

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

PORT OF SAN DIEGO
BOARD ROOM - 1ST FLOOR
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA

TUESDAY, OCTOBER 30, 2007

10:00 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSION MEMBERS

Mr. John Garamendi, Lieutenant Governor, also represented by Brian Bugsch

Mr. John Chiang, State Controller, also represented by Cindy Aronberg

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Ms. Marina Brand, Assistant Chief, Environmental Planning and Management Division

Ms. Judy Brown, Staff, Land Management Division

Mr. Mario DeBernardo, Legislative Liaison

Ms. Barbara Dugal, Chief, Land Management Division

Ms. Kimberly Lunetta, Executive Assistant

Ms. Matt Rodriguez, Senior Assistant Attorney General

Mr. Jack Rump, Chief Counsel

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. Steve Aceti, California Coastal Coalition

Ms. Marge Allen, Resident for Responsible Desalination

Mr. Steve Arakawa, Metropolitan Water District of Southern California

Mr. Gary Arant, Valley Center Municipal Water District, San Diego Desal Partners

Mr. Chuck Badger, Badger & Son Orchard Management

Mr. Jim Bell

APPEARANCES CONTINUED

Mr. Steve Blouent, Resident for Responsible Desalination

Ms. Cecelia Brown, Resident for Responsible Desalination

Ms. Bridgette Browning, Unite Here Local 30

Mr. Kurt Burkhart, Carlsbad Convention & Visitors Bureau

Mr. Jerry Butkiewicz, San Diego Labor Council

Mr. Eric Christen, Associated Builders and Contractors

Mr. Don Christiansen

Mr. Dan Coffey

Mr. Milt Dardis

Mr. Andrew Davis, Carlsbad Aquafarm LLC

Mr. Vincent Diaz, Filanc Construction,

Mr. Conner Everts, Desal Response Group

Mr. Chris Garrett, Latham & Watkins for Poseidon Resources

Ms. Patricia Goodman, Resident for Responsible
Desalination

Mr. Marco Gonzalez, Coast Law Group

Mr. Mitch Guillon, Rincon del Diablo Municipal Water
District

Mr. Matt Hall, City of Carlsbad

Mr. Shaun Haluax, BAE Systems

Mr. David Hamilton, Resident for Responsible Desalination

Mr. Irwin Haydock, Resident for Responsible Desalination

Ms. Marinka Horack

Mr. Frank Hutchins, California B&T

Ms. Marie Joyce, Assemblyman Martin Garrick's Office

APPEARANCES CONTINUED

Ms. Christine Kehoe, State Senator

Mr. Jerome Kern, City of Oceanside

Ms. Ann Kulchin, City of Carlsbad

Mr. Eric Larson, San Diego County Farm Bureau

Mr. Tom Lemmon, San Diego Building Trades

Mr. Buddy Lewis, City of Carlsbad

Mr. David Lloyd, Cabrillo Power

Mr. Carlton Lund

Ms. Lani Lutar, San Diego County Taxpayers Association

Mr. Peter M. MacLaggan, Poseidon

Mr. Frank Melbourn, California Regional Water Quality
Control Board

Mr. Douglas Metz, San Diego Regional Chamber of Commerce

Ms. Joni Miringoff, The Flower Fields

Ms. Merle Moshiri, Resident for Responsible Desalination

Mr. Eric Munoz, Agua Hedionda Lagoon Foundation

Ms. Eileen Murphy, Resident for Responsible Desalination

Mr. Ben Navy, Biocom

Mr. Don Neu, City of Carlsbad

Ms. Julie Nygaard, City of Carlsbad

Mr. John O'Drobinak, Resident for Responsible Desalination

Mr. Ted Owen, Carlsbad Chamber of Commerce

Mr. Bud Pocklingston, Sweetwater Authority, County Water
Authority, Metropolitan Water District

Mr. Larry Porter, Resident for Responsible Desalination

APPEARANCES CONTINUED

Mr. Bruce Reznik, San Diego Coastkeeper

Ms. Sylvia Rios, Board of Port Commissioners, Port of San Diego

Ms. Jean Roberts

Mr. William Rucker, Vallecitos Water District

Mr. Jerry Sanders, City of San Diego

Mr. Jim Schmidt

Mr. Kevin A. Sharrar

Mr. Andy Shea, Acciona Agua Corporation

Mr. Robert Simmons

Ms. Rachel Solorzano, Assemblywoman Mary Salas

Ms. Maureen Steiner, San Diego County Water Authority

Mr. Lou Storrow

Mr. Paul Thompson, Carlsbad Chamber of Commerce

Mr. Shawn Veen, Office of Assembly Member Saldana

Ms. Angelika Villagrana, San Diego Regional Chamber of Commerce

Mr. Julian Vochelli, Resident for Responsible Desalination

Ms. Julie Walker, Obraverde Growers

Mr. Paul Webster, State Senate District 38

Mr. Dan Wilkens, Port of San Diego

Mr. Bob Winchell, Resident for Responsible Desalination

Mr. Water J. Winrow, Poseidon Resources

Mr. Simon Wong, Simon Wong Engineering

Mr. Alan Zelenka, Kennedy/Jenks Consultants for Renewable Resources Group

INDEX

	PAGE
I. Closed Session	1
II. Open Session	1
III. Confirmation of Minutes for the Meeting of September 13, 2007	2
IV. Executive Officer's Report	2
V. Consent Calendar C01 -- C44	5
VI. Regular Calendar Items 45-49	

Item 45 ROBERT L. HULBERT (LESSEE):
Discussion of response by Lessee to the
Commission's action of September 13, 2007,
involving lease No. PRC 8531.1, a General
Lease - Recreational Use; authorization of
notification of default for failure to comply
with the terms and conditions of Lease No.
PRC 8531.1; authorization to terminate said
lease; and adoption of related findings,
involving sovereign lands located in the
Sacramento River, near the city of Sacramento,
Sacramento County, for an existing covered
floating boathouse, dock, four pilings,
stairway and gangway. (PRC 8513.1)
(A 9;S 6) - PULLED

Item 46 HANSON MARINE OPERATIONS, INC. 2
(LESSEE): Consider applications for
amendments to Lease Nos. PRC 709.1, PRC 2036.1,
PRC 7779.1, and PRC 7780.1, Mineral Leases, of
granted lands with minerals reserved to the
State and sovereign lands located in San
Francisco Bay, Marin, and San Francisco
counties; to modify the royalties.
(PRC 709.1, PRC 2036.1, PRC 7779.1, and
PRC 7780.1; RA# 07707) (A 6, 8, 11, 13; S 2, 3
4, 7)

INDEX CONTINUED

	PAGE
Item 47 SAN DIEGO BAY SHIPYARD SEDIMENT SITE: Consideration of the Port of San Diego's involvement in the San Diego Regional Water Quality Control Board's proposed clean up and abatement order for the shipyard sediment site.	227
Item 48 POSEIDON RESOURCES (CHANNELSIDE) LLC (APPLICANT); CABRILLO POWER I LLC (LESSEE): Consider application for amendment of a General Lease - Industrial Use, of sovereign lands located in the Pacific Ocean, city of Carlsbad, adjacent to Agua Hedionda Lagoon, San Diego County; for the use of existing intake and outfall structures for desalination purposes that are currently used as part of an existing once-through cooling upland electric generating plant. (PRC 8727.1, W 26202 RA# 15906) (A 74; S 38)	7
Item 49 CALIFORNIA STATE LANDS COMMISSION: Consider a resolution proposed by the Controller supporting S 1870 (Feingold) and HR 2421 (Oberstar), which would affirm federal protections for waters of the United States, including wetlands, tributaries, headwaters, and streams, through the Clean Water Act.	5
VII. PUBLIC COMMENT	261
Adjournment	263
Reporter's Certificate	264
PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345	

1 PROCEEDINGS

2 (A closed session was held.)

3 CHAIRPERSON GARAMENDI: Good morning, all. We're
4 going to start this meeting.

5 Controller John Chiang is with us. We have a
6 quorum.

7 Our first order of business, which was going to be
8 the desal situation, is delayed until the Department of
9 Finance and the Treasurer's representative Anne Sheehan
10 arrives from a delayed Southwest flight.

11 Paul, would you care to begin our session?

12 EXECUTIVE OFFICER THAYER: Certainly.

13 A couple housekeeping announcements. The first
14 one is particularly directed at the people in the back, is
15 that the Port has asked that we do everything we can to
16 keep the space that's now full of people clear so there
17 won't be a fire hazard. There is an overflow room
18 directly across the hall from this room, the people --

19 CHAIRPERSON GARAMENDI: Paul, I don't think you
20 have your microphone on. I will repeat what you said.

21 For those people that are in this room, if you
22 will take your seats and be quiet. For those people in
23 the hallway if they could move into the overflow room in
24 the back and remove themselves from the hallway, the fire
25 marshal has been busy. We don't want to give him any

1 other work. So let's -- thank you very much.

2 Okay. Paul?

3 EXECUTIVE OFFICER THAYER: The second thing is
4 that there are bathrooms across the hall and also
5 upstairs, near the cafeteria.

6 I guess the first item, we can adopt the minutes.

7 COMMISSIONER CHIANG: So moved.

8 CHAIRPERSON GARAMENDI: Done.

9 EXECUTIVE OFFICER THAYER: The second item is the
10 executive officer's report. I think we're very busy so I
11 will just run through that.

12 The third item is taking up the Hanson case, which
13 we discussed in closed session.

14 We have a presentation by Barbara Dugal. Barbara
15 Dugal, she's from our land management division.

16 MS. DUGAL: Good morning. Chairman Garamendi and
17 commissioners.

18 As Paul stated, my name is Barbara Dugal. I'm the
19 chief of the Land Management Division.

20 As outlined in staff's report, Item No. 46,
21 request that the Commission consider the approval of an
22 amendment of four leases that are used for the extraction
23 of sand and gravel from approximately 2,750 acres of
24 sovereign lands located in San Francisco Bay and Marin, in
25 San Francisco County. These four leases were entered into

1 by the State in July of 1998.

2 Three of the leases were issued to Moe Sand
3 Company. And the fourth lease, Olin Jones Sand Company.

4 Hanson Marine Operations has succeeded to the
5 Lessee's interest in all four of these leases. The leases
6 were issued for a term of ten years, and they will all
7 expire on June 30th of 2008. The leases also provide for
8 a ten-year renewal option. Hanson has advised staff that
9 they intend to exercise that renewal to renew the leases.

10 And in August of 2001, a qui tam complaint was
11 filed, alleging that certain defendants, including Hanson
12 Marine Operations, violated the California False Claims
13 Act and the Business and Professions Code in connection
14 with mining sand and gravel from San Francisco Bay.

15 Hanson Marine Operations subsequently filed a complaint
16 for declaratory relief against the Commission, and the
17 Commission subsequently filed a cross-complaint for
18 underpayment of royalties due under the leases and for
19 mineral trespass and conversion.

20 A central issue to the litigation has been the
21 proper interpretation of the royalty provisions of those
22 leases.

23 In August of this year, staff participated in
24 mediation with all the parties to the litigation. A
25 component of the proposed settlement provides for the

1 parties to renegotiate the royalty provision of the
2 leases. As such, staff is recommended that the Commission
3 amend the leases to reflect, among other things that are
4 outlined in the staff report before you today, that
5 commencing on July 1st of 2007, the agreement on royalty
6 of \$2.09 per cubic yard of material mined. Additionally,
7 the royalty will be adjusted annually beginning in
8 July 1st of 2009 by the producer price index.

9 Staff is also recommending to amend the terms of
10 the lease to require Hanson to provide additional
11 information as to the mining activities that take place on
12 the lease premises.

13 All of these recommended amendments are contingent
14 upon execution and a written agreement between the parties
15 and settling the litigation and subsequent court approval.

16 That concludes staff's presentation.

17 CHAIRPERSON GARAMENDI: Paul?

18 EXECUTIVE OFFICER THAYER: That concludes staff's
19 presentation.

20 We're recommending approval of the amendment to
21 adjust the royalty. This is part of the package of the
22 ultimate settlement of the sand mining litigation.

23 CHAIRPERSON GARAMENDI: Is there any public
24 comment on this?

25 John, the issue is before us.

1 COMMISSIONER CHIANG: Move staff recommendation.

2 CHAIRPERSON GARAMENDI: Two-zero vote. Staff's
3 recommendation is approved.

4 EXECUTIVE OFFICER THAYER: Thank you very much,
5 Mr. Chair.

6 The other item in the beginning that we normally
7 do -- we tried to gloss over it -- is the consent
8 calendar. There's a number of items on the consent
9 calendar which staff is recommending approval, as there's
10 no controversy associated with it.

11 CHAIRPERSON GARAMENDI: Are there any comments
12 from anybody about the consent calendar?

13 There being no comments about the consent
14 calendar, John, the issue is before us.

15 COMMISSIONER CHIANG: Move approval of consent
16 calendar.

17 CHAIRPERSON GARAMENDI: Two-zero vote. Consent
18 calendar is adopted.

19 EXECUTIVE OFFICER THAYER: The next item that I
20 would recommend taking up, because it would be brief,
21 would be consideration of the resolution by the Commission
22 supporting wetlands -- wetlands litigation in Congress.
23 If Mario is in the room. Mario, he is our new legislative
24 representative and I think he presented a resolution at
25 our last meeting.

1 MR. DeBERNARDO: I'm not sure if you got the
2 chance to look over this.

3 THE REPORTER: State your name, please.

4 MR. DeBERNARDO: Mario DeBernardo.

5 Well, there are scientific data that supports that
6 wetlands play a significant role in fighting global
7 warming and climate change. And what this bill does is,
8 Senate Bill 1870 by Senator Feingold and House Bill 2421,
9 by Congressman Oberstar, is, include in the jurisdiction
10 of the Clean Water Act, waters such as wetlands. There's
11 been some confusion in the wake of the Rapanos case and
12 this basically solves that confusion by explicitly
13 including in the language water such as isolated wetlands
14 and other isolated bodies of water.

15 CHAIRPERSON GARAMENDI: Comment or a motion?

16 COMMISSIONER CHIANG: Motion for approval.

17 CHAIRPERSON GARAMENDI: Comments from any of the
18 public on this?

19 Very good. The resolution is approved, two-zero.

20 EXECUTIVE OFFICER THAYER: At this point,
21 Mr. Chair, we're down to two items. One is the Poseidon
22 item, and one is the item dealing with contaminated
23 sediments in San Diego Bay.

24 We anticipate that the item on the sediments will
25 probably last about an hour. There are three 10-minute

1 presentations, an opportunity for public comment, which we
2 would expect to be used, and then a vote by the Commission
3 on whether or not to send a letter that's been circulated
4 to you.

5 The Poseidon matter, of course, would take quite
6 some time. We could adjourn and wait until Anne shows up,
7 or we could start on contaminated sediments and break it
8 off.

9 CHAIRPERSON GARAMENDI: We anticipate one or two
10 hours of hearing on Poseidon alone. Anne will be here
11 for, theoretically, three-quarters of that, actually about
12 four-fifths of that time.

13 So let's get started on Poseidon, and we will have
14 at it.

15 EXECUTIVE OFFICER THAYER: Very good.

16 The staff presentation consists of two parties.
17 And the first part will be prepared by Ms. Brown from the
18 Land Management Division.

19 MS. BROWN: Good morning, Mr. Chairman and Member
20 of the Commission.

21 My name is Judy Brown, and I work in the
22 Commission's Land Management Division.

23 Before I begin my presentation today, on Item 48,
24 I would like to read an amendment to the calendar item
25 into the record.

1 On page 14 of the staff report, in the first full
2 paragraph, the date upon which the City of Carlsbad
3 certified the EIR 03-05 and a mitigation monitoring
4 program should read, "June 13th, 2006," rather than
5 "May 3rd, 2006."

6 Calendar Item 48 involves an application submitted
7 by Poseidon Resources Channelside LLC and the Commission's
8 lessee, Cabrillo Power 1, LLC, for use of sovereign lands
9 located in the Pacific Ocean, offshore of the City of
10 Carlsbad, in San Diego County, for the desalination use of
11 existing intake and outfall structures that are authorized
12 to provide seawater intake and discharge of heated
13 seawater for a once-through-cooling power plant known as
14 the Encina power station.

15 Poseidon proposes to construct a four-acre
16 desalination facility adjacent to the Cabrillo power
17 plant, as shown on the overhead screen in the red square.
18 This is the location presently occupied by Cabrillo's fuel
19 oil tank number three.

20 Cabrillo and Poseidon entered into an agreement
21 that allows Poseidon to use and operate Cabrillo's
22 existing facilities for desalination use.

23 Cabrillo's improvements authorized by the existing
24 lease consist of a tidal inlet channel at the north end of
25 Agua Hedionda Lagoon.

1 The inlet channel is protected by two jetties that
2 were constructed to maintain the opening of the lagoon as
3 well as to minimize dredging frequency within the lagoon
4 in order to supply the ocean water intake pumps at the
5 power plant.

6 A discharge channel located at the south end of
7 the lagoon is a tidal outlet channel connecting a
8 discharge pond to the Pacific Ocean. This discharge
9 channel is also protected by two jetties. The tidal inlet
10 and outfall channels were originally constructed by San
11 Diego Gas & Electric Company, predecessors of Cabrillo, to
12 serve the power plant.

13 Because the actual intake pumps of the power plant
14 are located inside the lagoon, the power plant relies upon
15 the lagoon as a source of seawater for cooling its five
16 generators, and then discharges the thermal process water
17 into a discharge pond, also located in the lagoon, which
18 then flows through the tidal outlet channel, as you can
19 see.

20 When operating the desalination intakes in
21 conjunction with OTC, Poseidon proposes to use 100 million
22 gallons a day of power plant cooling water as its source
23 water to produce approximately 50 million gallons a day of
24 fresh water.

25 Approximately 55 million gallons per day of

1 back-filtered backwash water and concentrated saline waste
2 water would be diluted and discharged back into the power
3 plant's cooling water discharge channel before exiting
4 through the tidal outlet channel and into the Pacific
5 Ocean.

6 The 50 million gallons per day of water produced
7 by the desalination plant would be pumped to the City of
8 Carlsbad's water system for distribution to other water
9 customers.

10 Poseidon indicates that eight water districts have
11 signed agreements to accept delivery of water to their
12 systems. I understand that representatives of the eight
13 water districts are here today to provide comments on the
14 project, later on.

15 During the time periods when the power plant is
16 not operating its seawater intake pumps for the purposes
17 of generating electrical power, Poseidon will coordinate
18 with Cabrillo to operate a combination of intake pumps to
19 obtain up to 304 million gallons per day of water, to
20 reduce the 50 million gallons of fresh water, and to
21 enable the dilution of brine water, pursuant to the
22 Regional Water Quality Control Board's waste discharge
23 requirements.

24 In fact, ocean water intake by the power plant has
25 fallen this year to the point that additional water would

1 have been required by the desalination facility.

2 A recent repowering proposal for the power plant
3 is likely to result in a desalination facility being a
4 stand-alone operation, which means we are obtaining --
5 which means little or no cooling water would be obtained
6 from operation of the power plant.

7 In a resolution adopted on April 17th, 2006, the
8 Commission expressed concerns about the environmental
9 effects of -- to coastal and ocean uses and resources,
10 primarily eggs and larvae as well as adverse impacts to
11 Public Trust resources from the intake and entrainment of
12 organisms and the thermal discharge water from OTC coastal
13 power plants.

14 Although the resolution was rendered void for
15 procedural reasons, the underlying concerns with OTC still
16 exist.

17 There are some distinctions between the federal
18 and state regulations governing the power plants' intake
19 and discharge processes and the regulations governing
20 desalination intake and discharge processes. The intakes
21 of once-through-cooling power plants are governed by the
22 federal Clean Water Act including section 316(b) and
23 California's Porter-Cologne Water Quality Act. Section
24 316(b) requires that OTC power plants utilize the best
25 achievable controlled technology to minimize impacts to

1 marine life.

2 A recent court case threw out the use of off-site
3 mitigation instead of on-site design modification for
4 intakes to minimize impingement and entrainment impacts.
5 USEPA and the California State Water Resources Control
6 Board are preparing to implement a new OTC policy that is
7 anticipated to be considered for adoption in 2008 that
8 would be designed to better protect the environment and
9 respond to the court decision.

10 Desalination intakes are governed by the
11 Porter-Cologne Water Quality Control Act of 2006.
12 Potential water quality impacts are conditioned through a
13 regional board order that combines NPDES and California
14 Water Code waste discharge requirements on a case-by-case
15 basis, utilizing best professional judgment by Board
16 staff.

17 Minimization of impacts could include such
18 measures as design modification, best available control
19 technology, or mitigation measures feasible.

20 As a result, Poseidon was required to provide a
21 flow impingement and entrainment minimization plan for
22 which the Board staff is presently seeking comments. This
23 flow plan must be adopted by the regional board prior to
24 operation of Poseidon's proposed desalination facility.
25 The flow plan proposed by Poseidon would include the

1 restoration of 37 acres of wetland in the area. The
2 37 acres of wetland was calculated to mitigate for the
3 eggs and larvae that would be destroyed by the intake of
4 ocean water by the desalination facility.

5 A representative of the San Diego Water Quality
6 Control Board is here today to answer any questions you
7 may have about their review of the desalination project.

8 The existing lease area involves two partials that
9 extend from the ordinary high water mark of each of the
10 inlet and outfall channels and extends to the end of each
11 jetty, involving a combined total of 5.548 acres.

12 Representatives of Poseidon are present to provide
13 you with more information about the proposed desalination
14 facility. And although the Commission is not proposing to
15 take an action on this item today, the following are
16 highlights of staff's current recommendations:

17 Number 1, amend Cabrillo's existing lease to
18 authorize Poseidon as a colessee and to authorize the use
19 of the existing intake and outfall channels and jetties
20 for desalination purposes;

21 Two, the lease amendment contains special
22 provisions requiring Poseidon Resources, as a separate
23 obligation, to do the following: A, provide 37 acres or
24 any greater amount required by another federal or state,
25 local regulatory agency, a marine wetlands restoration as

1 mitigation for the unavoidable intake and mortality of
2 marine life, provide all funds to operate and maintain the
3 marine wetlands restoration for the term of the lease or
4 as otherwise required by another federal, state, or local
5 agency; B, use the best available design technology and
6 mitigation measures at all times for which this lease is
7 in effect; C, pay for an environmental review directed by
8 the Commission, in ten years, that will analyze all of the
9 environmental effects of the desalination operations and
10 alternative technologies that may reduce any impacts
11 found; D, provide the Commission with a performance
12 deposit in the amount of \$1 million, an apparent guarantee
13 to ensure compliance with all obligations under the lease;
14 E, report to the Commission in a public hearing within
15 five years regarding compliance with the federal Clean
16 Water Act and California's Porter-Cologne Water Quality
17 Control Act.

18 This concludes my introduction. And I would now
19 like to introduce Marina Brand of our Oceans Division of
20 Environmental Planning Division for further presentation
21 on greenhouse gas emissions.

22 CHAIRPERSON GARAMENDI: Okay. Let's do that. And
23 I may want to come back for a couple of questions. But
24 let's move on to the greenhouse gas issue.

25 MS. BRAND: Good morning, Chairman Garamendi and

1 Commissioner Chiang.

2 As stated by Judy Brown, I am Marina Brand, and I
3 am the assistant chief for the Commission's Division of
4 Environmental Planning and Management.

5 And as noted by Ms. Brown, I would like to discuss
6 the effect of Poseidon's proposed desalination facility
7 will have on the emission of greenhouse gases in the
8 region.

9 AB 32, California's Global Warming Solutions Act,
10 was enacted after certification of the final EIR by the
11 City of Carlsbad for this project. As a result, the final
12 EIR does not contain an analysis of greenhouse gas
13 emissions. In order to fill this gap, Commission staff
14 prepared a rough estimate using the best available
15 information. Now, this information was not complete. For
16 example, we don't know how much energy is lost as a result
17 of the transmission process; we do not know the mix of
18 energy types; and there are operations associated with the
19 desalination process that we don't have information for
20 with respect to how much energy they use. So as a result,
21 we had to make a number of assumptions.

22 So the first step, staff determined the amount of
23 greenhouse gases that could be emitted from the project.
24 Then they also determined the amount of greenhouse gas
25 that would be emitted as a result of transporting an

1 equivalent amount of water, either through the state water
2 project or from the Colorado River.

3 For purposes of the greenhouse gas analysis, staff
4 assumed that the energy needed to transport and desalinate
5 the water would be the result of energy generated by
6 combined cycle gas power generators. And this assumption
7 was made because Poseidon has indicated that they are
8 going to get their energy from the San Diego Gas &
9 Electric Power grid and the primary source of power for
10 SDG&E is combined cycle gas power plants.

11 The same energy source assumption was used when
12 calculating emissions for the transport of water from the
13 state water project and from the Colorado River.

14 Just this month, in October, a Climate Action Team
15 report was released that estimates about 815 pounds of
16 carbon dioxide per megawatt hour are produced from
17 combined cycle gas generating facilities. Using this
18 amount, using this figure, staff estimated that the
19 Poseidon project could generate as much as 101,271 metric
20 tons of carbon dioxide per year. And this would be for
21 the production of 50 million gallons of fresh water per
22 day.

23 Using those same assumptions, staff estimated that
24 importing water from either the state water project or the
25 Colorado River would generate about 56,309 metric tons of

1 carbon dioxide per year.

2 Now, Poseidon has indicated that water produced --
3 that the water that they would produce would replace water
4 from the state water project and the Colorado River. If
5 this is indeed the case, then the net increase in carbon
6 dioxide emissions would be 44,962 metric tons per year.
7 However, if water produced by the proposed desalination
8 facility ends up being an additional source of water
9 rather than replacing existing sources, the carbon
10 footprint in the region would be increased by nearly
11 101,271 metric tons of carbon dioxide a year. A more
12 complete description of this analysis is included as part
13 of the calendar item in Exhibit B.

14 And both I and Tom Fuller, who is the staff
15 environmental scientist who prepared the analysis, are
16 available for questions.

17 So next, I will --

18 CHAIRPERSON GARAMENDI: Very good.

19 The issue of carbon emissions is a new issue that
20 the state has set a policy to reduce its carbon emissions
21 to 1990 levels. And therefore, new projects of all sizes,
22 at least that have come before this committee, or this
23 commission, I believe should be reviewed to the goal of at
24 least being carbon neutral or reducing carbon emissions.
25 I appreciate your report. We'll have further discussion

1 about this as we go forward.

2 Thank you very much.

3 Ann Sheehan has joined us, representing the
4 Department of Finance and Governor's Office. We thank
5 you. And we thank Southwest for making you just a few
6 minutes late.

7 I think we have an extensive hearing before us.
8 We have several elected officials who have a very busy
9 schedule out ahead of them, given the recent fires here in
10 San Diego.

11 Before they come up, I want to take up an issue
12 that had arisen as to the conduct of this meeting. That
13 is, what we've completed today -- Paul, could you give us
14 a basic background of what we're faced with as a result of
15 the fire and other issues here?

16 EXECUTIVE OFFICER THAYER: I think the chairman
17 put his finger on it. We did receive a letter from some
18 of the public interest groups that have been most involved
19 in reviewing this project, late last week, which called
20 our attention to the impact of the fire it had on their
21 ability to respond to this matter. Although they have
22 done a lot of background work, the staff report didn't
23 come out until Wednesday. Some of the people involved
24 were, in fact, evacuated because of the fire and they
25 asked the Commission to have the hearing, but to not take

1 a decision on this until they have had more of an
2 opportunity to review the staff report and provide
3 additional input that they thought was important for the
4 Commission to consider.

5 Staff reviewed this matter with, really, all three
6 commissioners' offices. And there was a general feeling
7 that this was -- this had a lot of merit and that it
8 wasn't appropriate to make a decision on such an important
9 matter without first hearing from the people who were most
10 interested in it.

11 So as a result of that input from the
12 commissioners, staff has noticed on the Web site and
13 notified Poseidon and those who have written the letters
14 that it would be the intent of the Commission to hear as
15 much public testimony now that we're in San Diego and then
16 put over the final decision until a future hearing at
17 which more testimony could be taken. We haven't yet set a
18 schedule for when that future hearing would be. And it
19 might be worthwhile doing that at the end of this meeting,
20 so that we can understand whether the Commission has
21 additional information they would like staff to develop on
22 how long that might take.

23 CHAIRPERSON GARAMENDI: Thank you very much, Paul.

24 It would be my position to delay the final
25 decision until the next meeting. I don't want this thing

1 to drag out.

2 And so our -- I think our next meeting is
3 December. And I would like to have this issue completed,
4 up or down, sideways, whatever way we decide to go, at the
5 next meeting. There are some additional issues that will
6 undoubtedly come up today, having to do with the specifics
7 of the lease itself, certain enforcement issues, and make
8 sure that we're not just begging for a lawsuit out there,
9 some day in the future. Those may or may not be resolved
10 during the course of the day. But I do think it's
11 important that we allow about a month for everybody to
12 fully participate in this hearing.

13 If the other two commissioners are -- find that
14 acceptable, then we will not finalize this today. We'll
15 take as much testimony as we possibly can.

16 Okay. Now, let's see where we are here. I think
17 that that completes the staff report.

18 Any questions that the commissioners have?

19 I have a whole bunch, but I think I will just hold
20 those until we hear from the participants along the way.
21 And then we can sort of do an interactive thing here. I
22 may call staff back at some point to ask -- to take up a
23 specific issue that might arise. And certainly, my fellow
24 commissioners should be -- do the same if they care to.

25 Let's hear from the elected officials, who would

1 like to speak to this issue. The list is not too long,
2 but it starts with -- well, I don't know how this stack
3 came to this, so please don't take offense one way or the
4 other.

5 Mayor Jerry Sanders, if you would like to start.

6 MR. SANDERS: Thank you very much. Good morning,
7 and thank you for giving me an opportunity to address you
8 today.

9 City of San Diego is second largest city in the
10 state and a large customer for water delivered by the
11 Metropolitan Water District through our own San Diego
12 County Water Authority. We're the Authority's largest
13 member agency and, as such, stand for the benefit for many
14 initiatives that would increase water supplies and will
15 reduce the cost of water for use by the City. The
16 desalination plant being proposed in the city of Carlsbad
17 is that kind of initiative. The Carlsbad desalination
18 project is one element of a much broader regional strategy
19 to improve the diversity and reliability of San Diego
20 County's water supply, by reducing the -- by reducing the
21 dependence on imported water.

22 The implementation of the San Diego County Water
23 Authority's Regional Water Supply Master Plan will result
24 in a 16 percent overall reduction in the average energy
25 needed to acquire and treat water for the San Diego

1 region, including the proposed desalination project.

2 It would help diminish our dependence on imported
3 water supplies and will create a new local water supply
4 that will benefit our entire region.

5 I'm here today to ask for your approval of that
6 project. It fits into our water diversification strategy.
7 It complements our conservation and reclamation efforts
8 and augments our locally controlled water supply. It's an
9 important part in reducing energy costs and other
10 environmental impacts associated with importing water.

11 I am impressed with the commitment to build a
12 plant that is a net zero carbon footprint. And I think
13 the need for San Diego County to have desalination is
14 clearly apparent to public agencies and the ratepayers
15 that we represent.

16 I am honored to join every member of San Diego,
17 Sacramento, and Washington, D.C., delegation in supporting
18 this project.

19 I would like to ask you to approve this project,
20 and we appreciate the fact you are here to listen to us
21 today.

22 Thank you very much.

23 CHAIRPERSON GARAMENDI: Mayor, if I might, first,
24 thank you for your testimony. And also, acknowledge the
25 extraordinary work that you and the city have done in the

1 very, very difficult eight days, nine days now. It's been
2 quite remarkable. You and your staff and the other
3 elected officials ought to be complimented for dealing
4 with a very tough and dangerous situation with the fires.

5 MR. SANDERS: Thank you very much. It's been a
6 combined effort of state, local, elected, volunteers,
7 federal. It's been everybody together. So thank you very
8 much for your help in that also.

9 CHAIRPERSON GARAMENDI: Okay.
10 John?

11 COMMISSIONER CHIANG: I wanted to make a similar
12 type of comment. I wanted to thank you for your
13 leadership. I wanted to thank you.

14 THE REPORTER: Can you use your microphone,
15 please.

16 COMMISSIONER CHIANG: It's on.
17 Do you want me to speak into it?

18 THE REPORTER: Yes.

19 COMMISSIONER CHIANG: Recognize the work of the
20 mayor, the county supervisors, the other elected
21 officials, Governor Schwarzenegger, Lieutenant Governor
22 Garamendi.

23 I share my colleague's sympathy for the victims of
24 these devastating fires. The threat was tremendous. And
25 I wanted to commend the thousands of firefighters,

1 volunteers, emergency workers, and emergency medical
2 professionals who were so valiant and strong in trying to
3 save the property and, more importantly, the lives of the
4 residents of this area. They protected, obviously, a
5 great span, and at a time of great need.

6 Thank you for your leadership.

7 CHAIRPERSON GARAMENDI: Mayor, thank you very
8 much. See you later this afternoon.

9 MR. SANDERS: Thank you. All right.

10 CHAIRPERSON GARAMENDI: Senator Christine Kehoe.

11 MS. KEHOE: Thank you, Lieutenant Governor. And
12 Commissioners, thank you for coming to San Diego. This is
13 an important meeting and we welcome you to our city. You
14 are giving local residences and elected officials the
15 opportunity to share our thoughts on the coastal
16 development permit for the Carlsbad desal plant.

17 As a former member of the Coastal Commission and
18 the City of San Diego City Council, member of the state
19 assembly, and now as a state senator, I know how important
20 the State Lands Commission's decisions on a coastal
21 development permit -- I know how important these decisions
22 are.

23 That's why I, along with ten other members, of the
24 San Diego County Legislative Delegation urge your approval
25 of the Carlsbad desalination projects coastal development

1 permit.

2 The 3 million residents in our region lack a
3 reliable drought-proof water supply. And while the San
4 Diego County Water Authority has made great strides in
5 promoting water conservation and recycling programs in our
6 region, we still import 85 percent of our water from the
7 Colorado River and the Sacramento-San Joaquin Bay Delta
8 through the Metropolitan Water District.

9 The County Water Authority recently identified
10 desalination as critical to diversifying our local
11 supplies and reducing the region's dependence on imported
12 sources. We are at the end of the pipeline for all our
13 water infrastructure. We need more supply here in the
14 county.

15 The proposed Carlsbad facility is necessary to
16 bolster existing water supplies and enhance our region's
17 economic outlook and handle the growth that we absolutely
18 know is coming.

19 All the water produced by the facility will be
20 available for public use through long-term water purchase
21 agreements with public agencies. These agreements provide
22 important ratepayer protections by guaranteeing that
23 quantity, quality, reliability, and the price of water
24 will be maintained.

25 100 percent of the plant's output has been

1 allocated to eight public water agencies and the county
2 under long-term contacts that assure they will never pay
3 more than -- the ratepayers will never pay more than what
4 they will for imported water -- what they would have for
5 imported water. And public agencies retain their existing
6 oversight of water allocations and use.

7 My support for this project is based on two public
8 priorities, diversifying our water supply and approving
9 our water reliability. Diversifying San Diego's water
10 portfolio just makes sense in these days of long-term
11 drought, global climate change, and legal constraints
12 placed on our Colorado River supply. Desal is just one
13 part of our water supply system, but it is a critical part
14 that should be pursued.

15 To this end, we cannot afford further delays of
16 this critical water infrastructure project. Please
17 approve the Carlsbad desalination project coastal
18 development permit.

19 Thank you. And again, welcome to San Diego.

20 CHAIRPERSON GARAMENDI: Thank you very much,
21 Senator.

22 Questions?

23 MS. KEHOE: Mr. Chairman, in light of the fact
24 that you have a long segment here and another long
25 segment, may I briefly address the Commission on the bay

1 clean-up?

2 CHAIRPERSON GARAMENDI: The bay clean-up issue is
3 coming later. In deference to your schedule, we would be
4 happy to hear your testimony.

5 MS. KEHOE: Thank you very much. I appreciate it.
6 And I thank the other commissioners as well.

7 CHAIRPERSON GARAMENDI: So taking it out of order,
8 and moving now to Item --

9 EXECUTIVE OFFICER THAYER: -- 47.

10 CHAIRPERSON GARAMENDI: -- 47, for the purposes of
11 hearing the senator's testimony on that item.

12 Senator, please commence.

13 MS. KEHOE: Thank you.

14 Before you, on the next item today, is a proposal
15 to send a letter to the Port of San Diego urging the Port
16 to provide the necessary staff to support the Regional
17 Water Quality Control Board's execution of any final
18 clean-up and abatement order for contaminated lands within
19 San Diego Bay. The letter would also direct the Port to
20 take all reasonable and necessary actions to ensure that
21 the Port's lessees comply with any clean-up and abatement
22 order.

23 For more than a decade, we have known that there
24 are problems with the sediment in the San Diego Bay,
25 caused by inaction and actions over the last 50 years. In

1 April 2005, the regional board staff recommended that the
2 regional board issue an order requiring that a clean-up
3 and abatement order begin. Since then, the regional board
4 has been developing and preparing the evidentiary record
5 to support any clean-up and abatement order that may be
6 voted on by the regional board.

7 Time has moved slowly. In fact, far too slowly
8 for the public benefit. The State Land Commission itself
9 issued a resolution almost a year ago, in December of '06,
10 calling for an expeditious clean-up of the contaminated
11 bay sediment. Your resolution documents -- your
12 resolution documents the elevated levels of pollutants in
13 the bay, the sources of the pollutants, and the actions
14 taken by the regional board up to a year ago.

15 Last April, as part of the state budget process, I
16 asked whether the adequate resources were available to the
17 regional board so that the digitization of the evidentiary
18 record could be completed. The response was that it would
19 be done by November 1st, which is this Thursday, with the
20 fall back date of December 17th.

21 The good news is that the regional board is
22 preparing to post, on its Web site, the current versions
23 of the tentative clean-up and abatement order and the
24 supporting technical documents, and the digitizing of the
25 supportive documents has been completed.

1 This starts the 250-day clock for the regional
2 board to consider taking action. And I urge you, as
3 strongly as possible, Members, as members of the State
4 Lands Commission, responsible for protecting public lands,
5 to take whatever action you can to expedite the clean-up
6 and abatement process, should the regional board take
7 action later this summer.

8 This issue is critically important to the health
9 of the bay, of the species that live in and around the
10 bay, the businesses and the people who enjoy its many
11 recreational and economic benefits including fishing; all
12 that continues to be at risk. I urge you to please send a
13 letter. I ask for your support.

14 But thank you very much for letting me go out of
15 turn.

16 CHAIRPERSON GARAMENDI: Thank you very much.

17 Questions?

18 Thank you.

19 We have elected officials from a couple of cities
20 that have requested to speak. If your schedules are so
21 tight as to require you to leave, please let me know.
22 Otherwise, I would like to go to the Poseidon company and
23 hear from them.

24 Now, among the elected officials, there are -- it
25 looks like the entire city council of Carlsbad is here.

1 And this being public meeting, we don't have the Brown Act
2 issue, I don't believe. If the mayor and the city council
3 members would like to speak now, they certainly can.
4 Otherwise, I will move to Poseidon.

5 Okay. Mary Louis, you had your chance. Now we're
6 going to go to Poseidon. I think that's the best way for
7 us to go.

8 Let's hear from the company that wants to build
9 the power plant. There are several of you that are on
10 this list from Poseidon. Why don't you guys organize
11 yourselves and make your presentation?

12 MR. WINROW: Good morning, Mr. Chairman,
13 Commissioners. My name is Walter Winrow. I'm the
14 president of Poseidon Resources. And with me is Peter
15 MacLaggan. He is the senior executive at Poseidon who has
16 responsibility for this project as well as all of our
17 other activities in the state of California.

18 What we would like to do is -- I would like to
19 present some introductory remarks and then have
20 Mr. MacLaggan provide details largely focused on issues
21 that have been raised as well as our plan for mitigating
22 potential impacts.

23 As background, Poseidon Resources is a company
24 that develops, invests in, and manages water
25 infrastructure projects, wastewater treatment plants,

1 recycled water facilities, and obviously desalination
2 facilities.

3 We first began the development of the Carlsbad
4 project in 1998. And we began that development, really,
5 based on two primary foundations. One was that, at that
6 time, there had been significant technological
7 improvements to the desalination technology over the
8 preceding decade. And so these technological improvements
9 allowed the production of desalinated water at a cost that
10 now is comparable to the cost of other alternatives in the
11 San Diego region.

12 The second foundation for commending the
13 development of this project was that at that time, and as
14 it was described earlier, the large majority of the water,
15 over 85 percent of the water resources used in San Diego
16 County are imported from locations hundreds of miles away
17 and dependant upon precipitation in those areas.

18 And so there was a need for diversification of
19 water supply, and desalination was able to provide, on a
20 cross-comparable basis, a highly reliable, high quality
21 source of supply that was also secure from potential
22 natural disasters, such as earthquakes.

23 And so that was the premise for us developing the
24 project nearly ten years ago. Over the course of time
25 since then, the rationale for this project has even

1 heightened further. We are now facing, in San Diego
2 County, the effects of a persistent, and some would
3 characterize it as a permanent, drought in the Colorado
4 River Basin. The precipitation in Southern California is
5 at historic lows, some of the lowest levels since rainfall
6 has been reported in Southern California.

7 The projected effects of global warming on
8 snowpack are expected to materially affect the ability to
9 continue to import water from northern California, as it
10 has been in the past.

11 And layered on top of this is the current
12 situation in the bay delta environment that has concluded
13 in a judicial action that would reduce the ability to
14 import material amounts of water as has historically been
15 the case in Southern California.

16 And so with that backdrop, what I would like to do
17 is have Mr. MacLaggan talk about the details of both the
18 project and address the issues that have been raised.

19 CHAIRPERSON GARAMENDI: Thank you.

20 MR. MacLAGGAN: Mr. Chairman and Commissioners,
21 good morning. Peter MacLaggan with Poseidon Resources.
22 Thank you for the opportunity to address you this morning.

23 Let's start with an overview of the proposed
24 project. You have before you a photograph of the Encina
25 power station site, an artist's rendering of the proposed

1 desalination facility, in the diagram.

2 And this project is both a water supply project as
3 well as an environmental restoration and enhancement
4 program. As a water supply project, it will provide
5 50 million gallons per day, or 56,000 acre feet per year
6 of fresh water for the San Diego region and involves the
7 desalination facility and associated delivery pipelines.
8 It will provide a new locally controlled drought-proof
9 supply of water. It will help this region reduce its
10 dependence on imported supply. Additionally, the
11 desalination process produces an extremely high quality of
12 water. So it helps us with objectives of improving water
13 quality, as it's good for residents and furthers our water
14 recycling efforts and reduces salinity in the water supply
15 and that helps with water recycling.

16 In terms of environmental restoration and
17 enhancement program, this project will result in the
18 long-term preservation of Agua Hedionda Lagoon and the
19 associated watershed. It will restore 37 acres of marine
20 wetlands and create new opportunities for coastal access
21 and recreation.

22 Just now moving on to the relationship between the
23 power plant and the desalination facility, we have
24 separate operations, and both are shown on the photograph
25 here. What's important here in terms of primary

1 advantages of these two projects being located together
2 is, one, we would have existing infrastructure that would
3 not have to be replicated and causing related construction
4 or operational damage to the ocean in the form of an
5 intake and an outfall that are the subject of the lease
6 before you today. Secondly, we have compatible zoning.
7 And finding zoning for public utilities in the coastal
8 zone is not an easy thing to do. And where possible, it's
9 always encouraged to squeeze them in, together, so you
10 don't take up any more land than necessary. That's what
11 we're attempting to accomplish here.

12 Secondly, with respect to operational scenarios,
13 as staff briefed you, there are two. And in the near
14 term, we will be operating jointly with the power plant
15 that operates on an intermittent basis. So at the times
16 they are flowing water, we will take their discharge; at
17 times they are not, we will take water through the
18 existing system to serve our needs.

19 When the power plant is operating, the marine
20 impacts are de minimis. When the power plant is not
21 circulating water, we circulate less water; therefore, the
22 impacts are reduced and fully mitigated.

23 Agua Hedionda Lagoon is the setting for this
24 project. It is a manmade estuary that has been in its
25 current form since the power plant was first constructed

1 in the early 1950s.

2 It is kept open to the Pacific Ocean through
3 dredging maintenance, dredging every other year. And as a
4 result there -- in addition to power production, this
5 existing intake and outfall, that are the subject of the
6 lease, support a number of very important and critical
7 beneficial uses that make this lagoon the treasure. It
8 has, first and foremost, 388 acres of coastal wetland
9 habitat, tremendous public recreation, and beach access
10 resource. There is a shellfish farm that produces over a
11 million pounds per year of oysters and mussels that take
12 pressures off the natural stocks in the outer lagoon. And
13 there's white sea bass fish hatchery run by Sea World
14 Research Institute that produces these fish to replenish
15 natural stocks. And they have released over 1.2 million
16 fish over the life of the facility. There's numerous
17 marine education and research facilities along the lagoon.
18 And lastly, each restoration and surfing are also related
19 to your assets in that the dredging of the lagoon puts the
20 sand on the beach, that was historically Cobblestone
21 Beach, and it also produces sandbars that are formed in
22 the discharge channel, flow of water through that channel,
23 and the flow of sand through that channel, to support what
24 is arguably the best surfing beach in Carlsbad. All of
25 these uses are linked to the flow of water and the flow of

1 sand. And our future water supply is similarly linked.
2 The absence of continued maintenance dredging would result
3 in the loss of most if not all of these uses.

4 Now, moving on to how do we get the water from the
5 desalination facility to the end users. This facility
6 will serve the cities and communities of Oceanside,
7 Carlsbad, San Marcos, Escondido, Encinitas, Solano Beach,
8 Rainbow, Valley Center, Chula Vista, and National City.

9 And as you will see in the graphic before you, the
10 pipelines that were approved in the environmental impact
11 report that was certified by the city of Carlsbad, there
12 are numerous alignments, but various combinations of these
13 pipelines will move the entire production from a point of
14 production to the local distribution systems that will be
15 receiving that water. The pipeline alignments follow
16 existing roadways. The pipeline sizes range from 4 feet
17 in diameter to 2 feet in diameter.

18 There are a number of project-related public
19 benefits. And this is one that has been contributed by
20 our site host, Cabrillo Power, in that they own the lagoon
21 and much of the surrounding -- surrounding shoreline.
22 They have entered into an agreement with the City of
23 Carlsbad whereby the four parcels shown in the graphic
24 before you will be dedicated to the City of Carlsbad by
25 the owner, Cabrillo Power, for long-term public use.

1 Number one is the parcel, that pie-shaped parcel,
2 adjacent to the fish hatchery. It has been reserved
3 specifically for continued use as a fish hatchery,
4 expanded fish hatchery, and/or related marine research.

5 Parcels two and three, lagoon-front and beachfront
6 property are for public access generally.

7 And then off the map, to the east of the coast
8 highways is a parcel that would be set aside for beach
9 parking.

10 Now, the flow of water into the plant, the
11 desalination facility will use the power plant's discharge
12 when the source water is available. When the source water
13 is not available, when the power plant is not operating,
14 we will move that water for our purposes. We will do so
15 in a fashion that will minimize the environmental impacts.

16 First thing we will do is we will slow down the
17 flow of water and reduce the velocity so we minimize the
18 intake of marine organisms. As a result, the impingement
19 losses of fish, fish that are caught on the screens and
20 subsequently die, would be on the order of 2 pounds per
21 day, actually less than 2 pounds per day, under worst-case
22 conditions.

23 Entrainment losses, the small larval fish that
24 staff described that come into our plant and are caught up
25 in our fillers, that subsequently die, would represent

1 about 12 percent of the larval fish within Agua Hedionda
2 Lagoon. None of these species is endangered or
3 threatened.

4 The lease provisions that are before you today
5 fully mitigate the unavoidable losses through the
6 restoration, enhancement, and maintenance of 37 acres of
7 marine wetlands.

8 Poseidon has also agreed, in the draft lease, to
9 add improved equipment and technology if required by the
10 Regional Water Quality Control Board or other regulatory
11 entities during the term of the lease.

12 And the Commission has various checkpoints to
13 review on progress and protections that have been built
14 into the lease. There will be a public hearing in year
15 five of the lease to review compliance; and in year ten,
16 the Commission will conduct an updated environmental study
17 to review the project itself and may require modifications
18 at that time if deemed necessary or appropriate.

19 One of the issues that got a lot of debate in the
20 EIR process has been, are there better ways to bring water
21 into the plant? And we have studied numerous
22 configurations. And some of these are summarized before
23 you.

24 The notion of being able to bring the water in
25 through the seafloor, through wells, and bring it into the

1 plants in a fashion that would not cause the entrainment
2 and impingement of organisms was studied extensively with,
3 initially, pilot wells that were done and then ultimately
4 some scale-up.

5 And what we learned is that in this particular
6 location, we don't have the geology necessary to bring in
7 enough water. So the wells we would need would be on the
8 order from anywhere, 20 mega wells to 200 smaller intake
9 systems, and that they would impact up to 4 miles of
10 coastline at a cost of anywhere from 438 to 650 million
11 dollars depending on the configuration.

12 Additionally, we found that the water quality
13 below the surface of the ocean actually is inferior to
14 that of the surface water and difficult, if not
15 impossible, to treat.

16 Another configuration was looked at, what was
17 referred to as a seep infiltration system where you're
18 basically moving your filters offshore and putting them in
19 the floor of the ocean. Here, we would effectively need
20 to scour three layer miles of ocean floor, dig a trench
21 25 feet deep, drop pipes into it, pour sand on top of it,
22 pull the water out, that way, very slowly, an expensive
23 and environmentally damaging undertaking.

24 Lastly, we looked at the possibility of relocating
25 intake, offshore. Here, we found that we're simply

1 shifting the area of impact from the lagoon, which has
2 species that are abundant, that are impacted, to fish
3 species that make up 90 percent of the entrained organisms
4 to a more sensitive and diverse habitat, offshore, that
5 would probably result in eater impacts along with the
6 construction-related impacts. And I would bring to your
7 attention that there's a typo here on the cost of the
8 offshore intake. It is not \$650 million. It is
9 \$150 million.

10 It takes 2 gallons of seawater to make 1 gallon of
11 drinking water. So what we do is, we bring the water up
12 from the ocean, start with a hundred million gallons,
13 roughly, filter it twice. Then we run it through the
14 reverse osmosis process, which effectively splits that
15 hundred million gallons into 50 million gallons of very
16 high quality drinking water, and 50 million gallons of
17 seawater that now has all the original salts, so it's
18 twice as salty as it used to be.

19 Separately, the Regional Water Quality Control
20 Board issued a permit for Poseidon to put that salty
21 by-product back in the ocean, and the permit requires that
22 for every gallon we bring up to the plant, two more
23 gallons are necessary to ensure it's diluted to a level
24 that's acceptable for the marine organisms offshore. That
25 number was determined through rigorous studies that were

1 conducted over the last seven years to assess actual
2 organisms in place with an actual pilot plant that's been
3 running for four years now.

4 And so that permit contemplates that we are not to
5 exceed 40 parts per thousand salinity leaving the
6 property, compared to 33.5 in the natural environment. So
7 it's about a 20 percent increase.

8 The discharge must be continuously monitored to
9 ensure that we never go over these levels. Limits are
10 also in place and monitoring requirements for pollutants
11 and toxicity. And lastly, the stormwater that falls on
12 our project site is collected and retained on site and we
13 hold in the plant rather than discharged elsewhere.

14 The lease provisions that are before you require
15 compliance with other regulatory agency requirements. And
16 Poseidon is to provide the State Lands Commission with
17 copies of all of our regulatory compliance reports.

18 You had a discussion earlier in the report from
19 staff about the energy use of greenhouse gas production.
20 And this is just to summarize some of the numbers for you.
21 And the project, as discussed, will replace water that is
22 otherwise being pumped from northern California into San
23 Diego County today. So you have, in the first column,
24 energy use on a unit basis for acre foot. The
25 desalination is 4.4 megawatts per acre foot of water, the

1 state water project at 3.4 megawatts per acre foot, or a
2 net energy increase of 1 megawatt per acre foot.

3 The energy use is escalated out to annual numbers.
4 And then in the far column, on your right, we have
5 converted that to production of greenhouse gas CO2. You
6 will note, the numbers are different. The reason why the
7 numbers are different here -- the 61,000 tons per year for
8 the desalination facility are based on the California
9 Climate Action Registry certified data and protocols for
10 San Diego Gas & Electric systemwide supply, which will be
11 our supplier, so it is a blend of all of the resources
12 compared to the presentation you received from staff,
13 which just assumed that all of the energy we were using
14 came from gas sources.

15 Our commitment to the Commission today is that we
16 will voluntarily reduce our net carbon emissions to zero
17 through a climate action plan, and I will summarize what
18 that entails.

19 The climate action plan will result in the
20 voluntary reduction of net carbon emissions to zero by
21 investing in a combination of solutions. But first and
22 foremost, it will employ state-of-the-art high efficiency
23 energy recovery systems in the desalination facility to
24 lessen our energy footprint in the plant.

25 Similarly, we will invest in high efficiency

1 motors to maximize the efficiency of the plant through the
2 energy used for pumping the water.

3 Third, we will look to LEED standards in the LEED
4 checklist and implement as many of those standards are
5 feasible and appropriate for investor installations of
6 this nature.

7 And then among the others that will be evaluated
8 and implemented to provide the remaining offsets necessary
9 will be installation of solar generation systems, either
10 on site or elsewhere in the region; purchasing of carbon
11 offsets; acquisition of renewal energy credits; restoring
12 and preserving coastal wetlands that have carbon
13 sequestration value.

14 So through the combination of these actions, we
15 will ensure that the project is carbon neutral.

16 Now, implementation. Moving on to what I view as
17 an unparallel team that has been put in place to deliver
18 this project and ensure its success, we have a number of
19 members, on the slide before you, that I will just briefly
20 summarize.

21 Acciona Agua is the engineer, designer of the
22 desalination facility. They have over 70 installations
23 worldwide, producing over 400 million gallons per day of
24 desalinated water, including the largest installation in
25 Europe.

1 American Water will be responsible for overall
2 operations and maintenance, and they are the largest and
3 oldest water services company in the United States.

4 Filanc Construction -- a local construction
5 company -- has been in business since the '50s -- has
6 constructed over 300 water and wastewater projects with
7 stellar reputation in this region -- will be the
8 contractor to build the plant.

9 PBS&J, the civil engineer, they are an
10 international company focused on water and wastewater
11 engineering and construction management. 60 offices, 3500
12 employees worldwide.

13 GE Water and Process Technologies will be
14 providing our membrane pretreatment technology.

15 Simon Wong, engineering and local-based structural
16 engineer will be providing the structural engineering on
17 the plant. They are involved in many infrastructure
18 projects here in San Diego County.

19 And lastly, we'll be working with the Renewal
20 Resources Group for the development and implementation of
21 the climate action plan I discussed.

22 Now, we have, as mentioned, entered into
23 contracts, and we have a ninth pending that represent the
24 full output of the plant. And all of this water is sold
25 through long-term contacts to public agency partners that

1 are providing water services in this region.

2 On the map before you, you can see the locations
3 of their service areas. And I will just briefly summarize
4 the participants: Pending contract before the City of
5 Oceanside later this month; contract with the City of
6 Carlsbad, 22,000 acre feet; Olivenhain Municipal Water
7 District, 5,000 acre feet; Santa Fe Irrigation, 2,000 acre
8 feet; Rainbow Municipal Water District and agricultural
9 community, 7500 acre feet; Valley Center Municipal Water
10 District and agricultural community, 7,500 acre feet;
11 Rincon del Diablo Municipal Water District serving the
12 greater Escondido region, 4,000 acre feet; and the
13 Vallecitos Water District serving San Marco, 7500 acre
14 feet; and lastly 2400 acre feet to the Sweetwater
15 Authority in Chula Vista and National City.

16 The terms of public benefits, the project provides
17 many: This project will eliminate the need for 56,000
18 acre feet of water supply, currently imported into San
19 Diego; the project will provide the public agency partners
20 with a locally controlled drought-proof supply of high
21 quality water for 30 years with two possible terms of 30
22 additional; it will ensure the ongoing stewardship of Agua
23 Hedionda Lagoon long after the Encina power station is
24 decommissioned; it will increase opportunities for coastal
25 access and recreation through the dedication of 15 acres

1 of lagoon and oceanfront property; result in the
2 restoration of at least 37 acres of coastal wetlands;
3 reduce the net carbon footprint to zero; generate
4 \$2 million per year in tax revenue for infrastructure
5 development in the coastal zone; and generate up to the
6 2100 jobs during construction and 400 new permanent jobs.

7 Just to summarize where we are, Mr. Chairman and
8 Commissioners, the project has the following milestones
9 that have been accomplished: We have secured the site; we
10 have entered into long-term water purchase agreements for
11 100 percent of the plant output; we have selected a
12 preferred engineering and construction team; environmental
13 impact report has been certified; local land use permits
14 have been approved; the NPDES permit has been approved;
15 the drinking water permit has been approved. And the
16 State Lands Commission's lease coastal development permit
17 are the last two remaining steps.

18 I would just like to ask Mr. Winrow to come up for
19 some summary remarks and then we would be happy to answer
20 any questions you may have.

21 MR. WINROW: First of all, thank you for the
22 opportunity for us to share our remarks and perspectives
23 with you.

24 In light of our relationship with the local water
25 agencies and the people and the businesses that they serve

1 that are all relying upon the water that would be reduced
2 by this project as part of their future water resources,
3 we would respectfully request that the Commission approves
4 the lease amendment that has been presented to you by the
5 staff, at your earliest consequence.

6 We have with us a number of specialists and
7 experts that we can put to good disposal to answer any
8 questions that you may have.

9 Again, thank you very much.

10 CHAIRPERSON GARAMENDI: Thank you.

11 There are a series of questions that I think this
12 Commission would like to get at. Certainly, the Chair
13 would, and I think I am joined by my colleagues on this.

14 There's a series of questions as to some of the
15 specifics of the lease. We would like to get those
16 squared away. We'll go through some of those as we go
17 along here. There's some questions about -- new issues
18 that have arisen with regard to carbon emissions issue.
19 There is a significant difference between the numbers you
20 just presented and the numbers that were worked out by the
21 State Land Commission staff.

22 I don't anticipate a resolution of that
23 difference, that analysis, today. But between now and the
24 final hearing on this, I would like to get that worked
25 out. It is my very strong view, I personally hold this

1 view, that this project has to be at least carbon neutral.
2 There's no way that the State is going to be able to
3 achieve AB 32 requirements with major projects. And this
4 is a significant project with -- we want at least a carbon
5 neutral situation. So that has to be worked out. And
6 maybe we'll hear more about that as we hear from
7 witnesses. But there's a difference, and we need to make
8 sense of that.

9 There's also a series of issues related to the
10 mitigation. And perhaps you would like to comment further
11 on this. The 37 acres, it's proportional, 12.2 percent,
12 and therefore proportional to the total, 338-acre habitat.
13 And I understand that.

14 But what I don't understand is, where and how on
15 the 37 acres. I know that the present lease and
16 information say, yes, someday we'll decide that. I would
17 like to come to a more clear resolution of that issue as
18 to where the 37 acres is and how it's going to be handled.

19 There are opportunities in this region for
20 restoration. I would like to get some better sense of the
21 specifics. Otherwise, I know that three or four years
22 from now, this Commission and quite possibly some court is
23 going to be debating that issue. So let's see if we can
24 avoid that.

25 There's also a certain cost that the State Lands

1 Commission is going to have, going forward. To monitor
2 the lease as proposed has some significant ongoing
3 monitoring requirements for the State Lands Commission and
4 other state agencies. We would -- I would like to see
5 those ongoing monitoring costs paid for by the project.

6 Finally, I was sitting here just listening to the
7 numbers. And if I recall -- if I am correct in recalling,
8 the numbers, as it applies to the amount of water that's
9 taken from the lagoon, the amount of water that is made
10 potable and then the amount of water that's needed to
11 dilute the more salty remaining water, is it somewhere
12 around 200 million gallons per day? Is that about right?

13 MR. WINROW: To go through that series of water
14 requirements, we require -- when the power plant is not
15 operating, a total of 304 million gallons per day, which
16 is approximately a third of what the power plant is
17 authorized to utilize.

18 Of that 304, approximately a hundred million
19 gallons is used to be desalinated, and the remainder is
20 used for dilution purposes in the discharge to ensure that
21 the salinity of the discharge falls within the
22 requirements of the regional board.

23 CHAIRPERSON GARAMENDI: So about a hundred
24 million -- about a third of the total water needed when
25 the power plant is operating or not operating, either way

1 is it the same number?

2 MR. WINROW: Yes, and about a third of the water
3 that would be required to lead our -- the minimum amount
4 required to meet our dilution purposes would be the same,
5 which is about a hundred million gallons per day that
6 would be desalinated and that would produce the 56,000
7 acre feet.

8 CHAIRPERSON GARAMENDI: Just to -- I don't want to
9 play Regional Water Control Board here, but I will.

10 Apparently, their requirement is that the water
11 that's returned to the ocean be no -- be the same salinity
12 as water that's taken into the intake. Is that basically
13 it?

14 MR. WINROW: Peter, why don't you answer the
15 details on this.

16 MR. MacLAGGAN: The regional board permit issued
17 last summer requires that we bring it within 20 percent of
18 the background water before it leaves the site, and then
19 it flows out to sea, and within a few thousand feet, it is
20 within the surrounding salinity that's diluted there, to
21 background levels.

22 CHAIRPERSON GARAMENDI: It's flowing out to sea
23 right at the beach, in the existing facility?

24 MR. MacLAGGAN: There's a discharge channel. So
25 this photograph -- before we enter this channel we have

1 already reduced it down to 20 percent of our background.
2 And then as the water flows out and out to sea, it
3 continues to dissipate. And within a thousand feet
4 offshore, where 10 percent of the background and another
5 thousand feet, it's unlikely that you would measure the
6 salinity out that far.

7 CHAIRPERSON GARAMENDI: The big issue, one of the
8 big issues, is the entrainment issue. In the discussion
9 with the regional board, was there a discussion at all of
10 disposing of the salty water directly into the ocean, far
11 offshore?

12 MR. MacLAGGAN: Not offshore. But there is an
13 ongoing discussion about ways to balance entrainment and
14 salinity management. And what's happening with the review
15 of our minimization plan with the regional board is that
16 we were asked to look at impacts of salinity, all the way
17 up to 60 parts per thousand, almost double the strength of
18 seawater, and determine whether there was a clear line
19 where you were going to cause some harm with the
20 discharge, and a goal toward moving that 40 number up
21 higher and lessen the input -- water for dilution
22 purposes.

23 That study demonstrated that when you get to 46,
24 48 parts per thousand, you start to see some discernible
25 impacts and it gets worse thereafter. So there's a line.

1 And if you go all the way down to 40 parts per thousand,
2 you probably have a fairly conservative number. There may
3 be some room to increase that. The regional board is
4 exploring that. And I will just give you an example. If
5 it was 46 parts per thousand we would be able to cut the
6 dilution water in more than half.

7 So this is an ongoing discussion at the regional
8 board. The minimization plan has not been adopted. they
9 have the flexibility to balance these competing issues --
10 entrainment management versus salinity management -- and
11 arrive at the optimum level. And it's -- a permit right
12 now has 40 parts per thousand as the number for requiring
13 to meet that today. But they still have an obligation
14 before we can become operational to adopt this
15 minimization plan.

16 CHAIRPERSON GARAMENDI: So at some future point,
17 less water is required to dilute salty water from the
18 facility. I assume you are not going to ask for a change
19 in the mitigation.

20 MR. MacLAGGAN: No, sir.

21 CHAIRPERSON GARAMENDI: Okay. I thank you for
22 that.

23 Questions from the commissioners? John?

24 COMMISSIONER CHIANG: I agree with the lieutenant
25 governor that the project needs to be carbon neutral. Can

1 you elaborate on the costs of the various measures and how
2 it increases your costs?

3 MR. MacLAGGAN: Let me ask a member of our carbon
4 action team to come forward. Alan Zelenka is our expert
5 on this, so he can help you with that question.

6 MR. ZELENKA: Commissioners, I'm Alan Zelenka with
7 Kennedy/Jenks Consultants, subcontractor for Renewable
8 Resources Group.

9 Your question was the cost of the overall carbon
10 mitigation plan?

11 COMMISSIONER CHIANG: Yes. If you want to go
12 through the various measures, thanks. We articulate a
13 number of items, all of which aren't drawn in great
14 specificity. I trust you will try to do your best. But I
15 am trying to get a general sense of what the costs would
16 be.

17 MR. WINROW: Before he provides his testimony, let
18 me characterize where we are in the plan and what our
19 commitment is. There is a series of activities and
20 investments that we would make to achieve net carbon
21 neutrality.

22 The detailed costs of those have not been fully
23 developed. For example, the -- well, the cost of the
24 solar element of the plan is at the estimated level. We
25 have not fully developed a final cost for portions of

1 that.

2 Similarly, with respect to some of the other
3 elements, there are estimates that can be made at this
4 time, but they are not the final and definitive numbers.
5 So we made our commitment based on those order of
6 magnitude numbers, because we were comfortable that we
7 could fulfill that commitment and still implement the
8 project. And so I wanted to at least caveat and
9 characterize where we are in the establishment of those
10 numbers.

11 COMMISSIONER CHIANG: Thank you. I understand.
12 I'm trying to get your best thinking, and if you can
13 identify a specific number, the range.

14 MR. ZELENKA: We're at -- the elements of the
15 climate action plan are sixfold. The energy efficient,
16 super energy efficient, energy recovery device. The cost
17 of that isn't known at this time. But the company has
18 committed to installing that. That reduces the overall
19 footprint of the megawatt hours used from 30, 31, down to
20 28 average megawatts of power usage. So that's a
21 substantial decrease.

22 COMMISSIONER CHIANG: Can you further elaborate --
23 sorry to interject -- what further action? Energy
24 efficiency is a broad term?

25 MR. ZELENKA: That's a particular energy recovery

1 device. Then there's energy efficiency components of it
2 that would be identified as we go through more detailed
3 analysis of the design process to look at the things that
4 Pete had talked about, which are more efficient motors,
5 more efficient lighting, daylighting, looking at all the
6 pieces, parts, components, of the project and making them
7 super energy efficient so that the overall megawatt hours
8 used by the project is reduced, and therefore the carbon
9 required for the project is reduced.

10 Those haven't been specifically identified and
11 neither has the cost at this time. I think that's a
12 process.

13 CHAIRPERSON GARAMENDI: I think -- excuse me,
14 John, if you don't mind.

15 COMMISSIONER CHIANG: Oh, no, please.

16 CHAIRPERSON GARAMENDI: -- that for this
17 particular piece of this carbon neutral proposal to work,
18 we need to have a baseline. And I would think that the
19 baseline would be other existing power plants, that is the
20 most recently constructed desalinization plants. The
21 power is the base, and then the additional efficiency,
22 that you've discussed, would be then subtracted.

23 MR. ZELENKA: Correct. Right. The basic standard
24 plant would use the 31-point --

25 CHAIRPERSON GARAMENDI: I didn't say "basic

1 standard." I said most recent.

2 MR. ZELENKA: The most recent plant --

3 CHAIRPERSON GARAMENDI: Which I assume is the most
4 advanced technology and equipment and the rest.

5 MR. ZELENKA: That would be 31.3 average
6 megawatts. The energy recovery would save about
7 10 percent, which would knock down that number 28.1.

8 CHAIRPERSON GARAMENDI: My interest here is -- my
9 sense of it is that there's three members of this
10 commission that are going to make sure this is carbon
11 neutral.

12 MR. ZELENKA: Right.

13 CHAIRPERSON GARAMENDI: And then we would like --
14 we're going to be honing in on this, both at this hearing
15 and a subsequent hearing. And so the baseline which we
16 just discussed -- and we'll go through the other elements.

17 I'm sorry.

18 Please continue.

19 COMMISSIONER CHIANG: I appreciate that.

20 MR. ZELENKA: To walk you through, really quickly,
21 the steps -- and I will come back and talk about the
22 detail. Start with the standard plant, which would be a
23 new plant, 31.3, taking the energy recovery device, doing
24 all the energy efficiency that can be identified in using
25 premium high efficient energy components and other things

1 like daylighting and efficient pumps and variable speed
2 drives, and then we would look at the LEED process and do
3 a LEED-type process to identify further things that would
4 reduce and make the project more sustainable. Those two
5 things have not been completely identified because of
6 processes that need to occur that haven't yet. Then the
7 solar project.

8 COMMISSIONER CHIANG: If I may further interject
9 while you are still on that point. I don't want to have
10 to go back and have to revisit it.

11 How long will it take to identify the process and
12 present responses to it. You said, you know there's
13 various uses and you have to identify it. Will we have
14 that information by December, or can you get us -- how
15 much -- if you cannot get us that information by December,
16 how much information can you provide us by the next
17 hearing?

18 MR. ZELENKA: I will let Pete answer that
19 question. But the basic structure would be to take the
20 basic plant, do all these energy efficiency and LEED
21 things that would reduce the overall megawatt hours used
22 and fill in that gap, still the remaining carbon
23 footprint, with the solar and the carbon offset projects
24 and the renewable energy credits.

25 MR. MacLAGGAN: Commissioner Chiang, I was talking

1 when you raised your question.

2 Can you repeat it please.

3 COMMISSIONER CHIANG: Sure.

4 In regards to the energy efficiencies and going
5 through the process and the various uses where you can
6 mitigate the carbon emissions, do you have a sense of how
7 long it's going to take to identify the difference in
8 efficacies for the various measures you're going to take
9 in each of those specific areas?

10 MR. MacLAGGAN: Let me break it down into two
11 components.

12 The first three items in the list -- and I will go
13 back to the list. First three items on the list are
14 things that we have under our control within the plant
15 that have -- we will design a new plant and have an
16 engineer. I think, he's in the holding room. And I will
17 get you a number before this hearing is over as to what
18 the cost of that is. So let's set that aside for a
19 moment.

20 And as Mr. Zelenka said, this will get us about 10
21 percent, plus or minus reduction from the most recent
22 plant built, sort of baseline, state of the art.

23 The solar generation and the carbon offsets and
24 the renewable energy credits, etc., we -- you know, as
25 Mr. Winrow mentioned, in terms of order of magnitude

1 estimate at this point in time, the remaining offsets we
2 require we think are on the order of magnitude of about 75
3 thousand to 150 thousand dollars per year to achieve those
4 reductions.

5 Your question as to how long is it going to take
6 us to shake this down and get it to the point where we
7 have something that everybody can agree, I don't have a
8 good answer for you, because as far as I know, we're the
9 first ones to go through this process. And there's a huge
10 learning curve involved for everybody involved, but we are
11 working, aggressively, to have in the next 30 to 60 days
12 our draft climate action plan available that will give our
13 best thoughts as to how we would go about this. And then
14 that would obviously be a subject to further review with
15 your staff and others and presumably, you know, six months
16 from now, we should be able to get it to the point where
17 there's a consensus that this is moving in the right
18 direction.

19 Again, we're creating some new policy here, and so
20 I don't have a good sense of the timeline that you asked
21 about.

22 COMMISSIONER CHIANG: I am just trying to identify
23 where the greatest -- the areas of greatest change are
24 going to take place. And then is it -- in your efforts,
25 you know requires more technology and what requires

1 greater supposition? I mean, technological advances can
2 solve 20 percent, you know, so are you committing to
3 buying 80 percent renewable energy credits to get you to
4 that hundred percent?

5 MR. WINROW: Let me give you our orientation
6 towards prioritizing our efforts here. Our plan is to
7 utilize on-site investments as much as possible to the
8 extent that we have to go offsite and make investments,
9 for example, installing additional solar generation,
10 offsite, or restoring more wetlands for carbon
11 sequestration.

12 The last on that list of priorities would be to
13 purchase offsite soil for credits.

14 And that's the hierarchy that we bring to this in
15 terms of our orientation of how we would implement a plan.

16 Is that helpful?

17 COMMISSIONER CHIANG: Yeah. And I support that
18 approach. I appreciate that.

19 CHAIRPERSON GARAMENDI: Anne?

20 ACTING COMMISSIONERS SHEEHAN: Yeah, I guess the
21 only thing, when Mr. MacLaggan said 30 to 60, in light of
22 the fact that we would like to come back in December, 30
23 would be preferable to 60, at least for this commissioner.
24 So the more that you can have sort of fleshed out in terms
25 of specifics, I think it would be helpful for us to

1 understand. I understand you may not exactly know in
2 terms of some of the specifics. But at least for this
3 member, the more you have when you come back, I think the
4 better it will help us in our decision making process.

5 MR. WINROW: We will have a plan, at least in
6 draft form, at that point, to share with the Commission.

7 And I would like to say though that our commitment
8 is to implement it, the agreed upon program to achieve the
9 net carbon neutrality that we have described. And so we
10 will, indeed, implement the elements of this portfolio to
11 achieve that outcome. The roadmap is still in the process
12 of being developed and we will have the draft of it by the
13 December hearing.

14 CHAIRPERSON GARAMENDI: Any questions on this
15 item?

16 MR. WINROW: I do have some additional
17 information. The two items that are described in terms of
18 energy efficiency investments on the project represent
19 approximately \$12 million of investment.

20 CHAIRPERSON GARAMENDI: Okay.

21 MR. ZELENKA: To add one more comment to that,
22 Commissioner Sheehan, which is the process for -- the
23 carbon offsets and renewable energy credits are actually
24 going to be processes. You won't see actual projects
25 because they have -- they're request for proposals. So

1 you will see the outline of how they would do that.

2 ACTING COMMISSIONERS SHEEHAN: I think that's
3 good. The 12 million figure that was just spoken, was
4 that the first three bullets or just the first two
5 bullets?

6 MR. WINROW: The first two items. There are
7 additional investments that would be made to implement the
8 LEED items, as well as the insulation of solar energy is
9 over and above that \$12 million.

10 ACTING COMMISSIONERS SHEEHAN: Yeah. And I
11 certainly understand the term "feasible," but could you
12 give me a little bit more what's going into your thinking
13 on the determination as to what is "feasible." Is it both
14 technical and economic, or what other issues are going to
15 go into that?

16 MR. WINROW: I will have our experts talk in more
17 detail, but it is our understanding that the LEED
18 certification was designed much more for commercial office
19 and residential buildings. And so there are a number of
20 developments that really are inapplicable to an industrial
21 facility like ours. And so there are limitations as to
22 what we could physically implement, you know, at this
23 particular project.

24 In all of our considerations, there is of course
25 an economic feasibility aspect that we take into

1 consideration with it as well.

2 ACTING COMMISSIONERS SHEEHAN: Thanks.

3 CHAIRPERSON GARAMENDI: John?

4 COMMISSIONER CHIANG: Along those lines, can
5 you further elaborate for my enhanced understanding how
6 much it costs, the various measures that you take to
7 reduce carbon emissions versus how much it costs for a
8 carbon credit, like -- you know, obviously I appreciate
9 you trying to reduce the emissions. But I'm also trying
10 to understand your perspective of how much it costs for
11 each of the measures.

12 MR. WINROW: I don't know that we have fully
13 developed that information yet. As we've described, there
14 is a -- the first four items that you see up there
15 represent upfront capital investment. The purchasing of
16 offsets and renewable energy credits would be ongoing
17 operating expenses. And so we need to do some
18 calculations to be able to compare apples to apples for
19 you.

20 COMMISSIONER CHIANG: Yeah. If you could do that,
21 I would appreciate that.

22 CHAIRPERSON GARAMENDI: I think it's clear by now
23 that this Commission is determined to have a zero carbon
24 emissions project here. And you have got some work to do.

25 John earlier asked how long it would take you.

1 That's totally up to you. But I would recommend no more
2 than 30 days. That is depending upon your desire to get
3 this thing completed.

4 There is one issue right at the outset, and that
5 is the base. There's a State Lands Commission analysis of
6 how much carbon, and then there's your analysis. That
7 needs to be settled, and otherwise this isn't going to get
8 done. So we need to have a discussion about that -- your
9 staff, our staff, come to some conclusion. On that end, I
10 suspect the three of us are keenly interested in that.
11 Okay.

12 So I think we've covered this particular issue.

13 There are a couple of other issues that I
14 mentioned a moment ago that need to be worked out. I
15 don't think this is particularly useful to spend time on
16 here. There are some contract issues, the lease itself
17 that need to be clarified, some ambiguity that we want to
18 get out of the way. I think staff has already discussed
19 this with your team. I don't want to set up a situation
20 where we're going to have a lawsuit five years from now
21 over some issue. I would like to have it clarified and
22 there's some questions here about who's responsible for
23 what, between you and the power plant, how that's going to
24 get resolved, I want that nailed down. I don't want to
25 have it ambiguous so that some day, in the future, you and

1 the power plant get in a fight and somebody's going to
2 have to figure it out. We would be happy to figure it out
3 at the State Lands, but we want to make sure that we have
4 the power to figure it out. Okay?

5 So there are a series of issues like that, all of
6 which I think have been made -- at least you've had some
7 preliminary discussions with our team on that. And we'll
8 go through that. I don't want to get into it now because
9 there isn't a resolution at this point.

10 So I will just say that issues around the lease
11 need to be clarified.

12 MR. WINROW: We share your view. Clarity is
13 helpful to all parties to the agreement. And so we
14 similarly look to achieve that.

15 CHAIRPERSON GARAMENDI: With regard to the 37
16 acres of mitigation, it's like, we've been in mitigation
17 37 acres somewhere, and it's all going to be good. Again,
18 we are looking to seek some clarification on that. There
19 may be some discussion from any number of witnesses today
20 and maybe not. But we would like to be -- have clarity
21 about that issue. Thirty-seven acres of wetlands in and
22 along the west coast of Africa is interesting but not
23 necessarily useful for us, so we want to be somewhat more
24 specific. We would like to be more specific about that.

25 And also -- and then from that, we can have some

1 more specificity about exactly what is the mitigation,
2 where and what? And if you haven't figured it out yet, I
3 suggest you get on with it quickly.

4 MR. WINROW: We are prepared to give you some
5 additional information and testimony now as to the process
6 that we have commenced, to identify the specific locations
7 where the mitigation would be implemented. And if that
8 would be helpful of the Commission....

9 CHAIRPERSON GARAMENDI: I would appreciate that.
10 I don't think it's particularly useful to have it
11 presented orally. If you would present it in writing to
12 the staff, we'll get it out on the Web site so that others
13 can respond to that in the intervening, basically, 30
14 days.

15 So if you will bring this, the most recent,
16 up-to-date, advanced information, then we can try to get
17 that one out of the way.

18 MR. WINROW: Very good.

19 CHAIRPERSON GARAMENDI: The mitigation -- just
20 wanted to raise this question because this may be
21 something that we would want to consider. Wetlands -- the
22 wetlands, yes, that's why I wanted to know where the
23 wetlands are and exactly what you have in mind. Also,
24 we're going to very shortly take up an issue having to do
25 with San Diego Bay's health. And maybe these issues

1 collide there. We'll see.

2 Okay. Any other things that the Commission has?

3 ACTING COMMISSIONERS SHEEHAN: The only issue is,
4 I think it would be helpful at least for me -- I know
5 there are some concerns that the Coastkeeper and
6 Surfriders have raised. So after they have the
7 opportunities to raise their issues, I would like to hear
8 some of your response or, you know, how you see some of
9 those and what actions might you have to address on those.

10 MR. WINROW: Very good.

11 CHAIRPERSON GARAMENDI: One of the lease issues --
12 I believe when I was talking about the lease issues
13 between you and the power plant, it's anticipated that the
14 power plant will not be doing once-through cooling at some
15 date, in the future. I think the lease -- I know the
16 lease speaks to this issue. I know it's a major issue for
17 you. I want to make sure that the lease is very clear
18 about the responsibilities at that point and what's going
19 to be doing what. That's both a physical issue, is where
20 the water is coming from, how you are going to get it, as
21 well as the discharge and the intake. And so I think the
22 lease speaks to it, but I want to make sure that that's
23 narrowed down because we have reason to believe it's going
24 to be happening.

25 MR. WINROW: Our understanding is that the latest

1 term of the lease amendment addresses that. And if that's
2 not the case, I think it will be communicated to us.

3 CHAIRPERSON GARAMENDI: The other thing -- this is
4 my view, is that once-through cooling is a major issue on
5 the coast of California, actually throughout the United
6 States. And we are moving to eliminate once-through
7 cooling.

8 Now, desalinization, in my view, is not
9 once-through cooling. These are, in my view, two
10 different things. Now, the impact on entrainment is
11 somewhat similar, but it's not once-through cooling. It's
12 the purpose for which the water is put. It's quite
13 different. Okay.

14 Let's move on here. I have a huge stack of people
15 that want to speak.

16 THE REPORTER: Could we take a break?

17 CHAIRPERSON GARAMENDI: We've got a
18 seven-and-a-half-minute break.

19 (Thereupon a break was taken in
20 proceedings.)

21 CHAIRPERSON GARAMENDI: Thank you very much for
22 taking your seats. We have a stack of about 50 people
23 that would like to testify. There's no way that's going
24 to happen. Some of the supporters have offered to combine
25 their testimony. We appreciate that. And some of the

1 opponents have offered to present their testimony in a
2 combined manner, and we appreciate that.

3 At the LNG hearing, we found it particularly
4 useful to hear from the proponents which we just did, in
5 his case, Poseidon, and then to hear from the opposition.
6 And I understand the opposition group has combined their
7 opposition into one presentation. That's a very good
8 thing.

9 So let's take the next 20 minutes or so, and we'll
10 hear from the opposition. And then what I would like to
11 do -- and I know I've got some elected officials from the
12 city. And if it's okay, the normal protocol is to take
13 you immediately. But I think you might be better off
14 responding to what you may hear or have already heard what
15 you may hear. So if that's okay with the elected
16 officials from cities -- I think we have two cities
17 here -- we'll do that.

18 Also, I may as well tell everybody that -- not
19 that it makes any difference at all, but I have to leave
20 at about 12:20 to join the governor at a meeting that's
21 taking place with regard to the restoration, clean-up, and
22 so forth. So I will be leaving about 12:20.

23 John Chiang has offered to take over and to run
24 the meeting, and it will be much better with him.

25 (Laughter.)

1 CHAIRPERSON GARAMENDI: Let's hear from the
2 opposition.

3 MR. GONZALEZ: Good afternoon. Thank you,
4 Mr. Chair, Members of the Commission. My name is Marco
5 Gonzalez. I'm an attorney with Coast Law Group. And I'm
6 here on behalf of the Surfrider Foundation and San Diego
7 Coastkeeper.

8 I would like to first thank you for the
9 accommodation of our concerns with the stresses and
10 difficulties of the fire. We appreciate you postponing
11 your ultimate decision until another meeting. In
12 addition, I appreciate you allowing us to combine our
13 presentations to make this organized. Sometimes it's hard
14 in three-minute increments to hit all the issues.
15 Normally, this is a point where I would ask all of our
16 supporters in the room to stand up. But given that, they
17 are in the hallway, in another room, it's not going to
18 make that big a difference.

19 But I would like to remind you all that the
20 Commission staff received more than 1400 e-mails in
21 support of the environmental community's position, which I
22 will try to give you some clarity on here, today.

23 Assisting me is Julia Chunn. She's the chair of
24 the San Diego chapter of Surfrider. And with the
25 presentation today, my goal is to hit some of the

1 highlights, some of the broad policy concerns, and then
2 kind of some of the nitpicky little legal issues. Being a
3 lawyer, I really think it's important that we all
4 understand that there are ways things get done, that we
5 don't simply sandbag the public or sandbag decision makers
6 with information, at the last minute.

7 CEQA provides opportunities where you have a
8 discretionary action to actually require supplemental and
9 subsequent EIRS. And the gist of what I'm here to tell
10 you today is that we are in a classic circumstance where a
11 supplemental or subsequent EIR is required. And I
12 sincerely doubt they can do it in 30 days.

13 Now, that being said, I would like to begin with
14 just the overview of what I'm going to cover. I am going
15 to talk about San Diego's lack of water situation. I'm
16 going to breeze through some of the stuff because, quite
17 frankly, we all know that we're in dire straights. I'm
18 going to talk about statewide desalination policy issues.
19 Make no bones about it, your consideration of the project
20 today will have major implications on our water supply
21 strategies for the next hundred years, maybe more.

22 I'm going to talk about once-through cooling and
23 the problems we have with that. I'm going to talk about
24 the Riverkeeper decision, and importantly, talk about how
25 the Riverkeeper decision on once-through cooling has a

1 direct implication on desalination and seawater intake.

2 Then I'm going to talk about the CEQA issues and
3 requirements of the State Lands Commission, specifically
4 focusing on this myth of carbon neutrality that we've just
5 heard discussed here earlier, and then talk about
6 entrainment and some of the problems with their studies
7 and your Public Trust responsibilities.

8 So let's jump right into it. San Diego, as we're
9 all aware, imports most of its water. Some 90 percent of
10 it comes from the Colorado River and state water projects,
11 very little coming from local runoff, recycled water, or
12 conservation.

13 While we all know that conservation is the best
14 way to achieve our water needs, we also have to recognize
15 that new local sources of water are also going to be
16 necessary. And remember, new local sources of water are
17 very different from replacement water that we might
18 otherwise get from the Colorado River and state water
19 project. And we'll discuss that a little bit later.

20 The situation we are currently experiencing is not
21 localized to San Diego; it is statewide. The Colorado
22 River is in its eighth year of historic drought,
23 significant reductions have happened, significant
24 reductions will happen. As we all know, the delta smelt
25 ruling, up at the state water project, will reduce

1 northern California water supplies by 14 to 30 percent for
2 our region. 2007 is already recording as the driest year
3 on record, in many regions, including San Diego. We have
4 numerous areas of the coastline where the population is
5 increasing. In fact, throughout California, the
6 population continues to increase. And importantly, our
7 water storage and delivery systems are 30 years old. This
8 leads us to very basic conclusions. Simply, we need new
9 sources of water. But most importantly, for purposes of
10 this hearing, your decision on this project will shape the
11 future of water policy in the state of California.

12 That being said, we thank you for your careful
13 consideration because, quite frankly, a lot of other
14 agencies haven't given it so much thought. I think, as
15 you see the outpouring of support for desalination and the
16 discussions about how dire our water consequences are, you
17 see people turning a blind eye to both the process and the
18 substance of the environmental impacts of doing big
19 projects like this.

20 That being said, let's launch right into the
21 biggy, and that is colocated desalinization and the
22 statewide policy considerations of putting desal
23 facilities next to power plants that use once-through
24 cooling.

25 State Lands Commission staff has detailed some of

1 this information both in its resolution from April of '06
2 and in the staff report. We have 21 coastal plants that
3 suck up 17 billion gallons per day or more of water. The
4 impingement, which is the impaling of live organisms on
5 screens, or the entrainment, which is essentially the
6 cooking of larvae and other things that make it through
7 the screens, have enormous impacts, and they are virtually
8 impossible to quantify.

9 When we look at the data and the state of our
10 fisheries, we do know, as a matter of fact, that they are
11 in decline, significant decline. There was a lot of hay
12 made about the two reports that came out in recent years,
13 talking about the anthropogenic impacts that have caused
14 these declines. They're everything from once-through
15 cooling to runoff to essentially overfishing and
16 everything else that we do to harm the health of our
17 oceans.

18 Importantly, as we enter into this realm of better
19 understanding and global climate change, we also have to
20 accept that global climate change has a significant impact
21 on fisheries. One study, more than ten years old, noted
22 that 80 percent of the macrozooplankton has decreased
23 since 1951. Happens to also have been the timeframe
24 within which the once-through cooling technologies have
25 largely come on line, but this also correlates to climate

1 data change. The conclusion of this is, we have a problem
2 with our fisheries. And as a state, we should be doing
3 things that are going to have a net benefit, not in the
4 long term have a detriment.

5 That being said, this had been the subject, the
6 once-through cooling issue, in particular, has been the
7 subject of litigation at the national level, and it's
8 directly applicable here in the desalination realm as
9 well.

10 The Riverkeeper decision was decided in the second
11 circuit earlier this year. We refer to it as Riverkeeper
12 2 because there was a Riverkeeper 1 which addressed many
13 of the preliminary issues. But I'm going to talk a little
14 bit about what they found there, specifically as to
15 once-through cooling.

16 The Clean Water Act, in section 316(b), which
17 deals with thermal plants, not with desal plants, it
18 requires the use of best technology available, or BTA, for
19 minimizing adverse impacts. It recognizes that within an
20 industry you have to find the best technology and you have
21 to implement it across the industry. This is called
22 technology forcing. Technology forcing means that you
23 don't get to simply say, "It's too expensive." If it can
24 be done, you must do it. And the Court found, in the
25 Riverkeeper decision, that closed cycle cooling is BTA.

1 They also found some corollary findings that are
2 important here. First is that no-cost benefit analysis is
3 allowed. There can be no range of impacts. So in other
4 words, where the Phase 2 rule for once-through cooling
5 previously said that you had to reduce impingement by a
6 certain percentage, say, 80 to 95 percent, the Court said,
7 when you do the best technology, it means that you don't
8 get a range. You have to do the best, to the highest
9 level.

10 On entrainment, where they said reductions of 60
11 to 80 percent, they said, "Nope, you have to do the
12 highest level." Very important, because the issue there
13 was that cost does not offset the impacts. You have to do
14 the technologically best that you can do that can be borne
15 by the industry. Now, we have a difficult situation
16 because there is no desalination industry in the western
17 hemisphere. We have one example of a large-scale plant in
18 Tampa, Florida, a project done by Poseidon Resources.
19 Your staff can investigate that -- a total boondoggle. We
20 have no example where a 50-mgd plant has succeeded. We
21 only have studies, anecdotes, and examples from around the
22 world.

23 The Riverkeeper 2 decision also had a very
24 important point to make on restorative measures. This is
25 what we simply call mitigation. With respect to this, the

1 Court said that "mitigation is an unacceptable response to
2 a technology forcing standard."

3 In essence, what we've done throughout time is,
4 we've said, let's quantify the amount of fish that we
5 bring in through either impingement or entrainment. How
6 much do we kill? What is the impact of that on our
7 environment? And let's mitigate it. Much like we've
8 heard today, let's go buy some acreage. Let's go and
9 build a new lagoon down at Batiquitos. Let's go and
10 restore the San Dieguito wetlands. Let's, in essence, go
11 offsite and fix what we can't fix at the entrance of our
12 seawater intake. This decision essentially renders the
13 death, now, for once-through cooling.

14 Very important to recognize, this is a major step
15 forward. It's a step that we've been fighting for, for
16 more than 20 years. We've known that there is better
17 technology out there, and we're finally getting there,
18 which is why we feel that desalination, using open ocean
19 intakes, is a step backwards.

20 But as I mentioned, 316(b) applies to thermal
21 plants. And we need to make the link between the state
22 law regulations and the federal regulations. So what we
23 look at is Porter-Cologne Water Quality Control Act. This
24 is the State's Clean Water Act, and that is what controls
25 how we are going to approve desalination plants under

1 these sets of intake controls.

2 The Water Code says, "For each new or expanded
3 coastal power plant or other industrial installation using
4 seawater for controlling, heating, or industrial
5 processing" -- so clearly, it goes beyond just 316(b) and
6 thermal plants. It talks about industrial uses like
7 desalination. It says, "The best available site, the best
8 available design, the best available technology, and the
9 best available mitigation measures feasible shall be used
10 to minimize the intake and mortality of all forms of
11 marine life."

12 Now, it doesn't say, "The best mitigation shall be
13 used to accommodate the impacts that you made." It says,
14 "The best mitigation measures shall be used to minimize
15 the intake and mortality of all forms of marine life."

16 Now, if you look at the language of 316(b), and
17 this is important, because we're going to talk about what
18 the Court did on 316(b), it has some similarities and some
19 differences. It doesn't talk about nonthermal plant uses.
20 It says that "the location, design, construction, and
21 capacity of the cooling water intake structures must
22 reflect the best technology available for minimizing
23 adverse environmental impacts."

24 In some ways, it's more broad because it just
25 talks about minimizing adverse environmental impacts, not

1 just marine life and intake and mortality. But in some
2 ways, it's more narrow because it doesn't address
3 desalination. So the important thing to focus on, though,
4 is, what does minimization mean? What does it mean to
5 minimize your impact in the context of the words there?

6 The Court said, "Restoration measures are not a
7 part of location, design, construction, and capacity."
8 That's with respect to 316(b). So on its plain reading,
9 it said, once-through cooling does not allow you to
10 mitigate offsite.

11 But then it went into, what does minimizing mean
12 in the context of mitigation? It says, "Restoration
13 measures correct for the adverse impacts of impingement
14 and entrainment," but they do not minimize those impacts
15 in the first place.

16 That being said, we've got to return back to
17 Porter-Cologne and take that notion and look at the
18 express language of Porter-Cologne. "The best available
19 site design and mitigation measures shall be used to
20 minimize the intake and mortality of marine life."

21 This is just an entirely different way of looking
22 at what you have to do in terms of technology forcing than
23 what we've done on once-through cooling. Porter-Cologne
24 says that you "need to minimize the intake and mortality."

25 It doesn't say, much as they found in Riverkeeper,

1 that you need to address the impacts of your mortality by
2 going someplace else and buying 37 acres of land. It says
3 that from a technology forcing standpoint, Porter-Cologne
4 tracks 316(b), and I don't know how Poseidon is going to
5 get around this.

6 Quite frankly, the result of this interpretation
7 is pretty straightforward. One, once-through cooling just
8 isn't feasible. And so there's policy implications of us
9 to continue to suck in water and killing marine life. But
10 more importantly, colocated desalination is illegal. And
11 even more importantly, colocated desalination that no
12 longer functions as collocation but still uses the seawater
13 intake does not minimize the impacts from taking up that
14 water.

15 Everything that we've heard today talks about
16 mitigating that impact by going and buying new land. It
17 doesn't talk about, what are we going to do the intake
18 structures? What type of technologies are we going to
19 force to come in there?

20 CHAIRPERSON GARAMENDI: Excuse me. I'm curious
21 about your argument here. It's a very, very important
22 point. Your basic argument is that -- I'm going to start
23 in a different place.

24 It's clear that once-through cooling at this
25 particular power plant and most others in the state is

1 going to terminate. The date is not known, but it's going
2 to terminate and some other technology will be used to
3 deal with the cooling. That would then put this
4 particular desalinization plant as a stand-alone facility;
5 correct? Is that correct?

6 MR. GONZALEZ: Correct.

7 CHAIRPERSON GARAMENDI: And then your point, as I
8 understand it is, at that point, are they using the best
9 available site design technology and mitigation measures
10 feasible. Is that where you are headed with this?

11 MR. GONZALEZ: Yes.

12 CHAIRPERSON GARAMENDI: And you are saying that
13 they have not done that?

14 MR. GONZALEZ: What I am saying -- I think it's
15 important. If you talk about site design technology and
16 mitigation alone, you lose the impact of what those are
17 intended to accomplish. Those are intended to accomplish
18 the minimization of the intake and mortality of all forms
19 of marine life.

20 CHAIRPERSON GARAMENDI: Understood. Understood.
21 You made that point well.

22 MR. GONZALEZ: So the point I'm making is that the
23 reasoning applied on Riverkeeper will be applied by the
24 California courts as well. And it's not that the language
25 has to be identical between Porter-Cologne and 316(b).

1 It's that the reasoning of whether you can use mitigation
2 to reduce in the first instance needs to be addressed.

3 CHAIRPERSON GARAMENDI: I get all that.

4 But are you arguing then that the Poseidon
5 facility does not deal with the precursor, which is the
6 best site design technology for the intake? Is that what
7 you are arguing?

8 MR. GONZALEZ: Yes.

9 CHAIRPERSON GARAMENDI: Then please go about that.

10 MR. GONZALEZ: We will get to that on another
11 slide. But one of the important things to consider --

12 CHAIRPERSON GARAMENDI: The rest of it is a very
13 important legal issue that I suspected you're thinking's
14 going to be decided by a Court. Okay?

15 And that's fine.

16 MR. GONZALEZ: And the important thing to
17 remember, though, is it raises implications for State
18 Lands in the CEQA context, which is where we will address
19 that.

20 CHAIRPERSON GARAMENDI: Okay. So let's go to
21 that.

22 MR. GONZALEZ: So CEQA, State Lands Commission,
23 greenhouse gases, and supplemental EIRs. I'm going to
24 tell you why this project cannot be approved. And I will
25 address your comments in the context of the CEQA

1 consideration.

2 As we know, the State Lands Commission, if it
3 cannot rely on the city of Carlsbad's final EIR, because
4 there is a change in the project, a change in project
5 circumstances, or new information that gives rise to new
6 mitigation measures, or new alternatives that have not
7 been adopted by the project, the State Lands Commission
8 essentially has to go through CEQA all over again.

9 Now, going through CEQA all over again could mean
10 doing an addenda, doing a supplemental EIR, doing a
11 subsequent EIR. The point is, the State Lands Commission
12 goes from being just a responsibility agency to actually
13 being a lead agency, which is why it's important that you
14 understand the legal responsibilities that the State Lands
15 now has as a result of all the things that we have learned
16 since the changed circumstance of the once-through cooling
17 at Encina, going away.

18 Now, there is a lot of information presented to
19 you today by Poseidon that is valid to the consideration
20 of whether this project should comply with CEQA. The
21 problem is, it didn't happen in CEQA process. The final
22 EIR had a closed time period within which the
23 administrative record was set. And we note, and your
24 staff notes in the staff report, at the last minute,
25 Poseidon and the city of Carlsbad did this additional

1 responses document that purported to look at some of the
2 impacts of a stand-alone facility. And that was within
3 the context of the final EIR record, which we cannot now
4 sue on because the statute of limitations has passed.

5 In terms of CEQA compliance, what you have to ask
6 yourselves is, are there project changes that we've
7 learned since then? Have the circumstances changed since
8 then? And as a result of this now being a stand-alone
9 facility in the foreseeable future, are there alternatives
10 or new mitigation opportunities that were not considered
11 in the prior CEQA process? They were presented to you.
12 Some of the stuff that I've heard today is going to be a
13 part of that supplemental EIR process. But it doesn't
14 suffice to simply put it in the record, when the final EIR
15 can't be amended before you here, today.

16 So we make the argument in a substantial comment
17 letter that we gave to you. And that is that this is a
18 changed project. If you look through the approvals that
19 happen at the city of Carlsbad, you look at their response
20 to comments, you look at their planning commission, their
21 comments, you look at their approval resolution. Every
22 single one of them says that if this becomes a stand-alone
23 project, we have a different project. We have to undergo
24 a whole new review. We need whole new permits. What has
25 happened to that reasoning?

1 At the last minute, when Poseidon put that
2 additional responses document into the record, they would
3 like you to believe that that eliminated all of these
4 prior discussions by the city of Carlsbad, by the public,
5 and contained in their legal resolutions. I would say
6 that's not true. The reason that's not true is because
7 CEQA says that when you have a project change or you have
8 circumstances change, you also require a subsequent or
9 supplemental EIR so long as people like us can show that
10 the new information gives rise to substantial new impacts
11 that weren't previously considered.

12 In our letter, we've detailed a number of those,
13 so I'm just going to bullet point them to make sure that
14 the record is clear, that we've identified numerous new
15 impacts that have never undergone a CEQA process.

16 The first is energy consumption. While we talk
17 about greenhouse gases and energy, we've never talked
18 about the delta, the delta between what they said they
19 were going to do in front of Carlsbad, which is take
20 heated cooling water effluent, and put it through reverse
21 osmosis, versus the difference of taking raw ocean water
22 or lagoon water and putting it through the reverse osmosis
23 process. Poseidon has repeatedly, in the past, said that
24 the reason why collocation makes so much sense is because
25 their energy efficiencies go up when they push hotter

1 water through the reverse osmosis membranes. We don't
2 know what's different now that they are taking a less
3 warmed water as their source water.

4 Construction impacts are significant and not
5 previously analyzed. We know now that the Encina power
6 station will be demolished. We know that a new closed
7 cycle plant will be constructed. And we know that the
8 desalination facility will be constructed, and it will all
9 happen in the same relatively short time frame. But we
10 don't know what the construction impacts are. And if they
11 aren't going to happen at the same time, we need to know
12 that information as well and it's not out there.

13 Looking at the time frames that have been
14 speculated, based on the CEC application of the Encina
15 power station, and looking at the EIR time frame for
16 construction, we know that they coincide enough to require
17 cumulative impact assessments under CEQA.

18 With respect to infrastructure connectivity, think
19 about it this way. You have an Encina power station. And
20 the desalination facility is going to connect into the
21 intake and the outflow. But when that power station goes
22 away, when are you left? How much of that infrastructure
23 stays in place? And what's the impact of the pipes going
24 in and out on the new land uses that will happen on top of
25 that site? We don't know. They've never been studied.

1 With respect to the entrainment impacts, if you
2 look back to the final EIR response to comments documents,
3 it says unequivocally, there will be no significant
4 impacts. There was no 37-acre mitigation requirement
5 until after the CEQA process was concluded at Carlsbad.
6 That means, to me, that that was a significant impact
7 somewhere. Otherwise, they wouldn't be spending the
8 millions of dollars to mitigate their impact. That needs
9 to be studied, disclosed to the public, and given an
10 opportunity to respond.

11 Now, another thing that was highlighted by
12 Poseidon, when they got up here, is that they have eight
13 and possibly nine water contracts. Well, when they went
14 through the CEQA process, they didn't know where the water
15 contacts were so they couldn't opine on the environmental
16 impacts of building a conveyance system to service those
17 areas. They only talked to the end of the fence.

18 Now that we know where those are and we've learned
19 them all since the CEQA process was closed, we have an
20 obligation to disclose that to the public and consider
21 those impacts.

22 The next one is really important because it's
23 completely missing from the EIR considerations in front of
24 the City of Carlsbad, and it directly relates to the State
25 Lands Commission. The sedimentation that occurs in the

1 west basin of that lagoon is the result, at least in part,
2 of the current operations of the Encina power station.

3 You can imagine a naturally functioning lagoon.
4 Water comes in, it brings sand; water goes out on the
5 tide, it takes sand out. But when you put a vacuum in the
6 middle of the lagoon, it acts as a net increase of flow
7 into the lagoon which brings more sediment in. As a
8 result, Encina power station has had to dredge that basin
9 at least 25 times over -- since 1950. And they have an
10 ongoing maintenance obligation. Important to note also
11 that this flood dominated condition has resulted in the
12 lagoon being listed on the 303(d) impaired waters list
13 under the Clean Water Act, and it's impaired for
14 sedimentation.

15 So the issue that arises is, what is going to be
16 the impact of a 300-million-gallon-per-day desal facility,
17 standing alone, taking in water in the lagoon 24 hours a
18 day, 7 days a week, 365 day as year? Poseidon will get up
19 here and tell you that over the last 50-plus years, there
20 has been an average flow of some 600 mgd through that
21 intake. Since January of 2007, there's been an average
22 flow of about 120 mgd. It has not been consistent.
23 They'd like to give you an average over 50 years, but the
24 fact is, under the current condition, the flow rates are
25 very low, and they are very sporadic. They change based

1 on the use of that power plant. We're talking about
2 changing now to a 300-mgd, 24/7, plant. That's going to
3 change the flow of sand into that basin.

4 What's important to remember is that back in 2005,
5 your own State Lands Commission did a project on behalf of
6 Cabrillo to extend the north jetty at the basin in order
7 to allow sand to bypass the entrance to this lagoon. They
8 didn't want to have to do dredging so much.

9 Your State Lands Commission staff, when they
10 produced this EIR, found that there is an environmentally
11 superior intake opportunity for that power plant. And we
12 would say, that superior intake alternative is also
13 available to the desalination facility. And that is
14 offshore. Now, they have talked about costs, something
15 that needs to be considered in a supplemental EIR.

16 But the point of your own staff's EIR was that you
17 are going to have entrainment, whether you suck in lagoon
18 water or you suck in ocean water. But the sedimentation
19 impacts that happen could be eliminated or at least
20 significantly reduced by putting an intake offshore. And
21 we would say, go to the next step and put it offshore,
22 subsurface. But once again, these are issues that need to
23 be considered in a supplemental EIR.

24 One of the things that I do want to note is,
25 speaking to the consultant for Poseidon in the hall, he's

1 done a study. There is a study out there that addresses
2 this very issue. I didn't have it before me over the last
3 couple weeks, when I've been working on comments. It was
4 completed in August of 2007, well after the close of the
5 comment and the litigation period for the final EIR. It
6 needs to be part of the supplemental EIR.

7 The standalone desalination facility will also be
8 able to provide us in the supplemental EIR with the
9 opportunity to address new intake options. We have from
10 the literature -- we have from Dana Point, a study that
11 was included in March of this year that says, you can
12 achieve 30 million gallons per day using subsurface
13 options, using subsurface options at the beach, not even
14 out in the open ocean. We have nothing to compare. Other
15 than what we've heard today in a slide, we have no studies
16 done. We have no public comment, no ability for our
17 experts to look at it. We know that these are all
18 technologies that are available, and one of them may be
19 the best technology available, but we're given one option.
20 And the reason we are is because up until very recently,
21 they thought they would just tie into the other side of
22 the power plant and this wouldn't be an issue.

23 Fact of the matter is, under CEQA, we now have
24 that third prong. Mitigation measures or alternatives,
25 which are available but are being declined, these need to

1 be studied in a supplemental EIR.

2 That being said, I'm going to move forward into
3 the energy issues. There's no question on -- to anyone
4 that seawater desalination is significantly more energy
5 intensive than any of our other opportunities for
6 establishing water supplies in the area. The Colorado
7 River and the state water projects use an enormous amount
8 of energy, largely for transmission. But seawater
9 desalination goes even further. It's important to note
10 that as the so-called carbon neutral program is devised at
11 the Carlsbad plant, here at the desal plant, they are
12 intending to compare the cost of bringing in existing
13 water to the creation of new water supplies. There's an
14 inherent problem with that.

15 Let's go to the next slide.

16 The staff report, when it does its calculation, it
17 comes up with 101,270.93 metric tons. This is an
18 assumption -- then it goes on to assume that the
19 desalination facility will replace existing supplies.

20 Before you can accept that, you need to see a
21 legal document. When I spent a couple years sitting on
22 the state's Desalination Task Force, we addressed this
23 issue of legal mechanisms to ensure that new water is
24 different than replacement water. And quite frankly,
25 there is no place outside the Monterey Peninsula where

1 this has even been contemplated as being effective.

2 I would say, if Poseidon wants to come to you and
3 say, "We only have to do the difference between state
4 water and Colorado River water and new water," they need
5 to show you an agreement between the County Water
6 Authority and the Metropolitan Water District that says,
7 "We're going to reduce our purchases of state water
8 project water or Colorado River water by 56,000 acre feet
9 per year." Otherwise, they have to be carbon neutral to
10 the highest amount that a stand-alone facility will
11 produce as new water. It's going to be impossible for
12 them to show you that the County Water Authority is not
13 going to buy that water, because, quite frankly, we have
14 growth; we have to accommodate influx into our region, and
15 there's nobody talking at reducing the water based on the
16 desalination facility. It's simply going to fill the gap
17 needed to accommodate growth.

18 The Coastal Commission sent you a letter,
19 yesterday, that indicates 200 million pounds of carbon
20 dioxide emissions per year are expected from the facility.
21 We had our own study done. It was appended to a letter
22 that we sent in recently. Our numbers are kind of in the
23 same range as your staff's, but a little bit higher. I
24 agree that these numbers need to be fleshed out before
25 this project can be approved.

1 I'm going to quickly now pull away from the CEQA
2 issue.

3 CHAIRPERSON GARAMENDI: Excuse me. Your point
4 here is, it's a debate over the amount of carbon?

5 MR. GONZALEZ: There are two issues in question.
6 The first is, how much carbon is being produced? I think
7 reasonable minds can have -- reasonable experts can
8 disagree, but we can come up with a reasonable range.

9 And then the second issue is, whether it's
10 justifiable to say a net carbon neutral versus a totally
11 carbon neutral.

12 CHAIRPERSON GARAMENDI: Okay.

13 MR. GONZALEZ: We're now going to pull out of
14 CEQA. And I'm going to talk very quickly about the Public
15 Trust, because State Lands Commission, before anything
16 else, is obligated with protecting the Public Trust. We
17 can't now go back and reopen the entrainment studies that
18 were done during the CEQA process for purposes of
19 requiring them to do new CEQA.

20 But as an independent agency that has an
21 independent Trust responsibility, you can, in fact, look
22 at what they did and ask yourselves if it's sufficient to
23 meet the standard of protecting the Public Trust that you
24 have to do, by law.

25 I'm going to talk very quickly about the

1 entrainment study. The sampling methodology that they
2 used to come up with their entrainment impacts assessment,
3 they studied four times in one summer, in the Agua
4 Hedionda Lagoon. They admit this in their appendix
5 technological report to the EIR. They also state Tenera
6 Environmental, who did this study, says, this can't be a
7 year's worth, but it gives you an idea.

8 When you look at Tenera, they recently did a
9 California Energy Commission study that was, just in the
10 last couple of weeks, put on the Web site, by the
11 California Energy Commission, where they looked at three
12 case studies as examples of how you ought to do your
13 sampling and how you ought to do your entrainment impacts
14 assessment. In all three situations -- Morro Bay, South
15 Bay, and Diablo Canyon -- they did one year, one year, and
16 three years worth of study. You can't tell me that, on
17 the one hand, they can say El Niño conditions, weather
18 conditions, seasonal conditions, dissolved oxygen, and
19 temperature all change what happens to the ecosystem, but
20 when we can go and sample in a couple of months in one
21 summer and tell you what's really going to happen.

22 They have to go back and give us a real study,
23 much like the ones that were done for the 316(b)
24 compliance actions in Morro Bay, South Bay, and Diablo
25 Canyon. The fact that the same environmental consultant

1 did both of these studies and one was substantially
2 substandard should ring suspect.

3 There are complex issues regarding how you assess
4 impacts from entrainment. Largely, in the desal context
5 here, they have used an old 316(b) method, and this is to
6 simply say, you have surplus fish. You have all of these
7 tidewater gobies and other things that are relatively
8 abundant, and therefore, if you kill off a whole bunch of
9 them, they are still going to be there, they are going to
10 persist.

11 This notion of surplus production eliminates the
12 consideration of predation foregone, meaning, yeah, you
13 are going to kill a bunch of larvae, but all you're
14 measuring is how many are not making it to reproduction
15 age. You are not measuring how many of them are the
16 substance for halibut, for sea bass. How many of them
17 might be important to the ecosystem before they reach
18 reproduction age? This is a fundamental flaw with most
19 316(b) studies, and it's one of the reasons why even
20 though every power plant tries to tell you they have no
21 significant impacts, the Energy Commission and the
22 regulators ultimately say, "No, you still have to
23 mitigate."

24 The ecosystem complexities must be addressed and
25 they have not been to date. The future of our marine life

1 in our oceans is dependent upon us recognizing that, to
2 date, we've messed up. And to approve not just this
3 plant, but to understand that by approving this plant, you
4 are going to approve dozens of plants throughout
5 California. Because I guarantee you, Poseidon, Cal M
6 Water, and people that we haven't even heard of are going
7 to show up in every water-strapped community in this state
8 and tell them, "We did it in Carlsbad so we can do it
9 here."

10 They expected to come here, to Carlsbad, and say,
11 "We did it in Tamp." That's how they started off, and
12 then Tampa went south, and suddenly Carlsbad had to be all
13 new and "Don't look at Tampa" and whatever.

14 But now, if you approve this project without the
15 significant considerations that we've presented to you
16 today, you will, in essence, establish the continuation of
17 our marine life destruction practices of the last 50
18 years.

19 There are a lot of ways for us to get water.
20 There are cost considerations, environmental, energy,
21 reliability, and feasibility considerations. But at the
22 end of the day, desalination using open ocean intake is
23 not the answer. And as the State Lands Commission with
24 LEED agency responsibilities, we can determine how we move
25 forward through a subsequent EIR process. And I would

1 argue today that that is your obligation.

2 I will conclude with Mark Twain's quote that's
3 attributed to him. "Whiskey is for drinking; water is for
4 fighting over." I appreciate you listening to my talk
5 today, I would much rather be drinking whiskey with you
6 guys than fighting over this project.

7 If you have any questions, I will be available; if
8 not, I will look forward to coming back at your next
9 hearing.

10 CHAIRPERSON GARAMENDI: There are many, many
11 issues that you have raised in your testimony, all of
12 which seem to argue that a supplemental EIR is required.

13 Basically, is that where you are headed here?

14 MR. GONZALEZ: Correct.

15 CHAIRPERSON GARAMENDI: Well, that will -- the
16 good news or the bad news depending on personal points of
17 view, is, the governor is running 30 minutes late, so I am
18 going to stick around for a few minutes.

19 (Laughter.)

20 CHAIRPERSON GARAMENDI: We'll see where it takes
21 us.

22 Questions?

23 Thank you. You have raised some very important
24 issues.

25 ACTING COMMISSIONERS SHEEHAN: I --

1 CHAIRPERSON GARAMENDI: Yes, Anne.

2 ACTING COMMISSIONERS SHEEHAN: Your last -- if I
3 understood your last comment correctly, you do not support
4 any desal projects, if I understood.

5 MR. GONZALEZ: Incorrect.

6 Can you put up the last slide?

7 ACTING COMMISSIONERS SHEEHAN: I mean, I saw the
8 slide, but I was actually listening to your words more
9 than looking at the slides.

10 MR. GONZALEZ: It is unreasonable for us to expect
11 that we're going to achieve conservation levels to
12 accommodate growth. We believe that we are going to do
13 potable reused projects including here in San Diego.

14 But we also believe desal has a place. It has a
15 place using the best technology available. It has a place
16 constructed on our coast in the appropriate places with
17 the appropriate technologies. And the problem is, here we
18 are with the first one, and it's one of the worst ones.

19 We just think it needs to go through the full
20 range of studies before we go down that track. We think
21 desal does work. It's the same technology used for
22 reclamation. But we think that the intake needs to be
23 something different than what we've already figured out
24 doesn't work.

25 ACTING COMMISSIONERS SHEEHAN: It's a little

1 different from what you said before, but okay.

2 MR. GONZALEZ: Thank you.

3 CHAIRPERSON GARAMENDI: Thank you very much.

4 I would like now to take up the City of Carlsbad,
5 and then we'll move as expeditiously as possible through
6 support. So it looked to me like the entire city council
7 is here.

8 MR. LEWIS: We are missing one.

9 CHAIRPERSON GARAMENDI: Okay. Are you the mayor?

10 MR. LEWIS: I am.

11 CHAIRPERSON GARAMENDI: Mayor, have at it.

12 MR. LEWIS: I am Mayor Bud Lewis, City of
13 Carlsbad. And I would like to thank you for the
14 opportunity to address you.

15 Besides myself, I have three of my colleagues here
16 that will also address you in a very short manner. And we
17 recognize that you have a very busy schedule but we all do
18 and we appreciate you being here.

19 I've served as a public official in Carlsbad for
20 about 37 years. Twenty-one of those years have been as
21 the mayor of City of Carlsbad.

22 And I believe that the water supply is the most
23 critical issue for this region, this state. You have been
24 around quite a while, Mr. Chairman, so you know the water
25 issues probably as well as most in this area. And the

1 thing that's so significant is that I think that when
2 people oppose different projects, there's a lot of smoke
3 that goes up. You deal with politicians. You deal with
4 lawyers. You deal with statesmen. But then the citizens
5 is the key element.

6 And to me, in talking to Peter Douglas -- about
7 three years ago, I was at a conference with him. And
8 Peter made no bones about it, he opposed desalination, not
9 so much this time, but desalination in general, because it
10 does two things -- it creates jobs and it creates growth.

11 Well, as you know, those of you that have been
12 involved in depth, that most of the growth comes from
13 within, and so kids and grandkids and what have you. So
14 you folks have a tremendous job here. You have to
15 evaluate all this BS that's been thrown at you.

16 (Laughter.)

17 MR. LEWIS: And you got to decide what is best for
18 the citizen, not from me, not from any of these local
19 politicians or other politicians, but for the citizens
20 themselves. And you will also have these smoke screens
21 being thrown up at you.

22 And from my viewpoint, and I've been around a long
23 time in politics, that if you let it get away from you and
24 don't do the homework -- which I think you are doing. I
25 think the things you are asking of Poseidon is very real.

1 But some of the things that I just got through
2 hearing has me somewhat pondering as to, what are we
3 really after here? Is it for the best of the public, or
4 best for very few individuals? And with that, I will
5 leave the other thoughts that I had in mind here, because
6 I've been listening very closely to what has been said.
7 And as a politician, you kind of wade through; as a
8 statesman, you present facts and figures so you will have
9 a better feel for the citizenry. And it's the citizenry
10 we're after. Because this water is short -- this area is
11 short of water. You know it, I know it. But what's
12 happening in the delta and what's happening in the
13 Colorado River, there's not enough water.

14 In this idea of conservation and getting all the
15 water you need, it doesn't work. We need other sources.
16 And desalinization, I think, could be one way we could do
17 it.

18 Thank you, sir.

19 CHAIRPERSON GARAMENDI: Thank you very much.

20 Let's go through the city council members. And
21 reputation is not necessary.

22 MS. KULCHIN: I understand. I will do the best I
23 can. I'd start out by saying "good morning," but it's
24 not.

25 So good afternoon, everybody. I appreciate you

1 coming down, Mr. Chairman, and members of the Commission.

2 I am Ann Kulchin. I am a lot younger than the mayor.

3 (Laughter.)

4 MS. KULCHIN: I've only been on the council for
5 about 27 and a half years. So you understand what I'm
6 saying.

7 As the mayor mentioned, he had some, I think, very
8 good points in terms of, we are here representing our
9 citizens. And I support the proposed desalination
10 project.

11 As the whole city dealing with this, the
12 benefits -- and I'm going to talk a lot about the
13 benefits. You've heard about CEQA and carbons and those
14 things. I'm going to tell you what's important to me
15 representing my citizens in terms of what it's going to
16 get us.

17 We need a reliable source of water. We know that.
18 We know that people are still coming into California. Our
19 growth is rampant. Blame me. My daughter had triplets.
20 Most people have children one at a time. So we have three
21 generations now, and we're doing multiple births.

22 (Laughter.)

23 MS. KULCHIN: But people want to live here. This
24 is why we chose to live here. It's a beautiful place to
25 live. And we know it because we've done studies -- I

1 chair the Shoreline Preservation -- that people want to
2 live within 50 miles of the coast. So we need to do
3 something about water.

4 The enhancements that we have been told by
5 Poseidon, and in all the reports that they have done, the
6 EIRs, the planning commission, all those things, that
7 we're looking to do the protection, protection of the
8 northern shore of the lagoon. And I don't have a
9 PowerPoint, but, you know, the northern shore is where the
10 successful Hubbs Fish Hatchery, marine research, and
11 public trails. That's going to be given. The bluff area
12 on the west -- on the west side. Whoops. I use my hands.
13 I'm from the East Coast. The bluff area on the west side
14 of Carlsbad Boulevard will be dedicated to recreational
15 and coastal access users. We don't have enough places for
16 our citizens to use the beach; it's hard to get there.

17 To help support the increases in coastal access,
18 the south power plant parking will be converted to public
19 parking. That's very, very important to our citizens. We
20 have so far been very fortunate that we do not charge for
21 parking. We want all our citizens to be able to use the
22 beach.

23 And also, to the -- Poseidon has agreed to
24 continue the dredging of the Agua Hedionda Lagoon, after
25 the power plant leaves. And we've heard some things today

1 about when the power plant is going to leave. We don't
2 know that. We've been sitting down, talking with staff.
3 We don't know. The allegation that perhaps it's all going
4 to happen at one time, I've been in government too long.
5 These things just don't happen.

6 And also, too, we are going -- Poseidon has said
7 that they would dredge it, so we will continue the
8 aquaculture that you've talked about and to have it a
9 vibrant lagoon, and also that sand will be placed on our
10 beaches.

11 Our city and our region needs to actively develop
12 a more reliable source of water. That source of water is
13 the biggest body of water in the world, and that's the
14 Pacific Ocean.

15 I am now going to introduce Councilman Matt Hall.

16 MR. HALL: Thank you for this moment. And we
17 appreciate your time and energy for being here. And I've
18 listened closely to what you have said already in this
19 meeting, so I'm going to change my presentation a little
20 bit to tailor some of the thoughts that you stated before.

21 And first, I would like to give you just a brief
22 perspective of the history of Carlsbad. In the mid 1980s,
23 we created something very unique within this community.
24 It was a growth management plan. It created 11 facilities
25 to create sustainability in our city. One of those was

1 water. Over the years, we've worked very hard in water
2 reclamation and also to preserve the water that we have
3 today. But today's a new time. And you have brought up
4 different things that we need to think about -- the carbon
5 footprint.

6 In 1955, I sat on the tube that went into the
7 ocean when we first started pumping Agua Hedionda Lagoon,
8 so I know and understand this lagoon. In the early '90s,
9 we restored the Batiquitos Lagoon. We have understanding
10 of what it takes to preserve our lagoons. We have the
11 Buena Vista Lagoon to the north that we're right in the
12 process of going through the environmental process to
13 further enhance that lagoon.

14 We're the only city in the state of California
15 that has three lagoons. And we understand the importance
16 of those lagoons and their preservation.

17 Today, you talked about the carbon footprint.
18 That's very important to us. It's part of what we're
19 discussing today and how to deal with that. We appreciate
20 the thoughts that you have and how we can create other
21 ways of preserving energy. The City of Carlsbad could
22 give you a list of at least ten items today of how we
23 could work with Poseidon to create a way to shorten our
24 energy needs just in the city of Carlsbad.

25 Mr. Garamendi, you speak about the San Diego

1 harbor. Within this region, I'm sure we can answer your
2 concerns today, of what we need to do to create a
3 sustainable community both from an environmental
4 standpoint and from an economic standpoint.

5 I thank you for your time and I wish you would
6 vote today. But I understand your concerns.

7 CHAIRPERSON GARAMENDI: Thank you. Good morning.

8 MS. NYGAARD: I am Julie Nygaard, council member
9 in Carlsbad. And I am here to support the desalinization
10 plant.

11 For nearly a decade, the City of Carlsbad has
12 worked with Poseidon to make this dream a reality. We are
13 dreamers in Carlsbad, and that's why it's such a beautiful
14 city.

15 We have studied the environmental impacts and
16 identified the lessons that have been learned in other
17 committees. We have conducted extensive due diligence on
18 this project. That's how we do business in Carlsbad.

19 Based on the thorough evaluation, the City was
20 able to structure a water purchase agreement that puts all
21 the risk right where it should be, with Poseidon
22 Resources. I think we worked really hard on that.

23 We are confident that this project will provide
24 not only the city, but our region, with a much needed
25 supply of potable water. And if this project fails to do

1 so, Carlsbad residents will be in no worse shape than
2 anybody else in our county.

3 Ultimately diversifying the region's water supply
4 really makes good sense for us. As you heard, we are at
5 the end of the pipeline. We have no other way to get
6 water. We have to figure out many ways to create water in
7 our community.

8 And there was a lot of talk about increased
9 population growth. The truth is, in San Diego County,
10 population growth is births over deaths, not new people
11 coming here. And we need to make room for those children.
12 I have triplets too. I think it's in the water from
13 Carlsbad.

14 (Laughter.)

15 CHAIRPERSON GARAMENDI: I don't think it's the
16 water at all.

17 (Laughter.)

18 MS. NYGAARD: Our public review period for this
19 project lasted more than a year and included extensive
20 input from a wide arrange of community, environmental,
21 scientific, business, and regulatory agencies. We all
22 have to rely on that process. That process was set up by
23 the State of California.

24 And after -- after a review, our council was
25 confident that the proposed desalinization plant's impact

1 would be less than significant after the mitigation
2 measures were issued.

3 And I think you have raised a really important
4 questions today. And if those things can be answered, I
5 think, it's important to move forward.

6 And the use of mitigation lands has historically
7 been done in California. I don't know why we would
8 question that usage at this point in time. We have
9 adopted the EIR unanimously, and the state -- the statute
10 of limitations is passed on it. When wasn't it challenged
11 during that process?

12 On behalf of the city of Carlsbad and its 100,000
13 residents, I would urge you to move forward on this
14 project as quickly as you can. It's very important for us
15 and for all of us in Southern California.

16 CHAIRPERSON GARAMENDI: Thank you very much. You
17 raised a point that I believe the lease deals with, but I
18 want to review this piece with the staff and Poseidon.
19 And that is the potential for failure of the project.

20 You said that Carlsbad has addressed this issue.
21 We must also. And this has to do with the relationship
22 between Poseidon and the power company. It may be that
23 the power company -- certainly the power company is going
24 to eliminate once-through cooling at some point in the
25 future. When that happens, Poseidon then inherits the

1 facilities. I think this is correct.

2 And though some of the -- some of those facilities
3 are on state land, and we need to make sure that there is
4 a failsafe issue here for the restoration of the state
5 lands, should the facilities not be used for the purposes
6 in the lease. So I am asking the staff to take a look at
7 that. And Poseidon will make sure that's drafted up and
8 taken care of.

9 Apparently, the governor has arrived and I am
10 leaving. So I'm going to join him and get on with the
11 other issues of San Diego County.

12 John Chiang is going to take over and run the
13 meeting. My apologies to all of you. I will leave the
14 record, and I will have other conversations. We look
15 forward to the next -- I think it's about 40 some days to
16 the next hearing.

17 EXECUTIVE OFFICER THAYER: December 3rd.

18 CHAIRPERSON GARAMENDI: It's my intent that we
19 take this issue up. I'm not sure that that will be taken
20 up here in the San Diego area. We may have to take the
21 issue up in a different location, to be determined soon.
22 We'll try to be as close to San Diego as possible.

23 Or maybe we'll go to Eureka.

24 COMMISSIONER CHIANG: Okay. The next individual
25 we have requesting to speak is Jerome Kern, council member

1 from the City of Oceanside.

2 MR. KERN: Thank you. Like you said, my name is
3 Jerry Kern, council member for the City of Oceanside. I'm
4 not going to be like Mr. Gonzalez and tell you what your
5 job is. I think you guys know that. I've been on the
6 other side of that. He's only told me what my job is too.

7 Well, I will tell you what my job is. I'm an
8 elected official from the City of Oceanside. We're the
9 largest city in North County, the third largest city in
10 the county. And I have an obligation to provide water for
11 775,000 people.

12 Now, I, along with my colleagues -- and I am
13 talking more as one of the water agency's persons than an
14 elected official, because especially in light now of the
15 tremendous pressure on the state water project and the
16 Colorado River, we are in drought, natural drought, and we
17 are facing what we call regulatory drought every summer
18 now because of the pressures on the delta.

19 So we need a reliable, long-term source of water
20 for all of our people in Southern California. And that's
21 why we're in partnership with the other water agencies to
22 support the desalinization plant in Carlsbad.

23 The water produced by the desalinization plants
24 and delivered to the public water agencies will not only
25 help the City of Oceanside and the other member agencies,

1 but hopefully will help all the agencies in San Diego
2 County, even the ones that do not have direct connection
3 to the water, because it will actually lower the demand on
4 the system. So actually, the increased water floats all
5 boats; it helps us all.

6 I am here today to represent those 175,000
7 residents of my city. And hopefully, you approve this
8 project.

9 Thank you.

10 COMMISSIONER CHIANG: Thank you, Commissioners.
11 Next we have Don Neu followed by Paul Webster.

12 MR. NEU: Thank you, Commissioners. I wanted to
13 thank you for the opportunity to address the Commission
14 this afternoon. My name is Don Neu. I am the planning
15 director for the City of Carlsbad.

16 And as you heard today, the City of Carlsbad was
17 the lead agency for preparation of the environmental
18 impact report for the desalinization project.

19 Our city council, on June 13th of 2006, certified
20 the EIR. We also approved a findings of facts and adopted
21 a mitigation monitoring reporting program. The City took
22 a number of local actions on various permits. And at the
23 conclusion of our deliberations, it was found that the
24 project met all the City's requirements and it was
25 approved.

1 So at this time we would ask that the Commission
2 support the requested lease amendment. We do have -- the
3 City, when it went through the environmental process hired
4 an outside consulting firm to prepare the environmental
5 impact report. And Joe Monaco with Dudek and Associates
6 is here today. And we would be happy to try and address
7 any questions you might have about the CEQA process. And
8 also, Senior Planner Scott Donald from our Planning
9 Department is here as well.

10 So I would just like to offer our expertise if we
11 can help answer any questions that you might have
12 regarding the Carlsbad process.

13 So thank you very much.

14 COMMISSIONER CHIANG: Thank you.

15 Paul? Followed by Fern Steiner.

16 MR. WEBSTER: Hello. I'm Paul Webster. I'm
17 district director for State Senator Mark Wyland from the
18 38th Senate District.

19 Senator Wyland represents more than 800,000 people
20 in North San Diego County in Southern Orange County.

21 He strongly supports the Carlsbad desalinization
22 project and believes that its expedition completion is
23 vital to his constituents in North County, North San Diego
24 County.

25 I think the events of last week forcefully

1 demonstrated how reliable San Diego is, North San Diego
2 is, on water. And certainly, the fact that 85 percent of
3 San Diego County's water is imported from northern
4 California and the Colorado River Sources also underscores
5 the significant need for water in San Diego County.

6 Not only is the delta and the Colorado River
7 supply being discussed, but also now we have the courts to
8 contend with, with respect to the endangered delta smelt
9 that could result in a 30 percent loss of water supply to
10 the region from the delta.

11 Senator Wyland knows firsthand the incredible
12 strain on California's water system and has long allocated
13 for diversification of the state's water resources.
14 Because the desalinization program -- project will create
15 new supplies of drinking water for Southern California, we
16 believe that it is a very important project that will
17 serve the constituents of North County.

18 As you may already know, eight local water
19 districts -- Carlsbad, Valley Center, Rincon del Diablo,
20 Sweetwater, Rainbow, Vallecitos, and Olivenhain -- have
21 already contracted to receive water from this cost
22 effective and environmentally sound water source. They
23 understand the need to develop new water supplies, and we
24 believe that the Carlsbad desalinization program will do
25 such.

1 The proposed Carlsbad project will provide
2 meaningful progress towards meeting the goal of being
3 diversified in terms of water for the state. It will also
4 provide valuable experience for the state as it seeks
5 alternative water supplies.

6 Developing new water supplies and storage are only
7 part of the solution. We must continue our ongoing
8 investment and conservation, recycling program that
9 complement new supplies of water.

10 Overall, the Carlsbad desalinization program will
11 improve the health of California's water system. Senator
12 Wyland urges the Commission to quickly approve the
13 Carlsbad plant so they can begin helping solve our state's
14 water crisis.

15 Thank you very much.

16 COMMISSIONER CHIANG: Thank you very kindly. I am
17 going to limit remarks to two minutes. We want to give
18 everybody an opportunity to make a comment and it would
19 not be fair to shortchange people at the back end. So if
20 you could kindly make that request.

21 I have Fern Steiner followed by Maureen Stapleton
22 followed by Gary Arant followed by Bud Pocklingston.

23 MS. STEINER: Thank you. Good afternoon.

24 Maureen Stapleton had to leave. I have Bob Yamata
25 with me who's the water resources manager for the San

1 Diego County Water Authority. And I am Fern Steiner, and
2 I am the present chairperson of the San Diego County Water
3 Authority.

4 The Water Authority was formed in 1944 as San
5 Diego County's Water wholesaler. The Water Authority's
6 mission is to provide a reliable source of water to its 24
7 member agencies in the San Diego region. The Water
8 Authority serves 3 million people and a \$150 billion
9 economy. We deliver on average 600 million gallons of
10 water a day.

11 I'm going to take you back for a moment to 1991.
12 The state was in its fifth year of drought. Water
13 supplies were at historic lows. San Diego had already
14 been cut 30 percent and was facing a 50 percent cutback.
15 We were sitting in the board room voting on this cutback
16 and outside it started to rain. And it rained. And it
17 rained. And that was the start of "Miracle March." We
18 remained in cutback condition for another year after that.

19 Borne out of that experience, the Water Authority
20 made the decision, never again. We heard that from the
21 business community. We heard it from the water agencies.
22 We knew it for ourselves.

23 We took away two key lessons from that experience.
24 The first lesson was we were too dependent on imported
25 water. It was imperative that we diversify our water

1 supply. The second lesson was that we needed to prepare
2 for future droughts.

3 As we approached 2008, we are again facing many of
4 the same water supply challenges we did in the 1990s. Dry
5 conditions persist across the state and across the West.
6 And we were also facing new regulatory and judicial
7 challenges that we didn't have in 1991.

8 In response to the impacts of the delta smelt and
9 threatened species that lives in the bay delta, the Court
10 imposed pumping restrictions on the state water project,
11 which will reduce the state water project supplies to
12 Southern California by up to 22 percent beginning
13 December 25 of this year.

14 In May 2006, the Water Authority approved a
15 comprehensive drought management plan. We were smart
16 enough to do that while there was water present. And
17 incredibly, we find ourselves now, a year later, already
18 implementing that drought management plan.

19 COMMISSIONER CHIANG: Fern, not to be rude, but I
20 gave you 34 extra seconds. If you can have one last
21 statement.

22 MS. STEINER: And then I'm going to turn it over
23 to Mr. Yamata.

24 We're looking at seawater desalination as a major
25 component of our portfolio to be present and up and

1 running by year 2020.

2 And I'm going to turn it over to Mr. Yamata.

3 COMMISSIONER CHIANG: Thank you for coming.

4 MR. YAMATA: Thank you, Fern.

5 Our region's water supplies are in transition.

6 We're transitioning from a water supply mix that was
7 entirely dependent on imported water to a much more
8 diversified water supply portfolio, one less susceptible
9 to drought and the limitations on imported water.

10 Our diversification strategy for these water
11 supplies was laid out in our urban water management plan,
12 most recently completed in 2005. And we are planning to,
13 in terms of our local resources, which are key to this
14 plan, we're planning to double our region's conservation,
15 mostly through outdoor savings related to landscape,
16 triple the region's use of groundwater, and more than
17 triple the region's use of water recycling.

18 And in addition to that, we're counting on 56,000
19 acre feet annually of ocean desalination from the Carlsbad
20 project by 2011.

21 I was heartened to hear Mr. Gonzalez talk about
22 the fact that desalination is going to play a key role in
23 California's future water supplies. I want to emphasize
24 that in our water supply planning, not only are we looking
25 at desalination to play a key role, but I want to

1 emphasize how important water conservation and water
2 recycling are to our region. The Water Authority and its
3 member agencies have invested literally hundreds of
4 millions of dollars in water conservation and water
5 recycling. To date, 9 percent of our region's water
6 supply is due to conservation and water recycling. That
7 number will grow to 17 percent by 2020.

8 Our commitment to recycling and conservation is
9 stronger than ever. Our programs are among the state's
10 leaders and are held up as models to this state.

11 Still, the region, our region, cannot recycle or
12 conserve water that it doesn't have. And I think last
13 week's wildfires showed us just how critically important
14 it is to have water available here locally and both during
15 normal times and during the emergencies that -- similar to
16 what we faced last week.

17 So our region is relying on the Carlsbad project
18 to provide a new drought-proof and highly reliable source
19 of water to our region, and we need it, and we need it as
20 soon as possible.

21 So our agency is asking you to approve this
22 project and approve the lease amendment for the Carlsbad
23 desalination project.

24 COMMISSIONER CHIANG: Thank you very kindly.

25 Mr. Gary Arant followed by Bud Pocklingston,

1 followed by Greg Quist.

2 MR. ARANT: Thank you, Chairman.

3 My name is Gary Arant. I'm general manager of the
4 Valley Center Municipal Water District.

5 In 2005, after the city of Carlsbad, we were the
6 first agency to sign a contract for the Poseidon project,
7 a contract to purchase up to 7,500 acre feet or 2.5
8 billion gallons of water a year on this important project.

9 My district happens to be the largest agricultural
10 water district in the San Diego region. We serve over
11 24,000 acres of agriculture on land located in the
12 northeastern portion of our county.

13 Our district, like many districts in San Diego
14 County, is 100 percent reliant on water from metropolitan
15 water district in the San Diego County Water Authority --
16 imported water. Also, there is no community that's going
17 to be harder hit by this proposed 30 percent cutback of ag
18 water, that's coming up in January of 2008.

19 If this plant was online today, a regional water
20 supply would be enhanced. Our reliance on an increasingly
21 less reliable imported resources would be lessened. And
22 the impact of the impending cut to agriculture would be
23 reduced.

24 I'm also here today representing a group called
25 San Diego Desal Partners. You've heard about the people

1 here in Carlsbad, Rincon del Diablo, Rainbow, Olivenhain
2 Municipal Water District, as well as the Sweetwater
3 Authority, Vallecitos Water District and Santa Fe
4 Irrigation District. Poseidon also continues to work with
5 other local agencies such as the City of Vista -- excuse
6 me, Vista Irrigation District and the City of Oceanside,
7 to optimize the project's customer base and delivery
8 capabilities by utilizing existing distribution systems.

9 The partners share a common goal of providing an
10 ample and safe, reliable water supply which protects the
11 public health and economic stability of our local
12 ratepayers and our region in general. In addition to our
13 long-standing commitments to water conservation, water
14 recycling, brackish groundwater and demineralization and
15 imported supply diversification, we need this new locally
16 controlled drought-proof supply of potable water from the
17 Pacific Ocean to meet our goal, an important goal of
18 reliable water supply.

19 COMMISSIONER CHIANG: Excuse me. I am not trying
20 to be rude, but we have 73 people remaining. So if you do
21 the calculations, that's two hours and 26 minutes worth of
22 pure testimony, before the second item. So I'm going to
23 cut you off.

24 MR. ARANT: As the one who's responsible for not
25 being able to supply enough water for our community, I

1 hope you ultimately approve this lease permit for this
2 project. It's very important. Thank you very much.

3 COMMISSIONER CHIANG: Thank you.

4 MR. POCKLINGSTON: Good afternoon, Commissioners.
5 My name is Bud Pocklingston. I am a director for the
6 Sweetwater Authority in Chula Vista. I am also director
7 of the County Water Authority and the director of the
8 Metropolitan Water District.

9 I'm going to forgo my notes because I'm going to
10 speak from my heart, because I'm really frustrated today.
11 I don't think the people understand the seriousness of
12 this water situation that we have. It is very serious.
13 We could be rationing water here within the next few
14 years. And I don't want to be in an area where we have to
15 ration water.

16 Desal is part of our component that can help us
17 tremendously. Yes, we have roadblocks, and we continually
18 get roadblocks. But we need to move forward.

19 If you look at our earth, two-thirds of the earth
20 is covered with saltwater. 97 percent of the water on
21 this earth is saltwater. One percent is tied up in our
22 two north poles and south pole, and 1 percent is in the
23 aquifers. We're working with 1 percent of the water.

24 I think as water agencies, we've done a tremendous
25 job. But we need to move forward.

1 And if you remember, 17 years ago, Santa Barbara
2 had to build a desal plant. They never used it because
3 they hooked up to the water project. But they were going
4 to pay over \$2,000 an acre foot at that point. We have
5 made tremendous progress. Desal eventually, I think, will
6 be cheaper than the water we buy from the Colorado and
7 from Northern California. That's the way it's going, and
8 we need to move forward.

9 Thank you very much, and I hope that you approve
10 this project.

11 CHAIRPERSON GARAMENDI: Thank you very much.

12 For those of you who want to, you can also submit
13 written comments in addition to your oral comments, or
14 substitute your written comments for oral comments. And
15 when you choose to do so, if you want to be heard, you can
16 also say you support or oppose and just give us your name.
17 Thank you.

18 MR. GUILLON: Greg Quist couldn't be here. My
19 name is Mitch Guillon. I'm the general manager for Rincon
20 del Diablo Municipal Water District. Our board president
21 couldn't be here either; his house was burnt to the ground
22 last week.

23 So I will focus on public health and safety.
24 However, it wasn't so many months ago that I was a
25 chairman of the Sacramento Groundwater Authority and a

1 board member for the Sacramento Regional Water Authority.
2 So I'm particularly pleased to be here in San Diego with
3 Rincon, working on the -- with diversity and reliability
4 of this region's water supply.

5 Rincon encompasses about 42 square miles in the
6 greater Escondido area. It's partially located in the
7 city of Escondido, San Marcos, and San Diego. Our service
8 area is hard hit by the fires that ravaged the county last
9 week, and they are still burning today. San Diego is
10 prime wildfire territory, and because we are such an arid
11 region, local sources of water supply limit it. We must
12 import our water.

13 During our local fire, our system was tested. It
14 passed. However, the system was severely strained and
15 reminded everyone how important it is to have a local
16 water supply that we can -- that's reliable in case of a
17 natural disaster. Having more diverse sources of supply
18 during emergency, wether it's a fire, an earthquake, a
19 hurricane, will help ensure the minimum levels of service
20 for us to provide health and safety for the public.

21 The general manager of Metropolitan Water Supply
22 was quoted last week in the Contra Costa Times saying,
23 "The wildfire threatened the region's long-term water
24 supply, and the reservoirs have been depleted." I can't
25 confirm this firsthand. But I do know that -- without a

1 doubt, local water supply was damaged and the next
2 wildfire could be worse.

3 I urge your support for this project today.
4 Delaying approval of this project is not in San Diego's
5 best interest. Water supply is a public health and safety
6 issue and deserves your immediate attention.

7 Thank you. And thank you for being here.

8 COMMISSIONER CHIANG: Thank you very much.
9 William Rucker followed by Ted Owen followed by Paul
10 Thompson.

11 MR. RUCKER: Yes, my name is William Rucker, the
12 general manager of Vallecitos Water District.

13 The mission of Vallecitos Water District is to
14 provide the public with a reliable and healthy supply of
15 water. Vallecitos currently serves a population of 86,650
16 within a 45-square mile boundary in Northern San Diego
17 County, serving parts of the cities of San Marcos,
18 Escondido, Carlsbad, Vista and the incorporated county in
19 between.

20 Vallecitos has signed a long-term water purchase
21 agreement with Poseidon that provides our ratepayers with
22 a certain quantity of high quality drinking water that is
23 delivered with reliability over a 30-year period at a
24 guaranteed price. Our contract is for 7,500 acre feet per
25 year of water. And the Carlsbad desalination plant

1 representing 44 percent of the district's total annual
2 need of 17,000 acre feet per year. Vallecitos Water
3 District and San Diego County's other public water
4 agencies are pursuing aggressive conservation, recycling
5 and desalination, creative partnerships to lessen our
6 dependence on imported water supplies.

7 The Carlsbad seawater desalination project is a
8 partnership between San Diego's public water agencies and
9 the private sector. The water produced from this project
10 is absolutely critical to our diversification strategy and
11 the region's goal of reducing our dependence on imported
12 water.

13 The public-private partnership allows the region a
14 secure, cost-certain, locally-controlled, drought-proof
15 supply of water with all risks borne by the private
16 sector.

17 Like you, I'm a public official in the state of
18 California. My obligation is the district's ratepayers.
19 The contract we have signed for desalinated water is in
20 the best interest of the public I represent.

21 For example, payments for water -- public water
22 agencies will be based on the quantity of water actually
23 delivered. If no water is delivered, we don't pay.
24 Poseidon's involvement as private sector partner does not
25 diminish in any way the government's full regulatory

1 authority over the distribution of the desalination water.

2 For example, Poseidon cannot sell the water to a
3 private interest or change the price of the water at any
4 point during the 30-year contracts. These are the type of
5 protections that are built into our contracts and are just
6 part of reason why so many public water agencies have
7 joined the partnership to build the Carlsbad desalination
8 plant.

9 On behalf of Vallecitos, will you please approve
10 the project.

11 COMMISSIONER CHIANG: Thank you very much.

12 Mr. Owen?

13 MR. OWEN: Commissioners, thank you for allowing
14 us to be here today.

15 My name is Ted Owen. I'm the president and CEO of
16 the Carlsbad Chamber of Commerce. I am certainly not a
17 water expert. I'm a user. I'm certainly not a scientist,
18 and I've listened to a lot testimony today that I think
19 I've absorbed some and lost some.

20 But I am responsible for the maintaining of an
21 economy in our city. We are the second largest chamber of
22 commerce in the county of San Diego, the tenth largest in
23 the state of California. And we represent 75,000
24 employees.

25 I would just give you a 60-second snapshot.

1 Carlsbad is a very progressive city of a hundred thousand.
2 It has 65 biotech and high tech companies, 15 golf
3 manufacturing firms. Of course I can't promise a cure for
4 cancer soon, but I can guarantee you an improvement in
5 your golf score.

6 We are looking at building eight new hotels. We
7 are the second largest TOT paying entity or city in the
8 county of San Diego, at 13 and a half million dollars. We
9 are building three and a half million square feet of
10 retail and commercial space.

11 The desalinization plant is the lynchpin in
12 securing our city's economic future and the quality of
13 life for all of our residents. Carlsbad isn't seeking
14 economic health to build our plant. It is a tremendous
15 public and private partnership that we have entered into.

16 Most cities in the state could not afford to put
17 down two or three hundred million dollars to build a
18 plant, but our partnership with Poseidon Resources makes
19 it work for us. The plant puts 8 to 10 percent of our
20 region's imported water back into the system to help the
21 other 22 cities in the region.

22 Carlsbad is one of the most fiscally responsible
23 cities in California because of a very responsible
24 government body. We aren't asking for a handout today,
25 but just a signature from your Commission next month that

1 our city's water future is secure. We have a water
2 problem in our region. We have one in Carlsbad. But
3 we're bringing our own solution for your approval.

4 Thank you for hearing my thoughts.

5 COMMISSIONER CHIANG: Thank you, Mr. Owen.

6 Mr. Thompson followed by Mr. Burkhart.

7 MR. THOMPSON: Good afternoon, Commissioners.

8 My name is Paul Thompson. I am the chairperson of
9 the board of directors for the Carlsbad Chamber of
10 Commerce. I am the also the executive director of an
11 international foundation focused on sustainable
12 development.

13 For 85 years, the Carlsbad Chamber of Commerce has
14 been working to promote a favorable business climate at
15 the local state and federal levels. We make certain the
16 business perspective is heard on a variety of critical
17 issues that affect our local economy. Overall, the past
18 few years, securing a reliable and affordable potable
19 water supply has become one of Carlsbad Chamber's greatest
20 priorities.

21 The City of Carlsbad's public-private partnership
22 with Poseidon Resources makes an effort to address our
23 region's critical need for water by building and operating
24 a desalination plant at no risk to the City and its
25 taxpayers. This plant will provide enough water to meet

1 the needs of the entire city of Carlsbad while reducing
2 the burden of San Diego's water supply and creating
3 hundreds of local jobs during both the construction and
4 operation of the plant.

5 Despite the many benefits that this project brings
6 to the region, we would not support it if we felt it was
7 harmful to the environment. The chamber is greatly
8 concerned about the Agua Hedionda Lagoon, which is a
9 viable resource for Carlsbad's tourism industry and
10 business economy. Many companies and individuals depend
11 on the health of the lagoon and nearby beaches, including
12 an aquaculture farm, Hubbs-Sea World Research Institute,
13 and several water recreational facilities.

14 After a thorough study of the project EIR, we have
15 concluded that the project will be constructed and
16 operated in an environmentally responsible manner. We
17 feel confident not only that it does put into place a
18 multitude of protections for the lagoon during the plant's
19 operation; it also ensures that the lagoon and surrounding
20 marina environment will continue to be a clean, healthy
21 marine environment in the long term.

22 The chamber sincerely believes that the Carlsbad
23 plant is the most important water infrastructure project
24 in our city's history. We applaud the City of Carlsbad
25 and Poseidon Resources for taking this important step

1 towards finding a water solution for the region and urge
2 your approval for this project's general use.

3 COMMISSIONER CHIANG: Thank you.

4 Mr. Panetta followed by Mr. Schmidt.

5 MR. BURKHART: Chairman and Commissioners, thank
6 you very much. My name is Kurt Burkhart, and I am the
7 executive director of Carlsbad Convention & Visitors
8 Bureau.

9 I'm here to speak today in support of the Carlsbad
10 desalination project. The Carlsbad CDD promotes the city
11 of Carlsbad year-round preferred travel destination. Our
12 organization offers information about lodging, dining,
13 arts and attractions, shopping and transportation in
14 Carlsbad. Every year, hundreds of thousands of visitors
15 come to Carlsbad to visit our great beaches, world-class
16 resorts, shopping, restaurants, local attractions like
17 Legoland and the Flower Fields.

18 The city now supports nearly 40 hotels. That
19 translates into approximately 3800 rooms to accommodate
20 these guests. For the local hospitality industry, it is
21 absolutely imperative that a dependable and safe drinking
22 water supply be made available to meet the needs of our
23 guests and ancillary services that these guests depend on.

24 One of the goals of the Coastal Act is to open up
25 public access and promote visitor-serving uses. As an

1 industry, we cannot do this without a reliable source of
2 water. The desalinization plant will provide Carlsbad,
3 both residents and visitors, with this entire daily
4 requirement for water up to 25 million gallons per day.

5 The Carlsbad Convention & Visitors Bureau believes
6 that this project, along with water conservation and water
7 recycling, are necessary to diversify our water supply.
8 In fact, 20 percent of the Carlsbad's water comes from its
9 water recycling plant. The hospitality industry is
10 committed and invested in using recycled water for outdoor
11 uses and voluntarily conserving water where possible.

12 But water recycling and conservation efforts still
13 leave Carlsbad and the industry vulnerable. With the
14 recent announcement about reductions in imported supplies,
15 the approval of this project is more crucial than ever.
16 Equally important, the construction and location of the
17 desalinization plant is consistent with the city's
18 long-term vision for its coastal zone.

19 Many of our hotels and visitor attractions are
20 located along or near the coast, and it's imperative that
21 the natural habitat and coastal resources are protected.
22 After all, our coastal environment is part of what brings
23 visitors here, year round.

24 Thank you very much. And I hope that you will
25 support this project.

1 COMMISSIONER CHIANG: Thank you very kindly.

2 MR. SCHMIDT: My name is Jim Schmidt. I'm a
3 retired banker, and I served this government as Governor
4 Reagan's appointee, three positions in state government,
5 full-time system secretary, chief deputy of
6 transportation, and on two boards in San Diego.

7 I want to give you some experiences I had. I
8 played golf in Monterey about 25 years ago at a business
9 meeting. And the fairway is about this wide, three or
10 four yards wide. You get the ball, you look over, you
11 dropped it right there. You couldn't have watered
12 anything, the greens were hard because they couldn't
13 hardly water them. In the men's locker room, above the
14 urinal, they said "Do not flush."

15 (Laughter.)

16 MR. SCHMIDT: Santa Barbara, some friends of mine
17 told me the horror stories there. They had some of the
18 same opponents you have today, opposing going on the state
19 water project -- was not in it. They couldn't water their
20 lawn. The companies that sprayed lawns green made a lot
21 of money, apparently. They are now in the state water
22 project, and they have a desalinization plan.

23 In 1970, September, we had to evacuate my house,
24 about 14 miles inland because of the fire. Thank God it
25 wasn't burned down. Last week, my daughter moved into our

1 house because of that.

2 So again, we have the same opponents. I am just
3 saying this. We got to have more supply and more supply
4 and I urge you to be very positive on this. We've got to
5 have more water here and work out the technical problems
6 that were raised earlier. Work them out. You can do it.
7 Let's be positive. Let's make it happen. It has to
8 happen or San Diego is going to have a problem. We're not
9 going to be able to water our lawns. That's my conflict
10 of interest. I want to be able to water my lawn. And I
11 am very, very concerned that that's what's going to happen
12 if we don't get more and more water.

13 Thank you.

14 COMMISSIONER CHIANG: Thank you very much. Mr.
15 Panetta?

16

17 MR. NAVY: Mr. Panetta had to step out. My name
18 is Ben Navy, and I'm here on behalf of Biocom. Biocom is
19 an association of over 550 life science companies
20 related -- and related service providers in the Southern
21 California region.

22 In the past few decads, Southern California has
23 become a magnet for life science companies amounting to
24 one of the largest life science clusters in the world. In
25 San Diego alone, life sciences support 37,000 employees

1 and an annual local economic impact of approximately
2 \$8.5 billion. With that being said, none of this would be
3 possible without a reliable supply of clean water to
4 support the current and expanding needs of the life
5 science industry.

6 Water is critical in the research, development,
7 and manufacturing of life science products. For many
8 companies, this one item may determine whether they move
9 to Southern California. Life science companies need water
10 in order to be successful. Without it, we cannot survive.

11 We believe that this facility will be a vital part
12 of a comprehensive water policy that would provide the
13 necessary resources to our member companies.

14 Desalinization is one of the few realistic means with
15 which Southern California can address its long-term water
16 needs. And therefore, on behalf of Biocom, I strongly
17 urge you to support the Poseidon desalinization plant.

18 Thank you.

19 COMMISSIONER CHIANG: Thank you.

20 Mr. Munoz followed by Mr. Miringoff, Joni
21 Miringoff, followed by Frank Hutchins.

22 Is Mr. Munoz here?

23 MS. MIRINGOFF: Hello. My name is Joni Miringoff
24 and I'm the marketing director for the Carlsbad Flower
25 Fields. The Carlsbad Flower Fields are located in the

1 coastal zone and are the only working ranunculus field in
2 the world that's open to the public.

3 The Flower Fields has been an important part of
4 the Carlsbad's local heritage for over 60 years and
5 attracts a hundred thousand visitors each season. Every
6 spring, the Flower Fields dazzle visitors with over 50
7 acres of giant ranunculus flowers, roses, poinsettias, and
8 orchids. Approximately 6 to 12 million ranunculus bulbs
9 are harvested each season and sold at nurseries and garden
10 centers across the country.

11 We also provide educational activities for
12 children, including classroom presentations and an on-site
13 growing program. We have bus groups that come from all
14 over the United States to learn about growing.

15 But none of our work would be possible without a
16 reliable water supply. As participants in the
17 metropolitan water district's discounted agricultural
18 program, we have recently learned that we will have an
19 enforced 30 percent reduction in agricultural water
20 supplies. This will be the first time in the program's
21 13-year history that agricultural users have been subject
22 to order water cuts.

23 Without a doubt, these cutbacks will have a
24 negative effect on our coastal agricultural operation and
25 our ability to attract visitors. The Flower Fields

1 utilizes recycled water, like many of our farming
2 neighbors, but we require fresh water for our propagated
3 plants.

4 One of the options that our region has in dealing
5 with a reduction in imported water is to diversify and
6 increase the local water supplies through seawater
7 desalinization. We strongly believe that the Poseidon
8 Resources's Carlsbad desalinization project has been well
9 conceived. It's undergone rigorous testing to ensure
10 water quality and environmental safety and will provide
11 multiple benefits to our entire region.

12 A reliable and affordable water supply is crucial
13 to the survival of the flower fields. We strongly urge
14 the State Lands Commission to approve the general lease
15 application for the Carlsbad desalinization project.

16 Thank you for your consideration.

17 COMMISSIONER CHIANG: We have Frank followed by
18 Larry Duca.

19 MR. HUTCHINS: Mr. Chairman, in light of time
20 constraints, I will provide a letter in lieu of public
21 comment.

22 CHAIRPERSON GARAMENDI: And you are?

23 MR. HUTCHINS: Frank Hutchins.

24 COMMISSIONER CHIANG: Thank you very much, Frank.

25 Next?

1 And you are?

2 MR. MUNOZ: Eric Munoz.

3 CHAIRPERSON GARAMENDI: Very good. Go ahead.

4 Thank you.

5 MR. MUNOZ: Good afternoon, Commissioners. I am
6 Eric Munoz. I am the president of the Aqua Hedionda
7 Lagoon Foundation.

8 Our membership and our board of directors are in
9 support of this project. And the mission of the Agua
10 Hedionda Foundation is to conserve, restore, and enhance
11 the environmental features of Agua Hedionda Lagoon and
12 wetlands. Agua Hedionda Lagoon is not in its natural
13 state. Its natural state was stinky waters, hence the
14 name Agua Hedionda.

15 In the early '50s, when it was dredged out for the
16 power plant, it began a regime of coastal zone management.
17 It has dredging, it has water quality controls and
18 monitoring, beach replenishment, and a support of a lot of
19 varied uses around the lagoon, including water contact for
20 recreation and fish hatchery uses and several other uses.

21 Our concern is that, right now, we have a lagoon
22 steward in the form of the power plant because of the
23 dredging and all the related benefits that I just
24 outlined.

25 The Poseidon plant would present and introduce a

1 successor steward if the power plant were decommissioned
2 or the dredging were to cease for any reason. So our main
3 support for this project is from the perspective of
4 providing a long-term lagoon steward for the lagoon and
5 the related benefits that it would provide.

6 The beach replenishment aspects, the water quality
7 aspects, checking for invasive species, those are all
8 elements of the lagoon that are very important and are
9 currently in place. And if the dredging were to be
10 reduced or to be taken away in the long term or an
11 indefinite manner, the whole physical reality of the
12 lagoon in itself could come under jeopardy.

13 So again, I just want to summarize my support and
14 support of our lagoon foundation in the form of supporting
15 a lagoon steward for the lagoon.

16 And thank you very much for your time.

17 COMMISSIONER CHIANG: Thank you, Eric.

18 We have had Larry followed by Carlton Lund.

19 MR. DUCA: Ciao. My name is Larry Duca. I'm a
20 resident of Carlsbad. I've been there for seven years,
21 and I'm from New Jersey, though.

22 Originally, when I moved here from Jersey, I lived
23 on a farm in Farmington, New Jersey. It was nice and
24 green, the mountains were green. We had, like, maybe a
25 hundred-plus days of rain every year. I pumped water from

1 my well, which was 65 feet deep. And I pumped it at the
2 rate of 60 to 80 gallons per hour. But that was there,
3 it's not here.

4 Here, I live in Carlsbad. It's beautiful. It's a
5 great place to live. I look to the east, there's a
6 sunset -- sunrise. I look down below me, there's the Agua
7 Hedionda the man was just talking about, a beautiful
8 lagoon.

9 To the west is the ocean. Yeah, we got some
10 things. We got smokestack there, we got the power lines
11 and things that aren't so nice. But the main thing is,
12 here, in California, what I love about California is the
13 weather. But the weather means you don't get too much
14 rain. As a result, we live in a drought. We live in a
15 desert. We need water. And I appreciate you guys taking
16 the appropriate action to move this thing along and get
17 this thing done.

18 Thank you.

19 COMMISSIONER CHIANG: Thank you. We have Lou
20 Storrow.

21 MR. LUND: My name is Carlton Lund. I'm chief
22 financial officer of the Carlsbad Chamber.

23 But I really come to you as a citizen to the state
24 of California, because this is really a sustainability of
25 life issue. It's not about growth, it's about

1 sustainability.

2 I found out, about three weeks ago, I'm going to
3 be a grandfather so I share the thought that my kids will
4 be enjoying this great state, and I wanted them to call it
5 the golden state, not the brown state. I am so concerned.

6 I had dinner with the fire chief of Carlsbad last
7 Saturday. And I thought, during this whole discussion --
8 and I envisioned with these different water departments
9 that we can help solve their water situation of a
10 firefighter standing there in a drip of water coming out
11 and no way to serve and protect our homes, our sacred
12 places where we are.

13 If we ever had a terrorist attack on the aqueduct,
14 we would be out of the water. I am thirsty right now,
15 just going through this whole thing. Can you imagine what
16 it would be to not have a great viable water source? So
17 it is incumbent upon you to please consider this
18 seriously, not because of a private interest of the city,
19 although I love it completely, but for the fact that
20 California is great and it's your duty to really look at
21 it as a statewide opportunity for you to regulate and be a
22 part of.

23 Thank you so much. I appreciate you being here.

24 COMMISSIONER CHIANG: Thank you very kindly.

25 MR. GARRETT: I am speaking for Paul Singarella.

1 My name is Chris Garrett. I'm a lawyer with
2 Latham & Watkins. Paul Singarella has been responsible
3 for the regional board compliance for this project.

4 I've been responsible for the past four or five
5 years working with Poseidon for the all the California
6 Environmental Quality Act compliance, all the EIR issues
7 for the project. And my partner, Rick Zaburg, also from
8 Latham & Watkins is going to be responsible for getting
9 the project approved at the Coastal Commission. So we've
10 had the unique vantage of looking at these issues.

11 In the minute and a half that I have left, I
12 wanted to just briefly touch on a few of the legal issues
13 that you heard from Mr. Gonzalez. And I frankly think
14 that a number of them reflect the fact that he is not that
15 familiar with the environmental impact report that the
16 City of Carlsbad did prepare.

17 The one point that I thought was very important
18 was the question about have we looked at enough
19 alternative methods of bringing seawater in. Since
20 Mr. Gonzalez is in favor of desalination at some place,
21 some point -- didn't seem to have a problem with the site.
22 Seems to be, the only issue that he can possibly have
23 would be the intake question.

24 And our EIR does have an extensive study of all
25 alternative intake systems. And in addition, at the

1 request of the Coastal Commission, when they commented on
2 the EIR that the City of Carlsbad prepared, additional
3 information was presented as to various alternative intake
4 systems.

5 The Coastal Commission sent you folks a letter
6 yesterday. I provided a letter to your staff, which I
7 hope they will distribute to you, responding to a number
8 of the points. For some strange reason, the points the
9 Coastal Commission makes are almost identical to what
10 Mr. Gonzalez has to say. And so I'm going to have to
11 leave it to the letter since I've only got about 30
12 seconds here.

13 But I did want to mention one example of what
14 Mr. Gonzalez said. He said that because we'll be
15 operating, the power plant is not there, the water that's
16 coming in the system will be cooler. Because it's cooler,
17 there may be more energy required for desalinization and
18 that's never been looked at in the CEQA process, and you
19 guys need to do that for a supplement to the EIR.

20 Actually, that was a question that came up during
21 the City of Carlsbad process. The City of Carlsbad
22 provided a response, demonstrated that our energy usage
23 figures in the EIR would not be affected by that.

24 As to the other eight or nine points that Mr.
25 Gonzalez made, we'll be able, again, to show that they

1 were all dealt with in the process.

2 Thank you.

3 COMMISSIONER CHIANG: Tell Paul to talk to his law
4 school classmates about it.

5 Lou?

6 MR. STORROW: Lou Storrow?

7 COMMISSIONER CHIANG: Yeah.

8 Lou followed by Eric Larson.

9 MR. STORROW: I apologize. I didn't hear my name
10 before.

11 I'm Lou Storrow. I'm an attorney in private
12 practice and have been a resident of Carlsbad for about 20
13 years.

14 Where there's no vision, it's, the people perish.
15 But most of us it would survive longer without vision than
16 without water. I think we've established that there is a
17 dire need for water supply in California and in this
18 region.

19 Despite the claims of the opponents of this
20 project, this decision is not going to set a precedent for
21 other projects. It's a decision on this project at this
22 place at this time. And if we allow this project to
23 evaporate, we'll still need water, and I would urge this
24 body to take this opportunity and accept it with its minor
25 blemishes, if there are any, indeed, and approve the lease

1 amendment.

2 Thank you.

3 COMMISSIONER CHIANG: Thank you very much.

4 Eric followed by Kevin Sharrar.

5 MR. LARSON: Thank you, members of the Commission.

6 My name is Eric Larson, executive director of the San
7 Diego County Farm Bureau.

8 There are more small family farms in San Diego
9 County than anywhere else in the United States. San Diego
10 County is the 12th largest farm economy amongst all
11 counties in the nation and is host to more than 6,000
12 farmers who make a total contribution of more than 5.1
13 billion to the local economy.

14 While farming is strong in our community, farmers
15 here are facing what might be the most historic challenge
16 they've ever been up against.

17 We heard it here today already, about the future
18 need for water in Southern California. For farmers, this
19 issue is real, today.

20 On January 1st, 2008, the County's farmers are
21 racing for a mandatory 30 percent cutback in imported
22 water supplies as a result of the drought and issues in
23 the delta. Now, we might be acting as the canaries in the
24 mineshaft. Imagine if, in the county of the San Diego,
25 the restaurants were told they had to close 30 percent of

1 their tables; the hotels, 30 percent of their rooms; or
2 the Chargers have to block off 30 percent of their seats
3 at the next home game. That is what's happening to the
4 farmers in San Diego County in January.

5 We live in an arid region, and our farmers have
6 already invested in conservation and reclamation in
7 technology, while becoming national leaders for several
8 varieties of crops. But this will no longer be the case
9 if San Diego doesn't diversify its water supply and
10 develop local sources. This is why the San Diego County
11 Farm Bureau supports the Carlsbad desalination project.

12 In addition to the value to the economy, the
13 farmers in San Diego County own and maintain thousands of
14 acres of open space, plant trees and crops that help
15 improve the air quality, and provide an abundance of
16 harvestable pre-grown products and protect the ambiance of
17 what is San Diego County.

18 We have 200,000 acres of irrigated crops. There's
19 been a lot of talk about carbon today. Imagine how much
20 carbon sequestration would be lost with not enough water
21 for the farmers in our county.

22 From the perspective of the farm community, water
23 supply is not just the bottom line business issue. It's
24 critical to the preservation of San Diego's open space and
25 environment and farming way of life.

1 As farm water suppliers are directed to supplement
2 urban users, farms will suffer and productive land will
3 become more readily available for other land uses that
4 will have traffic, noise, and pollution impacts. The
5 Carlsbad desalinization project is not a panacea, but
6 offers farmers and urban water users a new, local,
7 reliable, and affordable water supply.

8 COMMISSIONER CHIANG: Anne?

9 MR. LARSON: I urge you for our support.

10 ACTING COMMISSIONERS SHEEHAN: Yeah. This may
11 have been answered, but you brought up the issue about the
12 cut back from -- in January, and the staff may have
13 brought this up. And I realized I was late. How many
14 acre feet will be reduced in January?

15 MR. LARSON: 30,000 for next year. The farmers in
16 San Diego County use about a hundred thousand acre feet of
17 water a year, with only allowed to use 70 percent. That
18 would be 30 --

19 ACTING COMMISSIONERS SHEEHAN: There's a 30
20 percent decrease.

21 MR. LARSON: It just cuts it down exactly a
22 hundred thousand acre feet.

23 COMMISSIONER CHIANG: Thank you very much.

24 Kevin followed by Marie Joyce.

25 MR. SHARRAR: Good afternoon, Commissioner Chiang

1 and Commissioner Sheehan. My name is Kevin Sharrar, and I
2 am a resident of Carlsbad. I relocated my family from
3 Sacramento in June.

4 When I look at this project, I just don't see a
5 water supply project, but I see a water solution project.
6 It's also an innovative project that is referred to --
7 will be carbon neutral. Obviously, water supply is a
8 crisis issue, not only in San Diego but statewide. As a
9 Carlsbad resident, I am very unsettled at the likelihood
10 of water supply reductions annually beginning next year,
11 due to the various regulatory issues that we've heard
12 about.

13 As a parent, I'm very concerned that we don't have
14 a reliable water supply now or into the future.
15 Reliability is the core issue for me and my family as we
16 look into the future. Reliability of city services such
17 as police, fire, and water, reliability that their quality
18 of life will be diminished, and moreover, reliability in
19 that Carlsbad can be a place for my children to raise
20 their families.

21 This water solution project, if you will, goes a
22 long way. And I'm here to tell you to help ensure my wife
23 and I can rely on these things, namely, a place that our
24 kids can raise their families.

25 Even as all of us in Carlsbad work diligently to

1 conserve water, we desperately need the water this
2 solution provides. We need to drink. And as we
3 experienced in tall order last week, we also needed it to
4 fight wildfires.

5 As a Carlsbad citizen, husband, and father, I
6 implore you, at the appropriate time, to approve this
7 project, this reliable water supply that we need in
8 Carlsbad as well as a region.

9 And thank you for your attention.

10 COMMISSIONER CHIANG: Thank you.

11 Marie will be followed by Gary Knight.

12 MS. JOYCE: Thank you. Marie Joyce representing
13 State Assemblyman Martin Garrick.

14 Thank you for listening. I've brought words from
15 Assemblyman Garrick. I appreciate you listening, on his
16 behalf.

17 Assemblyman Garrick represents throughout the
18 cities of Carlsbad, Del Mar, Encinitas, Escondido,
19 Oceanside, Rancho, Santa Fe, San Diego, San Marcos, Long
20 Beach, and Vista.

21 And I name those because he wanted me to.

22 (Laughter.)

23 MS. JOYCE: He represents, as you can tell by that
24 list, many thousands of constituents who will benefit
25 greatly from the security of a new drought-proof,

1 reliable, environmentally-responsible supply of water.

2 The project is a public-private partnership
3 between Poseidon Resources and San Diego's public water
4 agencies. It's taken almost ten years to reach the point
5 today. That's a very long time and expensive process for
6 a project our region needs desperately.

7 Assemblyman Garrick has visited the project site
8 and toured the demonstration facility on at least two
9 occasions and he's even tasted the water quality.

10 He has also closely followed the projects
11 environmental review process. The City of Carlsbad
12 analyzed the project extensively and concluded there are
13 no significant unavoidable impacts for both the
14 construction and the ongoing operation of the plant.

15 And to that end, he wanted me to respectfully
16 request the Commission to approve the Carlsbad
17 desalination project.

18 And I thank you for your time.

19 COMMISSIONER CHIANG: Thank you, Marie.

20 Gary followed by Tom Lemmon.

21 Gary Knight? Tom Lemmon?

22 David Lloyd followed by Don Christiansen.

23 Tom's coming up.

24 MR. LEMMON: My name is Tom Lemmon. And I serve
25 in the capacity as business manager of the San Diego

1 Building and Construction Trades Council.

2 I come before you in support of this project. I
3 represent 35,000 working men and women who build San
4 Diego. It's been over two years since Poseidon Resources
5 approached the Building Trades about this worthwhile
6 project. They indicated, because of its complexity, they
7 needed a highly qualified workforce to build the project.
8 And to that end, we entered into a partnership. Early on,
9 they knew they wanted a relationship with labor and have
10 demonstrated that every step of the way.

11 In their contract selection process, they reached
12 out to us for input and followed through by choosing
13 Filanc, a highly qualified local contractor who currently
14 employs local workers.

15 We are currently in negotiations with them on an
16 agreement that will cover the terms and conditions of this
17 project.

18 I also am a member of the City of San Diego
19 Chamber of Commerce, Water Infrastructure Committee, who
20 has also boarded to support this project. Poseidon has
21 built relationships with both the business community and
22 with labor, further demonstrating the broad local appeal
23 of this project.

24 The San Diego Building and Construction Trades
25 Council respectfully requests that you approve this

1 project.

2 COMMISSIONER CHIANG: So Tom, these jobs are
3 represented employees?

4 MR. LEMMON: We're working on that. We do not
5 have a signed agreement yet, but we are working diligently
6 to get there.

7 COMMISSIONER CHIANG: Okay. Thank you.

8 Is Gary Knight here?

9 Okay.

10 David Lloyd followed by Don Christiansen.

11 MR. LLOYD: My name is David Lloyd. I am a
12 resident of Carlsbad. I'm also an officer of Cabrillo
13 Power, and I am the reluctant host of this project.

14 As you can see, it would be foolhardy for NRG and
15 Cabrillo Power to resist this project if it had some basis
16 and value to our community. You don't live here. I do.
17 And I'm the steward of this lagoon. I take it very
18 personally.

19 I know how many fish live there because we see
20 them and we count them. We go before the regional water
21 board every five years to renew our permits. And over
22 time, we will discontinue seawater cooling on that site,
23 because there's new technology now available that makes it
24 so that we can cool steam in a way that's still economical
25 to the ratepayers.

1 But during this last week, San Diego was islanded
2 off from the rest of the power grid. This power plant ran
3 at its full capacity for about eight days. The other
4 power plant in the region also ran at its full capacity.
5 Had we not been running, the lights would have gone off, I
6 can assure you of that fact. So I can't tell you when the
7 power plant's going to come down. I can tell you that we
8 will continue to seek permits to do seawater cooling for
9 the future.

10 And as soon as we can repower with more efficient,
11 more reliable power plants, then we can go through the
12 system and get rid of seawater cooling. We'll do it. But
13 at the moment, the oil that's stored on that property is
14 the only fuel that is native to California -- to San
15 Diego. When we're islanded off from the rest of the
16 system, that's the only thing that can keep the lights on.

17 As the gas pressure started to drop, we started
18 worrying about that fact and we were prepared to switch to
19 oil, had we had to.

20 So the last thing we need is the problem of
21 another bunch of people angry at that site. However, it's
22 a good site. It's being operated for the public use. Of
23 all the Public Trust Doctrine issues, being able to bring
24 in oil by sea to that site, being able to generate
25 electricity, and then using the wastewater to make potable

1 water is probably a good thing.

2 COMMISSIONER CHIANG: Thank you, David.

3 MR. LLOYD: I came here just to answer questions.
4 Do you have any from the power company that's responsible
5 for the site?

6 ACTING COMMISSIONERS SHEEHAN: Can you tell me,
7 you have applied to the Energy Commission to get into
8 discussions on decommissioning the plant?

9 MR. LLOYD: Yes.

10 ACTING COMMISSIONERS SHEEHAN: Tell me the timing
11 on that. And you will have to do -- will an EIR have to
12 be prepared for that action?

13 MR. LLOYD: Yeah. The CEC process will take about
14 a year. It is a CEQA equivalent. Under their separate
15 jurisdiction, they have a different statute. We have not
16 proposed using seawater for cooling for that piece of the
17 power plant. The other 650 megawatts that will remain on,
18 about two-thirds of the existing power plant will be on
19 indefinitely.

20 Now, over a planning horizon, that may be ten
21 years. But until someone tells us we can shut that
22 down -- and we don't have the right to shut it down.
23 That's the call of the independent system operator from
24 the California Utilities Commission, the CUC.

25 And just a couple of comments on the process. The

1 EIR that was done was not appealed by anyone. That
2 document's good. They considered all kinds of things
3 including what about when the power plant's not running.
4 Because we don't run as much as we used to, which is fine
5 with us. We get paid to stand by, and we're there when
6 we're needed. If we don't need to run, we're happy not
7 running.

8 But that lagoon needs to continue to be flushed,
9 on some kind of a basis. And when your staff came to us
10 with a proposal to build a pipe for a different intake --
11 and when we said we're a little concerned about how much
12 sand is being washed in with winter storms because of the
13 beach replenishment, I said, "We cannot, in good
14 conscience, take this proposal to anyone for review," and
15 we dropped the idea.

16 There is not a better way to bring water in and
17 out of that lagoon. And, you know, we looked at that real
18 hard with -- paid a lot of money to the State Lands
19 Commission's consultant to look at that other intake.
20 That's not a viable alternative.

21 So good luck with this work. We're benignly
22 neutral to this; we want to keep making power but we also
23 know that water is critically important, otherwise the
24 ratepayers won't be living there to buy our power.

25 Thank you.

1 COMMISSIONER CHIANG: Thank you.

2 Don Christiansen followed by Mark Filanc, followed
3 by Nico Ferraro.

4 MR. CHRISTIANSEN: Good afternoon. My name is Don
5 Christiansen. I moved to Carlsbad about 20 years ago from
6 the Midwest.

7 One of my early childhood memories was growing up
8 on a farm in the Midwest and experiencing severe drought
9 conditions that did leave -- that has left a lasting
10 impression.

11 When I first heard that Carlsbad had been
12 approached by Poseidon for a location for a seawater
13 desalination plant, I decided to become proactive and do
14 what I could, on an individual basis, to move that
15 forward.

16 And I would like to share with you a quote from an
17 Associated Press article in last Saturday's newspaper.
18 The headline reads, "National Crisis Feared from Dwindling
19 Fresh Water Supplies."

20 Lead paragraph: "An epic drought in Georgia
21 threatens the water supply for millions. Florida doesn't
22 have nearly enough water for its expected population boom.
23 The Great Lakes are shrinking. Upstate New York's
24 reservoirs have dropped to record lows, and in the West
25 the Sierra Nevada snowpack is melting faster each year."

1 Followed by another quote: "Some scientists have
2 suggested giving droughts names like we do hurricanes. If
3 we did, the Southwest drought, the one that seems to have
4 its epicenter in Atlanta and Georgia, this Southwest
5 drought would be called Katrina and it would be about to
6 hit Atlanta."

7 So here we are. I've heard a lot of talk from a
8 lot of different people and a lot of talk about
9 conservation. I believe in conservation. I also believe,
10 we cannot conserve what we do not have. And if either one
11 of our two main water supply lines is seriously impacted,
12 we're going to have a serious drought. And we may even
13 want to be thinking about what we're going to call it.

14 California has a tradition of leadership. I would
15 just like to encourage you to continue that tradition by
16 thinking globally, acting locally, and moving this project
17 forward, as quickly as possible.

18 COMMISSIONER CHIANG: Thank you. Mark Filanc
19 followed by Nico Ferraro.

20 After Mark, we're going to take a ten-minute
21 break.

22 MR. DIAZ: Hello. Mark Filanc is not present.
23 I'm speaking on his behalf.

24 CHAIRPERSON GARAMENDI: And you are, please?

25 MR. DIAZ: My name is Vincent Diaz. I'm with JR

1 Filanc Construction. I'm the vice president of labor
2 relations.

3 Founded in 1952, Filanc is a regional construction
4 company that has completed more than 300 water projects
5 for cities, counties, and water agencies in California --
6 throughout California and the Southwest.

7 We are headquartered in North San Diego County in
8 the community of Escondido. We are best known for
9 experience in building water structure projects. Filanc
10 is nationally recognized for ability and commitment to
11 exceed industry standards and delivery of design build --
12 and designed, build projects. We have received national
13 awards for our safety record, which we are very proud of.

14 Our construction expertise includes water and
15 wastewater treatment plants, water reclamation facilities,
16 solid waste recycling plants, pump stations, reservoirs,
17 hydroelectric, and microturbulence installations.

18 Our responsibility to the project team is to
19 construct this world class project and maintain the
20 project's schedule, quality, and safety record along with
21 cost.

22 As mentioned earlier, this is a \$300 million
23 project and is a significant undertaking from a
24 construction standpoint. This project will allow Filanc
25 to put our local expertise and our local labor force to

1 work. As a union contractor, we are committed to working
2 with the local building trades to ensure this project is
3 built by San Diegans. After ten years of study and
4 planning, San Diego taxpayers need this project and want
5 this project.

6 Now, on a personal note, I've been a resident of
7 the city of Carlsbad for 13 years. My family, we walked
8 the seawall, we've spent many summer hours on the beach
9 and in the water. And along with City of Carlsbad
10 leaders, I strongly urge support for this project.

11 Thank you.

12 COMMISSIONER CHIANG: Thank you very much.

13 We will now take a ten-minute break.

14 (Thereupon a break was taken in
15 proceedings.)

16 COMMISSIONER CHIANG: Good afternoon. We're here
17 to reconvene. We have Nico Ferraro.

18 Let me apologize for all of us up front. Some of
19 us are going to continue to take a bite during these
20 proceedings.

21 So Nico?

22 MR. BUTKIEWICZ: Nico was not able to stay. I'm
23 Jerry Butkeiwicz. He asked me to make some comments on
24 his behalf. I want to thank you for holding these
25 hearings. And we want to start off by thanking the mayor

1 of Carlsbad, Bud Lewis, to have the leadership to move
2 forward on this project.

3 The Labor Council in San Diego formed in 1902. We
4 have 120,000 union members in San Diego and Imperial
5 Counties. We have 118 local unions affiliated with our
6 labor council. We are keenly aware of the water problem
7 that we have in San Diego County, ever since Bruce Babbot
8 enforced the proper allocations of the Colorado River
9 water. We had resorted to quadrupling our allocation from
10 the bay delta, and now, in the courts you see what kind of
11 problems that is causing us.

12 So we know that we have a serious problem already
13 upon us. We need your help to help resolve this problem.
14 The way we're going to be able to do that is working on
15 this project. The Carlsbad facility will have a huge
16 economic impact on the region with \$170 million in
17 spending during construction, and 37 million in yearly
18 spending, once the desal plant is in service. These are
19 going to be good jobs. You heard from the Building Trades
20 that they are already working together with the
21 contractor. These are going to be jobs for people from
22 our county, and this is going to provide drinking water to
23 300,000 San Diegans.

24 On behalf of the 100,000 families in San Diego and
25 Imperial County, I ask you to please move as quickly

1 through the remaining issues that we heard John Garamendi
2 talk about earlier, and please get this project approved.
3 We need the water.

4 Thank you very much.

5 COMMISSIONER CHIANG: Thanks, Jerry.

6 Vincent Diaz followed by Jim Coleclaser.

7 Is Vincent Diaz here?

8 MR. DIAZ: I already spoke.

9 COMMISSIONER CHIANG: Thank you. I'm sorry.

10 Jim Coleclaser. Gary Sallis followed by Steven
11 Arakawa.

12 MS. SOLORZANO: Good afternoon. Thank you for
13 allowing us to be here today. My name is Rachel
14 Solorzano. I am representing Assemblymember Mary Salas in
15 the 79th District.

16 Assemblymember Salas supports Poseidon Resources.
17 Last year's Sweetwater Authority, which provides water to
18 thousands of her constituents, contracted with Poseidon
19 Resources to purchase 24 hundred acre feet of water
20 annually that will be produced in the Carlsbad
21 desalination plant. This water will account for
22 approximately 10 percent of Sweetwater's income needs and
23 will supply enough water for about 4800 families each
24 year.

25 Assemblymember Salas takes personal interest in

1 this, not only because her constituents will benefit
2 directly from this contract, but also because she is a
3 proud member -- she was a proud member of the Sweetwater
4 Authority Board of Directors when they voted to approve
5 the water purchase agreement with Poseidon Resources last
6 year.

7 Having participated in the approval of the water
8 purchase agreement, she has firsthand knowledge that the
9 water produced by the desalination facility will be of the
10 highest quality, meeting or exceeding all drinking water
11 regulatory standards under law. It has also gone through
12 rigorous testing and public scrutiny to ensure that the
13 plant will be environmentally friendly and efficiently
14 operated.

15 Assemblymember Salas is proud to support the
16 successful public-partnership between Poseidon Resources
17 and the City of Carlsbad, and she urges you to approve
18 this project.

19 Thank you very much.

20 COMMISSIONER CHIANG: Thank you very much. Let me
21 try this again.

22 Jim Coleclaser, Gary Sallis, Steve Arakawa.

23 MR. ARAKAWA: Thank you, Commissioners. My name
24 is Steve Arakawa. I am representing the Metropolitan
25 Water District of Southern California. I am a manager for

1 the Water Resources Management Group for the district.
2 And as such am responsible for imported water supply
3 issues as well as local supply management.

4 We provide supplemental water supplies to the
5 south coast region of southern California, and that
6 includes six counties -- Ventura, L.A., Orange County,
7 Riverside, San Bernardino, San Diego. And that includes
8 over 18 million people that Metropolitan serves wholesale
9 water to other retail and other water agencies in Southern
10 California.

11 The Metropolitan Water District joins in
12 supporting the San Diego County Water Authority in support
13 of a seawater desalination project in Carlsbad. And I
14 refer you to a letter that Metropolitan sent you on
15 October 23rd of 2007.

16 Metropolitan's integrated resources plan, its
17 water supply strategy, its investment strategy
18 incorporates seawater desalination into that plan at about
19 150,000 acre feet.

20 Now, we know there are multiple challenges to all
21 sides of water supply, water supply management. We've
22 seen those challenges both on the imported side as well as
23 in the local side. For example, on the imported side, we
24 have the delta smelt situation. But there are other
25 issues related to imported water on the state side. For

1 example, how do we prepare for catastrophic failure? How
2 do we deal with other fishery issues?

3 On the local side, we have water quality. More
4 and more stringent water quality standards may affect
5 local groundwater pumping.

6 For these reasons, Metropolitan has pursued an
7 aggressive strategy of multiple sources. Conservation and
8 recycling is a foundation. And if you count up all that
9 water for the future, it makes up about 35 percent of our
10 future need. Seawater desal a portion after that.

11 For those reasons, we support the project in
12 conjunction with the San Diego County Water Authority.

13 Thank you very much.

14 COMMISSIONER CHIANG: Thank you. Julie Walker
15 followed by Bailey Noble.

16 MS. WALKER: My name is Julie Walker, and along
17 with my husband Joe, I own and operate Obraverde Growers
18 in Valley Center. We have grown drought-tolerant crops
19 there for the past 33 years.

20 I am here today to ask you to please approve the
21 Carlsbad desalination project. Right now, San Diego
22 farmers are facing immense water challenges and we need
23 new, more reliable sources of water as soon as possible.

24 By approving this project, you will have taken an
25 important and innovative step towards preserving the farm

1 industry in San Diego. I represent just one of hundreds
2 of small independent farmers who work hard to keep our
3 farms productive. Water can be one of our biggest
4 expenses and can make or break our profits for the year.

5 In addition to the issues of price, we are now
6 facing a 30 percent reduction in our imported supplies,
7 and add to that an announced 6 to 10 percent rate increase
8 in Valley Center this coming January.

9 Adjusting to these changes will require many
10 farmers to substantially reduce crop output. As an owner
11 of a family-run operation, I fear that my business will
12 suffer if this happens.

13 Many other growers in our industry told us that
14 they will shut down their operations if the water cuts and
15 high prices continue. But it is not only farming that
16 will suffer, but also the people of San Diego County. The
17 trend today is to reduce our carbon footprint by buying
18 local fresh product versus bringing it in, out of county,
19 out of state, or even offshore. Our local farmers'
20 markets and their growing popularity is a good example of
21 this. This will not be so easily done if dozens of small
22 farms are forced out of business. San Diego does not have
23 a huge corporate farming operation as other areas do. San
24 Diego needs the small independent farmer to survive in San
25 Diego. The future of farming in this county depends on

1 dependable and affordable water.

2 Please approve this project.

3 COMMISSIONER CHIANG: Thank you, Julie.

4 Bailey Noble followed by Bob Zaiser.

5 Julie? Or Bailey? Bob? Chuck Badger? Andy Shea
6 followed by Dan Coffey.

7 MR. BADGER: I'll follow Julie since I'm a farmer
8 as well.

9 My name is Chuck Badger, and I am a third
10 generation owner of RE Badger and Sun Orchard Management,
11 specializing in the production of lemons.

12 In addition to my farming operation, I am
13 currently the president of the San Diego County Farm
14 Bureau.

15 My grandfather came to San Diego, in Orange
16 County, in 1922. He helped form the Santa Fe Irrigation
17 District, and he served as a director on the Metropolitan
18 Water Board. My father served many years on the 9th
19 Regional Water Quality Control Board, here in San Diego.
20 My family has always been interested in water issues
21 because it's vital to our industry and/or our way of
22 living.

23 As you have heard, farmers are going to be cut
24 back almost 33 percent next year. And I have wondered
25 what are we going to do. I have heard opponents to the

1 project talk about conservation. Believe me, as farmers,
2 water is one of our most expensive inputs. We conserve.
3 We use BTA, best technology available, to reduce our water
4 costs.

5 We can't afford to waste it. So this puts us in a
6 difficult position, having already conserved water, now
7 having to cut back one-third from that water conservation
8 level, I fear that our production is going to plummet.

9 What then? Maybe reclaimed water. Well, although
10 I do grow lemons, it is considered an edible fruit,
11 although a little bit sour. But because it's edible, I
12 cannot use reclaimed water, even if it were available in
13 any area.

14 So the Carlsbad desalination plant is a necessary,
15 relatively immediate complement to importing water. The
16 sooner the project is approved, the sooner it can be built
17 and begin supplying our region with affordable water.

18 The farmers of San Diego County cannot wait any
19 longer. We might be able to weather one or two dry
20 seasons, but if our water situation isn't improved in the
21 long term, we'll definitely be going out of business.

22 I want to protect my business and my livelihood,
23 and take care of my employees, and I want to take care of
24 my family. I have three kids who are growing up right
25 now, and I want to leave them a thriving San Diego, just

1 as my father did for me and just as my grandfather did for
2 him.

3 Thank you.

4 COMMISSIONER CHIANG: Thank you.

5 Bailey Noble? Bob Zaiser? Andy Shea? Dan
6 Coffey? Simon Wong?

7 MR. SHEA: Thank you. Good afternoon. My name is
8 Andy Shea. I serve as the USA development director for
9 Acciona Agua Corporation.

10 I'm pleased to be part of the EPC, engineering
11 procurement construction, team for the Carlsbad project.
12 And for those not familiar with Acciona Agua, we're an
13 international leader and large scale resource for reverse
14 osmosis desalination, approximately 70 projects worldwide,
15 and producing in excess of 420 million gallons per day of
16 fresh water.

17 When one thinks about desalination, clearly one
18 thinks about San Diego. In fact, the modern day reverse
19 osmosis technology was first developed by San Diego's own
20 General Atomics Laboratory in the 1960s, for the
21 Department of Defense.

22 The bay in San Diego County is home to much of the
23 international desalination industry with over 35
24 desalinization related companies employing 2,200 people
25 and generating over 200 million in annual revenue.

1 Carlsbad desalinization project is the next step
2 in San Diego's evolution to becoming both the showcase and
3 an international leader in desalination industries.

4 The Carlsbad project will provide the solution to
5 San Diego's growing water supply project and offer
6 significant benefits to the local industry. As proposed,
7 this \$300 million project, we anticipate a great number of
8 companies will contribute services, products, and
9 professional expertise to design construction, and ongoing
10 operation of the plant be local to both San Diego and
11 Southern California companies.

12 Prior to pursuing the Carlsbad project, Acciona
13 Agua completed a thorough analysis of the project's
14 feasibility including extensive due diligence, review of
15 the project's environmental documents. Based upon our
16 international experience, which now reaches almost 25
17 years, we believe the project can be built with no
18 significant impacts to the local marine environment.

19 I thank you for your time and attention.

20 COMMISSIONER CHIANG: Thank you very much.

21 Simon Wong followed by Steve Aceti.

22 MR. COFFEY: I'm sorry. I thought -- Daniel
23 Coffey.

24 COMMISSIONER CHIANG: Go ahead.

25 MR. COFFEY: Thank you.

1 Yes, my name is Daniel Coffey. I'm an attorney of
2 20 years. I hold a degree in chemical engineering from UC
3 Davis. I'm a resident of the city of San Diego, and I'm
4 also a candidate for city attorney.

5 In addition to that, I was the second employee of
6 the State's Superfund Program when that first began. And
7 it's important to recall that the reason for all of the
8 environmental programs that were put in place during '80s
9 was to protect the water quality of waters in the state of
10 California.

11 Now, I find that it's very important that we look
12 to the rights of people to have a wonderful environment.
13 But I think that the first right they have to have is for
14 the basics and having a good water supply. A high purity
15 water supply is very, very important. And that's why I
16 support desalination versus reclaimed water. Because I
17 think that there are issues which are presented by
18 reclaimed water in connection with what are called trace
19 contaminants or emerging contaminants, estrogens, a
20 variety of compounds which are present in sewerage which
21 is then reclaimed.

22 So as between reclaimed water, which incidentally
23 is very salty, and water which is produced from seawater
24 by removing the salt, I think that we should prefer the
25 high purity, the public health protection of and the

1 simplicity of desalinated water, as a water supply going
2 forward. In addition to that, it can be produced locally
3 and it's a water supply which is essentially going to last
4 forever.

5 So I ask you to support this project and the
6 lease.

7 Thank you.

8 COMMISSIONER CHIANG: Thank you.

9 MR. ACETI: Members of the Commission, my name is
10 Steve Aceti. I am the executive director of the
11 California Coastal Coalition, otherwise known as Cal
12 Coast.

13 Earlier you heard from council member Ann Kulchin,
14 City of Carlsbad. She's our board vice chair. And the
15 city is a member of our coalition.

16 Cal Coast is a nonprofit advocacy group comprised
17 of 35 coastal cities, five counties, AMBAG, SANDAG, and
18 SCAG. And we support the project's policies and programs
19 that promote the preservation, protection, and restoration
20 of California's coastline, specifically related to sand
21 replenishment, increasing the flow of natural sediment
22 supplies to the coast, and improve water quality.

23 We have given considerable consideration to
24 Poseidon's proposed desalination plant. And we find that
25 the project includes the necessary design and mitigation

1 for us to conclude it represents an appropriate use of
2 coastal property and Public Trust resources.

3 In addition to the obvious benefits of providing
4 an affordable and reliable new source of drinking water,
5 the project has made numerous pledges to protect and
6 enhance the adjacent marine and lagoon environments. And
7 this is where we joined the earlier comments made by Agua
8 Hedionda Lagoon Foundation.

9 In the area of beach sand -- first of all, the
10 project includes a dedication of land for increased public
11 access and recreation opportunities and will generate
12 revenue for South Carlsbad Coastal Redevelopment Plan to
13 be used for enhancement of public infrastructure in the
14 coastal zone.

15 In the area of beach sand, historically, tidal
16 patterns affecting Carlsbad State Beach removed most of
17 the beach's sand, leaving only rough cobblestones. Over
18 the years, the periodic dredging of the lagoon by the
19 power plant has provided the beach with a permanent sand
20 supply.

21 The power plant is scheduled to be decommissioned
22 and the operators of the desalination plant will take over
23 responsibility for dredging the lagoon for finding much
24 needed sand replenishment in that area.

25 COMMISSIONER CHIANG: Thank you, Steve.

1 MR. ACETI: Thank you.

2 We ask that you approve the permit.

3 COMMISSIONER CHIANG: Very good. Simon followed
4 by Douglas Metz.

5 MR. WONG: Good day. I'm Simon Wong, president of
6 Simon Wong Engineering. Simon Wong Engineering is a local
7 firm. They will play a critical role in the engineering
8 of the Carlsbad desalination project.

9 The team Poseidon has assembled is without a doubt
10 one of the most impressive collection of international
11 renowned professionals. The team has the experience as
12 well as the technical expertise to build what I believe
13 would be remembered as one of the most important water
14 infrastructure projects in Southern California.

15 But what is more impressive for me is the fact
16 that many of us are San Diegans with ties to the local
17 community and region.

18 For all of us, it is truly an honor to have the
19 opportunity to build such a monumental project that will
20 serve our neighbors, our friends, and family.

21 The Carlsbad desalination project will be
22 designed, constructed, and operated with the latest
23 technologies and the best practices. Subsequently, you
24 can be assured the plan will provide a drought-proof water
25 supply that is in harmony with the coastal environment.

1 We live in such a dry climate, and our need for local
2 water is great. I respectfully ask that you approve the
3 project. San Diego is counting on it.

4 Thank you.

5 COMMISSIONER CHIANG: Thank you, Simon.

6 Douglas Metz followed by Charles Griffin.

7 MR. METZ: Mr. Chair and members of the
8 Commission, my name is Douglas Metz. I am a member of the
9 San Diego Regional Chamber of Commerce's Water
10 Subcommittee. I serve as a state commissioner of Boating
11 and Waterways in California, and I am a member of my local
12 school board in Coronado.

13 In exercising its responsibility in the Public
14 Trust, I would urge, in sum, that the Commission find that
15 the sum of the evidence is that desalinization is a
16 question of when and not whether, that a state of
17 emergency does exist in terms of water supply, which could
18 only get worse, based on meteorological evidence and
19 forecasts, and that the Commission would take a
20 progressive approach to the consideration of environmental
21 impact of the desalinization projects, which will come
22 before it, and learn from each project and not wait until
23 a high degree of perfection and satisfaction is achieved,
24 and finally, to approve the project as quickly as possible
25 and allow us to move forward in gaining a greater supply

1 for a much needed area.

2 Thank you very much.

3 COMMISSIONER CHIANG: Thanks, Douglas.

4 Charles Griffin followed by Jim Bell followed by
5 Gary Curran.

6 MR. BELL: I am Jim Bell. I don't know if the
7 other person is here.

8 COMMISSIONER CHIANG: Go ahead.

9 MR. BELL: I am Jim Bell. I actually live in
10 Ocean Beach, and I'm in favor of desalination. I am also
11 a candidate for mayor of San Diego.

12 But I am also conscious, as an ecological
13 designer, of the environmental impacts that were brought
14 up before. I think, it seemed like they all sort of
15 focused around how you extract the water from the ocean.
16 So I would like to see Poseidon look at actually taking
17 the water from the sand, from the infiltration of
18 saltwater into the aquifer. That would pretty much solve
19 all that problem.

20 And as far as the carbon footprint if -- according
21 to their figures, they are basically producing about
22 72 gallons of freshwater from seawater per kilowatt hour
23 of energy consumed. At that rate, it would take about a
24 half of a square mile of solar panels to produce all the
25 energy needed to run that plant. So it would actually end

1 up being a positive carbon footprint instead of a negative
2 one or a breakeven one.

3 Thank you very much.

4 COMMISSIONER CHIANG: Thank you very much.

5 Charles Griffin? Gary Curran? Patrick Caswell?
6 Angelika Villagrana?

7 MS. VILLAGRANA: Good afternoon, Commissioners.

8 My name is Angelika Villagrana, and I represent
9 San Diego Regional Chamber of Commerce.

10 And I am here on behalf of the San Diego Chamber
11 Board of Directors and, our 3,000 members are in very
12 strong support of the project. You have heard this
13 morning, over and over again, that San Diego imports
14 85 percent of its water, that our whole economy and
15 quality of life depends on a reliable water supply. And
16 you have heard of our concerns especially with drought
17 conditions and the threat of state water projects cutbacks
18 that are looming over our heads.

19 Therefore, water reliability for our region is one
20 of our chamber's most important goals. And we're very
21 interested in any alternatives that minimizes our
22 dependence on imported water and that diversifies our
23 local water supply portfolio.

24 We believe desalination is such an alternative,
25 especially since we're confident that adequate safeguards

1 are in place to address environmental issues. Reliable
2 new water is needed, and the development of local supply
3 makes sense to us because additional infrastructure for
4 importing more water costs hundreds of millions of dollars
5 with limited improvements in water supply reliability.

6 Therefore, the San Diego Chamber of Commerce
7 believes it's in all of our interest to move this
8 important water supply alternative forward so that the
9 project can come online and deliver the high quality
10 desalinated water we desperately need for our San Diego
11 region.

12 Thank you for listening to us.

13 COMMISSIONER CHIANG: Thank you, Angelika.

14 Robert followed by Lani Lutar followed by
15 Andrew -- and I am having difficulty reading the name. I
16 guess it's Davis from Carlsbad Aguafarm LLC.

17 MS. LUTAR: Good afternoon. My name is Lani
18 Lutar, and I represent the San Diego County Taxpayers
19 Association, a nonprofit, nonpartisan organization. And I
20 Am here to respectfully urge your approval for the
21 Poseidon Resources lease.

22 We support the efforts made by the city of
23 Carlsbad and Poseidon Resources to develop new potable
24 water supplies at no risk to taxpayers. I know that's
25 been said several times during the hearing this morning,

1 but I think it's worth repeating. Again, no risk to
2 taxpayers.

3 Over the last several years, we've observed
4 estimated costs of public and private infrastructure
5 projects across the region skyrocket due to increases in
6 construction costs. It is clear that without the upright
7 financial investment by Poseidon, this project would have
8 failed to reach this pivotal point in the approval
9 process. We believe that this must be taken into
10 consideration as one of the benefits of the project to
11 ratepayers.

12 Furthermore, the long-term water purchase
13 agreements Poseidon has signed with several public water
14 agencies across the county ensures the costs of water to
15 be equal to or less than the cost of imported water. This
16 is a critical safeguard for ratepayers, and yet another
17 reason why the Taxpayers Association is pleased to endorse
18 the proposed desalination project.

19 We appreciate that the project takes an
20 environmentally sensitive approach to development. As you
21 know, the project will employ energy conservation
22 technology and utilize sustainable energy resources. It
23 is consistent with AB 32 and the public net zero carbon
24 footprint.

25 Finally, this project will generate revenues for

1 local governments, including \$2.4 million in property tax
2 per year for the next 30 years, as well as 10.4 million in
3 sales tax during construction, and 2.9 million per year
4 thereafter.

5 The region cannot afford to delay opportunities
6 for diversification of the water supply. The reliable
7 water supply is our public health and economic lifeline.

8 Thank you.

9 CHAIRPERSON GARAMENDI: Thank you very much.

10 Andrew, David Bolland, and Andrew Poat.

11 MR. DAVIS: Good afternoon. My name is Andrew
12 Davis. I'm with Carlsbad Aquafarm. And my family and I
13 own and operate the aquafarm and have for the past 19
14 years, and we are just adjacent to the power plant and the
15 proposed desalinization project.

16 Carlsbad Aquafarm is a small part of the 1 billion
17 U.S. aquafarming industry. But we have 25 employees and
18 produce approximately 1 million pounds of oyster and
19 mussel and clam that ultimately ends up in our local
20 restaurants and sold throughout the nation.

21 By providing a farm seafood source, my company
22 helps reduce the toll that overfishing takes on our ocean.
23 Carlsbad Aquafarm can only exist because of the pristine
24 conditions of the Agua Hedionda Lagoon as it stands today.

25 The maintenance and dredging of the lagoon by the

1 Encina power plant has provided the clean water and marine
2 environment that we need to ensure that quality and purity
3 of our farm products.

4 However, we know that the power plant could be
5 decommissioned in the near future, leaving our lagoon
6 without a caretaker unless Carlsbad desalinization plant
7 is approved and built. As part of their agreement, the
8 desal plant will provide lagoon dredging, keeping the
9 mouth of the lagoon open. The constant tidal flushing
10 would keep the lagoon healthy and prevent it from
11 returning to its prior marshy environment.

12 Our business can only exist with high quality
13 seawater. We take great comfort knowing that the
14 operations -- or the operators of the desalinization
15 facility will be highly incentivized to preserve and
16 protect water quality.

17 Without the desal plant and the Poseidon Resources
18 stewardship in the lagoon, the future of our business
19 could be negatively impacted.

20 As a business owner who is dependent upon the
21 health of the lagoon to maintain a healthy business, I
22 urge you to please approve the Carlsbad desalinization
23 plant.

24 Thank you very much.

25 COMMISSIONER CHIANG: Thank you very much, Andrew.

1 David Bolland? Andrew Poat? Merle Moshiri
2 followed by Cecelia Brown and Irwin Haydock.

3 MS. MOSHIRI: My name is Merle Moshiri. I'm from
4 Huntington Beach, California.

5 I am here representing residents who are for
6 responsible desalinization, a group that was formed three
7 years ago in response to a CUP that was provided by and
8 passed by the City of Huntington Beach. That allowed
9 Poseidon to go forward in the permit process to build a
10 desalination plant on the back of an AES generator in the
11 City of Huntington Beach.

12 I've altered my statements since listening to
13 everybody up here. And I wanted to point out two things:
14 One, the company you are all choosing to entrust your
15 water future to has an abysmal record of failure in the
16 largest desal operation that it's ever done, and that's in
17 Tampa Bay, Florida. And that happened to be one-half the
18 size of the project that it's proposing for this
19 community.

20 But you are part of an experiment and one that I'm
21 not willing to let come to the city of Huntington Beach.
22 We further believe that the proposed lease promotes
23 privatization of a public resource, water. Therein lies a
24 huge ethical question to be addressed by the SLC. This
25 agency is charged with the protection of sovereign lands

1 in California. You are entrusted by not only the citizens
2 of California, but the entire United States, to lead the
3 way, as always, in environmental sensitivity and
4 progressive technology.

5 There are solutions to finite water resources --
6 increased urban water conservation, recycling, improved
7 farm water, groundwater banking, and improvement to the
8 delivery system in the delta. We believe that
9 Californians are ready to become a party to the solution,
10 immediately, with mandated conservation steps. And we
11 urge you not to succumb to their tactics.

12 Lastly, we believe it is putting the cart before
13 the horse to hurry this decision, before the State Water
14 Resources Control Board completes the regulations and the
15 analysis of section 316(b) of the Clean Water Act and/or
16 the Regional Board finalizes an entrainment and
17 impingement minimization plan.

18 Again, we request that this Commission not approve
19 the amendment to lease the new power facilities that
20 include OTC. We further request that the Commission
21 enforce the Public Trust Doctrine and all its work, and
22 then therefore mandate the least environmentally harmful
23 technologies for ocean desalinization.

24 Finally, we hope the commissioners in the
25 legislative advocacy promote conservation methods

1 immediately.

2 Thank you for your time and your consideration.

3 COMMISSIONER CHIANG: If you can stay there for
4 one second. I understood by what was given today that you
5 are also speaking on behalf of Cecilia Brown?

6 MS. MOSHIRI: Oh, no. Since I have amended my
7 original presentation, however, I would like to leave
8 copies for the board for what I intended to say, but not
9 want to be repetitive.

10 COMMISSIONER CHIANG: We appreciate that. Okay.
11 Cecelia Brown?

12 MS. BROWN: Hello. My name is Cecelia Brown, and
13 I am a resident of Huntington Beach and a concerned
14 citizen about the Poseidon company.

15 I am not against desalinization, but I do not have
16 confidence in Poseidon's track record and what they've
17 done in the past, and what they can do in Southern
18 California and to our communities.

19 I reinforce everything that Merle has said, and I
20 feel that it's our responsibility to change our behaviors,
21 our patterns, get rid of our lawn, reinforce conservation,
22 and also look at the big global picture of just how much
23 energy it costs to create this water, because we also are
24 in an energy crisis as well as a water crisis.

25 Thank you.

1 COMMISSIONER CHIANG: Thank you very much.

2 ACTING COMMISSIONERS SHEEHAN: Can I ask you what
3 your T-shirt reads? Whoever.

4 MS. BROWN: It's "Residents for Responsible
5 Desalinization."

6 UNIDENTIFIED FEMALE: Stand up, everybody. We're
7 all here.

8 ACTING COMMISSIONERS SHEEHAN: I saw lots of them.

9 MS. BROWN: We are not anti. We just really care
10 about our communities and we want to do it correctly. We
11 want to be responsible. And that's our message. And we
12 don't feel Poseidon has been responsible with other
13 communities.

14 (Applause.)

15 MR. HAYDOCK: My name is Irwin Haydock. I would
16 like to thank the Commission for being here today to
17 listen to us.

18 I had asked if I could ride the bus from
19 Huntington Beach. They let me on. I have a PhD in
20 science and for many years was the head of the Ocean
21 Monitoring Research Program in Los Angeles County and
22 Orange County Sanitation Districts.

23 But I wanted to say just a couple of words about
24 desalinization. I followed this project from day one,
25 really, with meetings that we had in Orange County.

1 I would like to point out two things. One is the
2 fact that Orange County is now undergoing a major program
3 for reclamation and reuse of waters that are a lot less
4 salty than seawater, cause no impingement and no
5 entrainment. That's number one. And that would be a
6 substantial source of water, and you have a substantial
7 source of wastewater here in San Diego County that gets
8 dumped in the ocean every day.

9 There used to be a desalination plant right there
10 in Point Loma, next door. Maybe you get the Navy to call
11 the strategic resource for the state and build another
12 Clair Engle there.

13 Secondly, I want to say the privatization of water
14 is not a good idea. Now, I don't know much about that.
15 But I want to reach out and touch someone, and I have a
16 former fellow fraternity member that I'm going to meet
17 with next week for our 50th reunion from Cal Poly, San
18 Luis Obispo. And he's an expert in these water problems.

19 His name is Joseph W. Cotchett. And I think if
20 you Google on that name, you will find a lot of
21 information about privatization of water that you should
22 be aware of. I brought some of it with me. But I will
23 leave it to you to do the Googling yourself.

24 Thank you very much for your attention.

25 COMMISSIONER CHIANG: Great. Thank you. Marge

1 Allen followed by David Hamilton, Patricia Goodman.

2 MS. ALLEN: I want to designate my time to Merle.

3 COMMISSIONER CHIANG: I'm sorry. Your name is?

4 MS. ALLEN: Marge Allen.

5 COMMISSIONER CHIANG: Marge wanted to designate

6 her time to who?

7 MS. ALLEN: Merle.

8 MS. MOSHIRI: I already spoke.

9 COMMISSIONER CHIANG: Thank you.

10 David Hamilton.

11 MR. HAMILTON: I oppose the project and the lease

12 agreement and wish to follow up with comments.

13 COMMISSIONER CHIANG: Thank you, David. I

14 appreciate that.

15 Patricia Goodman?

16 SPEAKER 4: I oppose the project and I donated my

17 time to Merle Moshiri.

18 COMMISSIONER CHIANG: Thank you.

19 Jean Roberts?

20 MS. ROBERTS: My name is Jean Roberts. I oppose

21 the project, and I donate my time to Merle.

22 COMMISSIONER CHIANG: Thank you.

23 Diane Stelley? Curtis Stelley? John O'Drobinak?

24 Sorry to butcher your name. John O'Drobinak? Eileen

25 Murphy.

1 Oh, are you John?

2 MR. O'DROBINAK: Commissioners, I am host to
3 the --

4 COMMISSIONER CHIANG: Are you John?

5 MR. O'DROBINAK: Yes.

6 COMMISSIONER CHIANG: Can you pronounce your last
7 name?

8 MR. O'DROBINAK: O'Drobinak.

9 COMMISSIONER CHIANG: Thank you.

10 MR. O'DROBINAK: There are a number of issues
11 involved with this. And one of them is the -- with the
12 intake and the outtake of the waters there. There's a --
13 with the gradual warming in the ocean, this presents a
14 number of different problems.

15 And in addition to that, with the plant being a
16 part of the grid, anyhow, during the summer, the
17 increasing demands in the warm summers over there, we have
18 a problem there.

19 And in respect to their -- a lot of the things
20 that were proposed today, and a lot of buzz words were
21 brought up, like specifically like a super energy
22 efficiency. And I thought that was rather unusual. And
23 there will be a lot of things that one would expect that
24 they would have their hands on for -- numbers and
25 information, they didn't have.

1 And I think this sort of reinforces some of the
2 problems that they've had in Tampa. And in Tampa, their
3 plan was originally scheduled to be operational in 2005.
4 And they've had sequential extensions for -- they're
5 demonstrating that they have -- the plant has a capacity
6 to deliver a minimum quantity of our water. And that's
7 it.

8 COMMISSIONER CHIANG: Thank you, John.

9 Eileen Murphy? Julian Vochelli?

10 MR. VOCHELLI: I also oppose doing business with
11 Poseidon, and I donate my time to Merle.

12 COMMISSIONER CHIANG: Everybody else.

13 Thank you.

14 MS. MURPHY: My name is Eileen Murphy and I just
15 wanted to say that in Huntington Beach they don't have
16 the -- the same company is trying to build a
17 desalination -- the same size as this. And they don't
18 have any customers yet. So they are going to have to take
19 the water out. Huntington Beach isn't getting any. But
20 we have asked them, for four years, how much is going to
21 be a square acre foot? And they said, they don't know.

22 We've heard the cost is going to be as high as 2
23 or 3 thousand dollars a square foot. So I hope these
24 people have it in writing, that have signed up for this.

25 Thank you.

1 COMMISSIONER CHIANG: You're welcome. Thank you,
2 Eileen.

3 Eric Christen? Steve Blouent?

4 MR. CHRISTEN: Thank you. Eric Christen, vice
5 president of government affairs for Associated Builders
6 and Contractors of San Diego. We represent almost 300
7 construction firms in the San Diego County, representing
8 new employees and employ over 15,000 construction workers.

9 And as a previous speaker said, we're not against
10 desalinization project so much as the way in which
11 Poseidon has gone about seeking to build this project.
12 Something that wasn't mentioned but we want to put out
13 there for your consideration, something that we hope can
14 be rectified, because it has no place in California in San
15 Diego in the year 2007.

16 As we followed over the last three months, the
17 construction building trades, the unions, in this town
18 have suffered a big black eye with regards to what they
19 have done down at Gaylord, which is using the
20 environmental permitting process to extort out of Gaylord
21 the union-only agreement.

22 Now they are suddenly -- these
23 neoenvironmentalists are suddenly in favor of Poseidon,
24 because they have been able, without too much effort, to
25 at least verbally get one of these union-only construction

1 agreements out of Poseidon Resources.

2 It is something that is terrific as long as you
3 are a union member, which means about 15 percent -- they
4 comprise about 15 percent of the construction work for us
5 in California. What it tells the rest of the industry is,
6 you are not wanted.

7 Now, imagine you would be considering a project
8 that discriminated against white, black, Hispanic, or
9 female construction workers, and it would be rejected out
10 of hand. And Poseidon would be told to get their act
11 together and allow all workers to work on this project.

12 What we're told here is, it's okay in this day and
13 age to discriminate so long as it's implicit
14 discrimination and it's nonunion construction workers.
15 Our workers, along with union workers, build some of the
16 finest -- built the finest products and construction
17 projects in this town, state, and country. They do not
18 take kindly to being discriminated against so as -- and
19 this is what the unions do -- to get through the
20 environmental permitting process.

21 If you do not agree to the union's demands, they
22 will use boards like this, the Coastal Commission, etc.,
23 to hold up the project until the owner agrees to a PL in
24 follow-up. We refer to it as green mail. It's
25 environmental extortion. It's wrong, and it has no place

1 here in San Diego.

2 So I just hope that you take that into
3 consideration, and I thank you for your time.

4 COMMISSIONER CHIANG: Thank you.

5 Steve followed by Larry Porter.

6 MR. BLOUENT: I am Steve Blount. "You can count
7 on Blount." I am a candidate for Congress in the
8 46th Congressional District.

9 And since it's been a who's who of San Diego
10 coming before you, starting with the mayor of San Diego, I
11 want to say thank everybody involved for the way they took
12 care of my parents. My father is 94, and my mother is 90.
13 And they had to flee their home because of the Harris
14 Fire. And they first stayed at the San Diego High School,
15 downtown, and they had, like, one-to-one student
16 volunteers to attend to the -- to their every need. And
17 then they went to St. Paul Residence Hotel, and they
18 returned home Sunday night, and their home was exactly how
19 they left. And they have led a long and prosperous life.
20 And this is just another grand adventure for them. And my
21 father has, as long as I can remember said, "The first
22 hundred years are always the roughest." Well, thanks to
23 the great people in San Diego, I look forward to my father
24 turning a hundred years old.

25 Now, the question at hand, I am a member of the

1 San Pedro Peninsula Chamber of Commerce, and I am used to
2 doing or witness politically correct -- working with the
3 Port of Los Angeles. And Joan Lenats came to become the
4 executive director. And she says, "Well, all these
5 projects have changed enough that we have to start at the
6 beginning."

7 And I said -- you know, everybody said, "Why?
8 It's just minor."

9 And, you know, but we -- you know, she says,
10 "Because later there might be lawsuits if we don't start
11 over again and do it like we're supposed to do, with all
12 of the permit projects and all of the certifications and
13 reports that have to be prepared."

14 Well, here, with the desalinization project in
15 Carlsbad, I'm on the other side and we're -- you know,
16 it's good to go through the process as was intended and
17 make sure everything's in place. No matter what the will
18 takes or the energy it takes or the time it takes, or the
19 frustration that incurs, it should follow this process and
20 get done correctly.

21 COMMISSIONER CHIANG: Thank you.

22 Larry followed by Bob Winchell.

23 MR. PORTER: Good afternoon, you guys. Larry
24 Porter. I'm from Newport Beach.

25 And I wish to share with you some of the knowledge

1 I have gained in being around the Poseidon Resources
2 Corporation, up in Huntington Beach since the middle of
3 2002. I would have to say, their presentation for us, and
4 I am gathering it's the same for the folks down here, it
5 bears little resemblance to the truth. They had the
6 audacity to get their PhDs from Scripps to say that the
7 quality of the ocean water, the intake pipe, would just be
8 really pure and nice, that there would be no influence
9 whatsoever from the discharge of 250 million gallons a day
10 of a wastewater pipe, roughly 3 miles away, that no way
11 whatsoever might that come into the intake pipe.

12 Those stormwater discharges, wastewater discharges
13 coming out the San Gabriel River, the consequences of what
14 went on up in Los Angeles Harbor, which at least
15 75 percent of the time is upwind of the intake pipe, none
16 of it would come into the intake pipe.

17 Also, they drew a circle around the intake pipe
18 and the discharge pipe and they had the audacity to call
19 that a watershed and make the statement that everything
20 outside that circle that they drew around these intake and
21 discharge pipes would never get inside the pipe.

22 So these people really don't know what they are
23 doing. Look at Tampa. Make sure everything is correct,
24 all the T's are crossed and the I's are dotted before
25 moving forward.

1 Thank you.

2 COMMISSIONER CHIANG: Thank you, Larry.

3 MR. WINCHELL: Good afternoon, Commissioners. My
4 name is Bob Winchell.

5 I support what has been said with regard to the
6 operations in Huntington Beach. What I have seen today
7 and the testimony has just reinforced that. With regard
8 to Poseidon, I don't think Poseidon belongs any place in
9 California until they can justify their existence
10 elsewhere in the country.

11 Secondly, I think I would like to ask you to
12 look very closely at the comments that have been made by
13 Oceankeepers and be sure that all of those considerations
14 have been addressed.

15 And I want to thirdly and lastly like to ask you
16 to keep in mind that what you do here with regard to this
17 project and any other projects in California, Huntington
18 Beach project, whatever, has implications for all of the
19 people in California, not only in terms of what you decide
20 but in terms of precedence and so forth.

21 And I would like you to consider that all
22 taxpayers in California are going to be affected in one
23 fashion or another by the proposed projects.

24 Thank you very much for the opportunity to speak
25 to you, for your being here today.

1 COMMISSIONER CHIANG: Thank you, Bob.

2 Conner Everts followed by Milt Dardis.

3 MR. EVERTS: I thought you had lost my name, but
4 my name is Conner Everts, and I am the executive
5 director -- that actually happened to me in El Segundo,
6 but that item went by so quickly. This one obviously is
7 not going to go by quickly. I was willing to give up my
8 time earlier, but after hearing the lengthy testimony in
9 support of, I would like to bring some other issues
10 forward.

11 I've been working on this issue since the late
12 '80s, when desalination came to Santa Barbara. As it has
13 historically, desalination was then built and not used.
14 It came to Ventura, where I actually worked for a clothing
15 company, Patagonia, that was looking at the environmental
16 concerns, when we decided to maximize our local resources.
17 I ran for a local water agency and now chair Public
18 Officials for Water Environmental Reform that's having our
19 17th annual Water Policy Conference.

20 My comments are my own, but I also chair the
21 California Urban Water Conservation Council. I know that
22 Carlsbad is very late to the game in terms of doing
23 serious conservation, even though everyone says, like,
24 it's apple pie for desal and conservation. There's a lot
25 more that needs to be done. And we're now looking at the

1 next generation of conservation, which technology happens
2 very quickly and the improvements have been far more than
3 a big centralized desal plant which is -- has been said,
4 like buying an old Hummer with today's rise in gas prices.

5 I also want to say they're in violation of their
6 stormwater permits. So you have a situation where you
7 have polluted runoff running out, and then you are
8 concentrating on pulling it back up and drinking it, in
9 this cycle -- this has also been said before -- of
10 insanity.

11 I live in Santa Monica where we capture that
12 runoff and we treat it, on site, at the plant. This is
13 the kind of model proactive program we need to do. Along
14 with the long history of San Diego having to wave around
15 recycled water, we need to move forward on these issues.
16 We need to deal with greenhouse gases and climate change
17 and really look at the drinking water quality before you
18 move forward on this plan. I urge you not to approve the
19 lease, and extend it as you have and look at the true
20 costs and ultimately the Public Trust.

21 Thank you very much.

22 COMMISSIONER CHIANG: Thank you, Conner.

23 Milt Dardis followed by Tiep Bui.

24 MR. DARDIS: Milt Dardis, Huntington Beach,
25 California. Thank you, folks, for letting the little

1 people speak.

2 Poseidon has had eight projects and only one was
3 in desalinization. The other two were water projects.
4 The bank rolled by with Warburg Pincus, which is basically
5 a private equity company. Their employees are probably
6 more people at this meeting than they have employees.

7 Poseidon was founded in 1994 by energy executives
8 who saw profits in the water infrastructure projects.
9 They contacted the power companies in order to use the
10 land to build desalinization plants. Desalinization
11 plants use large amounts of electricity. So build the
12 plant, next to the electrical plant, they have a common
13 denominator of using electricity.

14 Poseidon does not build plants. Basically, they
15 put the deal together. That's what we're looking at.
16 Where's there going to be the accountability?

17 Look at the track record down in Tampa. Two
18 contractors were hired to build the plant. Two
19 contractors went bankrupt.

20 Poseidon has had trouble getting financing. In
21 fact, the Tampa Bay Water Authority had to sell bonds and
22 take over the project. Plant was delivered five months
23 later. Water at a higher operating cost. They want a
24 hidden agreement as to the cost structure. We don't want
25 that. We want to have open. We want to know what the

1 costs are.

2 Poseidon is basically a management consulting
3 company. As taxpayers, we want to see a performance bond
4 of at least \$20 million, not \$1 million. As taxpayers, we
5 want a completion bond with a definite date, if this plant
6 is to be built. As taxpayers, we want a cross-corporate
7 guarantee with apparency. In other words, we want you to
8 do your due diligence. Other than that, this will be a
9 slam bang thank you, ma'am, deal when it be all over.

10 Thank you. And good afternoon.

11 COMMISSIONER CHIANG: Is Tiep Bui here? Marinka
12 Horack?

13 MS. HORACK: Good afternoon, Commissioners. My
14 name is Marinka Horack. I am from Huntington Beach.

15 I will just make a few statements. After oxygen,
16 water is most essential thing to life. And I don't want
17 it in private hands. There have been third world
18 countries where people cannot get clean water because it's
19 in the control of private hands who are -- whose main
20 interest is to make money. That's their number one
21 profit, and making water should not be in private hands.

22 Thank you.

23 COMMISSIONER CHIANG: Thank you. Marty Benson
24 followed by Bruce Reznik.

25 Is Marty here?

1 Bruce is here.

2 MR. REZNIK: Thank you. Bruce Reznik with San
3 Diego Coastkeeper. I wasn't planning to come up, but
4 after the testimony I too felt compelled.

5 The project before you is really a house of cards,
6 except it really falls down if you just look at it too
7 hard.

8 The world is promised by Poseidon, and to the
9 point where I look at it and I say, "Oh, my god, I don't
10 know why I don't support this."

11 But when you put any real thought into it, it
12 doesn't make sense. We know open ocean desal is the
13 single most energy intensive way to get water. We know
14 it's among the most expensive and yet we're promised same
15 cost of water, carbon neutrality, labor deals, on and on.

16 Just because they say it doesn't make it so, and
17 if it sounds too good to be true, it probably is. And I
18 urge you to take a hard look.

19 I need to talk about carbon neutrality, because
20 hopefully you were listening to the same testimony I was.
21 Poseidon says that they are going to offset state water
22 project water. And that's why they are looking at carbon
23 neutrality.

24 Now, first of all, they are comparing themselves
25 to the second most energy intensive way, and hopefully

1 we're looking at ways to actually reduce our carbon
2 footprint. But even so, even if you get beyond that, what
3 you've heard today, over and over again, is, this project
4 is about growth. You heard it from Mayor Lewis at
5 Carlsbad. You heard it about, you know, from the
6 hospitality industry. This is about bringing more
7 visitors. You heard it from the high-tech industry. Life
8 sciences. This is about attracting more business. You
9 heard it from the councilmen, the chambers of commerce.

10 So on one hand -- I know Peter is nervous hearing
11 all those people -- you have Poseidon saying, this is
12 offsetting water. But half the people testifying are
13 saying, this is growth inducing; this is encouraging
14 growth.

15 If that's going to be the case, and I think that
16 was about the most honest testimony we've heard, then they
17 need to be carbon neutral for the full cost of that plant,
18 a hundred thousand metric tons of carbon. Because
19 otherwise, it's just going to be exacerbating global
20 warming and trading energy security or water security for
21 energy insecurity.

22 The last quote I wanted to leave you with -- and I
23 see my time is running short. Peter saying -- has
24 mentioned that today's problems are yesterday's solutions.
25 And what I want to avoid is having today's solutions be

1 tomorrow's problems. Yes, we have water supply, but we've
2 done it at the cost of global warming and carbon emission
3 increases, and there are better options out there.
4 Indirect potable reusage. We support mandatory
5 conservation, which we support, which unfortunately is
6 opposed by many of the people, including Mayer Sanders who
7 spoke earlier.

8 Thank you very much.

9 COMMISSIONER CHIANG: Bob Simmons?

10 MR. SIMMONS: Thank you, Commissioners.

11 I was afraid you would declare a recess after the
12 last speaker. Thank you for reaching me. I appreciate
13 it.

14 My name is Robert Simmons. I am a retired
15 professor of law at the University of San Diego, former
16 chief trial attorney for the Sierra Club, in federal court
17 Clean Water Act litigation during the 1990s that was
18 brought by EPA. It involves many of the same issues that
19 are confronting you today.

20 I'm very familiar with this desalination project.
21 And I am here to express my strong support for it. I am
22 also very familiar with the two organizations that are in
23 opposition to the project, that have been opposed since
24 the beginning of this project was announced, Coastkeeper
25 and Surfrider Project.

1 My good friend Marco Gonzalez is an able attorney.
2 And one thing we learned in developing trial attorneys is
3 that if you have a losing case, generate a lot of fog.
4 And he sure did generate a lot of fog. I think it's
5 important for you to penetrate that fog. And I will just
6 cite several examples of that.

7 At one point, he said, there ought not to be any
8 water intake in the ocean for the desalination plant.
9 When you -- I think it was you, Ms. Sheehan, asked him
10 whether he was opposed, based on his comments, to all
11 desalination, he backtracked and he said, well, but
12 different ways and different methods, we wouldn't oppose
13 it.

14 Well, understand one thing. These organizations
15 are opposed to it. You have heard Mr. Reznik state the
16 reason for the opposition. And that is, it's their belief
17 that desalination, by producing additional clean drinkable
18 water, will support new growth, even if it's the residents
19 that come into the area to replace other residents that
20 are burned out or die.

21 COMMISSIONER CHIANG: Professor Simmons, your time
22 has elapsed. Would you like to make a concluded
23 statement?

24 MR. SIMMONS: Oh, yes. All right. It's very
25 important for you to understand that the greatest threat

1 we have in this area is the declining volumes of potable
2 water.

3 If you compare the possibility of some excess
4 carbon over carbon neutral production with 300,000
5 residents of this county who will be served clean water by
6 this plant, you must understand that water, the
7 life-giving ingredient, is the much more important
8 ingredient.

9 I ask you, please issue this permit now and start
10 us along the path to water independence, which we
11 critically need.

12 Thank you very much.

13 COMMISSIONER CHIANG: Thank you very much.

14 We've called everybody. Does anybody else still
15 want to testify in the event that we missed you?

16 Okay. Let's have the representative from
17 Poseidon, please join us again.

18 ACTING COMMISSIONERS SHEEHAN: Yeah. What I would
19 like is if you could -- the concerns raised by Marcos, if
20 you could briefly address some of those. I mean, you were
21 welcome to send additional comments. But I would like if
22 someone could just address the issues that he raised.

23 You know, one was the discussion of carbon neutral
24 and go through that again. The other was the issue we
25 discussed in terms of the energy, the shutting down of the

1 power plant. And then also, you know, whether we are
2 replacing water, but then losing -- you know, is it
3 additive to the water supply down here?

4 So at least -- those are sort of the ones that
5 I -- and then at least for the record, briefly discuss
6 what has gone on with the Tampa project. At least for
7 this member it would be helpful to understand.

8 MR. WINROW: Why don't I start from the bottom of
9 the list and work up and rely on some of our legal
10 advisors to address this in some specific details that
11 have been raised.

12 With respect to the Tampa project, we were,
13 Poseidon Resources, was selected by the Tampa Bay Water
14 Agency to develop, construct, and operate a
15 25-million-gallon-per-day desalination plant in Tampa,
16 Florida. When we were approximately 25 percent complete
17 in the construction of that project, Tampa Bay Water
18 Agency exercised a purchase option that it had under the
19 contract with us to buy the -- to buy the project from
20 Poseidon and complete the construction and operation and
21 then own the facility, going forward.

22 At the time of its exercise of its purchase
23 option, it was concluded by both the staff of Tampa Bay
24 Water and their outside technical and financial experts
25 that the project was on time, on budget, and if completed,

1 according to design at that time, would perform as
2 planned. And that's all a matter of the public record,
3 because it was concluded in a hearing such as this.

4 What happened subsequent to that -- and this
5 occurred about five and a half years ago. At that
6 juncture, ownership and responsibility for the project, of
7 course, transferred to the Tampa Bay Water. They
8 completed the project in approximately 18 months.
9 Subsequent to their purchase from -- of the project, from
10 Poseidon, at that point they found that the operation of
11 the plant costs more than anticipated because there were
12 problems with the pretreatment system. And then they went
13 through a process of going out and hiring a team of
14 companies to solve that technical problem. That team of
15 companies happens to be Acciona and American Water, the
16 members of our construction team, which similarly were
17 retained by Tampa Bay Water to solve the problems that
18 they had in implementing that project.

19 The representatives from the city of Carlsbad,
20 during their due diligence, visited the Tampa Bay
21 desalination project, conferred with the management of
22 Tampa Bay Water, and conferred with members of the Board
23 of Directors of Tampa Bay Water Agency, and were satisfied
24 in those discussions that Poseidon had performed well and
25 had fulfilled their obligations to the fullest.

1 With respect to, I think, the next item on the
2 list, moving up from the bottom, and that is whether the
3 importation -- the water that is imported into the region
4 should be factored into the determination of the carbon
5 footprint for this plant, whether the water that is
6 produced by the desalination plant will merely serve new
7 and additional development, unfortunately, our
8 representatives from Renewable Resources Group -- and our
9 prior expert had to depart. But the general understanding
10 and perception that our -- the water we produce diminishes
11 on a one-to-one basis, the water that would have to be
12 imported into the San Diego County to serve the existing
13 demand.

14 To the extent that there is future development
15 that will somehow now either increase or resume the
16 importation of the water that we offset, then it should be
17 the obligation of this future development to mitigate the
18 carbon and greenhouse gas production arising out of their
19 development and their release of that water.

20 But our water, water that we produce is --
21 replaces existing imported water and the demands on the
22 system. So we think it is incumbent upon proponents of
23 future development that will utilize whatever sources of
24 supply of water to address their -- the carbon impacts of
25 their particular project.

1 ACTING COMMISSIONERS SHEEHAN: And can I -- is
2 that what the contracts state that you have with the water
3 agencies, yours is to replace that source?

4 MR. WINROW: They all have urban water management
5 plans that determine how they will use the water that we
6 deliver. We basically produce water and they have full
7 control over the utilization at this position of the
8 water. That's their responsibility as a governmental
9 agency. And so we do not have any control over how they
10 would use the water that we produce.

11 The water that we provide from -- that we will
12 provide from our plant serves an existing population base
13 and serves existing demand.

14 ACTING COMMISSIONERS SHEEHAN: I guess at some
15 point -- and maybe you can provide this to staff, is just
16 documentation that you are, in fact, replacing the source
17 and it's not additive. So however -- you know, I don't
18 want to keep you longer than we already are. But at some
19 point, it would be helpful to have that.

20 MR. WINROW: Great.

21 ACTING COMMISSIONERS SHEEHAN: And then, you know,
22 the other issue -- I guess the other issues that were
23 raised that I would just like you to address is just
24 the -- what I think was Marcos's push for a supplemental
25 EIR in terms of some of the additional issues.

1 Now, we heard lots during the public testimony,
2 that many of those issues were addressed. So I don't know
3 if you want like to summarize. That would be helpful, at
4 least from the project's sponsors or the applicant's
5 perspective to summarize whether you think that
6 supplemental EIR would not be necessary, or why you don't
7 believe it would be necessary.

8 MR. WINROW: If I may, I would like to refer to
9 our CEQA counsel, who is more intimately knowledgeable of
10 the legal aspects of that.

11 MR. GARRETT: I will try to keep this brief. I
12 addressed -- as I took the --

13 THE REPORTER: State your name, please.

14 MR. GARRETT: My name is Chris Garrett from
15 Latham Watkins.

16 I took notes that -- Mr. Gonzalez had seven
17 reasons why we needed to do a supplemental EIR. The first
18 one was that we didn't take into account the different
19 water temperature from stand-alone operations. And that
20 was a question the Coastal Commission asked, and we did
21 take it into account and it doesn't materially change our
22 power, and that was included in the power numbers in the
23 EIR that was certified by the City of Carlsbad.

24 The second reason that he gave was that our EIR
25 did not take into account the new plans of Cabrillo for

1 construction in and around our facility.

2 Our response to that is, we have coexisted with
3 the power plant -- the EIR studied coexisting with them.
4 In their old form, in their new form, if there are any
5 additive impacts, say additional construction, emissions,
6 or whatever, those are all going to be the responsibility
7 of the CEQA process that the Energy Commission will be
8 running. And the Energy Commission could be looking at
9 any additive impacts.

10 As to say that our construction and the future
11 construction of Cabrillo will occur at exactly the same
12 time, and that needs to be studied in the new EIR, I don't
13 think there's any factual basis for that. And again, the
14 next project through the Energy Commission would be
15 looking at any additive impacts that could occur. We
16 certainly studied how our project coexists with the power
17 plant in our existing EIR.

18 The third issue he gave was that we didn't study
19 the infrastructure connectivity, that we signed all these
20 water contacts but we didn't study how the water would be
21 moved around.

22 That's incorrect. The EIR -- one of their slides
23 showed a series of pipelines. All those pipelines were
24 studied in detail. We had survey crews for the biology,
25 for where each one of the pipelines would go. And so the

1 infrastructure that's needed to connect to the various
2 water systems was included in our environmental impact
3 report. And we didn't have the exact contract signed up,
4 but we knew the service area for where the water was going
5 to be, and our EIR analysis was based on that.

6 And these contracts are all matched exactly to the
7 service area that was projected in our EIR. So there are
8 no new changes, no new impacts, that would result from
9 that.

10 The other claims said we need to do a supplement
11 to the EIR because we admitted that we're going to have
12 new entrainment impacts that weren't studied in the EIR,
13 because as part of the regional board process, we've added
14 this additional 37 acres of wetlands mitigation that's
15 going to be provided.

16 Our response to that is, that was something that
17 we did as part of the regional board process. The City of
18 Carlsbad has never found that our project, either
19 operating with the power plant or without the power plant,
20 in stand-alone operations would have significant adverse
21 impacts. And this is not mitigation that we're providing.

22 From a CEQA perspective, the fact that we provided
23 additional measures as part of the regional board process
24 doesn't trigger the need to do a new EIR, because we're
25 doing additional benefits over and beyond what CEQA

1 requires.

2 And Mr. Gonzalez didn't really present any new
3 evidence that would contradict what the City of Carlsbad
4 found, which was that our stand-alone entrainment impacts
5 would not be a significant adverse impact on the
6 environment.

7 I've got three more points that he covered.

8 The fifth point he raised was the growth
9 inducement and sort of the same question that Mr. Winrow
10 said.

11 First, I would like to go back to what Mr. Winrow
12 was saying. All the new EIRs for any new development
13 project, any new general plan amendment, all include a
14 carbon analysis for their water supplies and water usage.
15 I am working on those for a number of people. And, in
16 fact, that's the case, if there were some growth
17 inducement that occurs here, it only occurs through the
18 development process where those projects would have to
19 mitigate.

20 You may be familiar with the PBC's interim order,
21 which they adopted two weeks ago, which would require all
22 new residential projects to be carbon neutral by 2020; all
23 new commercial buildings to be carbon neutral by 2030.
24 The development industry will be dealing with that.

25 However, as to whether this is new water or old

1 water, there were two significant points you heard in the
2 testimony. The San Diego County Water Authority has a
3 water master plan for the area portfolio of what water is
4 needed, now, in San Diego County, and for the growth that
5 is permitted under each jurisdiction's general plan, all
6 that growth including the San Diego Water Authority's
7 water master plan was all cleared through an EIR and CEQA
8 process.

9 And the concept of growth inducement is really out
10 voted when you live in a community where all our growth is
11 so controlled. And we already have, you know, a maximum
12 number of dwellings units we can have in San Diego County.
13 And one of the council members from the City of Carlsbad
14 pointed out that they have had a growth management plan, a
15 growth control process, that restricts the size of the
16 population and the city in place for a number of years.
17 We're only serving that existing plan population.

18 Now, there's still a few more housing units to
19 build out in Carlsbad, but that's all strictly under the
20 Carlsbad growth control program. And our project will
21 completely replace the Carlsbad water supply, including
22 for the existing residents under the terms of the
23 contract.

24 So we're clearly serving people who are getting
25 the water now from the state water system.

1 (The remainder of the State Lands Commission
2 meeting was transcribed by the Certified
3 Shorthand Reporter from an audio recording
4 of the proceedings.)

5 MR. GARRETT: The last two points. There was a
6 point that somehow because we would be pumping less water
7 in or because the power plant has stopped its pumping,
8 that reduced it to some extent, that our 300 mgd of
9 pumping would have impacts on the lagoon and the
10 sedimentation. First of all, we studied that, and as he
11 predicted, we're pumping less so whatever impacts the
12 pumping has had on the lagoon, we'll have less of that.
13 Recently, that's changed. There's less impact now that
14 the power plant has stopped pumping so much.

15 And the inference of that is, first of all, we
16 have the dredging in place, which deals with that. And
17 secondly, the environmental studies that have been done
18 don't show that under our stand-alone operations that we
19 would have a significant impact on the lagoon. You heard
20 from the lagoon conservancy itself. It isn't concerned
21 about the impacts. So we're really mystified as to what
22 the new evidence would be that would trigger and
23 supplement the EIR that needs to study this. Some stand
24 alone operation was studied in the EIR.

25 The last point that Mr. Gonzalez made was that we

1 needed to supplement the EIR to study the additional
2 intake options. I mentioned that briefly. Our EIR in
3 Carlsbad studied a number of intake options. You've heard
4 some of them presented here. First of all, no one has
5 indicated that those intake options would be more
6 beneficial. The Coastal Commission raises in its letter
7 the question of an offshore intake, and we provided a
8 study to your staff which indicates that the offshore
9 intake would have more impacts in terms of entertainment.

10 We don't see that there's been any new evidence
11 brought forward to you that would say that there are no
12 significant impacts requiring the EIR to study additional
13 intake options. We feel that we've studied them all, and
14 there isn't really any contradictory conclusions that were
15 provided.

16 So therefore, if the commission were to go
17 forward, and your staff has worked over a number of months
18 on this question of whether or not there's evidence that
19 would trigger the need to do a supplement to the EIR, we
20 feel confident that, in fact, the reason that we're
21 here -- but the stand-alone operation was studied in our
22 EIR, which we did that at the specific request of the
23 Coastal Commission, as I indicate in my letter. The
24 concept or question of carbon emissions is a completely
25 new thing that was not studied in the City's EIR. And as

1 your staff points out all that was done before AB32.

2 And there have been two court cases, one of which
3 the attorney general won for the Reclamation Board about
4 the duties of state agencies to look at carbon emissions,
5 and perhaps prepare a supplement to an EIR when the
6 original EIR did not examine the issue. And both of those
7 courts have said that the concept of climate change where
8 the EIR is relatively recent, the new study found that
9 there is no new information that wasn't known, that
10 couldn't have been known, at the time it was certified. I
11 can shorten it to say, the judges seem to say, if your EIR
12 came out after Al Gore's book, then climate changes in the
13 new information, that would legally trigger the need to
14 supplement the EIR.

15 Now, that's not to diminish the issue or threat.
16 As you can see, my client has really embraced the concerns
17 and the question. It's just the legal question of
18 whether, as you require and you seek the commitment to be
19 carbon neutral for this project, do you in fact have to go
20 through a supplement to the EIR process before you do
21 that?

22 Which gets to my last point which is, in order for
23 new information to trigger the need to do a supplement to
24 the EIR, such as the concern about global warming
25 emissions associated with the energy usage to a project,

1 first of all, our project's energy usage was fully
2 disclosed in the EIR. All we're doing is saying we might
3 be able to reduce it.

4 And secondly, with the project's unconditional
5 commitment to be carbon neutral, there's no evidence that
6 it will have an adverse impact. If we have zero impact on
7 the rate of greenhouse gases, it will be the same rate of
8 emissions before and after our project; we would have zero
9 impact, and there's no new significant impact that would
10 then trigger the need to prepare a supplement to the EIR.

11 I think I got to all the questions. I don't know
12 if there's anything I left out.

13 ACTING COMMISSIONERS SHEEHAN: The only additional
14 question I would have -- and I want to make sure I
15 understood this correctly, but the EIR was certified and
16 it was not challenged during that time period that people
17 can challenge on these issues; is that correct?

18 MR. GARRETT: There was a lawsuit filed by the
19 coastal water group, which was one of the groups, and they
20 dismissed their lawsuit a week or two later. I think they
21 miscalculated the timing for filing the lawsuit. So they
22 filed it and then when we pointed out to them that they
23 had passed the statute of limitations, they --

24 ACTING COMMISSIONERS SHEEHAN: So they filed it --
25 okay. Got it.

1 MR. GARRETT: There was a motion filed on the
2 Huntington Beach project as well, and it was resolved in
3 the favor of the City of Huntington Beach on the merits.

4 ACTING COMMISSIONERS SHEEHAN: And on -- so that
5 court went through the merits of the project in the
6 litigation. This was a timing because they didn't file it
7 in time? Okay.

8 MR. GARRETT: That's right. And the regional
9 Board approval for this project was appealed by the
10 groups -- the State Water Resources Control Board on all
11 the ground that Mr. Gonzalez said, that it didn't comply
12 with the Water Code. The regional board rejected that,
13 and the State Water Resources Control Board rejected the
14 appeal, and no lawsuit was filed.

15 ACTING COMMISSIONERS SHEEHAN: And was that on the
16 316B issue is what that case was brought on?

17 MR. GARRETT: Yes, as Mr. Gonzalez said, 316B
18 doesn't apply to us. He mentioned the Water Code
19 equivalent.

20 ACTING COMMISSIONERS SHEEHAN: Porter-Cologne.

21 MR. GARRETT: Yeah, Porter-Cologne. And I wish I
22 could memorize that number. It's a lot harder to memorize
23 than 316. That's the equivalent number. And so the
24 arguments were made to the regional Board, just what we
25 heard today. The regional board rejected that and said,

1 "No, we interpret that a different way." There wasn't a
2 PFR filed. Ultimately, after jumping through some of
3 that, they dismissed the appeal.

4 ACTING COMMISSIONERS SHEEHAN: Okay.

5 ACTING COMMISSIONER BUGSCH: I just had a quick
6 question. I appreciate you going quickly, but you are
7 going very quickly. So I mean -- one issue dealing with
8 sedimentation, you started going off on an argument. You
9 didn't say whether or not that was covered in the EIR or
10 not. It seemed to be a different kind of argument. Can
11 you clarify, is that in the EIR or not?

12 MR. GARRETT: It's in the EIR. What the EIR
13 studied was the current rate of intake from the power
14 plant as it's operated for the past 50 years. Mr.
15 Gonzalez said, I would be making this argument. So his
16 argument -- so basically that rate of taking water out of
17 the lagoon, his argument was that that was increasing
18 sediment in the lagoon. That whole process has been
19 studied. It's been 50 years of seeing it and what goes on
20 there and the dredging is also part of that process so
21 that's been a stable process for 50 years.

22 His argument was that since the power plant --
23 since the first deal was cut back on taking water out of
24 the lagoon when we come back, we will be taking water out,
25 a less -- a lower rate of pulling it out of the lagoon,

1 somehow we'll be responsible for that impact even though
2 our environmental footprint is smaller. And we studied
3 the impacts on the lagoon of stand-alone operations from
4 the project, with a lower rate of intake, and we also
5 studied the impacts on the lagoon, in the EIR, of the
6 higher rate of intake that the power plant is doing.

7 So in either situation, whether we work
8 stand-alone, whether we operate in conjunction with the
9 power plant's greater water intake, the EIR found no
10 impacts on the lagoon, no greater rate of sedimentation
11 that would occur. So it was studied in the city's EIR.
12 That's about the best I can do for....

13 MR. MacLAGGAN: Just to pick up on some factual
14 information about the sedimentation --

15 ACTING COMMISSIONER BUGSCH: There was another
16 issue. I don't know if this was the same, but he talked
17 about a study that was done that he wasn't familiar with.

18 MR. MacLAGGAN: I will touch on that one.

19 On the sedimentation issue, we spent a fair amount
20 of time modeling the sedimentation in the lagoon and the
21 dredging regime required to keep the lagoon open. And the
22 way it works, if you just stop dredging, somewhere around
23 seven or eight years that lagoon mouth will close and it
24 will stay that way until a tremendous flood comes and rips
25 it open again. And this is a small watershed, so that's

1 unlikely. Therefore, you have to dredge on a regular
2 basis to keep it open. With the power plant operations
3 today, that frequency is every two years.

4 Now, frequency is driven by two things: Tidal
5 exchange brings in a certain amount of sedimentation. The
6 power plant water transport brings in more. When we
7 reduce the flow, the stand-alone operation, two years goes
8 to three years if everything else remains the same, which
9 is, you put the sand in the same place and you extract the
10 same amount, 300,000 pounds of sedimentation a year,
11 average intake. It would take three years to get to the
12 point where you need to dredge again.

13 If the desal plant was operating, it would take
14 3.15 years to get to the same point. So our 300 mgd of --
15 well, 300 million gallons per day takes you from 3.15
16 years of sedimentation to 3.0 years. That's the effect
17 that we have on sedimentation. So that .15, would you
18 extend the dredging cycle? Not likely, because there's
19 also a prohibition on when you can dredge because of the
20 breeding season for the least tern. So you have to do it
21 around that season, which means, you know, a .15-year
22 isn't going to likely extend your dredging cycle and you
23 have to factor in variabilities of sedimentations and
24 tidal exchange and storms and so on. So it becomes 3 and
25 3.15 for basically the same.

1 We have submitted to your staff the reports that
2 support this, and we'll be happy to provide more
3 information if there's an interest that we do so.

4 The other question that was raised that you were
5 inquiring about was related to the entertainment studies
6 and whether we did a full entertainment study of 12 months
7 per the USEPA protocols. And indeed, we did.

8 Tenera Environmental is a specialist, that Mr.
9 Gonzalez is referring to, that conducts these studies for
10 the power stations. They did our work as well. They have
11 done them up and down the coast. Our study was completed
12 over a 12-month period where you take samples every month
13 and you measure both entertainment impacts and impingement
14 impacts. The protocols were approved by the USEPA and the
15 regional boards. We followed the standard work plan, and
16 your staff has that information as well.

17 If there's additional questions on this, both
18 points, we'll provide you with a summary memorandum to
19 supplement what I'm sharing with you this afternoon.

20 COMMISSIONER CHIANG: Any more questions or
21 comments?

22 ACTING COMMISSIONERS SHEEHAN: Are we done with
23 this issue, because I've just got a couple in terms of if
24 staff went back --

25 ACTING COMMISSIONER BUGSCH: I just have one more

1 question. In terms of the climate action plan, from my
2 understanding, this project has been in operation or
3 inception about a decade; is that correct?

4 MR. WINROW: I'm sorry?

5 ACTING COMMISSIONER BUGSCH: Has it been in
6 operation -- I mean, this whole process has taken about a
7 decade; right?

8 MR. WINROW: We have been in development of this
9 project for about nine years.

10 ACTING COMMISSIONER BUGSCH: And the first that
11 anybody on this Board heard of it was on a press release
12 on Friday, four days ago, and the first time we've seen
13 any form of a climate action plan was when you popped it
14 up there. So I was just curious about the depth and
15 commitment to that, and we want to ensure that that's
16 followed through.

17 MR. WINROW: Mostly the focus and the questions
18 that have been raised regarding this project over the
19 course of this development were focused on malignant
20 impacts. And it has really been, in a recent series of
21 communications, with the Coastal Commission staff -- the
22 question of greenhouse gas production has been raised, an
23 item that should be addressed. And so those were the
24 questions that were raised in this process. We retained
25 specialized consultants with respect to this particular

1 subject matter. And they are in the process of first of
2 all -- they went to the process of identifying a variety
3 of rules to bring our net carbon footprint to neutrality.
4 And what is being developed currently is the specifics of
5 an implementation plan to achieve that.

6 The commitment is unequivocal, that we would bring
7 the project to carbon neutrality. The -- as I described
8 earlier, the methodology of getting there is -- is still
9 to be determined. So we know where we are going to end
10 up. We know what the objective is. What we're working on
11 is identifying the best task to achieve that outcome. I
12 would note that the -- we provided to staff the
13 description of our energy use greenhouse gas emissions and
14 our intention to develop this plan on October 9th. And so
15 we have been in communication with staff on this
16 particular item. Our public dissemination of our plan is
17 a more recent occurrence.

18 ACTING COMMISSIONER BUGSCH: So when did you
19 retain the consultants?

20 MR. WINROW: We retained them, I believe, in
21 August.

22 ACTING COMMISSIONER BUGSCH: August of this year?

23 MR. WINROW: Yes.

24 ACTING COMMISSIONER BUGSCH: Okay.

25 ACTING COMMISSIONERS SHEEHAN: Yeah. Well, just

1 sort of following up on what I know in terms of -- what
2 the effort of the Air Board and the Climate Registry. So
3 I would encourage you to talk to them as you put this plan
4 together, up in Sacramento, in terms of -- because
5 that's -- they are beginning to develop that expertise in
6 terms of sort of the carbon foot fingerprint and what they
7 are doing, so....

8 MR. WINROW: We will make certain to consult with
9 the Air Board and California Climate Action Registry.

10 ACTING COMMISSIONER BUGSCH: And you have no
11 problem with -- I mean, you will work with our staff to
12 come to some agreement as to what -- I mean, that's
13 obvious from this Board, or this commission. But that you
14 have no problem entering this into the lease, into the
15 agreements that we're doing?

16 MR. WINROW: I think that we have a good working
17 relationship and will be able to bring this particular
18 item to a conclusion that's acceptable to both parties.

19 COMMISSIONER CHIANG: Thank you very much. This
20 item will be decided, I guess, next month.

21 EXECUTIVE OFFICER THAYER: If I could take a
22 minute or two, just to go over some of the direction that
23 I have gotten from the commissioners during this
24 discussion, because when we bring this back in December,
25 we want to be as comprehensive as possible.

1 Just going to skip a little bit from subject
2 matter to subject matter because the development of the
3 Commission's views on that occurred as we moved through.

4 There were a number of comments about, well, the
5 carbon neutrality. I think that's going to be the most
6 significantly difficult thing to do. Our staff research,
7 in which we did consult with the Energy Commission, people
8 who are very active in climate change in Sacramento on
9 this, led us to this conclusion, that even if you were
10 willing to accept this, the displacement theory of this
11 new water supply, whether it's displacing existing or it's
12 additive, a total of 46 tons, and their calculations were
13 13 tons.

14 So we've had some back and forth with Poseidon.
15 As they indicated, as we were developing our figures. But
16 we did not resolve those. And the figures that they are
17 using for the number of pounds per kilowatt hour or
18 megawatt hour of carbon dioxide that's produced, depending
19 upon the energy source, or the mix of energy sources that
20 occurs in that area, we did not reach agreement with them
21 on. And that's going to be significant. That really
22 affects these figures. I think they would agree with
23 that, that you need to reach some understanding of that in
24 order to come up with figures that you can both agree
25 with. We'll work towards that end, but we're not there

1 now. And I think that's going to be difficult in part
2 because there's still so much research being done. And
3 when we talked to the Energy Commission itself, we got
4 estimates that varied from 500-something to 1100 pounds
5 per megawatt hour. Anyway, it was that range of
6 calculations that's involved. So that's going to be
7 difficult to do, especially when they indicate it will
8 probably take them 30 days to come up with an overall
9 program to achieve the results.

10 But having said that, this was pointed out by the
11 Commission, that we need to reconcile our figures and come
12 up with a sort of common approach to this. There was
13 discussion -- I'm just going to read through these --
14 about where the 37 acres were going to be located,
15 understanding that the final location may not be in place
16 yet. But we want to know the limits of the area being
17 discussed and make sure it's somewhat local to what the
18 impacts are going to be. So where it will be, how the
19 restoration will occur, when will that restoration occur.
20 The state lands commission staff should receive
21 reimbursement for monitoring expenses to make sure these
22 mitigation measures occur. The controller asked when we
23 would get to know what the carbon offset mechanisms and
24 costs would be.

25 Just going through this.

1 A lot of discussion, I think, from the chair about
2 the lease terms, ensuring that we are going to be able to
3 enforce all of them, and that they were precise, they were
4 clear, particularly differentiating between the
5 responsibilities of the power plant and the deal
6 facilities.

7 Some discussion about putting information about
8 where the wetlands are going to be restored, on our Web
9 site. And the lease should be very clear on what happens
10 when the power plant is no longer using the once-through
11 cooling facility, who takes on the responsibilities for
12 maintaining those facilities. I think our existing lease
13 deals with a lot of these issues, but these are the things
14 that we were asked to look at to make sure they were taken
15 care of.

16 Then I think those were the major issues. I want
17 to make sure that encapsulates what the commissioners are
18 interested in, when we come back.

19 We can obviously continue this discussion between
20 your offices, as we do regularly, anyway. And then as
21 part of this, of course, since we'll be bringing this back
22 in December, the Commission's intention now, or choice
23 now, is to not do a subsequent EIR. I should say that
24 many of the points the attorney from Lake and Wattcombs
25 made for the applicants reached conclusions which, I

1 think, the staff share, sometimes for different reasons,
2 but we have the same recommendation. We don't think this
3 subsequent EIR is necessary, sometimes for different
4 reasons, but we have the same conclusion.

5 COMMISSIONER CHIANG: Thank you, Paul.

6 EXECUTIVE OFFICER THAYER: So the next item is the
7 discussion of the contaminated sediment in San Diego Bay.

8 This was, as I think was spelled out earlier, is
9 the next step in an effort by the commission at the urging
10 of some of the public interest groups in San Diego to try
11 and move this process along.

12 As the commission knows back in December, the
13 Commission adopted a resolution urging the Regional Water
14 Quality Control Board to proceed promptly with the
15 issuance of an abatement order and the implementation of
16 that. Staff has prepared a calendar item which is before
17 you and a suggested letter which could be sent from the
18 Commission to the Port, in essence urging the Port to do
19 everything it can to help facilitate, in advance,
20 implementation of this order, which is scheduled to come
21 out next summer.

22 We have three different entities that will be
23 speaking as part of kind of a mini workshop here, and then
24 we would take some public testimony. The first entity
25 would be the representative of the regional board who will

1 kind of set the table, describe the process, and that's
2 Frank Melbourn.

3 And again, each of those witnesses will take about
4 ten minutes. We'll start with Mr. Melbourn, and then I
5 think it would be good to hear from Bruce Reznick
6 representing the views of the public interest groups. And
7 then we would follow up with representatives of the Port
8 who would explain the Port's involvement in this.

9 MR. MELBOURN: Thank you. In fact, I think I can
10 probably go through this in about five minutes. It's been
11 a long day.

12 All right. Good afternoon, commissioners. My
13 name is Frank Melbourn, it's M-E-L-B-O-U-R-N. And I am
14 with the California Regional Water Quality Control Board,
15 the San Diego regional office. I'm a water resource
16 control engineer there.

17 The reason -- the Board has documented all the
18 levels of pollutants in the marine sediment of San Diego
19 Bay, specifically along the eastern central shore of San
20 Diego Bay. In response, the regional board has drafted a
21 tentative clean-up and abatement order to address the
22 clean up of the pollution.

23 I will explain the process the regional Board will
24 propose to accomplish this clean-up. And furthermore, I
25 will cover what has been done and what will occur next.

1 At the request of the designated parties for a
2 formal hearing process, the regional board has divided its
3 office into two, basically. We have staff that is either
4 part of the clean-up team or part of the advisory team.
5 The clean-up team is responsible for preparing the
6 evidence and documentation to administratively enforce the
7 clean up, while the advisory team which I am a member of
8 ensures that the procedural due process is administered.

9 In an effort to efficiently and timely advance
10 this matter, the regional board appointed one of its
11 members as a hearing officer. The first hearing officer
12 that we had was our former chairman, John Minan, and the
13 current hearing officer is Board Member David King.

14 The hearing officer is one that makes the
15 procedural decisions related to this process. And he
16 oversees the creation of an eight face process that was
17 encompassed in which is called our order of proceeding.

18 Your agenda packets contains a table describing
19 the last seven phases of this eight-phased approach. The
20 first phase, which is on there, is the holding of two
21 prehearing conferences which party status, whether
22 designated or interested, was established, as well as
23 constructing the whole order of proceeding.

24 Now, looking at the table in your agenda package,
25 the first event is the release of the tentative clean-up

1 and abatement order, its technical report, and the
2 digitized record. The projected start date is listed as
3 Thursday. I know Senator Kehoe spoke earlier this morning
4 stating that that has been completed, but that has not
5 been completed. And speaking with members of the clean-up
6 team, they think that it is more likely that it will be
7 before the end of November.

8 While the tentative clean-up and abatement order
9 and the technical analysis have been available on the
10 regional board's Web site since September 6, 2007. The
11 files are still being digitized, as I said. And the
12 portion of the file that has been digitized is available
13 in our office and has been burned on CDs. Presently,
14 there's about 26 CDs. Those CDs are also available for
15 purchase, either individually or the entire package, as it
16 stands right now. After the release of the completed
17 digitized record, there will be a 90-day public review
18 period and also during that time period there will be
19 discovery and submission of evidence.

20 So until -- so one of the key facts is just until
21 that complete digitized record is released, the 90-day
22 period will not start until that time period, even though
23 the tentative clean-up and abatement order and the staff
24 analysis for that is completed. Until that record is
25 completed, that 90-day period won't commence. Okay.

1 Then there will be an additional public comment
2 period of 30 days of the material and evidence submitted
3 during the 90-day period. So after the 90-day period is
4 completed, in evidence, and information is submitted, all
5 on the digitized record, and the technical analysis and
6 the tentative clean-up and abatement order, there will be
7 another 30-day period to comment on the 90-day comment
8 period information.

9 The clean-up team will then have 60 days to revise
10 the tentative clean up and abatement order and technical
11 report in response to the materials submitted during the
12 90-day and 30-day public review periods.

13 At the end of the 60-day period, the regional
14 Board will provide a 45-day notice of the clean up and
15 abatement order's public hearing date.

16 The regional board is planning to set aside two
17 days to accept testimony, public comment, and summaries
18 from the designated parties. The presiding officer may
19 also allow some limited cross-examination. But no new
20 evidence will be allowed during that hearing. 30 days
21 later, the regional board will reconvene for deliberation
22 of the clean-up and abatement order. Okay.

23 So that's the process that has been proposed. And
24 what has been done, as I explained, the regional board has
25 completed only one of the eight phases and the completion

1 of the next phase will likely occur before the end of
2 November. The completion of that phase is dependent upon
3 completion of the digitization of the record.

4 And then finally what will occur next? After the
5 completion of the record, that will be the beginning of
6 that 90-day public review period. And then also, in your
7 agenda package, there was a review of what will be the
8 clean-up process for this.

9 The current tentative clean-up and abatement order
10 and divisions have submitted what they call a RAP, a
11 remedial action plan, by the dischargers, 90 days after
12 the clean-up and abatement order is adopted.

13 The dischargers can't start implementing the RAP
14 within -- after 60 days, after it's been submitted to the
15 regional board unless the regional board directs them to
16 do otherwise in writing. At this point, I can answer
17 questions or step aside for the next speaker.

18 ACTING COMMISSIONER BUGSCH: Again, when do you
19 expect the day zero to start for the clock, ticking on
20 this?

21 MR. MELBOURN: Day zero will start when the record
22 is completely digitized and they expect probably by the
23 end of November.

24 COMMISSIONER CHIANG: Okay. Do you have any
25 questions?

1 MR. REZNIK: Okay. Thank you for this
2 opportunity. My name is Bruce Reznick. I am the director
3 of San Diego Coastkeeper. And I really do want to express
4 my appreciation.

5 This has been obviously a very, very long day for
6 all of us. I swear, I would have been really on at
7 10:00 a.m., but now hopefully I will at least keep you
8 awake. I also want to thank -- we had several groups -- I
9 don't know if anybody's still remaining -- came here to
10 testify on this issue. But I want to thank them. And we
11 really do appreciate you holding this down in San Diego
12 while there's a really crucial issue that we're working
13 on.

14 I am here representing the San Diego Bay Council,
15 so even though Coastkeeper is my organization, we have an
16 informal alliance of most of the leading environmental San
17 Diego groups that represent over 22,000 members, many of
18 whom have been -- many of these groups who have worked on
19 this issue longer than I have. And I want to recognize
20 them.

21 This is just a map of the problem area, that --
22 what we're looking about, the leaseholds around the
23 shipyards, Southwest Marine Inc., and NASSCO, that we're
24 looking to address, and will have the toxicity problem.

25 There have been studies that date back that show a

1 little bit more of the timeline that have identified San
2 Diego Bay as the second most toxic bay in the nation. And
3 that toxicity is pervasive throughout the bay.

4 You can see in this slide some of the contaminated
5 leaseholds, but we do have toxicity throughout San Diego
6 Bay. So no clean-up -- where we're looking at now with
7 those leaseholds, none of these are going to be a magic
8 bullet and get us to a clean healthy bay immediately.
9 However, it is an important first step. And even though
10 we have toxicity throughout, we definitely have toxic
11 hotspots.

12 And we can see here, in this slide, the high
13 levels of PCBs. And you can see the same kind of thing
14 for other contaminants, surrounding those shipyard sites.

15 I'm going to kind of cut through a lot of this
16 presentation with quotes from various agencies. This is
17 one of my favorites from Frank Piersall who used to be on
18 the regional board many, many moons ago, when I started
19 worked on this. "The whole cotton picking bay is pretty
20 polluted. I wouldn't eat a fish out of there. I wouldn't
21 swim there. We got to start somewhere." And that's our
22 fight over these shipyards, is starting somewhere. And
23 the then-board member Frank Piersall says an important
24 thing to note. Because as you see these slides, you will
25 see a lot of then-board members in there, because one of

1 the problems we've had is this whole issue. And this
2 quote, by the way, is from October 2000. We've had such a
3 long delay. We've had a lot of turnover and reeducation.
4 And it's become a war of attrition.

5 Frank was a great guy. There's a reason he didn't
6 want to eat the fish, because of bioaccumulation and
7 biomagnification. I am a policy, not a technical, guy, so
8 I won't go into a whole lot of details here. But this
9 just shows, you have sediment that has 400 parts per
10 billion of PCBs. As you go up the food chain and
11 biomagnify you can end up at something like ten parts per
12 million which is beyond FDA recommendation. And even
13 though this is an example, those numbers are actually
14 fairly close to what we see around these leaseholds. And
15 obviously, when you get PCBs at that high level there's a
16 possible carcinogen and other impacts including
17 reproductive impacts.

18 And to show, this is very, very real. This isn't
19 some hypothetical, philosophical issue. Environmental
20 Health Coalition, part of the Bay Council, back in 2004,
21 conducted a survey of 109 fishers, predominantly around
22 the piers, around the shipyards, and predominantly from
23 underrepresented communities, Filipino, Latino, primarily
24 from underrepresented areas -- Barrio Logan, Chula Vista,
25 National City. And what they found was 31 percent of the

1 people out on those piers were fishing legally; 25 percent
2 fish four to seven times a week; and nearly two-thirds of
3 the fishers and, you know, getting near half of the
4 children eat the fish. So this is beyond an environmental
5 impact. It's a public health impact.

6 So what do we do to address it? We don't do
7 anything about cleaning up, but we do get better and
8 better warning signs. That has been the response so far.
9 And I actually want to applaud and recognize the Port for
10 upgrading the warnings, putting it in multiple languages,
11 making it more severe. And what that says is, "Don't eat
12 the fish."

13 But these more improved warning signs made in 2006
14 don't do anything to actually address the problem nor do
15 they comply with the Public Trust.

16 And I just want to get this slide up here and say,
17 this is not just a human health issue, but it is an
18 environmental. This is just a Fish and Game quote from
19 1999, eight years ago now. The Fish and Game department
20 is in complete agreement. "The clean-up of these sites is
21 a viable protection of fish and wildlife resources found
22 in San Diego Bay."

23 So when are we going to act? That's the question.
24 Here is the pattern of delay. We've had a hundred years
25 of contamination from military facilities. But given the

1 clean-up and abatement order, which we'll talk about
2 later -- there are a number of PRPs, potential responsive
3 parties. That list has changed from the draft, from 2005
4 to 2007. I do want to point out that a longer
5 presentation that talks about the resources -- but these
6 are companies with significant resources. I'm not saying
7 that's the only reason they should clean up. But General
8 Dynamics, BAE, MARCO, the Navy, SDG&E, even the City. And
9 these are not the defunct organizations. They have the
10 resources. They should be required to clean up.

11 So here, we are getting into the timeline. And
12 unfortunately -- and I don't know a kind way to say this
13 and it really doesn't give me a whole lot of joy, but you
14 can't look at this timeline without pointing out the sort
15 of white elephant in the room. The regional board has
16 bungled this effort at every single step of the way.

17 Back in 1991, 17 -- or 16 days ago, the Board
18 first requested shipyard participation in the sediment
19 study.

20 '96, our former name, San Diego Baykeeper, now
21 Coastkeeper, started suing the shipyards for ongoing
22 violations of contamination. We settled with NASSCO. We
23 prevailed against Southwest Marina. The judge ordered a
24 \$799,000 fine, and I noted a pattern of poor housekeeping,
25 causing the leaseholds to be devoid of life. And while we

1 stopped or at least reduced the amount of ongoing
2 pollution, we'll still left with a toxic legacy.

3 In '97 is that release of the toxicity report of
4 the bay, where we identified how toxic we were.

5 In 1999, this is where my personal involvement
6 started when I came to Baykeeper. Interim clean-up level
7 seven. This was, what I thought, frankly, was the first
8 misstep from the regional board, at least the first
9 misstep I saw, of course, was when I came down here.

10 The regional board had proposed a clean-up level
11 called AET, apparent effects threshold, of which when we
12 set that level which is really a research level, not a
13 remediation level, that's the point at which a hundred
14 percent of the time you see some impact on the benthic
15 community. Not really a good clean-up level. A peer
16 review panel agreed, it wasn't a good clean-up level.
17 Unfortunately, that peer review panel was never asked what
18 would be a good clean-up level.

19 In 2000, after the peer review panel shut that
20 down, they went back and proposed about six clean-up
21 levels ranging from doing nothing to clean-up the
22 background, which is what our argument was.

23 Unfortunately, despite this and despite actually
24 the regional Board members being somewhat open to a
25 protective clean-up, we never saw any real action.

1 In February 2001 -- this is another then-board
2 member, Jana Keller. "I was not surprised, like Laurie"
3 -- and that actually refers to Laurie Black, who's now a
4 Port commissioner, "I was shocked when I got this
5 recommendation in the mail."

6 And this recommendation was a recommendation from
7 staff to delay the clean-up. We've been dealing with this
8 issue for such a long time. It seems another stonewall.
9 I was ready to come here and go to option one for
10 background. That was again in February of 2001.

11 Instead, what happened was, the staff had
12 recommended to allow the shipyards to conduct their own
13 studies of the bay. The Bay Council, and I myself
14 personally, begged the regional board not to do this. We
15 said bring the money in this house, do an independent
16 study, don't -- this is, you know, classic fox in the
17 henhouse. Don't let the shipyards conduct their own
18 study. Unfortunately, in 2002, 2003, we saw continuous
19 delays. Interestingly, at the same time the regional
20 Board in 2003 adopted their own strategic plan which says,
21 we need to adopt the clean-up abatement by 2004, set back
22 by three years.

23 So in 2003, the shipyards did come out with their
24 study, and their study said, "Leave everything in place.
25 Natural attenuation. There is no impact on the benthic

1 community of fish populations."

2 Resource agencies say -- I put some of the quotes
3 up here. Essentially, they said the lease should be
4 rejected, the data reevaluated. NASSCO employs a heavy
5 bias. It's an interpretation of Fish and Game. They have
6 no help up there. So again, it's just proof positive that
7 this would a bungled process.

8 2004 was supposed to have, after this report,
9 clean-up levels. Another postponement, we actually could
10 have put a lot of postponements. We actually put it down
11 for you.

12 In 2005, we had sort of our hallelujah moment. In
13 April, the board finally releases a clean-up and abatement
14 order. And again, once again, in 2009, it looked like the
15 clean-up was just around the corner. And the clean-up and
16 abatement named eight responsible parties. It called for
17 the removal of 885,000 cubic yards of contaminated
18 sediment at a cost of 96 million. It essentially set
19 background levels for some contaminants and five times
20 background for others.

21 We have been fighting for full background, which
22 would cost about \$122 million and called for around
23 1.2 million cubic yards of dredging. But we still were
24 supportive of this clean-up level. I think we still
25 support it. It was called "Keystone of a Decade-Long

1 Effort to Restore the Bay," by the Union Tribune.

2 So once again, it looked in 2005 like we were
3 there.

4 Right around that same time, board member -- the
5 one who was still remaining -- Richard Wright, would like
6 to see the bay clean-up before he dies. I think he said
7 it as eloquently as anybody could.

8 Unfortunately, as soon as we got that clean-up
9 letter, we just saw another series of delays. In May of
10 2005, John Roberta said to wait for one month to have some
11 more hearings is not a major issue for us. Two and a half
12 years later, we're still waiting.

13 2006, again waiting, waiting. Electronic record
14 not complete. Another delay till November 2006.

15 2007, you know, just this kind of pattern goes on
16 and on. We were supposed to actually have the final
17 clean-up and abatement order and the final technical
18 report all issued before this hearing. I was actually
19 part of the timing.

20 One of the things that I wanted to point out --
21 I'm sorry. But that is in June of 2007, this June, we had
22 finally gotten tired of everything, and we coordinated the
23 Sediment Summit, and we brought, actually, USEPA; the
24 State Water Board; the chairman of the Board came down as
25 did State Lands staff; legislative offices, some of who I

1 think are here now or were here earlier; very important
2 commissioners, who unfortunately aren't able to attend.
3 It was a great session, and all these groups had actually
4 a much, much longer presentation. Very sympathetic,
5 understood, but again there was no action coming out of it
6 other than these hearings, which we appreciate.

7 The groups all specifically -- there's still the
8 mantra of deferring to the regional board. We're so
9 close, something we've been hearing for eight years now.
10 The one thing that has been missing throughout this debate
11 is leadership.

12 So where we are today, while we've had the
13 clean-up, the tentative, or revised clean-up and abatement
14 order at least in September, two of the responsible
15 parties are eliminated. The technical report, at least
16 the aspects that are complete, are finally online, because
17 we passed the regional Board hearing; we were granted
18 that. But again, we're still waiting for, at best if the
19 regional board meets every single deadline, we will not
20 have a hearing for another 255 days. Then it would go for
21 a State Water appeal. Then it would go to litigation,
22 almost certainly. And this is assuming not a single
23 deadline is missed.

24 And if there's one thing I've learned in eight
25 years of this battle is, this Board has not met a deadline

1 that it actually could meet. So I think we're still years
2 away from any kind of clean-up plan.

3 So what is the cost of delay? Well, we've already
4 talked about the loss of institutional knowledge. And no
5 Board members from the '99 actions -- and only one has any
6 experience. Costs keep going up. The impairments to
7 fishing and recreation are still there. The public health
8 threat remains, and we still have the degradation of a
9 Public Trust resource.

10 Again, a quote from Roberta. I kind of hate using
11 these against him, but not much on this issue. "NASSCO
12 and Southwest Marine were supposed to clean up their
13 sediments, voluntarily, years ago. So when these clean-up
14 levels are determined this year, I am going to issue
15 clean-up orders." You don't have to guess the year. It
16 was March 2, 2001, six and a half years ago.

17 Public Trust. I know it's been a long day. I
18 will run through this. I think you all know what the
19 Public Trust is, and it's your responsibility to show it
20 equally by State Lands, the Water Board, and the Port. I
21 will remind you, I think, you know your mission is to
22 protect the Public Trust including fisheries and
23 recreation, something not being met.

24 Again, 2006, you guys adopted a resolution, which
25 is why we're here today, to hear an update. And at that

1 time the resolution called for the expeditious and
2 protective clean-up of the bay, and it's something we're
3 still waiting on.

4 The Port, again -- to protect and preserve,
5 including plants and animal life and quality of the water
6 in the bay. Something not being met.

7 State Board also bears Public Trust
8 responsibility. However, State Lands owes no deference to
9 the Board's decision. You guys can take this over, if you
10 want.

11 So what can you do today? Why is it your
12 responsibility to protect the Public Trust resources?
13 Normally, I would have a much more specific "ask." And
14 there's obviously a draft letter that's out there and
15 we're very supportive of that going out. We don't have a
16 specific "ask." We've thrown out to you and done some
17 research as far as what some of the options could be.

18 You, State Lands, can issue an immediate clean-up.
19 You could require the Port of San Diego to undertake the
20 clean-up. You could require the PRPs to commence the
21 clean-up. In the second instance with the port, or the
22 first instance, you could go after the PRPs for the cost
23 share after the clean-up.

24 But rather than saying one thing that State Lands
25 can and should do, I just wanted to note, frankly, that we

1 are at the mercy of this agency, to show the leadership
2 that has been lacking on this issue ever since I've been
3 involved. The kind of leadership that this agency has
4 shown in the past, for example, in the BHP terminal or
5 some of the commissioners have shown on other issues, like
6 the marine debris issues.

7 Where we stand today, the regional board -- God
8 bless Frank. I don't think most of the mess is -- none of
9 the mess is his fault -- they demonstrated a level of
10 incompetence on this issue that is almost beyond belief
11 and can't expect them to all of a sudden turn this around
12 in the next few days, few weeks, or few months, and get a
13 clean-up plan, you know, despite that tendency to say,
14 "Oh, we're so close this time."

15 The Port, you know, again, we applaud what they
16 did on reposting the bay, but they are essentially
17 whistling by the graveyard. They haven't been named as a
18 PRP. They kind of hang low, and hope to God nobody points
19 a finger at them. They really haven't shown the
20 leadership they really need to show.

21 The federal and state agencies, the legislative
22 offices, that we got together at the summit, they all sat
23 there and they were all sympathetic and they all point to
24 what a great problem and they all want to adopt
25 resolutions. But none of them are going to take actual

1 actions to clean up the bay.

2 And one of the -- when we were talking and working
3 with staff on this, one of the things that I heard was,
4 well, we're sympathetic. It's really the regional board's
5 decision, and we're really sympathetic with these
6 agencies. And, you know, I can understand where the Port
7 is coming from in deference.

8 And my response, and my response today, is, I
9 understand that too. I mean, I understand, this is an
10 expensive clean-up and there are a lot of priorities. My
11 sympathy is with those people who go out and fish the
12 pier, that are putting their kids and their wives and
13 their unborn children at risk. My sympathy is with the
14 environment of San Diego Bay that has been degraded we
15 know for decades, without any action.

16 So how long must we live with this toxic bay? The
17 question is largely answered by you and what this agency
18 does today and whether you are willing to show the
19 leadership that frankly nobody else has demonstrated yet
20 on this issue.

21 Thank you very much.

22 COMMISSIONER CHIANG: Thank you.

23 EXECUTIVE OFFICER THAYER: Next up we have -- are
24 there any questions of Mr. Reznik?

25 We have the representatives of the Port here. And

1 I wanted to -- I believe we have both the chair, Ms. Rios,
2 and Dan Wilkens, who's the executive vice president and
3 who dealt with both of these officials for a long time and
4 a lot of mutual issues, including this one. And I wanted
5 to thank them, as well, for showing us the hospitality of,
6 once again, allowing us to use this board room, which has
7 been a great asset for us. It's allowed us to come down
8 here more often, I think, in the last five years than in
9 the twenty years before that.

10 MS. RIOS: Good afternoon, commissioners. Thank
11 you so much for inviting us to speak. I am Sylvia Rios,
12 the chair of the Board of Port Commissioners. And again,
13 I would like to welcome you to San Diego and to our board
14 room. It's a pleasure having you here so you can come
15 back as many times as you like.

16 Today the Port has a presentation for you
17 regarding the San Diego Bay sediment pollution prevention.
18 My remark will be followed by Dan Wilkens, executive vice
19 president of the Port, and David Merk, director of
20 environmental services. At the conclusion of this
21 presentation, I will be available for questions.

22 The history of the mission in San Diego Bay is a
23 long way. It is true. Up until the 1950s, the San Diego
24 Bay was a depository for untreated industrial, household,
25 and human waste. Large bodies of diverse types and

1 concentrations of industrial waste were discharged
2 directly into the bay. The region's trash was burned in
3 large quantities at the foot of 8th Avenue. And the burn
4 ash was laden with heavy metals, dumped into the adjacent
5 bay water.

6 This continued into the 1940s and 1950s, finally
7 ceasing in 1959, when Miramar Landfill opened. The
8 region's sewage was discharged, untreated, into the bay
9 until the early 1960s, when this continued in 1963 when
10 the San Diego Metropolitan Sewage System in Point Loma
11 opened. So as you can see, just 40 years ago, our region
12 treated San Diego Bay rather badly.

13 A lot of good things have happened since, I am
14 happy to say. Beginning in 1972 with the passage of the
15 Clean Water act, all industries discharging waste into the
16 bay were required to obtain NPDES permits. This
17 essentially prohibited uncontrolled industrial discharges
18 into the bay. The remaining legal discharges in San Diego
19 Bay are storm water, urban runoff, aerial deposition, and
20 incidental sources. I am only going to address storm
21 water/urban runoff, because by all accounts, this is the
22 number one cause of the condition in San Diego Bay.

23 Urban runoff is the water that flows from land to
24 the end point of discharge. Urban runoff may be from
25 rainfall or from irrigation or from commercial activities.

1 The San Diego Bay watershed is more than 400 square miles
2 in size and extends to points more than 50 miles inland
3 from the bay. The San Diego Bay is the end point for
4 urban runoff from within this vast watershed. Rivers and
5 creeks carry runoff from upstream areas to more than 200
6 storm drains and continues. Runoff carries the discharges
7 into San Diego Bay.

8 As urban runoff flows into the bay, it carries
9 with it all the contamination that accumulates along this
10 course. This contamination is not insignificant and can
11 include pesticides, petroleum products, heavy metals, and
12 a plethora of other substances. It is reasonable to
13 conclude that storm water/urban runoff is now the most
14 significant contributor of contamination into San Diego
15 Bay. It is also reasonable to conclude that ongoing
16 contamination from urban runoff must be resolved in order
17 to effectively address the sediment contamination in this
18 area.

19 To do so otherwise, it is simply -- to simply
20 spend large amounts of money cleaning sediment of the bay
21 only to find that stormwater runoff from upland sources
22 has over time recontaminated the same area that has just
23 been cleaned. This cycle will be repeated over and over
24 with enormous sums of public and private money spent on a
25 very small change in the condition of the sediment and the

1 bay itself.

2 We think we have arrived at a better strategy,
3 working collaboratively with the regional board, tenants,
4 and stakeholder groups.

5 In 1999 the Board of Port Commissioners embarked
6 on an aggressive and ambitious effort to stem the flow of
7 urban runoff into San Diego, through the adoption of the
8 Port of San Diego Urban Runoff Action Plan, URAP. The
9 URAP preceded the adoption of the Regional Water Quality
10 Control Board's Municipal Stormwater Ordinance in 2001.
11 In this response to the municipal stormwater permit, the
12 Port developed a jurisdictional urban runoff management
13 program and a watershed urban runoff program that outlines
14 activities conducted by the Port to effectively manage
15 urban runoff.

16 The JURMP focuses on activities conducted within
17 the Port's jurisdiction, whereas the WURP addresses
18 stormwater management in collaboration with all other
19 cities within the San Diego Bay Watershed. The Port is
20 the lead agency for San Diego Bay Watershed.

21 I would also like to remind you that we have just
22 gone through a horrific fire, one of the most horrific
23 fires in the history of San Diego. And this fire has
24 caused an incredible amount of pollution throughout our
25 whole county. And so this is another consideration is

1 what's going to happen to all this ash and all this
2 pollutants that are in the air and are sitting on the
3 rooftops, are sitting in our windowsills, are sitting on
4 our patio furniture. How much of this will inadvertently
5 end up in our San Diego Bay?

6 So as you can see, there are some things that we
7 can't control. But controlling the urban runoff has to be
8 one of our priorities.

9 And now I would like to ask Dan Wilkens to brief
10 you on the Port staff implementation of the board's policy
11 directives regarding stormwater and urban runoff.

12 Thank you.

13 MR. WILKENS: Thank you, Chair Rios.

14 I will be brief in deference to the hour. We
15 understand the frustrations that's being expressed here.
16 And frankly, what we've been trying to do very quietly is
17 work our way through these issues. And certainly, from
18 the standpoint of what your staff is recommending to you,
19 from our perspective, to the Port staff, that's a
20 reasonable approach. We stand ready to try to do that
21 change and try to go through these processes.

22 In a way, though, we're in the middle of a due
23 process point of view. And there are voices here. I
24 don't know if they'll speak today or not, but those would
25 be the shipyards.

1 Very quickly, as you heard, 200 storm drains,
2 unlike San Francisco Bay, they don't go through the sewage
3 system. They will go directly, untreated, into the bay.
4 The storm drains and conveyances are not always attached
5 to our tenants. As a matter of fact, our investigations
6 and our annual inspections indicate that our tenant
7 stormwater systems, including these shipyards, no longer
8 have stormwater that goes into the bay. The catch for
9 that drain is that water on site is stored in tanks and
10 then you have to treat it and take it off site or treat it
11 and discharge it into the sewer system. That's the first
12 point I wanted to make.

13 The second point I wanted to make is that we work
14 collaboratively not only with the Water Quality Control
15 Board but other appropriate jurisdictions in here, because
16 large pollutant loads are coming from upland sources. We
17 spend an inordinate amount of time, money, and staff
18 resources in joining with the cities and counties of our
19 region to educate the public. And there's something
20 called the "Think Blue" campaign. There's ads on the
21 media about it. There's a number of things about not
22 polluting. And we've even gone so far as to work with
23 those jurisdictions where we allow storm drains. It's
24 a -- don't pollute because the runoff goes into San Diego
25 Bay.

1 Having said all of that, at this point in time, I
2 would slightly differ with Bruce's characterization to
3 really hunker down, trying not to get in the way of the
4 bullets, if you will. There's a role for which we can do.

5 We are a landlord. We're not a regulatory agency. We
6 are governed by that. I don't say that with any
7 particular whininess to it, if you will, but we are a
8 landlord. We have certain things that we can and cannot
9 not do with our tenants, just as you, as landlord for the
10 State of California, have certain things that you can and
11 cannot do. We have to let this process, albeit as
12 frustrating as it might be, go forward until it gets to
13 some final resolution. At that point in time, as a
14 landlord, we can step in and ask our tenants to obey that
15 law, once that due process has run its course.

16 At this point, based on all of our analysis, we
17 don't know what else we can do except what we're doing
18 quietly behind the scenes and trying to find some level of
19 a solution here. We still are hopeful that maybe there's
20 a solution out there, and we stand, ready to act as a
21 catalyst.

22 Finally, I think there's a couple of things I just
23 need to say -- and pardon the commercial about us -- and
24 that is, we support the Water Board's efforts. We support
25 the clean-up and abatement order through whatever process

1 we end up doing here.

2 Having said every bit of that, my main focus is on
3 that urban runoff plan and the stormwater that bring the
4 pollutants into the bay.

5 And we would be happy to answer any questions you
6 might have.

7 Thank you.

8 EXECUTIVE OFFICER THAYER: And that concludes
9 their presentation. There are likely to be members of the
10 public who I think have signed up to speak.

11 COMMISSIONER CHIANG: Okay.

12 EXECUTIVE OFFICER THAYER: Unless there are
13 questions, of course.

14 Tell you what, why don't we just take people who
15 would like to speak.

16 MR. VEEN: Good afternoon. My name is Shawn Veen.
17 I'm representing Assemblymember Lori Saldana. And I would
18 just like to read a statement on her behalf:

19 "I would like to take this opportunity to request
20 the California State Lands Commission to take the lead in
21 a long, overdue, clean-up of San Diego Bay. I believe
22 that the SLC has both a duty and the authority to protect
23 these public tidelands and their natural resources for the
24 citizens of California. The sediment contamination of San
25 Diego Bay is a threat to the people that live and visit

1 San Diego.

2 "PCBs, PHs, metals, and mercury are some of the
3 toxic materials in the sediment that affect the entire
4 food chain. Although the environmental community has been
5 advocating for a clean-up of the bay sediment for many
6 years, no governmental body has made a serious effort to
7 remedy a century of industrial pollution.

8 "A clean-up can repair some of the damage and
9 sediment, a primary step to reestablishing San Diego Bay
10 as a healthy asset for our region.

11 "Again, I respectfully request that the SLC take a
12 proactive role in partnering with the Regional Water
13 Quality Control Board and the Port of San Diego in
14 creating a plan to clean up the sediment in San Diego Bay
15 and to protect these valuable assets from future
16 pollution.

17 "If there is anything I can do to assist you in
18 these efforts, please contact me or my staff at (619)
19 645-3090.

20 "Sincerely, Lori Saldana, 76 District."

21 Thank you.

22 COMMISSIONER CHIANG: Thank you, Shawn.

23 Next we have Frank Melbourn.

24 EXECUTIVE OFFICER THAYER: He already spoke. He
25 was the Port gentleman.

1 COMMISSIONER CHIANG: Shaun Haluax, BAE Systems.

2 UNIDENTIFIED MALE: Not here.

3 COMMISSIONER CHIANG: Okay.

4 Brigette Browning?

5 MS. BROWNING: Hello. My name is Brigette

6 Browning. I am the president of UNITE HERE Local 30, the
7 hotel workers union here in San Diego. We represent about
8 4,000 workers.

9 Because of the recent fires and demanding work
10 schedules, I'm here to speak on behalf of our members who
11 regularly fish in San Diego Bay for both recreation and as
12 a means to provide food for their families.

13 We're grateful for the vigilance and care with
14 which State Lands Commission protects our cover of
15 tidelands and maintains accessibility.

16 While some citizens practice catch and release,
17 many of our members customarily eat the fish that they
18 catch. And until the big contamination issues are
19 addressed, these people will continue to be unnecessarily
20 exposed to persistent toxic chemicals. In this way, we
21 feel that the community has been denied complete access to
22 a resource that is rightfully ours.

23 A failure to proceed with the clean-up in a timely
24 manner has the direct impact on the health and safety of
25 the working community as well as undermines the physical

1 beauty of our region, which in turn affects the tourism
2 industry. We urge the State Lands Commission to take a
3 leadership role, along with the Port, in restoring the bay
4 so it is once again a safe and healthy resource for the
5 people of San Diego.

6 Thank you very much for your time.

7 COMMISSIONER CHIANG: Thank you.

8 Laura Hunter?

9 UNIDENTIFIED MALE: She had to leave.

10 COMMISSIONER CHIANG: Okay. That's it.

11 EXECUTIVE OFFICER THAYER: We're open to questions
12 again.

13 Staff has worked with this directly with some of
14 the other citizens who have been very active on this
15 issue.

16 One of the slides showed three different options
17 that were also conveyed to us several months ago. There's
18 things that we would have preferred that included things
19 like the State Lands Commission initiating the clean-up or
20 requiring the Port to carry out the clean-up. We took
21 those suggestions seriously and consulted with the
22 Attorney General's Office as well as our own attorneys to
23 see what was available to us. And we find ourselves in a
24 position of not liking the result, but nonetheless we
25 don't have the skills or the expertise to take on water

1 quality issues like this. And that in order for us to get
2 involved in this litigation, we would have to have both of
3 those things.

4 The written record of the regional board is over
5 200,000 pages long. And some of that may be overkill, but
6 when you think about the necessity of proving the damage
7 occurs from this contamination, it can be proved, but it's
8 tremendously technical. I think Bruce would agree.

9 And then the issue of attaching liability to
10 companies who may not want to pay for the contamination
11 that's occurred and establishing the legal justification
12 for going out and doing that, it's not a simple thing to
13 do.

14 I'm not justifying how long the Water Board is
15 taking. I am merely saying that if we were to start to
16 get involved with that from day one, we would not catch up
17 with the Water Board so as they have been....

18 So we don't see a way, clear, to the State Lands
19 Commission taking those on.

20 We do agree with the people who have testified
21 today that this is an issue that affects Public Trust
22 resources. And if there are different ways that we can
23 assist you in bringing this issue forward, we'll be glad
24 to do it. That's why we're having this hearing today, to
25 adopt a resolution. These are pieces of paper. And it's

1 frustrating in terms of not contributing directly to the
2 actual clean-up. But given our responsibilities here and
3 our abilities, we have a lot of limitations.

4 COMMISSIONER CHIANG: Okay.

5 EXECUTIVE OFFICER THAYER: And so -- I'm sorry, I
6 should have said, and so our staff recommendation is to
7 write a letter to the Port, which the public interest
8 groups have reviewed and had a lot of input on, and the
9 Port as well, indicating our concerns and urging the Port
10 to do everything it can to be ready to implement the
11 clean-up and abatement order.

12 ACTING COMMISSIONER BUGSCH: Just a quick comment.

13 I think we agree with the assessment, Mr. Reznik
14 points out the long timeline of this very clearly -- this
15 is dragging on and on and on. I'm not sure at this point
16 that we see that there's a due process issue and once this
17 gets done it's going to run its course. And I don't know
18 that there's that much more in terms of extreme measure
19 that is we can really do to accelerate the process.

20 We'll continue to explore other possibilities for
21 doing that and to be creative about doing what everybody
22 wants speeding up this process, so that the legacy of
23 toxic sediment in San Diego Bay gets clean up in quick a
24 fashion as possible.

25 I think everybody's -- along those lines, it

1 hasn't happened. It's sad to see that timeline, to see
2 all that. And I'm sure Mr. Reznik will add our quotes to
3 the litany of other quotes that were up there. And
4 hopefully it's not coming back to bite us a decade from
5 now and we're much further on in the process, but, you
6 know, history has proved itself that it hasn't. So we'll
7 continue to work with the parties involved.

8 I would like to make a motion at this point to
9 approve the letter from the commission that has been
10 drafted with one change in it from a quest to
11 insist regarding the quarterly reports. That one sentence
12 is clear. I got it right here.

13 COMMISSIONER CHIANG: I will second that.

14 Does the staff have any additional
15 recommendations?

16 EXECUTIVE OFFICER THAYER: No. At this point
17 we'll continue to work with Bruce and I'm sure he will let
18 us know if there's some opportunity to be more of a gadfly
19 on this.

20 But I think we can also see from the Water Board,
21 their testimony, this is not a simple issue; this is
22 enormously complex.

23 And I think both Mr. Reznik and the Water Board,
24 both are ruing the next step, which is going to be the
25 litigation. And who knows how long that's going to take.

1 ACTING COMMISSIONER BUGSCH: And we don't have --
2 I think we also would like to have -- Commissioner Sheehan
3 had communicated, you know, regular reports at our
4 Commission hearings as to the status of this from the Port
5 as our tenant, or landlord, rather, and to have that done.
6 I mean, I think the process will be an initiated, and
7 hopefully by our meeting on December 3rd have started the
8 clock ticking on that process.

9 EXECUTIVE OFFICER THAYER: We will revise the
10 letter, as you suggested, and send it around to the
11 commissioners' offices so it can be signed by all the
12 commissioners.

13 COMMISSIONER CHIANG: Very good. So we have a
14 motion and a second. Without objection, motion passes.

15 ACTING COMMISSIONER BUGSCH: Second.

16 COMMISSIONER CHIANG: Is that a second?

17 EXECUTIVE OFFICER THAYER: I think we're done
18 with the regular items.

19 We have one more request to speak during the
20 public comment period. I think Ms. Browning has
21 something.

22 COMMISSIONER CHIANG: Very good.

23 MS. BROWNING: Okay. I will be very brief.

24 We wanted to bring up to you about the Lane Field
25 project and Sam Hardage, who is the founder of Woodfin

1 Suites. We have come to you before to speak about
2 timeshares on Public Trust lands, and you agreed with us
3 and wanted the Port of San Diego -- that you would not
4 support the development of timeshares and other partial
5 ownership hotels on public tidelands.

6 We believe that the Port is positioning itself to
7 approve another timeshare proposal on public tidelands,
8 along with Mr. Hardage.

9 Mr. Hardage has a history of violating local law
10 as well as the Public Trust Doctrine.

11 The Port is supposed to have Hardage develop and
12 operate prime waterfront property along the bay.
13 Hardage's proposal also calls for over 82,000 square feet
14 of retail space that will even be prohibited on public
15 tidelands.

16 We are asking that the State Lands Commission
17 utilize its oversight function and review the actions of
18 the Port of San Diego in naming Langfield Development as
19 developer.

20 Thank you so much.

21 COMMISSIONER CHIANG: Thank you. We'll have staff
22 look into that.

23 EXECUTIVE OFFICER THAYER: We'd be glad to do
24 that.

25 COMMISSIONER CHIANG: Very good.

1 EXECUTIVE OFFICER THAYER: On that subject, let me
2 also report that as we've talked about in the past, the
3 State Lands Commission has found that the Woodfin proposal
4 for timeshares appear to be inconsistent with the Public
5 Trust Doctrine. That matter will be heard before the
6 Coastal Commission in two weeks. And I will be going,
7 representing the State Lands Commission.

8 Thank you.

9 COMMISSIONER CHIANG: Thank you.

10 EXECUTIVE OFFICER THAYER: On that, we're ready to
11 adjourn at this time, although we have one last closed
12 session.

13 COMMISSIONER CHIANG: Closed session. Should we
14 go into the closed session then?

15 EXECUTIVE OFFICER THAYER: Yes. So we'll do it
16 right here. Just clear the room here. We can adjourn
17 now.

18 (The State Lands Commission meeting
19 adjourned at 4:30 p.m.)

20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
4 of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Lands Commission meeting was
7 reported in shorthand by me, Kathryn S. Swank, a Certified
8 Shorthand Reporter of the State of California, and
9 thereafter transcribed into typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand this
14 11th day of November, 2007.

15
16
17
18
19
20
21
22
23 KATHRYN S. SWANK, CSR
24 Certified Shorthand Reporter
25 License No. 13061