was
4 first on the City Council of the City of San Jose. Ken
5 has exhibited always a deep knowledge of local
6 government, as well as the climate-change-related
7 issues. Ken's position as the Bay Area Quality
8 Management District board member coupled with his
9 position as a Santa Clara County Board of Supervisors
10 member brings a wealth of knowledge with regard to local
11 government and how decisions made locally, at the state
12 level, can impact the state in a larger context.

13 In the county, Ken has taken a leadership
14 position with our climate action team, real world, on
15 the ground, and knows firsthand what those decisions
16 mean as far as impacts.

17 Since CARB has been tasked with implementing
18 initiatives to make the goals of AB 32 standards a
19 reality, we are, in San Jose, and the mayor is
20 specifically confident of the contribution that Ken will
21 make to the endeavors of the Air Resources Board. We
22 appreciate your consideration and wholeheartedly support
23 his nomination. Thank you.

24 CHAIRMAN STEINBERG: Thank you, thank you,
25 thank you, Ms. Miller.

1 Any opposition?

2 All right. I'm pleased to support the
3 nomination. You come from, again, a research
4 background, but you also obviously have involved
5 yourself in politics and in public policy, and I just
6 think the combination is rare. And thank you for your
7 willingness to extend your public service. It's not
8 like you don't already have enough to do with all of
9 your other responsibilities.

10 I'd be happy to take a motion.

11 SENATOR OROPEZA: Sure, sure. I'm sorry. You
12 were looking at me and I was -- of course.

13 CHAIRMAN STEINBERG: That's okay.

14 Moved by Senator Oropeza.

15 Please call the roll.

16 MS. BROWN: Senator Cedillo.

17 Dutton.

18 SENATOR DUTTON: No.

19 MS. BROWN: Dutton no.

20 Oropeza.

21 SENATOR OROPEZA: Aye.

22 MS. BROWN: Oropeza aye.

23 Aanestad.

24 SENATOR AANESTAD: No.

25 MS. BROWN: Aanestad no.

1 Steinberg.

2 CHAIRMAN STEINBERG: Aye.

3 MS. BROWN: Steinberg aye.

4 CHAIRMAN STEINBERG: We'll put the measure on
5 call until Senator Cedillo comes back.

6 Thank you very much, Dr. Yeager.

7 MR. YEAGER: Thank you.

8 SENATOR OROPEZA: Good luck.

9 CHAIRMAN STEINBERG: All right. Let us move --
10 Do you need a break?

11 THE REPORTER: Um-hmm.

12 CHAIRMAN STEINBERG: Let's take five minutes.
13 (Recess taken.)

14 CHAIRMAN STEINBERG: The Rules Committee will
15 reconvene.

16 It's our pleasure to invite up Robert Pacheco
17 as a member of the Occupational Safety and Health
18 Appeals Board. Assemblymember Pacheco is a former
19 colleague, spent many a long hour together in committee
20 hearings, and it's nice to see you again.

21 MR. PACHECO: Nice to see you. Nice to see all
22 of you.

23 CHAIRMAN STEINBERG: Oh, I'm sorry. Dr. Yeager
24 is waiting. Before we start, I'm sorry, can we lift the
25 call, please, on Dr. Ken Yeager as a member of the Air

1 Resources Board? Two, two.

2 MS. BROWN: Senator Cedillo.

3 SENATOR CEDILLO: Cedillo aye.

4 MS. BROWN: Cedillo aye.

5 CHAIRMAN STEINBERG: That nomination goes to
6 the floor of the Senate by a three-to-two vote. It will
7 be taken up forthwith. Thank you very much.

8 Okay. Mr. Pacheco, welcome back. Is there
9 anybody that you want to introduce, family, friend, foe?

10 MR. PACHECO: I have a number of the staff
11 members from the OSHA Appeals Board with me, but my wife
12 couldn't make it today. She had things to take care of.

13 SENATOR AANESTAD: Someone had to work.

14 MR. PACHECO: Yes, somebody had to work.

15 CHAIRMAN STEINBERG: Tell her hello for us,
16 will you, please.

17 MR. PACHECO: I will.

18 CHAIRMAN STEINBERG: All right, sir. We have a
19 number of questions for you, but why don't we begin with
20 a statement from you, and maybe a little bit of a focus
21 statement.

22 I know you're familiar and aware of the
23 confirmation hearing we had for Candice Traeger --

24 MR. PACHECO: Yes.

25 CHAIRMAN STEINBERG: -- where we raised a lot

1 of significant issues about calendaring and about
2 defined structure in the settlements of Cal OSHA Appeals
3 Board, and maybe if you could be sort of directly
4 responsive to some of those issues that we raised the
5 last time --

6 MR. PACHECO: I'd be happy to.

7 CHAIRMAN STEINBERG: Thank you.

8 MR. PACHECO: Thank you, Mr. Chairman and
9 Members. I appreciate the opportunity to be here before
10 you for you to consider my reconfirmation or
11 confirmation and reappointment by the governor. I do
12 want to say that I have enjoyed the time that I've been
13 on the appeals board. I think it's been very productive
14 for me in terms of my learning of different things, but
15 more importantly I think my service to the State of
16 California.

17 I do take my responsibilities very seriously.
18 As you know, I'm a student of the law, and I have a
19 great deal of respect for the law. I believe that it's
20 important to be unbiased and to interpret the law as it
21 is written and not to write the law. That's the role of
22 the legislature.

23 The board has had a period of growth. We've
24 come from a very difficult period of time where we
25 discovered that the board had very significantly

1 increased the backlog of cases, and I call that "Justice
2 denied and safety, basically, delayed." And that was, I
3 think, something that was a challenge to me when I first
4 went on the board, and we talked about it and said, "We
5 need to deal with this." And that is probably one of
6 the causes, that is one of the causes of -- the concerns
7 that have been raised and that were raised in front of
8 the -- both the Senate Labor Committee and here in Rules
9 Committee when Ms. Traeger was confirmed.

10 Those are concerns that we take seriously.
11 We're not ignoring them. We feel they are important. I
12 look at the board and the steps that the board has taken
13 in a number of ways. I think the board has been
14 productive, has been proactive, been progressive, has
15 been responsive, and I take those in that line because
16 we -- coming into the board, there was a very difficult
17 period where we saw that cases that had been filed were
18 just out of hand, and we had to do something about it.
19 To be productive, we had to eliminate that backlog and
20 by that we had to take steps that obviously were not
21 going to make some folks happy.

22 But then once we had done that, we moved the
23 backlog, I'm very pleased to say all the cases are now
24 being heard between the time that the federal
25 regulations require us to have them. As you know, we

1 had a lawsuit against us for -- against the State for
2 not being in compliance with the federal regulations.
3 Cases were delayed. I mean, we had cases that were six,
4 almost seven years old, and they needed to be removed,
5 and we did. We've gone through and removed that
6 backlog. We're now hearing cases within ten months.
7 That's what we're required to do.

8 SENATOR CEDILLO: Pardon me. I hate to
9 interrupt you. Just so I can think about this, what was
10 the number that you started with and take us to where
11 you're at.

12 MR. PACHECO: I can give it to you -- Let me
13 give it to you in this manner. I kind of went through
14 and jotted some notes.

15 In 2005 we had 4,651 cases documented, and the
16 appeals disposed of were 4,300. That meant we disposed
17 of less cases than we took in. In 2006 we had -- 5,300
18 new appeals came in, but we disposed of 5,600. 2007 we
19 took in 5,400, but we disposed of 7,000 cases. In 2008
20 we took in 5,100 and disposed of almost 7,000 cases
21 again. In 2009, where we are now, we have taken in
22 2,200 cases, and we've disposed of 2,800.

23 We're working hard. We are using and
24 maximizing our resources. You all know the same thing.
25 All our budgets have been reduced. Our staffing has

1 been reduced, our sources and resources have been
2 reduced, and we are now doing the best we can with the
3 resources we have.

4 One of the concerns I know that has been raised
5 because of the numbers I just told you is that there
6 were a number of cases that were booked and
7 double-booked, and in some cases triple-booked, in order
8 to get the cases rolling. We tried to remove those
9 cases that we call low-hanging fruit, meaning those
10 cases easily resolved by settlement, by quick
11 disposition. And those of you who have practiced law
12 know that the judicial system went through exactly the
13 same process.

14 And Mr. Steinberg and Mr. Cedillo, I think you
15 will remember back in -- I think it was 19 -- was it
16 1998 -- 1990 to 1995, thereabouts, the court system was
17 backlogged with a number of cases, and they had to go
18 through the process of removing that backlog, and they
19 went through the same thing, basically, we did. They
20 began to expedite the cases. No continuances. They
21 were sent to arbitration, mediation, all kinds of
22 things, until that case log was manageable.

23 So we, unfortunately, had a similar problem.
24 As you know, workers' compensation now has a similar
25 problem that we had, a huge backlog, and those need to

1 be removed as well. But that's for them to control.

2 But I wanted to just say that what we have done
3 is we took a difficult situation and now made it work.
4 We're now -- And I know that one of the major issues has
5 been the scheduling. We started out this year in
6 January scheduling hearings, 197 in January, 200 in
7 February, 157 in March, 186 in April, 181 in May, 176 in
8 June, 146 in July, and one of the things that
9 Ms. Traeger said was that we were going to try to
10 eliminate and reduce that double-booking.

11 In August we only have now 29 cases that were
12 set for hearing, and I don't know how many of those,
13 actually, because we don't have the file numbers. In
14 September we have 85 cases set for hearing, and in
15 October we have 89 cases set for hearing. That's a big
16 drop in the number of cases set for hearing. That will
17 eliminate the double-booking where you will have people
18 from the division not having to appear -- handle two
19 cases at one time. I actually can give you an updated
20 schedule that takes you all the way through October.

21 CHAIRMAN STEINBERG: If you don't mind, why
22 don't we see that, because this is -- The crux of the
23 concern, as you know, Mr. Pacheco, is that on the one
24 hand, when you're dealing with a lot of cases, there's
25 scheduling challenges. On the other hand, we know that

1 if you schedule too many cases at one time, there's a
2 huge incentive for parties to settle even if the cases
3 do not involve, as you described, low-hanging fruit. I
4 mean, there may be real issues with citations. It may
5 be invalid, it may be valid. You don't know -- We don't
6 know what the circumstances are.

7 So what's troubling to me is that we had
8 Ms. Traeger's confirmation hearing -- when was that?

9 MS. SABELHAUS: In January.

10 CHAIRMAN STEINBERG: In January.

11 On June the 19th, 46 individuals write a letter
12 to you and to Ms. Traeger in which -- and Mr. Carter in
13 which they complain about this layered scheduling. They
14 say in June there were 32 days at six locations where
15 three or more cases scheduled for the same judge, same
16 location, same time. There were 14 days with four cases
17 scheduled with one day and five cases scheduled. So
18 that was two months and 12 days ago. Is that --

19 MR. PACHECO: That's a correct statement, but
20 it's incorrect in terms of the number of hearings. As
21 we go through, I can touch on that.

22 In June there were 176 cases scheduled for
23 hearing. 123 of them ultimately settled, 15 of them
24 went to hearing. So there were only in the entire month
25 15 hearings.

1 CHAIRMAN STEINBERG: That may be because other
2 parties felt like they needed to settle because there
3 wasn't enough time to have their case heard.

4 MR. PACHECO: I'm not disagreeing with that
5 point because, as you know, having been in litigation,
6 you know what happens. When you're at the courthouse
7 steps, a lot of times you do settle at the end. But I
8 don't think that statistically the numbers stand up in
9 terms of forced settlement. I say that because
10 statistically, 80 percent of the cases have settled, and
11 we went back, like, I think it was eight, ten years -- I
12 think we did a calculation, I think, for eight or
13 ten years. For that period of time, the percentage has
14 stayed consistently around 80 percent.

15 So it isn't -- and I think Ms. Candice
16 indicated to you -- she said based on the calculation,
17 there was maybe a 4 percent increase that we have
18 calculated. So if there is an attributed amount to
19 force having cases heard more rapidly, the only thing we
20 could identify was a 4 percent increase over historical
21 data.

22 CHAIRMAN STEINBERG: Okay. But I want to get
23 your central point here, because you get a complaint
24 from these 46 people. It's fairly rare for people who
25 appear before the board to be willing to put their name

1 on a letter, because obviously you would be afraid that,
2 Oh my God! I put my neck on the line or my client's
3 neck on the line. Not that you would do that, but
4 that's just sort of a natural feeling, and the fact that
5 they were willing to do it says, Whoa, there's something
6 that they're really concerned about here.

7 So the question, as I'm looking at the calendar
8 here, and I'm not sure quite how to interpret this, but
9 if I'm reading this right, August 11th, for example,
10 there is one, two, three, four -- five cases set. Is
11 that one judge?

12 MR. PACHECO: No. And I don't have an extra
13 copy.

14 CHAIRMAN STEINBERG: Well, here.

15 MR. PACHECO: I can tell you that --

16 CHAIRMAN STEINBERG: Read from here.

17 If you can hand it to the witness here, please.

18 If you look at August 11th -- I just want to
19 understand how to interpret that.

20 MR. PACHECO: Sure, I'd be happy to.

21 On the right-hand side it identifies hearing
22 type, and I have check marked the ones that are hearings
23 to let you know that those actually would be hearings.
24 The others are pre-hearings or can be done by phone
25 conference.

1 CHAIRMAN STEINBERG: So only the things checked
2 are hearings, but it's one judge per category.

3 MR. PACHECO: Right. And then the ALJ is
4 listed at the very far right, so you'll see we don't
5 have a lot of the duplication. And what we had to take
6 into consideration -- We listened to those folks and
7 their concerns, and what we did is we were concerned
8 that we were booking the investigators to testify at
9 hearings that were obviously being held at the same
10 time, maybe two hearings at one time. They had to
11 prepare for two. So you can see that the identification
12 of the district -- Look at where it says "Docket
13 number," and you'll see a -- first the date, and then
14 you'll see R something and D something. That tells you
15 the region and district. So you can see they come from
16 different regions, different districts, so that we're
17 not double-booking them as we had before.

18 CHAIRMAN STEINBERG: Okay. The check marks are
19 pre-hearings?

20 MR. PACHECO: No. The check marks are
21 hearings.

22 CHAIRMAN STEINBERG: Are hearings.

23 MR. PACHECO: Yes.

24 CHAIRMAN STEINBERG: Okay. Now I'm looking at
25 September 2nd. September 2nd, Judge HNJ or Judge RF.

1 God, I'm not reading this correctly.

2 MR. PACHECO: On the very far right is the
3 judge.

4 CHAIRMAN STEINBERG: Okay. So you've got
5 Judge RF has one hearing, Judge BF has one hearing,
6 Judge DR on September the 2nd has two hearings, both at
7 10:00 o'clock.

8 MR. PACHECO: Right. What we're doing on some
9 of those is we're now scheduling so that one is set for
10 9:00 o'clock and the other one is set for 1:30. Most
11 hearings last around two to four hours at the most.

12 CHAIRMAN STEINBERG: Okay. So -- Hold on here.

13 This is helpful, but I don't think we, as we're
14 sitting here in real time, have a chance to really
15 analyze this, because what we want to see is whether or
16 not going forward here you have spread it out in such a
17 way that says that at most, for example, a judge will
18 have two hearings scheduled, and even that at the same
19 time is problematic. And I know, because I was an ALJ,
20 that sometimes you do that, although --

21 MR. PACHECO: It depends on the difficulty of
22 the case. If you have two fairly easy cases, you can
23 dispose of them in an hour or two yourself.

24 We've got to use our time productively.
25 Sometimes you will -- In the times past, in the years

1 when I told you about the total backlog that we had,
2 they were scheduling at that time maybe one hearing a
3 week, sometimes, at the most, two hearings per week. So
4 all these cases were backing up, because they were not
5 being heard.

6 CHAIRMAN STEINBERG: So -- all right. Here's
7 what we want to do. What I want to do with our fine
8 staff here and, of course, other staff, I want to go
9 over this. How far ahead are you scheduled?

10 MR. PACHECO: I think that goes through
11 October.

12 CHAIRMAN STEINBERG: That goes through October.
13 The witnesses I would like -- if they've seen the
14 schedule, because I assume it's public --

15 MR. PACHECO: We publish it as far as we can.
16 The cases are set, like, three or four months ahead of
17 time.

18 CHAIRMAN STEINBERG: What you handed me is
19 public, correct?

20 MR. PACHECO: That is the last information that
21 we have generated. I'm not sure how much of that is
22 published, because I don't know....

23 CHAIRMAN STEINBERG: It is now.

24 SENATOR CEDILLO: Published and public are two
25 different questions.

1 CHAIRMAN STEINBERG: Published and public.

2 Okay. Fair enough. You can distinguish that.

3 MR. PACHECO: At the last stakeholder meeting,
4 we actually handed the more current listing of cases,
5 and one of the people that had been complaining about
6 the double-setting, when he had a chance to review that
7 the scheduling had been substantially reduced, I think
8 he may not have been totally satisfied, we don't expect
9 that to be the case, but we expect that at least from
10 that point on he understood we had made great headway in
11 the reduction of the scheduling.

12 CHAIRMAN STEINBERG: Okay. So let us -- We can
13 take other questions, of course. I think one of the
14 things that might be important is to hear from some of
15 the witnesses, including some of the witnesses who have
16 some concerns.

17 The other thing I would like you to be
18 responsive to is, as a lawyer, the appellate court
19 precedent -- let me put it this way. The law, and I
20 think I wrote this law, AB 1127 back in 1998, provided
21 for a \$5,000 minimum fine for willfully failing to
22 protect a worker from serious injury or death, and
23 one controversy that rose the last time with Ms. Traeger
24 is that the board has been -- sort of on its own,
25 without authority, been settling those kind of cases for

1 less than a \$5,000 fine. So I would love to hear your
2 response to that.

3 MR. PACHECO: Senator, if you recall, recently
4 we heard the Senate -- the United States Senate
5 interview Ms. Sotomayor, and she was asked similar
6 questions of that nature on cases that either had not
7 been posed or presented to her as yet, and she said, "I
8 will give due consideration to those cases and treat
9 them fairly and honestly and give, I think, what should
10 be a fair result."

11 CHAIRMAN STEINBERG: I'm not asking you about
12 *Roe v. Wade*.

13 MR. PACHECO: I know, but I'm trying to address
14 the issue. The issue is this: There are a number of
15 these cases pending before the board. As a
16 quasi-judicial body, we have to be considerate of how we
17 deal with those.

18 Let me tell you that I have some concerns, and
19 I think in my letter to you addressed to the Senate
20 about my reconfirmation I addressed that, that I had
21 some concerns about how that issue was being dealt with,
22 and I think we need to give more direction to the ALJs
23 on how that's being handled. And I believe that we will
24 be dealing with that.

25 CHAIRMAN STEINBERG: My question is a pure

1 policy question. As a matter of policy, do you believe
2 the board has the authority, under Labor Code Section
3 6409.1, to impose anything less than a minimum penalty
4 of \$5,000 on employers -- and I'll get it right this
5 time -- who fail to report a serious injury or death of
6 a worker to Cal OSHA? That's the question. As a matter
7 of policy.

8 MR. PACHECO: Senator, I read your leg. counsel
9 opinion and his thoughts on how it works and how it
10 applies. Let me say to you that an employer is not
11 cited under 6409.1, never is. The division is not
12 authorized to cite an employer under that section. You
13 can only cite them under the Regulatory Code 336,
14 Section 336. 342(a) is the penalty section. That's the
15 only way they can cite them.

16 So as a lawyer --

17 CHAIRMAN STEINBERG: You don't think -- That
18 section is not applicable to --

19 MR. PACHECO: Not that it's not applicable.
20 It's just that if you look at the interpretation of how
21 it's being applied -- The division cites, based on its
22 own regulatory framework. The director actually -- When
23 6409.1 was enacted, the director then enacted a change,
24 the director's regulation Section 336. And in Section
25 336 that was imposed under the penalty side, 342(a), it

1 says that the director -- that the regulation now shall
2 impose a penalty, "shall impose a penalty." Senator,
3 when you drafted the regulation, when you drafted the
4 law under the Labor Code, it says "may."

5 We know that it's inconsistent. You cannot
6 have a director's regulation that is inconsistent with
7 the statutory law. And I'm just -- You asked me for a
8 very broad approach. I cannot go beyond that.

9 CHAIRMAN STEINBERG: So you don't feel that the
10 regulation applies because the statute -- The statute's
11 permissive, the regulation mandatory, and you choose to
12 follow the statute. Okay.

13 I want to hear from -- Let's hear from
14 witnesses. Witnesses in support first.

15 Witnesses either in opposition or expressing
16 concern. You can identify which.

17 SENATOR CEDILLO: Can I -- just on this
18 question, Mr. President --

19 CHAIRMAN STEINBERG: Yes, of course.

20 SENATOR CEDILLO: For clarification, so there's
21 a conflict? Did your law have permissive language or
22 mandatory language?

23 CHAIRMAN STEINBERG: Well, the truth is I wrote
24 the thing ten years ago. I don't really remember, but I
25 think it was permissive. It may have been, but -- let's

1 hear from the lawyers, okay, and then we can --

2 It is "may." It's "may" in the statute, no
3 question about it. Yes.

4 MR. SCHMIDT: "...may...of not less than..."

5 CHAIRMAN STEINBERG: "May" what?

6 MR. SCHMIDT: "...may...of not less than..."

7 CHAIRMAN STEINBERG: It says "...may be
8 assessed a civil penalty of not less than \$5,000."

9 So, you know, you can either look at the "may"
10 or you can look at the language "of not less than," and
11 that's why we have courts.

12 MR. PACHECO: The other alternative might be
13 zero.

14 SENATOR CEDILLO: Right.

15 SENATOR AANESTAD: Sure.

16 CHAIRMAN STEINBERG: Oh, that can't be.

17 MR. PACHECO: I'm sorry, sir. That's what you
18 wrote.

19 CHAIRMAN STEINBERG: Okay. Go ahead. Let's
20 hear from the witnesses here.

21 MR. SMITH: Thank you, Senator Steinberg,
22 Members of the Committee. Jeremy Smith on behalf of the
23 California Labor Federation. I'll get to the specifics
24 of that \$5,000 penalty and our response on that in a
25 moment. I'm not a lawyer, so the lawyer will -- the

1 non-lawyer will start, but the lawyers will fill in in a
2 few minutes.

3 First of all, I want to acknowledge the fact
4 that over the last eight months, at the behest of the
5 Labor Committee's oversight hearing and Ms. Traeger's
6 first appearance here in January, the appeals board has
7 had some advisory committees, brought labor and
8 management together to speak about issues that we're
9 concerned about. I want to stress that it took the
10 legislature and you, Mr. Steinberg, to make them do
11 that. But they are doing it, and I would like to thank
12 Mr. Pacheco for taking part in those, as well as the
13 staff of the appeals board. Michael Wimberly is out
14 there. He's been part of that process.

15 We're concerned about not only the \$5,000
16 penalty issue, but a few other issues that lead DOSH and
17 employers to settle cases, whether it's over-scheduling,
18 whether it's lack of continuances for legitimate
19 reasons, whether it's a myriad of issues that come
20 before the board. There's no doubt, according to the
21 letter from the DOSH staff, that they are persuaded by
22 the standards and practices of the board to settle
23 sometimes. They're overworked, there's furlough days.
24 Employers appeal everything, sometimes properly,
25 sometimes improperly. But there's a lot of work to be

1 done.

2 And the way the appeals board got through the
3 backlog over the last few years -- the practices they
4 put in place to do that are still going on, and it, in
5 our opinion, creates a culture of settlement at the
6 appeals board. I think, Senator, you hit on that a
7 little earlier.

8 CHAIRMAN STEINBERG: It's a two-sided coin, by
9 the way. It's not necessarily a terrible thing. It
10 depends, right?

11 MR. SMITH: We certainly do not want a backlog.
12 A backlog does not help anybody, but we don't need to
13 not have a backlog at all costs.

14 CHAIRMAN STEINBERG: Question for you, because
15 I want to make sure we move along here.

16 Have you had a chance to look at the September
17 and October calendars that Mr. Pacheco described?

18 MR. SMITH: We have not. We had an advisory
19 committee on August 6th. They did pass out calendars
20 from then, at that point, and there were ALJs who had
21 hearings scheduled at the same time still. So they had
22 fixed the --

23 CHAIRMAN STEINBERG: But you haven't had a
24 chance to look at new ones.

25 MR. SMITH: We have not.

1 CHAIRMAN STEINBERG: I just want to know who
2 has and whether or not the new schedules are responsive
3 to the complaints.

4 MR. SMITH: The DOSH inspectors wrote their
5 letter, and, frankly, that's as far as they thought they
6 could probably go without getting into too much trouble.
7 So they couldn't be here today to speak to that.

8 CHAIRMAN STEINBERG: That was June 19th. So
9 now the calendar is the calendar. Is it better or is it
10 not? That's what I want to know. Finish your
11 testimony, and let's move on.

12 SENATOR CEDILLO: I think -- I appreciate this,
13 the leadership on this, Mr. President, because what
14 we've heard is there's -- your concern is a culture of
15 settlement, but I share the perspective of the
16 President. This is what we do, so....

17 But there's been a representation that the
18 measure of settlements before was that about 80 percent
19 of the cases settle and that the increase was only 4
20 percent -- or was 4 percent, so I don't think that's
21 sufficient for you, and it may not be, but to bring to
22 us this presentation that now there's this problem of
23 culture of settlement. It should be measured, and I
24 think it is capable of being measured. If you said,
25 "Well, before it was 100 cases that would go to hearing

1 and now only four go," and we have somebody who says,
2 "Actually, of the 100 cases, 80 would settle, and now 84
3 settle" -- I don't know. You could still object to
4 that. From your perspective, that may be the tipping
5 point, but I would like to have a measure that's
6 quantitative on the concern.

7 MR. SMITH: Well, our concern today is with
8 Mr. Pacheco and the fact that he's been on this board
9 for four years now, and it took literally an act of the
10 Pro Tem at Ms. Traeger's hearing to get the appeals
11 board to start making changes. They weren't making
12 changes.

13 The scheduling, from what I've heard today, it
14 seems like it might be getting better. We're thankful
15 for that. We are of the opinion that this scheduling --
16 these scheduling fixes could have happened much sooner,
17 and we shudder to think of the number of cases when DOSH
18 inspectors were literally having to be -- presenting
19 cases at the same time to the same judge on the same
20 day, how many of those cases got settled.

21 You know, I've seen the statistics from the
22 appeals board and --

23 SENATOR CEDILLO: That's measured. There's
24 been a measure of that.

25 MR. SMITH: Well, I would just say statistics

1 are statistics, and we have to trust what they tell us.
2 But what they have shown us around -- not with
3 statistics -- is that they do not change what they do at
4 the appeals board unless they're made to. And so that
5 leads me to wonder exactly what the stats are they're
6 showing me and how they arrive at them. And we have
7 talked about stats at length at the advisory committee
8 hearings, and I frankly have not been swayed by all of
9 the stats they've shown me.

10 So I would simply say that settlements are
11 happening. I've heard firsthand from DOSH inspectors
12 that they're forced to settle. Whatever that percentage
13 number is, it's happening. And in our opinion, when a
14 settlement happens for pennies on the dollar, a
15 workplace -- an employer -- it's just a cost of doing
16 business, and it doesn't keep the workplace safe.

17 CHAIRMAN STEINBERG: So I hate to inconvenience
18 people here, but we're in the last two weeks of the
19 session, and we've got 36 bills on call. So what I
20 would like --

21 SENATOR CEDILLO: Scheduling.

22 CHAIRMAN STEINBERG: So what I would like to
23 do, if that's all right, with respect to all the other
24 Members' schedules out there, is to take a recess for
25 about 20 minutes so that we can lift the calls, and then

1 we'll come back and we'll continue.

2 Fair enough?

3 MR. PACHECO: Fair enough.

4 CHAIRMAN STEINBERG: Thank you.

5 (Recess taken.)

6 CHAIRMAN STEINBERG: The Rules Committee will
7 come back to order.

8 Thank you again for your patience, and we
9 apologize for the delay, but let's continue the public
10 testimony.

11 I don't know who was next, but --

12 MR. SMITH: I'm just going to finish up, and
13 we'll go down the row.

14 CHAIRMAN STEINBERG: Go.

15 MR. SMITH: I just wanted to speak about one
16 more issue -- less than a minute.

17 Thanks to a piece of legislation Labor
18 Federation introduced last year, AB 1988, the appeals
19 board decided to do an abatement pilot project. When a
20 violation is appealed, there's no abatement required
21 until the appeal is heard. We're very pleased that the
22 appeals board has begun this pilot project.

23 I'm a bit concerned over some statements that
24 were made at the last meeting about them not being sure
25 about them having staff or resources to continue the

1 pilot project, as to it being a pilot project. But it's
2 definitely a concern that abatement does not happen when
3 an appeal is being heard. So we hope the appeals board
4 could find the staff and the resources in these tough,
5 tight times to do that. We believe it's a good thing,
6 and it keeps the workplaces safer in the long run.

7 And then I'll finish off by just laying out
8 some other issues that other folks may talk about that
9 we have concerns about. Venue issues. The appeals
10 board meeting, for example, in the Valley instead of
11 just West Covina, Sacramento, and Oakland. Continuances
12 that are granted to employers and DOSH inspectors for
13 legitimate reasons, lack of continuances, and
14 determining for inspectors and attorneys which cases
15 will be heard first at hearing.

16 So I'll just pass it on down to the next
17 person.

18 CHAIRMAN STEINBERG: Thank you.

19 MS. FOO: I'm Lora Jo Foo.

20 CHAIRMAN STEINBERG: Nice to see you.

21 MS. FOO: It's been ten years since I've
22 appeared before a committee chaired by you.

23 CHAIRMAN STEINBERG: And neither of us have
24 changed.

25 MS. FOO: Neither of us have changed. You look

1 exactly like you did ten years ago.

2 CHAIRMAN STEINBERG: Okay. Thank you.

3 MS. FOO: I'm Lora Foo. I'm the legal director
4 of Worksafe. It's a nonprofit that dedicates itself on
5 ensuring safe and healthy workplaces in California.

6 I will ask this committee to postpone the
7 nomination -- renomination, reconfirmation of
8 Mr. Pacheco. There has been a pattern and policy and
9 practice that the appeals board with -- over the four
10 years with Mr. Pacheco on the board, that has undermined
11 the law and are contrary to court cases.

12 Now, the 47 inspectors who wrote the letter to
13 the appeals board did not do this lightly, and the
14 issues that they raised are serious, are very serious.
15 And I just want to read a sentence or two from that
16 letter. They protest "...the board's policies and
17 practices that have significantly undermined our ability
18 to do our job in protecting the lives, health, and
19 safety of California workers. The net effect of board
20 policies has been to sabotage the division's ability to
21 extend citations and penalties on appeal.
22 Cal OSHA is forced to fight with one hand tied behind
23 its back."

24 That is a very serious allegation, and these
25 allegations have been made over the years. There's been

1 years of frustration leading to this letter sent in
2 June to the appeals board.

3 I will get to the issue of the \$5,000 penalty,
4 whether or not there is a culture of settlement, but one
5 of the things I want to point out is at a public hearing
6 on August 6th where the appeals board heard
7 stakeholders, one of the inspectors that wrote this
8 letter said that when three to four cases are scheduled
9 in a day, they had to sit down with their supervisors
10 and decide which of those cases they would have to
11 sacrifice in order that one case went to hearing. And
12 so these inspectors basically are forced to settle
13 pennies on the dollar in order to do a hearing on one
14 case solidly. And these inspectors said that this
15 practice of multiple hearings in a day, that's why there
16 have been hundreds more settlements over the last four
17 years, many with drastic reductions and final penalties.

18 When I litigated, I settled 90 percent of my
19 cases before going to trial. It's not unusual to settle
20 80 percent or 90 percent of your cases before going to
21 hearing or going to trial. The question is the quality
22 of those settlements. I did not settle cases in order
23 to reduce my backlog, in order to get the cases off my
24 calendar. I settled those cases because it was in the
25 best interest of my client, and I got the best

1 settlement for them.

2 And so when Senator Cedillo asked that question
3 of whether or not there really is the problem now where
4 80 percent -- there's 80 percent settlement in the past,
5 there's 84 percent settlement today, the question is,
6 What is the quality of those settlements? We have no
7 statistics as to the amount of settlements from those
8 years in the past where there were 80 percent
9 settlements, and if you were to look at settlements
10 today over the past many years --

11 CHAIRMAN STEINBERG: Excuse me.

12 Can somebody turn their phone off.

13 MR. PACHECO: I'm sorry. I have it on vibrate.

14 CHAIRMAN STEINBERG: Go ahead.

15 MS. FOO: The inspectors have already said that
16 they had to settle hundreds of those cases for pennies
17 on the dollar.

18 Now, there are other problems in terms of just
19 the inefficiency of the scheduling process, not just the
20 multiple hearings, but not scheduling hearings knowing
21 that it's a complex case is going to go for more than a
22 day. And so you've got situations where cases are
23 finally completed after two or three days of hearing.
24 I'll give you an example. In Oakland --

25 CHAIRMAN STEINBERG: We want to make sure --

1 Just give us the example, and then we want to wrap up,
2 because we want to hear from everybody.

3 MS. FOO: An example, in Oakland, Sheedy
4 Drayage. The first day of hearing was March 4th, 2008.
5 The second day of hearing wasn't until seven months
6 later in October of 2008, and the third day of hearing
7 was ten months after that.

8 With proper scheduling, you would have your
9 case over within two days instead of it rolling over
10 over a two-year period when witnesses may not show up
11 again, when the OSHA inspectors have to relearn their
12 case and spend an enormous amount of time, wasted time,
13 in preparing and re-preparing for a case that should
14 have been finished the day after it was actually
15 scheduled.

16 There have been arbitrary dismissal of cases
17 due to technicalities. An example is an employer who
18 was cited after a carpenter was killed on the job. The
19 ALJ, the administrative law judge, dismissed the case
20 because the citation used the name of the employer that
21 was on its business card instead of the registered
22 employer.

23 In another case, the employer was issued a
24 citation which was upheld by the administrative law
25 judge. The appeals board, on its own motion, reached

1 down and took the case under reconsideration and
2 dismissed the case. This wasn't even the employer
3 appealing. The appeals board reached out and dismissed
4 the citation because there was issues in the name of
5 Teichert Aggregate instead of the registered legal name.

6 Now, these are more onerous than a court of
7 law, and the appeals board and administrative law judge
8 hearings are supposed to be informal. These employers
9 had noticed. They were issued a citation, and instead
10 of allowing amendments to the names to conform, these
11 cases are dismissed.

12 In terms of the \$5,000 penalty, I disagree with
13 Mr. Pacheco that this is permissive. The statute reads
14 "An employer who violates the subdivision may be
15 assessed a civil penalty of not less than \$5,000." That
16 means the subdivision may or it may not assess a
17 penalty. It's either they will or they won't. And when
18 they do, then they have to assess a penalty of no less
19 than \$5,000.

20 CHAIRMAN STEINBERG: Is there appellate
21 precedent? Is there appellate precedent on this
22 question?

23 MS. FOO: Not that I know of other than the
24 legislative counsel.

25 CHAIRMAN STEINBERG: Okay. Very good.

1 MS. FOO: So in conclusion, the Cal OSHA
2 inspectors have complained about this for years, all
3 these series of problems. Mr. Pacheco has been on the
4 appeals board for four years. It wasn't until this
5 month, earlier this month, that it actually took action
6 on the multiple hearings and have decided to schedule
7 no more than two hearings per day. And this came about
8 after oversight hearings by the Senate Labor Committee,
9 after the appeals board reform legislation AB 1988 was
10 introduced, and after a whole series of public hearings
11 where labor advocates, employers, and inspectors
12 complained. And so we are asking for a postponement of
13 the decision to give time for -- to see if the appeals
14 board actually makes good on the promises that they have
15 made.

16 CHAIRMAN STEINBERG: What I want to know from
17 the witnesses here, the first two have said they come
18 asking for the postponement. I would like to know what
19 the difference between that and outright opposition is
20 in terms of your position. So let's go to Ms. Guzman,
21 please.

22 MS. GUZMAN: Thank you. Martha Guzman with
23 California Rural Legal Assistance Foundation.

24 I think the biggest difference is that we would
25 like to see if, in fact, there will be some change in

1 particular for our client community on the actions and
2 final settlements taken for the heat cases. And we have
3 quite a few outstanding from 2008, and the record on the
4 previous decisions where I think, you know, we talked at
5 length about some of those decisions during Candice's
6 confirmation hearing and the oversight hearing, but some
7 of them that got slashed from 13,500 to 250. There are
8 more outstanding cases that we'd like to see that a
9 slashing of a fatality not result in \$250, and we simply
10 don't know if the board is going to do that. We don't
11 know if Mr. Pacheco is going to ensure that a slap on
12 the hand is not going to continue for heat deaths.
13 That's one.

14 The second is more on the process. In a lot of
15 these cases, what you see, at least in the notes of the
16 decisions, is that witnesses were no longer available.
17 Witnesses could not attend. And one of the big
18 impediments in being in rural California is that you
19 can't even get to Stockton if you live in Huron. You
20 know, if you're in L.A., you can get to Huron. You can
21 get to Bakersfield. There's no reason, from our
22 perspective, that you can't use some public building in
23 Bakersfield to hold some of these hearings. This is
24 like -- This is a very basic step, and it hasn't
25 happened yet.

1 And, in fact, you know, I haven't seen the
2 calendar as revised as of today, the calendar you were
3 reviewing. There are additional calendaring sites that
4 have been made in Fresno. That's an improvement. But,
5 again, we are still certainly not in a place where we
6 could be any way supportive of what is still -- and I
7 would say not a culture of settlement. It's a culture
8 of seeing the client -- and this came out of Candice's
9 mouth -- the client as the employer, really, and that's
10 not what we need here. We need a culture that is
11 balanced, a judicial process that is making sure that
12 all parties are involved. That takes a little time to
13 change, and we're concerned that we haven't seen the
14 progress that needs to happen. And when you're a part
15 of that culture and you've been there for that long,
16 we're also concerned that you maybe aren't going to be a
17 part of that change.

18 CHAIRMAN STEINBERG: Ms. Guzman, I don't want
19 to overemphasize the issue of this calendaring, because
20 it may be symptomatic of a larger concern that you're
21 raising; but Mr. Pacheco essentially said that as they
22 have planned forward post June 19th, that letter, that
23 they are addressing the calendaring issues by not
24 setting three or four or five cases at a time before a
25 judge. You mentioned the location-related issues. As

1 you have looked at their calendaring for August, for
2 September, for October, if you have looked at it, is
3 there a difference and an improvement in your view or
4 not?

5 MS. GUZMAN: Well, certainly, one, just
6 skimming it, because this is the first time I've been
7 able to see that version, that one improvement is that
8 there are now Fresno locations. That is an improvement.

9 CHAIRMAN STEINBERG: So you haven't had a
10 chance to look at the public but not published, as
11 Senator Cedillo pointed out, the public but not
12 published calendar that we were talking about earlier
13 this afternoon?

14 MS. GUZMAN: Right, but just to go back to what
15 you said a few minutes ago, that is one concern, the
16 calendaring issue. But the bigger issue, really, from
17 our perspective is the underlying culture around this
18 current makeup of the board that is allowing for heat
19 fatalities to result in a \$250 fine.

20 CHAIRMAN STEINBERG: How many of those cases?

21 MS. GUZMAN: That was the most egregious case.
22 That was the case of a farm laborer, and that was a
23 Huron case, and there was witness issues in that case.
24 And, again, that's a perfect example of if you had the
25 hearing in Bakersfield, maybe it would be different. I

1 don't know. But it certainly wouldn't make all the
2 difference.

3 The other case -- In the Durant Harvest case,
4 there was a reduction from 1400 to 300, and, again, this
5 was not a fatality, but this was failure to provide
6 water and shade. Could have resulted in many
7 fatalities.

8 And in the case of George Perry & Sons, the
9 fatality there was slashed in half from 7,300 to a
10 little over 3,000.

11 CHAIRMAN STEINBERG: Okay. Thank you.

12 MR. PACHECO: Mr. Chairman --

13 CHAIRMAN STEINBERG: We'll let you to respond,
14 Mr. Pacheco. Don't worry.

15 MR. PACHECO: I'll try to remember, if I can.

16 SENATOR AANESTAD: I have a question.

17 CHAIRMAN STEINBERG: Yes, Senator Aanestad.

18 SENATOR AANESTAD: Not knowing exactly how
19 these numbers are established, I'm assuming that the
20 state inspector goes out and has the authority to cite
21 and fine. Who sets what that fine level is? For
22 example, you said 13,000 or something like that for one
23 heat case. Who set that number?

24 MS. GUZMAN: The DOSH inspector.

25 SENATOR AANESTAD: So it was one individual, a

1 state employee, who arbitrarily had the power to set
2 that?

3 MS. SCHREIBERG: No, no.

4 SENATOR AANESTAD: Okay, then. Give me the
5 right answer. If it's not the inspector, who is it?

6 MS. SCHREIBERG: Fran Schreiber, and I'm
7 actually an attorney. I was with Cal OSHA for four
8 years from 1980 to 1984. My job there was to prosecute
9 companies who killed and maimed workers, so I was the
10 head of the bureau of investigations during that time
11 period and also worked with --

12 SENATOR AANESTAD: First of all, I'll just tell
13 you, for you to say your job was to prosecute companies
14 that killed and maimed workers automatically sets my
15 bias against whatever you have to say.

16 MS. SCHREIBERG: That was the job that I had.
17 I was hired to do that because of my criminal law
18 background. I was brought in because there weren't --

19 CHAIRMAN STEINBERG: Go on with the testimony,
20 please.

21 MS. SCHREIBERG: So basically I can just try to
22 explain a little bit the way that --

23 SENATOR AANESTAD: I want to know how the
24 13,000 figure was set.

25 MS. SCHREIBERG: The numbers were set based on

1 whether a matter is an issue that's a serious violation
2 or a general violation. There are maximum fines. You
3 start out with a number, and then it is actually reduced
4 by the size of the employer, the good faith of the
5 employer, and --

6 SENATOR AANESTAD: So it's not arbitrary, or it
7 comes from a regulation or --

8 CHAIRMAN STEINBERG: It comes from a statute.

9 MS. SCHREIBERG: It comes from a statute. The
10 first number comes from a statute, and then it is
11 reduced from there to these other sets of numbers.

12 Now, when the matter is settled, it's an
13 interesting process, because the division sits there
14 with calculators and they try to figure out, Well, if we
15 dismiss one of these citations and it's a serious, it
16 will knock \$10,000 off; and if we dismiss a general, it
17 will only knock 300 off; but if we change it to the good
18 faith here or bad faith there, it will change these
19 numbers. And that's what they do. They pick numbers.

20 SENATOR AANESTAD: You've answered my question.

21 CHAIRMAN STEINBERG: Okay. So why don't we get
22 into your testimony, please.

23 MS. SCHREIBERG: Thank you. I actually -- just
24 to address the question of postponement versus
25 opposition, I'm somewhere in the middle. I think the

1 issue of postponing is something that relates to an
2 invitation that the OSHA appeals board asked of us,
3 which was to submit some changes in the proposed
4 regulations, which we are willing to do -- which I am
5 willing to do on a number of the issues that have been
6 raised.

7 CHAIRMAN STEINBERG: How long will it take?

8 MS. SCHREIBERG: I'm perfectly willing to do
9 those very shortly. I don't know how long the board
10 will take, and I think that's part of what this
11 committee would have to look at, is whether this board
12 were to drag out the regulatory change process. If it
13 did, I think that would be an indication of the fact
14 that they weren't going to --

15 CHAIRMAN STEINBERG: Mr. Pacheco is up
16 January 15th, 2010, so as you talk about trying to come
17 to some understanding on amended regulations, time-frame
18 matters, both from your end and then also from
19 Mr. Pacheco and the board's end, if we were to sort of
20 go down that route --

21 MS. SCHREIBERG: And I understand that.

22 CHAIRMAN STEINBERG: Okay. Go ahead. Your
23 concerns.

24 MS. SCHREIBERG: My concerns really do also go,
25 as Ms. Guzman was saying, to the culture. And I think

1 that one of the problems is that this board doesn't see
2 their job as an administrative agency that is bound to
3 actually protect worker health and safety, but sees
4 itself as an independent court -- and they're not
5 exactly a court. They're part of an administrative law
6 system, and they have to be seen in that viewpoint -- so
7 that what they've done is that there are several
8 different issues that they've come to where they very
9 narrowly interpret a regulation, and when they need to,
10 they simply ignore what the regulation says in order to
11 have an outcome that is essentially not in the interest
12 of health and safety.

13 So the examples that I have of that are a case
14 that involves a multi-employer where they again reached
15 down without an appeal being lodged, took an
16 administrative law judge decision on multi-employer,
17 which is one of the most important laws that I think
18 we've passed, and it was a struggle, and it was also an
19 AB 1127, as you'll remember. And they reached down and
20 they took this case, and what they did was instead of
21 just making a decision based on the facts, which they
22 could have done, they decided to change the law, and
23 they shifted the law so that the burden is now on the
24 division to come forward with certain kinds of evidence,
25 which is -- number one, contradicts an actual District

1 Court of Appeal case; and, number two, contradicts the
2 statute; number three, contradicts the regulation. So
3 they did this in a way to make it more difficult for the
4 division to prosecute these cases. That's issue number
5 one.

6 Another example of, I think, something of
7 concern, and again it comes from my background doing the
8 criminal cases -- and now I'm going to speak for both
9 the defendant and the plaintiff in these cases -- is
10 there have been cases where the issue of continuances,
11 while a criminal case is pending, have not been granted.

12 There's a law that requires a continuance if
13 the bureau of investigations, which is the criminal
14 investigation arm in Cal OSHA, if they're still
15 investigating a case. However, once that case goes to
16 the District Attorney, all bets are off. In fact, in
17 the Power Point presentation that they did at the
18 program on August 6th, that was listed as one of the
19 reasons for denying a continuance. So it was just flat
20 out there. It was a policy decision that they were
21 making.

22 My concern is two things. Number one, they
23 want the division to put its entire case on in the
24 administrative hearing while the District Attorney is
25 getting this case ready to prosecute. That shows the

1 entire case. At that point, if the folks who are on the
2 defense side come forward and make -- assert the 5th
3 Amendment, then that's the end of the case. They've
4 heard all of the discovery from the prosecutor's side,
5 and they can walk at that point and wait for the
6 criminal case to go forward.

7 On the other side, just having to assert a
8 5th Amendment right is a disadvantage for the defendant.
9 I was a public defender for six years before I was a
10 prosecutor in these kinds of cases. Those assertions of
11 5th Amendment rights can be held against the defendant,
12 so it is equally bad for both parties in these cases to
13 do that. And this is their policy.

14 CHAIRMAN STEINBERG: So they're forcing the
15 hearing even if there's a pending criminal case.

16 MS. SCHREIBERG: That's correct. Their theory
17 is you won't know that the person, either the employer
18 or one of the employer's witnesses, is going to assert
19 the 5th Amendment until they do it.

20 CHAIRMAN STEINBERG: Okay.

21 MS. SCHREIBERG: Even if they say they're going
22 to do it.

23 CHAIRMAN STEINBERG: What else?

24 MS. SCHREIBERG: Okay. So another thing that
25 is of concern to me is -- as a lawyer who represents

1 victims, and we do, and I'm handling a case right now
2 helping the family of the UCLA young lady who was killed
3 in a lab fire in December, and the family is not
4 permitted, once a person dies, to be a party in the
5 case, and that's because the victim is dead. If the
6 victim had lived, then she could be represented by a lawyer
7 or her union, and she could participate as a full party
8 in the case, and she would have an opportunity to help
9 Cal OSHA prosecute the case by presenting evidence, by
10 cross-examining, and by getting involved in the case
11 itself.

12 However -- Mr. Lancaster is not here today.
13 He's actually in trial, and I'm kind of expressing some
14 of his concerns, but they're my concerns as well, that
15 these cases -- They're saying, "Okay. You can be an
16 intervenor," but an intervenor doesn't have the same
17 rights as a party to these cases, so I'm concerned about
18 that.

19 CHAIRMAN STEINBERG: Is that a regulation
20 issue, or is that a discretion --

21 MS. SCHREIBER: I think it's a discretion
22 issue. There's a regulation about what's a party and
23 what's an intervenor. The party says --

24 CHAIRMAN STEINBERG: So just to summarize, if I
25 may, in terms of the culture, because I know I have to

1 get going at 6:00 here tonight to get downstairs on
2 other subjects.

3 You complain about the culture relating to the
4 way that the heat-related cases are being dealt with.
5 We've heard a lot about the calendaring, which really
6 the concern is that the calendaring is done in such a
7 way that the case cannot be -- a lot of cases cannot be
8 adequately prosecuted. We talked about the issue of the
9 statutory interpretation around the minimum fine for
10 failure to inform. We've heard about a number of sort
11 of procedural issues that the board -- positions that
12 the board takes that you believe makes it difficult for
13 the process to work effectively.

14 Mr. Pacheco, a lot to digest here.

15 MR. PACHECO: That's a mouthful, isn't it?

16 CHAIRMAN STEINBERG: That's a mouthful, but go
17 ahead.

18 MR. PACHECO: I'll try to address from my
19 memory as best I can. Obviously, we had four people
20 providing information.

21 CHAIRMAN STEINBERG: That's all right.

22 MR. PACHECO: Let me tell you one thing that
23 probably bothers me more than anything else is the idea
24 that I, as a member of the board, and under my name of
25 law -- Let me tell you, I take my role as an attorney,

1 and I think you've known me here in the legislature for
2 a long time. I do not do that. What I rule upon is
3 what I believe to be a correct interpretation of the
4 law. There are remedies for anyone who feels that we
5 have made a wrong decision.

6 CHAIRMAN STEINBERG: Can we stipulate here,
7 really, that everybody is in good faith here. I know
8 you. You're a good person. You're a person of good
9 faith. You approach issues seriously. I don't want to
10 go there. I want to get right into the issues.

11 They believe that this is a board that is too
12 business friendly and that it doesn't protect the
13 worker. Your response to that and then your response to
14 some of the specifics I think is what we want to hear.

15 MR. PACHECO: I'd be happy to address all
16 those. The area -- I think they look at it as
17 sabotaging appeals, which is kind of hard to understand.
18 It's -- You know, you can throw all these things out,
19 but without any statistics, any information, really, to
20 support them, it's difficult to know what they're
21 talking about.

22 However, when you're talking about degrading
23 the division, or I should say permitting the division
24 not to present their case and therefore causing
25 settlements, you know, that's kind of degrading to the

1 division, if you think about it. These folks are out
2 there doing a job. That question was asked in the
3 stakeholder meeting, and that's why Mr. Carter, the new
4 labor appointee, he asked the people in the audience,
5 "How many of you believe that you are being forced to
6 settle these cases, and why are you settling the cases
7 if you do not honestly believe it's the right decision?"

8 There wasn't a soul that said, "Yeah, we're
9 settling the cases because we're being forced."

10 The point is this -- and I gave you the
11 statistics already. The settlement percentages are
12 essentially the same. For them to throw out all these
13 numbers without any substantiation is not supported by
14 the percentages.

15 The -- The reduction in the amount of penalties
16 actually finally assessed against the employer, you
17 know, I heard that the first time, and I thought that
18 seems kind of crazy. So I took one -- and I didn't
19 bring it with me. I'll provide it to you. I took one
20 board meeting, and I took all the stipulations where
21 there had been settlements reached. Of the
22 stipulations, the settlement ratio -- the settlements
23 amounted -- and I'm going from memory now. \$356,000
24 reduction in penalties. The reduction by the ALJs was
25 something like \$35,000.

1 These division employees have the authority,
2 when they resolve a case, when they actually cite a case
3 and go and speak to the employer, and they then discover
4 that their citation wasn't exactly right the way they
5 looked at it the first time, they have the authority to
6 make changes in the total amount of the penalty.

7 By the time we get them, the only ones that the
8 board -- the board being the ALJ who is hearing the
9 case -- by the time they get the change or reduce the
10 penalty, it would be only because the parties could not
11 reach an agreement.

12 So any penalty reductions that we've been
13 talking about here, the bulk of them come from the
14 division's reductions, not the court, and we have
15 actually some statistics on that information.

16 It's interesting to note that most reductions
17 come because the divisions either feel they can't prove
18 their case, they don't have enough evidence -- a number
19 of reasons.

20 CHAIRMAN STEINBERG: Or there are too many
21 cases scheduled on a given day, and they don't feel they
22 can give adequate time to prosecution.

23 MR. PACHECO: Like I say, we can presume that,
24 but the percentages don't show it. I mean, we can say
25 that, but I don't know that statistically it can be

1 justified.

2 Now, there's a discussion about us not
3 following the law and helping the employer. You know,
4 it's kind of like fighting me with both hands behind my
5 back. That is a pending case. It's before the
6 appellate court. I can't discuss it. I can't tell you
7 what's right or wrong. We issued an opinion. We issued
8 a decision. All the parties have the right to file a
9 petition, a writ, and get the Superior Court to judge on
10 it. And that's what they've done, and that's what
11 they're doing now.

12 CHAIRMAN STEINBERG: But you obviously have an
13 interpretation based upon the ruling, so you could
14 respond to that.

15 MR. PACHECO: Well, no, I can't, because it's
16 still pending before the appeals on the writ. So I
17 can't discuss it.

18 CHAIRMAN STEINBERG: Okay.

19 MR. PACHECO: The continuance while a criminal
20 case is pending, you know, you need to have all of the
21 facts. If you had a case that had been pending for a
22 number of years and you kept hearing, "We need to
23 continue it again, we need to continue it again, we need
24 to continue it again," and the District Attorney is not
25 pursuing prosecution of the case, and yet the OSHA board

1 has to consider the safety of the employees, abatement,
2 any of these other issues that are important for the
3 safety of employees, so what should we do? Should we
4 allow the District Attorney to continue to delay the
5 case, or should we proceed?

6 CHAIRMAN STEINBERG: That's a different fact
7 scenario than was just presented by Ms. Schreiber.

8 MR. PACHECO: That's right, but I'm just saying
9 every circumstance, everything that was told to you
10 has -- there's a contra-story.

11 CHAIRMAN STEINBERG: Which leads --

12 Mr. Pacheco, let me -- If I may, your
13 nomination expires the 15th of January, and so I suppose
14 that's good and bad from your perspective in the sense
15 that I do think that period of time gives us a chance to
16 continue talking here. I am not against you. I'm
17 trying to be thoughtful about this, and what's most
18 significant to me is the issue that's hard to quantify
19 but is really the essence of it. What is the culture of
20 the board? Is it a board that sees its role as
21 protecting workers, or is it a board that sees itself in
22 a different way?

23 MR. PACHECO: Can I --

24 CHAIRMAN STEINBERG: Hold on.

25 And though you may have disagreements on

1 individual cases with these four advocates, they're all
2 thoughtful people, just as you're a thoughtful person,
3 who do their work very diligently. I know them all.
4 Okay?

5 And so I'd like to take a little bit more time
6 here and see if there might be a meeting of the minds in
7 terms of some of these questions. And you're not going
8 to change each other's philosophies of life or
9 philosophies of politics necessarily, but there are
10 specific things.

11 Ms. Guzman said, "How are we going to deal with
12 heat-related fatalities?" That sort of like screams as
13 a top priority here. How are you going to
14 institutionalize the sorts of calendaring changes that
15 you say you made? And I believe you. No one has had a
16 chance to check the calendar, but I think a little bit
17 more time might give a little more comfort too.

18 If you have disputes about the multi-employer
19 rule, right or wrong, that may be philosophical. I
20 wrote the bill. I know I have my opinion on it. Okay.
21 That's up in the appellate court. The issue of knocking
22 down fines is an issue that I think bears some more
23 discussion. I know that leg. counsel has opined that
24 \$5,000 is in fact the minimum fine in the cases we've
25 been discussing.

1 And so not that you'll agree on everything, and
2 that won't be the test of whether or not I support your
3 confirmation in the end, but I do think to really not be
4 defensive about it, but try to listen to some of the
5 concerns we've heard today about heat-related deaths,
6 about the calendaring issue, which it sounds like you're
7 beginning to make the proper adjustments and that you've
8 heard, but I want to give this a little bit more time so
9 that you can continue to meet with them.

10 I'd say, Ms. Schreiber, if you have been
11 invited by the board to submit your specific comments
12 for amending regulations, that in fairness to
13 Mr. Pacheco, if his deadline is really -- let's not even
14 say January 15th -- let's say December 15th, okay, just
15 so there is enough time, that you submit your comments
16 in sufficient time so the board can consider them and
17 act on them prior to December the 15th. That way we can
18 rejoin the consideration and determine -- not
19 perfection. You're not going to get this man to be
20 somebody who he's not, nor should he be. He was
21 appointed by a governor. He was a Republican
22 Assemblyman. He has a philosophy. That's okay. But
23 the question is whether or not you can meet a little bit
24 more towards the middle here when it comes to some of
25 the more significant concerns that you have heard raised

1 today.

2 So I'd like to put this over so that we can --
3 so that you can have that shot, he can respond, and we
4 can see if we can really improve the level of confidence
5 of this board, hopefully with you on it, to do, you
6 know, an even better job than the job that you say
7 you're doing. That would be my intent.

8 MR. PACHECO: Well, I mean, certainly the call
9 is yours, so I'd be happy to go with whatever you
10 decide.

11 I do want to say one thing, that -- and it does
12 hinge on the whole thing because -- Although we talked
13 about philosophy, and there's a discussion here about a
14 culture, some kind of philosophy, it does seem to keep
15 saying in a sense that we're favoring one side over the
16 other.

17 I just want to give you one for-instance that
18 kind of tells you why it's incorrect, because there was
19 a lot of discussion about continuances being granted to
20 employers, or those being requested. And this is a very
21 quick statistic.

22 DOSH requested 25 -- There were 25 continuance
23 requests for DOSH. Twelve were granted, 11 were denied.
24 The employer requested -- There were 73 requests by the
25 employer for continuances. We granted 30, denied 37.

1 And then there are other requests. But I just want to
2 give you an idea that we're dealing with this pretty
3 straightforward and honestly, and the numbers don't
4 substantiate what's being said. But being the case, we
5 will provide -- Understand we are a very small board,
6 our budget is very small, but we will provide -- we have
7 to hand calculate all these things.

8 CHAIRMAN STEINBERG: The burden to me, to be
9 honest with you, is on the advocates here, to provide --
10 to continue what you've done, to provide suggested
11 amended regulations that address some of the things we
12 have heard here today, and then we'll let the board
13 respond to that, and we can then evaluate that. All
14 right?

15 MS. FOO: Okay.

16 MS. SCHREIBERG: Okay.

17 CHAIRMAN STEINBERG: Thank you very much.

18 MS. FOO: Thank you.

19 MR. PACHECO: Thank you.

20 CHAIRMAN STEINBERG: Thank you very much.

21 Okay. Very good. A couple of things here as
22 we move to item two. I want to take off the calendar
23 Joseph Tavaglione as a member of the California
24 Transportation Commission, without objection, continue
25 that to another hearing.

1 I understand -- Is it true, Mr. Dutton, that
2 you want to continue Grant E. Destache --

3 SENATOR DUTTON: Yes, sir.

4 CHAIRMAN STEINBERG: -- to another hearing?
5 There's no deadline issue on Mr. Destache?

6 MS. SABELHAUS: Not immediately.

7 CHAIRMAN STEINBERG: Not immediately.

8 SENATOR DUTTON: And also on Monica Hunter.

9 CHAIRMAN STEINBERG: And Monica Hunter. We'll
10 separate that one. We're going to continue Joseph
11 Tavaglione and Grant Destache and we will then take up
12 2D through K. We'll take up L separately. Okay?

13 Moved by -- D through K with the exception of G
14 and J. Okay. Moved by Senator Cedillo.

15 SENATOR CEDILLO: Yes.

16 CHAIRMAN STEINBERG: Please call the roll.

17 MS. BROWN: Senator Cedillo.

18 SENATOR CEDILLO: Aye.

19 MS. BROWN: Cedillo aye.

20 Dutton.

21 SENATOR DUTTON: Aye.

22 MS. BROWN: Dutton aye.

23 Oropeza.

24 SENATOR OROPEZA: Aye.

25 MS. BROWN: Oropeza aye.

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Aanestad.

SENATOR AANESTAD: Aye.

MS. BROWN: Aanestad aye.

Steinberg.

CHAIRMAN STEINBERG: Aye.

MS. BROWN: Steinberg aye.

CHAIRMAN STEINBERG: Very good. That passes.

Now let's take up L, Monica S. Hunter.

MS. BROWN: Senator Cedillo.

SENATOR CEDILLO: Aye.

MS. BROWN: Cedillo aye.

Dutton.

Oropeza.

SENATOR OROPEZA: Aye.

MS. BROWN: Oropeza aye.

Aanestad.

Steinberg.

CHAIRMAN STEINBERG: Aye.

MS. BROWN: Steinberg aye.

CHAIRMAN STEINBERG: Passes three to nothing.

(Thereupon, the Senate Rules Committee hearing
adjourned at 6:05 p.m.)

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2009.

INA C. LeBLANC
CSR No. 6713

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APPENDIX

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



July 29, 2009

*Jan Sturla
Responses*

The Honorable Darrell Steinberg, Chairman
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
Appointments Director
State Capitol, Room 420
Sacramento, California 95814

SUBJECT: CONFIRMATION HEARING

Dear Senator Steinberg:

Thank you for your consideration of my appointment to serve as director of the Department of Child Support Services (DCSS) and for the opportunity to provide responses to the following questions from your letter of July 8, 2009. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

Goals and Responsibilities

- 1. You have been director of the department for almost 6 months. In your time as director, what do you see as your accomplishments during your brief tenure thus far? What are the most serious challenges facing the department, and what do you see as the answers to those challenges?*

As director, my main goal is to advance the child support program's mission to promote financial stability for California's children and families. During the past six months, I have implemented a statewide "early intervention" program based upon the five year federal strategic plan. The 52 local child support agencies (LCSAs) have been required to develop and implement a written plan designed to intercede at early stages in the management of child support cases to increase collections and improve performance. All 52 LCSAs have submitted plans. These plans generally incorporate both "pre-order" and "post-order" strategies. Similar plans have been shown to be successful in other states as well as in some California LCSAs. For example, the Orange County DCSS early intervention program showed an improvement in the current support performance measure from 25 percent on default cases to over 65 percent on early intervention cases. There was also a 125 percent increase in collections between the default and early intervention cases. Similar results are expected throughout the state.

I have also implemented a new governance committee to prioritize changes to and management of the California Child Support Automation System (CCSAS). This group, the Executive Automation Steering Committee, was specially selected for its expertise

Senate Rules Committee

JUL 29 2009

Appointments

in child support operations and automation issues and is comprised of directors from the LCSAs as well as executives of the Department.

As part of an examination of potential cost savings, I have begun the process of obtaining a federal waiver to the Monthly Notice of Collections and Distributions. This waiver will ultimately save the Department approximately \$1.5 million per year in printing and mailing costs.

I have added the requirement "cost-effectiveness" to the annual Performance Management Plan for all LCSAs operating under the federal performance minimum of \$2 collected for every \$1 of administrative cost. This will require Sonoma, Yuba, Siskiyou/Modoc, Sierra/Nevada, and Del Norte LCSAs to create a plan to improve performance on this measure. This performance measure has never previously been the subject of a formal improvement requirement.

The most immediate challenge faced by DCSS is maintaining collections while coping with the problems associated with the current economic downturn. In many cases, non-custodial parents are having difficulty meeting their child support obligations due to unemployment or underemployment. Custodial parents often face the same employment issues and need regular child support payments to provide for the basic needs of their minor children. In addition, LCSAs are being challenged with an increased demand for services due to these economic issues.

Meeting these challenges will require effective case management, including the use of early intervention strategies, prioritization of work, and the assignment of staff to the most productive activities. Understanding and serving customer needs in this difficult time must overlay our efforts.

2. What do you hope to accomplish during your tenure as director of DCSS? How will you accomplish these goals? How will you measure your success?

One of my primary goals is to begin the process of improving the cost-effectiveness of the program. I am in the process of convening a workgroup of stakeholders to examine approaches which will lead to more efficient and effective use of program resources. These approaches include, but are not limited to, regionalizing the smaller LCSAs, sharing services, centralizing services, creating uniform statewide business practices and procedures, increasing the effectiveness and functionality of automation, and reducing the costs of printing and mailing.

A second goal of mine will be to increase the statewide performance on collections on current support. Although California has continued to improve in this measure over the past decade, more effort is required. The large LCSAs have the greatest challenge in this area and also have the greatest potential to positively impact this measure. Early intervention, prompt attention to court order modifications, closure of eligible cases,

establishment of appropriate orders based upon an obligor's ability to pay, and shared services are all strategies that will be successful.

Success will be measured by the formalization of recommendations and creation of a statewide implementation plan to increase cost-effectiveness. Statewide performance will be measured through our federal performance measures at both the LCSA and state level.

3. *You are the third director for the department since 2006. Do you see this position as a long term position?*

As with all director positions, incumbents serve at the pleasure of the Governor, and I am honored to have this opportunity. I do believe that it is critical for the Department to have consistent long-term leadership in order to achieve the main mission of the program and to succeed as a leader in the nation. To provide strategic focus for the Department, the director needs time to analyze and evaluate the many issues and problems affecting performance and to effectively plan solutions for achieving success. I have dedicated 17 years to California's child support program already, and look forward to continuing my professional commitment to the program for many more years.

Performance Measures

4. *The DCSS has had sufficient time to get through its growing pains, having been in operation since the year 2000. Why is the Department continuing to perform at relatively poor levels?*

In December 2008, California's statewide child support automation system was federally certified, having successfully completed the conversion of all 58 counties onto a single statewide automation system – the largest in the nation. As a result of the investment that California made in preparing and executing the successful conversion, California is one of only a few large states to pass the federal Data Reliability Audit in the year immediately following conversion to a single statewide automation system.

The new challenge for DCSS is re-engineering all child support operations into a cohesive statewide program. With the establishment of the statewide caseload database, the actions of individual LCSAs have a significant impact on the cases and customers in other counties. Therefore, all LCSAs must operate uniformly. This uniformity requires continuous local support and problem solving as unanticipated issues arise. In addition, the system is still being refined to ensure that it operates with maximum efficiency in locating noncustodial parents, establishing cases and collecting support.

Prior to the establishment of DCSS, most of California's federal performance percentages were in the 30th percentile, and initial attempts at implementing a federally-

mandated statewide automation system had failed. Since that time, the program has made steady progress in improving program performance. As an example of this progress, since 2000, current support collections in California have improved from 40 percentage points to 52.8 percentage points, a 12.8 percentage point improvement which represents a 32 percent change compared with the national percentage change of just over ten percent. In addition, California achieved double digit improvement over the period from 2000 to 2008 in cases with an arrears collection at 10.7 percent from 53 percent to 59 percent.

Now that DCSS has cleared the hurdle of securing federal certification of the statewide automation system, state and local resources are being devoted solely to performance improvement for the first time since the Department was established.

- 5. The 2006-2009 Strategic Plan issued by the Department in August 2006 stated the following objectives, that it will increase the statewide percentage of current child support collected to 60 percent in FY 2009, and will increase the cost-effectiveness of the program to at least \$2.75 in child support collected for every \$1 that is spent to administer the program. In contrast, the current collections performance level stands at 52.8 percent for FY 2008, far less than the target 60 percent, and the cost-effectiveness ratio has remained very poor at \$2.04. What were the reasons accounting for the failure of the department to reach these objectives?*

When the Department and the LCSAs laid out the 2006-2009 Strategic Plan, it was recognized that the goals were aggressive and difficult to achieve, particularly in light of the pending implementation and federal certification of the statewide automation system. In 2005, California collected 49.3 on current support and was at \$2.15 in cost-effectiveness. In January 2007, DCSS met with other large states to discuss how they prepared for their conversions to a single statewide system. Every state made it clear that, to be successful, there had to be a singular focus within the Department on conversion to the statewide system. This singular focus resulted in many state and local resources being redirected from program operations to conversion activities. In addition, the strategic plan was developed prior to the recent economic downturn.

One of the factors affecting cost-effectiveness is that California's expenditures for automation have been much higher than those of other states. In addition to devoting expenditures to development of the new system, it was necessary to convert LCSAs onto a single statewide system. Since 2000, California has been migrating LCSAs from six independent automated systems into one.

Another cost-effectiveness factor is that most other states operate and centralize their child support programs at the state level. California's child support program is operated by 52 local agencies, with oversight and leadership from the state. Many states operate their programs through a model in which child support orders are established and

enforced administratively. California's judicial model is based on family court administrative procedures dating back to 1975, when the child support program was first mandated. This means that in California, support orders are established and modified through the courts. This process adds costs such as attorneys, legal support staff, judges, commissioners, process servers and courtroom costs to California's program.

It has been ten years since the child support program has been re-evaluated in terms of functionality. To increase cost-effectiveness, DCSS is exploring efficiencies, centralization of case management functions, regionalization, and other potential program savings that will, at the same time, maintain and/or improve services to child support customers.

6. What short-term and long-term strategies have you developed to address the performance level deficiencies in the three areas where California is not obtaining 100 percent of the incentive funding available?

In early 2008, DCSS developed short-term and long-term plans to advance the DCSS goals and improve program operations. The short-term plan consisted of strategies that were focused on increasing current support and collections on arrears which were implemented by the end of September 2008. Several of these initiatives have served as models for other states, such as matching cell phone records against delinquent obligors; enhancing DCSS' credit card payment process; and refining the compromise of arrears program.

In March 2009, I directed all LCSAs to develop a plan to employ early intervention practices to increase the collection of current support while at the same time preventing and reducing arrears. Those plans were implemented July 1, 2009. These efforts include:

- setting appropriate orders;
- immediately following-up on missed payments;
- reviewing and modifying orders; and
- managing existing arrears.

The DCSS 2009/10 Business Plan is comprised of ten initiatives which are on track to be completed by end of the current Federal Fiscal Year (FFY). These initiatives include:

- expanding DCSS' insurance payment intercept program;
- researching a statewide real property lien process;
- exploring centralization and regionalization of child support functions and services.

The Department will continue its ongoing performance improvement efforts, including:

- establishing annual performance goals for LCSAs;
- requiring the annual development of local performance management plans;
- disseminating best practices through meetings, conference calls, video conferencing and training sessions;
- monitoring performance improvement through a review of performance reports, quarterly meetings with the directors of the six largest counties and the directors of each region, site visits, and regular contact with local child support directors.

Expenditures on child support services are a good investment for the state because they provide direct savings to the State General Fund. Child support collections offset current and past welfare costs. In addition, low-income working families who receive regular child support payments may be able to avoid having to apply to welfare for financial support. Medical support ensured by the child support program provides health coverage to children who may otherwise have to rely on Medi-Cal to pay the cost of health services. However, as I stated earlier, we need to explore ways to make the program more efficient and cost-effective in order to maximize the ability of DCSS to focus program resources on the Department's mission of collecting support for families.

7. The economic downturn has likely affected the ability of some obligors to make payments, thus affecting performance levels. What trends, if any, have been identified thus far? What strategies have been developed to address potential issues?

Due to the economic downturn, a number of factors have been identified as affecting child support performance levels. These include:

- Unemployment Compensation

As a result of the increasing number of individuals collecting unemployment in California, the child support program is intercepting a greater number of unemployment benefits for past-due obligations. As of May 2009, fiscal year (FY) 2008/09 unemployment collections have increased by \$53.9 million, or 106.5 percent over the same time period in FY 2007/08.

- Income Withholding

Due to the high unemployment rate in California, the child support program is collecting less money through employee wage garnishments. As of May 2009, FY 2008/09 support collected via wage withholding declined by \$48.8 million, or 3.6 percent over the same time period in FY 2007/08. Employee wage withholding remains the single largest source of child support collections, accounting for approximately \$1.4 billion out of a total of \$2.3 billion in collections annually.

- Property Liens

California intercepts profits from home refinancing or sales for individuals who are past-due in their child support obligations. Due to decreasing sales and lower home valuations in the current weak real estate market, California is intercepting less money through property liens. As of May 2009, for FY 2008/09 California intercepts from housing liens declined by \$11.7 million or 66 percent from the same time period in FY 2007/08.

- Direct Payments from Noncustodial Parents and Other Collection Sources

Due to California's high unemployment rate, the amount of money collected by LCSAs for noncustodial parents who have arrangements to make direct payments (i.e., by check or credit card as opposed to wage garnishment) is declining. As of May 2009, FY 2008/09 direct payments from noncustodial parents and for other collections sources declined by \$38 million or 12.1 percent from the same time period in FY 2007/08.

Research demonstrates that noncustodial parents are more likely to pay child support if the ordered amount is payable in accordance with their incomes. If the ordered amount is too high, and noncustodial parents get too far behind, the likelihood of receiving payments diminishes. To assist noncustodial parents and ensure that families continue to receive child support during the economic downturn, LCSAs have undertaken several major initiatives:

- As part of the early intervention initiative Operation Outbound or "dialing for dollars," caseworkers have incorporated into telephone outreach to noncustodial parents a query regarding whether they need a child support order modification due to reduction in income or unemployment.
- LCSAs contact businesses in the community that are liquidating or closing their doors to provide them with contact information for employees to request a modification of child support orders.
- Hearings for individuals requesting child support order modifications due to job loss are being moved ahead on the court calendar.
- LCSAs are working with their local Employment Development Department one-stop centers and job training programs to support child support obligors in their pursuit of employment.

8. *Has the department prepared a new strategic plan for the upcoming years?*

In August 2009, DCSS will begin development of its 2010/15 Strategic Plan. The planning team will be comprised of representatives from DCSS, LCSAs, the California Child Support Directors Association and the Judicial Council. The 2010/15 plan will be more comprehensive than past plans, and will contain an implementation business plan. It will identify strategies to be undertaken by DCSS and LCSAs in addition to program goals and objectives. Upon completion of the five-year plan, DCSS and each LCSA will develop its own action plan to implement the agreed-upon strategies for achieving 2010 goals and the goals for each following year. DCSS will provide guidance in the development and implementation of LCSA plans and monitor their progress.

In addition, DCSS has provided input into the federal Office of Child Support Enforcement's National Strategic Plan, which will be finalized within the next several months. The DCSS Strategic Plan will conform to the national plan.

Federal Stimulus Funding

9. *What has the DCSS done in the past three months to take maximum advantage of the ARRA for fiscal year 2009? What can and will DCSS do to take maximum advantage of the ARRA for fiscal year 2010?*

The American Recovery and Reinvestment Act (ARRA) contains two provisions that apply to state child support programs. The first provision temporarily restores a federal match on federal child support incentives that was eliminated by the Federal Deficit Reduction Act of 2005 for a two year period beginning October 1, 2008 to September 30, 2010. The second provision authorizes states to intercept one-time payments of up to \$250 for Social Security Administration (SSA), Supplemental Security Income (SSI), Railroad Retirees (RR) and Veteran's Affairs (VA) beneficiaries to help satisfy past-due child support obligations.

Regarding the first provision, in state FY 2006/07, the state provided a General Fund backfill to replace the child support funding lost as the result of the elimination of the federal match on child support incentives. The federal Office of Child Support Enforcement enables any state that opted to provide a General Fund backfill for lost federal funds to supplant those State General Fund dollars with the restored federal dollars. The Administration has opted to return the State General Fund backfill to the State Treasury in order to alleviate the state's current budget shortfall. This will result in General Fund relief of \$20.4 million in 2008/09, \$27.7 million in 2009/10 and \$6.3 million in 2009/10.

Regarding the second provision, the ARRA authorizes the intercept of one-time stimulus payments of \$250 for SSA, SSI, RR and VA beneficiaries to help satisfy past-due child support obligations. The Department has opted to intercept these stimulus payments. The payments are either passed directly through to families, or if a family is currently receiving or has formerly received public assistance from the state,

the state remits these dollars to the state, federal and county governments as recovery for public assistance benefits received. The federal Office of Child Support Enforcement estimates that California will intercept approximately \$10.2 million (\$3.1 million General Fund) through the intercept of these one-time payments. DCSS also developed business plans for FY 2009 and 2010 in order to maximize performance in the federal measures. Increased performance in the measures incrementally increases incentives that are earned which would benefit from federal match in FY 2009 and 2010. The immediate goals were focused on increasing current support and collections on arrears which were implemented by the end of September 2008. These include matching cell phone records against delinquent obligors; enhancing DCSS' credit card payment process; and refining the compromise of arrears program. Additionally, goals were set for specific performance improvement for every LCSA in the federal measures including a collections goal.

The early intervention efforts to increase collections that I have required of the LCSAs will also assist California in taking advantage of the 2010 ARRA provisions.

10. How much money in potential federal matching funds did California lose due to its poor performance levels?

States are awarded federal child support incentives based on their performance on five federal child support measures: paternity establishment, child support order establishment, collections on current support, collections on arrears and cost-effectiveness. Annually, the federal government establishes a pool of available funding for federal child support incentives. For federal fiscal year (FFY) 2009, this pool was \$495 million. States are awarded a proportion of these dollars based on their performance relative to other states. In order to estimate how much in federal funding was 'lost' due to California's performance on the five federal measures, it would be necessary to define the performance level that California 'should have' achieved in previous years as well as define the lower levels of performance that other states would have achieved during this time period.

It is important to note that California has been steady and consistent in improving on three of the five performance measures: Percent of Cases with a Child Support Order has increased from 75.3 percent in FFY 2002 to 80.2 percent in FFY 2008; Collections on Current Support increased from 42.4 percent in FFY 2002 to 52.8 percent in FFY 2008; Collections on Arrears increased from 54.9 percent to 59.1 percent in FFY 2008. California ranks 8th nationally on the statewide paternity establishment measures and has consistently ranked in the top ten for the past seven years. The cost-effectiveness measure is the key area I will focus on during my tenure as DCSS director.

California Child Support Automation System (CCSAS)

11. What is the current status and functionality of CCSAS? What challenges have the counties faced in implementing the system and how has DCSS addressed these challenges? How is DCSS balancing state and local needs in the implementation of the project?

CCSAS has been federally certified and implemented statewide in all 58 counties as of November 2008. There are over 9,000 statewide users, approximately 1.75 million cases, and over 3 million child support customers. DCSS has also implemented the statewide Enterprise Customer Service Solution. This system, known as ECSS, provides for a centralized telephone and integrated voice response system that can form the basis of statewide or regionalized call centers.

DCSS is in the process of implementing enforcement and other functionality, which was not required by certification but is necessary for the efficient functioning of the statewide system. Prior individual LCSA consortia systems had a high degree of automated functionality that was not addressed by federal certification requirements. These individualized systems were efficient, and developed over time to address California's program complexities and high caseload volumes. Once the changes and refinements to CCSAS have been implemented, they will add functionality to specifically improve worker efficiencies statewide.

CCSAS is the new way of doing business using state-of-the-art technologies and requires 100 percent retraining of state and local workers. The prior individual county systems were mainframe-based and had been in use for decades. CCSAS is a web-based, highly complex client-server implementation requiring intensive classroom and "on the job" training to regain worker efficiency. The prior systems were county-specific, e.g., Los Angeles County (LA) could only see LA cases. CCSAS is a statewide system, requiring workers to think about statewide impacts. As with any major change to automation, it will take time for state and local workers to become fully trained in the statewide operating system.

In addition to formal training, during the conversion process DCSS provided special "boot camps" for LCSAs in specific areas, such as public assistance referral processing and financial adjustments. Ongoing webcasts continue to be conducted to assist LCSAs in subject matter areas, as requested.

At all stages of the statewide conversion, DCSS assembled project teams, drawing extensively on local expertise to sort through the changes and understand how they affected operations and performance measures. Post-conversion, the Department instituted a project governing structure to include LCSAs in the ongoing decision-making process.

The change to a statewide system has impacted many aspects of the child support program, including case management approaches, financial results, system response

times and performance statistics. It is important to reach consensus on how best to create efficiencies and improve operations within the unified statewide program.

12. How will the department monitor the ongoing performance of the new system? What measures will be used to assess performance? Are there plans for changes or improvements to CCSAS?

The Department's CCSAS contract specifies a set of performance measures that are used to determine ongoing performance. Compensation for the business partner is tied to these measures. The performance measures relate to avoidance and clearance of system defects; system availability; help desk waiting times; and a quarterly scorecard that rates performance in system change management, execution of the knowledge transfer to state staff, defect repair, and conformity with standards including up-to-date documentation. The contract and associated documents also specify service level objectives for system response times.

System performance is monitored using software tools on an ongoing basis at several levels: transaction, process, county and statewide.

- Response time is the greatest measure of performance. The majority of counties experience transaction response time of one second or less.
- The volume of help desk calls is also used as an indicator. Calls have steadily declined over the last several months.
- System availability is a contract performance measure and required to be at 100 percent. This service level has been met 99.9 percent of the time.

Several changes have been implemented to optimize system performance and other processes are continuously evaluated for similar efforts to improve efficiency. Change Requests accumulated during the implementation period specifically address functionality to improve program performance and worker effectiveness. For example, child support cannot be collected if obligors and/or their assets can't be located. Changes to enhance CCSAS locate capability will improve the program's ability to collect child support for children and families and reimburse the State General Fund for previously paid public assistance.

CCSAS provides the platform for improving performance on a statewide level for the first time in California. As state and local workers gain confidence and the system is enhanced to provide increased effectiveness, California's performance on all five of the federal measures will improve.

The Relationship of DCSS with Local Child Support Services Agencies

13. What do you view as the primary role and responsibility of the state in administering the child support program? Of the counties? How do you ensure

a positive working relationship and communication with the counties so that the experiences of the counties are incorporated into policy and budget changes, and that counties receive clear and consistent direction from the state?

DCSS has the leadership role in directing and overseeing California's child support program. This role is carried out by:

- establishing a vision, direction and priorities for the program;
- setting program policies;
- providing direct oversight and supervision of the LCSAs;
- improving program performance in collecting child support and other key federal and state measures; and
- maintaining and improving California's statewide automated child support system.

The LCSAs are responsible for performing the child support activities required by law and regulation in a manner prescribed by the Department. They have been providing direct child support services to the families of California for decades, and have invaluable experience and knowledge of program operations.

In order to effectively lead the state's child support services program, I believe it is important to establish a shared vision and clear sense of priorities, so that the state and the LCSAs move forward effectively to accomplish shared goals. The Department is about to begin the collaborative process, with the Child Support Directors Association, of crafting a new Child Support Services Strategic Plan for FFY 2010 through 2015.

I am committed to maintaining a strong relationship with the LCSAs. I meet regularly with the Board and membership of the Child Support Directors Association, and the directors of the largest LCSAs to seek their input on program policies and operations, as well as to hear their concerns and issues. As a former LCSA director and past President of the Board of the Child Support Directors Association, I have established relationships with local directors, as well as a knowledge and sensitivity to local operational and program needs. I plan to continue to maintain positive relationships with the LCSAs through regular, ongoing communication regarding the Department's plans and initiatives.

Our partnership is structured so that Department and LCSA representatives work together through many work groups and committees. This ensures that local views and expertise are included as we make program decisions, develop policies and regulations, and implement statewide initiatives.

14. How would you characterize the current relationship between DCSS and the local child support agencies? Is there anything that you would like to see altered in this relationship? If there is, please be specific about what and why.

The child support program has undergone and will continue to undergo change. This is due to the new automation system and the establishment of DCSS and the LCSAs in 2000. This new organizational approach will continue to require a high level of coordination and collaboration among all the organizations and individuals with a role in the program – including the state, LCSAs, the courts, welfare agencies, and community based organizations, and child support customers. As I stated previously, the Department's ongoing challenge is to design and operate the organizational structures and efficiencies essential for the program's effective operation.

I view the relationship between the Department and the LCSAs as a collaborative partnership. While the state provides leadership and oversight, the LCSAs have the primary operational role in the state's child support program. The LCSAs are our most important partners, and extensive collaboration is the key to a successful child support program.

As the Department has exercised its oversight role and responsibility to hold the LCSAs accountable for performance improvement through efforts such as the statutory Corrective Action Process, the Key County Initiative and compliance reviews, this collaborative relationship has been strengthened.

15. How do you ensure that local child support agencies reach their performance targets?

In consultation with key LCSA directors, DCSS has established annual performance targets for the federal performance measures in which California is below the national average. In recent years targets have been set at a level that would enable the state to reach the performance goals specified in the DCSS strategic plan. Targets for most counties required maintaining performance that exceeded the national average. Targets for the lowest performing counties were set at a level that required more significant improvement.

First, we engage in a collaborative process with the LCSAs, through their representatives, the Child Support Directors Association, in setting ambitious performance goals. These local performance goals are typically linked to the statewide goals delineated in the Child Support Services Program Strategic Plan, which is also developed through a collaborative process with the LCSAs and their representatives. Once the local performance goals are established, there are a number of steps that we take to promote success in reaching those goals.

We require that each LCSA prepare a Performance Management Plan. The Plan must include a description of the specific business strategies the LCSAs will undertake to meet their performance goals. Strategies must target known problem areas and areas selected should have the greatest potential to improve outcomes for customers. The Plans must include details such as specific implementation activities, timeframes, and

milestones for measuring progress. The Plans must include responsible parties, expected results, and the methodology for measuring those results. The Plans are reviewed to ensure that the required components have been included. Revisions are requested in the event that a Plan does not contain the required components.

During the course of the year DCSS Regional Administrators, or RAs, monitor the performance of each local agency, tracking the performance measure with established targets. RAs review monthly, quarterly and annual reports on all measures. Progress is reviewed with each individual LCSA as well as in multi-county meetings where specific practices are shared and results are assessed. In addition to performance on federal measures, DCSS staff conduct compliance reviews to ensure that case processing rules are followed and federal timeframes are met. LCSAs that fail compliance reviews are required to complete corrective action plans.

My goal is to continue to personally, and through DCSS staff, work collaboratively with each local child support director and staff to achieve their performance goals. However, existing state law provides me the authority to take necessary action with respect to LCSAs that are not making progress in meeting performance targets or that fail compliance reviews. Specifically, failure by LCSAs to reach or make reasonable progress in reaching their performance targets allows me to administer a three-phase Corrective Action Process. Actions can include establishing performance improvement plans which focus on specific performance strategies, timeframes and outcomes of business practices designed to improvement performance. If there is persistent non-compliance and lack of cooperation, the ultimate step may include the state assuming responsibility for local operations.

16. Which initiatives to improve county performance are the most effective and how have you made that determination?

The following are the primary DCSS initiatives for improving county performance:

- Early Intervention

I believe that the Department's Early Intervention Initiative has the most potential to improve LCSA performance in California at this time. Early intervention has been proven to be effective in both increasing collections, as well as improving performance on several key federal performance measures (collections on current support due and arrears).

The National Child Support Enforcement Strategic Plan promotes a focus on early intervention to prevent the unnecessary build-up of arrears. The intent is to build a culture of compliance, in which parents support their children voluntarily and reliably, and benefit families by improving collection rates. Early intervention practices have been shown to increase performance in a number of studies in California and

jurisdictions around the country. My experience in Orange County confirms this conclusion.

Accordingly, I have begun a statewide Early Intervention Initiative utilizing 2009/10 Revenue Stabilization funding. In order to receive Revenue Stabilization funds, LCSAs were required to develop and submit Early Intervention Plans. Guidelines were developed, and all plans were submitted to the Department by May 1, 2009. Local agencies will utilize casework staff that are hired or retained using these funds on early intervention activities, with a focus on personal customer contact.

- Key County Initiative

This Initiative focused on the eleven lowest-performing LCSAs. Performance thresholds were established for key federal performance measures. The Department worked collaboratively with the agencies to develop Performance Improvement Action Plans that were targeted to issues and problems specific to each agency. Local progress in implementing the plans has been monitored, and performance has improved significantly for these Key Counties.

At the beginning of the Initiative there were eleven LCSAs with performance below established minimum thresholds. By June of this year, nine of the agencies had increased performance to such an extent that they successfully completed the requirements of the Initiative.

- Big 6 Initiative

This Initiative involves quarterly meetings with the directors of the six largest LCSAs that represent 58 percent of the statewide child support caseload. This promotes direct contact among the six largest agencies to share information and strategies and emphasize a focus on performance improvement. At these meetings, directors report on progress on federal measures, share best practices, and report on performance enhancement strategies that are resulting in desired outcomes. This provides a mechanism for the Department to regularly monitor the agencies' progress in meeting performance milestones and goals; builds collaborative working relationships; and encourages a healthy competition among the LCSAs as they seek to improve performance.

- Business Plan

This is a structured business planning process through which we have developed joint state/local strategies for improving effectiveness and efficiency. Through a number of workgroups, progress is being made to develop and implement both short

and long run strategies that will have a positive impact on the performance of the statewide child support program.

17. Are there problems that are unique to larger counties or smaller counties?

Small LCSAs face unique problems due to their size. In some small counties, staff salary and benefits are lower, which sometimes results in difficulty attracting a qualified pool of candidates to fill vacant positions. Many small county staff performs more than one function in order to meet the demands of a full child support program operation. When one person leaves, it can impact several areas of operation. These duties are assumed by others until the position can be filled. Due to the budget situation and increasing costs, many times positions are eliminated and the duties are assumed by existing staff, which increases individual workloads and adversely impacts operations when a worker is absent. In addition, small counties have limited, if any, resources to perform activities such as public outreach, technical functions, workgroup participation, and training programs.

Large LCSAs also face challenges due to their size. Large counties must ensure that information moves throughout the organization uniformly and consistently. Their ability to communicate organizational change has a direct impact on their ability to perform effectively and efficiently. Also, large county business processes cannot allow staff to perform full service case management activities. Instead, staff with separate areas of responsibility handles only certain aspects of individual cases. This has the potential to cause confusion for the customer and presents a greater opportunity for errors in case management.

I am committed to the Department's mission of promoting the well-being of children and the self-sufficiency of families, meeting all federal program requirements, refining operation of the statewide automation system, and improving the program's overall statewide program performance, particularly in the areas of collections and cost-effectiveness.

I look forward to working with the Legislature on the important issues facing California's families, and welcome further discussion of the opportunities and challenges facing our program during my Senate Rules Committee confirmation hearing.

Sincerely,



JAN C. STURLA
Director

Goals

1. *What are your goals as a member of ARB? How will you measure your success?*

As a member of the ARB, I hope to bring attention to the impact that air quality has on public health and well-being. The evidence is clear that poor air quality contributes to higher incidence of asthma attacks in children, increased cardiovascular disease in adults, and overall reduced life expectancy. I am an avid runner, and I promote the benefits of exercise and proper nutrition in my role as a county supervisor. But if we want to combat the negative health outcomes of childhood obesity, it's not enough that our kids exercise—they need clean air to breathe while they play outside.

As the representative of the Bay Area Air Quality Management District on the ARB, and as a county supervisor from Silicon Valley, I hope to be a link between the ARB and the innovative companies in Silicon Valley that are at the forefront of our new “green” economy. We must make sure that the regulations promulgated by ARB do not stifle the innovation coming out of Silicon Valley’s “green tech” industries.

As a county supervisor, I understand the needs of local government as it grapples with fiscal challenges not unlike those faced at the state level, while at the same time trying to realize the greenhouse gas reduction goals outlined in AB 32. I hope to provide that perspective on the ARB as the Board considers the various measures to implement AB 32.

Success will be measured by California’s progress toward attainment for criteria air pollutants, adoption of the regulations outlined in the AB 32 Scoping Plan, and reduction of health risks in our low-income communities.

2. *What do you believe are the most critical issues currently facing the board?*

I feel fortunate to have been appointed to the ARB at such a historic time. Tasked with implementing much of the California Global Warming Solutions Act of 2006 (AB 32), the ARB is and will be addressing many landmark measures aimed at improving our State’s air quality over the next few years.

However, these measures cannot be implemented without taking into consideration their impacts, both positive and negative, on California’s economy. The opportunities to lay the groundwork for the “green” economy of the future are here before us, but we also need to keep in mind the costs to businesses and government to get there. This includes not hindering the innovations of our cutting-edge green tech industries.

Senate Rules Committee

JUN 8 2008

Appointments

Together with consideration for the environment and the economy, we can't lose focus on the impact of air quality on public health. We must be mindful of all of these critical issues as the Board weighs new regulations.

3. *What air quality issues do you believe warrant more awareness and consideration from the board?*

Beyond the charge to achieve our air quality standards, I believe that the ARB should focus more attention on public education and awareness of the consequences of the Board's actions, and the consequences of inaction. We know why the ARB exists, and it's not to be overly burdensome on business, or to restrict personal freedoms or personal property rights. There are legitimate health and environmental considerations behind the regulations proposed by ARB, and we need to do a better job of grounding the public in these concerns. The challenge is balancing all of these interests to do the least harm while ensuring the maximum benefit to the health and well-being of the public and the planet.

Workforce and Succession Planning

The California State Auditor recently issued a report on workforce and succession planning in state government, "High-Risk Update—Human Resources Management: A Significant Number of State Employees Are Beginning to Retire, While Certain Departments That Provide Critical State Services Lack Workforce and Succession Plans" (March 19, 2009). Although the board is not noted in the report, the Auditor raises issues that apply to many state agencies. The report notes that as many as 42 percent of today's state employees in leadership positions, and approximately 23 percent of rank-and-file employees, may retire in the next seven years.

4. *Does the board have a workforce and succession plan?*

Yes, the Air Resources Board (ARB) has a Workforce Succession Plan. It was created and implemented in July 2006. In addition, the ARB has a Workforce Succession Planning Panel, comprised of Division Chiefs plus Human Resources staff affiliated with and/or key to workforce planning. The Human Resources Branch is lead on maintaining the plan which naturally is continually changing as our workforce environment changes. HR staff involved with workforce and succession planning attend statewide training provided by the Department of Personnel Administration and meet quarterly to network with other departments. HR staff also monitor demographics and oversee the overall training and other program requirements of workforce and succession planning, such as instituting a knowledge transfer program for the Board.

5. *In order to address future retirements in leadership positions, how does the board train rank-and-file employees to succeed into leadership positions? Does the board encourage job-shadowing and mentoring programs?*

In order to address future retirements in leadership positions, the Board provides rank and file employees, along with first line supervisors, five days of *Leadership Development Training*. The Board has trained over 200 employees since 2007. The training has been enthusiastically received. Many of our graduates have gone on to become managers.

In addition to providing Leadership Development Training, the Board offers *Follow Up Leadership Development Training*, or coaching approximately six months later. The course is a day and a half refresher to the previously given training, combining an additional component of “strengths based training.” The benefit of the refresher course is to reinforce the leadership principles and models that were outlined in the previous training and to gain further insight into how to apply those principles in the workplace.

The Board also implemented a pilot *Mentor Program* in 2008. Based on results, a formal Mentor Program will be launched in 2009 that will include cross-divisional mentoring. Additionally, the Executive Office has started a rotational four month long shadow program.

Federal Economic Stimulus Funds

On February 17, 2009, President Obama signed HR 1, the American Recovery and Reinvestment Act of 2009 (ARRA), which provides \$787 billion in economic investment nationally. The goals of ARRA are to jump-start the economy and create jobs for Americans in an accountable, transparent manner. California is the beneficiary of approximately \$50 billion for a variety of statewide programs. A considerable portion of funds are targeted for improving air quality, transportation, energy, and the environment.

6. *What actions is the board taking to ensure that the state secures as much federal stimulus funding as possible to improve air quality in the state? How are the board members monitoring this issue?*

ARB is committed to securing as much federal stimulus funding for California as possible. We expect funding requests to far exceed the available federal funds, so we are carefully evaluating the air quality related stimulus funding opportunities issued by the Environmental Protection Agency and Department of Energy looking for areas where California is uniquely situated to craft the most competitive proposals.

To date, ARB has submitted proposals to administer over \$80 million in clean air projects. ARB is also supporting efforts by Air Districts and industry to bring even more federal money to California by pledging \$25 million in ARB-administered State incentive funds as match funding to strengthen proposals by local air districts requesting \$25 million in federal air quality grants for California.

The Board routinely receives updates from staff on ARB's air quality incentive programs. At the April 2009 Board meeting, the Board asked staff to keep us apprised via Board updates on efforts to secure federal air quality funds for California.

7. How will the board decide where to focus these federal economic stimulus funds for air quality issues? What is your view?

We are using several factors in deciding where to focus air quality related federal stimulus funds, including:

- Regional severity of air pollution for both criteria pollutants and air toxics;
- Need for additional emission reductions to meet State Implementation Plan (SIP) commitments;
- Location of pollution sources targeted for federal funds;
- Ability to help California businesses impacted by air quality regulations;
- Ability to coordinate federal funding with existing California incentive programs; and
- Strength of proposal (i.e., we consider whether regionally-focused or statewide proposals would compete better based on the scoring criteria for each funding opportunity).

In some cases, these considerations led us to submit regionally focused proposals – such as proposals to modernize locomotives at rail yards in the South Coast and San Joaquin Valley Air Basins to help these regions meet their SIP commitments. In other cases, we submitted proposals for statewide projects – such as a loan guarantee program to assist off-road equipment owners with early compliance with ARB's statewide off-road equipment regulation.

In addition to the funding proposals submitted by ARB, we are supporting air districts in their efforts to pursue additional federal funding to address their local air quality issues.

United States Environmental Protection Agency (U.S. EPA) Proposed Finding on Greenhouse Gases

On April 17, 2009, the U.S. EPA issued a news release, "EPA Finds Greenhouse Gases Pose Threat to Public Health, Welfare/Proposed Finding Comes in Response to 2007 Supreme Court Ruling," which included a proposed finding that greenhouse gases (GHGs) contribute to air pollution that may endanger public health or welfare. This could potentially open the way for new federal regulation of cars, power plants, and factories. In addition, U.S. EPA administrator Lisa Jackson stated, "This pollution problem has a solution—one that will create millions of green jobs and end our country's dependence on foreign oil."

8. *Considering the current push at both the federal and state levels to boost the economy while promoting green jobs and technology, what is the board doing to develop and market green jobs and technology in California?*

This will require an educated workforce. ARB is an active member of California's Green Collar Jobs Council and works with the Workforce Investment Board and Employment Development Department to ensure California will continue to lead the nation in the green economy.

ARB promotes the green economy through the Innovative Clean Air Technologies (ICAT) program that co-funds the demonstration of innovative technologies that can reduce air pollution. Its purpose is to advance such technologies toward commercial application, thereby reducing emissions and helping the economy of California.

At a grassroots level ARB seeks to challenge a new generation to focus on climate change solutions. As the sponsor of Climate Champions, ARB challenges young Californians (in grades 9-12) to demonstrate that they have what it takes to develop local projects to raise awareness about climate change, and to engage their peers and communities in the effort.

AB 32 Scoping Plan

The California Global Warming Solutions Act of 2006 (AB 32 (Núñez), Chapter 488, Statutes of 2006), establishes the goal of reducing, by 2020, California's GHG emissions to what they were in 1990. On December 11, 2008, the board approved the AB 32 Scoping Plan. The plan includes 31 GHG emissions reduction measures to be applied to eight diverse sectors of the economy.

9. *How are the proposed measures in the scoping plan progressing? Do you believe that some sectors could contribute more to reduce GHG emissions than what is outlined in the Scoping Plan?*

The Board is on schedule in adopting the Scoping Plan measures. To date, we have adopted ten measures by regulation at our monthly Board meetings, including five since I joined the Board this January. Seven measures are scheduled for the remainder of 2009 and another nine measures are already scheduled for 2010. In April 2009, our Board adopted the Low Carbon Fuel Standard, which received worldwide attention. This is the world's first standard requiring transportation fuel providers to reduce the carbon intensity of fuels.

The Scoping Plan provides a balanced and cost-effective approach to reducing GHG emissions across all sectors. Nevertheless, there will be opportunities for adjustments and additions as we continue to evaluate cost, cost-effectiveness and technical feasibility during the development of regulations. For example, reductions from the Low Carbon Fuel Standard increased from the 15 million

metric tons of carbon dioxide equivalent (MMTCO₂E) estimate in the Scoping plan to 16 MMTCO₂E in the adopted regulation as a result of more detailed analysis. In order for California's climate program to be successful, our programs must reward innovation, so we must also pursue creative solutions – which may not be regulatory. Incentives, rebates, and education all have a role to play in maximizing emission reductions.

As part of our on-going implementation of the Scoping Plan, the Board has also recently completed other important non-regulatory activities including:

- Appointment of members to the Regional Targets Advisory Committee under SB 375. This Committee is charged with making recommendations on how ARB should set regional transportation greenhouse gas targets in September 2009. ARB, in consultation with metropolitan planning organizations, must then set the targets by September 2010;
- Appointment (jointly with Cal/EPA) of members to the Economic and Allocation Advisory Committee. This Committee will advise on the implementation of AB 32 and the associated Cap-and-Trade Regulation. Among the Committee's tasks will be considering various options for distributing allowances.
- Approving climate-related Innovative Clean Air Technologies grants. These grants provide funding to help commercialize innovative technologies that will reduce greenhouse gases;
- Developing a Small Business Toolkit for reducing greenhouse gases that showcases case studies and funding resources for small businesses to save money and reduce greenhouse gas emissions; and
- Developing a Local Government Toolkit to assist local governments in developing climate action plans.

10. Please provide a status report on the implementation of the early actions measures required to be adopted and implemented under AB 32. Will all measures be adopted and enforceable as required by the law?

The Board is on track to meet the January 1, 2010 deadline for the Discrete Early Action measures, as shown in the table below. With the adoption of the Low Carbon Fuel Standard in April 2009, eight of the nine Discrete Early Action measures have already been adopted by the Board. The final measure, addressing landfill methane, will be considered by the Board at our June meeting.

Discrete Early Action Measure	Board Adoption/ Consideration
Ship Electrification at Ports	December 2007
Consumer products (such as pressurized gas dusters)	June 2008
Improved aerodynamic efficiency from heavy duty trucks	December 2008
Motor vehicle air conditioning: non-professional servicing	January 2009
Semiconductor manufacturing	February 2009
Sulfur hexafluoride (SF ₆) emissions from non-semiconductor and non-utility applications.	February 2009
Tire Pressure Program	March 2009
Low Carbon Fuel Standard	April 2009
Landfill Methane Control Measure	June 2009

11. Many of the measures adopted by the board in its scoping plan (e.g. 33% renewable energy goal, extended producer responsibility for solid waste) are measures that touch upon the jurisdictions of other state agencies. How do you see those measures being implemented? Would the ARB adopt them as measures under AB 32 or simply recommend that other agencies implement those measures?

Throughout the development of the Scoping Plan, ARB worked closely with other State agencies through the Climate Action Team (CAT). The result was a comprehensive plan to reduce emissions that builds upon the existing expertise and authority of other agencies in addition to the broad authority granted to ARB by AB 32. AB 32 specifically preserves the authority of other State agencies, and many of the measures in the Scoping Plan are being led by other State agencies. ARB will continue to work closely with these agencies, both within the Climate Action Team and in measure-specific forums, to coordinate cross-sector efforts and implement the many measures identified in the Scoping Plan.

12. Please describe how the state's cap-and-trade program would coordinate with the WCI program? How should California balance its policies with those of other WCI partner states and provinces?

California is working closely with the other States and Canadian Provinces in the Western Climate Initiative (WCI) to design a regional cap-and-trade program that can deliver reductions of greenhouse gas emissions throughout the Western U.S. and Canada. The goal of this effort is to establish a fully linked emissions trading market with a uniform set of rules. By participating in the WCI effort, we help ensure that California industries compete on an even playing field with their counterparts in the other WCI jurisdictions during the transition toward a greenhouse gas constrained economy.

California is a leader in WCI discussions and California's cap-and-trade program design choices influence the decisions of the other WCI Partner jurisdictions. In this regard, the cap-and-trade choices made as part of the WCI design documents

were harmonized with the AB 32 Scoping Plan. ARB's cap-and-trade regulation will include provisions that link our program with that of those WCI partners that meet the common design. Because our rulemaking is being carried out based on our authority under AB 32, the Board will not adopt a cap-and-trade regulation that is not consistent with California's laws, policies and interests. The WCI design must meet those standards if California is to participate in the system.

Collaborative efforts and geographically broad solutions such as the WCI are essential if we are to address the shared problem of global climate change. California will continue to provide a leadership role as the WCI program develops.

13. How would the state's cap-and-trade program work in conjunction with a cap-and-trade program implemented at the federal level?

The federal cap-and-trade program can and should be designed in a manner that would allow California and other States to individually or collectively operate a State or regional cap-and-trade program within the federal program. Because the timing and content of the final federal bill remains uncertain, ARB is continuing to work on development of our own cap-and-trade program in conjunction with our partners in the Western Climate Initiative. As we develop this regional program, we will work to ensure that the regional program can transition smoothly into the future federal program. If California begins to operate its cap-and-trade program before a federal program is in place, it will be essential that the federal rules include provisions that maintain the value of any allowances issued by California.

The legislation currently under consideration in the U.S. House of Representatives, the American Clean Energy and Security Act (ACESA), includes a provision in Section 335 that would restrict individual states from implementing greenhouse gas cap-and-trade programs between the years 2012 and 2017. If this provision were to become law prior to completion of ARB's cap-and-trade rulemaking, then California would be unable to implement the cap-and-trade program prior to 2018. California will continue to encourage provision for State and regional cap-and-trade programs as Congress considers development of federal legislation to curb greenhouse gas emissions.

State and Federal Clean Air Act Compliance

Under the state and federal Clean Air Acts, the ARB oversees the adoption and implementation of district plans to achieve and maintain clean air standards. In recent months, there have been press reports regarding the apparent dearth of particulate matter (PM) emission reduction credits (ERCs) in the South Coast Air Basin. The district contends that a recent court decision has limited its ability to issue credits for businesses and essential public services. Environmental groups contend that the district is proposing

to issue credits that do not exist or that do not meet requirements of law (e.g. quantifiable, enforceable, surplus etc.)

14. Does the ARB have any data or information on the actual quantities of valid PM credits in the district ERC bank (“priority reserve”) and elsewhere in the district? If so please provide this information. Does the ARB itself possess any PM ERCs that could be used to address this situation?

SCAQMD process for creating the credits and validity of the credits is a point of contention in SCAQMD and is being challenged with litigation in state and federal court. ARB does not have any data or information on valid credits.

ARB does not possess surplus emission reductions that could be used for siting power plants. However, ARB staff is working closely with SCAQMD and U.S. Environmental Protection Agency to identify potential non-traditional sources of PM10 ERCs that could be used to site power plants (examples include locomotives, marine vessels, road paving).

There has been recent controversy over the implementation of the ARB’s Phase 2 Enhanced Vapor Recovery Regulation that applies to gas station dispensers. While parties support the underlying goal of the regulation, there have been reports that enforcement has been uneven and that there have been coordination challenges among the ARB and districts.

15. Given the issues that have occurred with this regulation, and your own experience on a district board, do you have any suggestions for how to avoid these kinds of problems with future regulations?

Implementation of the enhanced vapor recovery regulation affected over 10,000 sources and required a significant amount of capital investment by industry. An incredible amount of cooperation and joint effort by ARB and districts occurred including extensive outreach and the development of a joint compliance policy. However, given the issues, additional coordination was warranted and will be encouraged in future regulations.

Goods Movement

According to data collected by ARB and the Business, Transportation and Housing Agency, there are hundreds of additional deaths per year from goods-movement-related air pollution, and the mortality rate is increasing. In addition, there are thousands of increased incidences of respiratory illnesses and other adverse health effects. Low-income communities often suffer from increased pollution burdens due to their locations and the industrial activities, truck traffic, or other activities that take place adjacent to them. At the same time, goods movement provides jobs and increased economic benefits to the state.

16. *What actions do you support to address the health effects of air pollution from the movement of goods?*

ARB has a comprehensive program to characterize and reduce the health risks of diesel emissions from goods movement on nearby communities, and to cut regional ozone and fine particle pollution.

Risk Characterization. ARB has also completed health risk assessments for the busiest port complex in the U.S. (the Ports of Los Angeles and Long Beach), 18 major rail yards, and the West Oakland community (impacted by the Port of Oakland, two rail yards, and four freeways). These assessments indicate elevated cancer and non-cancer health risks around many freight facilities throughout the State. ARB staff is conducting a mobile monitoring program (the Harbor Communities Monitoring Study) in neighborhoods adjacent to the Southern California ports to better understand how pollution levels in impacted communities are responding to new control programs.

Exposure and Risk Reduction. ARB has adopted a broad suite of regulations and other programs for cleaner equipment and fuels to meet the Board's goal of 85 percent reduction in health risk from goods movement between 2001 and 2020 (despite a projected tripling of trade) and to help attain air quality standards. Key ARB regulations require: the existing fleet of diesel trucks, harbor craft, and cargo equipment to accelerate the transition to low-emission models; time limits on unnecessary truck idling; the use of much lower emitting fuels in ships, harbor craft, and land-based sources; and the use of shore-based electrical power for ships at dock instead of running the on-board diesel engines. The major freight railroads are also reducing emissions at rail yards under agreements with ARB to protect nearby communities and improve regional air quality. ARB has expanded its enforcement activities, with more than half of the field inspections for trucks performed in communities near ports, distribution centers, and rail yards.

ARB projects that the adopted rules, enforceable agreements, and supplemental incentive programs will reduce the statewide emissions and resulting health risk from goods movement by over 80 percent prior to 2020. ARB is investigating further strategies to improve the efficiency of the freight system, reducing fuel consumption and greenhouse gases concurrently with toxic air pollutants. ARB staff will continue to work with ports, railroads, air districts, and affected communities to identify and implement local strategies to accelerate the risk reduction at each major freight hub.

17. *How do you balance socioeconomic and industry concerns while protecting the public health in affected communities, such as low-income neighborhoods adjacent to ports?*

ARB evaluates the effectiveness of technology and other methods to reduce emissions and health risks in nearby communities, as well as the reductions

needed to meet federal air quality standards under the State Implementation Plan. ARB staff works closely with the affected industries to understand and lessen the business impacts of the regulation through phased implementation and compliance flexibility so equipment owners can choose the best path that achieves the needed emission reductions. The Board itself often spends considerable time focused on the issue of balance when considering each plan and regulation, in light of the public health needs and industry concerns highlighted in public testimony.

ARB also quantifies the economic costs and benefits of each plan or regulation. For example, in the 2006 Emission Reduction Plan, ARB estimated that each \$1 invested in new pollution controls would yield \$3-\$8 in benefits through avoided health impacts. For the 2008 Statewide Truck and Bus Rule, ARB estimated that implementation would avoid approximately 9,400 premature deaths through 2025, with each \$1 spent to cut particulate matter yielding over \$5 in avoided health impacts.

Financial incentives are another important tool to simultaneously achieve both goals – to accelerate the pace of emission reductions for public health, while assisting business owners with the cost of early compliance. The \$1 billion Proposition 1B Goods Movement Emission Reduction Program is designed to reduce the health risk in heavily-impacted communities. ARB administers this program with local air districts and seaports to co-fund the cost of cleaner equipment associated with port operations, including trucks, locomotives, and ships at dock. The statute directs ARB to “...allocate funds in a manner that gives priority to emission reduction projects that achieve the earliest possible reduction of health risk in communities with the highest health risks from goods movement facilities.”

The Program effectively targets emission reductions in heavily impacted communities by allocating more funds to the corridors with the greatest impacts from goods movement and more funds to the source categories contributing to the highest health risks (predominantly trucks). These include communities near ports, rail yards, and distribution centers, as well neighborhoods along travel corridors with high truck traffic. The focus on trucks also supports early reductions in health risk as truck upgrades can typically be accomplished more quickly than other project types.

Heavy-duty trucks serving seaports and intermodal rail yards are typically among the oldest, dirtiest trucks on the road. These trucks operate in and near densely populated neighborhoods, leading to significant health and safety impacts for the communities. For these reasons, ARB has targeted port trucks as the single largest funding category for the Program.

JUL 28 2009

Appointments

Robert Kecheco
Responses

July 14, 2009

The Honorable Darrell Steinberg
Chairman, Senate Rules Committee

Thank you for the opportunity to respond to questions relating to my reappointment as a member of the Occupational Safety and Health Appeals Board ("OSHAB").

I preface my responses by stating that I am pleased Governor Schwarzenegger has given me an opportunity to serve a second term on OSHAB. I have found the past four years both challenging and fulfilling in helping the State of California protect its workers from workplace hazards. In carrying out my duties, I am guided by my belief that enforcement of California's Occupational Safety and Health Act requires that OSHAB honestly and fairly interpret the applicable law and regulations.

The following responses correspond to the questions that have been posed to me by the Senate Rules Committee. For ease of reference I have repeated each section of those questions before my responses.

Roles and Responsibilities

During your first term as a member of OSHAB, you indicated that your goal was to protect employees and fairly enforce work safety standards, approaching your job as a board member with both open mindedness and integrity.

- 1. To what extent do you believe you have accomplished these goals? Please describe specific actions and accomplishments toward achieving them.**
- 2. What do you hope to accomplish in your second term? How will you measure your success?**
- 3. What do you view as your primary responsibilities as a board member?**

1. The role of the Appeals Board, as a quasi-judicial body, is to apply the law to the facts established by the parties in presenting their respective cases. Approaching issues raised by the parties with an open mind, and applying the law fairly, is critical to reaching an unbiased decision. I have approached my job as a board member in that manner, being mindful that the Board's role is not to legislate but to interpret the Occupational Safety and Health Act (the Act).

I take great pride in conducting extensive research before forming an opinion on all orders and decisions of the Administrative Law Judges as well as all petitions for reconsideration that are presented to the Board. I begin my analysis of each case by

reviewing the applicable regulation and the evidence that was the basis for the Administrative Law Judge's decision or order. That includes, when necessary, listening to recorded testimony or reading written transcripts of the hearing and reviewing any physical evidence. In addition to independent research I also consider the analysis of the Board's legal staff before forming an opinion in a case. By following that process I have and will continue to make a substantial contribution to the Board's decisions.

In formulating an opinion, I consider that employee protection from workplace hazards is the central purpose of the Act. The Board's role in achieving that purpose is to provide a forum for fair and impartial adjudication of appeals of actions taken by the Division. The Board's duties are set forth in the California Labor Code. It is the responsibility of the Board to adhere to the guidelines set forth by the Act as amended and the Board Rules of Practice and Procedure adopted in accordance with statutory law. As a Board member I apply the law and the rules and procedures in a fair and impartial manner keeping in mind the intent of the Act.

Protecting employees and providing fair adjudication under the Act requires that appeals be heard in a timely manner. A backlog of cases the Board had at the beginning of my first term, including a number nearly six years old, was a danger to the protection of workers because adjudication, enforcement, and guidance was delayed. In fact, the Board had a backlog of almost 4,000 appeals and a federal complaint was filed against State Plan Administration (CASPA) for failing to resolve appeals in a timely manner. Through diligence and hard work, applying the processes I outlined above and streamlining procedures, the Board was able to eliminate the backlog so that today cases are being heard within a reasonable time frame.

2. In my second term I will work closely with the other Board members to put into effect what the Board has already started, a process to determine what is needed to improve the quality of service the Board provides. The Board anticipated this need and commenced the process in 2008. Prompted by the fact that its case load was under control, the Board embarked on holding public hearings to receive input from all parties which bring cases for the Board to review. The Board will continue to assure that we receive input from interested stakeholders. Improving timely hearings of work safety cases is important for protection of workers. Expediting the handling of cases to achieve early resolution will assure that employee safety and the rights of all parties are protected.

3. My primary responsibilities as a Board member are to provide reasoned analysis to all Board members on issues before the Board and to articulate my points of view concerning the work of the Board. As a public board member, I consider my duties and responsibilities to include going to my West Covina office daily. My work load includes conducting extensive research and legal analysis. I review all orders, and decisions issued by ALJs and proposed rulings on petitions for reconsideration prepared by legal staff. I participate in drafting Decisions after Reconsideration (DAR's) and provide guidance in the preparation of DAR's. I attend all Board

meetings as scheduled by traveling to Sacramento or wherever they are noticed. With other Board members, I provide input in the daily processing of work as well as employee hiring and firing. Together with the Presiding ALJ, I am assigned by the Board to conduct interviews of prospective Administrative Judges and to make recommendations to the Board. Additionally, I participate in all noticed stakeholder meetings seeking input from the public and then prepare and provide input as to the results of those meetings.

The Appeals Process

OSHAB is responsible for handling appeals from private- and public-sector employers regarding citations issued by the Division of Occupational Safety and Health (DOSH) for alleged violations of workplace safety and health laws and regulations.

Appeal hearings are conducted by administrative law judges (ALJs), and any party to an appeal has the right to petition the board to reconsider an order or decision of an ALJ. Any party to an appeal who disagrees with a decision, after reconsideration or the denial of a petition for reconsideration, may apply to the California Superior Court for a writ of mandate.

4. *What substantive and procedural issues most frequently prompt you to reconsider an ALJ decision?*

4. Substantive and procedural issues arise in many ways. Some procedural issues concern the conduct of the hearing including evidentiary rulings. On a petition for reconsideration filed by either the Division or Employer concerning evidentiary matters, I apply my knowledge of evidentiary rules and when necessary conduct research to assure my understanding of the rules is correct. Disputes on evidentiary rulings arise less frequently than interpretation of the applicable regulation to the facts of the case.

The most frequent issues that prompt reconsideration of an ALJ's decision concern incorrect application of the regulation to the facts of the case. On each petition, the Board extensively reviews the ALJ decision to determine applicability of the law to the decision or the basis for reconsideration. The Board will deny the petition for reconsideration if the Board agrees with the ALJ's decision. Although I am not at liberty to discuss the details of these matters because they are pending before the Board, I have encouraged the Board to take reconsideration of a number of ALJ orders addressing section 342(a) violations (failure to report serious injuries to the Division) because I believe the Board must provide continuing guidance regarding the application of the regulatory, statutory and case law in this developing area of the Board's jurisprudence.

The Board will reconsider a case where the issue raised requires substantial review of the facts and/or a technical interpretation of a regulation. Many such cases involve lengthy briefs by one or both parties and substantial legal issues. The issues are varied. At present the Board has 73 cases pending for reconsideration. The issues include: violation of 342(a) (\$5,000 late reporting), 5 cases; multiple employer –

identity of employer liable 3 cases; penalty reduction, 5 cases; procedural issues 4 cases; issues relating to failure to provide witness list, 4 cases; IIPP (safety procedures manual) 3 cases; employer named on citation incorrect 3 cases; the remaining cases range from point of operation guard violation, serious classification of violation, fall protection, training violations, serious classification disputed, accident related classification just to name a few.

For the committee's information, in 2008, the latest year for which the Board has compiled numbers, the Division's 10 most frequently cited safety order violations, starting with the most frequent, were: Injury and illness prevention program; heat and illness prevention; construction injury prevention program; hazard communication; machinery & equipment clean, repair, service violation; portable fire extinguisher; failure to report work injury; permits to operate air tanks; and, respiratory protection equipment. The Board disposed of 6,904 appealed and docketed cases during the year 2008.

Customer Service

In testimony given on January 7, 2009, in the Rules Committee, and again on May 13, 2009, Chair Traeger indicated that the elimination of the case backlog affords new opportunities to improve customer service at OSHAB.

5. *Please describe concrete measures OSHAB has taken to improve customer service since January 2009, and the impacts these efforts have had on operations at OSHAB. Please be specific.*

5. The Board has been proactive in initiating procedures to improve customer service beginning in 2008. In fact the Board began the process in 2008 by reviewing its case load and how cases were assigned for hearing and in 2009 by holding meetings with stakeholders. The technology and computer programs available to the Board are not capable of producing adequate information to compile data. However, in 2008 and continuing in 2009, the Board underwent a labor intensive program of manually counting cases, reviewing types of cases and the degree of difficulty (time needed for presentation) of each case. The end result was improvement of case management and how cases were assigned to locations for hearings.

As a further result of improvement in case management, the Board has reduced the need for delays in presenting of cases. At the present time the Board is in compliance with the 10 month Federal requirement for time frames to hear cases. That is a substantial change from where the Board was 4 years ago.

Additionally, the Board, on its own, initiated an "Expedited Abatement Pilot Project to ensure that cases in which abatement of the alleged hazard had yet to be achieved were heard expeditiously. The Pilot project began on April 1, 2009. As a result of the project, to date, 85 cases have been identified that meet the Pilot Project Criteria. The

process of expediting abatement of conditions that may be a danger to the California worker is of critical importance to the enforcement of the Act.

Moreover, in response to stakeholder input, and the procedures implemented by the Board, the Board has virtually eliminated scheduling more than two hearings in a single day. When the backlog was extensive, this was not an option, but the Board has already instituted measures to reduce the number of required hearings. Because the Board schedules several months out, the results of this change will be evident in September-October 2009.

Hearing Locations

Section 376 of Title 8 of the California Code of Regulations specifies that the Appeals Board "shall set the place of the hearing at a location as near as practicable to the place of employment where the violation is alleged to have occurred." Concerns have been raised that OSHAB is not holding hearings in locations which are convenient for the parties involved, making it more difficult for witnesses to appear, and thereby reducing the quality of the adjudication process.

- 6. *What is your interpretation of regulatory rules requiring OSHAB to hold hearings, "at a location as near as practicable to the place of employment where the violation is alleged to have occurred"?***
- 7. *How has OSHAB addressed concerns raised on January 7, 2009 in the Rules committee, and again on May 13, 2009, in the Senate Labor Committee, regarding hearing locations?***

6 The Board has reviewed the location of sites to expand the number of places to hold hearings. The Board recognizes the need to hold hearings near where witnesses are located and where the employer was cited. Board manpower is limited by reductions in staffing due to cuts in funding. With only nine (9) administrative law judges to cover the entire state, the Board has experienced difficulty in providing hearing locations that are convenient for all employers, employees and, for the Division. ALJs are required to travel to preside over hearings but there are limitations on how frequently and productively they can travel to outlying areas. The Board anticipates complaints as to the sites for hearings will be substantially reduced by the addition of new hearing locations. The term "practicable" in Section 376 of Board regulations calls for a balancing of the multiple factors summarized above and in the next response, such as ALJ resources and productivity, availability of suitable hearing locations, geographic proximity to the violation, witnesses' locations, Division personnel, employers' locations and personnel, and so on.

7. Keeping in mind Section 376 in scheduling the location of hearings, the Board diligently considers the hearing location in relation to the place of employment. However, staffing and budgetary constraints must also be taken into consideration within the meaning of "practicable" as intended by the regulation. It is impossible that with the limited resources available to the Board, hearings could be held in every conceivable area where an employer is located in the state of California. Thus, seeking

locations that can be reached within a reasonable time by several employers is a practicable way of determining where hearings are located. Holding stakeholder meetings to get input on possible locations is presently underway.

Calendaring

In the past, OSHAB has double- or triple-booked hearings for the same day as a means of reducing the outstanding backlog of cases. As a result, employers, DOSH employees, and witnesses appearing at the hearings have been forced to wait while the judge hears other cases.

8. *An open letter to the board dated June 13, 2009 signed by forty-seven DOSH employees suggests that multiple calendaring continues to be standard practice at OSHAB even though concerns about this practice were raised in January and May 2009, in both the Senate Rules and Labor committees. Is the policy of multiple-calendaring still in effect? What is the rationale for the policy and what is the board doing to address the concerns that have been raised?*

8. As mentioned above, the Board has already addressed the issue of calendaring multiple hearings on a single date. It has been acknowledged that for a period of time from 2006 to 2008 the Board undertook to conduct “smart calendaring” in an attempt to reduce the substantial backlog it had. The smart calendaring (scheduling of a number of cases with likely short hearing times or settlement potential) was ended soon after the backlog was eliminated. Since then, beginning in late 2008, further steps have been taken to reduce the number of cases set for hearing on any given day. The Board heard the comments from the Division and others and, on its own, began conducting stakeholder meetings to obtain input on how to rethink the scheduling of hearings. The first of those stakeholders meetings was held prior to the writing of the letter by the 47 DOSH individuals. In fact, changes in calendaring had been announced prior to the issuance of that letter, but, as noted above, the changes are not immediate because cases are scheduled months in advance. Many of the individuals that signed the letter may not have attended a meeting to obtain updated information.

While this issue was raised in January and May 2009 Senate hearings, I understand legislative members of the Labor Committee and other Senate staff members have been provided substantial data on the changed calendaring practices of the Board. It would be a fair statement that the Board does not anticipate the calendaring concerns raised in the past will continue in 2009. The Board does, however, note that past history shows only a small fraction of cases set for hearing actually go forward. It is therefore important to schedule an appropriate number of hearings so that Board resources are not wasted and so that a backlog of cases does not again develop.

Non-Reporting Penalty

By law, employers must report serious occupational injuries and illnesses to DOSH within an eight-hour period so that the division can initiate its mandated investigations within a timely manner. According to Labor Code Section 6409.1, employers who fail to report a serious occupational injury or illness in a timely manner "may be assessed a civil penalty of not less than five thousand dollars (\$5,000)."

- 9. Please explain how the board determines and sets penalty amounts for employer failure to report workplace accidents to DOSH.*
- 10. How do you interpret Labor Code 6409.1? What do you believe was the Legislature's intent when it drafted and passed the law?*

9. I am unable to comment on matters currently pending before the Board.

10. I am unable to comment on matters currently pending before the Board.

I can state however, that work safety is and continues to be the driving force behind the Board's decisions as it was for the Legislature in enacting the law. Reporting of work injuries in a timely manner assists the enforcing agencies to not only assure that unsafe practices are stopped, but, that any violator is assessed appropriate penalties to encourage compliance with the law and the protection of workers.

Thank you for allowing me to respond to your inquiries.

I will be pleased to answer any further questions you may have during the confirmation hearings or earlier if you so desire.

Sincerely,

Robert Pacheco
Public Member
California Occupational Safety and Health Appeals Board

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SENATE RULES COMMITTEE

DARRELL STEINBERG
CHAIRMAN

June 15, 2009

Laura N. Chick, Controller
City of Los Angeles

*Laura Chick
Responses
State Bar Bd of Gov*

Dear Ms. Chick:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment to the State Bar Board of Governors on Wednesday, July 15, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by July 6th.

We would also like to receive an updated Form 700, Statement of Economic Interest by July 6th.

Role of the State Bar

The State Bar is governed by a 23-member board of governors, with six public, non-attorney members. The board of governors establishes policy and guides the operation of the State Bar. The State Bar is the administrative arm of the California Supreme Court in matters involving the admission, regulation, and discipline of attorneys. Californians rely on the State Bar to protect them from the unethical or unauthorized practice of law and to help uphold and improve the justice system.

Members of the State Bar Board of Governors generally serve for three year terms, although the board-elected President is given a fourth year. As a public member who is being reappointed to the board, you will serve on the board for at least five years.

Senate Rules Committee

JUL 06 2009

Goals

1. *You were first appointed to the board in 2007. What do you believe have been your main achievements or contributions as a public member of the State Bar Board of Governors?*
2. *Please provide us with a statement of goals. What do you hope to accomplish during your new term on the State Bar Board of Governors? How will you measure your success?*
3. *Are there any issues facing the State Bar or the State Bar Board of Governors that are of particular concern or interest to you?*

Board Makeup and Operations

There are fifteen lawyer members, elected by members of the profession. There are six public members, four appointed by the Governor, one by the Senate Rules Committee, and one by the Assembly Speaker. In contrast, and consistent with the more common practice, the members of the Medical Board of California are appointed by the Governor and the Legislature, and are comprised of eight physician representatives and seven public member representatives. (Thirteen of the members of that board are appointed by the Governor and one each by the Senate and Assembly.) Thus, the members of the State Bar have the unique privilege of electing its board of regulators from its own membership.

4. *Based upon your two plus years on the board thus far, what observations can you share regarding the participation of public members on the State Bar Board of Governors? Where an issue might affect the practice of law, are public members and lawyer members generally in sync in seeking to promote public protection while balancing the needs of the legal profession? Or, are there differences in opinions? Have you seen instances where the lawyer-elected members of the board seemed or were more concerned about a proposal's adverse impact on lawyers practicing law than on the public protection benefits of the proposal?*
5. *At the May meeting of the Bar Board of Governors, an initiative was narrowly defeated on a vote of 11-8 that appeared to divide public members from attorney members. You were absent. The measure would have allowed the public to search the State Bar's website for attorneys organized by practice areas, an effort known as "Find a Lawyer." What is your view of whether the practice area of an attorney should be displayed on the State Bar's website?*

6. *Do you believe that the public interest is best served by the legal profession being able to elect its own members to the regulatory body? Do you believe more public members should be added to the board, or is the fifteen to six ratio the appropriate mix?*

Theft of Building Rent Proceeds

A former State Bar executive was arrested in April and charged with embezzling more than \$675,000 from the bar over a course of eight years in her capacity as the bar's Director of Real Property. That former executive handled building management of the bar's San Francisco property and used her position to embezzle rents collected from the building tenants. The thefts were hidden by maintaining dual books and falsifying documents and reports to the Finance Office.

7. *As a member of the board of governors, when were you informed of the theft? What explanation was given for the Bar's failure to discover the ongoing theft for eight years? What internal procedures were in place that apparently failed? Why was the theft not discovered in the annual financial audits required by statute? What reason was given by the financial auditors for its continuous failure to discover the theft over the eight year period?*
8. *Given your extensive experience in financial auditing, what should the State Bar have done to prevent the theft or at least discover it much earlier? What should it do to prevent future thefts? What actions have been adopted by the board in response to the theft? What actions should be adopted?*

Public Protection and the Office of the Chief Trial Counsel

Public protection is the primary mission of the State Bar of California. The Office of the Chief Trial Counsel leads the State Bar's important mission in protecting the public from the unlawful or unethical practice of law by attorneys and the unauthorized practice of law by non-attorneys. The State Bar Board of Governor's recently declined to re-appoint Scott Drexel as the Chief Trial Counsel, who was seeking re-appointment to a second four-year term. No reasons were publicly stated for the board's decision although stories carried by the legal newspapers speculated that the action may have been taken because some of his actions were viewed by some attorneys as being controversial or overly punitive for minor offenses. Another claim was that there was a tremendous backlog of cases, close to 1000, which Mr. Drexel disputes in the news accounts.

9. *Case backlog has been a consistent problem for the State Bar, although the state audit reports have found improvements in recent years. What is the current case backlog? Has case backlog increased or decreased in recent years? Are there in fact roughly 1000 cases in which notices of disciplinary charges have not been sent?*

Mr. Drexel introduced a rule allowing for the permanent disbarment of attorneys in the most egregious discipline cases and made it more difficult for attorneys to resign with charges pending against them. This latter rule change consequently made it made difficult for attorneys who resigned with pending charges to obtain reinstatement.

10. *Were these actions by Mr. Drexel a factor in the board's decision? If so, how did the board balance the public protection aspects of these measures versus the interest of attorneys to practice law?*

Mr. Drexel also decided to post on a member's profile page on the State Bar website, and thereby searchable by the general public, notices of disciplinary charges against a member. This action was very unpopular with attorneys as some of the notices were for cases that were years old and had been resolved with the attorney satisfying the conditions of any disciplinary order, if any.

11. *Was this action by Mr. Drexel a factor in the board's decision? If so, how did the board balance the public's valid interest in knowing about past disciplinary actions versus the disciplined member's interest in non-disclosure of information about these past actions?*
12. *What is your position on the posting of disciplinary charges on the board's website?*

The news accounts also reported that Mr. Drexel incurred the ire of the law enforcement and district attorney community by pursuing disciplinary cases against prosecutors for misconduct.

13. *Do you believe these actions by Mr. Drexel a factor in the board's decision? If so, what lines did the board believe were improperly crossed by Mr. Drexel in his prosecution of deputy district attorneys for attorney misconduct?*
14. *What goals would you set for the next chief trial counsel? What are the most important duties of the next chief trial counsel?*

State Bar Annual Dues and MCLE Fees

The last 18 months has seen California face the deepest economic crisis since the days of the Great Depression. Many lawyers have lost their jobs, many others have seen incomes significantly reduced, and many new lawyers cannot find jobs in a very difficult job market.

15. *What cost-cutting measures have the State Bar Board of Governors adopted? What long term plans have been adopted by the State Bar to control future costs so that the membership is asked to pay more dues as a last resort as opposed to the first resort?*

The State Bar has been criticized in past audits for its lack of strategic long range planning.

16. *What long range plans have been adopted by the State Bar to meet the needs of the public and its membership in the upcoming years?*

An active attorney must complete 25 units of Mandatory Continuing Legal Education every three years or else face suspension of his or her license. While up to 12.5 units may be satisfied by self-study, the MCLE requirement may be a financial strain for some lawyers in this economic downturn.

17. *What is the State Bar Board of Governors doing to control MCLE fees or to provide lower cost options for attorneys so that they may comply with their MCLE requirements?*

Professional Liability Insurance Disclosure

The State Bar Board of Governors is supporting a proposed regulation, currently pending before the California Supreme Court for approval, which would require attorneys to disclose to a client if the attorney does not have professional liability insurance where the attorney reasonably foresees that his or her representation of the client will exceed four or more hours. Significant concern has been raised by small and solo practitioners about the adverse impact of this requirement on their practices.

18. *What is the State Bar doing to help make professional liability insurance more affordable and available to attorneys, particularly small firms and solo practitioners?*

July 6, 2009

Laura N. Chick

Nettie Sabelhaus
Appointments Director
Senate Rules Committee

Dear Ms. Sablehaus:

Pursuant to your June 15, 2009 letter, please find below my responses to questions for use by the Senate Rules Committee during my July 15, 2009 confirmation hearing. I understand that I am not required to appear.

Goals

1. My major contribution as a public member of the State Bar Board of Governors has been to be constantly watching out to protect the public's interest and the consumers of professional legal services.
2. My goals are:
 - a) To ensure fiscal responsibility, accountability and transparency of Bar operations for both members and the public including the assurance that proper internal controls are firmly in place.
 - b) To promote greater fiscal efficiency whenever feasible.
 - c) To encourage the Bar to operate an effective and helpful "Find A Lawyer" informational service for the public on their website.
 - d) To expand the participation of lawyers, either through their monetary contributions or their pro bono services, to provide legal services to low-income clients.
 - e) To promote opportunities for member of ethnic and racial minorities to become qualified attorneys and members of the judiciary.
 - f) To expand ways to help prevent attorneys from missteps and ensure disciplinary measures are meted out in a fair, expedient and effective way when wrongdoing occurs.
 - g) Seek ways to enhance services that are needed and wanted by lawyer members.
3. I am very interested in assisting the Bar to streamline and modernize its business operations, reduce overhead costs where wise and feasible and decrease and manage internal risks wherever possible.

Board Makeup and Operations

4. I feel very strongly that the number and ratio of public members on the Board of Governors should be increased. I have seen a tendency on the part of lawyer-members to represent their “constituencies” who are especially the attorneys active in the local bar organizations that elected them to the Board of Governors. In my opinion, the State Bar is primarily a regulatory agency whose primary purpose is to protect the public who seek and use lawyers for legal advice and representation. Having more public members on the Board of Governors would create a better balance between that mandate and promoting the interests of the legal community who are mandatory members of the Bar.
5. If I had been able to be present at that Board of Governors’ meeting, I would have supported the “Find A Lawyer” initiative. I would like to see this initiative return to the Board of Governors for reconsideration in the near future.
6. Please see response to question #4.
7. As Chair of the Audit Committee, I first learned of the fraudulent loss of revenue on September 12, 2008. The Board of Governors was briefed on September 28. The explanation given was that the employee was a long-term and highly trusted staff member of the Bar who had carefully and cleverly created plausible explanations and falsified documents. The needed controls, checks and balances and oversight were not in place or this theft would not have been so “successful.” The theft was not found in the annual single audit because the amount of rental income over the 8-year period was significantly lower than the percentage of total Bar revenues to have risen to the level of materiality. Therefore, the rental income was not scrutinized in a way that would have exposed the loss.
8. The State Bar should not have allowed one single employee to have full and total unshared control of all the processes dealing with the building tenants and the collection and deposit of rental income. Kevin W. Harper, an outside CPA, has evaluated and made organization-wide recommendations on the State Bar’s internal controls.

The following changes have been implemented, or have been recommended by Mr. Harper and will be implemented in the near future:

- a. Effective in April 2009, departments that handle cash or checks shall assign two employees to open the mail and restrictively stamp checks received. Checks and cash shall be forwarded to the Office of Finance in a timely manner. Receiving departments shall continue to maintain a daily cash summary log, which shall be forwarded to Finance.
- b. The Office of Finance now invoices tenants and directly receives their payments. Electronic copies of lease documents and rental terms are stored in a shared location, visible to the Office of Operations, the Office of General Counsel and the Office of Finance.
- c. Effective in April 2009, the Office of Finance will have the ability to separately report on accounts receivables associated with various State Bar offices (e.g.

separating receivables related to retail tenants from receivables associated with the CalBar Journal), and to compile department-specific reports to help identify anticipated revenues.

- d. By early April 2009, all Finance policies and manuals will be available in a single location on the State Bar's intranet, for ease of reference.
- e. In the future, the State Bar will pro-actively identify internal control and finance-related training needs of each staff member as part of the annual employee performance review process, and formal training will be provided accordingly.
- f. Internal controls awareness material will be added to the State Bar's annual mandatory executive staff training sessions.

In addition, Mr. Harper is continuing, at the direction of the State Bar's Audit Committee (which now has been given full internal audit function) to perform three more audits of internal controls for the three remaining major organization-wide business processes: procurement/disbursement, payroll and budget. The Chief Financial Officer, Peggy Van Horn, and her staff will perform assessments and provide this Audit Committee with recommendations for the more focused business functions of financial reporting, treasury and grants management.

The scope and timeline of these six reports will be determined at the next Board of Governors meeting in July.

9. The Board of Governors took all these factors into consideration in assessing Mr. Drexel's performance and the renewal of his contract. I was not able to be present for this discussion or vote, but I believe the board balanced both the public protection respects along with the attorney's self-interests.

10. See above.

11. See above.

12. I support the posting of disciplinary charges on the State Bar website as long as it is very clear when the case occurred and when it has been resolved and what the conditions were of the disciplinary order.

13. I do not believe these actions impacted the Board's decision.

14. The goals I would set for the next Chief Trial Counsel are:

- a) To fairly, fully and expeditiously investigate and resolve all discipline charges brought against attorneys.

- b) To look for ways to improve the discipline process which could include streamlining, reducing overhead costs, communications, etc. but never at the expense of the comprehensiveness or effectiveness of the process nor ever at the expense of protecting the public.

The Bureau of State Audits is currently completing a performance audit of the discipline system. I will be most interested to see its findings, recommendations and benchmarks with other state's bar operations.

15. Because of economic difficult times and the fact that 80% of the Bar's costs are salary and benefits, the Board of Governors declined to make salary adjustments for 2009.

16. In July 2008, the Board adopted its long-range strategy which is available on its website.

17. The State Bar's Board of Governors has no legal authority to control what Mandatory Continuing Legal Education providers charge. However, the California Bar Journal provides MCLE self-study tests for one hour of credit at \$25 for the print version and \$20 for online. Additionally, for a relatively modest cost (\$375 for attorneys licensed before September 4, 2004 and \$275 for new lawyers), attorneys can satisfy all MCLE requirements by attending the State Bar Annual Meeting where over 150 classes are offered over a four-day period.

Professional Liability Insurance Disclosure

18. In May 2008, when the Board of Governors voted to recommend the adoption of a new insurance disclosure rule, the Board also voted to study methods of making professional liability insurance more affordable and widely available to attorneys. A working group was created pursuant to the Board's resolution.

On July 27, 2009, the working group met to consider potential State Bar strategies to assist in making professional liability insurance more available and affordable to California attorneys. Although anecdotal evidence was presented on the issues of affordability and availability, the working group noted the absence of solid current data to assist in evaluating the extent and precise nature of any current problem. The working group determined that a member survey would be necessary to obtain more meaningful and detailed information on issues such as: (a) the current percentage of uninsured attorneys; (b) the extent to which professional liability insurance is simply unavailable and the reasons – practice area or individual circumstances; and (c) specific information to assist in evaluating the question of "affordability." The Board of Governors approved conducting the member survey, and it will be launched in the near future.

Additionally, the State Bar of California sponsors a competitively priced professional liability insurance (PLI) for small and solo firms. The program is underwritten by Arch Insurance Company, and administered by Marsh Affinity. The State Bar's program, along with Lawyer's Mutual, are the two largest PLI providers in California for small and solo practitioners. The State Bar program also features a \$675.00 PLI policy for newly admitted attorneys who choose solo or small firm practice right out of law school.

Additionally, the State Bar of California sponsors a competitively priced professional liability insurance (PLI) for small and solo firms. The program is underwritten by Arch Insurance Company, and administered by Marsh Affinity. The State Bar's program, along with Lawyer's Mutual, are the two largest PLI providers in California for small and solo practitioners. The State Bar program also features a \$675.00 PLI policy for newly admitted attorneys who choose solo or small firm practice right out of law school.

A handwritten signature in cursive script that reads "Laura N. Chick". The signature is written in black ink and is positioned above the printed name.

LAURA N. CHICK

William Gailey
Responses
State Bar
Board of Gov's

July 2, 2009

Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814

Dear Ms. Sablehaus:

Pursuant to your June 15, 2009 letter, please find below my responses to questions for use by the Senate Rules Committee during my July 15, 2009 confirmation hearing. I understand that I am not required to appear.

Role of the State Bar

The State Bar is governed by a 23-member board of governors, with six public, non-attorney members. The Board of Governors establishes policy and guides the operation of the State Bar. The State Bar is the administrative arm of the California Supreme Court in matters involving the admission, regulation, and discipline of attorneys. Californians rely on the State Bar to protect them from the unethical or unauthorized practice of law and to help uphold and improve the justice system.

Goals

1. You were first appointed to the board in 2007. What do you believe have been your main achievements or contributions as a public member of the State Bar Board of Governors?

In addition to my normal duties as a Board member, I have been appointed and have served as Vice Chair of the RAD committee for the past two years, serving under two State Bar Presidents, Jeffrey Bleich, and Holly Fujie. I have been very involved in the operations and functions of this committee. I also serve as a member of the Stakeholders Committee, and I am Board liaison to the Litigation Section and the Criminal Law Section. I believe I have contributed to the Bar through these assignments, by becoming familiar with the inner workings of the OCTC and in the discipline process and creating "Discipline Day", for members of the Board of Governors, particularly the new incoming members. I have been involved in creating the Discipline Day" training program for two successive years.

2. Please provide us with a statement of goals. What do you hope to accomplish during your new term on the State Bar Board of Governors? How will you measure your success?

One area I intend to focus on is ensuring that the Office of the Chief Trial Counsel functions in a fair, efficient, and effective manner. I wish to emphasize that this includes fairness to all members of the Bar, including sole practitioners and small law firms in particular.

Senate Rules Committee

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Appointments

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In this economic environment it is critical that we use our scarce resources in the smartest way possible and my past two years experience indicates to me that there is room for improvement in these areas. We will also be engaged in the search for a new Chief Trial Counsel, I intend to be active in that search, and selection.

Success in this area will be measured by monitoring the case load of discipline cases opened, and the time required to bring them to a conclusion, and the decrease in the number of backlogged cases. Also closely monitoring the OCTC metrics to ensure a balance exists in the prosecution of all Bar members, and that prosecution is not skewed against small law firms and sole practitioners.

3. Are there any issues facing the State Bar or the State Bar Board of Governors that are of particular concern or interest to you?

Many issues facing the State Bar are of concern to me. Paramount among them is the performance of the OCTC and the current state and operation of the discipline system. Also it should be re-emphasized to all Board members that the Mission Statement of the State Bar includes as its number one goal as follows:

“A. Public Protection - The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics.”

Board Makeup and Operations

There are fifteen lawyer members, elected by members of the profession. There are six public members, four appointed by the Governor, one by the Senate Rules Committee, and one by the Assembly Speaker. In contrast, and consistent with the more common practice, the members of the Medical Board of California are appointed by the Governor and the Legislature, and are comprised of eight physician representatives and seven public member representatives. (Thirteen of the members of the board are appointed by the Governor and one each by the Senate and Assembly.) Thus, the members of the State Bar have the unique privilege of electing its board of regulators from its own membership.

4. Based upon your two plus years on the board thus far, what observations can you share regarding the participation of public members on the State Bar Board of Governors? Where an issue might affect the practice of law, are public members and lawyer members generally in sync in seeking to promote public protection while balancing the needs of the legal profession? Or, are there differences in opinions? Have you seen instances where the lawyer-elected members of

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the board seemed or were more concerned about a proposal's adverse impact on lawyers practicing law than on the public protection benefits of the proposal?

I have been told by many Board and staff sources that in previous years prior public members were not as involved nor effective as the current six member contingent. It is my view that public members may now be a factor on the Board because they are all very conscientious, they bring a different skill set and viewpoint to the Board, and are very active in governing the affairs of the Bar. In a recent move, two years ago, Public members were appointed as Vice-chairs of each of the Board Committees and a public member now chairs the Board's Audit Sub-Committee. However the present committee process makes it difficult, if not impossible for public members to be appointed committee chairs. This province has been reserved for the third year "elected members" who automatically become Vice Presidents in their third year, and thus become eligible to run for President near the end of their third and final year.

I have been informed that by resolution adopted on November 2006, the Board of Governors expressed its belief that public members are integral to the governance of the State Bar. The Board's resolution praised the dedication of the public members and noticed their outstanding contribution to the Board and the membership. The Board also observed that public members have worked tirelessly on behalf of the public interest during their tenures. However this resolution was adopted prior to my tenure and I have no knowledge of its passage or purpose.

I believe that the State Bar Act could be strengthened to provide that the highest priority for implementation by the Board of Governors is the protection of the public, improving access to justice and ensuring that practitioners are both honest and competent.

I am told that in 1990 the Medical Practice Act was modified to state that the Medical Board's highest priority is "protection of the public". In 2001 the statutes for every department of Consumer Affairs occupational licensing program were also amended to provide the same consumer mandate. A similar amendment would be helpful in providing clarification that the protection of the legal profession and its self interest is superceded by public protection.

In my view some elected members are not in sync with the public members in seeking to promote public protection while balancing the needs of the legal profession. Quite the contrary, some elected members seem to view their first duty is to their "constituencies" who elected them to the Board, and not to the public. I have seen instances when these members view protecting the needs of the legal profession, and their fellow lawyers, before public protection.

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5. At the May meeting of the Bar Board of Governors, an initiative was narrowly defeated on a vote of 11-8 that appeared to divide public members from attorney members. You were absent. The measure would have allowed the public to search the State Bar's website for attorneys organized by practice areas, an effort known as "Find a Lawyer." What is your view of whether the practice area of an attorney should be displayed on the State Bar's website?

As you have noted, I was absent from this Board meeting. I would like to point out that this is the first Board meeting I have missed in my entire 2 1/2 years on the Board. I have diligently attended every other Board meeting in person, and I have participated in all conference calls for committee work, and information sessions. It was unfortunate that I was unable to attend the May 2009 meeting as a family emergency took me out of the country during this period of time. Therefore I was unable to listen to and take part in the Board discussion on this particular issue, however I have been informed that most members of the board agreed that attorneys should be allowed to display their self-designated practice area on enhanced member profiles. However, the sticking point was whether or not the Board would allow consumers to search the State Bar's database by self-designated practice area. This would allow consumers to find attorneys in their area who practice a specific kind of law. Had I been able to attend the May 2009 Board meeting, I would have voted to allow a consumer search by self-designated practice area.

6. Do you believe that the public interest is best served by the legal profession being able to elect its own members to the regulatory body? Do you believe more public members should be added to the board, or is the fifteen to six ratio the appropriate mix?

No, I do not. I believe that the public interest would be better served by changing the Board composition to an equal number of public members and elected lawyer members. Therefore, the number of elected lawyer members should be reduced and the number of public members should be increased to attain this balance.

Theft of Building Rent Proceeds

A former State Bar executive was arrested in April and charged with embezzling more the \$675,000 from the bar over a course of eight years in her capacity as the bar's Director of Real Property. That former executive handled building management of the bar's San Francisco property and used her position to embezzle rents collect from the tenants. The thefts were hidden by maintaining dual books and falsifying documents and reports to the Finance Office.

7. As a member of the board of governors, when were you informed of the theft? What explanation was given for the Bar's failure to discover the ongoing theft for eight years? What

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internal procedures were in place that apparently failed? Why was the theft not discovered in the annual financial audits required by statute? What reason was given by the financial auditors for its continuous failure to discover the theft over the eight year period?

As a member of the board of governors, when were you informed of the theft?

I was notified of the theft on Sunday September 28, 2008, along with the rest of the full Board. We were in Monterey attending the State Bar annual conference. Myself and many other members of the Board had been in Monterey at the conference since Wednesday of that same week, attending section and committee meetings. The Sunday Board meeting was the concluding meeting of the conference for the Board. Just prior to adjourning the Board meeting, a staff member notified the full Board of the theft. Many members, myself included, were surprised by this last minute announcement, and were not pleased to be notified of such a serious internal issue in this fashion.

On October 21, 2008, the State Bar announced that it had reported to the Special Crimes Unit of the California Department of Justice, the possible embezzlement by a former long term employee of rents received from tenants at the State Bar's 180 Howard Street headquarters.

What explanation was given for the Bar's failure to discover the ongoing theft for eight years?

We were told by staff that the employee who committed the theft was the former Director of Real Property Operations, who had been employed by the State Bar for a little over twelve years. This individual allegedly used her position to become the single point of contact between the State Bar and the tenants of its 180 Howard Street building, enabling her to divert rent payments while providing plausible explanations and falsified documentation for their absence to the Office of Finance and outside auditors. Staff explained that essentially this employee was a long term trusted employee, who was very clever.

What internal procedures were in place that apparently failed?

It has become apparent that it was the complete lack of appropriate internal procedures in this department not being in place which allowed the theft to occur. I am told by staff that at one time, the duties of invoicing tenants and receiving their payments was divided between the Director of Real Property Operations (Director) and an administrative assistant. At some point, the Director re-organized this process, consolidating both duties. The change was not disclosed to the Office of Finance. Subsequently, the Director verbally directed several tenants to make rent payment checks payable to a different entity than the State Bar of California under the pretext that this designated a "special account" which the State Bar had

established for rental income. Since the Director had obtained responsibility for collecting rent checks and transmitting them to Finance for deposit, she was able to intercept and divert checks.

In my view this is an Administrative failure of the top management of the Bar.

Why was the theft not discovered in the annual financial audits required by statute? What reason was given by the financial auditors for its continuous failure to discover the theft over the eight year period?

I am told the following by staff: "We were advised by our independent auditors that their responsibility is to obtain reasonable assurance about whether the financial statements are free of material misstatement. Our auditors and the internal auditor hired by the Audit Committee to investigate the fraud have expressed a similar opinion that the amount of the loss --approximately \$655,000 over an eight year period of time-- as compared to the Bar's total revenues --slightly more than \$1 billion for the same period-- is immaterial to the Bar's financial statements. Staff tells me that auditors sometimes use 5% as a measure of materiality. Staff also tells me that while the \$655K loss was substantial and troubling, it should be viewed in context -- the total theft as a percentage of total State Bar revenues for the time period is less than seven one-hundredths of one percent."

In my view staff has not yet provided a satisfactory reason for its continuous failure to discover the theft over the eight year period. Further, executive(s) in top management of the Bar should be held accountable for allowing this theft to occur. I find it ridiculous that the loss of \$655K is considered immaterial to the Bar's financial statements.

8. What actions have been adopted by the board in response to the theft? What actions should be adopted?

Staff has reported to me that the State Bar has contracted with an outside CPA (Kevin W. Harper) to perform an independent forensic review to document the scope and amount of the alleged embezzlement, and to evaluate and make organization-wide recommendations on the State Bar's internal controls. To ensure his independence, Harper's work is overseen directly by the Audit Committee of the State Bar's Board of Governors.

As a part of this process, Harper is convening Bar-wide meetings and training sessions for management and non-supervisory staff involved in all phases of the cash receipting cycle. These sessions aim to raise awareness on all levels of internal controls issues, to facilitate cross-departmental and cross-functional communications regarding cash-handling practices

and procedures, and to inculcate an internal controls-aware organizational culture.

The following changes have been implemented, or have been recommended by Harper and will be implemented in the near future:

- 1. Effective in April 2009, departments that handle cash or checks shall assign two employees to open the mail and restrictively stamp checks received. Checks and cash shall be forwarded to the Office of Finance in a timely manner. Receiving departments shall continue to maintain a daily cash summary log, which shall be forwarded to Finance.**
- 2. The Office of Finance now invoices tenants and directly receives their payments. Electronic copies of lease documents and rental terms are stored in a shared location, visible to the Office of Operations, the Office of General Counsel and the Office of Finance.**
- 3. Effective in April 2009, the Office of Finance will have the ability to separately report on accounts receivables associated with various State Bar offices (e.g. separating receivables related to retail tenants from receivables associated with the CalBar Journal), and to compile department-specific reports to help identify anticipated revenues.**
- 4. By early April 2009, all Finance policies and manuals will be available in a single location on the State Bar's intranet, for ease of reference.**
- 5. In the future, the State Bar will pro-actively identify internal control and finance-related training needs of each staff member as part of the annual employee performance review process, and formal training will be provided accordingly.**
- 6. Internal controls awareness material will be added to the State Bar's annual mandatory executive staff training sessions.**

Public Protection and the Office of the General Trial Counsel

Public protection is the primary mission of the State Bar of California. The Office of the Chief Trial Counsel leads the State Bar's important mission in protecting the public from the unlawful or unethical practice of law by attorneys and the unauthorized practice of law by non-attorneys. The State Bar Board of Governor's recently declined to re-appoint Scott Drexel as the Chief Trial Counsel, who was seeking re-appointment to a second four-year term. No reasons were publicly state for the board's decision although stories carried by the legal newspapers speculated that the action may have been taken because some of his actions were viewed by some attorneys as being controversial or overly punitive for minor offenses. Another claim was

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that there was a tremendous backlog of cases, close to 1,000, which Mr. Drexel disputes in the news accounts.

9. Case backlog has been a consistent problem for the State Bar, although the state audit reports have found improvements in recent years. What is the current case backlog? Has case backlog increased or decreased in recent years? Are there in fact roughly 1000 cases in which notices of disciplinary charges have not been sent?

The State Bar reported in its 2008 Report on the California Discipline System (issued April 2009) that the statutorily defined case backlog for 2007 was 327 and for 2008 was 290. Former Chief Trial Counsel Scott Drexel identified a goal of reducing the back log to 250, which I am informed has not been achieved. The trend, according to the State Audit and Annual Discipline reports is that the statutorily defined case backlog has been generally decreasing, certainly from the historical highs when annual reporting on the discipline system began. However, at the May meeting of the Board of Governors, the Chief Trial Counsel provided a Productivity Report which reported the ““Open Case Inventory”” as of March 30, 2009 to include 1,904 ““Total Investigations Open Pending.”” According to this report, 438 of these meet the statutory definition of being in ““backlog”” status. The majority are at the ““Notice Open”” stage, which mean that the Notice of Discipline Charges commencing the discipline proceeding has not been filed yet. The California State Auditor has been taking a close look at these discipline statistics in its 2009 audit of the State Bar. That audit report is not yet complete nor public. I will look with great interest to that audit report on these issues

Mr. Drexel introduced a rule allowing for the permanent disbarment of attorneys in the most egregious discipline cases and made it more difficult for attorneys to resign with charges pending against them. This latter rule change consequently made it more difficult for attorneys who resigned with pending charges to obtain reinstatement.

10. Were these actions by Mr. Drexel a factor in the board’s decision? If so, how did the board balance the public protection aspects of these measures versus the interest of attorneys to practice law?

No. The decision to not reappoint Scott Drexel was purely a personnel matter and not based upon disagreements or concerns about his prosecutorial policies. Further all discussions regarding this action were taken in closed and super closed board sessions and as a result I am precluded from discussing this Board action.

Mr. Drexel also decided to post on a member’s profile page on the State Bar website, and thereby searchable by the general public, notices of disciplinary charges against a member. This

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action was very unpopular with attorneys as some of the notices were for cases that were years old and had been resolved with the attorney satisfying the conditions of any disciplinary order, if any.

11. Was this action by Mr. Drexel a factor in the board's decision? If so, how did the board balance the public's valid interest in knowing about past disciplinary actions versus the disciplined member's interest in non-disclosure of information about these past actions?

No. The decision to not reappoint Scott Drexel was purely a personnel matter and not based upon disagreements or concerns about his prosecutorial policies. Further all discussions regarding this action were taken in closed and super closed Board sessions and as a result I am precluded from discussing this Board action.

12. What is your position on the posting of disciplinary charges on the board's website?

I support posting disciplinary charges on the website, as it is consistent with the stated State Bar goal of public protection.

The news accounts also reported that Mr. Drexel incurred the ire of the law enforcement and The district attorney community by pursuing disciplinary cases against prosecutors for misconduct.

13. Do you believe these actions by Mr. Drexel are a factor in the board's decision? If so, what lines did the board believe were improperly crossed by Mr. Drexel in his prosecution of deputy district attorneys for attorney misconduct?

No. The decision to not reappoint Scott Drexel was purely a personnel matter and not based on disagreements or concerns about his aggressive prosecutorial policies. I support an assertive approach to public protection and will expect the next Chief Trial Counsel to continue these strong public protection policies. Press accounts speculating on the reasons for the board's action are inaccurate.

14. What goals would you set for the next chief trial counsel? What are the most important duties of the next chief trial counsel?

What goals would you set for the next chief trial counsel?

The next Chief Trial Counsel (CTC) should advance, articulate, and implement a fair, balanced prosecutorial philosophy that regards public protection as the primary mission of the

office and introduces budget reforms or efficiencies to the OCTC without reducing its effectiveness.

What are the most important duties of the next chief trial counsel?

The new CTC might look to recommendations made in response to questions posed by members of the Board Committee on Regulation, Admissions and Discipline following the second “Discipline Day” presentation made on February 5, 2009, which I chaired. Some of those recommendations included:

- 1. Reducing the size of the investigative staff and increasing the average investigator caseload.**
- 2. Creation of a “surrogate attorney” program whereby each active member of the State Bar would be required to annually designate another State Bar member who, in the event of the attorney’s death or unforeseen inability to continue to practice law, would be willing and able to properly close down his or her law practice. In addition, any attorney who is unable or unwilling to designate a “surrogate attorney” should be required to pay an annual fee to the State Bar to help pay for the assumption of his or her law practice. These are the services currently provided by the State Bar pursuant to Business and Professions Code sections 6180 and 6190.**
- 3. Other recommendations to streamline and simplify the disciplinary process long-term include the following possible reforms: (1) limiting the number of cases in which Early Neutral Evaluation Conferences (ENECs) must be held as a prerequisite to filing a notice of disciplinary charges; (2) simplifying and shortening the notice of disciplinary charges; (3) simplifying the default process; (4) significantly reforming the discovery process to provide for an open exchange of discovery rather than relying upon the Civil Discovery Act; (5) broadening the standard for the introduction of evidence in State Bar proceedings; (6) requiring trials to be conducted on consecutive days until completed; (7) limiting or eliminating most post-trial briefing, and (8) closely reviewing existing programs such as Probation and Unlawful Practice of Law for inefficiencies and duplication of effort.**

The above-referenced reforms would permit proceedings to move through the discipline system much more quickly, wasting less time and effort with discovery and evidentiary disputes and prolongation of trials. This would either allow the same number of cases to be processed with fewer employees or, alternatively, a larger number of cases to be processed with the same number of employees.

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It is also my understanding that at the request of the Supreme Court, a staff working group is exploring and developing proposed amendments to the Rules of Procedure necessary to effectuate these sorts of reforms to the disciplinary process.

State Bar Annual Dues and MCLE Fees

The last 18 months has seen California face the deepest economic crisis since the days of the Great Depression. Many lawyers have lost their jobs, many others have seen incomes significantly reduced, and many new lawyers cannot find jobs in a very difficult job market.

15. What cost-cutting measures have the State Bar Board of Governors adopted? What long term plans have been adopted by the State Bar to control future costs so that the membership is asked to pay more dues as a last resort as opposed to the first resort?

I am told by staff that eighty percent of the State Bar's costs are salary and fringe benefits. In March, the Board of Governors declined to make salary adjustments for 2009, discontinuing the authority it gave in August 2008 to provide increases. There are zero salary adjustments for 2009. Unemployed or low-income attorneys are entitled to a 25% reduction in licensing fees. They may also petition the Board for additional relief, including a partial or full waiver of fees depending on their level of hardship.

The Board itself has reduced and curtailed its own spending to include cancelling the annual planning retreat in La Quinta and re-scheduling the 2010 and future sessions to be held in the Bar offices in Los Angeles. Mindful of the economic crisis facing California, the Board is factoring cost as appropriate into each issue it reviews, and decision it makes.

The State Bar has been criticized in past audits for its lack of strategic long range planning.

16. What long range plans have been adopted by the State Bar to meet the needs of the public and its membership in the upcoming years?

In July of 2008, the Board adopted its Long-Range Strategy. It is a lengthy document and I have attached it in its entirety for your information and review.

An active attorney must complete 25 units of Mandatory Continuing Legal Education every three years or else face suspension of his or her license. While up to 12.5 units may be satisfied by self-study, the MCLE requirement may be a financial strain for some lawyers in this economic downturn.

William H. Gailey

July 2, 2009

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17. What is the State Bar Board of Governors doing to control MCLE fees or to provide lower cost options for attorneys so that they may comply with their MCLE requirements?

The State Bar's Board of Governors has no legal authority to control what Mandatory Continuing Legal Education providers charge. However, I have been informed that the California Bar Journal provides MCLE self-study tests for one hour of credit at \$25 for the print version and \$20 for online. Additionally, for a relatively modest cost (\$375 for attorneys licensed before September 4, 2004 and \$275 for new lawyers), attorney can satisfy all MCLE requirements by attending the State Bar Annual Meeting where over 150 classes are offered over a four day period.

Professional Liability Insurance Disclosure

The State Bar Board of Governors is supporting a proposed regulation, currently pending before the California Supreme Court for approval, which would require attorneys to disclose to a client if the attorney does not have professional liability insurance where the attorney reasonably foresees that his or her representation of the client will exceed four or more hours. Significant concern has been raised by small and solo practitioners about the adverse impact of this requirement on their practices.

18. What is the State Bar doing to help make professional liability insurance more affordable and available to attorneys, particularly small firms and solo practitioners?

In May 2008, when the Board of Governors voted to recommend the adoption of a new insurance disclosure rule, the Board also voted to study methods of making professional liability insurance more affordable and widely available to attorneys. A working group was created pursuant to the Board's resolution.

On January 27, 2009, the working group met to consider potential State Bar strategies to assist in making professional liability insurance more available and affordable to California attorneys. Although anecdotal evidence was presented on the issues of afford ability and availability, the working group noted the absence of solid current data to assist in evaluating the extent and precise nature of any current problem. The working group determined that a member survey would be necessary to obtain more meaningful and detailed information on issues such as: (a) the current percentage of uninsured attorneys; (b) the extent to which professional liability insurance is simply unavailable and the reasons - practice area or individual circumstances; and (c) specific information to assist in evaluating the question of "afford ability." The Board of Governors approved conducting the member survey, and it will be launched in the near future.

William H. Gailey

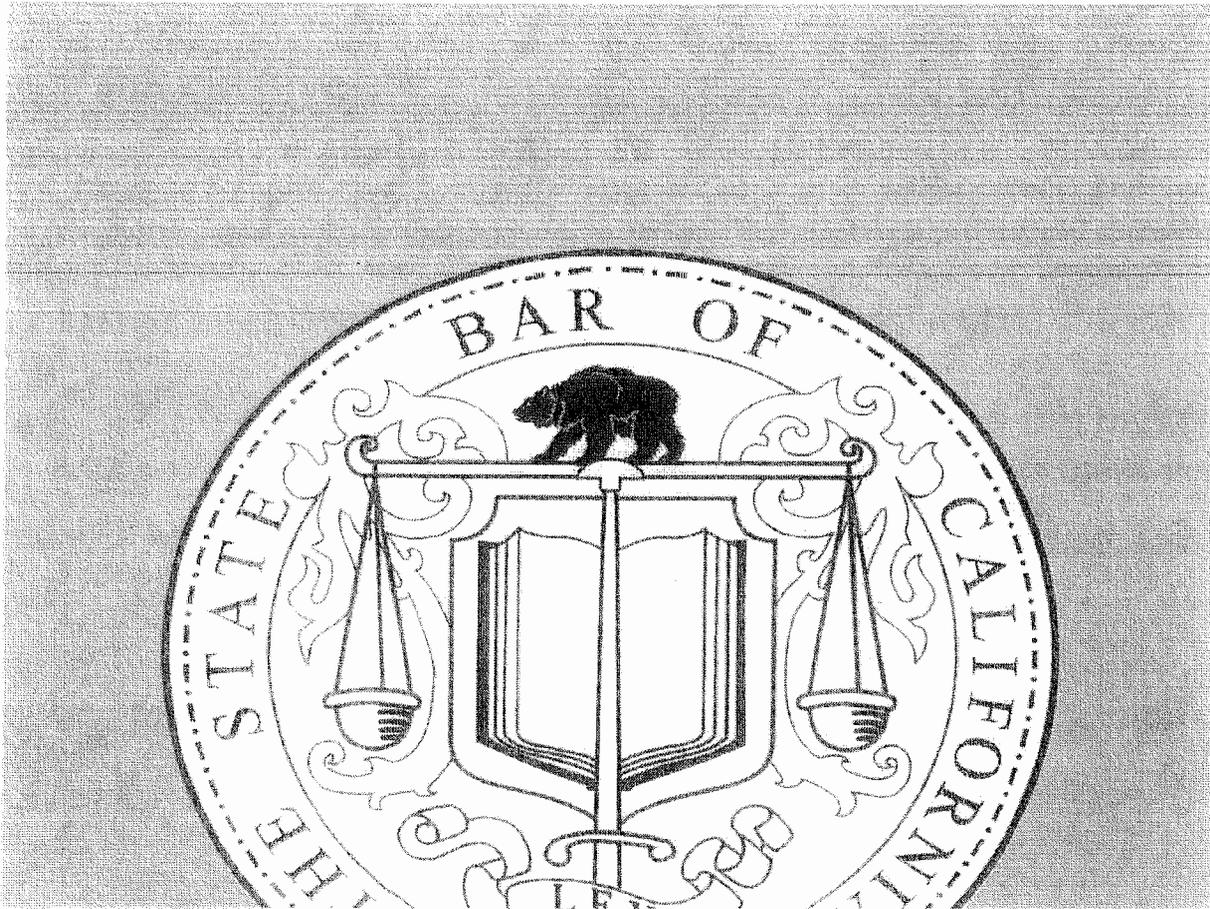
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Additionally, the State Bar of California sponsors a competitively priced professional liability insurance (PLI) for small and solo firms. The program is underwritten by Arch Insurance Company, and administered by Marsh Affinity. The State Bar's program along with Lawyer's Mutual are the two largest PLI providers in California for small and solo practitioners. The State Bar program also features a \$675.00 PLI policy for newly admitted attorneys who choose solo or small firm practice right out of law school.

Respectfully submitted,

William H. Gailey



State Bar of California Long Range Strategy

Adopted July 11, 2008

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Introduction

This Document

This document, the *Long Range Strategy of the State Bar of California*, upon adoption by the Board of Governors, supercedes and replaces its predecessor, entitled *State Bar of California Long-Range Strategic Plan*, which was adopted in September of 2004.

This document is organized into the following sections:

- **Introduction:** describes the legal basis for the State Bar as well as key legal constraints and mandates under which the Bar operates; and describes the strategic planning activities of the State Bar and the related documents.
- **Mission, Vision & Values:** identifies, at the highest level, the broad purposes and aspirations of the State Bar, along with the values the Bar upholds in carrying out its mission.
- **State Bar Goals by Functional Area:** identifies the functions the State Bar will perform in order to perform its role as regulator and leader of the legal profession in the State of California. This section characterizes the functions to be performed in broad, goal-oriented terms. The Executive Director's *Implementation Plan* (see below) fills in the management-level detail required to successfully carry out the specified functions.

Establishment & Mandates of the State Bar

Establishment of the State Bar

The State Bar of California is a public corporation in the judicial branch of government (Article VI, section 9 the California State Constitution). The purposes and powers of the State Bar are further defined in the State Bar Act (codified as Chapter 4 of the California Business and Professions Code).

Specifically, the State Bar Act charges the Bar with "the enforcement of the provisions of [the Act]," (B&P Code Section 6030) and authorizes the Bar to "aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interest of the members of the State Bar and such matters as concern the relations of the bar with the public." (B&P Code Section 6031). Thus, the Act identifies three broad "pillars" of the Bar's mission:

1. A mandate to enforce statutory provisions governing the practice of law;
2. Permissive authority to contribute to the science of jurisprudence and the administration of justice, in such manner as the Board of Governors may deem appropriate; and
3. Permissive authority to advance the professional interests of Bar members, in such manner as the Board of Governors may deem appropriate.

The State Bar Act grants the Bar powers generally associated with public corporate bodies, such as perpetual succession, the ability to enter into contracts, and the ability to incur debts, as well as the authority to raise revenues for its purposes by any lawful means.

Constitutional Issues

The State Bar of California is an integrated bar, meaning that membership is mandatory for the practice of law in the State of California. In *Keller vs. State Bar of California* (1990), the U.S. Supreme Court held that the imposition of mandatory membership dues implicates members' First Amendment right of free speech, in much the same manner as the imposition of mandatory union dues.

The U.S. Supreme Court found that – notwithstanding the broad permissive authority granted by State law – mandatory dues could be expended solely for the purposes of “regulating the legal profession and improving the quality of legal services,” which a California Superior Court subsequently called the “*core purposes* of the integrated bar.” (Emphasis added.)

Further Mandates

In addition to the mandate to enforce judicial and legislative rules and statutes, the Legislature and the California Supreme Court have, on occasion, assigned additional specific tasks to the State Bar. For example, in 1981 the Legislature designated the State Bar as the entity which was to receive interest on certain lawyer trust accounts (IOLTA) and distribute it to programs providing legal services to indigent persons. In 2001, the Attorney Diversion and Assistance Act directed the State Bar to “seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.”

Strategic Planning in the State Bar of California

The State Bar performs a variety of planning and management activities under the general label of "strategic planning." Strategic planning encompasses both a set of documents – "the plan" – and a number of ongoing processes that aim to ensure that the organization executes its strategy effectively and efficiently. In a sense, strategic planning is both a product and a process.

Products: Strategic Planning Documents

The following are the key documents in the State Bar's strategic planning efforts:

- **Long Range Strategy** (this document): The *Long Range Strategy of the State Bar of California* sets out the mission and principal goals by functional areas of the State Bar. The *Long Range Strategy* is formally adopted by the Bar's Board of Governors, and is updated on an as-needed basis. Because the mission and main functions of the State Bar are generally stable from year to year, updates to the *Long Range Strategy* are relatively infrequent, coinciding with major changes in the Bar's functions or its legal mandates.
- **Implementation Plan**: The State Bar's *Implementation Plan* is devised by the Executive Director, and it defines the internal organizational and programmatic structure of the Bar and assigns the Bar's functions (as defined in the *Long Range Strategy*) to specific offices and divisions. The *Implementation Plan* also identifies statistical measures of the State Bar's workloads and, where possible, its results ("performance measures"). Broadly, the *Implementation Plan* lays out the Executive Director's plans for efficiently and effectively carrying out the functions called for in the Board of Governors' *Long Range Strategy*. The *Implementation Plan* is revised on an as-needed basis, to reflect significant changes in organizational structure or priorities.
- **Annual Budget**: The State Bar's annual budget identifies the resources allocated to each of the Bar's service areas and offices, as recommended by the Executive Director and adopted by the Board of Governors. The budget reports on initiatives undertaken by the Bar's service areas, and it includes annually updated workload and performance data. The budget is prepared annually, with guidance and oversight from the Planning, Program Development and Budget Committee of the Board of Governors, and is adopted by the full Board of Governors typically at the last business meeting of the Board year (July - August).

- **Annual Report:** The *Annual Report of the State Bar of California* summarizes the activities and accomplishments of the State Bar during the preceding year. The report also includes key performance measures from the Bar's major service areas. The Office of the Executive Director issues the report annually.

Processes: Strategic Planning Activities

- **BOG Long-Range Strategy Setting:** The Board of Governors has the fundamental fiduciary responsibility for the health and success of the State Bar of California, with a focused *attention on the governing responsibilities* for this organization. The governing functions are those that provide the essential direction, resources and structure needed to meet specific needs of our core constituencies: the public, the judiciary, and our lawyer-members. The Board sets the strategic direction for the State Bar of California that reflects the needs of our constituencies and the mandate provided by the State of California.

One way in which the Board of Governors exercises its leadership of the Bar is by setting the Bar's long range strategy – that is, by consideration and adoption of the *Long Range Strategy* document. Because the long range strategy is intended to guide the organization consistently over a long time horizon, the document is reconsidered relatively infrequently, when circumstances dictate a substantial change in the Bar's approach to carrying out its mission.

- **BOG Annual Strategy and Planning Session:** While the *Long Range Strategy* is revisited only infrequently, the Board of Governors remains actively engaged in the Bar's strategic planning. The Board's annual strategy and planning session, held each January, is the primary forum for this ongoing engagement. The agenda of the strategy and planning session varies from year to year based on direction from the State Bar President and the Chair of the Planning, Program Development and Budget Committee, and previously identified Board priorities, but the session typically includes:
 - Presentation of Member Survey Data
 - Presentation of Additional Stakeholder Input
 - Review of Changes in the Bar's Environment
 - Review of the Efforts and Progress of Advisory Committees
 - Identification of "Special Focus Areas" for the Upcoming Board Year

- **BOG Special Focus Areas:** Another way in which the Board of Governors leads the Bar is by identifying areas of special focus – topics of special concern or interest to the profession. Areas of special focus may be identified in the Annual Strategy and Planning Session, or they may emerge from other Board or Committee meetings. How the Bar addresses special focus areas varies on a case-by-case basis. Common approaches include:
 - Investigation of a topic or proposal by staff, with follow-up in the form of an agenda memo to the Board
 - More extensive staff study of a topic or proposal, resulting in a full-length report to the Board
 - Appointment of a task-force or advisory committee to study the topic and advise the Board

- **Annual Budget Process:** The Bar's annual budget development process is a key strategic planning activity. As part of the process, the Bar's offices provide updated data on their workload and performance measures, and identifies their principal initiatives for better carrying out the Bar's mission. And, of course, the Bar's budget also identifies the allocation of the organization's resources to its service areas. Staff develops the budget with guidance from the Planning, Program Development and Budget Committee of the Board of Governors. The annual budget is considered and adopted by the full Board of Governors, usually at the last business meeting of the Board year (July - August).

- **Annual Report:** Staff of the State Bar prepares an Annual Report, which provides a high-level overview of the Bar's accomplishments for the past year, along with performance indicators for its major service areas. The Annual Report provides accountability from the Bar to the Board of Governors, the membership, other stakeholders and the public.

MISSION, VISION AND VALUES

Mission of the State Bar

Formulating a simple “mission statement” which smoothly harmonizes all of the purposes, which have been articulated by various authorities at various points in time, is challenging. The following is intended to capture the spirit and intent of those declarations, as well as the professional values of the Bar’s members:

The purpose of the State Bar of California is to ensure that the people of California are served by the legal profession in a manner consistent with the highest standards of professional competence, care, and ethical conduct; to carry out such additional programs as may be required by law or by rule of court; and to contribute generally to the science of jurisprudence and the administration of justice to the extent and in a manner consistent with the First Amendment rights of its members.

The remainder of this document outlines the vision and values of the Board of Governors as well as the specific functions that the Board deems to be necessary and appropriate to carrying out this mission.

Vision of the State Bar

From the successful execution of its mission, the Bar envisions a variety of beneficial results for the public and the profession:

- A legal profession respected for serving the public in accordance with the highest standards of professional competence, care and ethical conduct
- Adequate access to the justice system for all, regardless of economic means
- A justice system reflective of the diversity of the State it serves
- A legal profession which conducts itself with civility and comity
- A State Bar with productive working relationships with its stakeholders, including the State Supreme Court, the Judicial Council of California, the Legislature, the Governor, members of the legal profession and of the public, and all parties with an interest in the legal profession and the administration of justice in the State of California

Values of the State Bar

The Bar's efforts to execute its mission and bring about its vision are motivated and guided by the values of its members, as articulated by the Board of Governors. Among these values are the following:

1. Economy, Efficiency & Effectiveness

As a part of the judicial branch, the State Bar recognizes an obligation to handle the resources entrusted to it with care and professionalism. The Bar values prudent stewardship: economical use of resources; efficient organization of its activities, and effectiveness in its undertakings.

2. Equal Access to Justice

One of the core principles of our democracy is access to justice for all people. Seeking equal access to justice for all people in California is a cornerstone of the continued vibrancy and efficacy of the judicial branch of government in the State. The State Bar values the efforts of the Chief Justice of California, the Legislature, the Governor, local bar associations, and local courts to expand funding available for this purpose, including enactment of the Equal Access Fund appropriation, legislation on IOLTA comparability, and the new Justice Gap Fund. The Bar also values the continued willingness of attorneys throughout the State to voluntarily provide low-cost and no-cost representation to individuals in need, in keeping with longstanding traditions of the profession and the duty of a lawyer to never reject the cause of the defenseless or the oppressed.

3. Self-Regulation of the Legal Profession

The State Bar of California is entrusted with one of the most important aspects of ensuring the effective and efficient operation of the justice system: self-regulation of the legal profession. The purpose of self-regulation is to ensure that the public is protected by receiving legal services from individuals who abide by the highest levels of competence and ethical standards. Historically, self-regulation has included setting standards for admission to practice law, developing and recommending adoption of Rules of Professional Conduct, regulating the unauthorized practice of law, and disciplining attorneys to protect the public from persons who are unfit to practice law. In addition, self-regulation encompasses the development of voluntary guidelines in such areas as indigent defense services systems, civility and professionalism.

4. Services to Members

In addition to its regulatory functions, the State Bar of California also functions as a professional association of its members, and to actively support their professional development. The Bar strives to deliver membership benefits that encourage a positive identification with the Bar on the part of its members, much as a voluntary association might. Moreover, in all of its functions, the Bar believes in providing the best possible customer service, to members and the public alike.

5. Stakeholder Relations & Accountability

The State Bar values strong collaborative working relationships with its wide variety of stakeholders. Among the key stakeholders are the State Legislature and Governor, who control the Bar's ability to levy the mandatory membership dues which constitute its primary source of funding. Also crucial, as a part of the judicial branch of government, are working relationships with the State Supreme Court and the Judicial Council of California. Finally, the Bar places a high value on relationships with its members, and with professional groups, such as the legal practice sections, local bar associations, specialty bars, and bench-bar groups. The Bar approaches all of these working relationships in a spirit of mutual respect, integrity and collegiality.

State Bar Goals by Functional Areas

- GOAL 1. PUBLIC PROTECTION** - The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics.

Admission to Practice

Pursuant to its mission to ensure that the public is served by the legal profession in a manner consistent with the highest standards of professional competence, care and ethical conduct, the State Bar shall regulate admission to the practice of law in the State of California. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Establish and maintain standards for institutions, subject to the State Bar's oversight, which are engaged in the training and education of legal professionals, including institutions providing continuing legal education for admitted professionals.
2. Establish and maintain standards for the admission of individuals to the practice of law in California, including standards pertaining to: requisite education and training; the ability of individuals to demonstrate adequate knowledge to competently practice law; and the moral character of applicants.
3. Establish and maintain standards for the continuing legal education for admitted professionals.
4. Establish and maintain standards for the practice of law within California by individuals admitted to the bar of other states and nations.
5. Establish and maintain standards for the certification of practitioners in specialized areas of law.
6. Establish and maintain procedures for the initial registration and annual renewal of registration of law corporations and limited liability partnerships entitled to practice law in the State of California.
7. Maintain records as required by law – including the status of members of the Bar, registration of law corporations and limited liability partnerships entitled to practice law, and accreditation of institutions providing education and training of legal professionals (including continuing education and specialist education) – and provide for public access to this information, consistent with applicable requirements of privacy and confidentiality.

Competence, Ethical Standards, Rules and Guidelines for Practice

To ensure the highest levels of competency and ethics of all attorneys, the State Bar shall assist in the development of both rules and guidelines (e.g. voluntary standards of conduct, best practices) to govern the practice of law in the State of California. More specifically, the Bar shall execute the following strategies:

Strategies:

1. The Board of Governors shall establish a committee to assist the Board in considering amendments to the Rules of Professional Conduct and other laws governing the conduct of lawyers.
2. From time to time, the Board may also establish committees, task forces or working groups to study issues of importance to the profession and to recommend relevant rules or guidelines where appropriate.
3. The State Bar shall provide technical, logistical and staff support to such committees, task forces and working groups.

Investigation and Discipline

To protect the public from unprofessional conduct of attorneys and to uphold the highest standards of the legal profession, the State Bar shall implement a system for the investigation and resolution of complaints against attorneys in the State of California, including, when appropriate, recommendation of disciplinary action. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Establish and maintain a process by which members of the public may bring complaints against attorneys to the State Bar, as well as a process for evaluating these complaints and forwarding them for further action where appropriate.
2. Establish and maintain a process for the investigation of substantiated allegations and, where appropriate, for instituting disciplinary proceedings.
3. Establish and maintain a court for hearing disciplinary proceedings against attorneys ("State Bar Court") and recommending disciplinary action to the State Supreme Court. The State Bar Court will be organized to include a hearing department and a review department.

4. Establish and maintain the capability to monitor the compliance of attorneys placed on probation as part of the disciplinary process, and to institute probation revocation proceedings when appropriate.
5. Establish and operate a program under which a designated portion of the member fees paid by all State Bar members are set aside to pay compensation – at the discretion of the Board of Governors – to members of the public who have suffered financial damages due to misconduct by members of the State Bar; and make appropriate efforts to recover the amounts of such payments from those responsible for the misconduct.
6. Establish and maintain a program providing mandatory arbitration of disputes pertaining to attorney fees and costs, including the establishment of guidelines for programs operated by local bar associations.

GOAL 2. ADMINISTRATION OF JUSTICE - The State Bar is recognized and respected as a contributing and accountable leader in improving the administration of justice and ensuring the rule of law in our civil society.

Leadership of the Profession

In addition to its core regulatory mission, the State Bar is the “umbrella organization” which represents and leads the legal profession in the State of California. In carrying out this role, the Bar shall at all times be cognizant of the First Amendment rights of its individual members. In a manner and to an extent permitted by law, the Bar shall carry out activities in accordance with the concerns and aims of the profession, as determined by the Board of Governors. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Undertake appropriate activities to inform and educate the public regarding the profession and the activities of the Bar, by means of electronic publications (e.g. its website), printed publications and through contact with the mass media.
2. Cooperate with local and specialty bar associations, the California Young Lawyers Association and other entities as the statewide representative of the legal profession, taking care that mandatory dues are expended appropriately.
3. Undertake activities to encourage the expansion of the access to justice by low-income Californians and expanded provision of low- and no-cost legal services to low- and moderate-income Californians.
4. Undertake activities to enhance the diversity of the legal profession to eliminate bias in the practice of law, taking care that mandatory dues are expended appropriately.
5. Provide information to the State Legislature and other public bodies on matters pertaining to the mission of the State Bar, taking care that mandatory dues are expended appropriately.

Legal Services Funding

The State Bar effectively administers and distributes funding through the Interest on Lawyer Trust Accounts program and Equal Access Fund to maintain and increase the availability of legal services for indigent persons statewide.

On several occasions, beginning with the enactment of the IOLTA program in 1981, the Legislature and Governor have expressed the State's commitment to provide funding for providers delivering civil legal services free of charge to indigent clients throughout California. As of this writing, funding sources for this purpose include interest on lawyer trust accounts ("IOLTA"), legislative appropriations and a designated portion of certain legal filing fees ("Equal Access Fund"), and voluntary contributions ("Justice Gap Fund"). The State Bar has been designated as the agency responsible for the administration and distribution of these resources to service-providing organizations. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Collect and distribute interest on lawyer trust accounts, consistent with the provisions of Article 14 of the Business & Professions Code.
2. Under contract with the Administrative Office of the Courts (AOC), receive and distribute the proceeds of the "Equal Access Fund," including appropriations from the treasury of the State and legally designated portions of certain filing fees.
3. Implement a process whereby members of the profession may make voluntary contributions for the purposes defined in Article 14 of the Business & Professions Code.

Judicial Nominee Evaluation

The Commission on Judicial Nominees Evaluation ("JNE Commission"), established pursuant to Government Code Section 12011.5, is the State Bar agency which evaluates all candidates who are under consideration for a judicial appointment by the Governor. The mission of the Commission is to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.

Strategy:

1. The State Bar shall faithfully execute its mandated role.

GOAL 3. MEMBER SERVICES - The State Bar provides a wide array of services and benefits to members that meet their professional development, business, and personal needs.

Service to Members

As a membership organization, the State Bar shall provide a high level of customer service in its contacts with members, and provide benefits of membership similar in nature to those of a voluntary association (where not in conflict with law). More specifically, the Bar shall execute the following strategies:

Strategies:

1. Establish and maintain programs to provide information to lawyers on Professional Conduct and other duties of attorneys.
2. Establish and maintain a primary point(s) of contact for membership issues, such as member records inquiries, change of status requests, and MCLE compliance questions.
3. Optimize the use of technology to communicate with members and member groups, including development of online access to allow members to review and manage aspects of their membership status and related information via the Internet.
4. Produce a regular, periodic publication for members of the Bar, covering the Bar's activities, issues relevant to the practice of law, and opportunities for education and professional development.
5. Investigate and – where feasible, cost effective, and in the interest of the Bar and of the profession – implement Bar "sponsored" services and products to be available to Bar members.
6. Investigate and – if feasible, cost effective, and in the interest of the Bar and of the profession – implement appropriate uses of networking technology as a resource for the legal profession.
7. Establish and operate an Attorney Diversion and Assistance program in conformity with the Attorney Diversion and Assistance Act.

Education and Professional Development

For the purpose of improving the quality of legal services in the State of California, and to encourage the provision of legal services consistent with the highest standards of professional competence, care, and ethical conduct, the State Bar shall undertake activities to inform educate and develop its members with regard to all aspects of legal practice. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Undertake educational, professional development activities, and outreach efforts aimed at ensuring that members of the profession are aware of, appreciate and understand, their duties as attorneys.
2. Establish and operate voluntary "sections" devoted to specific areas and types of legal practice for the purpose of enhancing competence and offering professional development opportunities in these areas.

Goal 4. STATE BAR ADMINISTRATION - The State Bar obtains and uses resources effectively and efficiently to support all aspects of its operations and demonstrates the cost effectiveness of State Bar services and activities.

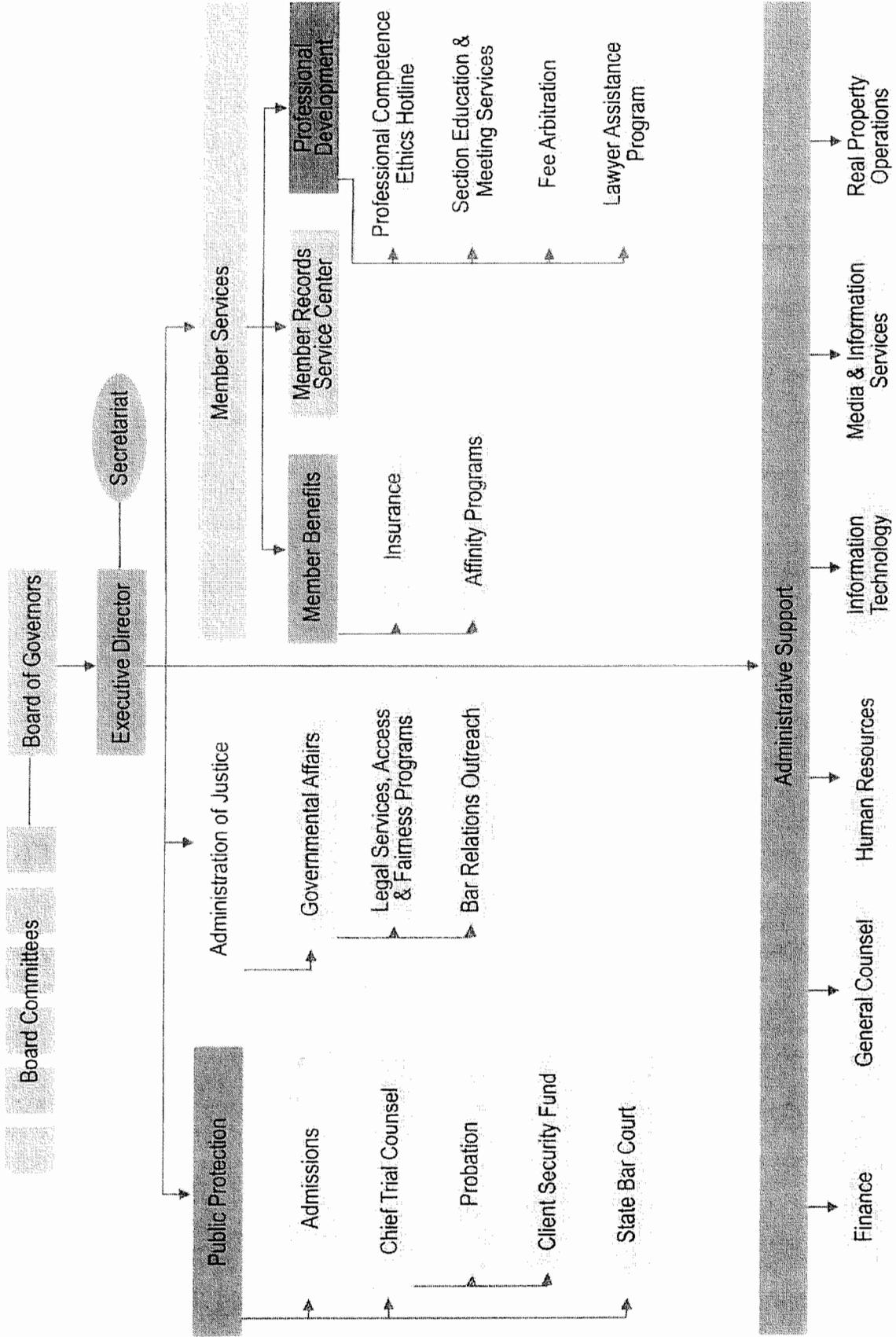
Administration

The Board recognizes the value and need to hire professional staff to support this organization, and looks at staff members as critical partners in the organization's success. The Board recognizes the need to delegate to staff the management functions that ensure effective follow-through and implementation of the governance leadership of the Board.

In keeping with the State Bar's value of economy, efficiency and effectiveness, the Bar shall carry out the administrative functions necessary for the efficient functioning of a statewide organization. More specifically, the Bar shall execute the following strategies:

Strategies:

1. Provide for the executive leadership of the organization as a whole
2. Provide for in-house legal counsel
3. Provide for administrative support in the area of human resources management
4. Provide for administrative support in the area of operations, real property and facilities management
5. Provide for administrative support in the area of finance and purchasing
6. Provide for administrative support in the area of information technology and telecommunications



James Stielmetz
Respones

SENAT RULES COMMITTEE

Statement of Goals

When you were confirmed for a second term on CTC in 2005, one of your stated goals was to “continue efforts to influence the restructure of Caltrans to become a much more efficient agency.”

- 1. *What efforts have you made thus far to achieve your stated goals and objectives?*

With regard to a predictable method of funding for transportation and a new method of funding without gas tax, we have engaged discussions with the States of Oregon and Washington to go to a “Vehicle Miles Traveled” method. This will need to be on a National level to succeed. We have also had preliminary discussions with DOT.

Caltrans has made several internal changes as a result of suggestions from the Commission over the last four years that have made the agency more efficient.

- 2. *Do you think Caltrans has become a more efficient agency? Why or why not? What further improvements do you think need to occur?*

Under the direction of Director Kempton, Caltrans has definitely become a more efficient agency, but more needs to be done. It would be helpful if the Director and the ability to selectively reward or terminate employees who perform above or below the line.

- 3. *What goals and objectives do you hope to accomplish during your third term? How will you measure your success?*

I will continue my work to obtain legislative action to restructure Caltrans into a top to bottom transportation mobility company rather than a “bottoms up.” Success will be measured by the successful passage of such legislation.

Infrastructure Spending Freeze

- 4. *Do you have any suggestions for statutory changes needed to better implement Prop 1B or future infrastructure bond legislation?*

Proposition 1B was a stop-gap measure designed to back-fill our back log of transportation needs. While very welcomed, what is needed is a reliable way of fully funding our annual transportation needs.

A Blue Ribbon Panel should be established to recommend to the Legislature how best to accomplish this task. Having said this, time is working against us and we may need to have a second round of Proposition 1B funding from the voters.

Senate Rules Committee

AUG 18 2009

Appointments

5. ***How have this year's PMIB actions and state bond sales affected the commission's efforts to implement Prop. 1B? How many projects have been affected?***

This year's PMIB actions and state bond sales has made our job very difficult. Not knowing when or if our bonds will be sold is wreaking havoc on our planning process, let alone the delay of needed projects. We continue to defer allocations for new projects pending assurances of bond funds. The budget uncertainty has had a negative effect on our ability to fund needed transportation projects.

Federal Economic Stimulus

6. ***Outside of the \$2.6 billion made available to the state under the federal highway program, what are the next important steps policymakers should take to compete for additional federal funds in ARRA?***

Obviously, the ARRA funds for infrastructure were not near where they need to be. California should prepare a comprehensive list of "shovel ready" projects covering all aspects of transportation: bonds, transit, ports, airports and rail. This list should be presented to our California Congressional Delegation for their buy-in and support.

7. ***What lessons have the commission and department learned from the expedited ARRA process that might be applicable to future funding received by the state?***

I am not sure we know yet. One thing that became obvious is the need for NEPA and CEQA to become one document.

Federal Transportation Act Reauthorization

8. ***When you were confirmed in 2005, several months before SAFETEA-LU was enacted, you stated that "California needs to prepare a more organized collective strategy when dealing with the Federal Government" in the reauthorization debate. How is the commission helping to ensure that transportation stakeholders work together to implement an effective federal transportation strategy?***

As a Commission, we have asked the California Delegation to consider the following:

1. Ensure the integrity of the Highway and Transit Trust Funds.
2. Rebuild and maintain infrastructure in good state of repair.
3. Make Goods Movement a national priority.
4. Increase mobility in metropolitan areas.
5. Maintain environmental stewardship.
6. Streamline project delivery (CEQA/NEPA).
7. Assist in providing a reliable funding source (VMT).

9. *How can California maximize its share of federal transportation funding? How could California become more effective in competing for federal discretionary transportation funds?*

California can maximize its share of federal transportation funding by having a more united Delegation; much like Texas and Florida.

Transportation in a Post-AB 32 World

10. *What is CTC doing to implement the requirements of SB 375? Specifically, has the commission begun assessing travel-demand models in an effort to have those models better respond to land-use decisions? Please discuss the timeline for these efforts.*

The CTC staff has engaged in State level meetings with the California Air Resources Board, Caltrans, the Department of Housing and Community Development, the Governor's office of Planning and Research and the California Energy Commission. We are currently conducting workshops in order to present updated RTP Guidelines to the Commission by the end of 2009. We have met with staff from U.C. Davis to discuss travel-demand models as it relates to land use. Hopefully, this will come together by the end of 2009.

11. *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 transportation projects?*

In 2007, the Commission updated the RTP to include additional considerations for greenhouse gas emissions. Incorporating air quality and climate change concerns into the planning of transportation projects must be handled with great thought and a great deal of common sense. Wouldn't it be great if we could phase out the combustion engine?

12. *How would you assess the state's current policy as it relates to toll facilities and other pricing strategies in our transportation system?*

With the passage of SB4 we will soon find out the real benefits of public-private partnerships and their ability to fulfill needs that cannot be currently met with our existing funding sources.

If we did not have our current toll structure within the Bay Area Bridges, we would either not be able to retrofit our bridges or we would have taken money from other needed projects.

13. *Do you regard the toll facilities operating in Orange and San Diego counties as successful? If so, please describe the benefits they provide versus the costs they impose on travelers.*

Yes, I regard these toll facilities as successful, but not without lessons learned. As stated previously, the lack of available and sufficient funding forces our transportation agency to find other means to fund needed projects. Toll facilities are used all over Europe with great success. The public always has a free option.

14. *What recommendations would you make to the Legislature in forming its policies on toll roads or other pricing strategies in transportation?*

Recommend to continue to monitor the success of the recently approved SB4. The success of other countries with similar political, demographic and transportation challenges suggest that challenges to public-private partnerships can be overcome.

State Transportation Improvement Program

15. *Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?*

The concern is not how funds are distributed, but it is the unreliability of and unstableness of the funds that is the problem.

16. *Do you have any concerns with how STIP funds are distributed among urban and rural areas? How do you describe your approach to balancing the transportation needs of rural and urban areas?*

Yes. Urban areas typically have been able to pass local sales taxes that make them more competitive for STIP funding. Rural areas have miles of roads to maintain while generating very little in sales tax revenue even if they pass a sales tax measure.

Public Transit Operations

17. *Do you think the state of California sufficiently invests in public transit operations? Is this a legitimate responsibility of the state, or is it primarily a local concern?*

This is a difficult question to answer because I am not positive the public is really aware of the subsidized cost of operating transit. In the long run, it is the public's decision and if the answer is that we want more public transit, then a means to pay for both capital improvements and operations must be developed outside the current system.

Developing an alternative way of funding transit legislatively belongs to the State with local buy-in.

18. *What actions can CTC take to enhance funding for public transit operations in California?*

In October 2008, the Commission and California Transit Association held a joint "Transit Summit." Needless to say, the majority of the discussion was focused on funding. If the CTC can be a catalyst to help funding for transit outside of the normal STIP process, then we will have succeeded.

19. *What recommendations might you make to the Legislature to stabilize funding to public transit operations?*

If public transit is to have a viable future, it must have a reliable, dedicated source of funding for both capital improvements and operations. I would also put this before a "Blue Ribbon Panel." However, one idea may be to have a small portion of property tax dedicated to this purpose; much like a special district (flood control, mosquito abatement, etc.). This would leave transit with its own reliable source of funding while freeing up existing funds for roads and maintenance.

Statement of Goals

1. *Since 2004 when you were first appointed, what have been your most significant accomplishments as a member of the Los Angeles Regional Water Quality Control Board? What do you hope to accomplish during your current tenure as a member of the board? How will you measure your success?*

The most significant impact that I have had has been in the area of building collaborations. Our work in the past year has been much more collaborative. The relationships between the Board and Permittees have improved and the communication has become less adversarial.

The measurement of success is long term, I believe through more collaborations, stronger communication and joint public/private studies, projects and information sharing there will be fewer lawsuits and a reduction of appeals to the State Board.

2. *What do you believe are the most serious problems facing your regional board?*

There are water quality challenges such as stormwater, groundwater remediation, toxicity limits, and metals, including TMDLs into permits, and supporting recycling. There are also challenges related to education and strengthening communication with permittees and stakeholders. There are also challenges in the administration and enforcement of the permits in light of the budgetary reductions.

3. *How does your board help the public understand the state of water quality in your region? 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, streams, and the ocean in your region?*

With our new Executive Office, Tracy Egoscue, and whenever possible, myself as chair, we attend non-permit topic specific meetings to listen and share general information with permittees and stakeholders (environmental agencies, Watershed Councils, WTOs and PTOs, water purveyors and Municipality and County representatives). Through these contacts we have found a general misconception of the general purpose of the Water Quality Control Board and a basic understanding of the permitting and violation process.

This is a new concept for the Board that brings open discussion of the challenges facing our region and water quality. In the past year it has improved the understanding of the permittees and stakeholders regarding their responsibilities and the expectations of the Board.

4. *As of April 9, 2009, there are no 2009 agendas on the board's Web site. In addition, the minutes of only two of the 11 board hearings conducted in 2008 are listed on the board's Web site. Please explain. How long should it take to place the board's agenda and minutes on its Web site? How does the board monitor the way in communicates with the public?*

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Appointment

It is definitely correct that currently we are experiencing challenges with our Web site. Our Webmaster left our Board and took a job at CARB for an increased salary. The budget restraints have prohibited us from hiring outside our current staff and there is not a trained Webmaster on staff at this time. We have solicited a part time student to work with one of our more technical engineers, but the challenge of day to day upkeep is still present as we do not have a full time dedicated employee.

Currently (May 18, 2009) Agendas for February, March and April 2009 and minutes for February and March are posted on the site.

You are correct about the minutes from 2008 and I will discuss with staff the most expeditious manner in rectifying the site.

State and Regional Boards

The state and regional boards were created nearly four decades ago. In January 2009 the Little Hoover Commission issued a report on improving the performance of the state's water boards. One of the findings was that the relationship between the state and regional boards is not well-defined. This has led, they believe, to inconsistencies and inefficiencies among boards, an inability to set statewide priorities, and a lack of focus by the state board on holding regional boards accountable for clean water outcomes.

The report also found that there is little focus on clean water outcomes or accountability. Regional boards admit they have difficulty in analyzing watersheds to determine whether their programs are protecting and improving water quality. Regional water boards' focus is more on issuing permits and determining whether dischargers abide by permits than determining if the water is actually getting cleaner.

Another issue that has been raised in the past, and also discussed in the recent commission report, is that many of the issues board members have to deal with are very technical, and a number of board members are, basically, volunteers and do not have such formal technical experience.

5. *What is your view of the relationship between the state board and your regional board? What type of guidance do you receive from the state board?*

The State Board Member liaison for our Board is Vice Chair Fran Spivey-Weber. Fran has been very helpful and offers advice as needed. She listens intently to our Board Meetings and has taken many of our concerns back to the State Board. Likewise for past Chair Tam Doduc. I have met with our State Board liaison several times throughout the years and have always felt they were/are responsive and helpful. As the Chair I have met with Fran several times and will continue to do so along with the monthly Chair Conference Calls.

There are many issues in which our Board is awaiting policy decisions from the State Board. In these cases it places our Board in the very uncomfortable position of making permit decisions.

Many times this causes complaints from permittees when we interpret the future opinions of the State Board and complaints from the environmental stakeholders when we are conservative and do not include any provisions until clear direction is made by the State Board.

6. *What is the best use of the board's time? Should the board focus on the permitting process or focus on broad policy issues, such as updating basin plans and setting regional priorities? Or can the board reasonably be expected to accomplish both?*

The basis for all the work the Board accomplishes begins with the Basin Plan. It is imperative that we are provided the assistance needed to keep our Basin Plan current and relative. Once a permit is issued the most important aspect is the enforcement of the permit. This is time consuming and staff intensive.

I don't believe the Board should focus solely on policy issues without maintaining the permitting and enforcement. At the same time, unless the Basin Plan and broad policy decisions are made the permitting and enforcement lack direction and purpose. It is not an either/or proposition.

7. *Has your board developed or discussed creating a mechanism that would let the public know if the waters in your region are becoming cleaner and by how much?*

To date our Board has utilized two methods of communication with regard to water quality successes. First are the actual board meetings where we have begun to have presentations by permittees and agencies explaining how they met these challenges. We have also held the Los Angeles Water Quality Awards for several years to celebrate the successful projects and water quality advocacy.

We also bring to the attention of our stakeholders the "Beach Report" by Heal the Bay and other environmental organizations.

Press releases are not utilized to their fullest. The process does not always lend itself to a timely article. However, responding to the media in a timely, professional manner when they are asking questions for a story is always addressed quickly.

8. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

The Regional Board staff is extremely helpful in explaining and answering questions. I have been able to meet with them one-on-one to assure that I fully understand some of the complex science and legal issues.

In the very few times I have directly asked State Board staff questions regarding science and policy they have been helpful. I have more contact with the legal staff at the State Board and find them to be extremely helpful and supportive.

Enforcement

In 2005 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. In 2008 the state board, in its *Strategic Plan 2008–2012*, said it would adopt an updated water quality enforcement policy by December 2008. That enforcement policy will now not be adopted until mid to late 2009. On January 1, 2009, the state board published its 2008 enforcement report. Among other things it showed the number of violations that were imposed by regional boards compared to completed enforcement actions. For the four-year period from 2005 through 2008, the Los Angeles regional water board scored a low of 40 percent in 2005 and a high of 48 percent in 2006 in wastewater violations compared to completed enforcement actions. This is well below the average of the nine regional boards. For stormwater violations compared to completed enforcement actions, the board scored a low of 91 percent in 2006 and a high of 100 percent in 2008. This is above the average of the nine regional boards.

In a review of eight years of discharge data from wastewater plants, the environmental group Heal the Bay found 900 instances in which effluent samples contained toxic levels high enough to harm aquatic life in lab tests. According to the report, less than 2 percent of the discharges resulted in penalties imposed by the board. The previous chair of the board has said “[Y]ou cannot enforce without any numbers to adhere to Everybody would agree toxicity is a problem.”

Last year the board entered into a three-year pilot project with the Attorney General's Office to develop water quality enforcement expertise in the Attorney General's Office to develop, refer, and prosecute water quality enforcement cases.

9. *What is your view on how your board should enforce water quality laws? When are fines and penalties appropriate, and when are more informal actions necessary?*

Water quality laws should be enforced evenly and fairly through the entire permitting community. There can be no sacred cows, but that is not to say that cooperation and collaboration are not part of the process and solution. After all, assessing a fine does not actually clean the water. The goal is to achieve water quality and sometimes it is not a violation based on neglect but rather inability or lack of knowledge. Our job should not only use a hammer but teach the permittees to accomplish results.

10. *Without a current formal state board policy on enforcement, how does your board determine whether it is consistent in its enforcement practices with other regional boards?*

Our Board has struggled in this area. We are currently focusing on providing consistent enforcement practices without our own purview. We have little communication with Board

Members (generally at annual WQCC meetings) from other regions regarding their approaches to enforcement. Since each region has many permits with varying limits and expectations it can be difficult to create parity.

As Chair I am now able to speak to other Board Chairs at the monthly Chair meeting.

I know that our Board staff has communication with other regional staff but as to the degree and content I do not know specifics.

11. *Is there any way the regional board can better regulate the toxic effluent discharges in the absence of action by the state board?*

Toxic discharges can be regulated by benchmarks and MALs. Once the State Board has finalized their action we will incorporate their findings into our permits and will therefore be consistent with other regions.

12. *How is the pilot project with the Attorney General's Office to develop water quality enforcement expertise coming along? Has this project improved enforcement of water quality laws?*

We have been pleased with the pilot project. Several items have been referred to the AGs office, although we have not closed any of the cases yet. The overall with the AGs Office will take time to determine if it actually improves water quality. We are tracking the cases to determine if the results are just a monetary slap on the hand or if they actually create a nexus for change. This is the challenge for all enforcement.

Our Board has instituted a program to encourage a payment plan, or settlement program, with violations and this has proved to be very successful. These enforcements are tracked on a monthly basis and reviewed by appropriate staff.

Septic System and Stormwater Treatment in Malibu

The Malibu area has a long history of problems with septic systems. Last year the board asked staff to propose an amendment to the Water Quality Control Plan for the Los Angeles Region to prohibit septic systems in the Malibu Civic Center area. It is expected the proposal will go before the board later this year. Early this year, the owner of the Paradise Cove Mobile Home Park was assessed a proposed \$1.65 million fine for allowing raw or partially treated sewage to spill into local creeks and the ocean in 2007 and 2008. The December 2008 Executive Officer's report to the board lists eight major septic system failures for a number of restaurants and businesses in the Malibu area.

Under orders from your board to clean up its stormwater, the City of Malibu is about to turn 17 acres of open space into a stormwater treatment zone. Previously, the environmental impact report (EIR) also listed a wastewater treatment plant to help address the problems with the

septic systems for the same site, but that was deleted in the January 2009 final EIR. Many environmental groups have called for such a joint stormwater and wastewater treatment project.

13. *How is your board addressing the problems with the septic systems, not only in the Malibu area, but in other parts of the region?*

Septic systems are of major concern to our Board, particularly in Malibu. We have for many years worked closely with the City of Malibu and others with the goal to develop wastewater treatment plants. Based on State Board direction on Septic Tanks the Regional Board has negotiated MOUs with many municipalities.

14. *What are the prospects for hooking up businesses and residents in the Malibu area to a regional wastewater treatment plant?*

Recently our Board issued 23 NOVs in the Malibu Civic Center to business permittees. The Board and City of Malibu are in discussions regard a wastewater treatment plant. The obstacles are great; there is not much political or public will to make this huge change in their community. The challenges there, but we believe with open communication with City Council Members the tide will turn.

We also have an ACL hearing scheduled June 5, 2009 with Paradise Cove regarding many major violations.

15. *Do you believe that a joint stormwater and wastewater treatment plan should be considered for the Malibu area? Why or why not?*

Yes I do believe there should be a stormwater and wastewater treatment plant. Whether they should be a joint plant I do not believe is a necessity.

I believe if we can hold Malibu to standards and keep measured pressure we will be able to make a change in their attitudes regarding treatment of both stormwater and wastewater. We have made progress with the plan to turn open space into a storm water treatment zone. Unfortunately, these projects cannot be accomplished over night and are extremely costly. Even a city such as Malibu has financial restraints. It is our intention to continue to assist them to do the right thing.

1. What do you hope to accomplish during your current 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?

The Los Angeles Water Quality Control Board is mandated to protect and enhance the quality of water sources in the region. However, it is essential that the decisions made and mechanisms put in place by the Board do not negatively impact the businesses and employment sources that secure the economic vitality of the state. In my tenure I would like to help the Board achieve the balance needed to preserve the water quality while maintaining the economic well being of the State. In the light of the current economic crises, budget shortages, and job losses this balance is an absolute priority. My other goals include continuous promotion of objectivity and sound scientific measures that result in specific recommendations and enforcement measures in each case. It is important for the board to clarify the processes, procedures, and measures it adopts to arrive at decisions to the public, and remain independent of special interest groups.

I will accomplish my goals on a case by case basis, closely considering and analyzing the issues and material presented to the Board. I would like to work through each case by understanding the views of the stake holders as well as the applicants, and the mandate put forth in the Board's agenda. Specifically, I will implement the short and long term goals of the basin plan and the specific background of the case to arrive at fair and effective enforcement measures, keeping in mind the economic health of the state. I would also promote the importance of formal Board Policies that will result in the development of consistent enforcement policies. One of my priorities is to assure that the resources of the Board and the staff is proportionately and equitably distributed to enforce storm water and waste water violations.

I would measure my success by continuously monitoring the processes that result in improvement of water quality assuring that improved water quality assists the advancement and economic development of our state. In my view ultimate success will be measured by the development of formal procedures that are based on quantitative scientific measures, comparable monitoring and sampling processes, and tailor made methodologies that take into consideration the background conditions, the objectives of the basin plan to define accurate numerical thresholds and expedient enforcement action.

2. What do you believe are the most serious problem facing your regional board

There are a number of serious challenges facing the Regional Board that can be summarized as follows:

- Lack of comparable data collection and sampling mechanisms
- Usage of incomparable methodologies to measure water pollution in each case
- Difficulties involved in developing specific numerical and quantitative thresholds

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- Insufficient scientific information
- Lack of well organized empirical data
- Lack of formal Policy on enforcement
- Lack of measures to identify need for informal actions versus fines and penalties in each case
- Need for technology and scientific knowledge
- Shortage of staff and resources necessary to analyze the complex and multi layered nature of each case

3. How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spill, or the overall quality of water in rivers, streams, and the ocean in your region?

The Board has raised public awareness through various measures, including public displays and exhibits funded by the board through Heal the Bay and the Aquarium of the Pacific. The overwhelming passage of measure O is proof that the efforts undertaken by the board have been successful, and public awareness of water quality has been elevated. However, what concerns me more than sewage or storm water run-off violations is the lack of public awareness of waste water violations. Unlike sewage or storm water run-off, the public is not well informed and does not have access to information regarding waste water. Often time's wastewater violations are committed conspicuously by dischargers without permits, and the public is not informed unless it results in a public health hazard. This lack of information inhibits the public from fighting against the illegal discharging waste water. This becomes a significant quality of life and overall environmental issue. I believe that the Board needs to be more diligent in raising public awareness in the area of wastewater pollution. The board should specifically educate the public, keep them aware of the violations, and more importantly emphasize the importance of clean up processes and enforcement. In addition, the Board should keep the public and the stakeholders abreast of the clean up that occurs as a result of enforcement actions. This becomes more important in inland watersheds where there are more industrial activities and the residents are less informed and sensitive about water quality issues.

4. As of April 9, 2009 there are no 2009 agendas on the board's Web site. In addition the minutes of only two of the 11 board hearings conducted in 2008 are listed on the board's Web site. Please explain. How long should it take to place the board's agenda and minutes on its Web site? How does the board monitor the way it communicates with the public?

Communication is the first step in transparency and the process of building consensus between the board, the applicants, the stake holders, the special interest groups, and the general public. To the best of my knowledge the Board's website www.WaterBoards.ca.gov. has posted the

latest information as of March of 2009 meetings' minutes. In addition, the agendas and notices for future meetings, up to June of 2009, are posted on the website.

I believe that one of the most effective communication tools available to the Board is its website, and I am satisfied with the pace of the updates on the site. Please see www.waterboards.ca.gov under board information.

5. What is your view of the relationship between the state board and your regional board? What type of guidance do you receive from the state board?

Currently the Los Angeles Water Quality Control Board receives regular updates from the State Water Board during its meetings. The briefings focus on the overall priorities at the state level, policies set forth by the governor's office, and issues discussed at the State Board level.

I believe that this relationship can be improved in following ways:

- State Board to develop State wide priorities semi annually, and put in place attainable numeric thresholds and standardized monitoring methodologies specifically designed for the Regional boards
- State Board to request the Regional Boards to meet the goals over a one year period
- State Board to request the Regional Board to meet the specific water quality goals over a three year period
- State Board to request specific water quality reports from the regional boards on regular basis

In summary I believe that the State Board should function as a policy making body that develops specific policies, implementation strategies, and assists the boards to develop methodologies to monitor the improvement of water quality. In turn the Regional Boards should function as permitting bodies that follow the policy decisions and the guidelines issued by the State Board to deal with permitting issues in the region, and achieve certain goals by regular monitoring and reporting of the improvement of the water quality.

6. What is the best use of the board's time? Should the board focus on the permitting process or focus on Board policy issues, such as updating basin plans and setting regional priorities? Or can the board reasonably be expected to accomplish both?

The board should be primarily responsible for permitting matters. It is important for the Board members to understand the general guidelines and policy matters developed by the State Board and work diligently to achieve the goals through careful and well thought out permitting processes in their respective districts. While the board's primary responsibilities should not

include policy development and goal setting, it is essential that the Regional Board to provide input to the State Board for policy development. Similarly, the Regional Board's input in updating basin Plans and setting regional priorities is very important since the basin plans define the context of goals and objectives in each district.

7. Has your board developed or discusses creating a mechanism that would let the public know if the waters in your region are becoming cleaner and by how much?

This task has been undertaken through interagency coordination. Certain mechanism have been developed by which the Water Boards, Environmental Protection Agency and South Coast Air Quality Management District (SCAQMD) have provided their data, resources and funding sources to certain non-profit environmental groups to spearhead research, testing and monitoring of water quality. This research will assess the progress of water quality resulted from regulating and cleanup efforts. The best example of such an effort was when Heal the Bay began to produce the Beach Report Card beyond Santa Monica. This very successful effort was funded by SCAQMD.

8. Does the State board or your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

The Regional Board staff does an excellent job of assisting the members to better understand the process, and the complex issues that might come in front of the board. I received an excellent briefing before my first meeting that included an introduction to the processes as well as a comprehensive glossary of the terms that proved to be very helpful. Overall the background work completed by the staff to compile the staff reports is outstanding. In addition, I have had a positive experience with the regional board staff response time and their ability to respond to questions before, during, and after the board meetings.

9. What is your view on how your board should enforce water quality laws? When fines and penalties are appropriate and when are more informal actions necessary?

The process through which the board interacts with a discharger functions as a key measure of success in enforcement practices. First and foremost it is imperative that the board acts with the basic premise that informal actions, penalties and fines ultimately are aimed to result in compliance. Departure from this premise will end up in actions, penalties and fines that do not fundamentally deal with the issue of curing the damage. In some cases the board is dealing with dischargers that have the means and can afford excessive penalties. In these cases it is important for the board to devise mechanisms that force the discharger to clean up its act

instead of paying the penalty and continuing to pollute the waters. This course of action is imperative to assure that the board does not become irrelevant and fail its basic objectives. Therefore the enforcement process should stem from the specifics of the case. This of course is challenging in terms of availability of staff time and resources.

10. Without a current formal state board policy on enforcement. How does your board determine whether it is consistent in its enforcement practices with other regional boards

I believe in a basic idea that each watershed is unique. We define the uniqueness of each watershed by its specific basin plans. Theoretically the basin plan is the touch stone for goals and objectives. Once again, the background condition, the goals of the basin plan, becomes parameters that will define site specific compliance and enforcement standards. It is understandable that different districts and regions in our state will anticipate some kind of uniformity. However, a basic organic act does not necessarily promote consistency. I am convinced that consistency should not translate into creation of uniform enforcement practices and standards, but should result from more concentrated and specific work in developing goals objectives and guidelines in the basin plans. To achieve the consistency of practices among the boards it is imperative to depart from the baseline background conditions of the watershed, and analyze the specificities and uniqueness of every case. It is essential to define the attainable standard, assess the timeline required to achieve it and make enforcement standards.

In summary Compliance and enforcement practice should achieve consistency at the state level by calibrating the practices to the specific condition of each watershed, and not through a uniform generic act.

11. Is there any way the regional board can better regulate the toxic effluent discharges in the absence of action by the state board?

In order to better regulate the toxic effluent discharges the board has to achieve enforcement and compliance actions through scientific research, understanding the naturally occurring chemicals in each site and uniqueness of the case. This site specific analysis requires a large staff and advanced technological resources. It is obvious that in an era of scarce resources this is a challenge.

At this point I believe that the board must receive from the staff a series of applicable policies for each case and provide a context with the following elements:

- The basin plan
- Applicable standards
- The complex variables involved in the case such as natural conditions

Since toxic effluent in a lot of cases creates odors, air quality issues and health hazards, it is essential that the board create intergovernmental coordination to deal with the cases that have differing characteristics. By using this methodology the board will create a decision making matrix that can better regulate the toxic effluent discharges

12. How is the pilot project with the Attorney General's Office to develop Water quality enforcement expertise coming along? Has this project improved enforcement of water quality laws?

The pilot project with Attorney General's office is designed to enhance Region 4's enforcement capabilities and was launched in 2008. It is clear that historically the water board's enforcement has been primarily administrative. This pilot program intended to bring the court system to strengthen the board's enforcement capability. The specific intent has been to create a relationship on prosecutorial issues in addition to already existing relationship with Attorney General's office on defensive matters.

According to my research there is no evidence of any measurable gains. However, the Attorney General's office is working on numerous fronts. Therefore, increased settlement numbers along with more enforcement in a court of law is expected.

13. How is your board addressing the problem with the septic system, not only in Malibu area, but in other parts of the region?

Septic systems in general become a hazard to the communities and the environment. I experience the negative impact of the septic systems as a long time resident of the city of La Canada Flintridge, a city largely based on septic systems. It is obvious that in many cases in the past septic systems have been falsely used to prohibit development in an attempt to preserve the single family and low density nature of communities. I believe that maintaining the single family residential communities should have been done through use of zoning ordinances since septic systems are not a means to define the typology of development.

In the case of Malibu the problems created by the septic systems are exacerbated. Last year the Water Quality Control Board asked the staff to propose an amendment to the Water Quality Control Plan for the Los Angeles Region to prohibit septic systems in Malibu Civic Center area. The city of Malibu is about to turn 17 acres of open space into a storm water treatment zone. I believe that the appropriate approach at this time is to deal with the problem in a collaborative manner. The actions should translate into a locally controlled board to create a collaborative method, and to enforce a joint storm water and wastewater treatment plant in Malibu. Any other solution but a central treatment plan will be inadequate and dysfunctional.

14. What are the prospects for hooking up businesses and residents in the Malibu area to a regional waste water treatment plant?

Historically one of the reasons to incorporate the city of Malibu was to cut the city from the regional wastewater treatment plan. In a way it has been an attempt by Los Angeles County to not deal with the sewer issue in Malibu. Therefore, given the current state of the economy the prospect for hooking up businesses and residents in the Malibu area to a regional waste water treatment plant is less likely than ever. This effort will not be successful in light of the lack of cooperation that will be demonstrated by Los Angeles County.

15. Do you believe that a joint storm water and wastewater treatment plan should be considered for the Malibu area? Why or why not.

I believe that a joint storm water and wastewater treatment plan should be considered for Malibu area. In general joint treatment plans are not desirable, and are not an environmentally sound solution. However, given the specific situation in Malibu, more specifically the existing land uses and lack of presence of any significant industrial uses or activities make joint storm water and wastewater treatment plant a viable and environmentally sound option for the area.

George Loveland
Regional Board
San Diego

May 4, 2009

Senate Rules Committee

George I. Loveland

MAY 22 2009

Appointments

Dear Mr. Loveland:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the San Diego Regional Water Quality Control Board on Wednesday, June 24, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 26th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 26th.

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?*

- a) Ensure that the quality of recreational waters in the San Diego Region are not negatively impacted thereby adversely affecting the environment and regional economy; and b) facilitate local potable water supply.**

What goals do you have for the board, and how will you accomplish them?

Identify issues which impact a & b (above) and work with the Regional Board Chairman and staff to educate the ourselves on the impacts, causes and solutions; then recommend

appropriate policies to enact those solutions to the State Board as appropriate or for Regional Board adoption.

How will you measure your success?

a) Improvement in water quality reports; and b) increases in local water supply.

2. *What do you believe are the most serious problems facing your regional board?*

Resolution of water quality issues in San Diego Bay and the Mission Valley 'Tank Farm' plume.

3. *How does your board help the public understand the state of water quality in your region?*

Through reporting of Regional Board action in the local media and proactive efforts such as currently underway with multiple public & private agencies to develop solutions to the pollution crossing the border from Mexico and degrading the Tijuana River Valley and estuary.

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, streams, and ocean waters in your region?

Web sites for the Regional Board, the Counties of San Diego & Orange and local municipalities are all good sources. In addition, local media have been good about disseminating information, especially through the cooperative "Think Blue" campaign.

State and Regional Boards

The state and regional boards were created nearly four decades ago. In January 2009 the Little Hoover Commission issued a report on improving the performance of the state's water boards. One of the findings was that the relationship between the state and regional boards is not well-defined. This has led, they believe, to inconsistencies and inefficiencies among boards, an inability to set statewide priorities, and a lack of focus by the state board on holding regional boards accountable for clean water outcomes.

The report also found that there is little focus on clean water outcomes or accountability. Regional boards admit they have difficulty in analyzing watersheds to determine whether their programs are protecting and improving water quality. The regional water boards' focus is more on issuing permits and determining whether dischargers abide by permits than determining if the water is actually getting cleaner.

Another issue that has been raised in the past, and also discussed in the recent commission report, is that many of the issues board members have to deal with are very technical, and a number of board members are basically volunteers and do not have such formal technical experience.

4. *What is your view of the relationship between the state board and your regional board?*

The relationship is distant and appears to me in the short time that I have served that it is not effective. A State Board member attempts to attend our monthly meeting but it is sporadic and there is no time, or venue, for interaction.

What type of guidance do you receive from the state board?

To date it has been very limited and as evidenced by our May meeting there are instances where policies mandated by the State Board may not be fully relevant to the issues at hand. The case involved an apparent inability to deal with two conflicting, but desirable goals involving POTW discharges and groundwater recovery to supplement local water supply.

5. *How do you balance the board's focus on the permitting process and the focus on broad policy issues, such as updating basin plans and setting regional priorities?*

In my time on the Regional Board there has not yet been an opportunity to address any focus other than permitting. There are fledging plans for workshops to address priorities and policies, at this date they are not scheduled.

What is the best use of the board's time?

Addressing policy issues and developing those polices which facilitate quick and effective decision making by both staff and Board in the permitting process.

6. *How does the state board and your regional board staff assist you to better understand some of the complex issues before you?*

Staff has been ready and willing to answer questions that arise.

Do you have any suggestions on how the state water board's staff might better assist you?

Staff reports are written with an eye to potential legal challenge and not with the idea of clarity or understandability of complex issues. Balancing those, often competing goals, should be a staff training priority.

Enforcement

In 2005 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. In 2008 the state board, in its *Strategic Plan 2008–12*, said it would adopt an updated water quality enforcement policy by December 2008. That enforcement policy will now not be adopted until mid to late 2009. On January 1, 2009, the state board published its 2008 enforcement report. Among other things, it showed the number of violations that were imposed by regional boards compared to completed enforcement actions. For the four-year period from 2005 through 2008, the San Diego regional water board scored a low of 60 percent in 2008 and a high of 92 percent in 2006 in wastewater violations compared to completed enforcement actions. This is slightly above the average of the nine regional boards. For stormwater violations compared to completed enforcement actions, the board scored a low of 77 percent in 2006 and a high of 91 percent in 2008. This is slightly below the average of the nine regional boards.

The San Diego region is also home to the largest underground tank leak in the state that has not begun cleanup. Twenty years ago, the board ordered Ametek/Ketema

Aerospace to map the extent of the underground plume that was created when tens of thousands of gallons of solvents and other chemicals leaked from an underground tank. San Diego city officials are concerned that the plume may impact one of their municipal wells in the El Cajon Valley. On the board's February 11, 2009, agenda was an item to levy an administrative assessment of civil liability to the company for \$2.3 million. That action was postponed and has not been rescheduled to date.

7. *What is your view on how your board should enforce water quality laws?*

Equally and impartially.

When are fines and penalties appropriate, and when are more informal actions necessary?

Punitive measures are appropriate when permittees or parties subject to regulation fail to adhere to those regulations. Discretion may be appropriate depending upon specific circumstances. Informal actions that can accomplish water quality goals in advance of regulatory actions based on failure to comply are more desirable.

8. *How do you prioritize your enforcement activities, given current budget constraints?*

Direct discharges to waters of the State should receive the highest priority.

9. *Without a current formal state board policy on enforcement, how does your board determine it is consistent in its enforcement practices with other regional boards?*

We rely on staff and the Chairman.

10. *Why has it taken so long to address the cleanup of the Ametek property? What plan does the board have to address the cleanup of this site and the protection of the El Cajon Valley municipal well?*

I cannot speak to the history. My initial impression of the issue is that the legal debate at a staff level has become a quagmire. The Board needs to cut through the process knot and move the issue forward.

Sewage Overflows

The San Diego region has a long history of sewage overflows. For FY 2007–08, there were a total of 215 spills, accounting for 1,637,233 gallons of sewage spilled. There were five jurisdictions that had spills totaling over 100,000 gallons:

<u>Name</u>	<u>Number of spills</u>	<u>Volume of spills</u>	<u>Percent of spills recovered</u>
Santa Margarita Water District	6	528,134	3.1%
City of San Diego	87	490,815	11.8%
Rancho California Water District	1	151,000	1.3%
City of Laguna Beach	4	138,300	57.9%
City of Oceanside	12	108,566	79.6%

11. *How is your board addressing the sewage overflow problems?*

The San Diego Board has not addressed any policy issues on sewer overflows in my time on the Board. We have asked our Chairman and staff to schedule workshops on policy issues.

12. *Why are some jurisdictions able to recover a significant amount of their spills while others are not able to?*

Physical circumstances can play a major role, such as when a spill occurs from a break directly in a streambed or a remote area. Other factors include agency preplanning, staff training and agency priorities.

13. *To what degree do you believe that portions of the federal stimulus money can help to refurbish the aging sewer infrastructure in the San Diego region?*

The degree will be directly affected by the amount of funds available and the criteria established for its use. Direct block grants would be the quickest and most effective way to inject funds into the sewer systems, which are in some parts in excess of 100 years old.

Recycled Water

The board regulates approximately 57 wastewater treatment facilities that recycle wastewater for reuse, generating a maximum of 539 million gallons per day. This recycling produced nearly 104,000 acre-feet in 2007. Recycled water is primarily used for landscape irrigation, but some is also used in agriculture, industrial, and commercial

uses. A significant amount of recycled water, 47,000 acre-feet, was not reused but discharged into the ocean in 2007.

14. *What role does recycled water have in meeting water demand in the San Diego region?*

In a region with only a very limited local supply of water, recycling is critical to future economic growth. Recycling plans in the region deserve careful review, consideration and facilitation where warranted.

What should be the future role of recycled water?

Every drop of available recycled water should be utilized to the fullest extent possible. In addition to the current agricultural, landscape and industrial uses, potable water uses must be carefully considered.

15. *Does the board have plans to utilize the recycled water that is now not used but discharged into the ocean?*

It is my understanding that we will soon see proposals from the City of San Diego on potential potable water augmentation of those recycled waters currently discharged to the ocean.

June 2, 2009

Monica S. Hunter, Ph.D.
Responses
WQCB, Central Coast

Statement of Goals

- 1. Since 2005 when you were first appointed, what have been your most significant accomplishments as a member of the Central Coast Regional Water Quality Control Board? What do you hope to accomplish during your current tenure as a member of the board? How will you measure your success?***

Since becoming a Board member of the Central Coast Regional Water Quality Control Board I have grown in my role on the Board in several ways. First, I have worked diligently to gain a functional understanding of the jurisdiction and authority of the Regional Board under the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act. In part this has occurred through the excellent quality of information provided in the form of staff reports and background information in preparation for each hearing. I also actively seek information on priority problems and issues related to protecting and restoring water quality that is important to our region, and have attended all but two semi-annual Water Quality Coordinating Committee meetings where I have actively engaged in program/policy review and strategy development, providing input from a regional perspective to the State Board.

As a Regional Board member, I have worked together with my fellow Board members to address priorities for both proactively protecting watershed functions across the region, and aggressively identifying remediation strategies to restore degraded watershed functions associated major impacts to surface and groundwater, as well as to wetlands and riparian areas. A major effort has been directed at streamlining the Phase II Stormwater Program review and approval process to assure that Municipal Separate Storm Sewer Systems (MS4s) are progressing to program implementation in a more efficient manner to effectively address urban runoff. This has resulted in a more systematic review and permit approval, with greater clarity and understanding of the process and of the program components by the MS4s. Since our region has only one Phase I permitted Storm Water Program held by the City of Salinas, the remainder of the Stormwater Management Plans (SWMPs) being developed or implemented in Region 3 are for Phase II MS4s, and thus are in their first permit cycle with many challenges to be met in bringing their programs online. As a Board member, I have worked to move SWMPs through review and approval recognizing that as more SWMPs are implemented, benefits accrue across the region offering program model components to benefit other MS4s in the form of effective "best management practices" (BMPs), including meeting the required standard of "maximum extent practicable"

Senate Rules Committee

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Appointments

(MEP) in achieving watershed scale protection. I have also joined with my fellow Board members in encouraging aggressive staff support for MS4s to provide guidance and technical assistance to each municipality or other entity progressing toward Board review and approval. This approach has demonstrated that coordination of planning and design effort among geographically linked entities is an effective method to support collaborative SWMP development and implementation. I anticipate that the annual SWMP reporting and review process will also inform all MS4s in the region, further clarifying program requirements and highlighting creative and cost-effective methods as model program components are successfully implemented. The Board has encouraged all MS4s to work collaboratively in their first permit cycle with staff to assure that they are on the right track and that program achievements during their first 5-year permit will meet all required actions.

Another important development associated with the SWMP Program is incorporation of Low Impact Development (LID) standards for SWMPs that will protect and restore ecological and hydrological watershed functions associated with development and redevelopment within urban areas. While the current climate for development has slowed, our region will see population increases over time that will require new housing and redevelopment of urban areas. Region 3 has approached the development of LID in a proactive manner, working collaboratively with industry and with local government to initiate development standards that rely on establishing post-construction hydromodification controls to reduce urban runoff and improve infiltration and recharge of groundwater basins. This proactive approach is a high priority for me as a Board member as I recognize the importance of developing efficient and effective strategies to achieve new standards derived from LID in ways that are consistent with local priorities and goals to meet housing needs for growth areas in the region. Introduction of LID to SWMPs also aligns this program with the region's vision to achieve healthy functioning watersheds, providing strategic and measureable action in a systematic, long-term effort that is part of our region's coordinated strategy to proactively protect watershed functions across the region.

Additionally, the Board's commitment to LID has resulted in establishing the Central Coast Low Impact Development Center as a resource to provide technical and scientific expertise in the region, as well as offering a model program for the state. Developed in partnership with the renowned Maryland Low Impact Development Center, the program has flourished under the direction of Dr. Darla Inglis, who joined the program in 2008. Benefits to the region have been achieved in just a short time, as Dr. Inglis has focused on work with the MS4 communities in the region to identify appropriate and cost-effective strategies for LID design and implementation. Through her efforts, the Storm Water Program has shifted away from one of resistance to finding ways to meet program requirements, to working collaboratively with Region 3 staff toward permit approval. Dr. Inglis has also effectively worked with State Board staff assisting in their efforts to maximize Region 3's experience in bringing LID online for other regions. In my current term, I will continue to focus on the Stormwater Program and to find ways to

expand the role of the Central Coast LID Center, including identifying long-term funding to assure that the program is self-sustaining.

Another aspect of my work on the Board during my first term has contributed to a steady focus and recognition of the role of the public in providing input for Board consideration from both the regulated community as well as from stakeholders in the region. This includes enforcement actions, permit review and approval, as well as program review and policy development. For example, in a recent hearing on the Basin Plan amendment for onsite wastewater systems, the Board heard many stakeholders expressing concern that they did not have access to the current phase of the process for developing MOUs with local agencies, including opportunities for input to new criteria for onsite system management plans. In discussion with fellow Board members, I proposed that Region 3 establish a website to post Draft MOUs to facilitate public access and review by providing all MOUs in one location where stakeholders could track progress for their area in order to be informed and prepared to engage in their local community review and approval process. The staff immediately responded with an excellent design that will support a more informed process, linking key documents with informative background information to help educate the public on the new Basin Plan criteria, as well as specific program development for their community.

My focus on public input has also been supported by my fellow Board members in clarifying local concerns through follow-up with staff, who have demonstrated a commitment to providing follow-up and response to clearly stated stakeholder concerns and issues raised, leading to a more collaborative and better informed process. As a social scientist, I have contributed to staff's efforts to identify and incorporate meaningful public outreach and education, as well as public participation in the many programs provided on a range of issues. During my current term, I will continue to focus on identifying potential opportunities and direct staff to consider effective and efficient options to maximize public involvement in the various programs to contribute to a strong public outreach and involvement strategy. I am satisfied that Region 3 staff have made this component of their work a high priority, although constrained by limited time and funds, and anticipate that their interest and response to these issues will continue to build effective action.

Last, I have strongly supported one of Region 3's most important programs through Board approval to continue funding for the Central Coast Ambient Monitoring Program (CCAMP). The mission of CCAMP is "to collect, assess, and disseminate scientifically based water quality information to aid decision makers and the public in maintaining, restoring, and enhancing water quality and associated beneficial uses." This program has contributed approximately ten years of data on coastal confluence streams, including both program generated data (systematic 5-year watershed rotation throughout the region), and other externally generated data (with appropriate quality assurance controls) to create a highly useful database for access by the public as well

to support the Region's program priorities and actions. This includes internal program coordination with the Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural, TMDLs development, and will most certainly contribute to the Stormwater Management Program monitoring effectiveness. My advocacy of this program has extended beyond my role as a Region 3 Board member, seeking opportunities outside Board actions to raise awareness of the value and benefit of the CCAMP Program, to advocate for its continued support through external sources to assure that the program continues to gain and expand in keeping with the Region's needs and uses for the CCAMP database. I will continue to advocate for the program in my current term.

2. *What do you believe are the most serious problems facing your regional board?*

While urban issues are being addressed through implementation of the Phase II Stormwater Program, agricultural nonpoint source pollution remains a huge challenge, with many significant dimensions of agricultural operations requiring changes in practices to effectively reduce nitrates, pesticides and sediment due to erosion affecting both surface waters and groundwater. Of these, high nitrate levels are prevalent across the region's watersheds, and clearly present an enormous and significant problem that can only be addressed by improving farm practices to reduce discharge of contaminated tail water and other discharges associated with irrigated agricultural operations. These changes include requiring irrigation tail-water reductions from farm operations; improving efficiencies of irrigation systems; reducing fertilizer applications through nutrient budgeting; inspection of farm operations to verify changes in practices; and developing ways to track fertilizer applications. Designing and implementing Best Management Practices (BMPs) that achieve these changes is a high priority for the Irrigated Ag Program, with required monitoring to assess overall effectiveness of BMP implementation.

Of great concern are impacts to drinking water caused by high contaminant levels evident in the fact that 17% of the public supply wells in the region were determined to be contaminated by pollutants as reported by the Department of Water Resources in 2003 (using data that ranged from 1994 to 2000). Of the 17%, 55% exceeded public health standards for nitrate in drinking water. Region 3 staff reports that "this reference shows nitrate to be the single most important contaminant of drinking water in our Region." Additionally, we are lacking data to determine the significance of impacts to private and small domestic water supply systems, which our Region will pursue through analysis of existing data to determine what information is available to consider public health impacts and protection of privately owned water supply operations. Additionally, Region 3 staff is coordinating efforts with Monterey County, the California Department of Public Health and the State Water Resources Control Board, in support of SB X2 1 (Perata) requiring a study of the Salinas Valley to determine "causes and the extent of nitrate contamination within the groundwater basin and evaluate remedies to address the problem." Region 3 will play an important role in determining impacts to individual

domestic wells which is not adequately addressed in SB X2 1, and is working cooperatively with the county to require nitrate sampling for permits on all new wells.

In terms of protection of beneficial uses, problems associated with nitrates and impacts to surface water also present immediate concerns for beneficial use protections for aquatic wildlife. Our region has determined that the drinking water standard of 10 mg/L does not adequately protect sensitive aquatic wildlife, and through targeted study, has determined that the numeric target of 1.0 mg/L-N is more adequate to protect beneficial uses of surface water for aquatic life. This has led to new listings on the 303d List for Impaired Water Bodies within the region, and development of Total Maximum Daily Load (TMDL) objectives that will require significantly lower nitrate concentration levels than currently required for protection of the public drinking water supply.

Additionally, Region 3 has initiated a Nitrate Working Group that incorporates staff from different programs (Stormwater, Agriculture, TMDLs, etc.) in order to coordinate action throughout the region to assure all effective measures are applied systematically through alignment of actions across programs. In my view, the integrated approach that the Region has utilized in developing a response and proactive strategy to address the nitrate problem maximizes the resources and full capacity of Region 3 staff to achieve targeted outcomes to the extent possible.

3. *How does your board help the public understand the state of water quality in your region? 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, streams, and ocean waters in your region?*

As noted in my response above, Region 3 has lead the way in designing and implementing the Central Coast Ambient Monitoring Program (CCAMP) which has over the past ten years been effectively utilized for many purposes including informing the Board on important trends in water quality problems, supported determination of the 303d listings and development of TMDLs, and is also a fundamental component of region-wide monitoring and is eventually anticipated to house all monitoring data within the region. The CCAMP database was also designed from its inception to provide information to the public and has undergone many revisions and updates that have over time made the website more easily accessed and offers "user friendly" features and tools that allow the layperson to explore water quality data and trends across the region. The CCAMP database is also the main platform for Volunteer Monitoring Programs within the region, supporting these activities through coordinated technical quality assurance, and improving the potential for consistency of data within watersheds and for specific rivers and creeks where volunteer programs are actively working to acquire water quality information. Organizations that include the Coastal Watershed Council, and state agencies that include the Coastal Commission and federal agencies including the Morro Bay National Estuary Program and the Monterey Bay National Marine Sanctuary have all utilized CCAMP data, noting the high value of the program data and

contribution to collective efforts to develop and understand water quality problems in the central coast region, and to consider potential viable actions that will lead to solutions. Region 3 also conducts the Central Coast Environmental Assessment Network (CCLEAN) which is a program designed to monitor intertidal and nearshore waters of the Monterey Bay region, linking ocean data with the CCAMP database. The CCLEAN Program serves as the nearshore monitoring component for the NPDES receiving water monitoring and reporting requirements for 5 entities that discharge to Monterey Bay including the cities of Santa Cruz and Watsonville, Duke Energy, the Monterey Regional Water Pollution Control Agency, and the Carmel Area Wastewater District.

Information on sewage spills is available via the statewide database for the Sanitary Sewer Overflow Reduction Program accessible on the State Water Board website. A recent addition to the database includes a map of sewage spill incidents that provides a search tool for investigating sewage spills by geographic area. Additionally, Regional Board enforcement reports also include violations resulting from sewage spills and overflow incidents and are also accessible via the web where this regularly issued report is linked to Board Agenda reports and documents. Information on beach closures is currently not available on the Regional Board website. However, the website is being revised and will offer this information in the future. Information is available via county websites, and is often a component of the County Public Health Department. Newspaper accounts of major beach closures are also a source of information for the public to remain advised on health risks and beach closure actions.

State and Regional Boards

The state and regional boards were created nearly four decades ago. In January 2009 the Little Hoover Commission issued a report on improving the performance of the state's water boards. One of the findings was that the relationship between the state and regional boards is not well-defined. This has led, they believe, to inconsistencies and inefficiencies among boards, an inability to set statewide priorities, and a lack of focus by the state board on holding regional boards accountable for clean water outcomes.

The report also found that there is little focus on clean water outcomes or accountability. Regional boards admit they have difficulty in analyzing watersheds to determine whether their programs are protecting and improving water quality. The regional water boards' focus is more on issuing permits and determining whether dischargers abide by permits than determining if the water is actually getting cleaner.

Another issue that has been raised in the past, and also discussed in the recent commission report, is that many of the issues board members have to deal with are very technical, and a number of board members are, basically, volunteers and do not have such formal technical experience.

4. *What is your view of the relationship between the state board and your regional board? What type of guidance do you receive from the state board?*

I believe that the role of the Regional Boards and the relationship to the State Board is well defined, understanding that ongoing effort to improve and clarify the role of each is an important aspect of continued growth of the responsibility of each in meeting state and federal regulatory mandates. This is especially important as the scientific and technical basis for regulatory program development continues to expand action necessary to implement the Clean Water Act and the Porter-Cologne Water Quality Control Act as the work of these agencies progresses with addressing the many complicated and not yet fully characterized problems associated with nonpoint source pollution. In my view, during my term, the leadership of the State Board in identifying strategic areas of policy and program development, including gaps and updating old policies, has actively been conducted in coordination with Regional Boards, who provide the locally unique and distinct set of priority problems associated with specific impacts to water quality at the regional scale.

As the State Board meets its function in providing statewide policy, I believe that our Region is also meeting its obligation to consider region-specific issues, in context of broad scale goals for protection of watershed functions and goals for improving water quality in surface and groundwater. Our role, therefore, is to determine how to apply state policy through conditioning for permit approval that meets the standards set by state and federal law, and enforcement of regulations through individual case review for those who fail to comply with state and/or federal law. Furthermore, the State Board provides review of Regional Board decisions, providing an appeal process for those who wish to challenge a Regional Board decision. Additionally, legal counsel is provided to the Region by an attorney based in Sacramento but who is assigned to the Region, and is therefore able to actively participate in coordination across regions to assure consistency where appropriate can occur. Legal support to the regions has also been augmented by the formation of the State Board Office of Enforcement, providing legal staff to the Region when necessary, improving the way cases are developed across the regions.

The State Board Liaison to the Region also attends Regional Board hearings providing updates on current and future State Board actions including program and policy development statewide. Her attendance at Regional Board hearings also ensures that the specific issues and priorities for our Region are directly communicated to the State Board, both through observation of hearing matters, and also through direct exchange of information with Board members as a feature of the State Board member's report to the Regional Board given formally during the hearing.

The Regional Board Chair also participates in a monthly conference call with the State Board Chair that is intended to provide a forum for all Regional Chairs to discuss issues and review upcoming planned actions. As a Board Member, our semi-annual Water

Quality Coordinating Committee meetings have vastly improved communication between the State Board and Regional Board members in recent years, focusing on critical statewide action items, leading policy debates, and in the last two years, providing a meaningful process for Regional Board members to contribute to the development of the State Board's Strategic Plan (2008-2012).

Guidance from the State has been most effective in setting the pace for improving effectiveness, including a shift toward becoming a "performance based organization" emphasizing tangible outcomes that improve and protect watershed functions. In part this effort was initiated by Region 3 staff, who then collaboratively presented our program process at a WQCC as a way to launch State Board actions. This approach is presented in the Strategic Plan (2008-2012) which outlines goals for policy and program implementation that prioritize watershed scale actions "which stakeholders identified as the most effective approach to manage and protect the State's water resources." In our Region, our strategy has been to embrace a vision of healthy watersheds that focuses on attaining healthy aquatic habitat, sustainable land management practices, and protection of groundwater. This view recognizes the importance of protecting hydrological functions, inter-relatedness of surface and groundwater, as well as the important connections between protecting water quality and water supply. These goals have been instrumental in structuring Regional Board programs and to establish key parameters intended to measure environmental improvements such as "physical, chemical and biological conditions in water," and also operational measures which are intended to gage the changes that occur as a result of program action. The later includes measuring both actions taken by staff and the Board, as well as behavioral changes by dischargers that demonstrate compliance. Through collaborative efforts with State Board staff, our Region has continued to pursue this approach to improving program effectiveness that conforms to broad statewide goals to achieve integration of program effectiveness with measureable outcomes.

5. How do you balance the board's focus on the permitting process and the focus on broad policy issues, such as updating basin plans and setting regional priorities? What is the best use of the board's time?

In my view Region 3 staff as directed by the Executive Officer, has developed an excellent process for evaluating program effectiveness and setting annual priorities that are designed to maximize staff time and resources in order to meet objectives, and also to address new and growing areas of high priority. In part, priority issues are driven by programmatic cycles (e.g., the triennial review, reissuing of general permits) as well as by program mandates (e.g., Stormwater Program, TMDL Program). This aspect of the Board's function is most efficiently conducted by staff who provide excellent background reports and clearly stated and presented recommended actions for Board consideration. Additionally, because staff preparations involves work directly with the regulated community, review and updating permit conditions often moves forward efficiently

through "consent" following Board review, allowing the Board to proceed with approval when appropriate. The Board does discuss any issues that need further explanation or additional information that are presented to the Board for approval under the "uncontested" category, but often staff reports adequately present the facts on the matter, and the discharger has waived the hearing, also satisfied with the process. My experience has been that when the Board does inquire further into the details of a "consent" item, staff is always prepared with information necessary for further consideration by the Board, legal counsel is prepared, and the Executive Officer also is ready to provide additional details and information in response to Board inquiry in the course of the hearing allowing the Board to proceed. Therefore, the process is one that has been made more efficient through excellent preparation by staff and legal counsel, and through Board preparedness and inquiry in hearing the matter and reaching a decision.

Program and policy issues are also effectively addressed and I feel are given adequate time by the Board, again due to the fact that Region 3 staff has developed and implemented an outstanding comprehensive process for evaluating both short-term performance in achieving goals, as well as long-term strategies for keeping pace with emerging priorities, and building program effectiveness. In part this occurs through the annual "off-site" meeting conducted in a less formal manner than the hearing format, and is also intended to review the broad set of program objectives set from year to year, evaluate and reassess outcomes and progress to meet goals, and identify and focus on essential priority actions for the coming year. The structure for this process has been developed as part of the "healthy watershed" vision that links broad goals with tangible objectives and outcomes. For example, goals linked to achieving healthy aquatic habitat have created the basis for developing a basin plan amendment for riparian protection. In this manner, the watershed focus and related broad policy issues lead to effectively utilizing the basin plan as a mechanism to achieve a strategic outcome.

In considering the best use of the Board's time, I am satisfied that our focus on policy and program effectiveness are setting a pace that has already shown impressive results (LID Center, Stormwater Program, TMDL Program). I am also satisfied that the Board's time and focus on individual cases, and on allowing for a full hearing for those dischargers who are seeking a thorough review and who are facing enforcement action or reissuing of a complicated discharge permit, also demands the Board's full attention. In these actions, our Region has demonstrated their commitment to providing a fair process in which individuals who wish to dispute water quality regulations or permit conditions, monitoring requirements, etc., can receive a fair hearing. The Regional hearing process is one of our most important functions in that these proceedings are conducted as near to a given community as possible, they are accessible by diverse stakeholders from within the region, and they provide an important forum in which to review all sides of the issues and consider conflicting needs and points of view. This function cannot be diminished, and is a unique aspect of the Board's work that centers the importance and value of protecting water quality and quantity in the region where

the practice is occurring, where local residents can participate in and contribute to the action of the state to protect water quality and beneficial uses for all.

6. *How do the state board and your regional board staff assist you 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?*

As noted in an earlier answer, at the regional level, the staff prepares reports for each individual hearing item. These reports are organized to present background (the history of the permit or enforcement action), current information and status of the problem, and recommended actions that also provide a context for understanding the outcomes being sought. Additionally, staff presentations during the hearing are very well organized and highly effective in conveying the essential high points for Board consideration, and if appropriate, provide more details on any disputed or problematic aspect of the issue. These presentations also include informative visual information that is always instrumental in conveying the nature and extent of the problem, illustrating through tabled format or mapped data presenting past trends and projected future progress, defining areas where action is not sufficient and more is needed, including greater mitigation or further study. Additionally, staff reports, public comments and any related reports or studies are sent well in advance of the hearing in order to provide adequate time for review and preparation by Board members, including website links to technical reports and other supporting documentation. I am also able to submit questions in advance of the hearing and request further information which is always provided as requested to assist me in gaining a full understanding of any given issue related to a hearing matter. Additionally, I have access to legal counsel for the Board, who can provide additional information or direct me to further information as I prepare for a hearing.

State Board assistance, as noted, occurs in several ways, including the semi-annual Water Quality Coordinating Committee, as well as review of legal issues with State Board legal counsel that occurs as part of the WQCC. These meetings are instrumental in gaining the statewide picture, hearing from other regions throughout the course of the two-day sessions, as well as from hearing directly from State Board legal counsel who review recent court decisions that may have implications for the work of the Regional Boards. As a regular event, our State Board Liaison, currently Fran Spivey Weber, attends Regional Board hearings, and reports to the Board on State Board matters as an agenda item, allowing for questions and comments to be exchanged during the public hearing process. Additionally, the State Liaison remains in attendance in the hearing to directly observe issues and concerns that are occurring in the Region.

In my short experience on the Board, State Board efforts to connect with the regions, and to provide meaningful and productive statewide work sessions that focus on broad policy and program effectiveness issues has greatly improved from my very first WQCC

meeting, to more recent meetings conducted by Chair Doduc. My commitment to the process is also clear in that I have attended all but two of the WQCC meetings since 2005, and in both cases was unable to attend due to illness. I anticipate that as the State Board proceeds with implementation of the Strategic Plan (2008-2012), Regional Board involvement will continue to play an important role to allow input from the Regions to State Board program development, and that this interaction will continue to define Regional needs that will be the focus of future program development to the extent possible, providing needed support to the Regions.

To the extent possible, I am eager to have the opportunity to explore statewide issues through formats like the WQCC, where intensive focus on water quality matters can increase my knowledge and understanding of the challenges facing the state. I feel that the Regional Board support for Board members is very well conducted, and therefore, I have no suggestions for improvements other than to hope that no further cutbacks in staffing occur that could seriously affect the current level of quality of performance by staff.

Enforcement

In 2005 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. In 2008 the state board, in its *Strategic Plan 2008–2012*, said it would adopt an updated water quality enforcement policy by December 2008. That enforcement policy will now not be adopted until mid to late 2009. On January 1, 2009, the state board published its 2008 enforcement report. Among other things, it showed the number of violations that were imposed by regional boards compared to completed enforcement actions. For the four-year period from 2005 through 2008, the Central Coast regional water board scored a low of 16 percent in 2008 and a high of 63 percent in 2005 in wastewater violations compared to completed enforcement actions. This is well below the average of the nine regional boards. For stormwater violations compared to completed enforcement actions, the board scored a low of 87 percent in 2008 and a high of 99 percent in 2005. This is about average for the nine regional boards.

7. *What is your view on how your board should enforce water quality laws? When are fines and penalties appropriate, and when are more informal actions necessary?*

Regulated activities that fall under the jurisdiction of the Regional Board, whether through a discharge permit or through other mechanisms for protection of water quality, are subject to monitoring and reporting, or other methods to assure compliance, including field inspections, characterization, study and documentation of onsite practices and remediation when required. The Region has moved to electronic

reporting and documentation that has greatly advanced the Board's ability to identify and track violations, including repeat offenses by a given discharger, and to also identify specific violations and their links to priority problems (e.g., contaminated discharge that contributes to nitrate levels in surface and groundwater, or illicit discharge associated with industrial waste or construction site activities).

The Executive Officer has the authority to take initial action on violations and to determine the level of severity under the law and to act in accordance with prescribed minimum actions, including determining when fines or penalties must be considered. This approach includes several levels of informal actions including opportunities for the discharger to meet with staff to discuss options for corrective action and to determine any available assistance that may be provided to facilitate immediate action and resolution. Region 3 has utilized these informal steps in addressing violations in order to focus on eliminating poor practices and introducing more appropriate practices as quickly as possible. Consideration of fines and penalties involves review of a complex set of criteria including mandatory minimum penalties, any economic benefit derived from failing to comply with water quality regulations, or failure to take steps required through a time schedule order designed to reduce or eliminate poor practices, and to implement systems and operations that comply with the law. Additionally, consideration of the impact of recalcitrant behavior on other dischargers, even if considered minor violations such as late reporting, or failing to comply with monitoring program requirements, should also be viewed for the message that is conveyed across the industry or to local permitted agencies, in allowing seemingly minor actions to go without penalty. This is especially true where failure to monitor as required later reveals undetected water quality impacts that are evident once monitoring comes into compliance. In another example, the Regional Board reviewed a case where a discharger had failed to file monitoring reports and other required reporting documentation, and on field inspection was found to be in violation of the permit, with a broken irrigation system discharging directly to an adjacent creek. This case was brought to the Board and resulted in penalties assessed for all violations sending a strong message to the discharger and others in the industry that failure to comply with monitoring and reporting will not be overlooked by the Board and will be pursued.

8. How do you prioritize your enforcement activities, given current budget constraints?

All violations are tracked by staff and are subject to systematic evaluation by enforcement staff to determine required action including minimum mandatory penalties (MMP). Evaluation criteria for determining appropriate enforcement actions include both policy aspects (is the violation contributing to a high priority regional problem), as well as considering the extent and severity of a violation, and the environmental damage resulting from the violation. Additionally, enforcement actions also require

consideration of the discharger's past history, whether there have been improvements or other efforts made to eliminate the problem, and whether there is any economic benefit for failing to meet water quality regulations. Recent efforts to establish an electronic database will greatly enhance our ability in the future to assess trends across different practices (e.g., landfill management, industrial site chemical spills, wastewater system operational failures and spills, etc.). Enforcement reports to the Board now display quarterly updates of all violations regardless of the level of severity, providing Board comments and direction to staff on issues of concern, and contributing to prioritization of enforcement actions. While the current transition to the electronic reporting format and integration of violation reports and other relevant data are not yet perfectly synchronized, Board oversight will continue to direct staff as this new approach is refined.

9. *Without a current formal state board policy on enforcement, how does your board determine it is consistent in its enforcement practices with other regional boards?*

There is an existing State Board policy in effect at this time, and this policy continues to provide guidance on enforcement actions. While the policy was last updated in 2002, it is fundamentally consistent with the Clean Water Act and with the state's Porter Cologne Water Quality Control Act. The State Board Office of Enforcement, under Program Director Reed Sato, has undertaken action to update and revise the current Water Quality Enforcement Policy for the state that includes input from the regions through the formation of an Executive Steering Committee including Regional Board Executive Officers, who have engaged in review of the draft revised guidelines and also to consider public comment received on the draft. This process is underway at this time and continues to make progress and was most recently reviewed by the State Board in February 2009.

Additionally, Region 3 Enforcement Staff actively engage in the Statewide Enforcement Roundtable, providing regular interaction among the regions regarding enforcement practices and trends. Additionally, the Board also receives legal guidance on enforcement matters from our legal counsel, who is assigned to the Region, and who also works closely with legal counsel from State Board as well as from the other Regions. In this manner, there is a constant review and exchange of information regarding trends in enforcement practices across the regions and with State Board staff.

Last, the State Board provides summaries and reports of significant enforcement actions, including reports issued by Executive Director Dorothy Rice. These reports provide information on key actions and upcoming cases that will come before the State Board and help to define large scale issues of importance statewide.

Irrigated Agricultural Lands—Waiver of Discharge Requirements

In 2004 the Board adopted a conditional waiver of waste discharge requirements for discharges from irrigated agricultural lands. This Board order will expire in July this year. Board staff is now revising language for a new Board order for irrigated agriculture that will provide a schedule to comply with various discharge requirements. Board staff does not expect to have the revised language ready by the time the current order expires this July.

10. How will the board deal with the expiration of the order for irrigated agricultural lands this July? If the board extends the current order, will it be strengthened in any manner pending the development of new language?

The current Conditional Waiver for Discharges from Irrigated Lands permit was issued in July 2004. The first permit period (5 years) of this program have resulted in enrollment of 1737 growers of the estimated 2200 to 2500 in the region, representing a total of 395,000 acres of irrigated land (June 2009). This includes providing program information and educational outreach and technical coursework in other languages including Spanish and Chinese to name two. The Conditional Ag Waiver Program requires all commercial growers with irrigated agriculture farm operations to complete a 15-hour course in managing farm water quality, develop an on-site farm water quality plan, and conduct monitoring of their farm operations either through the cooperative monitoring program or individually. Staff has been engaged in stakeholder meetings initiated in 2008 to review the current Conditional Waiver Program and consider recommended changes and new elements for the Conditional Waiver with input from the Agricultural Advisory Panel (established in 2003) that includes representatives of the agricultural community and other diverse community groups. Staff has also sought input from other interested parties and organizations including municipalities, water districts, other resource agencies, environmental groups and environmental justice organizations.

At our February 2009 Board hearing, staff presented an update on the Irrigated Ag Conditional Waiver review process. Public comment on the hearing item included many of the Agricultural Advisory Panel members, as well as others who expressed many diverse perspectives on the proposed revisions to the permit, including the request that the scope of revisions be limited. On the suggestion of the Executive Officer, the Board endorsed the view that Board review should include the full range of proposed changes and water quality issues in order to assure that all aspects of impacts to water quality are considered by the Board in making its final determination on the new conditions for the Conditional Waiver. I anticipate that the July staff report presenting the best options for extending the permit will include a proposed revised schedule for completing the permit review that will comprise a finite period at which time the Board will be presented with the final Conditional Waiver permit conditions for the new permit cycle. It is also

likely that there will be many stakeholders whose views will be submitted to the Board in writing, and also who will attend the hearing to comment formally during the hearing, which the Board will also consider in making their final determination. Therefore, at this time, it is not possible to know what action the Board will take. However, I am confident that the work that is being conducted at this time, and that will continue to occur during the extension of the current permit, will lead to a revised permit that incorporates necessary changes and strengthens the actions necessary to assure water quality protections are being achieved reducing pesticides, nitrates, and other contaminants associated with irrigated agricultural activities from entering surface water and groundwater.

11. What types of schedules for compliance does the board envision with the new language regulating agricultural discharge?

The current Irrigated Ag Conditional Waiver permit incorporated a schedule that allowed for phased program implementation that included cooperative participation in the program in the initial stages, with increasing levels of requirements including enforcement action, as the program progressed during the first five-year permit period. This program was effectively managed through cooperative partnering between the Regional Board, the growers, UC Extension, the Farm Bureau and others who play a role in conducting the educational components, technical assistance, the monitoring program, field inspections and program review. I anticipate that the next permit will carry equally effective and aggressive time constraints for compliance, and that the associated agency and organizational support will also work collaboratively to meet scheduled requirements and program mandates as effectively as they have during the current permit period.

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