

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
(CALRECYCLE)

PUBLIC HEARING RE:
ISSUANCE OF COMPLIANCE ORDER IWMA BR09-003
FOR THE CALAVERAS COUNTY REGIONAL AGENCY

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY BUILDING
BYRON SHER AUDITORIUM
1001 I STREET
SACRAMENTO, CALIFORNIA 95814

TUESDAY, AUGUST 21, 2012

11:00 A.M.

REPORTED BY:
PETER PETTY

 **COPY**

APPEARANCES

CalRecycleStaff Present at Dias:

Mark Leary, Deputy Director

Scott Smithline

Elliot Block, Chief Legal Counsel

Howard Levenson

CalRecycle Witnesses

Trevor O'Shaughnessy

Michael Chen

Kathleen Marsh, Supervisor

Lorraine Van Kekerix

Calaveras County Witnesses

Tom Garcia, Director of Public Works

Cynthia Knapp

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Larry Sweetser, Consultant to Rural County ESJPA

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P R O C E E D I N G S

1 AUGUST 21, 2012

11:07 A.M.

2 DEPUTY DIRECTOR LEARY: At this point we're
3 going to move into Section G on the agenda, Local
4 Assistance.

5 And the first item on the agenda is actually a
6 public hearing for the consideration of the issuance of
7 a compliance order to the Calaveras County Regional
8 Agency.

9 And for those who have been -- witnessed one
10 of these exercises before, you'll know that we need to
11 get a little more formal at this point in time because
12 it is actually a public hearing and it is a regulatory
13 item.

14 So, we are actually going to hold a public
15 hearing in the context of our meeting. And we have a
16 court reporter for this item, and it also necessitates
17 the court reporter swearing in the folks who will be
18 testifying on this item today, for this agenda item.

19 So, let's get folks who are planning to
20 testify to stand, and be sworn in by our court reporter.

21 COURT REPORTER: Could you all raise your
22 right hand, please?

23 DEPUTY DIRECTOR LEARY: Well, hold on one
24 second, I'm not sure we have everybody. We have folks

1 from Calaveras County here, also, so they need to be
2 part of this. Thank you.

3 COURT REPORTER: All right, anybody who will
4 be testifying raise your right hand.

5 (Whereupon witnesses are sworn
6 en masse by Court Reporter)

7 COURT REPORTER: Very well. When you come to
8 testify just state and spell your name for the record,
9 and confirm that you have indeed been sworn. Thanks.

10 DEPUTY DIRECTOR LEARY: Thank you very much.
11 Of course, when Trevor gets up here to spell his name,
12 we'll be here for about an hour.

13 I will ask staff from CalRecycle to provide
14 their testimony. We may ask a few questions as they
15 conclude, and then ask the representatives of Calaveras
16 County Regional Agency if they'd like to make a
17 presentation and if they do, we may have some questions
18 at the end of that, and then we will move forward with
19 decision making.

20 So, given that we're ready to go, take it
21 away, Trevor.

22 MR. O'SHAUGHNESSY: All right, thank you Mark.

23 Trevor O'Shaughnessy, T-r-e-v-o-r,
24 O'Shaughnessy, O-'-S-h-a-u-g-h-n-e-s-s-y. And I do
25 confirm that I have been sworn in for this public

1 hearing.

2 I would like to begin by providing the legal
3 background and framework for today's hearing. It is as
4 follows: pursuant to PRC 41821, jurisdiction's report to
5 the Department annually on their progress in
6 implementing their diversion programs and in meeting the
7 diversion requirements.

8 Pursuant to PRC 41825, the Department uses
9 these reports and other information to review a
10 jurisdiction's compliance either every two or four
11 years, depending on their compliance status in the
12 previous review.

13 Based on that review, the Department may find
14 that the jurisdiction is in compliance, or that it has
15 made a good faith effort to comply, or that it is not in
16 compliance with the requirements.

17 The Department's determination utilizes the
18 criteria in its Enforcement Policy, which has been
19 incorporated into statute, specifically PRC 41825.

20 "If the Department determines that a
21 jurisdiction is not in compliance, it shall issue a
22 compliance order requiring specified actions designed to
23 bring the jurisdiction into compliance.

24 The jurisdiction is subject to penalties of up
25 to \$10,000 per day if it subsequently fails to implement

1 the compliance order."

2 Today's proceedings and the hearings -- and
3 issues to be decided include the Deputy Director, Mr.
4 Leary, or if so chosen, the Director, Ms. Mortensen,
5 will describe the order -- has described the order of
6 presentations for the hearing.

7 The issue before the Department is to decide
8 whether the Calaveras County Regional Agency is in
9 compliance with the diversion requirements or if it has
10 made a good faith effort to comply, as defined in
11 statute.

12 Or, if it is not in compliance, then a
13 compliance order should be issued.

14 At this time I would like to introduce Michael
15 Chen to provide staff's summary of findings.

16 MR. CHEN: Good morning, my name is Michael
17 Chen. Michael, M-i-c-h-a-e-l, Chen, C-h-e-n, and
18 confirm that I have been sworn in for this public
19 hearing.

20 Today CalRecycle staff is bringing forward its
21 2007, 2008, 2008 jurisdiction review findings that the
22 Calaveras County Regional Agency has failed to
23 adequately implement its diversion programs.

24 Staff independently reviewed the County's
25 program implementation and diversion rates using

1 available information from the County, the County's
2 annual reports, waste hauler tonnage reports, and
3 Department databases.

4 Staff's analysis included the residential and
5 commercial sectors. Staff gathered information through
6 consultations, correspondence, and telephone calls with
7 County staff and the County's hauler.

8 Staff also conducted several site visits to
9 get a full representation of the County's efforts.
10 Staff conducted site visits in the various seasons over
11 the course of a year.

12 This review process helped staff to understand
13 the issues the County needs to address.

14 In determining compliance with the waste
15 diversion mandates statute directs CalRecycle to
16 consider both a jurisdiction's efforts to implement its
17 programs, selected in its source reduction and recycling
18 element, SREE, and the jurisdiction's achievement of the
19 diversion rate.

20 To fully understand how the County handles its
21 waste inter-cycling program over the last year, staff
22 reviewed the entire waste management system within the
23 County.

24 Staff found that the County's disposed waste
25 goes to seven facilities, which are owned and operated

1 by the County. Six of these facilities are transfer
2 stations. The seventh facility, Rock Creek Solid Waste
3 Facility, is a combined transfer station and landfill.

4 The County does not charge residents a gate
5 fee. Instead, the facilities are supported by the
6 County's annual solid waste parcel fee.

7 As part of staff's review, visits to the
8 transfer stations and landfill were conducted. Staff
9 also evaluated the County's key diversion programs.

10 The following is a summary of staff's
11 findings: at the landfill and transfer stations the
12 County has provided recycling opportunities for
13 cardboard, scrap metal, appliances, toxics, tires and
14 mixed recyclables, which consist of paper or plastics,
15 cans and glass.

16 Staff observed that most self-haulers were
17 disposing of recyclables rather than using the recycling
18 bins.

19 The residential diversion or curbside program
20 had varied participation by geographic location.
21 However, overall participation within the County was
22 low.

23 Staff found pockets of residential areas where
24 participation was as high as approximately 50 percent,
25 with minimal contamination.

1 However, this was not representative of the
2 entire County. Staff's review of curbside waste bins
3 and the haulers' residential loads at the landfill found
4 significant amounts of recyclables.

5 With regards to the commercial diversion
6 program, staff found participation similar to that of
7 the residential program. Commercial participation
8 varied by geographic location.

9 During staff's site visits, staff observed
10 businesses recycling with minimal contamination.
11 However, staff's observations of commercial waste bins
12 and commercial loads at the landfill found significant
13 amounts of recyclables.

14 Staff would like to note that the County does
15 not have a mandatory commercial recycling program at
16 this time.

17 The County does not have a construction and
18 demolition, or C&D diversion ordinance, but it does
19 prohibit contractors from disposing of C&D at the
20 County's transfer stations.

21 This forces contractors to take C&D to the
22 Rock Creek Solid Waste Facility.

23 Throughout staff's year-long review, staff has
24 seen the C&D program's continued development. During
25 staff's initial site visits, mixed C&D loads were being

1 disposed of in the landfill.

2 During staff's most recent site visit, staff
3 observed mixed C&D loads being delivered to the Rock
4 Creek Solid Waste Facility transfer station. Here the
5 loads were being hand sorted to capture recyclables
6 before disposal.

7 Because of this recent change to the C&D
8 program, staff was not able to determine its overall
9 effectiveness.

10 Staff recommends additional investigation of
11 this program to better understand the County's overall
12 C&D diversion efforts.

13 As part of staff's effort to evaluate the C&D
14 program, staff discovered an illegal C&D disposal site.
15 this was reported to the LEA and follow up by the LEA is
16 being conducted.

17 The schools' diversion program was
18 inconsistent. Staff found that some schools were
19 effectively recovering their recyclables, but that other
20 schools had missing or contaminated recycling bins.

21 Staff recognizes that implementation of this
22 kind of program can be difficult due to the various
23 demands on the education system.

24 However, efforts can be taken to impact the
25 overall recycling at the schools.

1 Staff did observe successful programs. The
2 County Government Diversion Program was effective. The
3 County government building had recycling bins outside
4 the building, throughout its hallways, and at each
5 employee's desk. These recycling bins are clean and
6 well sorted.

7 The CRV buy-back centers were also effective.
8 The County has four buy-back centers and during staff's
9 observations the collected recyclables were minimally
10 contaminated.

11 Although the County's Curbside Green Waste
12 Program had low participation, staff's observations of
13 the collected materials found minimal contamination.

14 Staff was not able to fully evaluate this
15 program to determine how effective the program was
16 overall.

17 Staff recommends additional investigation of
18 this program to better understand the County's overall
19 green waste practices.

20 In addition to reviewing the diversion
21 programs, staff also reviewed the County's per capita
22 disposal rate. Staff used the per capita disposal as an
23 indicator in evaluating program implementation and
24 performance.

25 The County's disposal target is 4.0 pounds per

1 person per day.

2 However, in 2007 the County disposed of 5.9
3 pounds per person per day.

4 In 2008 the County disposed of 4.7 pounds per
5 person per day.

6 And in 2009 the County disposed of 4.1 pounds
7 per person per day.

8 Although the 2010 pounds per person per day is
9 outside this jurisdiction review cycle, staff did review
10 the County's reported efforts. The County reported a
11 disposal rate of 4.4 pounds per person per day in 2010.
12 This is higher than its target of 4.0 pounds per person
13 per day.

14 As part of staff's total analysis, staff
15 reviewed the County's reported tonnages for total
16 disposal and recycling.

17 Staff used the Department's disposal reporting
18 system, or DRS, to obtain the total tons disposed of in
19 2010.

20 Staff worked with several sources to obtain
21 recycling/diversion data for 2010. The sources included
22 the County's hauler, a metal recycler, and the
23 Department's Recycling Market Information Section.

24 Based on this data, in 2010 the County
25 disposed of 36,447 tons and diverted approximately 6,000

1 tons.

2 And in conclusion, based on staff's complete
3 analysis, staff believes that the County has not
4 demonstrated that it has adequately implemented its SRRE
5 to achieve the diversion requirements of PRC section
6 41780.

7 Although the County is implementing its SRRE
8 selected programs, the programs are not achieving
9 sufficient reductions in disposal to enable the County
10 to reach the diversion requirements.

11 Staff recommends that the Department find
12 Calaveras County or agents -- staff recommends that the
13 Department find Calaveras County Regional Agency has not
14 adequately implemented its SRRE and approve the attached
15 compliance order, with the following revisions to the
16 Schedule 4 compliance:

17 Changing paragraph 3.1, section C, to make
18 December 31st, 2014 the deadline for full implementation
19 of local implementation plan programs;

20 And changing paragraph 3.1, section D, to make
21 December 31st, 2015 the end of the oversight period.

22 Present today are two representatives from the
23 County. They include Tom Garcia, Director of Public
24 Works, Calaveras County, and Cynthia Knapp, Recycling
25 Coordinator, Calaveras County.

1 This concludes staff's presentation. Thank
2 you.

3 DEPUTY DIRECTOR LEARY: Thank you, Michael.
4 Are there more presentations to be made from CalRecycle
5 staff? Nope. Stay close, Michael, in case we have any
6 questions.

7 Do the representatives of Calaveras County
8 care to share their perspective? Welcome.

9 MR. GARCIA: Good morning, Tom Garcia --

10 COURT REPORTER: Is your mic on?

11 MR. GARCIA: There we go. It's still red, but
12 it's on, okay. All right.

13 Good morning, Tom Garcia, Director of Public
14 Works for Calaveras County. T-o-m G-a-r-c-i-a.

15 Thank you for giving me the opportunity to
16 respond the concerns raised by CalRecycle staff.

17 The County would request that the Board adopt
18 option 3, not to issue a compliance order at this time.

19 I would like to note that the diversion goals
20 or the pounds per day, as listed in the report, the goal
21 of 4.0 pounds per day per resident is -- the county's
22 been on track to achieve that.

23 In the first reporting year of 2007 we are 5.9
24 pounds per resident. The County understood that it had
25 issues with the diversion programs. We implemented

1 changes, implemented programs, and did training at our
2 six transfer stations, and at the County landfill.
3 Based on the efforts of the County, in 2008 the 5.9
4 pounds per day dropped to 4.7 pounds per day. Although
5 still not achieving the goal, it was a significant drop.

6 The County implemented additional training,
7 additional programs. In 2009 the 4.7 pounds per day
8 dropped to 4.1 pounds per day, just .1 pounds per day
9 off of achieving the goal.

10 Based on those three years it would appear
11 that the County is making good faith efforts in order to
12 achieve the 4.0 pounds per day goal set by CalRecycle.

13 In 2010, the County experienced a significant
14 drop in revenues and we were required to eliminate
15 staff, sorting staff at both the -- well, at the main
16 facility at Rock Creek. Based on the reduction in staff
17 and reduction in the program, the 4.1 increased to 4.4.

18 In 2011, through additional training and
19 additional implementation programs the County rebounded
20 and what we're reporting for 2011 is 4.2 pounds per day.

21 Again, the County is making good faith efforts
22 to attain the 4.0 goal. When we have issues, we address
23 them.

24 The County is also pursuing a fee increase for
25 diversion. The Board of Supervisors, last Tuesday,

1 authorized County staff to move forward with pursuing a
2 fee increase. The goal is to have that implemented by
3 the first quarter of 2013.

4 We would request that -- the fee increase is
5 the cornerstone of the County's diversion program. It
6 will allow us to recoup the costs in order to implement
7 the programs needed to attain the 4.0 goal.

8 If the Board does not concur with option 3,
9 then I would request that any action on this item be
10 deferred until the first quarter of 2013, when the
11 County's new fee is in place and we are able to work
12 with CalRecycle staff on how to implement the programs
13 that would better meet their needs and the County's
14 needs.

15 In addition, we'd like to meet with CalRecycle
16 staff to go over the report and the findings, and find
17 out where the County can put additional resources, put
18 additional efforts so that we can address the concerns
19 brought out in the report.

20 And with that, I'll go ahead and turn it over
21 to Cynthia Knapp or answer any questions that the Board
22 may have.

23 DEPUTY DIRECTOR LEARY: Mr. Garcia, I
24 appreciate the reference to our prior organizations, but
25 we're not a board anymore.

1 MR. GARCIA: I apologize.

2 DEPUTY DIRECTOR LEARY: No, that's okay. The
3 mistake is made by ourselves, actually, pretty
4 regularly. But this ultimately will be a decision made
5 by the Director.

6 Let me ask, you reference or you made mention
7 of an interest in having interactions with staff. Have
8 those interactions not occurred heretofore?

9 MR. GARCIA: The interactions between
10 management and CalRecycle staff have not occurred.

11 DEPUTY DIRECTOR LEARY: Okay. So, your
12 anticipation would be that if you were to have some
13 substantive interactions about the findings of this
14 report, and the County's plans, that the necessity of a
15 compliance order would go away?

16 MR. GARCIA: That is certainly the goal. I
17 imagine that once we have a robust discussion on the
18 findings, and what the County can do, what we can
19 implement immediately versus what we can implement as
20 far as part of our fee increase, I believe we can
21 address the concerns brought up by the staff of
22 CalRecycle.

23 DEPUTY DIRECTOR LEARY: You might recognize
24 that that is actually pretty consistent with the
25 approach staff is ultimately recommending in the

1 compliance order, which is interactions between the two
2 organizations, development of a local implementation
3 plan, kind of getting everybody together on the same
4 sheet of music to drive the process that ultimately
5 results in compliance.

6 So, I'm not sure we're talking about two
7 greatly different things, it's just whether it's being
8 done under the auspices of a compliance order or just
9 being done relatively less formally, as you suggest.

10 MR. GARCIA: And we would prefer a
11 collaborative process and to have that process reflect
12 the fee structure that we will have in place come the
13 first quarter of 2013.

14 DEPUTY DIRECTOR LEARY: How confident of that
15 being in place are you?

16 MR. GARCIA: Very confident. We had a
17 public -- well, we didn't have a public -- we had a
18 special presentation before the Board of Supervisors.
19 The public that was at the meeting spoke in favor of it.
20 They like the programs we have in place. They recognize
21 that we have a Cadillac system for a small county.

22 DEPUTY DIRECTOR LEARY: Uh-huh.

23 MR. GARCIA: Each of the six independent
24 transfer stations acts as a recycle center and a waste
25 disposal site. So, they know what they have, they'd

1 like to preserve it.

2 Based on budget constraints, without a fee
3 increase, there would be drastic reductions to the
4 ability to run those transfer stations.

5 The Taxpayer's League came out in favor of the
6 proposal.

7 DEPUTY DIRECTOR LEARY: Oh.

8 MR. GARCIA: So, we believe we have
9 significant support for that fee increase.

10 DEPUTY DIRECTOR LEARY: Is that a parcel fee
11 increase?

12 MR. GARCIA: A parcel fee increase, correct.

13 DEPUTY DIRECTOR LEARY: Just building on the
14 current program.

15 MR. GARCIA: That's correct. And the parcel
16 fee increase is targeting the diversion program, not the
17 waste management program.

18 DEPUTY DIRECTOR LEARY: What's the magnitude
19 of that increase?

20 MR. GARCIA: What we're looking at now, from
21 the nexus studies, approximately \$42 per parcel
22 increase, bringing the total fee per parcel to \$52.

23 DEPUTY DIRECTOR LEARY: Wow, \$42 on top of
24 \$10?

25 MR. GARCIA: We have a \$150 parcel feel. \$10

1 of that \$150 is allocated to diversion. We are raising
2 that \$10 to \$52. Considering the --

3 DEPUTY DIRECTOR LEARY: In the first quarter
4 of 2013?

5 MR. GARCIA: In the first quarter of 2013,
6 yes.

7 Considering that each of the transfer stations
8 has diversion facilities, as well as Rock Creek, it's
9 warranted and the nexus study highlights the needs.

10 DEPUTY DIRECTOR LEARY: So, the extra revenue
11 then will translate into more resources available at
12 those locations to help steer that self-hauled waste
13 into the diversion bins, basically?

14 MR. GARCIA: Yes.

15 DEPUTY DIRECTOR LEARY: Is that basically how
16 it translates?

17 MR. GARCIA: That is correct.

18 DEPUTY DIRECTOR LEARY: That would be
19 ultimately the local implementation plan that you would
20 propose in response to the compliance order?

21 MR. GARCIA: That would be a portion of it.
22 The other things I'd like to do is meet with staff and
23 go over what we can do at our existing -- the Rock Creek
24 separated into a transfer area and in the landfill, both
25 on the same site.

1 We'd like to go over programs that we can
2 implement, training of staff, whatever we need to do
3 without -- that's independent of the fee increase, so we
4 can implement those now, rather than waiting.

5 But as far as programs that will be
6 implemented as far as the fee increase yes, that would
7 be a long-term goal to meet with the staff and see what
8 other programs we can implement.

9 DEPUTY DIRECTOR LEARY: I'm sorry did your
10 associate want to offer any perspectives?

11 Please.

12 MS. KNAPP: Cynthia Knapp, C-y-n-t-h-i-a K-n-
13 a-p-p, with Calaveras County.

14 I can go over some of the questions you guys
15 have about any of our current programs, if you have any.

16 I know there was some question about wood and
17 yard waste in part of the County. Every curbside
18 customer does have access to curbside wood and yard
19 waste recycling services, it's just not -- we only have
20 one area in the County that's a bundled package. And I
21 know that was a concern in the letter.

22 Another concern in the letter was the C&D
23 ordinance. Over the last six months we have been
24 sending the majority of our C&D loads into our transfer
25 building at the Rock Creek Solid Waste Facility. And we

1 have -- we've diverted about an extra 120 tons per month
2 in the first four months. I don't have the numbers from
3 the last two months. But that's been a huge increase in
4 our diversion.

5 We will be working with the hauler, the hauler
6 that contracts our transfer stations, to help their
7 attendants give better outreach and education to the
8 residents that bring their waste to the transfer
9 stations, since 75 percent of our residents do self-haul
10 their trash and recyclables.

11 Did you guys have any other concerns about any
12 of the other -- and, hopefully, in the future, with our
13 fee increase we will increase our staff numbers, which
14 will help increase our diversion rate.

15 Because we did hire one person, one
16 maintenance worker at our Rock Creek Solid Waste
17 Facility six months ago, when we started our floor sort,
18 and if we have more staff on board we do feel like we
19 can raise our diversion rates.

20 DEPUTY DIRECTOR LEARY: And that will result
21 from the fee increase.

22 MS. KNAPP: From the fee increase, yes.

23 So, do you guys have any other questions
24 regarding our programs?

25 DEPUTY DIRECTOR LEARY: No, I don't. I'm a

1 little confounded by the lack of communication through
2 this interaction, so any perspectives?

3 Mr. Garcia represents that they really haven't
4 had substantive conversations with CalRecycle staff.
5 And moving forward, I'd like this perspective on this,
6 Trevor, or maybe Howard.

7 MR. O'SHAUGHNESSY: We have provided, from the
8 Jurisdiction Compliance Unit, all opportunities to the
9 County. Michael has been within the County, working
10 directly with Cynthia. We -- and have had phones calls
11 and have interactions.

12 You know, I don't know what role we were to
13 take to actively carry that message to higher levels.
14 We have maintained open communication. We're always
15 willing to talk with anyone.

16 We've been interacting with the Local
17 Assistance Market Development Division, and their
18 associated staff.

19 And internally, we have done our best to
20 maintain the channels of communication.

21 So, if Howard's unit, under Cara, has received
22 information, it's been shared with us. And if we've
23 been asked to return phone calls, we've done that.

24 You know, we have done, to the best of your
25 ability -- I do respect your statements about wanting to

1 interact. We want to do that.

2 And that's one of the elements of the
3 compliance order would provide that not only does it
4 interact and bring in the jurisdiction compliance, and
5 take all the lessons and things that we've found in our
6 independent review, but it also brings in all the
7 resources of LAMD, the Local Assistance Market
8 Development Division, to bring their technical
9 assistance to further enhance.

10 So, it really provides the outreach mechanism,
11 if you will, where the Department is dedicating itself
12 to the jurisdiction to help, as much as we can, when
13 requested for that assistance moving forward, if the
14 compliance order is issued.

15 If the compliance order is chosen not to be
16 issued, I'm sure Howard's program would still be
17 available to provide that technical assistance and move
18 forward with any program modifications and/or education,
19 technical assistance, if you will, that was being
20 requested by the County.

21 I don't know if that addresses the question?

22 DEPUTY DIRECTOR LEARY: No, that's good.

23 That's good, that's fine, Trevor.

24 And, Howard, you haven't been sworn in, so do
25 you promise to tell the whole truth and nothing but the

1 truth in offering a response to this question?

2 MR. LEVENSON: Yes, sir. And my name is
3 Howard Levenson. That's H-o-w-a-r-d L-e-v-e-n-s-o-n.

4 I just wanted to add a couple of comments for
5 context. First of all, I concur with Trevor's
6 statements that he just made about the interactions
7 between my staff and the jurisdiction compliance staff,
8 and with the County.

9 And I wanted to provide the context that this
10 actually represents several years' worth of back and
11 forth between our staff and the County. It starts back
12 in the review process, which we concluded back in 2010-
13 2011, that there was inadequate program implementation.

14 We understand that the County has been making
15 progress and I think we're all very pleased about that.
16 But it still was a referral to our Jurisdiction
17 Compliance Unit, finding that there was still
18 inadequate -- progress, but still inadequate
19 implementation.

20 So, the idea of a compliance order, from our
21 perspective, is something to formalize the commitment
22 between the County and the CalRecycle collective
23 staffing to work collaboratively, to have something on
24 paper with deadlines and deliverables that we can make
25 sure that those commitments really are being followed

1 through on.

2 So, I look at that as a collaborative effort,
3 albeit a more formal one that perhaps Mr. Garcia is
4 suggesting.

5 DEPUTY DIRECTOR LEARY: All right, thank you.

6 Larry Sweetser, you haven't been sworn in but
7 you're a veteran of many of these interactions. I'm
8 curious about your perspective, being a strong advocate
9 and very knowledgeable about rural government and rural
10 participation in our programs.

11 If you care to decline, that's fine, too.

12 Do you promise to tell the truth, the whole
13 truth, and nothing but the truth?

14 MR. SWEETSER: I do promise.

15 DEPUTY DIRECTOR LEARY: Thank you.

16 MR. SWEETSER: And it's Larry Sweetser, L-a-r-
17 r-y S-w-e-e-t-s-e-r.

18 And I'm the consultant for the Environmental
19 Services Joint Powers Authority. Calaveras is one of
20 our members.

21 And I do support the idea of delaying any sort
22 of compliance order. I think there's been sufficient
23 progress in the efforts to get to compliance. The
24 numbers, at least the current numbers show that.

25 One of the other things that staff had

1 mentioned in their testimony was that there were several
2 areas that still needed additional review, and I think
3 that needs to be taken into consideration.

4 I do acknowledge that -- and I don't know the
5 whole communication record, but I'm sure there was a lot
6 of communication going back and forth. I don't know how
7 much that communication occurred after the idea of -- or
8 the proposal to go forward with the compliance order
9 was.

10 So, once that was conveyed, I don't know how
11 much communication went on, but that's the point at
12 which it gets serious enough to really sit down and go
13 through all the records.

14 I think Calaveras's record does show all the
15 efforts they've taken to reduce the rates. The numbers
16 are down low.

17 The high numbers that are being reviewed were
18 in the period of transition from diversion to disposal
19 reporting. And Calaveras was probably one of those
20 jurisdictions that had a lot of issues with the old
21 system.

22 One thing that you may not be aware of is that
23 Calaveras had no taxable transactions. All purchasing,
24 big purchasing occurs outside the County.

25 DEPUTY DIRECTOR LEARY: Hmmm.

1 MR. SWEETSER: So, when that reality hit of
2 the switch over to the disposal reporting, that's when
3 the numbers went high.

4 And as you can see the track record went down,
5 there was a blip with the loss of staff. But the track
6 record is very well and good on the order of getting
7 close to the 4.0.

8 And if you round it down, 4.1 now is pretty
9 much 4.0, so they're pretty close to achieving that.
10 And they have taken good faith efforts to achieve that
11 diversion.

12 DEPUTY DIRECTOR LEARY: Right.

13 MR. SWEETSER: So, that's why we're asking if
14 we could have -- not have a decision today on it, maybe
15 there could be a time to have that meeting and go over
16 exactly what a compliance order would mean versus not a
17 compliance order.

18 The County would prefer not to have one, have
19 that on their record.

20 That effort they took to go through having --
21 increasing the parcel fee is a huge one, especially in a
22 rural area. I mean any time we increase rates we end up
23 with a lot of illegal dumping, and that's always a
24 concern.

25 But to go to that magnitude of an increase

1 shows good faith.

2 DEPUTY DIRECTOR LEARY: All right, thank you.

3 Any further comments, questions, testimony to
4 be offered?

5 Thank you, Larry, I appreciate it.

6 I think at this point this -- we'll take this
7 under submission. I want to have an informed
8 conversation with Director Mortensen.

9 The fact of the matter is I don't have a good
10 sense for her perspective on these kinds of activities
11 in regards to 939 and jurisdiction's performance, so I'm
12 hesitant to suggest that I can represent her well in
13 regards to this.

14 I think I will -- we shall have a written
15 record to review. And based on the testimony and, of
16 course, the staff report, I will represent to her that
17 I'm quite impressed with the efforts the County is
18 making.

19 And Mr. Garcia, I'll take you at your word
20 that things are greatly improving. You've got a fee
21 increase coming down the road that will clearly improve
22 your performance. It seems to me an increase of that
23 magnitude is pretty significant.

24 She'll have the benefit of my perspective in
25 making this decision and, also, our Chief Counsel who's

1 been sitting here, listening to all of this.

2 In fact, I'll ask Elliot, maybe -- I
3 appreciate the sensitivity and the stigma associated
4 with a compliance order. And it occurs to me that we're
5 virtually talking about the same thing, developing a
6 plan together and moving forward in implementing that
7 plan.

8 I have a great deal of confidence that the
9 plan, whatever plan is developed, the County is serious
10 about moving forward, and the citizens sound like
11 they're serious about moving forward and making sure
12 diversion happens in the County. That would be a good
13 thing.

14 So, I'll represent all of that to Director
15 Mortensen, and Elliott will be there as part of that
16 conversation.

17 The thing I want to ask Elliott is maybe do
18 we -- or your perspective, do we relieve some of the
19 stigma associated with the compliance order if we were
20 to call it a compliance agreement?

21 A compliance agreement that we both commit to
22 going forward, that has kind of the same measurable, but
23 it's not necessarily an order, but an agreement.

24 Is that -- maybe -- you don't have to opine,
25 now, but that's something I'll offer to Director

1 Mortensen, and Elliott can offer his perspective that
2 I'm out to lunch, as usual, or maybe onto something.

3 Anyway, I think that's where I'd like to leave
4 it is to take it under submission.

5 I appreciate you folks coming up and
6 representing yourselves very well here today. And we'll
7 have -- we'll communicate back to you before anything's
8 finally decided. Is that okay?

9 Okay, we will close the public record,
10 conclude the public hearing, and move back into our
11 regular agenda.

12 [Adjourned at 11:43 a.m.]

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REPORTER' S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 29th day of August, 2012.

A handwritten signature in blue ink that reads "Peter Petty". The signature is written in a cursive style and is positioned above a solid horizontal line.

PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 29th day of August, 2012.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520

