

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 3191  
SACRAMENTO, CALIFORNIA  
FRIDAY, SEPTEMBER 4, 2009  
9:15 A.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**

G. MICHAEL SUTTON, Member, Fish and Game Commission  
JAMES J. OSTROWSKI, Member, State Board of Forestry  
and Fire Protection  
BRUCE SAITO, Member, State Board of Forestry  
and Fire Protection

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1           Good morning.

2           MR. MONTAGUE: Good morning, Mr. Steinberg.

3           CHAIRMAN STEINBERG: Welcome, sir. Please sit  
4 down and make yourselves comfortable.

5           Water?

6           MR. MONTAGUE: Thank you. Do you want us to  
7 state our names?

8           CHAIRMAN STEINBERG: Yes.

9           MR. MONTAGUE: My name is Tom Montague,  
10 M-o-n-t-a-g-u-e, and I live at the veteran's home in  
11 Yountville.

12           MR. HOM: And I'm Dick Hom. Also, I'm a  
13 13-year resident of the home.

14           CHAIRMAN STEINBERG: Mr. Montague, Mr. Hom,  
15 please tell us your point of view.

16           MR. MONTAGUE: I'm not sure that I understood  
17 what it is that you wanted, Mr. Steinberg, but what I'm  
18 saying is that there is a proposal to increase the fees  
19 for about 75 members of the home, which would more than  
20 double what they're paying now. For example, one couple  
21 paid 2400, and if the proposed increase in the fees  
22 would be had, that would increase their monthly outlay  
23 for their living up to \$6,000. It's over a 100 percent  
24 increase.

25           CHAIRMAN STEINBERG: So this is the Senate

1 Rules Committee, and we don't directly take up matters  
2 relating to the state budget. And as I understand it,  
3 again, your comment is very relevant, though, because I  
4 suppose what you're arguing is that we should spend  
5 that \$4.8 million for the veterans homes to try to make  
6 sure that those fee increases do not take place.

7 MR. MONTAGUE: Yes, that's right,  
8 Mr. Steinberg. I'm sorry I didn't --

9 CHAIRMAN STEINBERG: That's all right. I just  
10 wanted to help to put it together.

11 MR. MONTAGUE: Like I said -- If I can just  
12 repeat. There is one couple there -- and these are not  
13 the exception. There are many couples like this. They  
14 currently pay \$2400 a month for two of them. Their fee  
15 increase would go to \$6,000 a month, and many of the  
16 people would have to leave the home as a result of that,  
17 because they're not able to afford that.

18 CHAIRMAN STEINBERG: From 2400 to \$6,000?

19 MR. MONTAGUE: Yes.

20 CHAIRMAN STEINBERG: We will look into that,  
21 sir.

22 MR. MONTAGUE: That's called a cap. The  
23 current cap is \$1200. That means nobody pays more than  
24 \$1200.

25 CHAIRMAN STEINBERG: We will look into this

1 before we make a decision on this item, by the way.

2 Sir.

3 MR. HOM: I would just like to address the fact  
4 that these changes are coming right in the middle of the  
5 planning cycle that we who have entered the home debated  
6 about for some time in order to come. Many of us are  
7 not lucky like myself, with all my appendages. Many of  
8 them have lost their arms and legs and so forth, and  
9 have had to sell their house and cars and so forth in  
10 order to come in the veterans home with a limited  
11 budget. But now that is being threatened, and they  
12 don't know whether -- they can't leave. They just have  
13 to stay.

14 So what we're really asking for, at least, is  
15 to have a grandfather clause so that it protects those  
16 that are there, because that was a contract we entered  
17 into when we entered the home, and everything was based  
18 on that. And many of us just don't have the resources  
19 in order to juggle around. So if you have a grandfather  
20 clause, it will protect those that are there now. And  
21 then whatever changes you make on the others, the other  
22 people will know what it is and have their eyes wide  
23 open, and they will come in under whatever new  
24 conditions there are. But please leave those of us that  
25 have made the decision to be able to stick to it,

1 because many of us are trapped. We can't even leave if  
2 we wanted to.

3 MR. MONTAGUE: Grandfathering everybody who is  
4 here now to November 1st or whatever, can be -- the new  
5 fees might apply to them.

6 CHAIRMAN STEINBERG: Let me respond in a couple  
7 of ways here.

8 First of all, I want to tell you how much I  
9 appreciate you and all your fellow veterans traveling to  
10 Sacramento to exercise your right, and certainly you've  
11 earned the right more than most to express yourself to  
12 your elected representatives.

13 Secondly, this situation that you just  
14 described really bothers me. And I'm sure it bothers  
15 Members of the Committee as well. There's no way that  
16 we should allow, if we can do anything about it,  
17 people -- veterans who are living at the beautiful home  
18 in Yountville, been there, having to leave because of  
19 some major change in the financing.

20 Third, this is -- Why you're here today is  
21 that as part of the \$62 billion budget deficit that we  
22 have dealt with over the past ten months in California,  
23 the Senate made a decision that we were going to take  
24 about \$5 million from our operating budget, and we were  
25 going to devote it to some program or agency to help

1 out. And so we have been -- I don't want to say  
2 besieged, but there have been a number of important  
3 ideas that have been brought forward. We cut dental  
4 care for seniors and others of low income, and now the  
5 only way that many of the seniors can get dental care is  
6 in an emergency room.

7           The administration has proposed that we devote  
8 the resources to Cal Fire, and we all know what's going  
9 on with the fire situation in California. And now you  
10 are before us with a very compelling case of directing  
11 that money there.

12           And so what we're going to do today -- We were  
13 going to vote today, but what I'm going to suggest of  
14 the membership here is that we put this over again and  
15 take into consideration now your request. And we have  
16 options here. We can divide the money three or four  
17 ways and help out. We could pick one. And I think  
18 among us, now that we have heard your story, we want to  
19 look into the circumstances to see if there might be  
20 some other way, aside from this money, to make sure  
21 there is a grandfathering, as you've suggested, for  
22 those who are currently living in the veterans home in  
23 Yountville. We want to find out the facts and figure  
24 out what our options are, and then we will put this over  
25 and make a decision on the disposition of the money.

1 All right?

2 MR. MONTAGUE: That's very kind of you,  
3 Senator. Thank you very much.

4 CHAIRMAN STEINBERG: Thank you all very, very  
5 much for coming. You're welcome to stay for the  
6 remainder of the hearing, of course, but we -- This is  
7 an important way to start off. We hear you, and let us  
8 see what we can do to try to help.

9 MR. MONTAGUE: Thank you very much.

10 MEMBER OF THE PUBLIC: Thank you for your time.

11 CHAIRMAN STEINBERG: Thank you, everybody.

12 All right. Let us call the roll for a quorum,  
13 please.

14 MS. BROWN: Senator Cedillo.

15 SENATOR CEDILLO: Here.

16 MS. BROWN: Cedillo here.

17 Dutton.

18 SENATOR DUTTON: Here.

19 MS. BROWN: Dutton here.

20 Oropeza.

21 Aanestad.

22 SENATOR AANESTAD: Here.

23 MS. BROWN: Aanestad here.

24 Steinberg.

25 CHAIRMAN STEINBERG: Here.

1 MS. BROWN: Steinberg here.

2 CHAIRMAN STEINBERG: We do have a quorum.

3 All right. Let us begin here with governor's  
4 appointees required to appear here today, G. Michael  
5 Sutton as a member of the Fish and Game Commission.  
6 Mr. Sutton.

7 Mr. Sutton, welcome to the Rules Committee.

8 MR. SUTTON: Good morning, Mr. Chairman.

9 CHAIRMAN STEINBERG: Good to see you. We have  
10 a tradition in the Rules Committee that we want to give  
11 you the opportunity to introduce your family or any  
12 special guest who is here with you today.

13 MR. SUTTON: Thank you, Mr. Chairman. My  
14 family couldn't be with me today.

15 CHAIRMAN STEINBERG: Hold on. Time out. I  
16 understand that Senator Maldonado is here and wants to  
17 introduce you. He's on the floor, and we'll of course  
18 extend that courtesy to him, so we'll wait just a  
19 moment.

20 Why don't you introduce your family.

21 MR. SUTTON: They couldn't be here today.

22 CHAIRMAN STEINBERG: Okay. Senator Maldonado,  
23 good to see you. You've got to be in two places at  
24 once, huh?

25 MR. MALDONADO: Just like you except I'm a

1 little less important.

2 CHAIRMAN STEINBERG: Go ahead.

3 MR. MALDONADO: Good morning, Mr. Chairman and  
4 Members. Today I have the honor of reintroducing a  
5 friend of mine to this Committee, and that's obviously  
6 Mr. Michael Sutton. He's up for reconfirmation as a  
7 member of the Fish and Game Commission.

8 As many of you know, my district includes  
9 one-third of the California coast line, and I have  
10 always valued and I know that he has always valued  
11 conservation of our oceans and, obviously, our coastal  
12 resources.

13 Mike has excelled as a commissioner, but his  
14 work is not done. That's why I'm asking for you folks  
15 to reconfirm him. Let me tell you why I'm really here,  
16 Mr. President. He's a pilot, and he's a good one, and I  
17 think that's very important.

18 But without further adieux, I've known Mike for  
19 quite some time. He's a great friend. He's always been  
20 there for the community. He's done a fantastic job for  
21 the central cost. I can go on and on and on in all that  
22 he's done for Monterey County, for Monterey Bay  
23 Aquarium. He's been a park ranger and so forth. But at  
24 the end of the day, I think he's a great public servant  
25 who gives it all to do what's right for the people of

1 California.

2 CHAIRMAN STEINBERG: Thank you. Thank you,  
3 Senator Maldonado for coming, and that means a lot to  
4 the Committee.

5 SENATOR MALDONADO: Thank you.

6 CHAIRMAN STEINBERG: Appreciate it.

7 So Mr. Sutton, a brief opening statement, and  
8 then I want to turn it over to Senator Dutton, who I  
9 understand has some questions.

10 SENATOR DUTTON: I would rather wait and hear  
11 from witnesses.

12 CHAIRMAN STEINBERG: Okay.

13 MR. SUTTON: Thank you, Mr. Chairman, and thank  
14 you, Senator Maldonado, for your kind introduction.

15 Good morning, Members of the Committee. My  
16 name is Michael Sutton, and I have been honored and  
17 privileged to serve as a member of the Fish and Game  
18 Commission for the past two and a half years. As a  
19 lifelong hunter and fisherman, I understand that our job  
20 on the commission, all of us, is to be the best possible  
21 stewards of the state's wildlife resources.

22 As you know, one of our most significant  
23 challenges today is to accomplish our mission in an era  
24 of declining budgets and fiscal crisis. We've got to  
25 find ways to bring back the salmon, to manage our

1 fishing and hunting, to protect our coast line, and to  
2 bring back our game wardens in a condition of declining  
3 resources. California has fewer game wardens today than  
4 the state of Maryland, and we have to find ways to do  
5 more with less, all of us.

6 As a former game warden myself, I have a  
7 special concern for this issue, and I've been doing  
8 everything in my power to help the plight of the wardens  
9 and to figure out how to do, as they say, more with  
10 less.

11 Finally, Mr. Chairman, I want to address an  
12 issue that has troubled me for the past year or so.  
13 Earlier this year during the debate over the  
14 commission's work to implement the Marine Life  
15 Protection Act, various allegations were made of  
16 conflicts of interest on my part between my day job at  
17 the Monterey Bay Aquarium and my work on the commission.  
18 Now, while it was clear that those allegations arose in  
19 the context of advocacy over the Marine Life Protection  
20 Act, nonetheless I took those allegations very  
21 seriously. I immediately sought an advice letter from  
22 the Fair Political Practices Commission, the FPPC, on  
23 the matter, requested an advice letter to put that  
24 matter to rest.

25 In June I received an advice letter which

1 indicated that I had no conflict and I was free to  
2 continue to vote on the MLPA and other marine issues  
3 before the commission. In July the FPPC ruled on a  
4 complaint that had been filed against me, again, finding  
5 no evidence of any conflict.

6 Mr. Chairman, I have no conflicts, and I would  
7 be honored to continue to serve on the commission. I  
8 keep a fire wall between my day job and my work on the  
9 commission, as do we all. As I said before, we all have  
10 the same jobs. We're the best possible stewards of the  
11 state's precious wildlife resources, and I would be  
12 honored to continue to do so. Thank you.

13 CHAIRMAN STEINBERG: Thank you very much,  
14 Mr. Sutton. I appreciate you raising that issue and  
15 putting it right out there. And, as you said, the FPPC  
16 issued a letter and a ruling saying that there was no  
17 conflict or was no problem. But --

18 So let's do this. Let's go right to the  
19 testimony here. Witnesses in support. Come on up.  
20 There are a lot of folks here. I'm going to ask -- We  
21 have a lot of people. We have a busy agenda. So I'm  
22 going to ask people not to repeat themselves, and, you  
23 know, it's efficient with your name, organization, and  
24 the fact that you support the nominee, unless you have  
25 something really extra special to say. Okay. Go ahead.

1 MR. RAFTICAN: Good morning, Mr. Chairman. Tom  
2 Raftican. I'm the president of The Sport Fishing  
3 Conservancy. I'm a member of the Marine Fish Advisory  
4 Committee through the Secretary of Commerce in the  
5 United States and really represent the heart of the  
6 recreational fishing/angling community. And I have  
7 hunted with Mike Sutton; I have fished with Mike Sutton.  
8 He's been absolutely open for working with him and  
9 strongly support him.

10 CHAIRMAN STEINBERG: Thank you, sir, very much.

11 MR. BENNINGHOVEN: My name is Don Benninghoven.  
12 I'm the most recent appointee to the Fish and Game  
13 Commission. The president of the Fish and Game  
14 Commission, Jim Kellogg, the vice chairman, Richard  
15 Rogers, and the other commissioner, Dan Richards, all  
16 had planned to be at this meeting to support  
17 Mike Sutton's confirmation, but with a shift, they could  
18 not make it, so they asked me to speak on their behalf  
19 in support of Mike Sutton, and that's why I'm here.

20 And we -- We disagree on issues, but there's a  
21 lot of real strong feeling of support among the  
22 commissioners, and I just wanted to let you know that.

23 CHAIRMAN STEINBERG: Very much appreciate it.

24 Mr. Broad.

25 MR. BROAD: Good morning, Mr. Chairman and

1 Members. Barry Broad on behalf of the International  
2 Brotherhood of Teamsters and the California Conference  
3 of Machinists.

4 Mr. Sutton's a strong conservationist. We have  
5 a lot of members who are fishermen and hunters and  
6 outdoors men and women, and they appreciate his service  
7 and support him.

8 I will say this: As an appointee myself to  
9 various boards and commissions, there's nothing easier  
10 for somebody that's interested in character  
11 assassination to do is to -- except to just file  
12 something with the FPPC. 99 percent of those things get  
13 thrown in the round file, but the accusation is there,  
14 and it sort of is one -- you know, one of these  
15 when-did-you-last-beat-your-wife situations. You are  
16 constantly saying, "I didn't do anything wrong." Even  
17 though you didn't do anything wrong, it's an accusation  
18 that stands. And I hope that no Member here is ignorant  
19 that that is -- often happens. Thank you.

20 CHAIRMAN STEINBERG: Thank you very much.  
21 Again, just name, organization, and support.

22 MS. GARRISON: Karen Garrison, Natural  
23 Resources Defense Council and codirector of our oceans  
24 program. We're here to support Mike Sutton. He's got  
25 an excellent track record. He has the rare depth of

1 knowledge on marine issues. He's helped provide the  
2 marine subcommittee to raise attention to ocean issues.  
3 With six years as a park ranger and special agent for  
4 the U.S. Fish and Wildlife Service, I think he's  
5 uniquely equipped to address and understand the  
6 pressures on our fish and game wardens.

7 CHAIRMAN STEINBERG: Thank you.

8 MS. GARRISON: Hope you reconfirm him.

9 MS. GAFFNEY: Kaitilin Gaffney with Ocean  
10 Conservancy, and I've also been authorized to speak on  
11 behalf of Wild Coast. We are in strong support of the  
12 confirmation.

13 CHAIRMAN STEINBERG: Thank you very much.

14 MS. FLICK: Good morning. Pamela Flick with  
15 Defenders of Wildlife. We strongly support the  
16 confirmation of Mr. Sutton. We feel his expertise  
17 ranging from wildlife to, you know, game warden and  
18 ranger -- He has a strong understanding of policy, and  
19 his passion is obvious for our natural resources. And  
20 we feel he will continue to be a strong steward for our  
21 public trust resources, and we urge your confirmation.  
22 Thank you.

23 CHAIRMAN STEINBERG: Thank you very much.

24 MR. WESELOH: Tom Weseloh of California Trout.  
25 You have our letter on file. We strongly support Mike.

1 We think he's going to be great, and we look forward to  
2 working with him in the future. Thank you.

3 CHAIRMAN STEINBERG: Thank you very much.

4 MS. WAKEMAN: April Wakeman, United Anglers and  
5 Fishermen. We always found Mike to be incredibly  
6 accessible, able to understand our issues, and act  
7 accordingly.

8 CHAIRMAN STEINBERG: Thank you.

9 MR. BUCARIA: My name is Charles Bucaria. I'm  
10 with the Northern California Council Federation of Fly  
11 Fishers. These are my personal comments. Mr. Sutton's  
12 day job is funded by a gracious public interest  
13 organization. Mr. Sutton's job on the commission is to  
14 protect the public trust -- the assets of the people of  
15 California, and in this he's done an admirable job.  
16 It's my pleasure to support his nomination.

17 CHAIRMAN STEINBERG: Thank you very much, sir.

18 MR. MILLS: Mr. Steinberg, my name is Eric  
19 Mills, coordinator of Action for Animals out of Oakland.  
20 I've been following the commission for about 20 years  
21 now, and I think Mr. Sutton is the most highly qualified  
22 man or woman I've seen up there in maybe forever.

23 CHAIRMAN STEINBERG: Thank you.

24 MR. MILLS: In 139 years, we've had two women  
25 on this commission. Barring a sex change, I hope we see

1 some women in the future.

2 CHAIRMAN STEINBERG: It's about time to change  
3 that.

4 MR. MILLS: I would like to point out one  
5 thing, too. I went to the commission meeting yesterday,  
6 and quite often the commission in the past was just a  
7 rubber stamp of what the department wants. For  
8 15 years, I've been trying to get some improvements in  
9 the live animal market situation with frog and turtle  
10 importation. After 15 years, Mr. Sutton spoke very, I  
11 felt, eloquently and in favor, and we're going to move  
12 forward with some improvement. So he's got my vote.  
13 Thank you.

14 CHAIRMAN STEINBERG: Thank you. Very good.

15 MR. ROCKWELL: I'm Mark Rockwell. I'm the vice  
16 president of conservation for the Northern California  
17 Council Federation of Fly Fishers. I handed in a letter  
18 of support to the Committee this morning from my  
19 organization that represents 31 member clubs and over  
20 6,000 members.

21 I think my main comment for Mr. Sutton or about  
22 Mr. Sutton focuses on the importance to restoring salmon  
23 as a viable species here in California, and Mr. Sutton  
24 has done a yeoman's work in working with the Salmon  
25 Stronghold Center, Wild Salmon Center for the salmon

1 stronghold legislation, and has helped to get the  
2 Smith River strategic planning process going with the  
3 Department of Fish and Game to restore salmon. So we  
4 highly ask the Committee to confirm him.

5 CHAIRMAN STEINBERG: Thank you very much for  
6 coming.

7 MS. BIGELOW: Mr. President and Members, Melva  
8 Bigelow, state government relations director for The  
9 Nature Conservancy, and I'm here in support of  
10 Mr. Sutton.

11 MR. MALAN: Mr. Chair and Members, Justin Malan  
12 on behalf of the Environmental Defense Fund.  
13 Mr. Sutton's credibility -- He's commitment beyond  
14 reproach. We urge your approval.

15 CHAIRMAN STEINBERG: Thank you.

16 MS. HANDLEY: Virginia Handley with Paw PAC in  
17 support of Commissioner Sutton. And although we would  
18 one day like to see someone who is not a hunter make it  
19 to the commission, that seems to be a requirement, which  
20 we don't agree with, but I am very impressed with  
21 Mr. Sutton. And on the issue of the leg. slot, he's the  
22 one to really look at the environment and protect it.

23 MR. ENDICOTT: Michael Endicott with Sierra  
24 Club California. What they all said, and what Mr. Addis  
25 is about to say. We're in support.

1           CHAIRMAN STEINBERG: That's the testimony of  
2 the day.

3           MR. ADDIS: Reed Addis on behalf of Audubon  
4 California in strong support.

5           CHAIRMAN STEINBERG: Thank you, Mr. Addis.

6           All right. Witnesses in opposition. No  
7 witnesses in opposition. Somebody coming up? No  
8 witnesses in opposition.

9           Senator Dutton, do you have any questions?

10          SENATOR DUTTON: If somebody else does, I'll --

11          CHAIRMAN STEINBERG: Does anybody else have  
12 questions? Senator Cedillo, Aanestad -- Okay. Well, we  
13 can --

14          SENATOR DUTTON: I can start, if you want.

15          CHAIRMAN STEINBERG: If you're ready. If not,  
16 we can take a short break whatever you want.

17          SENATOR DUTTON: Oh, no. I'm just trying to go  
18 through some of these things and some of these things  
19 Commissioner Sutton just said, and I was getting a  
20 little confused on some of the representation.

21                 You and I met before, and I know you have an  
22 extensive background and so forth as a federal fish and  
23 wildlife warden and -- certainly have a background. You  
24 made a statement about the shortage of game wardens --  
25 it's something close and dear to my heart -- and that

1 you feel a commitment making sure that we have adequate  
2 enforcement and so forth. Yet regarding the Marine Life  
3 Protection Act, there is a concern that by going forward  
4 with that, we may end up putting wardens at risk,  
5 actually, because we're stretching their resources far  
6 beyond their capability.

7           So I'm not sure -- Maybe elaborate a little bit  
8 more about how you're dealing with the public safety  
9 issues or the safety issues of our wardens, but yet we  
10 still seem to be piling more things onto them beyond  
11 their resources.

12           MR. SUTTON: Thank you very much, Senator.  
13 You've touched on an issue that is of concern to all of  
14 us on the commission.

15           Like I said before, we have fewer game wardens  
16 in the state of California than we do in the state of  
17 Maryland, which to me is really not a satisfactory  
18 situation. They are responsible for enforcing virtually  
19 everything we do at the commission.

20           I've done a couple things to try to help  
21 alleviate the burden on our wardens while we're dealing  
22 with our fiscal crisis, or you all are. One is to try  
23 and solicit federal partners and other state agencies to  
24 help our wardens get the job done. I understand that  
25 the department is just about to sign a memorandum of

1 understanding with a number of other federal agencies,  
2 the park service, the fish and wildlife service, the  
3 NOAA state parks and other state agencies to help the  
4 wardens get the jobs done. So that's one important  
5 piece of work.

6           The other thing that I've done, and my fellow  
7 commissioners as well, is we have encouraged the  
8 legislature to pass legislation to help bring dedicated  
9 funds to the wardens. For example, a bill that would  
10 create a warden's stamp, a voluntary stamp that hunters  
11 and fishermen could buy and affix to their licenses to  
12 show their support for the wardens, and the revenue  
13 would come directly back to the wardens.

14           So I would like to continue to do whatever I  
15 can in my power to help alleviate the funding crisis  
16 that affects our wardens and all the work that we do.

17           SENATOR DUTTON: With regards to the MLPA, back  
18 when that was passed in 1999, it was estimated by our  
19 staff at Senate Appropriations to cost only about  
20 \$300,000. Now that has ballooned to costing over  
21 \$35 million.

22           I'm not sure how you can justify voting to  
23 implement that -- what I consider to be, actually, a  
24 very good act, but how you can vote to go forward with  
25 that, given our current financial crisis, and still at

1 the same time say that you're sensitive about putting  
2 wardens at risk, or overstretching their resources? I  
3 don't understand how you can continue to go down that  
4 path when you do things like that.

5 Plus, also, why don't you address the cost  
6 issue, because 35 million is a far cry from 300,000.

7 MR. SUTTON: Senator, all of us on the  
8 commission have been concerned about the cost of  
9 implementing all of the things that we do, the MLPA, the  
10 hunting and fishing programs.

11 The department implements a number of programs  
12 that are costly. In recent years, we've found  
13 innovative ways to deal with those costs. Public-  
14 private partnerships, for example, such as the one  
15 that's helping implement the MLPA.

16 The latest cost estimates that we have from the  
17 MLPA initiative suggests that it will cost about  
18 \$11 million a year to implement the statute statewide,  
19 once the statewide series of marine and protected areas  
20 is established. Two-thirds to three-quarters of that  
21 cost would be borne by partner agencies, universities,  
22 and so forth, leaving the department with, perhaps,  
23 three to five million a year to fund out of their  
24 budget.

25 As I say, all of us are interested in helping

1 in any way we can to generate those funds to help figure  
2 out a way to afford to do this, because it's important  
3 not to put excessive burden on our wardens.

4 As I say, we do a lot of things that are  
5 expensive at the commission, and we're all dedicated to  
6 help -- of course, the commission, we don't control even  
7 our own budget, nor do we have any way to raise revenue.  
8 The department controls our budget. So we are limited  
9 in our power to help, but we do everything we can to  
10 make sure that we can afford to implement what we  
11 enact at the commission.

12 SENATOR DUTTON: Well, what happens if the  
13 federal money and the partner money disappears? We have  
14 to be prepared. We aren't going to just walk away from  
15 it. There's no guarantee that this keeps coming up or  
16 we're going to be able to continue to have the funds.  
17 Do you have thoughts on that?

18 You've got some federal experience. I've  
19 always been pretty critical of the federal government,  
20 because they own over 50 percent of California. I think  
21 they do a terrible job in giving us resources to take  
22 care of their property here, so....

23 MR. SUTTON: Senator, at the moment, the  
24 public-private partnership is helping defray the cost of  
25 the planning and the implementing of the MLPA.

1           As you say, there is no guarantee of future  
2 private funds being devoted to this. The federal  
3 government has its own fiscal issues, but I'm confident  
4 by working together and seeking innovative sources of  
5 funding from a variety of partners, that we can put  
6 together a package that will help us implement this  
7 statute and all of the other things we do that are  
8 expensive.

9           SENATOR DUTTON: Was your approval of the MLPA  
10 contingent on that happening, or is it going forward  
11 even without having those partnerships solidified and  
12 put together?

13           MR. SUTTON: Senator, we've discussed this a  
14 lot at the commission, and all of us are concerned about  
15 not wanting to impose unfunded mandates on the  
16 department.

17           On the other hand, the governor has instructed  
18 us to implement this statute, and that's our job. And  
19 we are proceeding apace to do that while at the same  
20 time being very cautious and paying attention to where  
21 we might find the revenue.

22           So we are certainly concerned about that, and I  
23 personally will do everything I can to encourage the  
24 federal government and our private partners to step up  
25 to the plate.

1           SENATOR DUTTON:   What was the vote on  
2 implementing the plan on the commission?

3           MR. SUTTON:   On the Marine Life Protection Act?

4           SENATOR DUTTON:   Um-hmm.

5           MR. SUTTON:   The last vote that we had -- We're  
6 doing the coast of California in sections.   The last  
7 section was the north central coast, the Mendocino and  
8 Sonoma coasts.   We approved the recommended set of  
9 marine protected areas by a vote of three to two on the  
10 commission.

11           SENATOR DUTTON:   So -- And there was a  
12 commissioner, I guess, who just recently resigned too,  
13 and there was a new commissioner that came into place.  
14 It would seem like not everybody is in total agreement,  
15 that maybe -- I don't think anybody was necessarily  
16 against the plan, but it was just the funding concerns.

17           It would appear -- and I realize three-two is a  
18 landslide.   You know, everybody can count.   But it would  
19 just seem like there must have been some obvious  
20 concerns about the ability to be able to fund this, and  
21 were we stretching our resources too much.   I'm still a  
22 little concerned in that area.

23           Let's do talk a little bit about the conflict  
24 of interest that you said was filed and people made  
25 reference to.   Your current employment -- Your current

1 employer, you've been employed for, what, over four  
2 years?

3 MR. SUTTON: I've been at the Monterey Bay  
4 Aquarium for five years now.

5 SENATOR DUTTON: Five years now. And you have  
6 a good understanding of the aquarium's operations and so  
7 forth. You've been there quite a while, right?

8 MR. SUTTON: Yes, sir.

9 SENATOR DUTTON: Okay. When you joined the  
10 commission, you were given the conflict of interest  
11 filing requirements and so forth?

12 MR. SUTTON: Yes, sir. Every commissioner was.

13 SENATOR DUTTON: Yet on three separate filings,  
14 you didn't note any income from your employer, despite  
15 having operations that would, perhaps, qualify at least  
16 as a disclosure area and so forth. But now you've made  
17 the necessary amendments and so forth.

18 My concern would be, during that long period of  
19 time, how would the department know if there was a  
20 conflict -- possible conflict on all the business that  
21 maybe came before the commission if you never made that  
22 disclosure? And has anybody gone back to take a look at  
23 the activities of the commission, because you are the  
24 appellate body for some actions of the Department of  
25 Fish and Game.

1           Has anybody gone back and taken a look to make  
2           sure that we don't have any conflicts that existed out  
3           there in some of these decisions which may have had a  
4           bearing on these decisions?

5           MR. SUTTON:   Senator, when I first joined the  
6           commission two and a half years ago, I sought legal  
7           advice at the time and from the Attorney General's  
8           Office, among others, about whether I had any reportable  
9           interest that would be required to be reported under the  
10          commission's guidelines on the subject.  At that time,  
11          and still today, all the advice that I have received is  
12          that my employment does not fall within any of the  
13          categories required to be reported by the commission.

14          However, in the interest of full transparency,  
15          I recently amended my Form 700 to go ahead and declare  
16          all of my financial interest, including my employment.

17          SENATOR DUTTON:  I was taking some time because  
18          I was reading the opinion letter, I guess, you received  
19          from -- let's see who is this from -- from your  
20          attorney -- I believe it's your attorney.  Steven Lucas.

21          MR. SUTTON:  Yes.

22          SENATOR DUTTON:  Okay.  And I was trying to go  
23          through here -- It's kind of a lengthy document, and I  
24          was trying to go through here.  There was a statement in  
25          here --

1 Do you happen to have this with you?

2 MR. SUTTON: I don't.

3 SENATOR DUTTON: Okay. It talks about  
4 compensation. I saw -- determining financial interest.  
5 And it goes through "... is generally prohibited from  
6 making statements," and so on and so forth, and it says  
7 here, "In light of the facts set forth above,  
8 Commissioner Sutton is deemed to have a financial  
9 interest in the aquarium as a source of income.  
10 Therefore, the aquarium constitutes a potential  
11 disqualifying financial interest for Commissioner  
12 Sutton."

13 And I was trying to figure out for sure where  
14 this fits in, because that would seem to indicate that  
15 you probably should have reported it. You're saying  
16 that you weren't required to, but that would seem to  
17 indicate from your own attorney that, yeah, you do have.  
18 So maybe you can clear that up for me.

19 MR. SUTTON: Well, Senator, as I said before,  
20 all of the advice that I've received ever since I joined  
21 the commission has been that my employment does not fall  
22 within any of the categories that are required reporting  
23 categories.

24 However, as I say, in the interest of full  
25 transparency, I have recently amended all of my

1 Form 700s, going back to the beginning of when I was  
2 appointed, just in the interest of transparency to  
3 disclose everything.

4 The FPPC, as I say, has sent me two letters now  
5 saying that I have no conflicts and I'm free to vote on  
6 the Marine Life Protection Act and other marine issues  
7 before the commission.

8 SENATOR DUTTON: I'm actually not necessarily  
9 talking just strictly about the Marine Life Protection  
10 Act itself. I'm concerned about other things that may  
11 come before the commission, because it goes on to say  
12 here from your attorney, "Accordingly, Commissioner  
13 Sutton is prohibited in making, or participating in the  
14 making, or otherwise using his position to influence a  
15 government decision if it is reasonably foreseeable that  
16 you could have a material financial effect on the  
17 aquarium," which is basically who you work for.

18 So there, again, without that disclosure, the  
19 department wouldn't have any way of knowing. So has  
20 anybody gone back and taken a look to see if there were  
21 any -- I know there's people that actually are connected  
22 with the aquarium that have taken out permits, things  
23 like that, for various kinds of activities. Did any of  
24 those come up on appeal in the last three years? Has  
25 anybody checked it out, or has anybody looked at it?

1           MR. SUTTON: Well, Senator, this is part of the  
2 reason I amended all of my Form 700s at the same time  
3 going back to the beginning when I was appointed, and,  
4 as I said, I keep an absolute fire wall between my day  
5 job at the aquarium and my work on the commission.  
6 They're quite different. As I say, all of us on the  
7 commission have the same job, to be the best possible  
8 stewards of our wildlife resources.

9           SENATOR DUTTON: Well, you had another  
10 commissioner just recently resign because of not having  
11 a legal conflict, but a perception. Do you not even  
12 think there's a perception of conflict here?

13           MR. SUTTON: Senator, I can't speak to the  
14 perception of all of our constituents, but I'll tell  
15 you this: It's important to me to meet with each and  
16 every one of our constituents to take all of their  
17 points of view into account when we make decisions, to  
18 be as objective as possible in making decisions and  
19 voting on the commission. And that's what I do.

20           SENATOR DUTTON: Okay. I'm sorry. I'm just  
21 going to conclude.

22           I'm going to be requesting -- Your appointment,  
23 we have until January, correct?

24           MR. SUTTON: I was reappointed --

25           SENATOR DUTTON: January 15th.

1           MR. SUTTON:  -- I think in February of this  
2 year.

3           SENATOR DUTTON:  I've got some other things  
4 that have come up that I really need to have time to  
5 take a look at.  I'm not going to be able to vote to  
6 confirm you today.  I would prefer to see it held over,  
7 but I'm going to wait until Chairman Steinberg returns  
8 and see what his pleasure is.  I'm going to be  
9 recommending that we hold over your confirmation until  
10 some of these other things can be clarified.

11          SENATOR AANESTAD:  Senator Cedillo, do you have  
12 any comments or concerns?

13          SENATOR CEDILLO:  Not at the moment.

14          SENATOR AANESTAD:  Then I'll jump in, if you're  
15 concluded.

16          SENATOR DUTTON:  I'm done with questions right  
17 now.

18          SENATOR AANESTAD:  You know, we'll wait for  
19 Senator Steinberg to get back to make a determination  
20 whether or not we honor Senator Dutton's request.

21                 It just seems to me, Mr. Sutton -- and thank  
22 you for your time that you spent with me in my office a  
23 couple weeks ago now, I guess, and your very forthright  
24 and frank answers to some of my questions.  It was a  
25 very good discussion.

1           Politically, we probably disagree on a few  
2 things, but I think the part that bothers me the most --  
3 On this five-member commission, there are no slots like  
4 there are on other commissions. For example, there's  
5 not an environmentalist slot, there's not an industry  
6 slot. My understanding is that all five of these  
7 positions are called "public." To me, that means that  
8 you don't have to be uninformed and that you don't have  
9 to be without experience, but it does mean that you need  
10 to be open-minded and you need to be biased.

11           Now, you had a lot of testimony here today from  
12 folks throughout the whole parameter of the industry  
13 that you come in contact with in support, and I  
14 understand that, and I'll stipulate that you're a good  
15 man and probably well-qualified for a position like  
16 this, except one thing bothers me. You are a paid  
17 political advocate for a particular political point of  
18 view.

19           You have used your position working for the  
20 Monterey Bay Aquarium. You've earned a salary  
21 advocating for something that is very controversial, the  
22 Marine Life Protection Act. The Monterey Bay Aquarium  
23 board has publicly announced that this is one of the  
24 primary reasons for their being involved in their  
25 advocacy. It's been in the newspapers. And you are the

1 person charged with carrying out that program for the  
2 Monterey Bay Aquarium.

3           It does not seem to me -- Your answer reminds  
4 me somehow of a skit that I saw on a Robinhood film once  
5 where Friar Tuck -- they're involved in a skirmish, and  
6 he's got that big stick, and he's hitting somebody. And  
7 he says, "God help me," hits somebody, "God help me."  
8 And then when he's asked, "How can you, as a man of God,  
9 be involved in a fight and be hitting people?"

10           And he says, "Well, the 'man of God' part is my  
11 day job."

12           I don't think you can separate the two. I  
13 don't think it's possible, and that's why I have a real  
14 concern when we have somebody who, in my opinion,  
15 cannot -- on a very controversial political issue cannot  
16 be open-minded and unbiased. Your income is derived  
17 from the advocacy of that position.

18           So I'm looking for a board member who is  
19 well-qualified like you are, but perhaps doesn't come  
20 from the industry, doesn't come from the advocacy group,  
21 but is simply a citizen or a resident of the state of  
22 California who has a major interest in public service  
23 without a political agenda. I don't think that's you,  
24 and that's why I can't support your nomination.

25           MR. SUTTON: Senator, thank you for those

1 thoughtful comments.

2           It is true that I have worked for a very long  
3 time to protect our ocean and coastal resources in  
4 California, and I happen to believe that that is in the  
5 best interest of all Californians, no matter whether  
6 we're users or not of those resources.

7           And when I joined this commission, I brought  
8 this very issue up to the Attorney General's Office and,  
9 ultimately, subsequently to the FPPC, and they told me,  
10 to a person, that mere advocacy does not a conflict  
11 make, and that all of us on the commission have the  
12 responsibility to keep our day jobs, whatever they may  
13 be, separate from our work on the commission. And I  
14 feel confident that I have been able to do that and will  
15 continue to be able to do that and sit as an objective  
16 member of the commission on the range of decisions that  
17 we make.

18           As you quite correctly said, Senator, we don't  
19 have seats on the commission for environmentalists, or a  
20 hunter, or a fisherman, or any particular  
21 constituencies. We all have the same job, and that's to  
22 represent the citizens of California and be the best  
23 possible stewards of our wildlife resources.

24           That's what I have done and would like to  
25 continue to do as objectively as possible, and I think I

1 can speak for my fellow commissioners that we all  
2 believe the same thing on that score.

3 SENATOR AANESTAD: Thank you. And because we  
4 have no other Senators here to take part in the  
5 discussion, I think that what we ought to do is take a  
6 very brief recess until Senator Steinberg can dispose of  
7 this. So why don't we just take a recess.

8 SENATOR DUTTON: Good idea.

9 (Recess taken.)

10 CHAIRMAN STEINBERG: All right. We're back in  
11 order.

12 Thank you, Senator Aanestad, for taking over.

13 I didn't catch most of the questioning here,  
14 and Senator Cedillo --

15 SENATOR CEDILLO: Mr. Chair, I want to make a  
16 few comments.

17 We are here evaluating this appointment. My  
18 colleagues have raised some very good points. Is it  
19 appropriate for us to appoint someone who has a  
20 political perspective, a viewpoint, with respect to the  
21 commission for which they are being assigned?

22 The nominee is one of five. They are all  
23 public appointments. I have this concern, and I have  
24 this concern because every time we appoint someone to  
25 the parole board, they're always someone who is in their

1 day job or their avocation, someone whose only  
2 commitment is to keep people in jail. The mission of  
3 the parole board is to remove people from jail, and yet  
4 we never hesitate, which is why I never vote for them,  
5 because it's only people whose job is in the day and in  
6 their volunteer service to keep people in jail.

7           That is not the case here. We have one of  
8 five. We have a mission in which the mission -- The  
9 difference here is there's a conflict in the mission of  
10 the parole board and those that we are stacking the  
11 parole board with. The mission of the parole board is  
12 to seek out those who are suitable to be released, to  
13 release prisoners, and we have created this overwhelming  
14 problem that is collapsing or played a role in  
15 collapsing our budget, and their day jobs are  
16 inconsistent with that.

17           On the other hand, this commissioner's job and  
18 this man's day job are wholly consistent with each  
19 other, because they're to be stewards of our natural  
20 resources. So there's not a conflict. There's a  
21 congruence. There's a convergence.

22           Now, on the legal question, it's already been  
23 determined there is no conflict. And I see no  
24 appearance of conflict nor perception of conflict.  
25 There's no financial gain. There's no program,

1 nonprofit, NGO, organization from which he will receive  
2 some benefit for which he then passes judgment on.

3 His -- The very nature of his work was as if we  
4 precluded law enforcement officers from being on POST.  
5 This is what this is more analogous to. This is like  
6 saying on Peace Officers Standards and Training, that  
7 someone would be excluded because they were a police  
8 chief. That's what this is like. We're arguing -- If  
9 you take the analogy, we're arguing that the very nature  
10 of this man's day job and his organization disqualifies  
11 him. That's like arguing that someone who is a police  
12 chief is disqualified from being on POST.

13 So we have no legal outfit that's been  
14 determined, and if we evaluate this in terms of what the  
15 mission is of the commission and the purpose of his  
16 organization, police chief and POST, there's no  
17 conflict. There's a convergence. It makes him more  
18 appropriate to this position. And I move for his  
19 appointment.

20 CHAIRMAN STEINBERG: Thank you. I think,  
21 Senator Cedillo, my view is that I couldn't say it any  
22 better than what you just said. It was well said. I  
23 agree. I don't want to -- It's a double standard to  
24 think otherwise. But the fact of the matter is you just  
25 said it very well. I know Senator Dutton disagrees.

1           Would you like to make any comments,  
2 Senator Dutton?

3           SENATOR DUTTON: No. I've just been going  
4 through the material that was provided with regards to  
5 the FPPC and his attorney's letter, and I've just got  
6 more questions, so I wouldn't be able to do it at this  
7 time. I still think it's reasonable to hold over the  
8 appointment. We've got plenty of time, but it's  
9 whatever the pleasure of the Chair is. But I won't be  
10 able to vote at this time.

11           CHAIRMAN STEINBERG: All right. Thank you very  
12 much. Good discussion.

13           Please call the roll.

14           MS. BROWN: Senator Cedillo.

15           SENATOR CEDILLO: Aye.

16           MS. BROWN: Cedillo aye.

17           Dutton.

18           Oropeza.

19           SENATOR OROPEZA: Aye.

20           MS. BROWN: Oropeza aye.

21           Aanestad.

22           SENATOR AANESTAD: No.

23           MS. BROWN: Aanestad no.

24           Steinberg.

25           CHAIRMAN STEINBERG: Aye.

1 MS. BROWN: Steinberg aye.

2 CHAIRMAN STEINBERG: Passes three-to-one with  
3 one abstention. It will go to the Senate floor.

4 Thank you very much, Mr. Sutton.

5 Let us move on and call up both  
6 James J. Ostrowski and Bruce Saito as appointees of the  
7 State Board of Forestry and Fire Protection.

8 Thank you both very much for appearing. I want  
9 to just begin with an opening comment which is maybe  
10 tangentially relevant to the confirmation hearing. It's  
11 something I want to put out.

12 I know this board sets policy for Cal Fire,  
13 which was once the Department of Forestry, and the  
14 issues in both realms could not be more important,  
15 especially now with the huge fires burning. We're also  
16 obviously interested in the forestry side of the job. I  
17 just want to say for future consideration for the  
18 Members that I'm not completely convinced this board and  
19 the department structure is the best one for California.

20 I want to continue to explore the idea of  
21 fire-fighting issues separate from forestry issues but  
22 recognize that that's probably a conversation for  
23 another day. So that's just me taking advantage of the  
24 microphone here, making a statement.

25 Now, you gentlemen. Always the opportunity to

1 introduce members of your family or special guests, and  
2 then brief opening statements, and we'll get right into  
3 the questioning.

4 MR. OSTROWSKI: Good morning, Senator and  
5 Members of the Committee. My family was not able to  
6 attend here today.

7 MR. SAITO: Senator, thank you. I have no  
8 family members here.

9 CHAIRMAN STEINBERG: Okay. You're  
10 Mr. Ostrowski. I just want to make sure.

11 Opening statements.

12 MR. SAITO: My name is Bruce Saito. My day job  
13 or my last job was the executive director of the  
14 Los Angeles Conservation Corps where I've served as the  
15 nonprofit executive director for 23 years now. Prior to  
16 that I served and worked with the California  
17 Conservation Corps from 1987-'86, to 1986. No. 1986 to  
18 1996. Excuse me.

19 I'm happy to be here, and I've been privileged  
20 to serve on the Board of Forestry for the past four  
21 years. And I am committed to serving, if approved,  
22 another four years. Thank you.

23 MR. OSTROWSKI: Good morning, Senators. My  
24 name is Jim Ostrowski. I am currently -- Currently, my  
25 day job, I'm the timberland manager for Timber Products

1 Company. I live in Mt. Shasta, California. It's a  
2 privilege to be before you today to discuss the  
3 confirmation of my reappointment as a member of the  
4 Board of Forestry and Fire Protection.

5 I would first like to acknowledge the support  
6 that I've received during the last three and a half  
7 years that I have served on the board, specifically to  
8 my wife Katie and our four children that have been very  
9 patient and understanding of the responsibility to put  
10 duty over self on this -- in this service.

11 I also want to thank my employer, Timber  
12 Products Company, and its owners, the Gontier family,  
13 for their support of my time spent on the board, a great  
14 deal of which is devoted to projects well beyond any  
15 company interest. As you probably are aware, I do serve  
16 into one of the industry -- or the positions on the  
17 board reserved for industry members.

18 The service to the people of California as a  
19 member of the Board of Forestry has been a challenge.  
20 I've tried to bring science, a long-term vision, and my  
21 experience as a registered professional forester to  
22 issues that in many cases are very emotional and  
23 personal to the people who appear before the board. I  
24 believe the board has accomplished many positive  
25 improvements for dealing with forest management, fire

1 management, and watershed protection during my term on  
2 the board.

3           The members of the board bring a diverse  
4 background to the process, and we do not always agree on  
5 the best solution. I can vouch for not being able to  
6 always convince the majority of the board to my point of  
7 view, but I also think this diversity is the strength  
8 that leads to better solutions to some very complex  
9 issues. Many individuals and groups are not always  
10 happy with the results of the board's decisions, but I  
11 can assure this committee that the board has listened to  
12 all the voices and has tried to make a balanced and  
13 sound decision.

14           California's over eight million acres of  
15 forest/marine lands are becoming ever more valuable for  
16 everything from wood and food production to clean water  
17 and carbon sequestration. California needs dedicated  
18 and knowledgeable leaders and decision makers to deal  
19 with the management of these lands. I take this  
20 responsibility very seriously and stand by my record of  
21 serving the public's varied interests over my first  
22 term. I am willing to continue this service, if you  
23 choose to confirm me for a second term on the board.  
24 There is still more to do, and I look forward to  
25 continue service to California's urban and rural cities.

1           CHAIRMAN STEINBERG: Thank you, Mr. Ostrowski  
2 and Mr. Saito. I want to ask questions of both of you,  
3 but I want to focus my questions, at least initially, to  
4 Mr. Ostrowski, and to state that I respect your public  
5 service, and there's no question that the law provides  
6 for an industry representative, and that's all well and  
7 good. There has to be some balance here, and as with  
8 everything we do in the legislature, to move anything  
9 forward requires compromise, and I certainly am about  
10 that. And yet for nine years, there has been no  
11 permanent regulations for threatened and impaired  
12 watersheds, and a common agreement that our salmon  
13 fisheries are nearly extinct.

14           And so, Mr. Ostrowski, there have been a number  
15 of issues related to what you have done and proposed in  
16 your first term that I really want to explore with you,  
17 and I say that they cause me concern, but I want to have  
18 this dialogue and give you a chance to respond.

19           We know that the Department of Fish and Game  
20 proposed a rules package that is supported by the  
21 Schwarzenegger administration, by Cal Fire, and by Fish  
22 and Game, and by the National Marine Fisheries Services.

23           On June 25th, you produced a set of 11  
24 proposals, amendments, that have been described pretty  
25 universally as weaker than the administration's package.

1 And some have said that you did not share that package  
2 with other board members or board staff prior to the  
3 meeting, and that the public itself couldn't get copies  
4 of the proposals until four hours after the meeting. So  
5 I have a series of questions.

6 Number one, do you agree that the proposals  
7 that you put forward were weaker in terms of salmon  
8 protection than the regulations, proposed regulations,  
9 put out by the Schwarzenegger administration?

10 MR. OSTROWSKI: Senator, on those -- that  
11 occasion, just to kind of clarify what led up to my  
12 motion or attempt to make a motion, actually, the board  
13 had produced a draft rule that we submitted for public  
14 comment in June at the meeting that you referenced. We  
15 had that public hearing and received both written and  
16 oral comments about our draft proposal.

17 At that time, as part of the written comments,  
18 the Department of Forestry and Fire Protection and the  
19 Department of Fish and Game presented the joint proposal  
20 that took some of the board's notice package, as well as  
21 many changes presented by the joint department proposal,  
22 and they submitted that as an alternative, essentially.  
23 We received those comments and proposals a few days  
24 before our hearing.

25 The board's job as -- trying to be impartial

1 and listen to all of the comments coming in is to take  
2 all of the public comments at the time of the hearing,  
3 and if some of those comments make sense for changing  
4 our proposed or noticed proposed package, then our job  
5 is to propose or motion that we amend our proposed or  
6 our noticed package for further consideration of the  
7 board and possibly additional public comment.

8           So what I was doing at that meeting was taking  
9 all the public comments -- and there were many comments  
10 that we did not hear. We had not seen the department's  
11 joint proposal, like I said, until a few days before the  
12 meeting.

13           Many of the public comments that we received  
14 were critical of portions of the department's -- the  
15 joint department's proposal. And so in consideration of  
16 all those comments, as well as other sections of public  
17 comments, I tried to craft what I thought was a balance  
18 between the agencies -- the joint agency proposal and  
19 some of the other public and agency comments. We had  
20 many comments from the water boards, from NMS, the  
21 National Marine Service, and many environmental groups  
22 that were not supportive of some of the portions of the  
23 joint agency. So trying to take all that in  
24 consideration, that's why I presented another proposal.

25           Technically, we're not able to share that with

1 board members. That would be essentially trying to make  
2 a decision prior to our meeting. We're supposed to do  
3 that at our meetings in front of the public so that the  
4 public has full disclosure. That's why I was not able  
5 to present that before the meeting. And, frankly, I was  
6 not able to really compile all that until I read and  
7 heard all the public comments.

8 CHAIRMAN STEINBERG: There's some process  
9 issues, but there's the substantive issue. As a board  
10 member, you have every right to put forward your own  
11 ideas or your own proposals. Nobody questions that.

12 I want to focus a little bit on the process,  
13 but more on the substance of it. And my question  
14 was: Did your proposed amendments weaken the  
15 administration's proposal as it relates to fisheries  
16 protection?

17 MR. OSTROWSKI: I did not think it weakened the  
18 proposal. There were certain specifics that were  
19 different, and there were some process portions about  
20 how certain stream characteristics were designated and  
21 things like that that were different, but they did not  
22 weaken the protections.

23 CHAIRMAN STEINBERG: How do you respond to  
24 this, then. I've got before me the September 2nd, 2009,  
25 letter under Governor Schwarzenegger's letterhead, but

1 specifically from the State of California, the Natural  
2 Resources Agency, from Don Koch, Fish and Game director,  
3 and Del Walters, the director of the Department of  
4 Forestry and Fire Protection, to George Gentry, the  
5 executive officer of your board, in which they state on  
6 page two, as they talk about what amendments through the  
7 process were consistent with the administration's plan,  
8 they then say on page two, quote, "In contrast, optional  
9 amendments 9, 26, 27, 100, 101, 102, 103, 104, 105, and  
10 106," which I understand are your amendments, "would not  
11 provide adequate protection or contribute to recovery  
12 and restoration of listed salmonid species and habitat  
13 on forested land, should they be adopted."

14 MR. OSTROWSKI: I haven't seen that letter, but  
15 I know what they're referencing there.

16 First of all, some of those amendments were not  
17 particularly my amendments. Some of the --

18 CHAIRMAN STEINBERG: The amendments that you  
19 proposed.

20 MR. OSTROWSKI: They weren't necessarily what I  
21 proposed. Those came from a proposal by board member  
22 Walls during the hearing process. My proposal took the  
23 options that the board had noticed and selected one or  
24 the other of the options. So some of those, the smaller  
25 number ones, are options. They weren't specifically

1 mine. They came out of our committee work as two  
2 different ways to achieve the board's goals of  
3 protecting salmonids.

4 So, apparently, the department is choosing  
5 which one they think is the better of those two, but the  
6 committee felt that they both protected salmonids.

7 CHAIRMAN STEINBERG: I mean, we have a dispute  
8 here. There's a dispute here about whether or not what  
9 you proposed substantively weakened the administration's  
10 proposed regulations, and it's a significant issue,  
11 obviously, because of the state of our fisheries.

12 So I don't know sitting here quite how to  
13 resolve that. I suppose we'll hear from witnesses on  
14 process, and then I'll give it to Senator Cedillo here.  
15 Two things.

16 SENATOR CEDILLO: Just a question. I don't  
17 want us to get lost in the vernacular here.

18 When you indicate -- It sounds like half a  
19 dozen proposals. He said they're not his, they came  
20 from the committee. But were they presented by you?

21 We have a process here. Our bills come out of  
22 committees. Somebody has their name attached to them.  
23 Then they get amended. They're not exactly our initial  
24 proposal, but we continue to be identified with them by  
25 our name and number.

1           Are these proposals that -- They came out of  
2 the committee presented by you and attached to you? How  
3 does someone get confused that these are your proposals?

4           MR. OSTROWSKI: That's a good question,  
5 Senator. The way we work in committee, at least in this  
6 particular case, we commissioned a science panel and a  
7 contract with an independent consulting science group to  
8 review the science around salmonid protection and forest  
9 management, and they came back what the science -- where  
10 there was strong agreement on various practices, the  
11 need for various protections, and where there maybe was  
12 differences of opinion or not enough information to  
13 decide.

14           So from that process in committee, we were able  
15 to develop, in some cases, options of two different ways  
16 of approaching salmonid protection and forest  
17 management. In many cases, there was just one good  
18 suggestion that the committee move forward. But the  
19 committee in many cases moved forward two options, and  
20 it wasn't -- though I may have preferred one or the  
21 other option, they weren't necessarily my proposal. We  
22 relied on staff working with a group from the department  
23 of -- Cal Fire, and I think they worked with the  
24 Department of Fish and Game, to come up with some  
25 options and different ways to deal with what -- the

1 issues we were looking at.

2           They weren't -- Usually, we don't have our name  
3 attached to something necessarily --

4           CHAIRMAN STEINBERG: Maybe, Senator Cedillo, we  
5 can have some of the witnesses sort of clarify from  
6 their perspective.

7           I'm not being accusatory here, but the story  
8 is -- and, again, you have your right to present your  
9 alternative. I'm really trying to focus really on the  
10 substance as to what it is you proposed and whether or  
11 not it weakened the administration's regulations.  
12 That's what I'm interested in here.

13           But on process itself, the way this worked, as  
14 I understood it, is that the board voted to put out a  
15 45-day public comment period on the administration's  
16 proposal, and in the midst of that, you put forward this  
17 alternative before hearing the public comment on the  
18 administration's proposal. Why not wait until the  
19 public comment is received before suggesting a -- what  
20 some describe, and I know you don't, but some describe  
21 as a weaker alternative?

22           MR. OSTROWSKI: Well, I think there's some  
23 confusion possibly in the timelines. The initial 45-day  
24 notice package came from the board staff and the board's  
25 committee, forest practice committee work, and at that

1 time there were 33 optional -- options available within  
2 that package.

3 The second 45-day notice was when we received  
4 the joint department's proposal, and the board,  
5 including myself, voted to move that to a 45-day public  
6 comment period.

7 CHAIRMAN STEINBERG: And then after that, you  
8 floated this --

9 MR. OSTROWSKI: No, no. Nothing's come since  
10 then. We're currently in that 45-day period.

11 CHAIRMAN STEINBERG: It was before. It was  
12 before.

13 MR. OSTROWSKI: Yes. Possibly the issue you're  
14 referring to is that at the time slightly before we  
15 actually noticed the 45-day -- first 45-day notice,  
16 there was a lot of confusion and frustration expressed  
17 at having all of these options. The 33 options was  
18 going to make that package somewhat difficult for people  
19 to understand.

20 Member -- Board Member Nakamura and I, who are  
21 on the forest practice committee and had worked within  
22 all these options, made the effort to show what we  
23 thought was a reasonable mix of all of these options  
24 into a coherent package and presented that to the board  
25 and to the -- to our executive officer to distribute to

1 the board and to the public so that they could, I guess,  
2 be assured that there was a workable group of options.  
3 So I don't -- This latest package with the department's  
4 rewrite is different. We haven't done anything on that.

5 CHAIRMAN STEINBERG: Okay. Thank you. Let's  
6 hear some public testimony, and maybe that will help  
7 sort of frame the issue a little bit better.

8 Any comment?

9 MR. SAITO: No.

10 CHAIRMAN STEINBERG: Okay. Let's hear  
11 witnesses in support, in support of the nominees.

12 MR. THOMAS: Good morning, Mr. Chairman.  
13 Anthony Thomas. Good morning, Mr. Chairman and Members  
14 of the Committee. Anthony Thomas. My day job is the  
15 vice president of Government and Legislative Affairs --

16 CHAIRMAN STEINBERG: None of this day-job  
17 stuff. All right?

18 MR. THOMAS: It's also my night job and weekend  
19 job. I head up government and legislative affairs for  
20 the California Forestry Association.

21 It is a pleasure to be here this morning with  
22 all of you. The association and our membership is in  
23 strong support of Mr. Ostrowski's confirmation today to  
24 the Board of Forestry. Mr. Ostrowski has more than  
25 30 years in the timber products business and has one of

1 the most stellar representations as being professional,  
2 forthright, and a diligent businessman committed to his  
3 craft as a registered professional forester.

4 As many of you, our forest resources and  
5 timberland in our great state are some of the most  
6 breathtaking in the world. And I don't mean on the  
7 coast on the United States. I mean in the world. It is  
8 our view that Mr. Ostrowski is one of the best to  
9 represent the maintaining of our landscapes as well as  
10 our watersheds.

11 His position on the board is an industry  
12 position. His position is an industry position. And  
13 with that Jim provides what we all want within the  
14 legislative as well as the regulatory process, and that  
15 key word is "balance."

16 I understand there might be some minor  
17 opposition to his confirmation today; but, again, in  
18 looking in terms of trying to provide balance to this  
19 board, it is our strong feeling that with  
20 Mr. Ostrowski's confirmation today, that he will provide  
21 that balance and provide a continuous exchange of  
22 ideas for the betterment of our forests and our  
23 resources.

24 Mr. Chairman and Members, we urge your  
25 confirmation today.

1           CHAIRMAN STEINBERG: Thank you, Mr. Thomas.

2           One quick question. When you talk about  
3 balance, in your view does the administration provide a  
4 balanced approach to forestry and fishery issues?

5           SENATOR AANESTAD: Could I answer that?

6           MR. THOMAS: I think I'll defer to  
7 Senator Aanestad on that.

8           CHAIRMAN STEINBERG: I mean, it's a fair  
9 question, because we're arguing or discussing  
10 Mr. Ostrowski's position on these issues relative to the  
11 administration's, so....

12           MR. THOMAS: Mr. Chairman, I believe that  
13 everyone here, including the administration, attempts to  
14 provide balance. I think that everyone comes here  
15 with -- attempting to provide the best policy and  
16 regulatory, not only opinions, but implementation. So  
17 my specific question that -- I would state that, yes,  
18 the administration attempts to provide balance, just as,  
19 I'm sure, this board does as well.

20           CHAIRMAN STEINBERG: Very, very good. Thank  
21 you. Thank you.

22           MR. CARLESON: Mr. Chairman and Members, I'm  
23 Eric Carleson, executive director of Associated  
24 California Loggers, representing the largely  
25 family-owned logging companies and log trucking

1 companies in California. We're the small business  
2 infrastructure for timber harvesting, for the collection  
3 and the transport of woody biomass alternative energy,  
4 and we're very involved in the efforts to prevent,  
5 fight, and clean up after forest fires. We're also in  
6 an extremely fragile economic state at this time, and  
7 we need experienced and fair officials such as  
8 Jim Ostrowski at the Board of Forestry.

9 In addition to the obvious strength of  
10 Mr. Ostrowski's experience and educational credentials,  
11 he offers the Board of Forestry something very important  
12 at this time. Continuity. A number of detailed  
13 technical issues come before the board and committee for  
14 a number of years. Mr. Ostrowski has participated in  
15 listening, speaking to the issues, participating in  
16 talks about the issues.

17 It seems to us it's imperative that he remain  
18 on the board at this time so his work on these issues  
19 heretofore is not in vain. We believe you not only  
20 should want Mr. Ostrowski on the board, but we believe  
21 at this crucial time, in terms of forestry issues, fire  
22 issues, and economic issues, you need him on the board.

23 CHAIRMAN STEINBERG: Thank you.

24 MR. CARLESON: I was just going to say one more  
25 thing.

1           We worked with him on a number of issues, and  
2 he has not always agreed with the positions expressed by  
3 our association, but he's always been fair in expressing  
4 why.

5           CHAIRMAN STEINBERG: Thank you very much.  
6 Appreciate it.

7           MR. BISCHHEL: Mr. President, Members of the  
8 Committee. I'm David Bischel. I'm a licensed  
9 professional forester, president of the California  
10 Forestry Association, former executive officer of  
11 forester's licensing for the state Board of Forestry  
12 and, of course, a strong supporter of Jim.

13           Jim has been a professional forester for  
14 30 years. His credentials are unquestioned in terms of  
15 his ethics, his professionalism, his dedication to  
16 managing based upon science. And all you have to do is  
17 take a look at the forests that he's managed for the  
18 last 20 years at the north end of the state, the family  
19 forest, that provides many union and nonunion jobs for  
20 his company and others.

21           I would like to address one issue that you  
22 brought up in terms of the Board of Forestry, and there  
23 is a sequence of activities that have occurred by the  
24 board, and of course the board is, in fact, designed to  
25 bring together a cross-section of interests and

1 perspectives to take a look at these issues and make a  
2 determination on what is the appropriate policy that  
3 will first and foremost be environmentally sound, but  
4 also be socially responsible and economically feasible.  
5 And all three of those -- without those three legs, you  
6 don't have good board policy, and that's what the board  
7 looks at.

8           The board issued a -- when they first issued a  
9 rule package, and as Mr. Ostrowski indicated, it was  
10 30-some-odd options, he was not at that particular  
11 meeting when the board issued the first notice. The  
12 next meeting is when the department came in, literally,  
13 the day before. I don't think anybody had seen the  
14 department's proposal, which was a joint proposal to --  
15 as an alternative to what the board had issued. And at  
16 that point the board had a fairly vigorous discussion  
17 and incorporated about eight to ten additional options  
18 to the department's joint proposal and substituted that  
19 proposal for their previous issued rule package. So it  
20 was now based upon the joint proposal from the  
21 departments and included about a dozen options, or eight  
22 to ten options for the board's consideration at that  
23 point in time.

24           Mr. Ostrowski did not proffer a single one of  
25 those options. Those were proffered by a couple -- two

1 or three other board members and have been included now  
2 into the package that the board will be adopting next  
3 week, quite frankly. I want to clarify that what you  
4 had identified were in no way proffered by him, but that  
5 does not mean the board science --

6           The board spent two years bringing together the  
7 best scientists in this state to evaluate the  
8 relationship of forest-management activities to riparian  
9 vegetation and riparian attributes that are important  
10 public trust resources; and Mr. Ostrowski has been  
11 absolutely committed to utilizing that science as the  
12 foundation for the options that are in front of the  
13 board today.

14           CHAIRMAN STEINBERG: Thank you.

15           MS. CREMERS: Good morning. Noelle Cremers  
16 with California Farm Bureau Federation. I just wanted  
17 to come here this morning and speak in support of both  
18 board members and ask for their confirmation. They're  
19 both thoughtful, open-minded individuals that do a good  
20 job of managing our state's natural resources.

21           CHAIRMAN STEINBERG: Thank you.

22           MR. ADDIS: Reed Addis on behalf of Audubon  
23 California here in support of Mr. Saito. We obviously  
24 have interest in the board and their makeup and  
25 decisions, and we appreciate his work on the board.

1 Thank you.

2 CHAIRMAN STEINBERG: Thank you.

3 MR. UNG: Phillip Ung on behalf of California  
4 ReLeaf here in support of Mr. Saito.

5 CHAIRMAN STEINBERG: Thank you.

6 MS. BIGELOW: Melva Bigelow on behalf of The  
7 Nature Conservancy here in support of Mr. Saito, and we  
8 appreciate that urban and Southern California viewpoint  
9 he brings to the board.

10 MR. GREACEN: Scott Greacen, executive director  
11 of EPIC, here in support of Mr. Saito. He has been one  
12 of a handful of board members who has consistently  
13 supported strengths and protections for our watersheds  
14 and impaired fisheries.

15 MR. WETCH: Mr. Chairman, Members, Scott Wetch  
16 on behalf of the Joint Labor Management Committee in the  
17 Forest Products Industry and on behalf of the carpenters  
18 and machinists and paper and pulp mills in California  
19 here in support of both of the nominees.

20 Particularly, I'd like to speak in support of  
21 Mr. Ostrowski's confirmation. Representing one of  
22 California's most endangered species, California timber  
23 workers, we've lost a thousand union jobs this year.  
24 His company that he works for during the day is one of  
25 the very few solid union employers that we have, and we

1 think that he -- that it helps bring a balanced voice to  
2 him -- to the board, having that background. So with  
3 that, we would support his confirmation. Thank you.

4 CHAIRMAN STEINBERG: Thank you, Mr. Wetch.

5 Next.

6 MS. GARRISON: Karen Garrison, NRDC, support of  
7 Mr. Saito.

8 CHAIRMAN STEINBERG: Thank you.

9 MR. WESELOH: Tom Weseloh, California Trout,  
10 here in support of Mr. Saito.

11 CHAIRMAN STEINBERG: Thank you.

12 MS. FLICK: Pamela Flick with Defenders of  
13 Wildlife in support of Mr. Saito.

14 CHAIRMAN STEINBERG: Thank you. Thank you.

15 Is there opposition to either of the nominees?

16 MR. WESELOH: Hello again. Tom Weseloh,  
17 California Trout. I want to thank you for a lot of your  
18 opening comments. They were addressing a lot of the  
19 concerns that we have. As you say, salmon is --  
20 basically, there's no debate. They've tanked.

21 Everybody's following the chinook salmon closures, but  
22 we seem to forget quite often coho have been closed to  
23 fishing for almost 15 years in the ocean. They're not  
24 recovering. It's not just ocean conditions. It's  
25 habitat.

1           The Board of Forestry has an obligation to deal  
2 with that habitat, and we have touched on the threatened  
3 and impaired process that has been in that temporary  
4 status for nine years. What we haven't really touched  
5 on is the 2112 process that has also been literally  
6 debated since the state listing back in 2000. And what  
7 we have not really accomplished with those 2112s is the  
8 protections that we thought we would be getting. So as  
9 a result of that, we had to take two actions that we  
10 really weren't very fond of. One of them was litigating  
11 the board and the Department of Fish and Game, and the  
12 court ruled in our favor, and the board has still yet to  
13 act. That was really a result of our efforts to request  
14 an emergency petition to take emergency action to  
15 protect salmon. Mr. Saito voted in favor of that;  
16 Mr. Ostrowski voted to oppose it.

17           I think we are really in a position where we --  
18 The chairman described it very well. We're on the verge  
19 of losing these fish. We need to take action, and we  
20 need to take actions to protect and recover these  
21 species. We can't delay; we can't defer; we can't  
22 weaken rules. We need to make sure we're doing the  
23 right thing to allow salmon to not only continue to  
24 exist, but to recover.

25           Given that, we urge you to confirm Mr. Saito

1 and we urge you to deny confirmation for Mr. Ostrowski.  
2 We also ask you to continue -- We really appreciate the  
3 efforts you took to reach out to the administration in  
4 some other issues that came before this committee  
5 related to this, and we think you really need to  
6 continue to do that, because we don't want to see these  
7 fish disappear, and I'm sure the governor doesn't want  
8 to see them on his watch, and we appreciate your efforts  
9 to do so.

10 CHAIRMAN STEINBERG: We always reach out to the  
11 administration.

12 MR. WESELOH: Thank you very much.

13 MR. GREACEN: Thank you, Mr. Chair and Members  
14 of the Committee. I'm Scott Greacen from EPIC based in  
15 Humboldt County.

16 We have on file a letter with 14 organizations  
17 opposing Mr. Ostrowski's confirmation. We very much  
18 appreciate the careful attention you're giving to these  
19 issues today.

20 Probably the most important task before the  
21 Board of Forestry for the last decade has been the need  
22 to bring forward effective, permanent rules to protect  
23 California fisheries and impaired watersheds from  
24 unnecessary additional impacts.

25 The crisis that Mr. Weseloh described that

1 existed when this effort started a decade ago when the  
2 National Marine Fisheries Service put the board on  
3 notice that our existing Forestry and Fire Protection  
4 practice rules were and are woefully insufficient to  
5 protect our salmon and steelhead, it is now a full-blown  
6 emergency, particularly for the coastal runs of coho  
7 salmon and steelhead, which are among the most sensitive  
8 to logging impacts. We've reached critical junctures  
9 for these runs.

10 I would note that 2200 fishermen are out of  
11 work this year because of our closures on the fisheries.  
12 I would note as well that the proposed rules in  
13 preparation during this long decade of decline were  
14 intended to address our impaired watersheds. The  
15 growing impacts of global warming make it urgently  
16 necessary that we follow through on our commitments to  
17 restore these watersheds which are impaired by various  
18 pollutants. Unfortunately, the Board of Forestry's  
19 proposed rule package failed entirely to provide any  
20 protections from impaired watersheds.

21 Having carefully reviewed the proposed new  
22 rules, it's EPIC's position that the net effect of the  
23 proposed package in terms of the additional impacts on  
24 fisheries is likely to be negative. What, in our view,  
25 is beyond dispute is that the proposed package fails

1 entirely to achieve a substantial move for greater  
2 protection for California's impaired watersheds and  
3 critically impaired fisheries.

4 CHAIRMAN STEINBERG: I don't want you to read  
5 the whole statement.

6 MR. GREACEN: I'm certainly not going to. I'm  
7 trying to keep this as brief as possible.

8 CHAIRMAN STEINBERG: Please.

9 MR. GREACEN: You've noted the central issue, I  
10 believe, Mr. Ostrowski's role in the threatened and  
11 impaired rules package. I would note that the  
12 suggestion that Mr. Ostrowski's proposal represented an  
13 attempt to bridge a gap between agency positions and  
14 public comment is, frankly, a bit difficult to accept.

15 The net effect of his action was to preclude  
16 serious discussion of the proposal then on the table,  
17 let alone any effort to substantially increase  
18 protections for fish and streams. Beyond their  
19 substantive contact and procedural impact, the manner in  
20 which these proposals were presented seemed to reflect  
21 an indifference to the public's role in crafting these  
22 critically important protections.

23 It is important that the Committee deny  
24 Mr. Ostrowski's confirmation not only for his own  
25 failure to move forward on these critical issues, but

1 also to encourage the timber industry as a whole to take  
2 a more realistic approach to implementing effective  
3 protections for California's watersheds. The industry  
4 has, frankly, failed to uphold its promises to play a  
5 constructive role in putting robust rules in place to  
6 protect our water and fish. To confirm Mr. Ostrowski in  
7 his seat on the Board of Forestry at this time would be  
8 to reward and encourage this kind of obstruction. I  
9 urge you to continue attention. Thank you.

10 CHAIRMAN STEINBERG: Thank you.

11 Briefly, please.

12 MS. FLICK: Sure. I will try my best to be  
13 brief.

14 Pamela Flick, Defenders of Wildlife. We were  
15 on the aforementioned letter that Mr. Greacen just  
16 mentioned. We oppose the confirmation of Mr. Ostrowski.  
17 We urge the commission to consider the professional  
18 opinion and feedback from both of the state agencies on  
19 this, especially considering that Department of Fish and  
20 Game has the authority and expertise of managing our  
21 imperilled species and also has the management authority  
22 of our state's wildlife resources.

23 We concur with the department's assessment that  
24 the T&I watershed rules will weaken the protections for  
25 the listed coho, and because of that and other

1     aforementioned reasons, we oppose the confirmation.

2             CHAIRMAN STEINBERG:     Thank you.

3             Briefly.

4             MR. ROCKWELL:     I'm Mark Rockwell.     I'm with  
5     the -- I'm the state representative for the Endangered  
6     Species Coalition here in California, which is a  
7     national organization of over 460 groups throughout the  
8     United States.

9             A couple of things I think that -- I don't want  
10     to repeat things that have gone on, so for me extinction  
11     is a permanent reality, and there is a public trust  
12     responsibility that the Board of Forestry and everybody  
13     involved with forestry, frankly, has to prevent  
14     extinction when that is on the agenda, which it  
15     certainly is for California's central coast steelhead --  
16     pardon me -- coho.

17             So I think -- One comment I would like to make  
18     that should clarify some things, because I've  
19     participated in the Board of Forestry meetings over the  
20     last many months leading up to the T&I rule over  
21     release, and the options put forward by Mr. Ostrowski  
22     and Mr. Nakamura prior to the first public release of  
23     the proposed T&I rules were driven by what appeared to  
24     be Mr. Ostrowski's efforts before the public comment was  
25     taken or reviewed.     These saw the light of day at the

1 Board of Forestry meeting when they were to decide if  
2 the public release should be done or not. So they were  
3 new to everybody. Nobody had a chance to review them  
4 thoroughly, so it was, in my opinion, an eleventh-hour  
5 attempt to undermine the rules.

6 The Ostrowski-Nakamura alternatives did not  
7 reflect the science board's recommendations as has been  
8 previously stated, so I want to be clear on that. Thank  
9 you.

10 CHAIRMAN STEINBERG: Thank you.

11 MR. ENDICOTT: Michael Endicott with Sierra  
12 Club California. The only thing I would add, you  
13 discussed the substance and you know the important role  
14 this Committee plays in this process of confirmation.  
15 The only thing that I would say is this is not an  
16 attempt by us not to have Mr. Ostrowski's expertise or  
17 participation in the board's deliberations, but we think  
18 it should be from a seat similar to ours, as a member of  
19 the public. Thank you.

20 CHAIRMAN STEINBERG: Okay. Fair enough.

21 I must say after hearing much of this, it's as  
22 clear as mud to me, and I have some questions that I'm  
23 not sure can be answered right now or not.

24 Question one is whether or not -- whether or  
25 not the administration's comment in their letter of

1 September 2nd in which they say that "Optional  
2 amendments" -- and I'm not going to read the numbers  
3 here again -- "would not provide adequate protection or  
4 attribute to the recovery or restoration," whether or  
5 not that comment refers to the Ostrowski-Nakamura  
6 proposal that we heard about here today. I don't know  
7 that. You say it doesn't. Others seem to say that it  
8 does. That needs some clarity for me.

9           That's really the question for me, because the  
10 way that I look at this -- I look at the administration,  
11 who we often have significant disagreements with on many  
12 issues, to be -- let's just say relatively balanced on  
13 this particular issue. And as one of the witnesses  
14 said, the Senate, and me personally, we have intervened  
15 on a number of occasions to make sure that these  
16 regulations move and that we actually have a framework  
17 and a better plan in California for protecting our  
18 precious fisheries.

19           So they come out with a proposal, maybe  
20 imperfect, but it seems to have consensus, and then  
21 there is this interjection, not necessarily  
22 inappropriate for anybody to put forward their own  
23 proposal, but in the midst of the public-comment period,  
24 which many say is weaker and is not just sort of an  
25 environmental industry fight, because the administration

1 says here on page two that these amendments do not  
2 provide adequate protection.

3           And so I guess my bottom line is this: I  
4 haven't come to a conclusion, Mr. Ostrowski, about your  
5 confirmation. And you are -- You have until the 15th of  
6 January, and I'd like to put it over, because I need  
7 answers to the questions. And, you know, I'd be willing  
8 to meet with you after session and talk through some of  
9 these things and have some further -- you know, some  
10 further dialogue so that I can be clear. And I want to  
11 be fair. I want to be fair to you, but I'm also  
12 bothered by the argument, if it's true, that you made --  
13 that there was an effort at the last minute to weaken  
14 what is already a precarious balance in terms of -- in  
15 terms of these regulations. So public what I want to  
16 do. Public my recommendation.

17           Mr. Saito, I know that you must have been  
18 lonely sitting there throughout this last hour.

19           MR. SAITO: Public okay.

20           CHAIRMAN STEINBERG: It's okay. I'm sure it  
21 is.

22           I'm prepared to move your nomination forward,  
23 again without prejudice, because I came in here thinking  
24 that I was not going to support your nomination based  
25 upon my preparation and all that I've heard, but I'm

1 genuinely on the fence, so to speak, because I think the  
2 facts need to be clarified a little bit more. So that  
3 is my recommendation and preference.

4           However, we take up Mr. Saito's nomination  
5 today, and without prejudice we continue a dialogue here  
6 with a possibility of coming back to the public session  
7 here in the Rules Committee and sort of hammer this out  
8 a little bit more. All right? We've got to be as fair  
9 as we can here.

10           MR. OSTROWSKI: That would be fine. And I  
11 think I worked since the beginning of my first term to  
12 get to this point in the regulations where we are going  
13 to, hopefully, adopt some permanent regulations.

14           So I think my record will be clear, and I  
15 appreciate the opportunity to discuss it further.

16           CHAIRMAN STEINBERG: Of course. All right.

17           Is there -- Senator Oropeza. Motion for  
18 Mr. Saito.

19           SENATOR OROPEZA: Mr. Saito.

20           CHAIRMAN STEINBERG: It doesn't take a motion  
21 to put over Mr. Ostrowski, but that would be the intent.

22           Okay. Mr. Saito moved. Please call the roll.

23           MS. BROWN: Senator Cedillo.

24           SENATOR CEDILLO: Aye.

25           MS. BROWN: Cedillo aye.

1 Dutton.

2 SENATOR DUTTON: Aye.

3 MS. BROWN: Dutton aye.

4 Oropeza.

5 SENATOR OROPEZA: Aye.

6 MS. BROWN: Oropeza aye.

7 Aanestad.

8 SENATOR AANESTAD: Aye.

9 MS. BROWN: Aanestad aye.

10 Steinberg.

11 CHAIRMAN STEINBERG: Aye.

12 MS. BROWN: Steinberg aye.

13 CHAIRMAN STEINBERG: That will move to the  
14 floor, and we'll continue. Okay.

15 Thank you all very, very much. Very good.

16 All right. Let us move briskly. Senator  
17 Aanestad, Senator Dutton with the remainder of the  
18 agenda, bill referrals, governor's appointees not  
19 required to appear, rule waiver requests -- You got any  
20 that you -- I understand that you want to separate 19,  
21 20, 21, and 23; is that right?

22 (Discussion off the record.)

23 CHAIRMAN STEINBERG: I need a motion on 1, 2,  
24 3, 4, 6, 7, 8, 9, 10, 11, 12 -- I'm sorry. We're taking  
25 10, 11, 12 off for now. That's right -- 13, 14, 15, 16,

1 17, 18, 22, 24, 25, and 26.

2 SENATOR DUTTON: So moved.

3 CHAIRMAN STEINBERG: So moved by  
4 Senator Dutton.

5 Please call the roll.

6 MS. BROWN: Senator Cedillo.

7 SENATOR CEDILLO: Aye.

8 MS. BROWN: Cedillo aye.  
9 Dutton.

10 SENATOR DUTTON: Aye.

11 MS. BROWN: Dutton aye.  
12 Oropeza.

13 SENATOR OROPEZA: Aye.

14 MS. BROWN: Oropeza aye.  
15 Aanestad.

16 SENATOR AANESTAD: Aye.

17 MS. BROWN: Aanestad aye.  
18 Steinberg.

19 CHAIRMAN STEINBERG: Aye.

20 MS. BROWN: Steinberg aye.

21 (Thereupon, the Senate Rules Committee hearing  
22 adjourned at 10:54 a.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**

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## MONTEREY BAY AQUARIUM

August 26, 2009

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

Michael Sutton  
Responses

Attention: Nettie Sabelhaus, Appointments Director

Dear Chairman Steinberg:

Thank you for your letter of August 5, 2009, regarding my reappointment to the Fish and Game Commission. I look forward to my confirmation hearing on September 2<sup>nd</sup> at 1:30 pm.

In preparation for the hearing, I've prepared the following responses to the questions in your letter. As you requested, I've also attached a copy of my most recent Form 700, Statement of Economic Interest, filed with the Commission.

### Statement of Goals

1. *What are your goals for your new term? How will you measure your success?*

After two and a half years as a member of the Commission, I remain convinced that my primary responsibility is to be the best possible steward of California's wildlife and fishery resources. While this mission is more difficult to achieve in challenging economic times, it nonetheless remains paramount. Among my top priorities for my new term on the Commission will be to complete the statewide implementation of the Marine Life Protection Act (MLPA), conclude a comprehensive review of the Marine Life Management Act (MLMA), and carry out the recommendations stemming from that review. These goals are related since the MLPA and MLMA were originally intended to work in concert to conserve our marine ecosystems and fisheries, respectively.

If successful, by 2011 we will see a statewide network of marine protected areas that safeguards ocean ecosystems, helps rebuild depleted fish populations, and restores the ecosystem services they provide to all Californians. We will also see streamlined and improved fishery management policies that incorporate innovative new approaches to restore and maintain sustainable fisheries and fishing communities.

**Senate Rules Committee**

2. *Do you support the creation of 30 new marine protected areas? If so, why?*

My consistent support for the Governor's ocean conservation agenda and the MLPA Initiative is a matter of public record. I'm an enthusiastic advocate of this effort for one main reason: Marine reserves work! In the Channel Islands, where reserves have been in place since 2003, lobsters and other species already are showing signs of increased size and abundance. There is growing evidence from both land and water that setting aside areas for wildlife helps protect ecosystems and the services they provide. My sense is that protecting California's ocean and coast is in the best long-term interests of all Californians, especially those who are active users of our marine resources. We all have an interest in ecosystem services such as fishing, surfing, diving, and kayaking—as well as the businesses they support. Healthy ecosystems are more productive and yield far more in terms of services to coastal communities. Moreover, scientists consistently tell us that protecting areas of the ocean is one of the most important and effective measures we can take to safeguard marine ecosystems.

There's another reason I've been proud to support the Commission's work to adopt regulations to implement the MLPA: It's consistent with the Commission's approach to wildlife conservation on land. For example, since the 1930's duck hunters and waterfowl lovers have backed refuges and helped conserve more than 12.6 million acres of wetlands habitat through the California Waterfowl Association, Ducks Unlimited, and similar organizations. Most sport hunters support game refuges—and donate money to preserve wetlands—for a simple reason: They work. Twenty years ago, waterfowl populations were at historic lows. Bag limits had dropped to the point that lifelong hunters were hanging up their decoys and shotguns for good. Today, thanks to habitat protection and enlightened management, waterfowl numbers have rebounded. Far from diminishing hunting opportunities, setting aside reserves actually boosted hunting by helping waterfowl populations recover. The concept is simple: When we protect breeding habitat and don't take too many adults, wildlife can recover handsomely.

3. *And if so, how should the new marine protected areas be patrolled?*

Our game wardens have patrolled the coast for years using boats and aircraft. A single aircraft can cover hundreds of miles of coastline in one day, identifying any vessels fishing illegally in protected waters. Wardens already on the water enforcing fisheries laws can pay special attention to marine protected areas. Assisting them will be enforcement personnel of other state and Federal agencies (see #6 below).

In recent years, our wardens have been stretched so thin that marine patrols and enforcement have declined. That's why the California Game Warden's

Association recently opposed the creation of new marine protected areas. They were simply trying to make the point that they do not have sufficient resources to enforce our wildlife laws on land or water. While the Commission stands united in solidarity with our wardens in their quest to rebuild their ranks, the majority of us believe that the MLPA is too important to allow temporary budget cuts to interfere with its full implementation.

4. *Are there ways in which the Commission can reach out to middle and high school students to encourage careers in fish and game management?*

The Commission's budget is severely limited and its staff too few to conduct either a statewide campaign or directly reach out to middle schools or high schools. However, it is very important to let students know about the numerous ways they can work towards a career in the state to conserve our natural resources.

The Commission could help in this effort by working with the Department of Fish and Game (Department) to sponsor technical training and internship programs that can be supported by the Department of Education or other bond funded programs. The Commission could also work with the legislature and other interested parties to develop incentives and promote interactions with youth during school to help them identify opportunities to work as a game warden, biologist, or resource manager for the state.

#### Game Wardens

5. *How has your work to identify unique funding sources for wildlife enforcement progressed?*

Increasing the ranks of our wildlife enforcement personnel remains one of my highest priorities. One way in which I've helped alleviate the shortage of state funding for wildlife enforcement and management has been to seek assistance from other agencies. For example, I've worked with the National Park Service and the National Marine Sanctuary Program of NOAA to secure commitments to assist in the enforcement of the MLPA. The latest estimate prepared by consultants to the MLPA Initiative in June 2009 suggests that it will cost about \$11 million per year to implement the MLPA. The majority—about 60% to 75%—of these costs would be covered by partner agencies and organizations, and the Department would be responsible for 25% to 40% or approximately \$3-\$5 million annually.

Another way I've worked to help raise additional funds to bolster our wildlife enforcement efforts is to urge the Commission to support legislation that would create new funding sources. For example, the Commission recently sent letters to the Governor and the legislature in support of AB 1442, which would authorize

the state to issue a voluntary game warden stamp that will raise revenue specifically for wildlife enforcement.

6. *Has the Commission discussed ways to enhance the state's ability to enforce wildlife laws? Has the issue of utilizing other state law enforcement agencies been discussed?*

We have taken two different approaches to enhancing the state's ability to enforce wildlife laws in an era of declining budgets. First, we've encouraged other state and Federal agencies to help our "thin green line" of game wardens fulfill their duties. As a result, for example, a number of agencies have pledged to help patrol and enforce new marine protected areas established under the authority of the MLPA. Among others, these agencies include the National Marine Fisheries Service, Coast Guard, Bureau of Land Management, National Park Service, U.S. Fish & Wildlife Service, and California State Parks. Assistance from these agencies will help fill the gap left by attrition in our game warden ranks.

Second, the Commission has become concerned about the increasing illegal commercialization of our wildlife resources and has been working to increase the penalties for such crimes. For example, I recently helped bring this issue to the attention of Assemblymember Jared Huffman, who chairs the Committee on Water, Parks, and Wildlife, about how we might make our wildlife laws more effective. As a result of widespread concern over this issue, Assemblymember Huffman introduced AB 708, which would increase the fines and penalties for certain wildlife crimes to make these sanctions more meaningful and effective.

#### Marine Resources Committee

7. *What progress have you made in revitalizing the Commission's Marine Resources Committee?*

I currently co-chair the Commission's Marine Resources Committee along with Commissioner Richard Rogers. The Committee now meets quarterly. In 2008-2009, we took two important steps to revitalize the Committee and increase its effectiveness. First, we held a scoping meeting in Santa Barbara at which we enlisted our marine stakeholders to develop a list of priority issues that need to be addressed by the Committee. That led to our decision to launch an independent review and evaluation of the MLMA in collaboration with the Department and the California Ocean Protection Council. Many of the concerns brought forward by our stakeholders related to the implementation of this statute. By the end of 2009, we will have the results of this study and be well-positioned to recommend improvements in the way we manage our marine fisheries in California.

That said, probably the single most effective step we have taken to revitalize the work of the Committee was to hire a Marine Advisor for the Commission. Dr. Craig Shuman came on board in late 2008 and has been instrumental in enhancing both the work of the Committee and its value to our stakeholders. As a result, the two most recent meetings of the Committee have been among the most productive in its history. We are now successfully preparing recommendations for action by the full Commission, including support for selected marine-related bills pending in the legislature.

Over the past two years, I helped raise nearly \$500,000 from external sources to pay for these efforts and other marine-related work of the Commission. That amount includes private charitable funds raised to pay for the Marine Advisor and funds raised from the California Ocean Protection Council to cover the costs of our independent review and evaluation of the MLMA.

8. *How effective has the new Marine Advisor been to the Marine Resources Committee? Given that his employment is funded using a two-year grant, what plans do you have for that position after that time period?*

The Commission's Marine Advisor has been a tremendous boon to the Marine Resources Committee and the entire Commission itself. Today, at least half of the Commission's work involves marine-related issues; thus the position of Marine Advisor has become increasingly important. Dr. Shuman has become very useful to the permanent staff by handling much of our ocean-related work and by initiating new, proactive efforts to deal with marine issues. For example, he is responsible for liaison with the MLMA evaluation team and recently initiated an effort to improve the management of the southern rock crab fishery. Dr. Shuman has helped make the work of the Marine Resources Committee more effective than ever.

I'm convinced that the Marine Advisor should be added to the roster of permanent Commission staff. While we have independent funding for this position through the end of 2010, my plan is to work with the Commission leadership to see that funds are made available as part of the Commission's operating budget in 2011 so that the work of the Marine Advisor can continue to make our ocean conservation efforts more effective.

### Salmon

9. *How can the Commission help address the serious and persistent decline in California's salmon populations?*

Restoring our salmon populations is important for many reasons, including sustaining thousands of jobs, maintaining the vitality of our fishing communities, protecting river-basin ecosystems, and ensuring a supply of sustainable seafood.

However, the root causes behind the decline of our salmon populations are mostly beyond the authority and jurisdiction of the Commission. As a result, developing solutions will prove complicated and challenging—conservation measures must be initiated simultaneously in the ocean, in our fresh water systems, and on land. The Commission will need to work closely with those agencies that hold the authority to make these important decisions. Only by developing and implementing practical, comprehensive solutions will we be able to bring back our salmon and steelhead.

One good model for such solutions is the Klamath Basin Restoration Agreement that focuses on returning salmon and steelhead to their ancestral spawning grounds in the Upper Klamath River basin. In my capacity as a Board member and volunteer pilot for LightHawk, I've been working closely with parties to this unprecedented agreement to help them advance their work to restore the Klamath River and its tributaries. For the first time, the key parties—including fishermen, Tribes, farmers, power companies, state agencies, and the Federal government—have joined together to help create the conditions necessary to restore the entire river basin. This effort currently is on track to become the largest river restoration project in United States history.

No doubt restoring the salmon populations of the Sacramento and San Joaquin Rivers will be even more complicated and challenging. In the near term, we will need to continue using the Commission's authority to restrict salmon fishing to limit the mortality of the few salmon that return to these rivers. We will also need to work with the Department, other state agencies—including the Ocean Protection Council—and the Federal government to develop a comprehensive approach to salmon recovery. While the Commission may not have the authority to solve this problem single-handedly, we need to be engaged with our sister agencies to develop and implement innovative solutions. This will include working with the Legislature and the Governor on forthcoming Delta and Water bond legislation to ensure that there are significant investments in habitat restoration and water flows to help the salmonid populations of the state.

Finally, earlier this year I persuaded the Commission to send letters to the House and Senate leadership in Washington, D.C. in support of the Pacific Salmon Stronghold Conservation Act of 2009. This bill, introduced in both the House and Senate, would provide Federal funds and encourage public-private partnerships to conserve the remaining salmon "strongholds" in the western states, including California's Smith River basin. In times of fiscal crisis when scarce state funds are spent mainly on addressing the worst problems, the Stronghold Act will help save what's left of our healthy salmon runs on the West Coast.

10. *To what degree has the Commission been working with other state agencies on addressing salmon protection? What has been the relationship between the Commission and the Board of Forestry?*

As mentioned above, restoring our salmon and steelhead populations will require the Commission to work with the Department and other state and Federal agencies to develop a comprehensive approach to salmon recovery. For example, we will need to work with the California Ocean Protection Council to ensure that bond funds are allocated to support projects that contribute to salmon restoration. We'll also need to work with the State Water Resources Control Board, the Board of Forestry, and other state authorities to develop and implement practical solutions that address the root causes of our salmon crisis.

Earlier this year, working with the Department, Cal Fire, and the Natural Resources Agency, the Commission and the Board of Forestry negotiated and signed a joint policy on the protection of anadromous fish populations on state lands. This new policy will help protect salmon and steelhead runs that occur in rivers and streams that flow through state lands managed by the Board of Forestry. The goal is to ensure that state-sponsored timber operations do not contribute to the decline of anadromous fish populations in California. Together with the Department, we'll need to monitor the health of salmon and steelhead populations affected by logging on state lands to ensure this new policy is being implemented effectively.

#### Marine Life Protection Act

11. *Your votes on the Marine Life Protection Act were the subject of a conflict-of-interest complaint against you earlier this year. As a result of this complaint, the FPPC opened a formal investigation. What is the status of this matter? What steps have you taken, if any, to address it?*

Earlier this year, controversy over the Commission's implementation of the Marine Life Protection Act gave rise to a complaint alleging various conflicts of interest on my part. While it was clear from the outset that these allegations were part of an advocacy campaign against the MLPA, nonetheless I took them seriously and immediately requested an Advice Letter from the Fair Political Practices Commission (FPPC).

On June 24, 2009, the FPPC General Counsel issued an Advice Letter that stated I would not have a conflict of interest if I participated in decisions relating to the MLPA. Then, on July 30, 2009, the Enforcement Division of the FPPC responded to the complaint filed against me and stated that after investigating the allegations they found insufficient evidence to establish that a violation of the Political Reform Act occurred. I have attached copies of these letters for your information.

Finally, I have attached a copy of my latest Form 700, Statement of Economic Interest, filed earlier this year with the Commission.

Sacramento-San Joaquin Delta

12. *What actions has the Commission taken to help protect fish and wildlife populations in the Delta?*

One tool the Commission is using to address these problems is the California Endangered Species Act (CESA). Like the decline of our salmon and steelhead populations, the decline of native wildlife in the Delta has many causes, including decreased fresh water flows, dredging and sand mining, competition with harmful invasive species, and pollution. Restoration of Delta ecosystems will be complex and challenging, and will require close cooperation among all authorities and stakeholders.

Earlier this year, the Commission voted to uplist the Delta smelt from threatened to endangered species status. In 1993, the Commission granted a petition to list this species as threatened with extinction under the CESA. In a related move, the Commission also recently adopted a regulation to list a similar species, the longfin smelt, as threatened with extinction under CESA.

These two small fish species are important indicators of ecosystem health and both have declined dramatically in recent years. As a result of the Commission's decisions in 2009, the taking of Delta and longfin smelt—including any actions that would cause mortality—is prohibited without authorization from the Department. The Department is currently attempting to limit mortality and promote the recovery of these species by requiring avoidance, mitigation, and other measures.

13. *Has the Commission been working with the state and regional water boards to address the issue of increased ammonium in the Sacramento-San Joaquin Delta? What are the possible solutions to address this issue?*

Evidence is growing that particular discharges into the Delta may have impacts on Delta wildlife, including endangered and threatened smelt populations. While these studies aren't yet conclusive, the Commission is becoming increasingly concerned about the impact of pollutants such as ammonium on Delta wildlife. The regional water boards have been the lead entity evaluating impacts on the Delta from wastewater discharge facilities. The Commission has been monitoring their work, as well as the Legislature's efforts to shape a comprehensive Delta policy. We have also participated in Ocean Protection Council hearings that address land-sea interactions and ocean health.

The Department of Water Resources and the state and regional water boards are important partners in efforts to restore and protect Delta ecosystems. Like the

Commission, these agencies recognize that the Bay-Delta ecosystem is unraveling and needs a comprehensive approach to restoration. Once-abundant fish species are in critical condition due to water diversions, pollutants, and harmful invasive species that thrive in degraded Delta habitat.

The Commission stands ready to do its part, along with the Department and other agencies, to implement a new, comprehensive effort to restore and protect the Delta and its native wildlife.

#### State Budget Reductions

14. *How has California's budget crisis affected activities at the Commission and in the Department?*

The ongoing fiscal crisis has affected virtually all aspects of the Commission's work and that of the Department. As I mentioned above, we are most concerned about the impacts on our game wardens and wildlife enforcement capacity. But the budget crisis has also affected our ability to carry out our mandate to implement wildlife laws such as the MLPA, the MLMA, and other statutes. In addition, the Commission moved all of its 2009 meetings to the Sacramento area to save costs. When funds become available again the Commission will go back to its longstanding tradition of holding meetings throughout the State to reach out to as many of our constituents as possible and bring the Commission's work to the people.

While I've worked with my fellow Commissioners, the Department, and others to find alternative sources of funding for our operations, there is a limit to our ability to raise independent funds to fulfill our goals. I've also worked hard to facilitate partnerships with other state and Federal agencies to make up for our lack of capacity to monitor and enforce California's wildlife laws.

I've also been working with state legislators and others to develop ideas for reform of the Commission's governance structure. Among the concepts we've discussed is the possibility of increasing the Commission's authority and giving it an independent budget not tied to that of the Department.

As long as the fiscal crisis continues, I'll continue to work hard to find innovative ways of funding and implementing our wildlife laws consistent with the goals of the Commission. While some have proposed that we suspend our efforts to carry out wildlife laws like the MLPA until sufficient state funds are available to underwrite these efforts, I have steadfastly refused to allow temporary budget shortfalls to defeat our conservation goals. I plan to continue to work hard to live up to my duty to be the best possible steward of California's wildlife resources, no matter how daunting the challenges we face.

Honorable Darrell Steinberg  
Page 10 of 10  
August 26, 2009

I hope these responses are helpful and look forward to discussing these issues with the Committee on September 2<sup>nd</sup>.

Cordially,

A handwritten signature in black ink, appearing to read "Michael Sutton", followed by a horizontal line extending to the right.

Michael Sutton  
Vice President  
Center for the Future of the Oceans

cc: William J. Craven, Senate Committee on Natural Resources  
John Carlson, Jr., Fish & Game Commission  
Donald Koch, Department of Fish & Game

James Ostrowski

James Ostrowski  
Responses

August 4, 2009

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

Dear Ms. Sabelhaus,

This letter is in response to the questions in the July 24, 2009 letter from Senator Steinberg in regards to the confirmation hearing on August 24, 2009 for my reappointment as a member of the Board of Forestry and Fire Protection. I have also attached a copy of my current Form 700, Statement of Economic Interest, which has not changed since my filing in January.

I appreciate the opportunity to answer the questions from Senator Steinberg and any additional questions that may be asked during the hearing. I have repeated your questions before my answer.

## **Statement of Goals**

**Question #1 - *What have you accomplished in your first term as a member of the Board of Forestry and Fire Protection? What do you hope to accomplish during your next term? How will you measure your success?***

My time on the Board of Forestry has resulted in four main accomplishments in which I played a significant part. The Board's rule and policy making process is always a joint effort of all Board members, staff and the public, but I feel that I played an important role in the following projects.

The first was the development of an outline for a systematic approach to rule making that included the role of science. This outline has now been adopted as the standard process that the board follows for rule making and was instrumental in guiding the review of the Threatened or Impaired Watershed rules.

The second was my chairmanship of the Board's Policy Committee. During my time as Chair, the committee completed the development of the Joint Policy on Salmonid Protection, Policy on Rule Development, the Board's Strategic Plan, the report on Early Action Items for Reduction of Greenhouse Gasses, and the annual review of Forest Practice Rule Implementation. The Joint Salmonid policy was an update to the existing policy document. Significant changes

included acknowledging the importance of the Coho and Steelhead Recovery Plans and setting clear policy guidance to Cal Fire and DF&G for protection, maintenance and restoration of salmonids.

The third was the development of the charter and framework for the Technical Advisory Committee (TAC) and contracting for a review of the scientific literature related to management of riparian zones and salmonids. I partnered with Board member Nawi on a subcommittee of the Forest Practice Committee to work with staff to guide the development of the TAC and insure that information from the literature review would inform the Board's review and updating of the salmonid protection rules.

The fourth accomplishment was my efforts to bring together members of environmental groups, industry and agencies to review the fuel treatment standards being used in the Board's emergency fuel reduction and exemption rules. The existing standards were inhibiting significant amounts of hazardous fuels from being economically treated. I was able to guide the development of new standards that met the objectives of all stakeholders.

During my next term I hope to see new rules for the protection of Salmonid habitat passed and implemented. I have devoted myself to the development of these rules and hope to see an effective and efficient package passed by the Board in September. The Board needs to continue to review its road construction and maintenance rules in order to provide clarity and insure that water quality is being protected. I also want to continue to develop rules that encourage fuel reduction and the maintenance of forest health. The revision of the Fire Plan will also be an important project that will help to guide fire policy into the next decade.

My goals for the Policy Committee include developing a joint policy with the State Water Quality Control Board, developing an effectiveness monitoring program that will provide an adaptive management feedback mechanism for future rule review, and finishing our review of the conversion process regulations.

I will consider my next term a success if the Board can bridge the gap between the state agencies that have responsibilities involving forestlands. The Department of Fish and Game and Water Boards are key members of review teams and have overlapping mandates with CalFire and the Board. If the Board can maintain open communications, work to solve mutual issues and eliminate inefficient duplication, then I will consider my time on the Board well spent.

***Question #2 - Your board has few staff and depends on the Department of Forestry and Fire Protection for much of its information. What board and department staff are available to assist you with your often-complex issues? How are you able to regulate an entity on which you depend for information?***

The Board does rely on Cal Fire staff as well as expertise from other state and federal agencies and the public. We currently have three full time professional level staff including our Executive Officer and three clerical staff. We have been able to call upon CalFire and other agencies for technical information with very timely results, but budget cuts are beginning to affect the ability of the agencies to participate. The Board has also used panels of academic and private experts to address key issues such as fire and fuels management, riparian protections and urban forestry. When budgets allowed, the Board used field hearings and tours to see the issues on the ground and hear from local experts and the public on what are the best solutions for the complex fire and forest management issues that we grapple with.

In general, I have found Cal Fire employees and management to be forthright and sincere in their desire to fulfill their mission as a state agency. Cal Fire also has their self interest and conflicting priorities that sometimes need to be sorted out by the Board. The varied experience and background of Board members helps in choosing the best forest and fire management policies and regulations for the long term benefit of Californians.

**Question #3 - Does the board monitor CalFire's efforts to reach out to middle and high school students to encourage them to pursue careers in forestry or firefighting?**

The Board has received periodic reports from CalFire on some of their outreach efforts including Project Learning Tree, The Forestry Challenge, Forestry Institute for Teachers and Forest Conservation Days. Most of these programs are private or volunteer education programs that the Department participates in. I am not aware of any specific CalFire programs dedicated to encouraging careers in forestry and fire fighting.

## **Salmon Protection**

**Question #4 & 5- You did not attend your board's April 8<sup>th</sup> meeting where the board voted to publish notice of the proposed rules package with options. But you and board member Nakamura privately assembled a 74-page document that went to board members on May 1<sup>st</sup> with 33 changes to the proposed rule package. Again, at the June 25<sup>th</sup> board meeting, you presented a document that differed substantially from your staff's draft of the Threatened and Impaired Watershed rules and from the recommendations of the state and federal agencies that testified, though you stated the science was very clear for your proposals. Your document was not made available to the public or to state and federal agencies, including your own board, prior to the meeting. In fact, it was four hours into the meeting before your document was made available to the public attending the meeting that day.**

***Please explain why you chose to present your views in this manner on two occasions. How do you reconcile this approach with your responsibility to protect the public's interest?***

Before answering these questions, I need to add some information to the statements made in your introduction to the Salmon Protection issues.

When I was appointed to the Board in 2006 and came before this committee during my first confirmation hearing, my number one issue to address during the first year of my term was the Threatened or Impaired Watershed (T&I) rules extension and review. At that time I believed that the continuation of these rules as interim was not acceptable and that we needed a strategy and the leadership to make salmonid protection rules a permanent part of the regulations. I was appointed by the Board Chairman to sit on the Forest Practices Committee (FPC) which was charged with reviewing the rules and developing permanent rules. Over the last three years, I have played an active role in developing the strategy and providing leadership to move a package of salmonid habitat protection rules to the final stages of review and hopefully, adoption.

The effectiveness of the original T&I rules were never completely evaluated leaving the Board with little information to base revisions on. I actively supported the creation of a Technical Advisory Committee (TAC) to develop information and a literature review of new information relevant to forest management and salmonid protection. The work of the TAC did not delay the review of the T&I rules, but was a critical first step before meaningful revisions could be made. As noted in your letter, NMFS criticized our existing T&I rules as not being based on science. The Board needed to gather and evaluate the science before we could begin reviewing the effectiveness of the rules.

The TAC process was supported by agencies and stakeholders and included agency, private and academic scientists to guide the review. They provided a very valuable "primer" of stream riparian functions and the potential impacts from forest management. Unfortunately, a process that we had hoped would take 6-9 months stretched into almost 2 years due to budget and contracting delays. The final literature review and report has been a valuable source for guiding policy and creating rules that address issues relevant to salmonid protection and restoration.

Once the TAC reports were completed, the FPC instructed staff to meet with CalFire's watershed and regulations specialists to prepare a draft of revisions to the T&I rules that reflected the findings in the TAC reports. The science review provided many areas of strong agreement on appropriate protections and mitigations for salmonid protection. The science review also revealed new areas for protection that had not been part of the original T&I rules. The review also included many areas where strong agreement was lacking on the need for or

effectiveness of some protection measures. All of this information was reviewed by staff and an array of options was developed to integrate the findings into a draft rule. Some protection goals could only be met with one management prescription while others had a number of options for achieving the goal. Staff brought their opinion of what options or range of options would meet our protection goals to the FPC for review.

The FPC in its public meetings and workshops reviewed the staff recommendations and options. Many of the protection measures had more than one option which in some cases the FPC made the decision to choose a preferred option. In other cases the FPC chose to leave the options in the draft package for review by the full Board. This resulted in 33 options in the draft that the FPC presented to the full Board in April. This work over the course of 18 months created the draft that was finally presented to the Board at the April 2009 meeting. The large number of options for the full Board to consider was a point of disagreement within the FPC. I felt that the FPC was "passing the buck" and that the options were confusing and complicated and should be resolved by the FPC. I also recognized that we needed to notice a package in April in order to allow ample time for public comment, revisions and approval for a January 2010 implementation date.

I had originally believed that we would be ready to notice a rule package in March and was not able to alter my plans to miss the April meeting. I did meet with staff and Member Nawi in late March to try and resolve some of the issues that I knew would erupt during the vote to notice the rules. I agreed at that time that our best option was to notice the package in April with as many changes as possible to reduce confusion.

Member Nakamura and I, as members of the FPC, felt that the confusion and frustration surrounding the many options in the noticed package was unfortunate and that we should try and show how we felt the options could be combined into a cohesive and consistent package of rules. We did not create the 33 options but prepared a possible compilation of the options into a draft that was presented to the Board at the May 1 meeting. Our intent was to pass on our understanding of the science findings and how the options presented by the FPC could fit together. Many of the Board members thanked us for our efforts and said that it helped them to see that the options were not as confusing as first thought. Both Member Nakamura and I had been absent from the April meeting and had not been able to communicate this to the Board before the May meeting.

The revised T&I rules were finally noticed on May 8, 2008 and a public hearing scheduled for June 24 with Board deliberations scheduled for June 25. Written comments were received by the Board including a very detailed and extensive rewrite of the package by CalFire and the Department of Fish and Game (DFG) which was not received until late Friday, June 19. I received the final package of written comments from Board Staff on June 23 and began to review the

comments for suggestions for any changes that I thought should be included in a revised draft and also for which noticed options the commenter felt were most appropriate.

After the oral comments were heard on June 24, I began to compile my ideas for a revised package of rules that I hoped would be re-noticed for final review and eventual adoption. I used the many agency and public comments as well as my understanding of the science review and forest management practices to prepare a draft that I hoped the Board would support as a balanced approach to Salmonid Protection. My draft included many of the ideas presented in the joint CalFire/DFG proposal, water board ideas and my selection of the noticed options that would provide salmonid protections and also the flexibility to actively restore habitat where it is degraded. I came prepared to present my compiled draft as a motion to the Board on June 25. I offered to explain my draft and was granted the time by the Board. The Board's deliberations eventually created a new draft based on the CalFire/DFG draft that included new options. This new draft has now been noticed for a public hearing in September.

I believe that the public's interests have been advanced by my efforts due to the time I took to thoroughly review their comments and by my efforts to integrate them into a new draft. I believe this is my duty as a Board member and that I would have been derelict in those duties if I had not made this effort. The joint agency draft did not take the public's comments into consideration and therefore to accept it as complete would not have done justice to the public process.

***Question #6 - Please explain in laymen's terms why your understanding of the science underlying your proposals is at such significant variance with the views of the state and federal agencies that testified in support of the original rules package, including CalFire and the Department of Fish and Game.***

I do not agree that my understanding of the science is at odds with the state and federal agencies. I stated during the Board's deliberations that there is very good agreement for much of the science that is used as the basis for the noticed rule revision. The science review revealed the important elements for protecting and managing riparian habitat and also provided many options for achieving these goals. There were some cases where I did not agree with the some of the agencies on which option was the best, but there are also cases where the agencies did not agree amongst themselves. This is the role of the Board to sort out these differences and make the best choice for the resource and the people of California.

The main difference that I had with portions of the CalFire/DFG draft was the lack of flexibility it provided to address the site specific variability found in California's

anadromous streams and the rigidness of the approach their draft took in applying the rules.

The agency perspective is that their approach provided ease of enforcement and review, but that from the fisheries protection and restoration perspective I believe it did not give landowners incentives for active restoration. The CalFire/DFG draft did not provide the levels of protection and restoration that I felt the public is demanding. Their approach created a “hands off buffer”, with a difficult process for initiating restoration of habitat. I believe that the public is demanding restoration sooner than later and the CalFire/DFG draft would not achieve this goal.

The draft that I proposed included many of the suggestions from the CalFire/DFG draft that I agree with as well as from the water boards and the public. The science that supports riparian buffers, high value stream features (so called “hot spots”) and the need for site specific flexibility are all included in my draft. My draft was a compilation of the science findings and ideas from the noticed draft and comments from the public and agencies.

***Question #7 - What impact will the new rules have on timber operations if they do not meet federal no take requirements?***

The rules are intended to provide protection to riparian habitat and lead to its restoration where it is degraded. The THP preparation and review process also adds an additional layer of analysis for each operation that can identify any potential risk for take and develop additional mitigation to prevent take if needed.

If a landowner still finds that a take could occur, a federal Incidental Take Permit (ITP) can be applied for from National Marine Fisheries Service (NMFS). The landowner can also seek a Habitat Conservation Plan (HCP) from NMFS which would provide for a long term agreement on how management will take place to minimize take. An ITP is usually granted with the HCP.

## **California Fire Plan**

***Question #8 - How often is the California Fire Plan reviewed by the board?***

The California Fire Plan does not have a set schedule for review and updates.

***Question #9 - What is the timeline for the board’s review and how is it being undertaken?***

The Boards Forest Protection Committee has been reviewing the Fire Plan and has developed a Fire Plan Review Steering committee. The committee is composed of representatives of the fire fighting agencies from state, federal and

local jurisdictions. They have been meeting regularly and intend to have a draft revised plan by January, 2010.

***Question #10 - What has the board learned in its review of how forest fires are fought?***

I am waiting for the report from the Forest Protection Committee on the results of the Fire Plan review to see what the current issues and solutions are to preventing and fighting forest fires. The Board has been briefed on many current fire issues since I have been a member from which I have learned a few key points.

- Fuels treatments do work in modifying fire behavior and allowing more effective suppression. The Angora fire at Lake Tahoe, the Blacks Mt fire and many others have proven that thinned forests can stop a crown fire and allow fire fighters to fight the fire on the ground. At the same time a wind driven fire such as the Angora can still push its way through treated areas. No forest is fire proof.
- The Angora and recent southern California fires have shown that flammable debris from burning structures can move between structures and carry a fire through a residential area. New building codes that specify fire resistant materials and construction techniques are being implemented that will address this problem.
- Fast and effective initial attack is still the preferred approach to fire fighting. Putting the fire out when it is small is a key strategy. Once a fire becomes large, it becomes difficult to control and puts many more structures and fire fighting personnel at risk. Even fires in wilderness areas and parks that may be a part of the natural ecological processes many times escape their preserve boundaries and then require massive efforts to control. The fires in the Trinity Alps last year took thousands of firefighters to control and involved a tragic helicopter crash.
- The recent southern California fires that required huge evacuation of citizens have raised the question of whether adopting a "Shelter In Place" strategy would be a safer approach. This approach has been applied in California but recent tragedies in Australia that used Shelter in Place are reason for further evaluation.

## **Timber Harvest Reviews**

***Question #11 - How do you as a board member monitor the degree of cooperation that takes place?***

My full time job is as the Timberland Manager for Timber Products Company. Our company files approximately 10 THPs per year which gives me an opportunity to observe the interaction between the agencies that review the plans. I also informally ask agency personnel and other Registered Professional Foresters how the process is working.

The Policy Committee, which I Chair, also conducts an annual review of recently passed rules. During the last two reviews I have asked CalFire to provide information on the THP approval process and any rules which are creating confusion or disagreement during THP review. This rule review workshop also encourages the public and other agencies to submit their comments on how the process is going. From the Policy Committee, any information relevant to possible rule changes is forwarded to the appropriate Board committee.

The Board has developed joint policies with the review team agencies to address some of the contentious issues in the THP process. The recent joint policy with the Fish and Game commission dealing with salmonids is an example. We are also working on a policy with the State Water Board.

## **Disease**

### ***Question #12 - How does the board monitor the spread of Sudden Oak Death or other diseases that affect California forestry?***

The Board receives monthly updates from the Oak Mortality Task Force. The task force was created by the Board to monitor the spread of Sudden Oak Death (SOD) and the efforts being made to prevent further spread and eradicate the disease. The Task Force was structured to act as the incidental command system to deal with this fungus. They have coordinated with other state and federal agencies and have been asked to bring any needed rule changes to the Board to deal with SOD.

The Board also has the California Forest Pest Council which makes monthly reports to the Board on vegetation, insect and disease pest issues throughout the state. The Pest Council also publishes an annual Pest Conditions Report that is available on the Web. This report provides timely tracking of pest conditions and allows trend monitoring from year to year. The Board can use this information for declaring Zones of Infestation if necessary which then can require special rules for preventing the spread of the pest or treating infected areas.

## **Budget**

### ***Question #13 - How have budget cutbacks affected your board's operation? How are you kept informed of budget cutbacks at your own board and at CalFire?***

Budget cuts continue to affect the Board's operations as the current budget has unfolded. They include;

- Eliminating travel money for meeting in locations other than Sacramento. This has eliminated opportunities for the Board to visit different regions of California to view forest and range conditions and fire prevention and suppression projects.
- We have recently been informed that reductions at CalFire may make it difficult for their staff to support board requests for information and reporting.
- State agencies that normally fully participate in our rule making and fact finding meetings are indicating that budget cuts no longer allow them to devote staff to our meeting.

The Board receives monthly reports from the Director of CalFire on budget issues including emergency fire fighting funding. The Board itself has a minimal budget which has not grown over the years. We rely upon CalFire for additional funding for special projects such as the recent T&I literature review. We expect that the opportunity for similar funding in the near future has been eliminated.

Thank you for the opportunity to answer your questions. I look forward to the hearing on August 24 to answer any other questions and to provide additional information on these written questions.

Sincerely



James J. Ostrowski  
Member, California Board of Forestry and Fire Protection  
RPF #2187

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SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIRMAN

July 24, 2009

*Bruce Saito  
Responses*

Bruce Saito  
Los Angeles, CA 90015

Dear Mr. Saito:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the Board of Forestry and Fire Protection on Monday, August 24, 2009. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by August 14<sup>th</sup>.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 14<sup>th</sup>.

**Statement of Goals**

1. *What have you accomplished in your first term as a member of the Board of Forestry and Fire Protection? What do you hope to accomplish during your next term? How will you measure your success? **The most significant accomplishment of the Board has been the approval and passing of the Jackson State Demonstration Forest Management Plan. In my second term, the Board will pass a Threatened and Impaired Coho Salmon rules package, finalize Northern Spotted Owl regulations, finalize and issue a State Fire Plan and complete and implement a comprehensive Climate Action Plan, in cooperation with the Air Resources Board. Our success will be measured by the approval of these, and other important rules and policy legislation.***
2. *Your board has few staff and depends on the Department of Forestry and Fire Protection for much of its information. What board and department staff are available to assist you with your often-complex issues? How are you able to*

**Senate Rules Committee**

AUG 2009

Appointments



*regulate an entity on which you depend for information?* **Executive Officer, George Gentry, does an incredible job at juggling very limited resources and staff to accommodate and support the Board. In addition, the industry, environmental constituencies and the general public, contribute feedback and countless hours to qualify and give merit to the process. Each Board Committee is assigned Cal Fire staff and for me, as a Resource Protection Committee member, Chris Zimney has provided information, research and support above and beyond the normal call of duty. Other Cal Fire staff, such as Jeff Stephens (who recently retired) are assigned specific committee or ad hoc committee tasks and in since the first of the year, the Director has committed additional Cal Fire staff to assist and support the development of the Fire Plan. Each committee depends heavily, on the support of the staff, with oversight by the Executive Officer, to regulate the flow of information and follow-up.**

3. *Does the board monitor Cal Fire's efforts to reach out to middle and high school students to encourage them to pursue careers in forestry or firefighting?*  
**Absolutely. The Board, over the years, has actively supported Project Learning Tree and other Environmental and Forestry education programs and many board members, especially our most recent appointments, Board Members Gary Nakamura and Doug Piirto, are very active in outreach programs to youth.**

### **Salmon Protection**

Salmon, from San Francisco to the Oregon border, have experienced a significant decline in the past 40 to 50 years. According to a study done for the National Marine Fisheries Service, wild populations of Coho salmon today are less than one percent of what they were in the 1940s. Many other salmon populations have experienced precipitous and prolonged declines, with some in danger of extinction.

In 1994 the Department of Fish and Game (DFG) petitioned the board to list Coho salmon as a sensitive species. The board declined. In 1996 the state Fish and Game Commission listed Coho salmon as endangered. Then, in 1997 the federal National Marine Fisheries Service (NMFS) listed Coho salmon as threatened. The federal government has also listed steelhead trout, spring-run Chinook, and coastal Chinook as threatened, and winter-run Chinook as endangered.

The timber industry is affected by the state's salmon listing. Under current statutes, if a timber operation might kill salmon, the timber company must first obtain an incidental take permit from DFG. Under the federal Endangered Species Act, no killing of salmon or destruction of their habitat that leads to their killing is allowed.

In 2000 the board amended the Forest Practice Rules (FPRs) to include Protection for Threatened and Impaired Watersheds regulations to enhance protection of listed salmon species. These regulations were adopted in 2000 because a state scientific review panel concluded that FPRs did not sufficiently protect salmon. The Threatened and Impaired Watersheds rules were to be a first step in increasing salmon protections. That is the only step that has been taken to date. In 2000 the National Marine Fisheries Service said they had reviewed FPRs; they concluded "that although the FPRs mandate protection of sensitive resources such as anadromous salmonoids, the FPRs and their implementation and enforcement do not accomplish this objective." These regulations were temporary and were extended in 2003, 2004, 2006, 2007, and 2008. They will expire December 31, 2009.

In July 2006 the Secretary of the Resources Agency called on the board and DFG to develop a set of comprehensive rules to protect and restore all salmon populations. But in September 2006 the timber industry requested that the board create a Technical Advisory Committee to review scientific literature that supported the development of permanent salmon protection rules. The Board agreed but this process effectively stopped the development of salmon protection rules for over two years until October 2008 when the review was presented to the board.

In 2009 the board requested that staff develop necessary salmon protection rules, and the board noticed the staff-proposed rules earlier this year. Board members also added 33 optional amendments to the noticed rule package. In a June 22, 2009, letter to the board, NMFS said if the board adopted "the most protective options and approve them as final rules, the new set of rules would be a step forward and provide a foundation for development of a state forestry HCP" (habitat conservation plan).

At the board's June 24 and 25, 2009, hearing, DFG, the Department of Forestry and Fire Protection, the State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and NMFS all supported the board staff drafted rules, with some additions. In an historic first, DFG and the Department of Forestry and Fire Protection submitted a joint letter of support for the staff drafted rules and joint comments on clarifications and changes to those rules. The representative of NMFS indicated that the rules do not meet the no-take requirements of federal law and indicated that federal enforcement could occur in the future.

4. *What impact will the new rules have on timber operations if they do not meet federal no take requirements? I am not an expert in this field but it is my understanding that timber operators will be required to comply with all no take requirements or they will face the appropriate consequences.*

## California Fire Plan

The board is responsible for developing both policy and regulations for the forestlands and fire protection system of the state. The California Fire Plan is the state's road map for reducing the risk of wildfire. The plan emphasizes what needs to be done before a fire starts. The plan looks to reduce firefighting costs and property losses, increase firefighter safety, and contribute to ecosystem health. The current plan was finalized in March 1996.

In an October 24, 2007, letter to the Governor, the board said it would begin a critical in-depth review of the California Fire Plan.

A September 2008 article in *Ecosystems* by a senior member of the U.S. Forest Service concluded that forest fires in the Sierras are more frequent and intense, and firefighting professionals may need to reassess the fire suppression methods currently used—quick suppression attacks with the goal of total suppression.

5. *How often is the California Fire Plan reviewed by the board?* **Every month and periodically, by special sessions, in between ad hoc or committee meetings.**
6. *What is the timeline for the board's review and how is it being undertaken?* **The timeline, originally, was to produce a final plan by the end of this year but that plan has been slowed down, I believe, by changes in the Department, most significantly with the resignation of the Chief Fire Marshall earlier in the year. A special Fire Plan Steering Committee was formed, in March, to work specifically on the development of the Fire Plan. This committee now meets every month, usually on the third day of our Board and Committee meeting week.**
7. *What has the board learned in its review of how forest fires are fought?* **Cal Fire does an incredible job, with very limited resources, especially in the last 3 years with all of the major events and fires that the State has encountered. I believe the most significant hurdle or challenge will be with the United States Forest Service (USFS). They have been very responsive and work cooperatively with Cal Fire but their mission, for fighting wildland fires, is different and must be more in line with Cal Fire's fire fighting priorities.**

## Timber Harvest Reviews

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies—DFG and the regional water quality control boards—have statutory mandates that, on occasion, are more protective of resources and more restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by DFG or regional water quality control boards.

8. *How do you as a board member monitor the degree of cooperation that takes place?* **Our committees meet every month, and at times, when needed, more often than every month. The committees, with the support of staff and DFG and regional water quality control boards, provide reports and dialogue that we consider and respond to.**

## Disease

9. *How does the board monitor the spread of Sudden Oak Death or other diseases that affect California forestry?* **Yes. The CA Oak Mortality Task Force reports to the Board every month and from time to time, has provided special or more detailed presentations on the status of Sudden Oak Death (SOD) findings, research and workshops/conferences.**

## Budget

10. *How have budget cutbacks affected your board's operation? How are you kept informed of budget cutbacks at your own board and at CalFire?* **The Board is already woefully understaffed so new budget cutbacks have made staffing and support of committee and board work that much more challenging. Projects or work on rule packages have been hampered by the reduction of staff time or freezing of contracts. Budget and funding restraints have also affected the delivery of policy issues in other ways as well. The rules for the Northern Spotted Owl has been a drawn out debate because there have been provisions, in the past, where the Fish and Wildlife Services would have provided oversight but since the funding for these programs was eliminated the new or revised rules cannot move forward because the new plan for oversight does not provide adequate protection, according to the environmental community. The Executive Officer, Director and Deputy Director have been thorough at reporting possible, projected and actual budget reductions or changes. These reports are conducted at every monthly board meeting or through timely email communications.**



## Mission and Goals

CTC is responsible for maintaining teacher quality by accrediting teacher preparation programs, credentialing teachers, and monitoring teacher conduct.

1. *Please provide a brief statement of goals that you hope to accomplish while serving as a member of CTC. How will you measure your success?*

Teaching is a family legacy, spanning four generations. My family has left me a legacy of service to others and a special passion for the field of education. I have been fortunate to spend the last 27 years as an educator.

The goal of CTC is to ensure a quality education for all students, a goal that is concurrent with my own purposes.

Research demonstrates that the key to success for learners is the teacher and access to that teacher. As a commissioner serving on CTC, my goal is to further its mission of developing high quality teachers and administrators, those who directly influence the education of our greatest California resource, our children. In addition, high quality preparation programs in our universities are vital to the development of our future educators and my goal is to assure that California continues to be a leader in this field.

Measuring individual success as a commissioner is less applicable than measuring the success of the Commission as a whole. I bring my daily classroom experience to the commission and am able to provide an "in the trenches" perspective. I serve as a reality check that Commission actions have the intended consequences. My personal role is to demonstrate due diligence in attending commission meetings fully prepared with my reading and study of the agenda completed. I am responsible for asking thoughtful questions. I must listen carefully to presentations made by staff and our constituents, bearing in mind that the ultimate goal is always to provide the highest quality education for every student. As the numbers of teachers who choose to remain in education after five years continues to increase, as students continue to make steady progress toward proficiency, and as the diverse populations that we serve continue to have their individual needs met, I will count myself an effective commissioner.

2. *Some 120,000 young people drop out of high school and middle school annually in California. What role, if any, should the CTC play in turning this drop out crisis around? Please be specific.*

A multi-faceted approach will be necessary to address the current drop out rate, which causes a staggering loss for California. Preparing and supporting teachers and administrators are of vital importance.

Teachers: Commission work focusing on the ranks of our teachers is reaping tremendous benefits. Teachers are better prepared than ever, according to a survey of 10,000 school principals in a study conducted by CSU, to face the challenge of today's classrooms. Authorized by SB 1209, the Teacher Performance Assessment (TPA) is the newest program that allows teacher candidates to demonstrate skills in differentiating instruction. Preparation programs have used data from the TPA to improve their instruction for new teachers.

Two-year induction programs support new teachers in further developing their repertoire of skills. The Beginning Teacher Support and Assessment (BTSA) program matches high quality mentor teachers with the new teacher. Teacher retention has improved as a result of the induction program. As a BTSA support provider, I can personally attest to the rigor of the induction program and the tremendous effort that is put into the support of this important asset, our teachers.

School Administrators: Developing a school climate that is welcoming and relevant but rigorous is vital if students are to connect to learning and to become contributing members of our society. CTC is in the process of reviewing the preparation of administrators. We also seek to make available, the best research practices and in September, the Commission will host a symposium entitled *Leading and Learning in California Schools: Preparing and Supporting Effective School Leaders*.

The Commission sponsors annual seminars for educators to examine "best practices". This past June, the challenge of the school drop out rate was addressed in seminars focused on successful teaching practices for specific subject matter. The keynote speaker, Tom Welch, spoke about connecting technology to current practice to keep education exciting and relevant, as well as accessible to students.

3. *The Budget Act of 2009 permits school boards to transfer to general purposes, funding for beginning teacher support and assessment and alternative certification. How will these changes impact the ability of intern*

*and novice teachers to complete their credential programs? How will the CTC help the state assess any such impacts?*

Working with Local Education Agencies (LEA's) and teacher candidates, the Commission is working to ensure that interns and new teachers are able to complete their programs.

Federal stimulus monies have been applied for to replace reductions in the Funded Intern Program. This could help fund positions that were cut.

The Intern Programs have been very responsive to program needs throughout California. When class-size reduction occurred, multiple subject credential holders were in high demand and interns were placed in multiple subject assignments. Today, the need is for Education Specialists (special education) and Math/Science single subject holders and once again, interns have been placed in those assignments.

On a personal note, this question is of special importance to me because 3 of my Kindergarten Team members completed year 1 of their BTSA induction program and also received their pink slip this year. Ensuring that they have the means to complete induction is necessary and the right thing to do. The Commission will continue to work with LEAs to solve this dilemma.

4. *In the past, CTC has been criticized for significant backlogs and inefficiencies in the processing of applications and other administrative functions. What has CTC done in recent years to address those issues and make processing and administrative requirements more streamlined? Where do you see opportunities for additional improvement in these areas?*

I received my teaching credential in California in 1976 and specialist credential in 1977. At that time, it took 6 months to receive my credential certificate from Sacramento so universities issued a certificate of completion so that I could begin employment immediately. Renewal of my credentials took 6-8 months so I would begin the process of renewal 8-10 months in advance. I last renewed my credential in 2005. My application for renewal was processed in 10 days (not months). There is currently NO backlog in application processing.

In 2005, with support from the Legislature, CTC put a multi-faceted program into place to eliminate the backlog problem. Technological infrastructure enabled CTC to increase the number of applications processes

electronically. Extended work hours for a period of time, as well as the support of all divisions at CTC to catch up on the backlog, also helped to eliminate long wait time. About 70% of applications are processed on-line within 10 days.

Paper applications are processed within the time line delineated by statute, usually in less than 50 days. As more types of applications are included in the on-line process, the numbers of those processed in 10 days will increase.

CTC also works with the Governor and the Legislature to make statutory changes, sponsoring legislation that streamlines the application process.

### **Accreditation of Teacher Preparation Programs**

One of the core responsibilities of the commission is to accredit teacher preparation programs to ensure they are of sufficient quality and are producing highly trained teachers. All institutions offering teacher preparation programs are required to be accredited by CTC. The Accreditation Study Work Group began working in June 2004 to review and suggest revisions to the commission's accreditation system for educator preparation. In 2006 the commission adopted a revised Accreditation Framework that provides for biennial reporting and regular site reviews conducted by Accreditation Teams.

5. *What is the purpose of the CTC accreditation system? Do you believe the proper systems are in place to support this purpose?*

The purpose of the accreditation system is to focus on high quality programs for educators to ensure that our students are provided effective programs. **Accountability** is ensured by on-going data collection, periodic site visits and focused intervention where necessary.

**Quality** is maintained by adherence to program and candidate performance standards. These standards are aligned to the K-12 Student Academic Content Standards and designed to prepare effective teachers for our diverse population.

**Program Improvement** occurs because data on candidate competence is analyzed and applied to refine preparation programs. Accreditation decisions are also based on this data.

**Assessment** of programs includes reports by the program sponsor on candidate competence and performance on assessments and also employer feedback. Program changes are data-driven. All information is presented to the Committee on Accreditation.

**Site visits** are conducted by teams of trained evaluators. The teams interview graduates, employers, program faculty and administrators. A

recommendation to give accreditation or not is made by the team with final action by the Committee on Accreditation.

6. *Is CTC's accreditation process now fully operational? Is there a backlog of programs requiring review?*

All preparation programs are now participating in the accreditation process. Preparation programs are organized into cohorts and each cohort is in a specific seven-year cycle of the accreditation process. Activities include site visits, program assessment and biennial reports.

There is no backlog in the accreditation process. All aspects are completed in a timely manner.

7. *How has the CTC increased the accountability of its accreditation system?*

The CTC has increased the accountability of its accreditation system. In the old model, institutions for teacher preparation were in contact with the CTC once every five or six years. Now, these same institutions are interacting with the CTC staff or Committee on Accreditation five or six times during the seven-year cycle and sending the biennial reports which are responded to.

The accreditation system is responsive to the public and the education profession because it requires that preparation programs demonstrate adherence to educator preparation standards and their use of data to refine their programs. The site visits ensure that programs don't just look good on paper. Candidate, instructor and administrator interviews provide evidence of appropriate instruction, advice and support. This process also encourages programs to use systematic and comprehensive evaluation processes to provide for rigorous content and pedagogical development of teacher candidates.

8. *Teacher preparation programs submitted their first biennial reports in 2008, providing aggregated candidate assessment and program effectiveness data. What is the role of the biennial reports in the accreditation process, and how does the commission make use of these reports in assessing the quality of an institution's credentialing programs? Are commission members routinely kept informed regarding the findings and results of accreditation visits including feedback and technical assistance provided by CTC staff to institutions and programs?*

As mentioned before, preparation programs submit reports to the CTC every 2 years. Institutions collect and analyze data on candidates and programs for two years and submit their data years one, three and five in the seven-year cycle. They base their plans for program improvement/changes on their data.

In the report, the types of programs it offers and the numbers of candidates in each program are given. Any changes made to the program since the last report or site visit are also discussed. The areas of strength and concern are also reported.

The report ends with a plan of action that addresses how the institution will make changes to deal with any areas of concern.

As a result of the current revised accreditation process, institutions for teacher preparation report that they now make program changes for improvement based on report data.

The Committee on Accreditation (COA) is appointed by the CTC. It has 12 members who evenly represent K-12 faculty and higher education faculty. The COA reports to the Commission after each meeting and provides an annual report on its accreditation decisions for the year.

### **California Longitudinal Teacher Integrated Data Education System**

Currently, teacher data resides in different forms in multiple databases in different agencies at the state and local levels, with no mechanism for integration. This results in redundant data collection and maintenance, significant barriers to high quality analysis, and a lack of quality data to support state and local decision-making, monitoring, and compliance activities. The California Department of Education (CDE) and CTC are collaborating on the development of a teacher data system, the California Longitudinal Teacher Integrated Data Education System (CALTIDES), which will serve as a central state repository of information regarding the teacher workforce in the state. Earlier this month, California received a \$6 million grant for the teacher data system from the U.S. Department of Education.

9. *What is the status of the implementation of CALTIDES?*

The procurement contract for CalTIDES is set to be completed March 2010. Implementation is scheduled for Spring 2011.

10. *Once CALTIDES and CALPADS, the California Longitudinal Pupil Achievement Data System, become fully operational, in your view, how will the state student and teacher data systems inform local school districts and policymakers in terms of making data-driven decisions? Will these systems*

*help ensure that parents and the public have access to essential data on student outcomes and education services?*

CALTIDES and CALPADs will be history making. This is the first time that school districts and policymakers in California will have access to a statewide data system to aid them in decision-making.

Parents may use the data to choose schools that will meet the needs of their children. Educators will be able to better understand and respond to the needs of their students. Policymakers will have access to data to help guide their decision-making.

### **Teacher Preparation**

California has considerably fewer underprepared teachers than it did a few years ago. While 14 percent of teachers were underprepared in 2001, seven years later that figure is down to 5 percent. However, a report recently released by the Center for the Future of Teaching and Learning indicates that California is producing fewer new teachers, and enrollment in teacher training programs is declining. The report also discusses the growing demand for elementary school teachers over the next decade, as well as the shortage of teachers in the subject areas of special education, math, and science. One-third of middle school algebra teachers lack a preliminary credential or are teaching out-of-field, according to the report.

*11. How is the CTC preparing for the retirement of so many “baby boomer” teachers and what role should the CTC play in building the teacher workforce? What specific strategies is the CTC pursuing?*

The CTC is well aware of the looming deficit of teachers to fill classrooms in the not too distant future. Many factors play into the decline of candidate enrollment.

1. A career in education is no longer a safe bet for prospective teachers. The headlines are full of the mass layoff of teachers in districts throughout the state.
2. The cost of higher education leaves many in debt. A teacher’s salary will not allow for them to get out from under this mountain of debt in a reasonable amount of time.
3. Meeting the needs of a diverse population, many of which are second language learners, is a daunting task. Teaching is rocket science. Juggling a professional life that has such tremendous responsibility with having a personal life is difficult at best.

4. Teacher salaries are not commensurate with other professions. As a seasoned teacher, I easily put in 50-60 hour weeks planning, teaching, assessing, performing adjunct duties, serving at the local district, county and state levels, attending student activities, meeting with parents, meeting with administrators, meeting with Senators.
5. Traditionally, teachers have been able to rely upon having excellent health benefits. This is no longer the case. Teachers across the state are being asked to have less covered and to pay more for what they do still have. Fewer options are offered. Families are no longer covered or are covered at exorbitant costs.
6. Out of pocket expenses can mount up quickly. As budgets shrink and teachers are asked to do more with less, teachers dig into their own pockets to supply pencils, paper, glue and other materials that will allow them to continue to run their programs. Parents assist where they can but in low socioeconomic schools, such as my own, asking for donations can mean that there is less on the table for dinner that week for the family.

The CTC must continue to ensure high quality teachers for California's students. Enlisting the support of our Governor and Legislators will be vital. No one questions the commitment of the stakeholders to ensuring every student has a highly qualified teacher. Improving/stabilizing teacher compensation and benefits will help ameliorate the problem. Institutions must continue to do outreach to entice the best of the best into education. The continuation of supportive induction programs, once excellent preparation has been completed, is necessary to assist with teacher retention. The state of California has a highly underutilized force that could help with teacher recruitment across the state: The California Teachers of Year. These are professionals who represent the diversity in the field, who are inspired educators and who have a passion for teaching. They are living and teaching all over the state.

12. *What is the role of the commission in ensuring that teacher preparation programs are preparing teachers capable of meeting the challenges of high-need schools, core subject matter areas, geographic regions, and special needs programs?*

The CTC has worked with the legislature to sponsor legislation that reduces red tape and streamlines the credentialing process.

The CTC Committee on Accreditation's activities include approval of new preparation programs in all areas, with the greatest number of programs being in special education.

The CTC has added six new subject matter authorizations in Math and Science. In the annual Teacher Supply Report, the number of credentials issued in these subject areas has increased steadily since their introduction.

13. *Should the State Board of Education's action to require all 8<sup>th</sup> graders to take and be assessed in algebra stand, what impact will the new requirement have on the demand for middle school math teachers? What would be CTC's role in helping the state meet the needs of students subject to the new requirement?*

Last Fall, the CTC chose to take a proactive stance by directing staff to study and assess the effectiveness of teachers providing math instruction in elementary and middle school classes and to create a plan to address issues related to teaching math. The Math Advisory Panel was formed to research and review state guidelines instructing the teaching of math and the preparation of math teachers. The panel also reviewed federal guidelines and conferred with national experts in the field of math and math teaching.

In August 2008 CTC approved new Career Technical Education (CTE) Credential Program Standards, streamlining and specifying the minimum requirements for both the Preliminary and Clear Designated Subjects Career Technical Education teaching credential.

14. *Has the commission considered the development of a multiple subject credential that integrates both subject matter competency and CTE experience?*

Educators with Multiple Subject credentials teach primarily in elementary and middle schools grades. Usually, this teacher instructs one group of students in all subjects (elementary) or teaches "core" subjects to middle school students.

Single subject teaching credentials are held by those teaching in middle and high schools where a particular subject is taught to various groups of students. CTE areas for single subject credentials such as agriculture, business, health, home economics and industrial technology are already in place.

A teacher with either type of credential is able to earn a CTE credential based on work experience in the CTE field in a streamlined fashion, bypassing the teacher preparation courses taken to clear the CTE credential. How much of the 9-12 unit CTE program is bypassed is addressed by the Local Education Agency offering the CTE credential program.

15. *Should teacher preparation programs do more to prepare qualified CTE teachers for the occupational fields most in demand today? If so, how?*

The challenge in attracting talented and experienced teachers into the schools in occupational fields that are in high demand today is the vast disparity in salary offered by the field and what one earns teaching CTE courses.

The CTC workgroup focused on CTE recommended and the Commission is pursuing regulations establishing a "Business and Industry Partnership Certificate". This certificate would enable individuals working in the field to teach for up to one year without any course work requirements. Those who catch the "teaching bug" would be given a preliminary CTE credential and then take the courses to clear the credential (teaching methods, working with special needs students, teaching English language learners).

16. *One of the key strategies for curbing dropout rates is providing students with rigorous but relevant learning, often including "hands on" experience in a particular field or discipline. This applied, integrated, more relevant teaching methodology is not readily available to most who seek a teaching credential. What can CTC do to enhance the number of teachers who are able to provide this type of learning experience to students? Please be specific.*

All credential candidates learn to make course content accessible to all students but accredited programs are able to provide their own emphasis within this requirement. There are some model programs integrating project-based learning into their teacher preparation programs. High Tech High and CSU Fullerton have such programs in place. In my local area, UC San Diego offers professional development in project-based learning through extension programs.

The CTC can make use of its best practices seminars to facilitate interest in and focus attention on project-based learning methodology and facilitate communication on this topic amongst teacher preparation programs.

The CTC can also discuss policy implications of requiring programs to offer specific course content in project-based learning. If local schools are emphasizing this type of learning, teacher preparation programs need to work with local districts to prepare candidates accordingly. The Commission can discuss how best to address the issue.

### **School Counselors**

17. *The California Association of School Counselors has been in discussion with the commission regarding the development of standards and accountability for school counselors. What is the status of these discussions?*

Input for the review of current standards for the accreditation of school counseling credential programs has already begun, with the review scheduled on the calendar for 2011.

At its April 2009 CTC meeting, an in-depth discussion on the competencies and professional expectations outlined by the CA Association of School Counselors' newly developed standards for the profession occurred. These standards for the profession will be one of the resources for the Commission's workgroup when it begins the review process.

The Commission will rely on the input of experts in the field as a part of the workgroup, as well as extensive input from the public and other members of the field. Alignment with the standards for accreditation with competencies and standards for the profession of school administrators will be considered.



CALIFORNIA LEGISLATURE

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CHAIRMAN

Steven Dean  
Responses  
Teacher Credentialing

June 12, 2009

Steven J. Dean, Jr.

Dear Mr. Dean:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Commission on Teacher Credentialing (CTC) on July 15, 2009. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by July 3, 2009

We would also like to receive an updated Form 700, Statement of Economic Interest, by July 3<sup>rd</sup>.

**Mission and Goals**

CTC is responsible for maintaining teacher quality by accrediting teacher preparation programs, credentialing teachers, and monitoring teacher conduct.

1. *Please provide a brief statement of goals that you hope to accomplish while serving as a member of CTC. How will you measure your success?*
2. *Some 120,000 young people drop out of high school and middle school annually in California. What role, if any, should the CTC play in turning this drop out crisis around? Please be specific.*

3. *The Budget Act of 2009 permits school boards to transfer to general purposes, funding for beginning teacher support and assessment and alternative certification. How will these changes impact the ability of intern and novice teachers to complete their credential programs? How will the CTC help the state assess any such impacts?*
4. *In the past, CTC has been criticized for significant backlogs and inefficiencies in the processing of applications and other administrative functions. What has CTC done in recent years to address those issues and make processing and administrative requirements more streamlined? Where do you see opportunities for additional improvement in these areas?*

### **Accreditation of Teacher Preparation Programs**

One of the core responsibilities of the commission is to accredit teacher preparation programs to ensure they are of sufficient quality and are producing highly trained teachers. All institutions offering teacher preparation programs are required to be accredited by CTC. The Accreditation Study Work Group began working in June 2004 to review and suggest revisions to the commission's accreditation system for educator preparation. In 2006 the commission adopted a revised Accreditation Framework that provides for biennial reporting and regular site reviews conducted by Accreditation Teams.

5. *What is the purpose of the CTC accreditation system? Do you believe the proper systems are in place to support this purpose?*
6. *Is CTC's accreditation process now fully operational? Is there a backlog of programs requiring review?*
7. *How has the CTC increased the accountability of its accreditation system?*
8. *Teacher preparation programs submitted their first biennial reports in 2008, providing aggregated candidate assessment and program effectiveness data. What is the role of the biennial reports in the accreditation process, and how does the commission make use of these reports in assessing the quality of an institution's credentialing programs? Are commission members routinely kept informed regarding the findings and results of accreditation visits including feedback and technical assistance provided by CTC staff to institutions and programs?*

## California Longitudinal Teacher Integrated Data Education System

Currently, teacher data resides in different forms in multiple databases in different agencies at the state and local levels, with no mechanism for integration. This results in redundant data collection and maintenance, significant barriers to high quality analysis, and a lack of quality data to support state and local decision making, monitoring, and compliance activities. The California Department of Education (CDE) and CTC are collaborating on the development of a teacher data system, the California Longitudinal Teacher Integrated Data Education System (CALTIDES), which will serve as a central state repository of information regarding the teacher workforce in the state. Earlier this month, California received a \$6 million grant for the teacher data system from the U.S. Department of Education.

9. *What is the status of the implementation of CALTIDES?*
10. *Once CALTIDES and CALPADS, the California Longitudinal Pupil Achievement Data System, become fully operational, in your view, how will the state student and teacher data systems inform local school districts and policymakers in terms of making data-driven decisions? Will these systems help ensure that parents and the public have access to essential data on student outcomes and education services?*

## Teacher Preparation

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11. *How is the CTC preparing for the retirement of so many “baby boomer” teachers and what role should the CTC play in building the teacher workforce? What specific strategies is the CTC pursuing?*
12. *What is the role of the commission in ensuring that teacher preparation programs are preparing teachers capable of meeting the challenges of high-need schools, core subject matter areas, geographic regions, and special needs programs?*

13. *Should the State Board of Education's action to require all 8<sup>th</sup> graders to take and be assessed in algebra stand, what impact will the new requirement have on the demand for middle school math teachers? What would be CTC's role in helping the state meet the needs of students subject to the new requirement?*

In August 2008 CTC approved new Career Technical Education (CTE) Credential Program Standards, streamlining and specifying the minimum requirements for both the Preliminary and Clear Designated Subjects Career Technical Education teaching credential.

14. *Has the commission considered the development of a multiple subject credential that integrates both subject matter competency and CTE experience?*
15. *Should teacher preparation programs do more to prepare qualified CTE teachers for the occupational fields most in demand today? If so, how?*
16. *One of the key strategies for curbing dropout rates is providing students with rigorous but relevant learning, often including "hands on" experience in a particular field or discipline. This applied, integrated, more relevant teaching methodology is not readily available to most who seek a teaching credential. What can CTC do to enhance the number of teachers who are able to provide this type of learning experience to students? Please be specific.*

### **School Counselors**

17. *The California Association of School Counselors has been in discussion with the commission regarding the development of standards and accountability for school counselors. What is the status of these discussions?*

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

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:LG

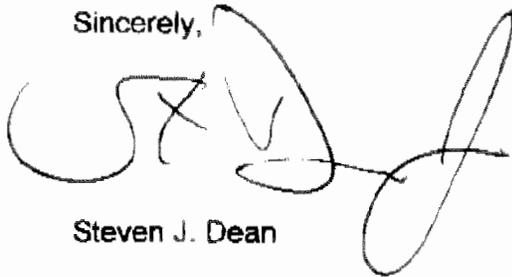
**Steven J. Dean**

July 3, 2009

Dear Mr. Steinberg,

Please find my enclosed responses to the Senate Rules Committee questions. I look forward to meeting you at the confirmation hearing on July 15<sup>th</sup> to clarify any of my responses.

Sincerely,

A handwritten signature in black ink, appearing to read 'SJD', with a large, stylized flourish extending to the right.

Steven J. Dean

**Senate Rules Committee**

JUL 06 2009

**Appointments**



1. As a member of the California Commission on Teacher Credentialing, I hope to help the Commission create and implement policies which will aid in the efficient credentialing of well prepared teachers, and that the teachers credentialed have access to whatever support necessary to ensure excellent education for our students and the highest retention of our finest teachers.

2. As a classroom teacher, I know the enormous role a teacher can play in keeping students motivated to stay in school. The CTC has played, and will continue to play, the very important role of preparing teachers to understand the individual learning needs of their students. About 6 years ago, teacher preparation programs were revised to assist teachers in tackling this issue and subsequent studies surveying principals have shown that teachers are better prepared today than before.

Another large part of the success of the revisions to teacher preparation has included the TPA, a test designed to show teachers where their strengths and weaknesses lie in reaching the individual needs of their students.

Retaining teachers past five years of teaching has been an enormous struggle for the country as a whole, but in California, teachers who finish their teacher preparedness programs are 12 to 37% more likely to continue teaching past five years than the national average. I believe that so much of this is due to the support provided by the programs introduced by the CTC and that the more experience and support teachers have, the better they can serve their students, identify students in need of additional support, and help keep them in school.

The CTC also conducts seminars yearly to discuss ways in which teachers can adapt their education to meet the changing needs of our students in a technologically changing world and conferences to aid administrators in supporting their faculties' preparedness.

3. Due to the Budget Act of 2009, some teacher preparation programs such as the intern programs may suffer from reduced funding. However, the CTC has applied for stimulus money to help avoid losses to interns who are receiving monies under the Funded Intern Program.

The CTC will continue to monitor all teacher preparation programs and intern programs through biennial reports, accreditation and site visits to determine if programs have been affected by the Budget Act of 2009 as well.

4. In the past four years, the CTC has modernized its ability to process applications and now 70% of its applications are processed electronically. The average turnaround time for an electronic application is 10 days. The other 30% of the CTC's applications for credentials are required by statute to be processed

**Senate Rules Committee**

JUL 06 2009

**Appointments**

in under 50 days. During months where a larger number of applications are submitted, the CTC has used overtime to help with any potential backlog. There is no backlog in application processing today.

There is more room for efficiency. As more types of credentials are added to the computer system, more applications will be processed electronically. Additionally, as other institutions (ie, universities) update their systems, the CTC will be able to securely receive applications and supporting documentation more quickly. This will increase the CTC's efficiency even more.

5. The CTC accreditation system is designed to ensure the quality of teachers in the State of California. There are many ways in which it accomplishes this task. Besides the site visits every seven years, the CTC continuously collects data pertaining to the competence of educators from teacher preparation programs and applies that data to drive program improvement. The CTC also requires consistent adherence to the state standards (which are aligned with the K-12 State standards). As a member of the CTC for a short time, I have already seen the very competent members debating validity to programs and making recommendations for changes where deficits may have been. There is no question that this system works very well to support the CTC's purpose.

6. Since the 2006 adoption of the revised accreditation framework, all elements of the new system have been implemented and all institutions preparing teachers are participating. The initial backlog of program reviews no longer exists.

7. Under the new accreditation system, the CTC interacts with institutions at least five times within their seven-year credentialing cycle. The CTC requires during those interactions that the teacher preparation programs document adherence to the state standards and use data to demonstrate their programs' effectiveness. Part of the visiting team's analysis of the data and documentation includes ensuring that high quality support and preparation are provided to students.

8. The biennial reports ensure accountability of teacher preparation institutions. The collection of program effectiveness data is required and recommended improvements based on that data are to be incorporated in the biennial reports. The CTC evaluates new data regarding those improvements in subsequent biennial reports or site visits.

A Committee on Accreditation (COA), appointed by the CTC, analyzes all biennial reports and submits its own report to the CTC on all accreditation decisions.

9. CALTIDES is expected to be operational by mid 2011.

10. In my school district, we take our STAR test results and analyze them thoroughly. We know, in all our core subjects, which standards are not being taught to our expectations and we attempt to use that data to change our curriculum or teaching practices. With CALTIDES and CALPADS fully operational together, all districts can do the same. Teacher preparation programs may benefit as well from the data and make adjustments to their curriculum. Parents may also use data to help make decisions about which schools their children might attend.

11. I believe that the CTC's responsibilities in building the teacher workforce lie in ensuring quality teacher preparation and mentoring to maintain and increase the number of teachers who enter the profession and especially remain in the profession. In my response to question number two, I indicated the numerous ways the CTC has done its part to increase teacher retention.

12. The CTC added six new subject matter authorizations in the fields of math and sciences in 2003 and continues to see increases in the issuing of these types of credentials. Aside from these authorizations, the CTC continues to accredit new programs yearly. The majority of these accreditations in recent years has been in the area of special education.

13. As a foreign language teacher, my opinion of whether the state should mandate algebra by the end of eighth grade comes from what I have heard from my colleagues who teach math. They believe that some students are capable of Algebra by the end of eighth grade and others are not. They would not disagree with Algebra as a goal, but would not mandate it for all students.

Mandating algebra in middle schools will obviously require elementary school and middle school teachers to change their curriculum to meet the needs of students. The CTC created the Math Advisory Council to examine issues related to the teaching of math and to develop a plan to address these issues.

14. A CTE credential can be obtained by anyone with a multiple subject credential by demonstrating competence and experience in a certain field. Multiple subject credential holders usually teach elementary school or middle school and the CTE credential is suited for single subject teaching, usually at the high school level. So, a streamlined integrated credential has not been discussed to my knowledge.

15. In the fifteen years that I have been teaching, the need for a Bachelor's and Master's degree for students to become competitive in today's workforce has increased tremendously. Our schools have focused attention on helping students fulfill these goals. As much as I feel that a technical education would sufficiently prepare many students to become competent in their field of study, this is not necessarily seen as sufficient in today's society.

Nevertheless, the CTC has created the Business and Industry Partnership Certificate to enable professionals to teach for one year. If the individual decides after one year to become a teacher, they will be given a preliminary credential and a pathway to a clear credential.

16. Some teacher preparation programs have emphasized an integrated project-based learning, which may be considered "hands-on". The CTC currently provides Best Practices seminars for teachers where methodology for project-based learning can be discussed.

17. At the April 24<sup>th</sup> 2009 CTC meeting, two members of the California Association of School Counselors presented recently developed standards for the counseling profession. The CTC's current standards for the accreditation of school counseling will be reviewed in 2011.

Carolyn McInerney  
Responses  
Teacher Credentialing

## Mission and Goals

CTC is responsible for maintaining teacher quality by accrediting teacher preparation programs, credentialing teachers, and monitoring teacher conduct.

- *Please provide a brief statement of goals that you hope to accomplish while serving as a member of CTC. How will you measure your success?*
  - I am hoping to represent the interests of school board members on the Commission. I am in contact with board members throughout the state, and will be a conduit for information to and from the Commission.
  - The most important goal is the first one: Promote educational excellence through the preparation and certification of professional educators.
  - Highly qualified teachers should be in every classroom, working with our students every day. Measure success by continuing to review the data collected regarding the number of teachers on emergency credentials, the ratio of appropriate credentials to appropriate classrooms, ratio of unqualified teachers in low performing schools compared to high performing schools, ratio of unqualified teachers in economically challenged areas compared to economically strong areas. This information is being disseminated to programs such as BTSA, but not always communicated to each district or teacher preparation program.
  - I have talked to employees in my district who have expressed an interest in streamlining the fingerprinting process. Currently, all new employees must have their fingerprints reviewed for clearance through the California Department of Justice. A goal may be to create one source to collect fingerprints. This could also increase communication between districts and state departments. It may also decrease delays at the time of hiring. Some districts require employees to participate in LiveScan through the county Department of Education. Others can have

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their fingerprints done at police departments, while others can pay privately at commercial businesses. Here is an example of how this is difficult for a school district: If a substitute is working within more than one district, that person must have fingerprints scanned for each employer. The state usually only recognizes one employer and does not notify each place of employment if that employee is arrested.

- I hope we can create better lines of communication between school districts within California and other states regarding employee arrests. If an employee is arrested in the state of California, the current employers are notified within a few days. This does not provide protection if an employee is arrested outside of California. For example, if a teacher is arrested in Las Vegas (which has happened), my district (IUSD) may never hear about it. Out of state arrests are not communicated to school districts. Streamline communication between California and other states may also be a goal for the CTC.
- I am hoping to improve customer service so when teachers, administration, or Human Resource personnel try to contact the commission via phone the delays are less. I tried myself to call the CTC offices last week numerous times and it reminds me of calling a bank-- endless automated options resulting in long delays and no live voice available. No matter what I pushed a button for, the wait to talk to a live person was estimated at 45 minutes. Additionally, the Commission only answers calls between 1:00 and 4:45pm.
- *Some 120,000 young people drop out of high school and middle school annually in California. What role, if any, should the CTC play in turning this drop out crisis around? Please be specific.*
  - Highly qualified teachers need to be working with our students, every day, in every school. The CTC needs to continue to require highly qualified teachers to be hired to teach all students rather than just a "warm body" with an emergency credential. The two things that students need most to be successful are 1) supportive parents and 2) highly effective teachers.

- Districts should take advantage of the surplus of qualified teachers looking for jobs and hire only well-prepared quality teachers for all students.
  - Measure success by continuing to review the data collected regarding the number of teachers on emergency credentials, the ratio of appropriate credentials to appropriate classrooms, ratio of unqualified teachers in low performing schools compared to high performing schools, ratio of unqualified teachers in economically challenged areas compared to economically strong areas.
  - Continue to work with the Institutes for Higher Education (IHE) and the BTSA Induction programs to improve the learning continuum to new teachers.
  - In this time of economic challenges, the CTC may provide suggestions on how to consolidate staff development programs such as BTSA, GATE, PAR, PLC, RTI, so that all teachers, not just new teachers, are receiving effective professional development.
- *The Budget Act of 2009 permits school boards to transfer to general purposes, funding for beginning teacher support and assessment and alternative certification. How will these changes impact the ability of intern and novice teachers to complete their credential programs? How will the CTC help the state assess any such impacts?*
    - The impact of the Budget Act of 2009 has been extremely challenging for the BTSA and alternative certification programs because of several reasons:
    - I expect to see categorical funding getting swept away pretty quickly into shrinking general funds. We need to think proactively to make BSTA more cost effective and efficient. My daughter went through BTSA four years ago and she is not a fan. I have spoken to new teachers in our district and while I think it has improved, it is still too heavy on paperwork and is subjectively implemented. As class sizes and adjunct workloads increase, it is more difficult to find qualified, experienced mentors for beginning teachers.

- Fortunately for unemployed teachers, the CTC provided extensions for teachers who cannot find jobs before their preliminary credential expires.
  - Our program leaders have taken a "salesman" approach to appealing to the school board to share the importance of continuing to financially support the BTSA programs.
  - The CTC must continue to require all compliance aspects that have been required of new teachers to clear their credentials, such as participation in an Induction Program.
- *In the past, CTC has been criticized for significant backlogs and inefficiencies in the processing of applications and other administrative functions. What has CTC done in recent years to address those issues and make processing and administrative requirements more streamlined? Where do you see opportunities for additional improvement in these areas?*
- The CTC has made strides towards streamlining the credentialing process by having IHEs and Districts submit for clear credentials electronically. The Lead Educational Agency (LEAs) are required to participate in an online training before they can begin submitting for credentials online. The turnaround for electronically submitted credentials is now between 48 and 72 hours. I have spoken to new teachers in my district and they verified the short turnaround.
  - Some credentialing issues submitted through a paper process and mailed into the county office, then on to the state. This is a very long process and can take several months.
  - We might be able to provide the local county offices with more authority to provide solutions to individual problems, with the guidance of the CTC office. The CTC could provide quality control.
  - Again, we need to focus on the telephone customer service.

### **Accreditation of Teacher Preparation Programs**

One of the core responsibilities of the commission is to accredit teacher preparation programs to ensure they are of sufficient quality and are producing highly trained teachers. All institutions offering teacher preparation programs are required to be accredited by CTC. The Accreditation Study Work Group began working in June 2004

to review and suggest revisions to the commission's accreditation system for educator preparation. In 2006 the commission adopted a revised Accreditation Framework that provides for biennial reporting and regular site reviews conducted by Accreditation Teams.

- *What is the purpose of the CTC accreditation system? Do you believe the proper systems are in place to support this purpose?*
  - The purpose of the accreditation system is to make sure that all programs are aligned with the CSTPs, Common Standards, Program Standards, and the state's curriculum standards.
  - Now that the BTSA Induction programs are included in the accreditation cycle, systems are in place to provide some consistency among the programs.
  - I have not yet assessed the efficacy of the support systems.
- *Is CTC's accreditation process now fully operational? Is there a backlog of programs requiring review?*
  - The CTC has made significant strides towards streamlining the credentialing process by having IHEs and Districts submit for clear credentials electronically. The turnaround for electronically submitted credentials is now between 48 and 72 hours.
- *How has the CTC increased the accountability of its accreditation system?*
  - I am not completely sure. The CTC has increased the accountability by including all credentialing programs in the accreditation system, including teacher preparation programs, internships, administration credentials, and BTSA Induction programs.
- *Teacher preparation programs submitted their first biennial reports in 2008, providing aggregated candidate assessment and program effectiveness data. What is the role of the biennial reports in the accreditation process, and how does the commission make use of these reports in assessing the quality of an institution's credentialing programs? Are commission members routinely kept informed regarding the findings and results of accreditation visits including*

*feedback and technical assistance provided by CTC staff to institutions and programs?*

- The role of the biennial report is to focus on the program outcomes, including aggregated data, analysis, and program modification, overall trends, and an action plan.
- The report is compared to the program plan that was originally submitted to the state at the time of the program's initial approval to make sure the program is in compliance. The CTC staff will review the reports for aggregated data, analysis of aggregated data, program modifications, and the Dean/Director's summary.
- I haven't been on long, but I know we have received information about the accreditation findings.

### **California Longitudinal Teacher Integrated Data Education System**

Currently, teacher data resides in different forms in multiple databases in different agencies at the state and local levels, with no mechanism for integration. This results in redundant data collection and maintenance, significant barriers to high quality analysis, and a lack of quality data to support state and local decision making, monitoring, and compliance activities. The California Department of Education (CDE) and CTC are collaborating on the development of a teacher data system, the California Longitudinal Teacher Integrated Data Education System (CALTIDES), which will serve as a central state repository of information regarding the teacher workforce in the state. Earlier this month, California received a \$6 million grant for the teacher data system from the U.S. Department of Education.

- *What is the status of the implementation of CALTIDES?*
  - I am really not too familiar with the intricacies of CALTIDES, but as a School Board member, I welcome longitudinal educator data that will increase our opportunities to compile data sources and get the most accurate information possible.
- *Once CALTIDES and CALPADS, the California Longitudinal Pupil Achievement Data System, become fully operational, in your view, how will the state student and teacher data systems inform local school districts and policymakers in terms of making data-driven decisions? Will these systems help ensure that*

*parents and the public have access to essential data on student outcomes and education services?*

- Ideally, these will help with choices and policy decisions. I would hope these data outcomes will be available to all of us. Having the information and being able to do something about it, however, is another story.

## **Teacher Preparation**

California has considerably fewer underprepared teachers than it did a few years ago. While 14 percent of teachers were underprepared in 2001, seven years later that figure is down to 5 percent. However, a report recently released by the Center for the Future of Teaching and Learning indicates that California is producing fewer new teachers, and enrollment in teacher training programs is declining. The report also discusses the growing demand for elementary school teachers over the next decade, as well as the shortage of teachers in the subject areas of special education, math, and science. One-third of middle school algebra teachers lack a preliminary credential or are teaching out-of-field, according to the report.

- *How is the CTC preparing for the retirement of so many “baby boomer” teachers and what role should the CTC play in building the teacher workforce? What specific strategies is the CTC pursuing?*
  - At the current time, many potential teachers are reconsidering whether or not they should enter the teaching profession, so I am concerned that some of the “best and brightest” may not pursue teaching. Having said that, the remaining job market is not luring potential candidates out of teaching, so I am hopeful.
- *What is the role of the commission in ensuring that teacher preparation programs are preparing teachers capable of meeting the challenges of high-need schools, core subject matter areas, geographic regions, and special needs programs?*
  - Teacher preparation programs now use the same Common Standards that BTSA Induction programs use. This is to help align the continuum of teaching from having the knowledge to teach (teacher preparation program) to application and demonstration of pedagogy and universal access (BTSA Induction program) for all students.

- *Should the State Board of Education's action to require all 8<sup>th</sup> graders to take and be assessed in algebra stand, what impact will the new requirement have on the demand for middle school math teachers? What would be CTC's role in helping the state meet the needs of students subject to the new requirement?*

I support 8<sup>th</sup> grade algebra, but I am from a high performing school district in which 8<sup>th</sup> graders are, for the most part, prepared for Algebra. Many were taking it before the requirement. I am very concerned about the statewide ability of middle school teachers to deliver the curriculum. My District is K-6, 7-8 and 9-12. We are fortunate to have strong aptitude in our teachers at the middle school level yet our 6<sup>th</sup> grade multiple subject teachers are an issue, many of them are just not prepared for the current 6<sup>th</sup> grade math curriculum. We are team teaching and doing the best we can. Recent data suggest that many students, including minority students, are succeeding in 8<sup>th</sup> grade algebra, but a substantial number of students are not adequately prepared. I worry about math in general, and the unintended consequence of struggling in math in middle school. We need to beef up our support for 6 and 7<sup>th</sup> grade math teachers.

In August 2008 CTC approved new Career Technical Education (CTE) Credential Program Standards, streamlining and specifying the minimum requirements for both the Preliminary and Clear Designated Subjects Career Technical Education teaching credential.

- *Has the commission considered the development of a multiple subject credential that integrates both subject matter competency and CTE experience?*
  - We recently affirmed moving forward with the "Business and Industry Partnership Certificate" to enable individuals working in the field to teach for up to one year without any course work requirements. If these individuals want to pursue teaching, they will be given a preliminary CTE credential, credit for their orientation, and will then take the courses required to clear the credential.

In my district, we work closely to integrate ROP into our high schools. It is not always practical or efficient for the district to provide these courses.

- *Should teacher preparation programs do more to prepare qualified CTE teachers for the occupational fields most in demand today? If so, how?*
  - It depends on the strength and efficacy of the local Community College and ROP classes. Ideally, we would prepare all teachers for all disciplines, but that may not be practical. Generally, it is difficult to get widespread support for programs not included in state standards.
- *One of the key strategies for curbing dropout rates is providing students with rigorous but relevant learning, often including "hands on" experience in a particular field or discipline. This applied, integrated, more relevant teaching methodology is not readily available to most who seek a teaching credential. What can CTC do to enhance the number of teachers who are able to provide this type of learning experience to students? Please be specific.*
  - I would have to better understand why this would be our role. It is a wonderful, exciting, expensive concept. In my district, we successfully partner with area businesses and industries to provide more hands-on field opportunities at certain levels, giving the students "real world" training. Internships, externships and apprentice programs give a true "hands on" experience, providing a win-win for the students and businesses.

## School Counselors

- *The California Association of School Counselors has been in discussion with the commission regarding the development of standards and accountability for school counselors. What is the status of these discussions?*
  - I understand a review is being done, and will be completed in 2011. We just had a really interesting presentation on counseling at our April CTC meeting. My experience as a Board Member is that counselors often get short shrift in the bargaining unit—lumped in with teachers, with no real advocates in our union leadership. Our counseling ratios are ridiculous. Our current contract is that the Student to Counselor ratio shall be 650:1 and that middle schools each have a minimum of one full time counselor and that high schools have a minimum of 3 full time counselors. In 2006-07, we began receiving a Supplemental Counseling Grant (SB1802), which provided sufficient additional revenue to allow us to reduce the Student to Counselor ratio to 450:1.

June 12, 2009

Irene Oropeza-Enríquez

Irene Oropeza-Enríquez  
Responses  
Teacher Credentialing

Dear Ms. Oropeza-Enríquez:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Commission on Teacher Credentialing (CTC) on July 15, 2009. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by July 3, 2009

We would also like to receive an updated Form 700, Statement of Economic Interest, by July 3<sup>rd</sup>.

### **Mission and Goals**

CTC is responsible for maintaining teacher quality by accrediting teacher preparation programs, credentialing teachers, and monitoring teacher conduct.

1. *Please provide a brief statement of goals that you hope to accomplish while serving as a member of CTC. How will you measure your success?*

Walt Disney said, "Our greatest natural resource is the minds of our children." In a time when we are confronted with economic uncertainties it is imperative that we conserve and cultivate our greatest natural resource. As we know, the assurance of well educated children is directly connected to the prosperity of our country.

Teachers are the keepers of this resource. Obviously, parents are the first teachers and, as our society is organized, school teachers are who we rely on as the second in line in the formation of our children, both academic and social area. As a participating member of the California Commission on Teacher Credentialing, I hope to provide my experience in securing that only the most qualified and prepared teachers are entrusted with this crucial charge. As we know from data presented by the UC systems, not all teachers are satisfied with their preparation. We also know that 22% of teachers leave teaching after the first four years.

(<http://www.cde.ca.gov/nr/ne/yr07/yr07rel59.asp>.)

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I hope to work with the Commission to continually evaluate the current educator preparation programs. Education has finally progressed to embrace accountability as a crucial part of its advancement and the teacher preparation part of education should be not different. My success as a member of the CTC could be measured by the number of effective new teachers who stay in the profession and who continue on to increase student achievement and ultimately increase the number of students ready for college or to join the workforce. In summary, I would like to assure that in every classroom we have the most qualified/effective teachers advancing our greatest natural resource.

2. *Some 120,000 young people drop out of high school and middle school annually in California. What role, if any, should the CTC play in turning this drop out crisis around? Please be specific.*

Research shows that the only influencing factor in student achievement is a competent teacher. This sounds simple enough, but really it is extremely complicated in reference to what it takes to be a highly effective teacher. Highly effective teachers know how to teach and engage students so that they find confidence in themselves. Teacher selection and preparation is of the utmost importance. It is clear to me that the journey of a teacher begins rigorous content base knowledge. Teachers must understand the courses they are teaching. Simply stated, you cannot teach what you do not know. The second set of knowledge is the ability to connect the teachers' knowledge to the student and the ability to provide the time to reflect upon their effectiveness.

Obviously the onus of stopping this alarming drop out rate (within the classroom) does not solely lie in the hands of new teachers, but it is also the onus of tenured teachers. Currently the CTC is looking at adopting a revision of the California Standards for the Teaching Profession. A closer look at the revised standards will show that more and more teachers are expected to meet the academic needs of individual students, rather than teaching to the middle. They also require making learning comfortable and relevant to students. The new Standards require teachers to work as teams of specialists to treat the needs of every student. The new Standards lead to a new way of approaching teaching and supportive of what I tell my staff, "Teaching is no longer a private practice, one teacher cannot do it alone, we must work as a team of experts". Through this practice, the requirement for teacher reflection is understood and embraced. The final requirement in my opinion is a crucial one. It is the belief that every child can and must be a successful student. Teachers must believe in their students, provide rigorous curriculum that is relevant to them. Students will then in turn believe in themselves and in their goals and aspirations.

As I have alluded to in the above paragraph, Administrators also play a crucial role in turning this crisis around. Administrators must create an environment that is encouraging, demands for collaboration, allows reflection, and provides support where and when needed. Secondly, administrators must hold high standards for teacher performance that is directly linked to the California Standards for the Teaching Profession. Currently, the CTC is looking at the preparation of school administrators. This work will begin September 25<sup>th</sup> in conjunction with educators and policy makers. Finally, as discussed later in this document, a key component in making education relevant to students by increasing opportunities in Career Technical Education is also critical to decreasing drop out rates.

3. *The Budget Act of 2009 permits school boards to transfer to general purposes, funding for beginning teacher support and assessment and alternative certification. How will these changes impact the ability of intern and novice teachers to complete their credential programs? How will the CTC help the state assess any such impacts?*

I am living the uncertainties that the current Budget Act of 2009 has brought to the forefront of district financing. While I think flexibility is a good thing and its intentions are to help districts stay financially solvent, the decisions lie in the hands of the local Boards. Each community has its "sacred cows" that might jeopardize valuable programs such as Beginning Teacher Support and Assessment (BTSA). Having said this, it is going to be crucial that the CTC continue to work with Local Education Agencies (LEAs) to ensure that new teachers complete the credentialing process (Intern programs and BTSA Induction Programs). It will be imperative that the CTC continue to collect data around this issue. All approved credential programs must submit this information via their Biennial Reports.

4. *In the past, CTC has been criticized for significant backlogs and inefficiencies in the processing of applications and other administrative functions. What has CTC done in recent years to address those issues and make processing and administrative requirements more streamlined? Where do you see opportunities for additional improvement in these areas?*

I have heard the history behind this concern. I believe that the leadership of Dale Janssen has been the cursor for turning around the CTC's reputation. I understand that backlog of applications is no longer an issue since the average turnaround time for online applications is about 10 working days and 50 days for paper applications. I also understand that 70% of the applications are requested online. This improvement in practice is a result of the technological infrastructure that was put in place to allow for online applications.

I understand that the Commission works with the Legislature and the Governor to secure language that allows for improvement in the credentialing process. In any organization whether it is good or great, there needs to be a bit of an unsatisfied feeling. This feeling keeps the organization healthy and vigorous. I would like to see continued work in the area of accreditation.

### **Accreditation of Teacher Preparation Programs**

One of the core responsibilities of the commission is to accredit teacher preparation programs to ensure they are of sufficient quality and are producing highly trained teachers. All institutions offering teacher preparation programs are required to be accredited by CTC. The Accreditation Study Work Group began working in June 2004 to review and suggest revisions to the commission's accreditation system for educator preparation. In 2006 the commission adopted a revised Accreditation Framework that provides for biennial reporting and regular site reviews conducted by Accreditation Teams.

5. *What is the purpose of the CTC accreditation system? Do you believe the proper systems are in place to support this purpose?*

The purpose of the CTC accreditation system is, in my opinion, to produce effective educators for the students of California. Currently approved accredited organizations are placed on a 7 year cycle. During those 7 years, these organizations must participate in an ongoing collection and review of activities, which include, biennial reports and one site visit. I believe that the former accreditation model required each organization to have one contact with the CTC every five to six years.

I would like to see each accredited organization continue to collect data from the teachers they produce. I would like the information from these data collections to be integrated into the accreditation system. I would also like to see more formal data collection from school administrators that could also inform the CTC in its accreditation process. I hope that the compilation of this data can be part of the new data system coming to the State. Currently, the CTC accreditation system focuses on the journey to becoming a teacher. I would like to extend the accreditation system to include the outcome of the journey, through the fourth year of teaching.

6. *Is CTC's accreditation process now fully operational? Is there a backlog of programs requiring review?*

Currently, to name a few, the CTC has 12 Accredited State Universities, 4 University of California campuses, 27 Independent Institutions 14 school districts, and County Offices. As you allow for more teacher preparation programs, you must expand your accreditation system. The CTC has instituted a cohort model (7 colors=7 year cycle) to allow the CTC, staff, and the Board of Institutional Reviewers to meet the nine Standards of expectation's that have been set for accreditation. Cohorts are on a seven year cycle which includes the collection and review of activities and the one site visit. I understand that the backlog has been cleared.

7. *How has the CTC increased the accountability of its accreditation system?*

Educator preparation programs must prove that they are adhering to the educator preparation standards set by the CTC. There are nine Standards which include: Educational Leadership, Unit and Program Assessment an Evaluation, Resources, Faculty and Instructional Personnel, Admission, Advice and Assistance, Field Experience and Clinical Practice, District-Employed Supervisors, and Assessment of Candidate Competence. Educator preparation programs must show evidence of meeting these standards to the Committee on Accreditation. The seven year cycle is broken up into years where Institutions and Program sponsors must submit analysis of data gathering, prepare program document updates, prepare a self study of the Common Standards, prepare for the site visit and submit biennial reports. The Committee on Accreditation (COA) submits an evaluation form grading the Educator preparation programs in each of the nine Standards. Educator preparation programs can receive one of five ratings which include: Accreditation, with stipulations, major stipulations, probationary stipulations, and denial of accreditation. The COA is held accountable to the public and to the education profession. I believe the increased accountability has always been there, i.e. the development of BTSA. As accountability is increased in the schools, there is a trickle down affect on everything related to the schools, teacher preparation, administrator preparation, teacher preparation, local boards, and parent involvement, etc.

8. *Teacher preparation programs submitted their first biennial reports in 2008, providing aggregated candidate assessment and program effectiveness data. What is the role of the biennial reports in the accreditation process, and how does the commission make use of these reports in assessing the quality of an institution's credentialing programs? Are commission members routinely kept informed regarding the findings and results of accreditation visits including feedback and technical assistance provided by CTC staff to institutions and programs?*

The role of the biennial report is, I believe, twofold. One, it allows the CTC to gather qualitative data on the Educator preparation program to assure

Educator preparation programs will secure that only highly effective teachers are credentialed. The CTC can evaluate data to guide and advise Educator preparation programs towards effective practices. This support not only helps the Educator preparation program secure their accreditation, but more importantly, helps the Educator preparation program prepare effective teachers for the Students of California. Two, it allows the institution to seriously reflect on its teacher preparation program. I believe that accreditation would be their second goal and teacher effectiveness their first goal. These reports include information on a number of candidates, types of programs, and programmatic program improvements that have occurred as a result of the data collection. Institutions must summarize their plans of action to show improvement in their programs to include evidence that their candidates show mastery of the Teaching Performance Expectations (TPE): Specific Pedagogical Skills for Subject Matter Instruction, Mentoring Student Learning During Instruction, Interpretation and Use of Assessments, Making Content Accessible, Student Engagement, Developmentally Appropriate Teaching Practices, Teaching English Learners, Learning about Students, Instructional Planning, Instructional Time, Social Environment, Professional, Legal, and Ethical Obligations, and Professional Growth. These TPE are measured by the Teaching Performance Assessment (TPA). As a Commission member, at least I can speak for myself, I am aware of the ongoing accreditation process through the report from the Committee on Accreditation to the commission at each general meeting.

### **California Longitudinal Teacher Integrated Data Education System**

Currently, teacher data resides in different forms in multiple databases in different agencies at the state and local levels, with no mechanism for integration. This results in redundant data collection and maintenance, significant barriers to high quality analysis, and a lack of quality data to support state and local decision making, monitoring, and compliance activities. The California Department of Education (CDE) and CTC are collaborating on the development of a teacher data system, the California Longitudinal Teacher Integrated Data Education System (CALTIDES), which will serve as a central state repository of information regarding the teacher workforce in the state. Earlier this month, California received a \$6 million grant for the teacher data system from the U.S. Department of Education.

9. *What is the status of the implementation of CALTIDES?*  
Yes, this has been long awaited for along with Cal PADS. The plan is to secure a contract by March 2010 and the implementation by January 2012.

10. *Once CALTIDES and CALPADS, the California Longitudinal Pupil Achievement Data System, become fully operational, in your view, how will the state student and teacher data systems inform local school districts and policymakers in terms of making data-driven decisions? Will these systems help ensure that parents and the public have access to essential data on student outcomes and education services?*

Without data, decisions are made based on opinions. I am excited to have this system used to inform policy decisions, curricular decisions, and accreditation, etc. This data will inform our practices at our school in regards to curriculum and student outcomes. The data can point to weak areas within our curriculum and/or our instruction. The data can also identify students who are struggling and further, define intervention programs to address the needs of each of our students.

Yes, I believe that this system should be available to parents, students, researchers, and the general public. For parents, they should be able to track the progress of their child and as a means to help them choose a school that they see meets their child's needs.

## Teacher Preparation

California has considerably fewer underprepared teachers than it did a few years ago. While 14 percent of teachers were underprepared in 2001, seven years later that figure is down to 5 percent. However, a report recently released by the Center for the Future of Teaching and Learning indicates that California is producing fewer new teachers, and enrollment in teacher training programs is declining. The report also discusses the growing demand for elementary school teachers over the next decade, as well as the shortage of teachers in the subject areas of special education, math, and science. One-third of middle school algebra teachers lack a preliminary credential or are teaching out-of-field, according to the report.

11. *How is the CTC preparing for the retirement of so many "baby boomer" teachers and what role should the CTC play in building the teacher workforce? What specific strategies is the CTC pursuing?*

As we soon will be faced with the retirement of the "baby boomers", I believe the CTC is moving in the right direction of expanding the Educator preparation program to other institutions. There has been much discussion about the Encore program, which I think is a great idea and creative way of getting other professional experts in front of students sharing their expertise and passion for content knowledge and career pathways.

Unfortunately, the budget situation has become the first marker to influence the teacher workforce. I understand that approximately 10,000 teachers have lost their jobs due to the necessary increase in class sizes. Forecasts indicate that another 10,000 teachers may also lose their jobs in the upcoming years as, again, a result of continued class size increases to adapt to budget woes. More than ever, the CTC has the ability to demand strict guidelines to secure that only the most effective teachers are graduating the Educator preparation programs.

12. *What is the role of the commission in ensuring that teacher preparation programs are preparing teachers capable of meeting the challenges of high-need schools, core subject matter areas, geographic regions, and special needs programs?*

I believe the role is the same because high-need schools are becoming the norm in California. More than ever, our schools are increasing in their title of being a high-need school. If you look at the make up of the current California students, you will find that: 49% are Latino, 28% are White, and 11% are Asian, Filipino or Pacific Islander, leaving 22% for other groups. Of the 6 million plus students, 1.5 million are English language learners. To add to the data, there are about 700,000 students currently receiving Special Education services.

The CTC, has in the last eight months (that I have witnessed), streamlined the pipeline for fully credentialed teachers to add authorizations to meet the diverse needs of California's diverse student population. The CTC has also worked through legislation to reduce the unnecessary procedures towards credentialing. The CTC has also added six new subject matter authorizations to fulfill the shortage of mathematics and science teachers.

13. *Should the State Board of Education's action to require all 8<sup>th</sup> graders to take and be assessed in algebra stand, what impact will the new requirement have on the demand for middle school math teachers? What would be CTC's role in helping the state meet the needs of students subject to the new requirement?*

I don't think we have enough data to know the results of this decision. The impact, I believe, has been a good one. In my experience as an elementary school principal, the onus of expertise has come down to the teacher level and beginning in kindergarten. This decision has forced teachers at every grade level to understand and teach mathematics in preparation for students to pass algebra in the 8<sup>th</sup> grade. For example, as a staff we have studied the grade level algebra standards to understand how to prepare the students at every grade level, again beginning in Kindergarten. One example of our work is that every kindergarten class has a number line that no longer places 0 on the left side of the number line, instead, 0 is in the middle with negative integers on the left and the positive integers on the

right. Kindergarteners are visually taught the concept of these numbers and their significance. This is a direct impact of the aforementioned decision.

The CTC's role is again teacher preparation in content expertise and teacher practice. This is addressed through the creation of the Math Advisory Panel which reviewed teaching of math and preparation of math teachers.

In August 2008 CTC approved new Career Technical Education (CTE) Credential Program Standards, streamlining and specifying the minimum requirements for both the Preliminary and Clear Designated Subjects Career Technical Education teaching credential.

*14. Has the commission considered the development of a multiple subject credential that integrates both subject matter competency and CTE experience?*

**The Multiple Subject Credential is given to teachers who will teach at the elementary level and for the purpose of teaching all subject matter content to those students. At the middle school level teachers holding this credential can teach a core class (two or more subjects). There is the possibility for multiple subject holders to add on a CTE credential once they meet the credentialing requirements. The development of a Multiple Subject Credential that includes CTE experience would be a positive step in ensuring that instruction provided to middle school students is current and relevant.**

*15. Should teacher preparation programs do more to prepare qualified CTE teachers for the occupational fields most in demand today? If so, how?*

**Absolutely. One of the reasons students drop out of school is because they do not find the teaching relevant to their future. CTE should be an integral part of the education experience for students. Currently, the CTC is working with a Commission Career Technical Education workgroup to find new ways of bringing talented experienced professionals into the teaching field. One idea that has come up is establishing a "Business and Industry Partnership Certificate" that will allow non teachers the opportunity to teach as a way to find out if teaching is a viable option for them. If it is, then the credentialing process will kick in. They will have received a preliminary CTE credential, credit for their orientation. They then will be required to take the necessary courses to clear their credential.**

16. *One of the key strategies for curbing dropout rates is providing students with rigorous but relevant learning, often including “hands on” experience in a particular field or discipline. This applied, integrated, more relevant teaching methodology is not readily available to most who seek a teaching credential. What can CTC do to enhance the number of teachers who are able to provide this type of learning experience to students? Please be specific.*

I agree. I think that this can be embedded into the Standards for accreditation. I think that in Teacher Performance Expectations (TPE) 4 -making content accessible, in TPE 5 - student engagement, and in TPE 6 - developmentally appropriate teaching practices. These are all TPE standards that would lend themselves to applied, integrated, and more relevant teaching methodologies. Before pedagogy (the science of teaching) there were methods classes for teacher candidates. I think the difference is that in pedagogy classes, the science of teaching lends itself to the abstract while in methods classes the art of teaching is through product. Specifically the onus can be placed on the teacher preparation programs to present a balance of the science of teaching with the art of teaching. I believe that the CTC is responsive in requiring that Educator preparation program prepare teachers who are effective with students to include the different learning styles. One example is the Commission sponsored best practice seminars.

### School Counselors

17. *The California Association of School Counselors has been in discussion with the commission regarding the development of standards and accountability for school counselors. What is the status of these discussions?*

There are current standards for Educator preparation programs in the area of School Counselors. These will be reviewed in 2011. Also, Ms. Loretta Whitson and Dr. Charles Hanson presented to the Commission the competencies and professional expectations for School Counselors. The document is titled, “Transforming School Counseling”. I suspect that the CTC will align all of its credentialing preparation standards, teaching, school administration, counseling, etc.

Finally, I would note that the current school counseling programs are geared to serving middle and high school students; however, there are many elementary schools in need of counselor support services. It would be helpful if school districts were permitted or required to provide counselor support services to high-need elementary schools.

Malissa Feruzzi Shriver  
Goals  
CA Arts Council

MR DARRELL STEINBERG  
SENATE RULES COMMITTEE

MR STEINBERG,

MAY I BEGIN, BY SAYING WHAT A PLEASURE IT HAS BEEN FOR ME TO SERVE THE STATE THAT I LOVE SO MUCH, THE STATE I WAS BORN IN AND HAVE RESIDED ALL MY LIFE. AS A PROFESSIONAL ARTIST, MY WORK HAS BEEN BOTH FULFILLING AND EDUCATIONAL. I WOULD ALSO LIKE TO SAY HOW LOVELY IT WAS TO MEET YOU IN PERSON, AT THE CALIFORNIA ARTS COUNCIL LEGISLATIVE RECEPTION, IN THE GOVERNOR'S OFFICE, THIS MARCH. I LOOK FORWARD TO WORKING WITH YOU IN THE COMING YEARS.

I HAVE NOW SERVED FOUR YEARS ON THE CALIFORNIA ARTS COUNCIL, THREE AS A COUNCIL-MEMBER, AND ONE AS VICE-CHAIRMAN, ELECTED BY MY PEERS. SOME OF THE WORK I AM MOST PROUD OF HAS BEEN GENERATED BY THE STRATEGIC PLANNING PROCESS THE CAC UNDERWENT IN 2005. AS A BOARD, WE VOTED TO PROCEED IN THREE MAJOR AREAS: ARTS IN EDUCATION (40 % OF OUR GRANTMAKING FOCUSING ON THIS GOAL), ARTS ADVOCACY AND PUBLIC AWARENESS. THIS WAS THE NATURAL OUTCOME OF LOSING THE MAJORITY OF OUR BUDGET, TO MOVE AWAY FROM GRANT-MAKING AND INTO ADVOCACY, EDUCATION AND POLICY. I WAS THE COMMITTEE CHAIR FOR OUR PUBLIC AWARENESS CAMPAIGN, AND AS SUCH, I LOCATED, HIRED (INITIATED THE COMPETITIVE BID PROCESS) AND CONTINUE TO WORK WITH A MARKETING/ BRANDING FIRM IN SAN FRANCISCO, CALLED IVELICH STONE. THEY ARE HELPING THE CAC IN BRANDING THE STATE AS AN ARTS STATE, TO HELP RAISE AWARENESS ABOUT THE IMPORTANCE OF THE ARTS, TO OUR SCHOOLS, OUR COMMUNITIES AND TO THE CREATIVE ECONOMY OF CALIFORNIA. I ALSO CHAIRED THE MEDAL OF THE ARTS EVENT, WHICH BECAME THE HALL OF FAME AWARDS, AND I CONTINUE TO WORK ON THIS EVENT ANNUALLY, SERVING AS THE POINT PERSON FROM THE ARTS COUNCIL, PROVIDING POTENTIAL CANDIDATES FROM THE ARTS FIELD. I HAVE TRIED TO FOCUS ON IDEAS FOR THE COUNCIL TO RAISE AWARENESS AND FUNDING, APART FROM GENERAL FUND MONEY, LIKE PROMOTING THE CALIFORNIA ARTS LICENSE PLATE, WHICH CURRENTLY PROVIDES US WITH ALMOST TWO-THIRDS OF OUR BUDGET. I HAVE ALSO WORKED WITH DR RICHARD DEASY, FROM THE ARTS ED PARTNERSHIP, IN MARYLAND, ON INNOVATIVE WAYS TO ENCOURAGE ARTS EDUCATION STATE-WIDE, FOCUSING ON "IMAGINATION" AND THE CRITICAL NECESSITY OF FOSTERING THIS CAPACITY OF MIND, IN OUR STUDENTS. I HAVE ATTENDED THE NASAA (NATIONAL ASSOCIATION OF STATE ARTS AGENCIES) ASSEMBLY IN BALTIMORE MARYLAND, LEARNING STRATEGIES OTHER STATES HAVE UTILIZED TO MOVE FORWARD WITH VARIOUS ARTS POLICIES, FOCUSING ON ADVOCACY AND

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EDUCATION. I HAVE WRITTEN ARTICLES FOR ARTS MAGAZINES, PROMOTING OUR ARTS LICENSE PLATE, AND I OFTEN SPEAK AT LOCAL ARTS COMMISSIONS AND NON-PROFITS, EDUCATING THE FIELD ABOUT WHAT WE ARE WORKING ON AT THE CAC, AND PLANNING FOR THE FUTURE.

IN TERMS OF MY FUTURE GOALS, I WAS JUST ELECTED CHAIRMAN IN JANUARY OF THIS YEAR. I HAVE BEEN MEETING WITH OUR MARKETING FIRM IN SAN FRANCISCO, AND HAVE JUST FINALIZED THE CREATIVE BRIEF, WHICH WE PLAN ON TAKING TO TWO DIFFERENT AD AGENCIES NEXT MONTH, WITH THE INTENTION OF MOVING FORWARD WITH A STATE-WIDE PUBLIC AWARENESS CAMPAIGN, STRESSING THE IMPORTANCE OF THE ARTS IN CALIFORNIA. I WOULD LIKE TO SEE MORE CALIFORNIANS EDUCATED AS TO THE ENORMOUS ECONOMIC ENGINE THAT THE ARTS PROVIDE TO THE STATE. WE HAVE RECENTLY HIRED WESTAFF (WESTERN ASSOCIATION OF STATE ARTS AGENCIES) TO COMPLETE A "CREATIVE INDEX REPORT", MUCH LIKE THE RECENT OTIS REPORT ON THE "CREATIVE ECONOMY OF THE LOS ANGELES REGION". THESE REPORTS DETAIL THE VARIOUS INDUSTRIES AND THEIR CUMULATIVE TAX REVENUES TO THE REGION AND TO THE LARGER STATE...THE FIGURES ARE STAGGERING. THIS NEW REPORT WILL BECOME AN INVALUABLE ADVOCACY TOOL FOR THE ARTS COUNCIL, AND WILL EDUCATE OUR AUTHORIZERS AS TO THE IMPRESSIVE TAX REVENUE THE CREATIVE INDUSTRIES BRING TO OUR STATE. I WILL CONTINUE TO WORK WITH ARTS EDUCATION LEADERS, IN AN EFFORT TO RESTORE SEQUENTIAL ARTS EDUCATION, BACK TO OUR PUBLIC SCHOOL SYSTEM. FOR INSTANCE, DID YOU KNOW THAT BOTH THE UC AND CAL STATE SYSTEMS REQUIRE ONE YEAR OF ARTS EDUCATION FOR ALL OF THEIR APPLICANTS? ARE YOU AWARE OF HOW FEW OF OUR PUBLIC HIGH SCHOOLS CONTINUE TO OFFER THESE CLASSES, WHICH LEAVES COUNTLESS STUDENTS UNABLE TO APPLY TO CALIFORNIA'S OWN UNIVERSITIES? THESE UNIVERSITIES ARE MEANT TO BENEFIT THE TAX-PAYING RESIDENTS OF CALIFORNIA, AND YET IT IS THE CALIFORNIANS WHO NO LONGER HAVE THE QUALIFICATIONS TO APPLY...IN MY OPINION, THIS IS WRONG, AND I WILL WORK TOWARDS REMEDYING THIS TERRIBLE SITUATION. STUDIES SHOW THAT THE ARTS KEEP KIDS IN SCHOOL, LOWERING DROP-OUT RATES, AND IMPROVING TEST SCORES, ESPECIALLY IN SCIENCE AND MATH. THIS IS AN INVESTMENT OUR STATE MUST MAKE, TO SAVE THE MANY MILLIONS WE ARE SPENDING ON THE FALL-OUT, LIKE GANG VIOLENCE, OVER-CROWDED PRISONS, ETC. I HAD THE BENEFIT OF ATTENDING CALIFORNIA'S EXCELLENT PUBLIC SCHOOLS IN THE SEVENTIES, AND THEN UCLA IN THE EIGHTIES...I WANT MY DAUGHTERS TO BE ABLE TO HAVE THE SAME OPPORTUNITIES THAT I DID, SO MANY YEARS AGO. I BELIEVE THE STATE HAS AN OBLIGATION TO PROVIDE ARTS AND QUALITY EDUCATION TO IT'S CITIZENS, BECAUSE WHEN IT DOESN'T, ONLY THE WEALTHY HAVE ACCESS, AND THAT IS WRONG, IT IS

UN-AMERICAN, AND CALIFORNIA CAN DO BETTER. THAT IS WHY I WANT TO SERVE ON THE CALIFORNIA ARTS COUNCIL....TO MAKE A DIFFERENCE IN THE LIVES OF OUR CHILDREN, AND FOR ALL CALIFORNIANS. WE ADMINISTER PROGRAMS AND POLICIES THAT MAKE PEOPLE'S LIVES BETTER, AND WE BRING TAX DOLLARS TO THE STATE, AND JOBS TO PEOPLE WHO NEED THEM. THANK YOU FOR CONSIDERING MY RE-APPOINTMENT TO THE CALIFORNIA ARTS COUNCIL.

MALISSA FERUZZI SHRIVER



Carlton DiSante  
& Freudenberger LLP

ATTORNEYS

4510 Executive Drive  
Suite 300

San Diego, California 92121  
Telephone (858) 646-0007  
Facsimile (858) 646-0008

[www.cdflaborlaw.com](http://www.cdflaborlaw.com)

ORANGE COUNTY OFFICE

2600 Michelson Drive  
Suite 800  
Irvine, California 92612  
Telephone (949) 622-1661  
Facsimile (949) 622-1669

SACRAMENTO OFFICE

8950 Cal Center Drive  
Suite 160  
Sacramento, California 95826  
Telephone (916) 361-0991  
Facsimile (916) 361-1480

LOS ANGELES OFFICE

707 Wilshire Boulevard  
Suite 5150  
Los Angeles, California 90017  
Telephone (213) 612-6300  
Facsimile (213) 612-6301

SAN FRANCISCO OFFICE

601 Montgomery Street  
Suite 350  
San Francisco, California 94111  
Telephone (415) 981-3233  
Facsimile (415) 981-3246

August 6, 2009

Sender's e-mail:  
dcarothers@cdflaborlaw.com

**VIA E-MAIL AND U.S. MAIL**

The Honorable Darrell Steinberg  
Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814

Dave Carothers  
Responses

Re: Senate Rules Committee Questions

Dear Senator Steinberg:

Thank you for your July 17, 2009 letter seeking my responses to specific questions relating to my confirmation to serve as a Commissioner with the Fair Employment and Housing Commission. I have provided my responses herein, along with my most recent Form 700, Statement of Economic Interests.

1. **You have been serving as a commissioner since last December. Please provide a brief statement of your accomplishments as a member of FEHC and on your focus as a commissioner. Also, please tell us what you believe are your responsibilities as a member of the commission entrusted with the enforcement of the state's civil rights laws.**

**Accomplishments and Activities as a FEHC Commissioner:**

- When apprised of Commission challenges regarding funding and staffing, suggested that the Commission create a Subcommittee on Commission Planning to look at how the Commission could meet its short term and long term goals. I volunteered to serve on this Subcommittee along with Commissioner Stuart Leviton. With Commissioner Leviton and Executive and Legal Affairs Secretary Ann Noel, developed a work plan for the Commission.
- To fill some of the staffing shortfalls on the Commission, this summer, I volunteered the services of one of my law firms' summer interns for the entirety of the summer. That law

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intern spent the entire summer working on research projects for the Commission's housing regulations.

- Participate in all aspects of the Commission's work including reviewing Commission proposed decisions and drafts of Commission regulations. During my tenure, the Commission has made two of its decisions precedential, meaning that they can be cited by parties and the courts in other legal proceedings. Those two decisions are:
  - *Dept. Fair Empl. & Hous. v. Terra Linda Farms* (Rivas/Santillan) Dec. No. 08-09-P, a precedential decision holding a grower is a joint employer with the farm labor contractor under the Fair Employment and Housing Act (FEHA) and thus liable for the sexual harassment and retaliation of two female farm workers.
  - *Dept. Fair Empl. & Hous. v. Acosta Tacos* (Chavez), Dec. No. 09-03, a precedential decision holding that respondents failed to reinstate complainant to her position after she returned from a pregnancy disability leave; terminated her on the basis of her sex, because she was breastfeeding; retaliated against her for exercising her FEHA rights, and failed to take all reasonable steps to prevent discrimination from occurring.
- I also believe my background working with small businesses and employers allows me some perspective and input on how the Commission's role impacts everyday people in the State of California.

**Responsibilities:**

- Adjudication: specifically, consider and deliberate whether to adopt proposed decisions issued by the FEHC's administrative law judges
- Review Commission staff work on new regulations and revised existing regulations interpreting the Fair Employment and Housing Act (FEHA).
- Consider legislation concerning the FEHA and other civil rights statutes.
- Provide education to the public about the FEHA.
- Serve as a civil rights forum.

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2. **Please tell us about your goals as a commissioner. What do you hope to accomplish during your tenure? What challenges do you anticipate to meeting these goals? How will you measure your success?**

**Goals:**

- To raise the visibility of the Commission in the public and more particularly as a viable option to employees and employers who have disputes within the Commission's jurisdiction. Even in our current budget, I believe the Commissioners can do this by being available for public speaking at legal forums to discuss the Commission's role in housing and employment.
- To provide assistance and guidance to the Commission and its staff so that we can accomplish our work with the resources available to us.
- To provide guidance and leadership in the Commission's adjudicatory, regulatory, legislative, and public education work.

**Challenges:**

- Obviously, given the reality of budget restrictions, there will be challenges completing all the work that we want to do with limited resources and staff. I and the other Commissioners are volunteering our time and our law firms' staff's time to stretch Commission resources. The Commission's staff is working with Department staff to prioritize cases and to develop ways to decrease backlogs.
3. **Other than the periodic FEHC meetings, up to four times a year, how do you stay informed of commission activities? Is the quarterly briefing by commission and DFEH staff sufficient for you to carry out your responsibilities as a commission member?**

**Staying informed:**

- We are scheduled to meet five or six times per year. In between meetings, I stay abreast of all developments through frequent phone calls and e-mails from staff, particularly ELAS and ALJs. The ELAS, despite her incredible workload, is very responsive to requests for information and follow up. In addition, we have discussed holding some of our Commission meetings telephonically to stretch resources.

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**4. Do you see the growing backlog of cases as a serious problem for the Commission?**

**a. If so, what are some possible solutions?**

The Commission has directed its staff to fill its open, second ALJ position as soon as practicable. Until that position is filled, the backlog will continue to increase. At the moment, the Commission's executive officer, its Executive and Legal Affairs Secretary (ELAS), is also conducting hearings and Commissioners are volunteering to do mediations, given available time. It is my understanding that the DFEH has begun to prioritize which cases are brought to the Commission for full evidentiary hearings. The Commission, the DFEH and other parties attempt to settle as many cases as possible.

**b. If not, why not?**

N/A

**c. Have you contacted the Governor's office about the problem or asked commission staff to do so?**

No. The ELAS, on behalf of the Commission, reports weekly regarding its adjudicatory caseload to the administration and meets monthly with administration officials about its workload.

**5. In past years, there have been comments that the workload of the Commission was not sufficient to justify up to four ALJ positions. With the budget cuts and hiring freeze, the Commission has, for the foreseeable future, one ALJ. Is one administrative law judge sufficient to handle the anticipated workload? Based on your extensive legal experience, how many ALJs and support staff are needed by the Commission for it to fulfill its responsibilities to enforce the state's civil rights laws in a timely manner?**

At each Commission meeting, the ELAS gives us a report on the number of accusations filed, set for hearing, etc. In her June 2009 report, the ELAS reported that the DFEH filed 60% more accusations in the first half of this year, 2009, than were filed the prior year, 2008, even though our ALJ staffing is now at one, rather than at three, as it was only a year ago. The Commission recognizes that it is understaffed given the number of hearings scheduled and the variety of regulations it is attempting to complete. In addition, the Commission also embarked upon three rulemaking projects when its ALJ staff consisted of three ALJs in addition to its ELAS. At the moment, the Commission has one ALJ and its ELAS.

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The Commission will hire an additional ALJ and a .2 part-time attorney to assist it with its rulemaking responsibilities.

The Commission will also continue to utilize law students to further stretch its resources. In addition to the full-time summer intern that I provided to the Commission this summer, the Commission also hired four volunteer law students to work with it on its adjudicative functions.

And, the Commissioners and private staffs are attempting to bridge the resource gap volunteering our time to mediate cases, research issues, and do public speaking.

6. **Other than the Commission's minutes of its meetings, there are no public reports of the commission's adjudicatory work, particularly of the work handled and resolved at the administrative law judge's level. Should there be more transparency to the commission's work, similar to the case statistics prepared by the Judicial Council of California showing the workload of the courts and the disposition of the cases filed?**

The Commission puts a lot of information on its website including its precedential (published) decisions and educational materials. This past year, the Commission added to its website tables comparing differences between the FEHA and the newly amended Americans with Disabilities Act (ADAAA) and new federal Family and Medical Leave Act (FMLA) regulations and the Commission's California Family Rights Act (CFRA) regulations.

7. **It appears that the Commission members only decide about 15% of the accusations presented to the FEHC, with the remainder being resolved at the ALJ level.**

- a. **Are you told about the disposition in those other cases, and when?**

The ELAS provides the Commission with a report before each meeting which summarizes the Commission's ALJs' adjudicatory workload. This summary includes numbers of: accusations filed, cases set for hearing, case management hearings, full evidentiary hearings, hearing days, and settlement conferences, including, which cases settled.

- b. **What materials are you given prior to the commission meetings so that you are prepared to discuss and rule upon proposed ALJ decisions?**

Staff provides Commissioners with a cover memorandum, the ALJ's proposed decision, the DFEH accusation and complaint, final arguments of all parties, all

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briefs, and selections of the transcripts and exhibits. All parts of the record are available to the Commission.

- c. **Typically, about how much discussion occurs with respect to each proposed decision? Less than 30 minutes? More than an hour?**

The time spent discussing decisions ranges from approximately half an hour to more than an hour. At the last two meetings, we have had several decisions with complicated issues, and we have spent an hour or more discussing the issues involved. We take our responsibilities as Commissioners very seriously and fully discuss all issues involved in each case.

8. **Since the civil rights of litigants are involved and the matters may be of public interest and concern, should these proceedings be heard in closed session as they currently are?**

Adjudicatory decision making, by law, is held in closed session. (Gov. Code § 11126(c)(3).) We welcome as much public input as possible prior to the Commission retiring to make its decisions in closed session. For example, at the last Commission meeting, the Commission invited oral argument regarding reconsideration of one Commission decision, and sought an amicus brief in another case where one of the parties was unrepresented and we felt that we would otherwise not have had adequate argument about several legal issues.

9. **Please tell us the progress of those regulations and the specific timetable for its completion. Have there been particular challenges or issues in the promulgations of the regulations that slowed the process?**

The Commission's pregnancy regulations are currently with the Department of Finance being reviewed for their fiscal impact.

The Commission's disability regulations are finished but being held, briefly, while we review when the Equal Employment Opportunity Commission (EEOC) will be revising its disability regulations. The Commission would like to coordinate its regulations with the EEOC's new Americans with Disabilities Amendments Act (ADAAA).

The Commission's new housing regulations are half finished. To speed the work on these regulations, we have decided to utilize the federal Housing and Urban Development (HUD) regulations, wherever possible and concentrate instead on regulations not covered by current HUD regulations.

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For all three regulatory projects, we are greatly hampered by our limited resources and staff.

10. **Given the budget reductions, there will be difficult choices in choosing how to best allocate the commission's limited resources. How do you prioritize in importance the commission's outreach responsibility to promote the state's civil rights laws, educating both employers and employees, landlord and tenants, property owners and persons with disabilities, about the rights and obligations of people under the law? Where does outreach fit in the list of what should be accomplished?**

The Commissioners are assisting staff with educational work and other public outreach and posting more materials on the FEHC website. Also, and as previously stated, I believe individual Commissioners can make themselves available at various public forums to discuss the mission and role of the Commission.

11. **The Legislature last year enacted SB 1608, which, among other provisions, created the Commission on Disability Access to study and make recommendations to the Legislature on improving compliance with disability access laws in California. Once it becomes operational, how can the two commissions interact and interrelate for maximum efficiencies to promote compliance with the civil rights laws?**

The FEHC looks forward to coordinating its work with the Commission on Disability Access on our rulemaking projects regarding employment and housing regulations on disability.

12. **How have funding cuts and staff layoffs affected the commission's ability to perform its duties? The April 14, 2009 minutes of the commission's meeting notes the creation of a subcommittee to discuss a work plan to focus on how the commission can do more with less, and create value for the administration with limited resources and maximize the work of the commission's staff. When will it be completed? Please provide a copy of this work plan to the Rules Committee so that we may see what priorities have been set and what changes have been made in light of the reduced budget.**

The Commission's "Work Plan," was developed at the Commission's April and June meetings. We have altered the plan to reflect existing Commission's funding and staffing. Quoting from the latest version of the Work Plan, here is where we stand to date:

- a. **Marshal Outside Resources: Recommendation from June meeting:** Use more outside resources including student interns, the resources of Commissioners and their law

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firm staffs, the resources of our stakeholders, including attorneys' law firms and their interns, university doctoral students and seek foundation money if that is an option.

**Implementation:** The Commission has hired four full-time law students for the summer (at no expense). In addition, I have volunteered our firm's summer law intern to work with the Commission on its rulemaking projects.

- b. **Adjudication Survey: Recommendation from April meeting:** Survey users of the Commission's adjudicative process to understand their reasons for often "opting out" of the administrative system to take their cases to court.

**Implementation:** As Commission staff is at capacity with its current hearing caseload, staff has put implementing this recommendation on hold for now.

- c. **Regulations: Recommendation:** Include "leading minds" in employment/housing (cross-section of attorneys and other experts) to work with Commission on its rulemaking projects. Solicit law student help from these lawyers' law firms and also Commissioners' law firms.

**Implementation:**

Pregnancy regulations: With assistance from State and Consumer Services Agency, the Commission has worked with a fiscal analyst from the Franchise Tax Board to redo the FEHC's Fiscal Impact Statement for resubmission to the Department of Finance for its approval.

Disability Regulations: Commission staff has solicited the advice of several of its disability regulations subcommittee members on particular problems with the regulations.

Housing Regulations: Commission staff has recruited Prof. Tim Iglesias, a University of San Francisco professor specializing in housing discrimination issues to work with the Commission on its housing regulations. As stated above, Commissioner Carothers' summer intern, Jing Li, is working with the Commission on its housing discrimination regulations.

- d. **Civil Rights Commission Functions: Recommendation:** When the Commission's budget allows, the Subcommittee recommends holding hearings on one or more topical civil rights concerns.

**Implementation:** Commission staff has taken no further steps on this recommendation because of budgetary constraints.

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Thank you for your attention to the above. I am very honored to have been asked to serve and am truly inspired by the individuals supporting the mission of the Fair Employment and Housing Commission. Should you have any additional questions, please do not hesitate to contact me.

Respectfully,



Dave Carothers  
CARLTON DISANTE & FREUDENBERGER LLP



LEVITON LAW GROUP, A P.C.  
3699 Wilshire Blvd., Suite 1290  
LOS ANGELES, CALIFORNIA 90010  
TELEPHONE (213) 402 - 4576  
FACSIMILE (213) 559 - 0572

Stuart L. Leviton, Esq.  
sleviton@levitonlawgroup.com

Stuart Leviton  
Responses

August 7, 2009

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

Re: Commissioner Stuart L. Leviton – Fair Employment and Housing Commission

Dear Senator Steinberg:

I am in receipt of your letter dated July 17, 2009 regarding my confirmation as a commissioner on the California Fair Employment and Housing Commission. In response to the questions you pose in the letter, I respond as follows:

**Question No. 1:** You have been serving as a commissioner since last December. Please provide a brief statement of your accomplishments as a member of FEHC and on your focus as a commissioner. Also, please tell us what you believe are your responsibilities as a member of the commission entrusted with the enforcement of the state's civil rights laws.

**Answer to Question No. 1:** Since joining the FEHC, I have attended two full commission meetings. I have also joined and have participated in two FEHC sub-committees – one focusing on the promulgation of housing regulations and one focusing on our operations. I have also participated in various public outreach efforts to gain input from various stakeholders into the issues the FEHC is presently addressing. I have also volunteered to serve as a settlement offer/mediator in multiple pending cases before the FEHC.

With respect to the housing regulations, I have participated in a number of meetings, both in-person and telephonic, with either FEHC staff and/or with my sub-committee member, with respect to the promulgation of the housing regulations. My input into this process to date has mainly centered on focusing our efforts to promulgate housing regulations interpreting aspects of the FEHA that are not covered by the federal Fair Housing Act and the regulations promulgated thereunder. Given our present limited staff resources, we need to focus our attention on those areas in which the housing regulations will have the greatest potential impact, and that means those areas in which the FEHA offers greater protections than the FHA, such as in the areas of sexual orientation discrimination and source of income discrimination.

With respect to our on-going operations, I have participated in a number of meetings and discussions with both our staff and my fellow sub-committee member regarding how the FEHC can accomplish more with fewer resources. Fundamentally, the FEHC must

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AUG 10 2009

**Appointments**

focus on those areas in which it can have the greatest positive impact for the greatest number of people. As we continue to plan and work strategically to attain this goal, we must ensure that our organizational structure reflects our current and future priorities, and to the extent we need to re-focus staff and/or resources, we should not hesitate to do.

As for my responsibilities as a commissioner, I will hold myself to the following standard: a devotion and commitment of time, talent, thought, and tenacity sufficient to meet and/or exceed the goals of the FEHC and the Administration of which it is a part. Unfortunately, notwithstanding the great strides we as a society have made in the area of civil rights, many individuals and groups still suffer from unlawful harassment and discrimination. We must remain vigilant in our efforts to reduce and to eliminate such unlawful conduct. Moreover, to the extent possible, we should try and change underlying attitudes and feelings that breed, foster, and support harassment and discrimination.

As a commissioner, I must sit as an impartial judge in the context of our adjudicatory function, a balanced, practical promulgator in the context of our regulatory function, and a spirited advocate for fairness, justice, and equal treatment under the law in the context of our public outreach/education function. I also must help set the agenda for the FEHC and the overarching policies by which we govern ourselves and operate; however, neither I nor any commissioner should interfere with the staff functions of our employees. Our professional staff does an incredible job serving the people of California, and I will do whatever I can to support them in doing their work.

**Question No. 2:** Please tell us about your goals as a commissioner. What do you hope to accomplish during your tenure? What challenges do you anticipate to meeting these goals? How will you measure your success?

**Answer to Question No. 2:** My goal as a commissioner is to advance the cause of civil rights in a way that creates both the perception and the actuality of a fairer and more just society within the confines of our laws. Our laws set forth lofty goals and ideals. Unfortunately, these goals and ideals are not shared by all, and some perceive our civil rights laws as disadvantaging certain groups. We must find a balance between idealism and its practical effects on various segments of our society.

During my tenure on the FEHC, I hope to develop a reputation as someone who listens to all sides, critically considers all opinions, carefully crafts opinions and regulations in clear and understandable language that is faithful to the law and our mission, and who is a tireless advocate for all who aspire to have a more just society. By the end of my term, I also want to raise the profile and the relevancy of the FEHC so that more people view the FEHC as a more vital, more viable, instrument for positive social change that leads to a fairer, equal society.

**Question No. 3:** Other than the periodic FEHC meetings, up to four times a year, how do you stay informed of commission activities? Is the quarterly briefing by commission and DFEH staff sufficient for you to carry out your responsibilities as a commission member?

**Answer to Question No. 3:** At present, we meet six times a year. At the moment, this seems to be an appropriate number of full FEHC meetings.

In between full FEHC meetings, as noted above, I have been active in two sub-committees, and with respect to the dealings of these two sub-committees, I have regular communications with both FEHC staff and other members of the sub-committees.

In advance of each full commission meeting, FEHC staff provides commissioners with background materials regarding the items on the agenda. So far, these materials have been adequate to allow me to make informed decisions when called upon to vote on matters before the FEHC.

**Question No. 4:** Do you see the growing backlog of cases as a serious problem for the commission?

- a. If so, what are some possible solutions?
- b. If not, why not?
- c. Have you contacted the Governor's office about the problem or asked commission staff to do so?

**Answer to Question No. 4:** The FEHC's caseload is largely dependent on the volume of cases brought by the DFEH. I do not believe that we have a "serious" problem yet, although the growing backlog of cases does present various challenges to the FEHC, particularly in light of our limited resources. I understand that the DFEH is implementing a process by which it will prioritize cases. I encourage the DFEH to do this.

Ideally, the DFEH would focus first on two broad types of cases: (1) cases involving issues of first impression before the FEHC, which could lead to a precedential decision that will clarify the law for the general public; and/or (2) cases that have an impact on a class of individuals, and not solely on any one person. Although everyone's rights are important, given limited resources, both the DFEH and the FEHC must focus first on the areas in which we can have the greatest impact on the greatest number of people.

I will also encourage the FEHC to review our policies and regulations with respect to the handling of cases to determine whether we can streamline the process for certain cases, and/or otherwise make the adjudicatory process more efficient. This may be particularly appropriate in cases involving a single individual whose case does not present a novel legal issue

or fact pattern, which means that any decision in the case likely would not be certified as precedential.

From a longer-term perspective, to the extent the DFEH continues to bring more cases, ultimately, the FEHC will require more staffing. At some point, ideally, the FEHC would have dedicated ALJs whose sole function is adjudicatory, and staff attorneys whose sole function is regulatory. Regardless of the amount of streamlining and efficiency we may be able to achieve in the short-term, longer-term, with an increased case load, we will need more staff.

From an even longer-term perspective, and as part of the FEHC's long-term strategy planning process, I would like to explore ways in which the FEHC can become even more active in the adjudicatory process. To the extent the FEHC can develop a reputation as a fair and efficient provider of dispute resolution services, both to plaintiffs and defendants, it may be possible that all parties will want to utilize our adjudicatory process more. This should be particularly true if the Bar perceives the FEHC (and our ALJs) as having both particular expertise in the areas over which we have oversight, as well as an adjudicatory process that is superior either to court or binding arbitration.

Ultimately, the real constraint on the FEHC is limited financial resources. I know that FEHC staff is having on-going discussions with the Administration regarding our budget. So long as the FEHC is funded through the general fund, I am not optimistic that our budget will change meaningfully, at least in the short-term. Moreover, I am not in a position to weigh budgetary priorities, and as a commissioner, my role is simply to make the most of what we are allocated.

Over the longer-term, to the extent the FEHC could develop ways to supplement its general fund funding, it may be able to do more. One consideration may be to impose some form of fee in connection with the filing of complaints with the DFEH, and some form of fee in connection with adjudicated matters. Perhaps we could model a fee structure along the lines of fees assessed by the court system. Although we do not want to create a financial barrier to anyone who wishes to pursue a complaint, it may be time to at least consider whether a funding alternative to the general fund may provide a new source of revenue that will allow both the DFEH and the FEHC to better achieve their goals.

**Question No. 5:** In past years, there have been comments that the workload of the commission was not sufficient to justify up to four ALJ positions. With the budget cuts and hiring freeze, the commission has, for the foreseeable future, one ALJ. Is one administrative law judge sufficient to handle the anticipated workload? Based on your extensive legal experience, how many ALJs and support staff are needed by the commission for it to fulfill its responsibilities to enforce the state's civil rights laws in a timely manner?

**Answer to Question No. 5:** I have yet to form an opinion as to the optimal number of ALJ positions for the FEHC. At present, each ALJ is asked to perform multiple

functions in the adjudicatory process (e.g., discovery referee, settlement officer, hearing officer, opinion writer, staffing the FEHC), as well as staffing the FEHC with respect to its regulatory and public outreach/education functions.

Historically, the adjudicative function has taken precedence over the regulatory function. The result has been either a delay in promulgating regulations, or a foregoing of regulations entirely in some areas (for example, until recent efforts to promulgate regulations, there have been no housing regulations under the FEHA).

Historically, it appears that ALJ's have expended significant time and resources on individual cases, without regard to whether any particular case may lead to a precedential decision, and without regard to the scope of the impact any particular case may have on the public.

Going forward, just as the DFEH is beginning to prioritize cases, the FEHC will have to determine how much time to expend on any particular case. It is likely that the FEHC will need to review its own procedural regulations to make clear that cases likely to lead to precedential decisions or that have a significant public impact will receive more time, while other cases will receive less time. This is hardly a novel concept. Both state and federal courts have for years allocated time based on a case's complexity. Although we must be sensitive to due process considerations, the simple fact is that with limited resources, every case cannot command the same amount of time.

At present, the FEHC is dependent on the general fund for its budget. As noted above in answer to Question No. 4, to the extent that this can change, and the FEHC can develop a stable alternative funding source, we can increase all staff and have a greater impact. I, however, as an individual commissioner, do not set budgetary priorities, and I have very limited, if any, influence over the process. My charge is to make the most of the resources we are allocated, and I am committed to doing just that.

**Question No. 6:** Other than the commission's minutes of its meetings, there are no public reports of the commission's adjudicatory work, particularly of the work handled and resolved at the administrative law judge's level. Should there be more transparency to the commission's work, similar to the case statistics prepared by the Judicial Council of California showing the workload of the courts and the disposition of the cases filed?

**Answer to Question No. 6:** As a general rule, transparency is good and I support it. To the extent the FEHC can compile data and statistics that may be of benefit to the public without placing an undue burden on FEHC staff, I would support such an effort.

**Question No. 7:** It appears that the commission members only decide about 15% of the accusations presented to the FEHC, with the remainder being resolved at the ALJ level.

- a. Are you told about the disposition in those other cases, and when?
- b. What materials are you given prior to the commission meetings so that you are prepared to discuss and rule upon proposed ALJ decisions?
- c. Typically, about how much discussion occurs with respect to each proposed decision? Less than 30 minutes? More than one hour?

**Answer to Question No. 7:** FEHC staff advises commissioners generally about the disposition of matters presented to the FEHC. Unless a case requires commission action, we are not provided with the specific details of any particular case.

With respect to preparatory materials, prior to a commission meeting, we are provided with a copy of a proposed decision, a memorandum explaining the ALJ's actions and reasoning, the operative pleading, relevant transcripts from the hearing, and relevant documents required for a resolution of the case.

I have not participated in enough deliberations to form an opinion as to a "typical" length of time for deliberations. To date, deliberations on any particular case have ranged in the 30 – 60 minute range. In each case, I felt that the FEHC devoted sufficient time for each commissioner to express his or her views and for the FEHC as a whole to make an informed decision.

**Question No. 8:** Since the civil rights of litigants are involved and the matters may be of public interest and concern, should these proceedings be heard in closed session as they currently are?

**Answer to Question No. 8:** Yes. The FEHC acts either as a jury and/or an appellate court panel. In either case, such deliberations are in private. The FEHC speaks publicly through its opinions. The opinions should speak for themselves.

Opening the FEHC's deliberations to the public could chill the frank debate and discussion that may need to occur when considering a particular case. Moreover, if a Commissioner disagrees with the FEHC's decision or any part thereof in any particular case, his or her opinion will be made public via his or her written dissent.

**Question No. 9:** Please tell us the progress of those regulations and the specific timetable for its completion. Have there been particular challenges or issues in the promulgations of the regulations that slowed the process?

*Pregnancy Regulations:* These are currently pending with the Department of Finance being reviewed for their fiscal impact.

*Disability Regulations:* Although we have finished these regulations, we are not proceeding with them until the U.S. Equal Employment Opportunity Commission (EEOC) revises its disability regulations. Prior to issuing new regulations, the FEHC wants to ensure that they are consistent with the EEOC's revised regulations under the amended Americans with Disabilities Act (ADA).

*Housing Regulations:* Promulgating housing regulations from scratch has been a very difficult process. Even under the best of circumstances, this would be a very difficult process. Given the FEHC's limited staff resources, promulgating these regulations has been even more difficult.

At this time, rather than attempting to draft a single comprehensive set of regulations, the FEHC is now focusing on promulgating regulations in those areas under the FEHA in which there is no FHA equivalent (e.g., sexual orientation and source of income discrimination). For the time being, the FEHC can have the greatest impact by creating effective regulations in areas unique to California.

Given our current focus, it is my hope that we will have proposed housing regulations available for public review and comment by either the end of 2009 or early 2010.

**Question No. 10:** Given the budget reductions, there will be difficult choices in choosing how to best allocate the commission's limited resources. How do you prioritize in importance the commission's outreach responsibility to promote the state's civil rights laws, educating both employers and employees, landlord and tenants, property owners and persons with disabilities, about the rights and obligations of people under the law? Where does outreach fit in the list of what should be accomplished?

**Answer to Question No. 10:** The FEHC has three major functions: adjudicatory, regulatory, and public outreach/education. Given our limited resources, I would prioritize regulatory first, public outreach/education second, and adjudicatory third. I would do this for the following reasons.

First, although aggrieved persons have alternative adjudicative remedies, no one other than the FEHC is empowered to promulgate regulations. Regulations, by definition, have a broad impact on all of society, and can have a profound impact on the general public. As such, having clear, concise, plain-language regulations can have an important impact on everyone.

Similarly, although theoretically, others may undertake public outreach/education, by undertaking this responsibility, the FEHC may actually be able to change minds and opinions, foster more fairness in society, and limit the need for dispute resolution. Although to any individual aggrieved person, his or her case may be very important, from the FEHC's perspective, we must focus on doing the greatest good for the greatest number of

people. Through greater public outreach/education, I am hopeful that we can actually change minds and attitudes and reduce, perhaps substantially, the need for dispute resolution.

I must emphasize that although I would place the adjudicatory function third in priority, I both understand the importance of the adjudicatory function and am committed to carrying out this function fully, fairly, and efficiently, for all parties who appear before the FEHC.

**Question No. 11:** The Legislature last year enacted SB 1608, which, among other provisions, created the Commission on Disability Access to study and make recommendations to the Legislature on improving compliance with disability access laws in California. Once it becomes operational, how can the two commissions interact and interrelate for maximum efficiencies to promote compliance with the civil rights laws?

**Answer to Question No. 11:** I do not know enough about the Commission on Disability Access to comment specifically. More generally, to the extent the Commission on Disability Access identifies omissions or deficiencies in our regulations, we can work collaboratively to update our regulations. Similarly, to the extent the FEHC can help in public outreach/education, there may be opportunities to collaborate.

**Question No. 12:** How have funding cuts and staff layoffs affected the commission's ability to perform its duties? The April 14, 2009 minutes of the commission's meeting notes the creation of a subcommittee to discuss a work plan to focus on how the commission can do more with less, and create value for the administration with limited resources and maximize the work of the commission's staff. When will it be completed? Please provide a copy of this work plan to the Rules Committee so that we may see what priorities have been set and what changes have been made in light of the reduced budget?

**Question No. 12:** In light of our limited resources, the FEHC is being forced to determine how we can do more with less. This is not entirely bad, particularly if the end result is a more efficient operation that actually better serves the needs of the people of California.

On the adjudicatory front, the FEHC will have to figure out how to handle cases more efficiently, without either sacrificing a party's due process rights or the importance and value of precedential decisions. We likely will have to modify/modernize our procedural rules and regulations so that the FEHC handles cases as efficiently as possible.

On the regulatory front, a lack of staffing significantly hampers our ability to promulgate new regulations and/or amend/update existing regulations. Promulgating regulations takes significant time and expertise. Ideally, we would have at least three staff attorneys whose sole focus would be on regulations (one for employment, one for housing, and one for the Unruh Act and the Ralph Act). Each area is sufficiently broad to justify such a minimum allocation of

The Hon. Darrell Steinberg  
August 7, 2009  
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staff resources. To date, however, we have never had such an allocation of staff resources, and it is unlikely that we will any time soon.

Alternatively, the FEHC must look for additional ways in which to engage academics, practitioners, advocates, and other stakeholders in our regulatory development process. To the extent we can effectively solicit and marshal input from others, our limited staff resources can be more effectively leveraged. We are attempting to do this in our current round of regulatory development, and I am hopeful that we can build on this practice. The result should be better regulations that are promulgated in a more timely matter and that will require fewer staff resources to complete.

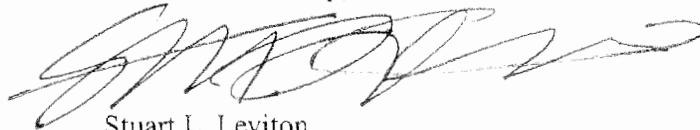
As for public outreach/education, this has suffered the most from a lack of staff resources. The FEHC is discussing ways to increase the FEHC's presence and visibility, and we are discussing ways in which individual commissioners can take a leading role in this process.

\* \* \*

Thank you and the members of the Senate Rules Committee for your consideration of me for this important position.

Sincerely,

Leviton Law Group, A P.C.

A handwritten signature in black ink, appearing to read 'S. Leviton', written over a horizontal line.

Stuart L. Leviton  
Commissioner  
California Fair Employment and Housing Commission



Patricia Perez  
Response

August 7, 2009

Via Email and U.S. Mail  
Email [evelyn.kazanis@sen.ca.gov](mailto:evelyn.kazanis@sen.ca.gov)

**Senate Rules Committee**

AUG 07 2009

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

**Appointments**

Re: Senate Rules Committee Questions for Patricia Perez (for confirmation to the Fair Employment and Housing Commission)

Dear Ms. Sabelhaus:

I am in receipt of Chairman Darrell Steinberg's July 17, 2009 letter asking for my response to questions related to my services on the Fair Employment and Housing Commission. Please see my answers below. In addition to providing answers to the Chairman's specific questions, I also attach, as requested, an updated Form 700, Statement of Economic Interests.

1. *You have been serving as a commissioner since last December. Please provide a brief statement of your accomplishments as a member of FEHC and on your focus as a commissioner. Also, please tell us what you believe are your responsibilities as a member of the commission entrusted with the enforcement of the state's civil rights laws.*

**Accomplishments and Activities as a FEHC Commissioner:**

- I was appointed Vice-Chair of the Commission in February 2009. To date, I have chaired two meetings, working with the Executive and Legal Affairs Secretary and staff to prepare the agenda and other meeting materials.
- I also serve as one of two Commissioners on the FEHC disability regulations subcommittee. The subcommittee is drafting disability regulations and is mindful of the need for clarity, consistency and fairness for employees and employers in these regulations.
- Having attended all meetings since my appointment, I have voted on numerous cases involving both employment and housing issues. In addition to reviewing meeting packets containing information about case adjudications, updates on regulations, information that

may impact civil rights issues, and summaries from various agencies, I have also, along with the other Commissioners, reviewed and voted on decisions based on proposed decisions of the Commission's administrative law judges (ALJs). During my tenure as a Commissioner, I have decided, along with my fellow Commissioners, three matters that were not designated as precedential (*Dept. Fair Empl. & Hous. V. Jennifer Victoria* [a familial status housing discrimination case], *Dept. Fair Empl. & Hous. V. Michael Hudson* [a decision holding a landlord liable for sexual harassment of one of his tenants] and *Dept. Fair Empl. & Hous. V. Historic 23 Club* [a decision dismissing an accusation for sexual orientation discrimination, dismissed for failure to meet its burden of proof]). In addition to these three decisions, we have also voted on two decisions, which the Commission made precedential, and are now final. Those cases are:

- *Dept. Fair Empl. & Hous. v. Terra Linda Farms* (Rivas/Santillan) Dec. No. 08-09-P, a precedential decision holding a grower is a joint employer with the farm labor contractor under the Fair Employment and Housing Act (FEHA) and thus liable for the sexual harassment and retaliation of two female farm workers.
- *Dept. Fair Empl. & Hous. v. Acosta Tacos* (Chavez), Dec. No. 09-03, a precedential decision holding that respondents failed to reinstate complainant to her position after she returned from a pregnancy disability leave; terminated her on the basis of her sex, because she was breastfeeding; retaliated against her for exercising her FEHA rights, and failed to take all reasonable steps to prevent discrimination from occurring.
- Beginning shortly after my appointment, I began to participate in presentations and educational seminars as a Commissioner to meet the Commission's goal of educating the public about the Commission's work. I am also scheduled to attend various other educational events to promote this goal:
  - In January of 2009, I attended the "Employment Litigation 2009" conference in San Diego. This conference, sponsored by The Rutter Group – California Judges Association, allowed me to interact with approximately 100 employment attorneys and judges from throughout the state. The Commission presented a program comparing differences and similarities between the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA).
  - In March of 2009, the Labor & Employment Law Section of the State Bar held its annual Public Sector conference in Sacramento. Approximately 250 employment attorneys (defense, plaintiff and union side) specializing in public sector law attended. At that conference, I participated as a moderator on a panel discussing best practices in conducting workplace investigations. My co-panelists included EEOC and DFEH attorneys.
  - On July 22, 2009, also attended the Labor and Employment Law Conference presented by the NLRB Regions 21 and 31 (LA), in cooperation with the OC Labor and Employment Relations Association and Federal Mediation and

Conciliation Service. Along with DFEH Director Phyllis Cheng, I presented the Governor's proclamation regarding civil rights. Approximately 250 attorneys, mediators, judges and HR professionals attended this event held in Anaheim.

- On August 5, 2009, I presented a webinar sponsored by the California Chamber of Commerce. The presentation covered regulatory requirements for AB1825 training, as well as general information regarding best practices in sexual harassment training. Approximately 350 attendees pre-registered for this event and almost 300 attended (the presentation is now on the Chamber's website and can be viewed by its members).
- In addition to the presentation I have already made, I have also been invited to make presentations later this year. I have been asked to speak about the Commission's California Family Rights Act (CFRA) regulations by a partner in the employment law department of Jones Day, an international law firm. I am set to speak to the firm's attorneys as well as firm clients (employers) in October of 2009.
- I will also participate on three panels at the upcoming Annual Meeting of the State Bar Labor & Employment Law Section. The Annual Meeting, to be held in late October in Berkeley, will include participation by several hundred employment law attorneys, judges, mediators, in-house counsel and HR professionals (I will serve as Chair of this 6500 member Section beginning in October of 2009). In addition to participating in a half-day preconference seminar regarding workplace investigations, I will also be a panelist, along with DFEH attorneys, on a panel regarding the administrative process (from accusation to adjudication) and on a panel discussing FEHA disability discrimination issues. In addition to my own participation, I am also coordinating the participation of several other Commissioners as speakers on several panels (the Annual Meeting theme this year is "Celebrating the 50<sup>th</sup> Anniversary of the Fair Employment and Housing Act").
- I am scheduled to conduct a mediation session on behalf of the Commission in Los Angeles on September 25, 2009. The mediation involves an accusation alleging violation of the California Family Rights Act by an employee of the City of Los Angeles's Department of Water and Power.
- I completed the mandatory ethics training on March 16, 2009.

#### **Responsibilities:**

As a Commissioner of the FEHC, my responsibilities include:

- Reviewing, considering and deliberating on proposed decisions issued by the FEHC's administrative law judges. This work requires careful preparation prior to the vote (reviewing the proposed decisions, as well as various portions of the record) and requires that I stay up to date on changes in the law related to the various statutes we enforce.

- Propounding new regulations and revising existing regulations interpreting the Fair Employment and Housing Act. This work includes not only drafting regulations, but also participating in public hearings regarding the regulations.
  - As a Commissioner I am responsible for reviewing legislation concerning the FEHA and civil rights.
  - Since one of the Commission's primary goals is to provide education and outreach to our constituents, as a Commissioner I am also responsible for informing the public (employees, employers, tenants, landlords and the general public) about the FEHA and civil rights.
  - Serving as a forum for the public on civil rights issues.
2. **Please tell us about your goals as a commissioner. What do you hope to accomplish during your tenure? What challenges do you anticipate to meeting these goals? How will you measure your success?**

### Goals

- One of my primary goals is assist the Commission and the Commission staff to meet its requirement to adjudicate and mediate matters before us. To that end, in addition to continuing to work with staff on matters that are being adjudicated by our ALJs (that work includes properly preparing to vote on proposed decisions, and voting on those matters), I also aim to participate directly in this process. I am already scheduled to conduct a mediation session on behalf of the Commission. I plan to participate in both mediations and case adjudications to lessen the burden on the ALJ staff and also to avoid, to the extent possible, case backlog.
- Being one of two Commissioners participating on drafting disability regulations, one of my goals is to have those regulations finalized as soon as possible.
- To further our important goal of increasing the visibility of the Commission, the protections of the FEHA, and civil rights, I will continue to participate in a variety of activities that will allow me to make presentations to a variety of constituency groups about the Commission's work. As noted above, I have already participated in several events and have plans to participate in several additional conferences, meetings and seminars.
- A major goal is also to collaborate with a variety of stakeholders to meet the Commission's goals. These collaborations will include working with members of the Department (something which I have already accomplished by participating with the Director and numerous Department attorneys on a variety of presentations). Additionally, as the incoming Chair of the State Bar's Labor & Employment Law Section, I will work closely with State Bar members (the Section includes 6500 members who are employment law specialists) and will also collaborate with the newly formed Housing Section of the State Bar. I have also been in touch with several other business, legal (defense and plaintiffs) and advocacy groups regarding ways that we can educate their members, either through presentations or publications.

- To increase opportunities for other Commissioners and Commission staff for public outreach to both the legal community and members of the public, focusing on preventative measures.
- In all of these areas, my overriding goal is to bring my unique professional perspective to all the work I perform on behalf of the Commission. As a neutral and a professional who is in the workplace on an almost daily basis (meeting with thousands of line employees, managers, business owners and executives), I hope to focus my efforts on preventative measures. To this end, I will certainly focus on making presentations to increase public understanding of ways to prevent workplace conflicts, and will also focus on providing my vantage point (presenting the employee and employer viewpoints, and looking at issues from a business perspective) on the work I perform for the Commission.

### Challenges

- The most important challenge is budget cuts which impacts our staff's ability to carry out the work required to protect civil rights. As a Commission, both individually and as a group, we are proposing a variety of solutions to ease this burden. These solutions include having Commissioners perform some of the work typically conducted by ALJs (case adjudication and mediations), continuing to rely on volunteer work (law students, for example) and also the resources of the Commissioners (law clerks, secretarial support, etc.), streamlining various administrative processes, and working with Department staff to prioritize cases and to develop ways to decrease backlogs, among others.
3. **Other than the periodic FEHC meetings, up to four times a year, how do you stay informed of commission activities? Is the quarterly briefing by commission and DFEH staff sufficient for you to carry out your responsibilities as a commission member?**

### Staying informed:

- We are scheduled to meet five or six times per year. In between meetings, we are kept abreast of all development through frequent phone calls and emails from staff, particularly ELAS and ALJs. Additionally, I have regular contact with the Department Director and her staff to ensure we are working in cooperation and meeting the Department and Commission goal of enforcing civil rights.
- I am volunteering the services of my staff to coordinate with the FEHC staff to receive statistics regarding accusations the Commission has received including their status (pending, scheduled for mediation, etc.), and a list of matters that were resolved before adjudication. I have also discussed with staff ways in which we can be better-prepared for our Commission meetings, which will make the work we perform at meetings more efficient and productive. These proposals include providing Commissioners with copies of all proposed decisions on a "flow" basis (when they are issued), to give Commissioners the maximum amount of time before Commission meetings to review the proposed decisions, transcripts, exhibits, etc.

4. **Do you see the growing backlog of cases as a serious problem for the Commission?**

a. **If so, what are some possible solutions?**

With only one ALJ position currently filled, it is a very high priority of the Commission to fill the second position. We anticipate an increasing backlog until the position is filled and see this as a problem. To this end, the Commission is also utilizing its executive officer for hearings and Commissioners, including myself, are volunteering to do mediations. The DFEH has begun to prioritize which cases are brought to the Commission for full evidentiary hearings. The Commission continues to work with the DFEH and other parties to attempt to settle as many cases as possible.

b. **If not, why not?**

N/A

c. **Have you contacted the Governor's office about the problem or asked commission staff to do so?**

No. However, I understand from reports by our Executive and Legal Affairs Secretary that, on behalf of the Commission, she reports weekly regarding its adjudicatory caseload to the administration and meets monthly with administration officials about its workload.

5. **In past years, there have been comments that the workload of the Commission was not sufficient to justify up to four ALJ positions. With the budget cuts and hiring freeze, the Commission has, for the foreseeable future, one ALJ. Is one administrative law judge sufficient to handle the anticipated workload? Based on your extensive legal experience, how many ALJs and support staff are needed by the Commission for it to fulfill its responsibilities to enforce the state's civil rights laws in a timely manner?**

At the moment, the Commission is understaffed for its adjudicatory and regulatory workload. As of January 2009, the Department of Fair Employment and Housing is now fully staffed, with 16 attorneys, including its Chief Counsel. With this number of attorneys, the number of accusations filed with the Commission has increased 60% from January to June 2009 over the same period in 2008. In addition, the Commission also embarked upon three rulemaking projects when its ALJ staff consisted of three ALJs in addition to its ELAS. At the moment, the Commission has one ALJ and its ELAS. Further, the Commission this month lost one of two of its legal support staff positions, the Executive Assistant assisting the Commission's ELAS and the Commissioners.

As noted above, the Commission will be hiring another ALJ. In addition, the Commission will utilize its remaining .2 position to hire a part-time attorney to assist it with its rulemaking responsibilities.

The Commission will also continue to utilize law students to further stretch its resources. For example, this summer, the Commission hired four volunteer law students to work with it on its adjudicative functions. And, Commissioner Dave Carothers volunteered full-time the services of his summer law intern to work with the Commission on research projects.

Finally, the Commissioners and their private staffs are working closely with Commission staff to provide further assistance, handling mediations and volunteering the expertise of legal support staff to work on databases which can better track the Commission's workload.

6. **Other than the Commission's minutes of its meetings, there are no public reports of the commission's adjudicatory work, particularly of the work handled and resolved at the administrative law judge's level. Should there be more transparency to the commission's work, similar to the case statistics prepared by the Judicial Council of California showing the workload of the courts and the disposition of the cases filed?**

The Commission publishes its precedential decisions on its websites. All open cases are confidential until completed, however.

Once the Commission's budget allows, the Commission looks forward to creating databases which will make it easier to track all of its work.

7. **It appears that the Commission members only decide about 15% of the accusations presented to the FEHC, with the remainder being resolved at the ALJ level.**

- a. **Are you told about the disposition in those other cases, and when?**

The majority of cases filed with the Commission are settled, either with or without specific Commission involvement. The Commission receives a report from its Executive and Legal Affairs Secretary (ELAS) prior to each Commission meeting which summarizes the adjudicatory work of Commission staff since the last Commission meeting. This summary includes number of case management hearings, settlement conferences (and whether those cases settled), hearings scheduled, and hearing days.

- b. **What materials are you given prior to the commission meetings so that you are prepared to discuss and rule upon proposed ALJ decisions?**

Typically, we are given a short cover memorandum, the proposed ALJ decision, all arguments and briefs, the accusation and complaint, and key parts of the transcripts and exhibits.

- c. **Typically, about how much discussion occurs with respect to each proposed decision? Less than 30 minutes? More than an hour?**

It varies tremendously depending on the difficulty of the decision. At the last Commission meeting, we spent more than two hours on the two decisions scheduled for deliberations because of the complexity of the issues involved.

8. **Since the civil rights of litigants are involved and the matters may be of public interest and concern, should these proceedings be heard in closed session as they currently are?**

While we hold arguments by the parties in open session, the deliberation of our ALJ staff's proposed decisions is held in closed session, required by California law. (See Gov. Code § 11126, subd. (c)(3).)

9. **Please tell us the progress of those regulations and the specific timetable for its completion. Have there been particular challenges or issues in the promulgations of the regulations that slowed the process?**

The Commission's pregnancy regulations are currently with the Department of Finance being reviewed for their fiscal impact.

The Commission's disability regulations are finished but being held, briefly, while we review when the Equal Employment Opportunity Commission (EEOC) will be revising its disability regulations. The Commission would like to coordinate its regulations with the EEOC's new Americans with Disabilities Amendments Act (ADAAA).

The Commission's new housing regulations are half finished. To speed the work on these regulations, we have decided to utilize the federal Housing and Urban Development (HUD) regulations, wherever possible and concentrate instead on regulations not covered by current HUD regulations.

The primary challenge for all three of these regulations is lack of staff.

10. **Given the budget reductions, there will be difficult choices in choosing how to best allocate the commission's limited resources. How do you prioritize in importance the commission's outreach responsibility to promote the state's civil rights laws, educating employers and employees, landlord and tenants, property owners and persons with disabilities, about the rights and obligations of people under the law? Where does outreach fit in the list of what should be accomplished?**

The Commissioners are attempting to perform much of this outreach work to assist Commission staff. Additionally, the Commission posts educational materials on its website.

11. **The Legislature last year enacted SB 1608, which, among other provisions, created the Commission on Disability Access to study and make recommendations to the Legislature on improving compliance with disability access laws in California. Once it becomes operational, how can the two commissions interact and interrelate for maximum efficiencies to promote compliance with the civil rights laws?**

The FEHC will work closely with the Commission on Disability Access (CDA) to coordinate our work with the CDA on our rulemaking projects regarding employment and housing regulations on disability.

12. **How have funding cuts and staff layoffs affected the commission's ability to perform its duties? The April 14, 2009 minutes of the commission's meeting notes the creation of a subcommittee to discuss a work plan to focus on how the commission can do more with less, and create value for the administration with limited resources and maximize the work of the commission's staff. When will it be completed? Please provide a copy of this work plan to the Rules Committee so that we may see what priorities have been set and what changes have been made in light of the reduced budget.**

The Commission's "Work Plan," developed at its April and June meetings, is a work in progress, evolving with the Commission's funding and staffing. Here is the latest iteration of that Work Plan.

- a. **Marshal Outside Resources: Recommendation from June meeting:** Use more outside resources including student interns, the resources of Commissioners and their law firm staffs, the resources of our stakeholders, including attorneys' law firms and their interns, university doctoral students and seek foundation money if that is an option.  
**Implementation:** The Commission has hired four full-time law students for the summer (at no expense). In addition, Commissioner Dave Carothers has volunteered his summer law intern to work with the Commission on its rulemaking projects.
- b. **Adjudication Survey: Recommendation from April meeting:** Survey users of the Commission's adjudicative process to understand their reasons for often "opting out" of the administrative system to take their cases to court.  
**Implementation:** As Commission staff is at capacity with its current hearing caseload, staff has put implementing this recommendation on hold for now.
- c. **Regulations: Recommendation:** Include "leading minds" in employment/housing (cross-section of attorneys and other experts) to work with Commission on its rulemaking projects. Solicit law student help from these lawyers' law firms and also Commissioners' law firms.

**Implementation:**

Pregnancy regulations: With assistance from State and Consumer Services Agency, the Commission has worked with a fiscal analyst from the Franchise Tax Board to redo the FEHC's Fiscal Impact Statement for resubmission to the Department of Finance for its approval.

Disability Regulations: Commission staff has solicited the advice of several of its disability regulations subcommittee members on particular problems with the regulations.

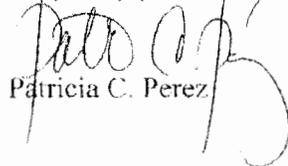
Housing Regulations: Commission staff has recruited Prof. Tim Iglesias, a University of San Francisco professor specializing in housing discrimination issues to work with the Commission on its housing regulations. As stated above, Commissioner Carothers' summer intern, Jing Li, is working with the Commission on its housing discrimination regulations.

- d. **Civil Rights Commission Functions: Recommendation:** When the Commission's budget allows, the Subcommittee recommends holding hearings on one or more topical civil rights concerns.

**Implementation:** Commission staff has taken no further steps on this recommendation because of budgetary constraints.

It has been an honor to serve the people of the State of California in my capacity as a Commissioner of the FEHC. I look forward to continuing to perform this important work. Thank you for the opportunity to answer your questions about my tenure thus far. If you require any additional information, please do not hesitate to contact me.

Very truly yours,

  
Patricia C. Perez

Thomas F. Gede

BY EMAIL & U.S. MAIL

August 28, 2009

Ms. Nettie Sabelhaus  
Appointments Director  
Senate Rules Committee  
California Legislature  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Thomas Gede  
Responses

RE: Appointment to Board of Directors, U.C.-Hastings College of the Law

Dear Ms. Sabelhaus:

As requested by Senate Rules Committee Chairman Steinberg in his letter of August 5, 2009, this letter responds to the questions presented in anticipation of a confirmation hearing on my appointment to the Board of Directors of U.C.-Hastings College of the Law.

Preliminarily, I must state that it is an extraordinarily special privilege to be appointed to the Board at the college where I studied the law and from which I began my professional career as an attorney almost 28 years ago. I keenly recognize the important responsibilities the position carries - responsibilities to the institution, the Dean and Chancellor, the faculty and administration and, most importantly, the students. Additionally, there are important responsibilities to the larger legal community and the neighborhood communities of San Francisco.

The answers to the questions are as follows:

#### GOALS

1. ***As an incoming member of the board, do you believe that UC Hastings should continue to provide a law school education that is a viable option for all Californians, regardless of the applicant's economic circumstances? If so, what ideas do you have that might help UC Hastings to reach this goal?***

A1. I believe the College must remain affordable for all Californians, regardless of an applicant's economic circumstances, as it was for me, when I attended Hastings on the G.I. Bill and with little financial means at the time. At the same time, I believe there is a delicate balance between the College remaining affordable on the one hand, and, on the other hand, charging fees commensurate with its stature as one of the country's top law schools. For Hastings to be regarded as a top-ranked law school, applicants will expect the College to charge fees reasonably consistent with the other U.C. law schools. This speaks to the value the applicant expects in return for her or his investment - in quality of faculty and instruction, in appropriately maintained facilities and resources, and in the ability to compete in seeking jobs in the legal profession and as judicial interns or clerks. For applicants who face greater economic hardship, Hastings must develop a stronger scholarship grant program to attract these individuals and allow them to enter the work force without carrying a long-term and severe financial burden. Stronger scholarship programs can be developed through a strong fundraising program and a larger endowment at the College, but until those resources are well established, state support can be an important component to grants and scholarships.

Additionally, Hastings must find a way to attract and assist students who seek careers in public service, as I did when I graduated from Hastings, or in service with non-profit organizations. I strongly support avenues of loan relief, forgiveness or reduction for those students who aspire to become public service lawyers, as currently available in certain programs and set forth in the policies of the American Bar Association (ABA) on the topic. However, I do not believe that Hastings should strive to be - or to be known as - the "affordable" public law school at the expense of its ability to develop and maintain its rank as a top-tier law school of exceptional quality in California and the United States.

**2. Please provide a brief statement of goals you hope to accomplish during your twelve year term on the Board of Directors of UC Hastings College of the Law. Within this statement, please respond to the following questions: What do [you] think should be the priorities of the law school? What issues relating to the operation of the law school are most important to you[?]? How will you measure your success?**

A2. My highest priority as a Director is to continue - and to improve - the College's development of a strong fundraising program to build a substantial endowment comparable to other top-tier law schools. The College is seriously under-endowed. While the Board of Directors is the governing board of the College and not the fundraising

Ms. Nettie Sabelhaus

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foundation, the Board must commit itself to a comprehensive and coordinated strategy for its endowment. Hastings, under Chancellor and Dean Nell Newton, commenced a highly professional and effective program of fundraising. That program will require focused direction, a high level of energy and considerable support. Accordingly, my first and most enduring goal as a Director will be to see a sharp increase in the existing endowment (1) to facilitate the granting of scholarship support to students who need assistance, (2) to attract and maintain faculty of the highest intellectual, academic and teaching quality, and (3) to maintain the most appropriate facilities for a high quality learning environment for students, the faculty, administration and employees of the College. I cannot attempt here to quantify the percentage or the amount the endowment should reach within the time of my service, but it must grow substantially and in the near future. An enterprise-wide fundraising approach is needed, using every available committee, alumni organization and network, the Chancellor and Dean and administration and, of course, supporters of the College in the greater legal community.

My second goal is to work towards an increase in the number of faculty hired in order to improve the faculty-student ratio. This goal is necessarily dependent on attracting and retaining the highest quality faculty members for Hastings, which is in turn dependent upon a significant growth in the financial resources of the College.

My third goal is more personal in nature. As a former government lawyer, I hope to see the curriculum and programs of the College strongly support public service as an option for graduating students - as prosecutors, defenders, city attorneys, and non-profit organization attorneys. Hastings is by its charter required to be located by the courts of the state, and that has always put it close to city, county and state government and their law practices. Hastings lawyers have regularly and consistently distinguished themselves in public service, and it is a vital part of Hastings' reputation and character for that to continue.

Finally, with the success of the other goals, particularly in the number and quality of faculty, the ranking of Hastings among other law schools should go up. As a Director, I will examine each and every proposed action in the context of whether it serves to better the College and its students, and one of the most significant measures of success is in how Hastings is regarded among its sister law schools.

**3. With the early resignation of Chancellor and Dean Newton, UC Hastings will be looking for a new Dean and Chancellor for the second time in four years. In your**

**opinion, what priorities should UC Hastings follow in selecting its new Dean and Chancellor?**

A3. As it was one of the top priorities for the search committee when Chancellor and Dean Newton was selected, it remains critical that a new Dean be committed to developing the financial resources of the College. It is well understood that a Dean should not be part of the day-to-day fundraising, nor should she or he be engaged in the work on lower- and mid-level contributions. However, it is especially important for the Chancellor and Dean to be the “face” personally to visit and talk with top-level prospective donors, those donors at the highest level of giving. Furthermore, the Chancellor and Dean, working with the Board of Directors, must play a key role in developing an overall strategy for integrating fundraising with other sources of revenue, namely, state support and student fees, for the financial stability and success of the College. The integrated approach with major-donor fundraising as a key element, is vital, in my opinion, to relieve the financial burden on students, hire needed additional faculty, and enhance scholarship, teaching and the important programs of the College.

Additional important priorities in seeking a new dean include finding an individual who will be committed to working with the faculty to attract and retain top quality scholars and teachers, of all backgrounds, to strengthen the College’s offerings to students, build its reputation for academic excellence and raise the College’s profile among its sister law schools. Vital to this is a commitment from a new dean to that individual’s looking for ways to improve the quality of the students entering and graduating from the College and the career opportunities for them. The higher the caliber of student, the student experience in the College and successful placement in the work world, the higher will be the level of commitment by Hastings graduates to supporting the school financially and in other ways. An additional priority for a new dean ought to be the recruitment and retention of students from disadvantaged backgrounds.

Next, the person to be selected as a dean should be an extraordinarily capable individual, whose personal qualities will allow the successful development and nurturing of key relationships with alumni, law firms, the bench and bar, businesses and the neighboring community, most importantly, the City and County of San Francisco. A new dean should be able to prioritize these commitments and efficiently utilize these networks for the betterment of the College.

Ms. Nettie Sabelhaus

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Finally, an essential requirement for all law school deans, under existing standards and protocols, is that a dean must have the respect and support of the faculty. This requires special skills and sensitivities, as the dean must be a courageous leader among the faculty on behalf of the entire College, but also be an integral part of the scholastic and academic enterprise with the faculty.

**4. Are there particular programs operated by UC Hastings College of the Law that you particularly support? Are there programs that you believe should be revised, eliminated, or expanded?**

A4. I fully support the College's current concentrations (Civil Litigation, Criminal Law Practice and Theory, Intellectual Property Law, International Law, Law and Health Sciences, Public Interest Law, Taxation), and its clinical programs (In-House Clinics, Out-Placement Clinics and Judicial Externships). I especially believe that the Out-Placement Clinics are extremely valuable for graduates who wish to work in the public sector, as it provides opportunities for students to work in governmental and non-profit law offices under the direct supervision of practicing attorneys. As I served as a state government attorney for 25 years, I will place a high level of attention, support and focus on the programs that help student develop their interest in and readiness for public service.

Among the Centers operated by Hastings is the Center for State and Local Government Law (CSLGL), which focuses on state and local government law, promoting research on public law issues. I understand that Hastings is the only public law school in California offering a program of study and research focusing on state and local government law, and thus, given my background, I expect it will have my deepest commitment.

I am yet unfamiliar with the levels of success for the international programs and certain other centers, so I currently am unable to suggest whether they should be expanded or eliminated. Clearly, the moot court program at Hastings is one of the most successful and it should be supported, as well as the trial advocacy skill teams that the College maintains and fosters.

**5. Should the board take other action to keep Hastings affordable to low- and moderate-income students?**

A5. As noted in my answer to Question #1, above, I believe the College must commit itself deeply to raising funds, growing its endowment, and obtaining the necessary state support to provide grants and scholarships to students. I was a student of limited means when I attended Hastings, and expected to enter public, not private service, and earn less than my colleagues, so I am sensitive to the issue of affordability. Loan forgiveness for those going into government and public interest law is essential. The board can and should take steps to ensure that higher levels of grants, scholarships and loan relief are developed and pursued.

**6. Should the board play a role in helping to ensure that there is better minority and ethnic representation in the legal profession? Should there be additional efforts to help increase the diversity of the law school pipeline into the profession?**

A6. I am deeply committed to the growth of the number of attorneys from diverse backgrounds in the workforce, and thus, from the law schools. To the extent consistent with California constitutional law, I support any and all programs designed to increase those number of students from disadvantaged backgrounds and limited means. Minority recruitment can take many forms, and I have personally been involved in encouraging and promoting prospective students from diverse ethnic backgrounds to attend Hastings. Most recently, a minority prospect I personally nurtured and encouraged to attend Hastings, and whom I escorted on a tour of Hastings, found himself offered a greater scholarship package from another school, and while he very much wanted to go to Hastings, he could not refuse the offer from the other school. The lesson for me was the importance of the “bottom line” for minority recruitment - we must offer greater financial incentives for such prospective students to attend Hastings.

I also support a vigorous use of the Legal Education Opportunity Program (LEOP) to permit students from disadvantaged backgrounds to be admitted under broader admissions criteria. In particular students who speak another language as their native language are often disadvantaged in the conventional admissions process, much as other factors play a role impacting students of diverse backgrounds. I believe the board should and will play a role, focus on these programs and ensure their viability consistent with the law and sound public policy.

**7. Has the recent economic hardships affected UC Hastings' commitment and funding of the LEOP? What kind of support has UC Hastings given to LEOP students**

Ms. Nettie Sabelhaus

August 28, 2009

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**to help ensure their success in law school and passage of the bar examination? How has that support been affected by these difficult economic times?**

A7. I do not have the particular financial figures at hand to assess whether the funding of LEOP at the College has been adversely affected. However, as I answered in A6 above, I believe the board has a responsibility and should commit itself to the health of the program and to the diversity of the student body, using all available and appropriate tools to recruit and retain students of disadvantaged backgrounds. I am concerned that the programs at Hastings to assist students in facing the bar examination is only at a nascent stage and deserving of more support. Many of the law schools considered competitive with Hastings have vigorous bar examination preparation courses, notwithstanding criticism that such courses do not match the standards of scholarship and academic rigor of the usual law school course. However, it seems to me to be of particular utility to allow and promote an appropriate program of bar exam preparation, particularly as it affects students of disadvantaged backgrounds who may struggle with standardized testing. It would seem such programs could be cost-effectively maintained, but provide for a greater bar passage rate for the College and better preparation for entry-level lawyers entering the work force.

Please do not hesitate to contact me if I can provide additional information or background.

Sincerely,

  
TOM GEDE



# Carol Muske -Dukes Goals

June 6, 2009

Darrell Steinberg, Chair  
Nettie Sabelhaus, Senate Rules Comm. Appts. Director  
Senate Rules Committee  
California Legislature

Dear Mr. Steinberg,

Thank you for your letter of May 22<sup>nd</sup>. I am pleased to provide my statement, as California Poet Laureate, to the California Legislature Senate Rules Committee.

The Senate Rules Committee asked the following questions of me: "What are your goals as California Poet Laureate? What do you hope to accomplish during your term? How will you measure your success? – and-- "Briefly outline your ideas for your cultural project. How do you envision bringing it to and involving underserved communities?"

Before answering these questions, I'd like to first thank the Governor and First Lady and the California Legislature for this remarkable opportunity to serve as Poet Laureate of California. I believe that the position of Poet Laureate offers me a "voice" and a chance to actively address a number of important issues related to the arts and education.

In response to the questions about goals and accomplishments – I would point to my twenty-five years as professor of English and Creative Writing at the University of Southern California – also my work establishing programs in creative writing and writing workshops in prisons: my goals remain the same. My goal is to connect the young (especially children in public schools and juvenile halls) to imaginative language, to serious reading, to the kind of enlightened literary possibility which leads to accomplished self-expression. It has always been my belief that an individual who knows how to read -- and read with awareness -- will learn to think clearly and profoundly, to write with clarity -- will be able to make informed choices and function as a contributing citizen. I measure my success in this endeavor, as always, by the response of students and teachers -- and other individuals whose lives have changed.

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Appointments

The statewide cultural project which I've initiated is called "The Magic Poetry Bus" -- and it is already in place (Our website is [www.magicpoetrybus.org](http://www.magicpoetrybus.org).) The Magic Poetry Bus will function as a vehicle to bring poetry and creative expression through writing to schools and artistically under-served communities throughout California. With a staff of volunteers (mostly former students, grad students or individuals who have attended my readings or lectures) -- we have already visited schools and other educational and literacy centers -- since my appointment by the Governor last November.

I've assembled a film-making crew (from USC's Cinema School and elsewhere) who have shot footage of poetry being taught in an exciting and challenging fashion to these elementary and high school students (in South Central Los Angeles and elsewhere) to children learning Shakespeare and to teen programs.

This film footage will become part of a website which we are building at present -- which will be a "resource guide" for students and teachers of poetry -- and for anyone else interested in poetry and creative expression -- particularly those in artistically under-served communities. The website will not only feature some of the fun and instructional film footage which we've shot -- it will provide a Virtual Bus Tour of "how to read and write creatively" -- information, both entertaining and challenging. The website will feature "bus stops" with poets and actors reciting their favorite poems, self-publishing, games, animation, motion graphics (as The Magic Poetry Bus travels from graffiti to organized self-expression), "pop-ups" and constantly-update-able interactive exchanges and information -- so that long after my tenure as poet laureate, The Bus will still be "traveling".

We have held gatherings to raise awareness and support for the project -- and most recently, we have "merged" The Magic Poetry Bus with Get Lit: Words Ignite, the teen literacy project. I have also provided poems and plan to visit juvenile detention centers through a juvenile court judge, Margaret Johnson, in San Jose -- with whom I've been in touch. I'm also working on visiting an elementary school for disabled children in Salton Sea -- also the Imperial Valley.

The Get Lit Players (whom we've filmed for the website) perform on high school stages throughout California. (They are also featured on HBO's recent program, "Brave New Voices".) The reason why I decided to work together with Get Lit, however, is because their goal is the same as ours -- "proactive poetry"! The Get Lit Players not only perform rap and "spoken word" poetry --- they also recite (blended with their own words) -- "Great Poems", canonical works by Walt Whitman, Langston Hughes, Emily Dickinson, Gwendolyn Brooks, William Wordsworth and many more.

What is most significant here is that the Get Lit Players (all of whom are from “under-served” communities) learn more than just “performance” and spontaneous expression – they learn to read and memorize poems, to recite them with joy and accuracy – and to continue to read more and more. Get Lit’s director, Diane Luby Lane, and I are working on more proactive poetry “blendings” of masterpiece poems and original or spoken work poems for presentation by the Players.

I believe that our idea of “pro-active” poetry works – and works in any educational or arts or “under-served” community. Not only will The Magic Poetry Bus and Get Lit travel to California communities – it will be accessible to all through the Magic Poetry Bus website - plus we are also planning a hard copy resource guide to accompany the website.

I should also mention that our Advisory Board so far includes individuals like former U.S. Poet Laureate Robert Pinsky, singer Paul Simon, actor and poetry performer John Lithgow, film-maker Nora Ephron, playwright Christopher Durang, and many others.

I hope that I have been able to make clear my goals and ideas for this “proactive poetry” cultural project. I would be most happy to provide any further information you wish.

Thank you again for this great opportunity to serve California and its communities.

Yours,

Carol Muske-Dukes



August 24, 2009

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

Vernon Chong  
Responses

Senate Rules Committee

August 2009

Appointments

Dear Ms. Sabelhaus,

These are my responses to the questions submitted by the Senate Rules Committee:

1. *How have you helped "to improve the function and value" of the board during your first term?*

Response: I have served on the Policy and Procedures Committee of the board since being appointed to the board. The policies had not been reviewed for over four years and were outdated. I was mainly responsible for the revising all policies and procedures to ensure that the board provided proper and current policies for the Department of Veterans Affairs.

There was an adversarial relationship between the board and the Department. Following my election as chairman, I initiated and continued personal visits with the Secretary of the Department and promoted a partnership between the board and the Department. Needless to say, the purpose of the board and Department is to ensure that veterans receive their benefits and that appropriate services are provided.

I also initiated the concept that the regular meetings of the CalVet Board would also be a forum for the Secretary of the Department to present ongoing issues as well as serving as a forum to interact with veterans.

I believe that the current relationship between the board and Department is one that reflects cooperation, collegiality, and good will.

I also led the development and adoption of a strategic plan for the board with goals and objectives.

2. *What goals and objectives do you hope to accomplish during your second term?  
How will you measure your success?*

Response: My goals are to continue to foster partnership and collegiality between the board and the Department, to ensure that veterans receive their rightful benefits and services, and to advocate for veterans benefits. The success of this partnership will be reflected in our working relationship in

developing and revising policies, requesting information and documents related appeals by veterans who feel they are denied benefits. This success may be may be more subjectively than objectively measured.

3. *What improvements, if any, have you seen in the working relationship between the board and the department during your tenure? Do you have any suggestions for further improvements?*

*Response: There has been a definite improvement in the relationship between the board and the Department. Much of this is due to the former Secretary, Thomas Johnson, and the Undersecretary, Roger Brautigan. All members of the board have had excellent working relationships with the executive leadership of the Department as well as the Departmental staff. The only suggestion for further improvements is to maintain a spirit of partnership and cooperation and to focus on the goal of providing the best services and benefits to the veterans.*

4. *Many inmates who parole from the California Department of Corrections and Rehabilitation are veterans. Does the board play a role in monitoring the services they receive on parole or how veteran services might be provided to parolees? If not, why not?*

*Response: The board has not play a role in monitoring services provided to paroled inmates. This is an operational issue and the board does not get involved in operational issues. The board receives briefings from the Veterans Services Division of the Department that includes information on services provided to paroled veterans. The board does not regard veteran parolees as being any different than other veterans when it comes to services or benefits.*

5. *What role does the board play in monitoring the status of federal matching funds and projected construction start dates on proposed new veterans homes?*

*Response: The board has been provided regular briefings on the status of each new home at board meetings since the beginning of the proposals for the new veterans homes. The board sent letters to the California congressional delegation supporting funding for the veterans homes.*

6. *How do you stay informed of living conditions and staffing issues at the veterans homes in Yountville, Barstow, and Chula Vista?*

*Response: The board is provided reports on many issues from each home on a regular basis at board meetings. This is by written as well as verbal reporting. The board will on occasion receive complaints from members of the homes. These are recorded and forwarded to the Department for action and follow-up.*

*Prior to 2008, the board conducted a meeting at each home on an annual basis. Members of the homes attend the meetings at their respective homes and are given the opportunity to make comments or ask questions of the board or the Secretary.. The frequency of board meetings were reduced from ten meetings*

per year to 6 per year on a bimonthly basis. To ensure that various locales in the state were venues for the board meetings, it was decided that meetings would be conducted at each home at least every two years. This policy was enacted by the board in view of the future increase in the number of homes. The board is also apprised of possible issues at the homes by the member of the board who is a resident at one of the homes.

The board is apprised of staffing issues at the homes by the Department during the regular board meetings.

7. *What role does the board play with respect to admittance of veterans to a*

Response:

A major responsibility of the board is to set policy for the Department. The board has established policies relative to the admission requirements to the homes as well as disqualifying conditions for admission. Admission requirements are spelled out in the Military and Veterans Code. Board policies A-4 Appeals to the Board, A-4.1 Production of Record by Divisions on Appeals, C-2 Disqualifying Conditions for Admission to the Veterans Homes, C-10 Admission of Veterans and Veterans Spouses, and C-12 Discharge of Non-Veteran Spouses.

8. *Why haven't the Ventura and Lancaster homes opened yet? What are the expected opening dates? What are the expected completion and opening dates for the Redding and Fresno homes?*

Response:

Aside from the original delays in funding by the U.S. Department of Veterans Affairs and the State, weather and the availability of supplies have delayed the openings of the homes. The Lancaster and Ventura homes are now projected to be open in November. The Redding and Fresno home should break ground in February or March 2010 with projected completion of both homes in early 2012.

9. *How many veterans currently reside and receive care in the center? When do you envision the center operating at capacity?*

Response:

There were 59 residents in the Memory Care Center. This is 98.33 percent of capacity. There is only one vacant bed.

10. *What successes and failures have you seen in the first year and a half of operation?*

Response:

The success was to see the facility opened after inordinate delays due to contractor difficulties. The facility has provided outstanding care to the residents who need this specialized type of care. I am not aware of any failures.

*How have the budget cuts thus far affected the veterans homes?*

Response:

The homes have been impacted by the budget cuts. Staff members who are not in direct care positions are taking three day furloughs. There have been 110 staff cuts from existing homes. The budget cuts will delay the Adult Day Health Care Services at the new Lancaster and Ventura homes and will delay the hiring of some staff for the homes. The Department and the homes have worked very hard to adjust to the budget cuts in order to minimize the effect on the care and services provided to veterans at the homes.

*12. How do you think the layoffs and proposed fee increases will impact the operation of veterans homes?*

Response:

The layoffs and cuts will require the staff to work harder to insure that the veterans receive the necessary care and services. Most of the cuts have been made in the those areas not involved in direct care services.

The greater majority of the residents (83percent) will see no changes in their fees. There should be no significant effect of the fee increases on home operations.

*13. According to the board's 2007-08 annual report, the department has hired a Homeless Veterans Coordinator responsible for administering grants and conducting outreach and education. How is the board monitoring these efforts?*

Response:

The board receives regular briefings from the Departments various divisions at scheduled board meetings. The Homeless Veterans Coordinator is assigned to the Veterans Services Division. This division provides briefings or written reports periodically to the board. The Services Division has done much to reach out to veteran service advocates.

*14. According to the board's 2007-08 annual report, the department had obtained Proposition 63 funding for two new veteran mental health outreach personnel to identify and make contact with veterans in need of TBI and PTSD screening and treatment. How is the board working with the department on this effort?*

Response

As previously stated the board is briefed on a regular basis by the Department on the activities of the various divisions. The Department developed a series of public information ads about mental health services. These ads have been placed in buses in 10 major markets around the state. The Department is working on a statewide program involving local, state and federal agencies to spread information

about programs that are available. The board encourages the Department to develop and implement programs to benefit veterans but does not get involved in the operations of these activities.

15. *According to the board's 2007-08 annual report, the department was in the process of updating the five-year strategic plan for the CalVet Home Loan Program. Does the board play a role in this process? When is the plan expected to be completed and published?*

Response:

The board does not get involved in the Department's strategic plans. This includes the CalVet Home Loan program. The plan was just updated and has been published.

16. *According to the board's 2007-08 annual report, "Although there has been some increase in foreclosures [under the CalVet program] due to current housing industry issues, the increase is less than that of other lenders." What steps have the department and/or board taken to assist veterans who are at risk of foreclosure?*

Response:

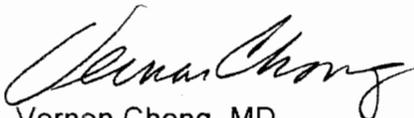
The Department did not use the high risk products that caused the many problems in the housing market. There has been an increase in the number of CalVet loans that have defaulted. This is a result of the economy. The Department has worked with veterans to try to keep them in their homes and has extended the terms of some loan in order to lower the monthly payments. The Department cannot write-off any portion of a loan to cover lost property value. The Department was not eligible to receive federal "bail out" funding since it did not utilize high risk instruments.

17. *How will the board help monitor the distribution and implementation of ARRA funds?*

Response:

The Department has to date not received any funds through the American Recovery and Reinvestment Act. The board receives regular briefings from the Department on major projects and grants. This should include any funding from the ARRA.

Sincerely,

  
Vernon Chong, MD



CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIRMAN

August 6, 2009

Thomas J. Moran

Thomas Moran  
Responses

Dear Mr. Moran:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the Veterans Board on September 2, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by August 26<sup>th</sup>.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 26<sup>th</sup>.

**Statement of Goals**

You were first appointed to the Veterans Board in 2007. When you were confirmed in early 2008, your stated intent was "to assist in the improvement of Veteran services in all areas, to all veterans."

1. *What efforts have you made thus far to achieve your stated goals and objectives?*
2. *What goals and objectives do you hope to accomplish during your second term? How will you measure your success?*

**Roles and Responsibilities**

Section 72 of the Military and Veterans Code states that the California Veterans Board shall determine the policies for all operations of the Department of Veterans Affairs (DVA). The board also acts as an appellate body for veterans who wish to appeal a



ruling made by the department. Yet the board has few staff of its own, relying almost entirely on DVA for its information.

3. *What improvements, if any, have you seen in the working relationship between the board and the department during your tenure? Do you have any suggestions for further improvements?*
4. *Many inmates who parole from the California Department of Corrections and Rehabilitation are veterans. Does the board play a role in monitoring the services they receive on parole or how veteran services might be provided to parolees? If not, why not?*

### **Veterans Homes**

In addition to operating California Veterans Homes in Yountville, Barstow, and Chula Vista, DVA is building new homes in Lancaster, Ventura, Fresno, and Redding. According to the board's annual report, the Ventura home was scheduled to open in May 2009, Lancaster in June 2009, and West Los Angeles in June 2010, while the Redding and Fresno homes were still in design phase.

5. *What role does the board play in monitoring the status of federal matching funds and projected construction start dates on proposed new veterans homes?*
6. *How do you stay informed of living conditions and staffing issues at the veterans homes in Yountville, Barstow, and Chula Vista?*
7. *What role does the board play with respect to admittance of veterans to a veterans home, definitions for the levels of care provided by the department at the homes, or other regulations that might impact the board's authority over the appeals from veterans who were denied admittance to a veterans home? Please provide examples.*
8. *Why haven't the Ventura and Lancaster homes opened yet? What are the expected opening dates? What are the expected completion and opening dates for the Redding and Fresno homes?*
9. *The Department of General Services oversees construction of veterans homes. When you were confirmed last year, you stated that "the Department needs to take a more active role in construction progress." In the past year, how has DVA become more involved in veterans home construction?*

### **Yountville Alzheimer's/Dementia Unit**

The new Franklin D. Roosevelt Annex Memory Care Center, which serves veterans with Alzheimer's and dementia, opened at the Yountville Veterans Home in fall 2007. The center was designed to serve 75 patients.

10. *How many veterans currently reside and receive care in the center? When do you envision the center operating at capacity?*
11. *What successes and failures have you seen in the first year and a half of operation?*

### **State Budget Reductions**

California is in the midst of a serious fiscal crisis. In 2007-08, the veterans home budget was reduced by \$1.7 million, followed by a \$13 million reduction in 2008-09. In May 2009 Governor Schwarzenegger announced that 5,000 state employees would be laid off as part of the effort to address this crisis. The layoff list includes 43 employees of DVA (about two percent of total department employees); the majority of these employees work at veterans homes, with 25 layoffs at Yountville alone. The recently signed budget included an increase in member fees at veterans homes, for a General Fund savings of \$2.7 million for each fiscal year 2009-10 and 2010-11. Veteran home residents currently pay fees on a percentage of income, up to a dollar cap, based on the level of care. The budget removes the dollar cap and prospectively revises the fee structure for nonveteran spouses. The budget does not reduce funding for the Veterans Board, which is allocated \$91,000 per year through DVA.

12. *How have the budget cuts thus far affected the veterans homes?*
13. *How do you think the layoffs and proposed fee increases will impact the operation of veterans homes?*

### **Homeless Veterans**

While veterans make up 11 percent of the adult population, the National Alliance to End Homelessness estimates that 26 percent of the homeless in the United States are veterans. In California there are more than 49,000 homeless veterans. While most homeless veterans are Vietnam veterans, approximately 1,350 veterans who served in Operation Enduring Freedom and Operation Iraqi Freedom have been identified by the federal Department of Veterans Affairs (VA) as homeless or at risk of becoming homeless. In addition, the Government Accountability Office has found that more than a half million low-income veterans were paying too much for housing in 2005, leaving them at risk for homelessness.

14. *According to the board's 2007–08 annual report, the department has hired a Homeless Veterans Coordinator responsible for administering grants and conducting outreach and education. How is the board monitoring these efforts?*

### **New Veterans**

A 2007 RAND study noted that, "As a group, the veterans returning from Afghanistan and Iraq are predominantly young, healthy, and productive members of society. However, about a third are currently affected by PTSD (Post Traumatic Stress Disorder) or depression, or report a possible TBI (traumatic brain injury) while deployed." A February 2009 Urban Institute study noted that "the rates of traumatic brain injury and post-traumatic stress disorder among new veterans are alarming."

15. *According to the board's 2007–08 annual report, the department had obtained Proposition 63 funding for two new veteran mental health outreach personnel to identify and make contact with veterans in need of TBI and PTSD screening and treatment. How is the board working with the department on this effort?*

### **CalVet Loans**

Through the CalVet Home Loan Program, the department provides California veterans loans to purchase farms and homes. The number of CalVet loans has vacillated greatly over the past nine years. In 2000–01, 2,752 loans were issued, and in 2001–02, 954 loans were issued. In 2006–07, 921 loans were issued; in 2007–08, 1,039 loans were issued, and in 2008–09 (through May 31), 751 loans have been issued.

16. *According to the board's 2007–08 annual report, the department was in the process of updating the five-year strategic plan for the CalVet Home Loan Program. Does the board play a role in this process? When is the plan expected to be completed and published?*
17. *According to the board's 2007–08 annual report, "Although there has been some increase in foreclosures [under the CalVet program] due to current housing industry issues, the increase is less than that of other lenders." What steps have the department and/or board taken to assist veterans who are at risk of foreclosure?*

### **Federal Economic Stimulus Funds**

On February 17, 2009, President Obama signed H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Under this act, California will receive \$92.7 million for 99 projects under the Veterans Health Administration—Non-Recurring Maintenance/Energy program, which is intended to correct, replace, upgrade, and modernize existing infrastructure and utility systems at VA medical centers. In addition, the state will receive \$10.2 million for 24 projects under the National Cemetery Administration Monument and Memorial Repairs program.

18. *How will the board help monitor the distribution and implementation of ARRA funds?*

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

Thank you for your help.

Sincerely,



DARRELL STEINBERG

DS:ER



**THOMAS J. MORAN**  
**SENATE RULES COMMITTEE QUESTIONNAIRE**  
**RESPONSES**

**1.....I intend to continue my efforts to make all veterans aware of their potential benefits in all areas, health care, education and home loans. I meet with the Department Staff in an effort to simplify procedures and programs; especially in the fiscal management of the Veteran Homes. I will continue to support veteran service programs and the Veteran Service Officers in their tasks.**

**2. I will continue my efforts to ensure veterans are aware of their benefits and provide improvement where possible. I will concentrate much of my effort to new veterans. My success will be measured in large measures by passage of veteran friendly legislation.**

**3. The relationship of the Department and the Board has been excellent during my time on the Board. Staff members participate in Board meetings and provide input to our committees. The department provides briefing documents on important issues and actively involves the Board and consults with us on these issues. I see no immediate necessary improvement in relationships.**

**4. The Board has no role in monitoring paroled veterans services. The Veteran Services Division provides us with information regarding the services being provided by County Veteran Service Officers and DVA. The Department of Correction provides many of the services to these individuals.**

**5. The Board receives project reports on the status of all ongoing projects and the funding for them.**

**6. Board members tour the homes regularly; additionally the Board holds meetings at the homes regularly. I find that residents are very open to Board members as to their feelings regarding the care they receive. As required by law, one member of the Board is a resident of a home.**

**7. The Board sets the policies for the Department including those for admittance to the veteran homes. The Board also hears the appeal if a veteran is denied admittance to or is removed from a home and challenges the action. The Board has enacted a policy to require non-veteran spouses residing in a home to care medical insurance or Medicare. We have recently adopted a clarification to the policy for the discharge of non-veteran spouses upon the death or discharge of the veteran. The Board just denied the appeal for re-admittance of a veteran. This was due to previous behavior and lack of medical treatment to assist his afflictions.**

**8. The Lancaster and Ventura homes have faced delay due to supply problems. They are both now on track for opening in November. The Redding and Fresno facilities are scheduled to break ground early in 2010. Completion should be in early to mid 2012**

**9. I have revised my view, something learned by experience! DGS meets regularly with Department staff to resolve all types of problems including change orders and other issues. These meetings include the Deputy Secretaries for Administration and Homes and major difficulties are thus avoided.**

**10. At the end of July the Memory Care Center there were 59 residents in the Center. It is funded for 60 residents so is near maximum.**

**11 The Center has not experienced any failures. The success is the operation at capacity and providing outstanding specialized care.**

**12. The homes and the Department have made every effort to minimize the cuts. Staffs that are not in direct care positions are taking the 3 furlough days per month. Direct care employees are using self-directed furloughs. The homes have had staff cuts of 110 positions including the new homes. The result is the delayed opening of the Adult Day Care at the two new homes. Hiring has been held off for some new positions at the new homes.**

**13. The proposed fee increases will affect less than 20 percent of the residents. So there is no significant impact in the fee increase. Layoffs put a strain on the entire remaining employees, forcing them to work harder to provide the care and services the residents need. Direct care services will not be affected.**

**14. As the Board receives regular briefings from the department's divisions including the Veterans Services Division. The Homeless Veterans Coordinator has been very aggressively reaching out to veteran service advocates.**

**15. These positions were placed in the Veterans Services Division which is spreading statewide awareness about Traumatic Brain Injury and Post Traumatic Stress Disorder. The division is developing a statewide public information ad campaign targeting awareness of TBI and PTSD. Also is an effort to create nine regional organizations to bring government and non-government organizations that all provide services to veterans and their families.**

**16. The plan is now updated and published. The Board does not play a major role in the Department's strategic plan.**

**17. As the CalVet program does enter into products that created the foreclosure problems, defaults have been minimal. The economy and job market has resulted in an increase in the number of defaulted loans. The Department works with the veteran to keep him in his home and will extend the term of the loan if the veteran qualifies which will lower the monthly payments. The law does not permit a write off of any portion of the loan.**

**18. The projects cited in your letter are all projects on existing federal Veterans Administration health facilities and federal cemeteries. The department has not received any grant funding from the American Recovery and Reinvestment Act. The Board receives regular briefings from the Department on any major projects and grants. We will be informed if the Department does receive any ARRA funds.**



SENATOR ALAN LOWENTHAL, Ex Officio  
ASSEMBLYMAN MIKE ENG, Ex Officio

BIMLA RHINEHART, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, MS-52  
P. O. BOX 942873  
SACRAMENTO, 94273-0001  
FAX (916) 653-2134  
(916) 654-4245  
<http://www.catc.ca.gov>

Joseph Tavaglione  
Responses

August 14, 2009

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

Dear Mrs. Sabelhaus:

I am pleased to provide a response to the questions posed July 28, 2009 for my upcoming confirmation hearing, now scheduled for September 2, for reappointment to the California Transportation Commission (CTC). Also enclosed is an updated Form 700 as requested.

### *Statement of Goals*

*When you were confirmed for a second term on CTC in 2005, one of your stated goals was "to continue to make progress toward my long term goal of keeping the project delivery mechanisms intact and...ensur[ing] that transportation dollars are efficiently and effectively spent and improvements are delivered expeditiously."*

#### *1. What efforts have you made, thus far, to achieve your stated goals and objectives?*

Since 2005, my fellow Commissioners and I have worked very closely with Caltrans and regional transportation agencies to ensure successful project delivery and effective use of state dollars. With the passage of Proposition 1B in November 2006, the Commission also incorporated performance-based program oversight. In its programming actions, the Commission required the development of project baseline agreements. The baseline agreements set forth the agreed upon project scope, schedule, cost and expected benefits. These agreements also include the estimated cost and the start and completion dates for the environmental, right-of-way, design, and construction phases of the project.

The Commission has asked recipient agencies to report, on a quarterly basis, on the activities and progress made toward the implementation of a project. The quarterly progress report includes

Senate Rules Committee

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Appointments

approved budgets, actual expenditures and forecasted costs, as well as approved schedules, progress to date, and forecasted completion dates for each phase of a project.

The Commission expects a recipient agency to develop a corrective plan to address anticipated deviations or variances from the approved project baseline agreement. Efficiency measures for possible cost increases or schedule delays are addressed on an ongoing basis by the project team and documented through the corrective plans. The Commission's accountability measures are designed to help manage projects to successful delivery. This level of project scrutiny, combined with bi-annual reporting requirements, is unprecedented at the state level. This Commissioner's view is that the enhanced reporting and accountability should become the norm for transportation infrastructure projects.

**2. *What goals and objectives do you hope to accomplish during your third term? How will you measure your success?***

As a member of the CTC, my first duty would be to assist the Commission achieve its goals and objectives to ensure safety, mobility and a clean environment for California's residents and visitors. I will continue to work towards implementing Proposition 1B, incorporating AB 32 and SB 375 into transportation, focusing funding on rehabilitation, repair and maintenance of existing infrastructure, and helping agencies deliver project with creative funding solutions in light of our current economic challenges. The Commission must also ensure that reasonable expectations for the programming and funding of transportation projects are in place. Mobility needs far outpace the funding, so the Commission must partner with the regions and Caltrans in innovative ways to provide vital transportation services and infrastructure to the state in a time of scarce resources. As long as we continue with preserving the existing transportation system, and allow for needed expansion through innovative funding and delivery mechanisms, I would consider that an achievement that is worth celebrating in today's environment.

***Infrastructure Spending Freeze***

***Two years ago, voters approved Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Prop. 1B). These bond funds were slated to go to a myriad of projects, including congestion reduction, highway and local road improvements, transit, goods movement, air quality, and port and transit safety. CTC is responsible for allocating Proposition 1B funds for the majority of the programs funded by the bonds. To date, of the \$5.7 billion appropriated to CTC, the commission has allocated \$3.8 billion (67 percent of funds) to project sponsors.***

***Because of the state's poor fiscal condition, the Pooled Money Investment Board (PMIB) in December 2008 froze \$3.8 billion in financing for infrastructure projects across the state. The Department of Finance released a list of 5,600 infrastructure projects affected by the decision. On January 16, 2009, citing the slightly improved bond market, PMIB partially undid the freeze by approving \$650 million in spending for 276 infrastructure projects, of which 98 were related to transportation. As a result of the state's successful general obligation bond sales in***

*March and April, the Department of Finance authorized further allocations for transportation and other bond-funded infrastructure projects. At the commission's June meeting, Caltrans reported that 13 percent of the net proceeds from the March and April bond sales (\$1.7 billion) was directed to Caltrans and that this would cover cash flow on all projects allocated through May 2009 by CTC until April 2010.*

**3. Do you have any suggestions for statutory changes needed to better implement Prop 1B or future infrastructure bond legislation?**

The State's fiscal crises caused the Pooled Money Investment Board to freeze new bond issuance, which delayed implementation of the State's "shovel-ready" projects during this economic downturn when jobs are needed most. Suggestions for consideration by the Legislature might include authorization for designated bond fund recipients to expend their own funds in advance of such an allocation with the right of reimbursement. This option is included in a legislative proposal by Speaker Bass and Assembly Member Eng, AB 672, which has recently been referred to the Senate Appropriations Committee.

Absent flexibility needed during this extraordinary economic climate, statutory changes to Proposition 1B are not necessary. What is necessary is stable, reliable and growing funding sources for transportation that enable project sponsors to bring their projects forward for Proposition 1B funding.

In its 2006 and 2007 annual reports the Commission recommended that the Legislature convene a blue-ribbon transportation funding task force to examine options for enhancing transportation revenues and to consider additional ways to raise revenue. An added impetus to establish a dedicated, special funding source is that the Federal Highway Trust Fund will likely not have enough resources to meet all of its obligations by the end of the decade.

In 2009 and beyond, the challenge will be delivering ready-to-go projects. Proposition 1B infrastructure projects, along with other transportation projects, require funding from a variety of sources, including state funds such as the State Transportation Improvement Program, and federal and local funds. When state funding sources are suspended, projects must be delayed, or if available, other funding sources need to be used to keep the projects going. This has a domino effect with the Department of Transportation (Caltrans) and regional agencies taking funding from one project to complete another, delaying the project that the funding was originally committed to.

**4. 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?**

The \$650 million approved by PMIB in January 2009 allowed 98 bond-funded transportation projects with awarded construction contracts before December 17, 2008 to proceed. Bond funding allocated by the Commission for these projects total \$1.569 billion: 39 Caltrans awarded contracts for highway and intercity rail projects totaling \$1.393 and 53 local agency

awarded contracts for on-state highway system, local bridge seismic and other projects totaling \$176 million.

In March 2009, the State Treasurer successfully sold \$6.5 billion in bonds for State general obligation purposes. Of these proceeds, \$3.87 billion were used to pay down outstanding loan disbursements, and the remaining \$2.67 billion will be used to provide direct upfront financing for eligible projects. A prioritization process was established by the Department of Finance on April 3, 2009, which resulted in funding all but two of the 57 projects already allocated by the Commission had not yet awarded a construction contract since December 17, 2008.

As a result of the state's successful general obligation bond sales in March and April, the Commission approved projects to proceed to construction. Regional agencies have also sought Proposition 1B funding commitments through a private placement bond agreement with the Treasurer's office. Both of these actions have allowed the Commission to allocate an additional \$700 million for projects ready to move forward as of its May 2009 meeting.

There continues to be significant uncertainty at this time regarding how and when additional bond funded projects will move forward. The Commission continues to defer allocations for new projects until assurances are in place that bond funds are available and can be committed to these projects. Lack of funding has and will continue to negatively impact project baseline agreement schedules for bond funded projects currently programmed, and will fail to provide needed economic stimulus through increased construction activity. The Legislature charged the Commission with monitoring and oversight of these projects which at this time cannot move forward because of the uncertainty of State funding commitments.

### *Federal Economic Stimulus*

***On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA). ABX3 20 (Bass), Chapter 21, Statutes of 2009, directs the use of the first \$2.6 billion made available to the state from ARRA. This legislation includes an agreement to allocate 37.5 percent (roughly \$964 million) to the state and 62.5 percent (roughly \$1.6 billion) directly to regions. At its April meeting, CTC allocated \$1.6 billion to regional transportation agencies for projects throughout the state. At its May meeting, CTC allocated another \$15 million in ARRA funding for four transportation projects, and in June the commission allocated \$36 million in ARRA funding for 17 transportation projects. Of this amount, \$25 million was attributable to savings on other projects due to lower than expected contractors' bids. At the June meeting, Caltrans reported that 57 of the 61 ARRA-funded projects allocated through May by CTC would be under construction by the end of August.***

- 5. 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?***

The State has two potential options for receiving additional federal highway program funding through the Recovery Act. The State can compete for discretionary funds and it can receive funding that was returned to the FHWA because other states were unable to obligate funds under the timely use of funds requirements in the Recovery Act.

States were required under the Recovery Act to obligate 50 percent of their highway funds by June 29, 2009. All 50 states met this deadline. States have until March 2, 2010 to obligate the remainder of the highway funds. Funds not obligated by this deadline will be redistributed to states that were able to obligate all their funds. California can put itself in the best position for a possible future redistribution of Recovery Act funds by fully obligating the Recovery Act funds already received.

The Recovery Act also provides \$8 billion nationally for Capital Assistance for High Speed Rail Corridors for which California has submitted 91 pre-applications for over \$22 Billion in Recovery Act funding. In addition, California airports have directly received to date \$86 million in aviation grants for 22 projects at 19 airports. Lastly, the Recovery Act provides \$1.5 billion available nationally under the Transportation Investment Generating Economic Recovery (TIGER) program for competitive discretionary grants for highway, public transportation, rail, and port infrastructure projects. The maximum California could receive from the TIGER program is \$300 million. Through July, Caltrans has received 121 Notices of Intent from potential project applicants requesting over \$3.3 Billion in Recovery Act funding.

**6. *What lessons have the commission and department learned from the expedited ARRA process that might be applicable to future funding received by the state?***

We will be in a better position to evaluate the process following the March 2, 2010 deadline for states to obligate the second 50% of the highway funds, and the September 30, 2010 deadline after which all unobligated funds (redistributed funds and funds deobligated from projects) will lapse. That said, the expedited process put in place to distribute Recovery Act highway funds was an important tool that helped enable the state to meet the deadline for obligating 50% of the highway funds (June 29, 2009).

On the other hand, there are some important features of the existing process to distribute state-controlled federal funds (through the SHOPP and the STIP) that were not a part of the expedited process. These include decisions about priorities for state funding being made at public meetings and requiring the approval of by a statewide body.

The Commission has a history of balancing statewide priorities with regional priorities. The expedited process, by distributing the majority of the funds directly through local agencies, left no one ensuring that the projects that funded were the highest priority projects in the state. Additionally, by incorporating the Recovery Act funds into the existing STIP process, the state would have been able to provide additional funding for high priorities in some regions of the state while ensuring that other regions receive more funding later.

Lastly, I would note that that, even without the expedited process, the Commission was prepared to begin making Recovery Act allocations in March (AB3x 20, the bill enacting the expedited process, which was signed by the Governor on March 27, 2009).

### *Federal Transportation Act Reauthorization*

*The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides \$286.4 billion in federal transportation funds to states for fiscal years 2005–09. SAFETEA-LU is set to expire on September 30, 2009. On June 18, House Transportation and Infrastructure Committee Chair James Oberstar released a proposal for The Surface Transportation Reauthorization Act of 2009. This proposal includes \$450 billion over six years for transportation, plus \$50 billion over six years specifically to develop 11 authorized high-speed rail corridors linking major metropolitan regions in the United States; one of these corridors is in California. Due to disagreements between Congress and the White House over funding levels, the predecessor to SAFETEA-LU, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), was extended 12 times from the time it expired in 2003 until SAFETEA-LU was finally enacted in 2005.*

- 7. When you were confirmed in 2005, several months before SAFETEA-LU was enacted, you stated that “the California transportation community, including the state and its local partners, must seek to influence the reauthorization with a cohesive message that communicates the importance of transportation funding to California and its significance in addressing the broader related issues of economic growth and development, land use, and air quality, which impact not just California, but the nation as a whole.” How is the commission helping to ensure that California’s transportation community works together to implement an effective federal transportation strategy?*

The Commission and transportation officials from across California have united on a basic set of principles that we have asked the California delegation in Washington, D.C. to consider in the debate on the future of this nation’s transportation policies:

- Ensure the financial integrity of the Highway and Transit Trust Funds.
- Rebuild and maintain transportation infrastructure in a good state of repair.
- Establish goods movement as a national economic priority.
- Enhance mobility through congestion relief within and between metropolitan areas.
- Strengthen the federal commitment to safety and security, particularly with respect to rural roads and access.
- Strengthen comprehensive environmental stewardship.
- Streamline project delivery.

The Commission has been very supportive of this collaborative process and whole-heartedly embraced these consensus principles. Commissioners have delivered the consensus principles to members of the California delegation, and will continue reiterate this important message

**8. *How can California maximize its share of federal transportation funding? How could California become more effective in competing for federal discretionary transportation funds?***

One key way California can maximize its share of discretionary federal transportation funding is by continuing the collaborative processes that were used to develop the aforementioned consensus principles and that have been a hallmark of Commission policy development.

Another important factor in maximizing our share of discretionary federal transportation funding is making sure we have good projects that are ready to go. This does not mean developing a shelf of ready projects that cannot be funded. Rather, this means ensuring there is adequate state funding to fund a sufficiently large program of projects. A large program of projects ensures that we always have good projects that can compete for discretionary federal funding as it becomes available.

***Transportation in a Post-AB 32 World***

***Two and a half years ago, the Legislature passed and the Governor signed landmark legislation, AB 32 (Núñez), Chapter 488, Statutes of 2006, to limit the emission of greenhouse gases in California. Last year, after extensive negotiations, the Legislature passed and the Governor signed legislation intended to implement AB 32. SB 375 (Steinberg), Chapter 728, Statutes of 2008, aims to align planning for housing, land use, transportation, and greenhouse gas emissions for the 17 metropolitan planning organizations across the state. Among other things, SB 375 requires CTC to maintain guidelines for travel-demand models used in the development of regional transportation plans. The commission's annual report to the Legislature states that "without reliable, sustainable, and increased transportation funding in the next decade the transportation community will not meet its AB 32 reduction targets."***

**9. *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.***

SB 375 requires the Commission, in consultation with Caltrans and CARB, to maintain guidelines for travel demand models used in the development of regional transportation plans by federally designated metropolitan planning organizations. SB 375 also requires the Commission to form an advisory committee, or a workgroup, and hold two workshops, incorporated into regular commission meetings, to discuss any proposed revisions to the guidelines.

To fully implement SB 375, the Commission is updating its RTP Guidelines. Commission staff has already held a kickoff meeting of the RTP Guidelines workgroup on July 1, 2009, and anticipates that the RTP update should be ready for consideration by the Commission at the end of this calendar year. This timeframe recognizes that there are concurrent activities with regard to SB 375 implementation that may have implications to the RTP Guidelines. For example, the RTAC is currently in the process of developing factors and methodologies

for setting greenhouse gas emission targets that will be provided to the CARB no later than September 30, 2009; legislation is underway to address various aspects of SB 375 that may impact implementation efforts; and the Strategic Growth Council is currently considering methods to help state agencies allocate strategic growth plan money in ways that best promote efficiency, sustainability and support the Governor's economic and environmental goals.

It is expected that the update to the RTP Guidelines will include, but not be limited to, guidance with respect to sustainable communities strategies designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in each region. The travel-demand model experts have suggested to the Commission that the modeling elements of the Commission's 2008 addendum to the 2007 Regional Transportation Plan (RTP) Guidelines are sufficient for incorporating initial AB 32/SB 375 issues. The work group clearly expects that the RTAC will develop recommendations that will enhance the existing modeling elements.

***10. 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, CTC proactively responded to the requirements of AB 32 by updating the RTP guidelines to include additional considerations for greenhouse gas emissions. New air quality concerns and climate issues will be incorporated into the RTP Guidelines as part of the effort described in Question 9 above for SB 375 requirements. CTC also incorporated additional environmental considerations into the project list development process for many Proposition 1B categories.

AB32 and SB 375 are having widespread impacts at the regional planning level and will need to be considered in any transportation planning or programming document in the future as required by law. The Commission can also assist in these efforts by considering these requirements in reviewing projects' environmental review documents.

***11. How would you assess the state's current policy as it relates to toll facilities and other pricing strategies in our transportation system?***

The State's current policies have improved in the recent past and with several new options for moving forward on additional toll projects, California will be well positioned to begin a true assessment of how these facilities can work in this state. With the state including the recent public-private partnership authority, the Commission will have a significant role in selecting and approving projects that provide the greatest benefits and have the greatest chance of success. In addition, previously approved projects such as the AB 1467, High Occupancy Toll (HOT) lanes projects on along various freeway segments in Los Angeles, as well as the I-15 in Riverside County and the extension of the 91 Express Lanes into Riverside County, will also provide the

state with a better picture of how these projects can work to provide additional infrastructure to drivers, promote transportation alternatives, and encourage changes in driving patterns in response to congestion pricing.

**12. *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.***

The toll facilities in Orange County are successful. Orange County has a variety of toll options which demonstrate how toll roads can provide all commuters with enhanced mobility options above and beyond the user of the toll facility itself. The SR 91 toll facility was not developed by converting High Occupancy Vehicle (HOV) lanes, but rather by adding a lane—and capacity—by using the median along the SR-91 freeway. In addition, the revenues from SR-91 toll facility are controlled by a public agency and provide funding for improvements to the adjacent “free lanes” so that all commuters benefit from the system. The 91 Express Lanes were the first toll road in the country to use variable congestion pricing, serving now as a national model and success story. Since 2003, OCTA has had a congestion/dynamic pricing policy based upon traffic volumes, monitored and adjusted on average every 12 weeks. The objective is to maintain free-flow conditions on the express lanes to provide travelers with a safe, reliable and predictable commute. The higher the volume of traffic, the higher the toll, but if traffic volumes decrease, toll are also reduced.

The Transportation Corridor Agencies (TCA’s) toll roads in Orange County (SR 241, 261, 133 and 73) have performed well in providing alternatives to congestion filled freeways and arterials. Nearly 300,000 cars a day are using the existing 51-mile toll road network resulting in a tremendous decrease in congestion on the freeways and arterials in the region. Less congestion equates to a decrease in green house gas emissions caused by idling cars, particularly on the I-5 freeway which is currently the only highway providing service to commuters and goods movement between Orange County and San Diego. This toll pricing program implemented by TCA is successful in that they have added lane miles to the state highway system at no cost to the state. These new lane miles relieve congestion on the heavily traveled interstate freeways I-5 and I-405. Congestion pricing encourages practices that improve air quality by encouraging commuting when traffic is less congested or by encouraging users to take transit during peak periods through the increased pricing of using the toll road. This ultimately works toward meeting the goals of reducing greenhouse gas emission which is the goal of AB32 and the State.

**13. *What recommendations would you make to the Legislature in forming its policies on toll roads or other pricing strategies in transportation?***

The Commission recommends that the Legislature and administration continue to expand public-private partnerships in 2009. The success of other countries and other states with similar political, demographic, environmental, and transportation challenges suggests that the institutional challenges to public-private partnerships can be overcome. Gas and sales taxes can not keep up with the rising demand for reliable mobility options. Alternative financing and

delivery options through Public Private Partnerships utilizing tolls and user fees are essential to pay for the needed mobility.

A key threshold question that needs to be answered in the policy debate is future funding to build the transportation capacity a future California with 50 million people will need. Current financing options and traditional revenue sources are no longer adequate to deal with the expected demands and mobility challenges of keeping the existing system in a safe and operable condition and providing for the projected capacity needs.

### ***State Transportation Improvement Program***

***CTC is responsible for adopting the biennial five-year state transportation improvement program (STIP), as well as for allocating state funds for capital improvement projects consistent with STIP. In recent years, CTC has taken actions to program transportation funds, with an emphasis on improving the state highway system. Public transit advocates have been critical of the process through which transit funds are made available for projects through STIP. Specifically, advocates have suggested that funds in the Public Transportation Account could be made directly available to regions in the state where a priority is placed on public transit, rather than subjecting those funds to the strict STIP formulas.***

***County shares of STIP funding are largely determined by population. Urban areas have larger populations and worse traffic congestion than rural areas. In addition, urban areas are generally more successful at raising revenues for transportation at the local level.***

***14. 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 with how transit funds are allocated by the STIP distribution formula but the unreliable and unstable funding source from which these funds come from. The Public Transit Account (PTA) is a transit-only funding source, and yet funds have been diverted away from transit in the past year. Proposition 42 funds are more flexible as far as distribution to both transit and highway projects, yet these funds may be used by the Legislature for other purposes. All STIP funds are flexible to the regional priorities, but the average amount of money available through the STIP has declined as well. Transit funds from the STIP are distributed based on what the regions view as their priorities.

Transit has an opportunity to play an important role in reducing congestion, enhancing mobility and partnering with alternative modes of travel in the reduction GHG emissions. The Legislature defines and supports the role of transit for the state and must provide secure and reliable sources of funding for it to be successful.

**15. 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?**

The biggest concern for the STIP funding program is not the distribution or distribution formulas of the funds but the funding system itself. The threat of borrowing from programs like Proposition 42 and the PTA leave the STIP as an unstable and insufficient funding source to meet both the urban and rural area needs. The key to providing a balanced approach to addressing rural and urban needs is to not divert or take away any further funding to this program or the other programs that flow into the STIP.

Where urban and rural, or smaller, counties do differ significantly in addressing their funding needs is over sales tax measures dedicated to transportation. Nearly all of the state's urban counties have transportation sales tax measures. Some even have more than one. Those counties have a distinct advantage in terms of advancing their regional priorities and making those priorities competitive for STIP funding

The two-thirds vote to pass a local tax measure requirement continues to be an issue for rural counties. However, the CTC could help rural counties educate their voters on the increasing funding needs for local streets and roads, highways and transit and the fact that existing revenues are declining in value.

It is important for rural counties to enjoy statewide connectivity, as should urban counties, for a healthy statewide system.

***Public Transit Operations***

***In the midst of the state's recent and continuing fiscal crisis, policymakers have moved to redirect funds originally intended to support the operations of public transit systems in California. In recent years, as much as \$4 billion has been redirected in a manner to assist the state's General Fund. This policy shift has occurred at a time when many policymakers support strategies to reduce emissions, including greenhouse gas emissions, from cars and trucks. While they recognize that public transit provides a vital and necessary alternative to driving, the state's fiscal condition has made investment in public transit operations difficult. Policymakers are exploring new strategies to provide necessary resources for public transit operations from "off-budget" sources (i.e., not involving the General Fund).***

**16. 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?**

With the passage of AB 32 and SB 375, demands on transit operations are increasing while state funding has been decreasing or even eliminated. The recent diversion of State Transit Assistance Funds took away a major source of transit operating funds for most of the regions. If there is a state goal of reducing greenhouse gas emissions through the increased use of public transit, there

is a concurrent state responsibility to help regions meet that goal by providing funding to meet those increased service demands. Not every region will be able to sufficiently generate enough local revenues to fund the higher level of transit operations anticipated under AB 32 and SB 375.

There is a legitimate need for the state to invest in public transit operations to meet mandates set by AB 32 and SB 375 but there is also a local interest and imperative to invest in public transit to meet the needs of residents and businesses. As an example, in Orange County, local sales tax dollars are being invested to expand transit service on the Metrolink system to ensure commuters' enhanced service times and options. Orange County Transportation Authority, working with local cities and stakeholders, is expanding transit options through its "Go Local" program – also financed with local funding – to provide connector services to the major employment and academic areas of the county with the Metrolink system. A number of cities throughout the county are zoning for increased Transit Oriented Development projects, significantly in Anaheim, Irvine, and Santa Ana, to meet the workforce housing needs of Orange County residents and businesses, consistent with the intent of SB 375 and AB 32.

***17. What actions can CTC take to enhance funding for public transit operations in California?***

The Commission has limited ability to "enhance funding for public transit." However, the Commission also recognizes the rising concern that transit funds are dissipating with the passage of each state budget. The Commission has taken a role of facilitating, educating and exposing the growing concerns for lack of transit funding. In October 2008, the Commission joined with the California Transit Association in organizing a Transit Summit Workshop. The intent of the workshop was to invite transportation stakeholders, including but not limited to, transit partners, the Department, Business, Housing and Transportation, regional agencies, metropolitan organizations, legislators, legislative analyst's office, senate transportation committee members, assembly transportation committee members, and other interested consulting firms. The turnout of participant's far exceeded our initial guesstimate of interested parties.

The Summit ended with the creation of a Summit Task Force Committee. The expanded Task Force was charged with following up on the priority-setting exercise conducted by all Summit participants, fleshing out the two or three key proposals, and then re-convening all the Summit participants for a second full day workshop (most likely in the Spring of 2010) to consider next actions.

The Commission may not have a specific role to enhance funding because its role is to allocate funds according to formulas in statute. However, it can better position itself as an advocate in bringing together entities in seeking common goals to procure public transit funding.

**18. *What recommendations might you make to the Legislature to stabilize funding to public transit operations?***

Prop 42, overwhelmingly supported by California voters, provides long-term, sustainable funding for both the STIP and the Public Transportation Account (PTA). Those accounts should be preserved to fund these vital transportation programs.

State support for transit operations needs to be restored and the Public Transportation Account preserved in order to assist regions with meeting the state's greenhouse gas emission reduction goals as outlined in AB 32 and SB 375. Both of these initiatives envision increased transit service at a time when the state is removing its funding support for those purposes. California's goal to reduce greenhouse gas emissions through the increased use of public transit should be supported with a concurrent state responsibility to provide investment that helps regions meet increased transit service demands.

Without regard to the politics of these ideas: consider further enhancing public-private partnerships for transit; incentivizing increased housing supply and density in exchange for an on-going contribution by that development toward transit benefiting residents of the development (not limiting it to merely "transit-oriented development). Reliable, sustainable, and increased transportation and transit funding will help the regulated community meet its AB 32 reduction targets in the time allowed by law. The Legislature could incentivize innovative automobile technology to expedite its market-readiness as transit alone will not meet the needs of a growing population.

Most importantly, long-term, stable funding for transportation is assured with a strong, vibrant California economy. When businesses thrive, they pay taxes, hire workers who pay taxes, funding state priorities and programs with consistency. The legislature must continue its efforts to advance a thriving state economy.

Sincerely,

  
JOSEPH TAVAGLIONE  
Commissioner

Enclosure – Form 700



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