

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM, SECOND FLOOR
1001 I STREET
SACRAMENTO, CALIFORNIA

THURSDAY, FEBRUARY 25, 2010

9:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Doreene D'Adamo

Mr. Ronald O. Loveridge

Mrs. Barbara Riordan

Mr. Ron Roberts

Dr. John Telles

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Ms. La Ronda Bowen, Ombudsman

Mr. Tom Cackette, Chief Deputy Executive Officer

Mr. Bob Fletcher, Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Ms. Lynn Terry, Deputy Executive Officer

Ms. Lori Andreoni, Board Clerk

Ms. Breanne Aguila, Staff, Program Operation Section,
Office of Climate Change, OCC

Ms. Sarah Carter, Staff Air Pollution Specialist,
Low-Emission Vehicle Implementation Section, Mobile
Sources Control Division, MSCD

APPEARANCES CONTINUED

STAFF

Mr. Harold Holmes, Manager, Engineering Evaluation
Section, Stationary Sources Division

Mr. Dave Mehl, Manager, Energy Section, Stationary Source
Division, SSD

Mr. Brian Turner, Assistant Executive Officer
(Washington, D.C.)

ALSO PRESENT

Ms. Anna Arridla

Ms. Barbara Baird, SCAQMD

Mr. Mike Barr, Association of American Railroads

Mr. Will Barrett, American Lung Association

Ms. Kate Beardsley, PG&E

Ms. Julie Becker, Alliance of Automobile Manufacturers

Mr. Luke Breit, Forests Forever

Ms. Susie Berlin, McCarthy & Berlin, LLP; Northern
California Power Agency

Ms. Sylvia Betancourt, CCAEJ

Ms. Maria Birrueta, CCAEJ

Mr. John Cabaniss, Association of International Automobile
Manufacturers

Mr. Steve Carlson, CTI

Ms. Sofia Carrillo, Coalition for a Safe Environment

Mr. Matthew Copa, Southwall Technologies

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Tom D'Augostino, Solatia

Mr. Steven Douglas, Alliance of Automobile Manufacturers

Mr. Don Duffy, Placer County APCD

Mr. Michael Endicott, Sierra Club

Mr. Jim Feichtl, Sierra Club

Mr. Tony Francois, Exatec, LLC

Mr. Rudi Flores, CCAEJ

Mr. James Gallagher, Transportation Corridor Agencies

Ms. Josei Gaytan, CCAEJ

Ms. Megs Gendreau, CCAEJ

Mr. Gary Gero, Climate Action Reserve

Mr. Peter Greenwald, SCAQMD

Mr. Joe Gregorich, Tech America

Ms. Barbara Haya, University of California

Ms. Bonnie Holmes-Gen, American Lung Association

Ms. Jamie Knapp, Clean Cars Coalition

Ms. Marisela Knott

Mr. Gideon Kracov

Ms. Graciela Larios, CCAEJ

Mr. Jeff Leecox, American Medical Response

Ms. Carol Livingston, CSSA

Mr. Angelo Logan, East Yard Communities for Environmental Justice

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bob Lucas, Lucas Advocates

Mr. Bill Magavern, Sierra Club CA

Mr. Kirk Marckwald, California Railroad Industry

Mr. Paul Mason, Pacific Forest Trust

Mr. Daniel Mata, East Yard Communities for Environmental Justice

Mr. Nathan Mata, East Yard Communities for Environmental Justice

Mr. Duncan McFetridge, MTC

Mr. Gavin McHugh, Crime Victims United

Mr. Bruce McLaughlin, Offsets Working Group

Mr. Guillermo Merin, East Yard Communities for Environmental Justice

Ms. Lily Mitchell, SCPA

Ms. Wendy Mitchell, Pacific Gas & Electric

Mr. Ralph Moran, BP America

Mr. Brian Nowicki, Center for Biological Diversity

Mr. Timothy O'Connor, EDF

Ms. Payal Parekh, International Rivers

Ms. Vivian Parker, Center for Sierra Nevada Conservation

Ms. Cindy Parsons, LADWP

Ms. Michelle Passero, The Nature Conservancy

Mr. Fred Paul, Eaton

Mr. Shankar Prasad, Coalition for Clean Air

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Isella Ramirez, East Yard Communities for Environmental Justice

Ms. Tamara Rasberry, Sempra Energy

Ms. Betsy Reifsnider, Catholic Charities

Ms. Maria Reyes, L Baca

Ms. Susan Robinson, Ebbetts Pass Forest Watch

Ms. Erin Rogers, Union of Concerned Scientists

Mr. Mike Rogge, CMTA

Ms. Kristina Santana, East Yard Communities for Environmental Justice

Mr. Dick Schnacke, Transcore

Mr. Mark Stehly, BNSF Railway Co.

Ms. Shelly Sullivan, AB 32 Implementation Group

Mr. Dan Taylor, Audubon California

Mr. James Tribble, Sekisui S-Lec America

Mr. Tim Tutt, SMUD

Ms. Lupe Valdez, Union Pacific RR

Mr. Nico Van Aelstyn, Carbon Offsets Providers Coalition

Ms. Jocelyn Vivar, East Yard Communities for Environmental Justice

Mr. Barry Wallerstein, South Coast AQMD

Mr. Michael Wang, WSPA

Ms. Peggy Willett, 3M Company

Ms. Marilyn Woodhouse, Sierra Club

Mr. Victor Yamada, SCE

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1 PROCEEDINGS

2 CHAIRPERSON NICHOLS: Welcome, everyone.

3 Before we begin our formal meeting and take the
4 role, we usually start our day with the Pledge of
5 Allegiance to the flag. So if everyone would please stand
6 and face the U.S. flag.

7 (Thereupon the Pledge of Allegiance was
8 Recited in unison.)

9 CHAIRPERSON NICHOLS: Thank you.
10 The clerk will please call the roll.

11 BOARD CLERK ANDREONI: Dr. Balmes?

12 BOARD MEMBER BALMES: Here.

13 BOARD CLERK ANDREONI: Ms. Berg?

14 BOARD MEMBER BERG: Here.

15 BOARD CLERK ANDREONI: Ms. D'Adamo?

16 BOARD MEMBER D'ADAMO: Here.

17 BOARD CLERK ANDREONI: Mr. Kennard?

18 Mayor Loveridge?

19 Mrs. Riordan?

20 BOARD MEMBER RIORDAN: Here.

21 BOARD CLERK ANDREONI: Supervisor Roberts?

22 BOARD MEMBER ROBERTS: Here.

23 BOARD CLERK ANDREONI: Professor Sperling?

24 Dr. Telles?

25 BOARD MEMBER TELLES: Present.

1 BOARD CLERK ANDREONI: Supervisor Yeager?

2 BOARD MEMBER YEAGER: Here.

3 BOARD CLERK ANDREONI: And Chairman Nichols?

4 CHAIRPERSON NICHOLS: Here.

5 BOARD CLERK ANDREONI: Madam Chair, we have a
6 quorum.

7 CHAIRPERSON NICHOLS: Thank you.

8 A couple of announcements before we get started.

9 I understand that there may be some people who
10 wish to speak later today who would like to use
11 translation services. We do have translators available in
12 Spanish for anyone who needs it. There are headsets
13 outside the hearing room at the attendant sign-up table.

14 Is the translator here to just make that
15 statement in Spanish?

16 (Thereupon the announcement was translated
17 into Spanish.)

18 CHAIRPERSON NICHOLS: Thank you very much.

19 Anyone who wishes to testify on agenda items
20 other than those that are on the consent calendar should
21 sign up with the staff outside this auditorium. The
22 listing of your name is optional, but it helps us to
23 organize the speakers obviously if we know who to call on.

24 The Board will be imposing a three-minute time
25 limit on all speakers. We appreciate it if you would

1 state your name, first and last, when you come up to the
2 podium, but then put your testimony in your own words
3 rather than reading it. If you have written testimony,
4 it's much easier for the Board to follow if you go
5 straight to your main points. And if you do have written
6 testimony, it will be entered into the record.

7 I'd like to point out the emergency exits at the
8 rear of the room. In the event of a fire alarm, we're
9 required to evacuate this room immediately and go down the
10 stairs and outside the building until there is an
11 all-clear signal sounded, and then we come back into the
12 room.

13 I have one other item I wanted to announce this
14 morning in terms of the agenda. And that is that we do
15 have listed on today's agenda an open comment period for
16 anyone who wishes to come address the Board on any topic
17 not on the agenda. And we will be taking that item today,
18 but not at the end of the meeting, because at the end of
19 the meeting we intend to break and immediately go to a
20 reception for our Haagen-Schmidt awardees. So if there is
21 anyone who is listening or watching this on their
22 computer, please be aware that we will take up the public
23 comment period at about 11:30 this morning.
24 And I think that's it as far as opening announcements are
25 concerned.

1 So, Mr. Goldstene, I'll turn to you for any
2 announcement.

3 EXECUTIVE OFFICER GOLDSTENE: I think the first
4 item is the consent item.

5 CHAIRPERSON NICHOLS: Okay. So our practice is
6 to put research items on a consent calendar which can be
7 moved at all once, unless any member of the Board wishes
8 to take any item off of the consent calendar and have it
9 discussed.

10 Are there any Board members who wish to discuss
11 any of the items here?

12 BOARD MEMBER RIORDAN: Madam Chairman, I don't
13 have a wish for discussion, but I'd be happy to move the
14 resolutions that go with those research proposals.

15 CHAIRPERSON NICHOLS: Thank you. We can move
16 them as a group then.

17 BOARD MEMBER BALMES: Second.

18 CHAIRPERSON NICHOLS: Seconded.

19 All in favor please say aye.

20 (Ayes)

21 CHAIRPERSON NICHOLS: Any opposed? Thank you.

22 The second item, which was also here for consent,
23 was the approval of the Coachella Valley PM10
24 redesignation request and maintenance plan. This has been
25 apparently thoroughly vetted at the local level, and I

1 believe there was no one who indicated a desire to come in
2 and testify on this item.

3 If I'm wrong about that, please let me know. If
4 not, then I think we can just have a motion on that one as
5 well.

6 BOARD MEMBER BERG: Madam Chair, I'll go ahead
7 and move this item and also would like to say
8 congratulations as we are moving a district into
9 attainment.

10 BOARD MEMBER RIORDAN: I'll second the motion.

11 CHAIRPERSON NICHOLS: All right. All in favor
12 please say aye.

13 (Ayes)

14 CHAIRPERSON NICHOLS: Any opposed?

15 Great.

16 Now we move into regs that do require or invite
17 some discussion, and we'll start with our Ombudsman, La
18 Ronda Bowen, who wants to give us a report of what's going
19 on with her office.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 OMBUDSMAN BOWEN: Thank you, Madam Chair and
23 Board members.

24 I want to give you a quick update with what's
25 happening with the Office of Ombudsman. And thank you for

1 stakeholders. And so you can see that we've been finding
2 ways to listen to small business owners better. We're
3 introducing ourselves to them. We're doing more proactive
4 outreach. We reached out to over 300 business
5 associations, chambers of commerce. And we believe that
6 key to ensuring the integration of small business
7 perspectives with CARB policies is this communication
8 part.

9 --oOo--

10 OMBUDSMAN BOWEN: As we continue with the
11 stakeholder engagement and outreach part, we're doing more
12 face-to-face meetings. One of the things that our staff
13 did was in support of the Cool California small business
14 toolkit get out and actually visit small businesses, knock
15 on their door, meet them, ask them, "Does this tool work
16 for you," and what's working and what's not working?

17 We know that in addition to our businesses,
18 others around the world are interested in what this agency
19 is doing. And so we have facilitated foreign delegations,
20 22 from 10 countries.

21 And further, we support the education.
22 California teachers are very interested in what we do.
23 They like having environmental programs for their classes.
24 And so we have been supporting the K through 16 teachers
25 by providing air pollution information in classes.

1 --o0o--

2 OMBUDSMAN BOWEN: We also continue with the
3 traditional Ombudsman services: The Board meetings,
4 that's why staff is out there helping; we answer
5 complaints and hotlines and e-mails. We have about 15,000
6 calls. For example, we're starting a tracking program.
7 We had about 15,000 calls that came in recently over the
8 past six months.

9 --o0o--

10 OMBUDSMAN BOWEN: We think that all this work
11 should be integrated into the policies that the Air
12 Resources Board does. And so we are being very proactive
13 as a conduit for bringing the information from our
14 external customers to our internal customers by sharing
15 the insights that we gain from our outreach, our
16 compliance assistance, and our stakeholder engagement
17 activities.

18 The response from the staff have been very
19 positive. In the past six months, they've helped with
20 regulatory adjustments aimed at reducing the burdens on
21 sources. And we have participated in coordinated
22 statewide efforts to help provide funds to businesses both
23 to exceed and meet regulatory requirements.

24 We have seen an increased interest from business
25 organizations, people, and other agencies. People calling

1 us saying, "We want to work with you. How can we work
2 collaboratively?" We think that bodes well for
3 California. And we have people calling for consultation.
4 We would like to figure out how we can make the regulatory
5 process more effective and how we can actually make the
6 economic opportunities more visible.

7 --o0o--

8 OMBUDSMAN BOWEN: So as we think about the next
9 steps that we want to take in this office, we are looking
10 to identify a group of small business leaders who will
11 help us as we identify new ways to enhance stakeholder
12 engagement, as we identify new ways to support compliance
13 assistance, and as we enhance the communication of this
14 office with all of our stakeholders.

15 We want to increase coordination and
16 collaboration with others. And we want to identify and
17 recognize the economic opportunities in our policies and
18 regulations.

19 --o0o--

20 OMBUDSMAN BOWEN: So just want to conclude by
21 saying to you that we will continue to work to improve the
22 communication and the service that we provide to all
23 stakeholders, but we're focused on small business right
24 now. And those are the staff members that are available
25 to work in this program.

1 We have reorganized ourselves so that we're
2 divided by topic areas as well as geography so that we can
3 get to know the actual neighborhoods, if you will, that
4 this agency serves throughout California.

5 That concludes my presentation.

6 CHAIRPERSON NICHOLS: Thank you very much.

7 I let La Ronda just jump into doing her
8 presentation this morning, because I thought it might be
9 better if she did just the facts presentation before I
10 said much more about her.

11 But I know I introduced her when she arrived a
12 little bit ago, but I just want to reiterate that bringing
13 in a new Ombudsman -- and this is a politically appointed
14 position she occupies -- is something that was done with a
15 lot of thought, both on my part and the agency and the
16 Governor's office that strengthening our relationships and
17 our outreach, particularly to small business stakeholders,
18 but to all stakeholders as well is something that the Air
19 Resources Board very much needed to do, particularly with
20 all of the controversy that swirls around our activities.

21 The fact is that, you know, as a powerful
22 regulatory agency, we are often in people's way. And we
23 may be doing things that the public values. We'd like to
24 think that the net result of our actions is something that
25 the public values very much, which is better health and a

1 better environment. But in the mean time, oftentimes we
2 are bringing and demanding things of people that can be
3 difficult.

4 And it's really important that we find better
5 ways to communicate both outwardly in terms of what we're
6 doing, but also inwardly to really listen and try to
7 adjust our programs in ways that will not compromise their
8 effectiveness but in fact make them more sustainable over
9 the long term.

10 La Ronda is a renowned -- I would say
11 world-renowned expert in this particular area, having
12 created the control at the South Coast Air Quality
13 Management District and led nationally on these issues.
14 So I was delighted she was willing to drop her own small
15 business and come to work for me here at ARB.

16 And she will be here at future Board meetings.
17 And I wanted to make sure that you all knew both a little
18 more detail about what she's doing and also really feel
19 like you have the opportunity to take advantage of her. I
20 have never found her unwilling to go out and speak to any
21 group, no matter who. And I always get good reviews back.

22 So with that, I'll open it up to any Board
23 members who might have any questions or comments about
24 this. Anybody?

25 Yes, Supervisor Roberts.

1 BOARD MEMBER ROBERTS: First of all, I want to
2 compliment La Ronda on the overall problem. For me,
3 reaching out to small businesses is particularly
4 important. And I think it's 80 chamber of commerces that
5 you're going to be linking up with. I think we're better
6 served if there's a lot of information that's given out so
7 people have an idea what we're doing and have a chance to
8 be part of that. I know in spite of our best efforts,
9 we'll always hear somebody come in, "Well, I never heard
10 about this," but we can minimize that number with a
11 genuine effort.

12 The one area I guess I had a concern as I looked
13 at this program was it seemed like disproportionately our
14 effort was northern California and that we have far more
15 small businesses in southern California. Far more. I
16 know in Sacramento you may not believe that, but that's in
17 fact the case. And if you were to look at the tax rolls
18 and everything else, I think you would find that in an
19 instant. And it seemed to me that in one way, shape, or
20 form that we probably need to strengthen the effort a
21 little bit in southern California.

22 While I'm concerned about San Diego in
23 particular, I think all of southern California -- I think
24 it sort of -- you've got a small crew there that's going
25 to be asked to do an awful lot. And if we're really going

1 to be active in the region and connect with the many
2 groups that have to be connected, I think we might
3 consider a little different approach and perhaps a little
4 more assistance.

5 I think this is important enough to warrant that
6 kind of attention. And I would hope that maybe through
7 the Chair we could work on some ideas to broaden the
8 program in southern California. And I'm not saying shift
9 resources, because I think it's equally important in
10 northern California. But there's a lot of ground to cover
11 if we're going to make an impact.

12 OMBUDSMAN BOWEN: Thank you, Supervisor.

13 We do have two student workers that actually
14 answer the hotlines that come in in southern California.
15 I'm down there about half of my time: Monday, Tuesday,
16 Wednesday here; Thursday, non-furlough Fridays there as a
17 rule. But we will take that, and next time I come to you,
18 we will have solved that problem.

19 BOARD MEMBER ROBERTS: All right.

20 CHAIRPERSON NICHOLS: Thank you.

21 Barbara.

22 BOARD MEMBER RIORDAN: I just wanted to say that
23 you serve a very valuable resource to those who are in
24 business, but may not even be considered a small business.
25 They are so small that they're probably not small

1 business; an individual owner of a truck, for instance.
2 And you become their first opportunity to provide help in
3 just helping them locate the right person to speak to on
4 whether or not they would qualify for any financial
5 assistance, to understand the rule. These people are so
6 small they can't even join a chamber of commerce. They
7 don't have time to join a chamber of commerce.

8 And I think it's just so important for us to have
9 an office that is their first contact that can then be a
10 resource for them probably over several months as they try
11 to comply with some of our rules.

12 So I'm particularly hopeful that you can
13 communicate that to the balance of your staff to say
14 you're the first one. We often say that to those who
15 are -- if we're professionals, to our secretaries. Our
16 secretary's our most important person in our office many
17 times, because they're the first contact, and that's the
18 same with this.

19 So I look forward to working with you and
20 referring clients to you. So thank you for the briefing.

21 OMBUDSMAN BOWEN: Thank you for your support. We
22 will receive those clients, and we will handle them
23 carefully.

24 I am in the process of training our staff
25 members. And we hope to, once we perfect our own

1 training, reach out to other front line people. I think
2 of our staff as definitely being the foot shoulders and
3 also the enforcement staff and rule development staff,
4 those teams that are the first touch the customers. We're
5 sensitive to that.

6 CHAIRPERSON NICHOLS: Ms. Berg.

7 BOARD MEMBER BERG: I would like to thank you
8 very much. I know firsthand. I've been working with La
9 Ronda on the TRAC Committee and we have started a small
10 business subgroup. And she so graciously is personally
11 attending that subcommittee. And it's very challenging.
12 And yet she is a great listener, is coming up to speed
13 with all of the issues, and we really appreciate that.

14 So what we're seeing is how vital it is to
15 integrate the various departments. And La Ronda is
16 playing a key role I think between the departments as well
17 as an ear to all business. But the small business people
18 we know really need our help.

19 So I thank you for that and look forward to
20 working with you. Great presentation.

21 CHAIRPERSON NICHOLS: Thanks.

22 And I just wanted to add that one of the things
23 that La Ronda reminds me of whenever we talk is whether
24 she says it directly or simply by example, but this is
25 very personal hands-on work. This is not about websites

1 or brochures, although those can enhance our effectiveness
2 greatly. But at least in the early stages when we're
3 trying to build relationships with people and communities
4 that we haven't always had relationships with, there's an
5 awful lot of personal work.

6 And many of our staff in the program areas do a
7 lot of this, of course, as well as part of the regulatory
8 development and just dealing with the public. And we have
9 quite a few people who are really quite skilled at it.
10 But it's also something that Board members can be helpful
11 in assisting in as well.

12 So I hope that in addition to feeding information
13 or concerns to her that we can also call on Board members
14 from time to time to go out and do some of these meetings
15 as well. And I know we can. So thank you.

16 All right. If not, then I think there's no
17 record that needs to be closed. We can just move on to
18 the next report.

19 And this time I'll say a couple words and ask the
20 Executive Officer to introduce the item.

21 The next item, which is an update on federal
22 climate activities, is on the agenda I think at the
23 request of several Board members who wanted to get a more
24 real time update and more personal update on what's going
25 on with respect to climate legislation, climate activities

1 at U.S. EPA, so we can have a better context for the work
2 we're doing here under AB 32.

3 U.S. EPA has been very busy ever since the Obama
4 administration came into office, including the
5 finalization of a finding of endangerment with respect to
6 greenhouse gases. And so we're now seeing the beginnings
7 of a really strong federal presence in regulating global
8 warming even before we see action on a bill in Congress.
9 And California's fingerprints have been very much on these
10 actions.

11 I've personally been back to Washington a number
12 of times ever since I was first appointed trying to help
13 stir things up to get a bill passed. And, of course, the
14 Governor personally has been very active on this front as
15 well, including raising the issue directly with the
16 President. But also whenever he is meeting with members
17 of the Congress, this is on his list.

18 There has been a bit of a hiatus here in Congress
19 while the focus has been on health care. And so it
20 sometimes seems as if climate has slipped in its
21 importance, at least as far as the members of Congress are
22 concerned.

23 But I think it is worth pointing out there is a
24 bill that's passed the House of Representatives, the
25 Waxman-Markey bill, waiting for action in the Senate.

1 It's a strong bill. It's a very long bill. And there are
2 pieces of it that we definitely think could be improved,
3 but at least there's something waiting there for further
4 action.

5 The Senate now has several different bills in
6 process, but nothing that has been able to get enough
7 votes to bring it to a conference. However, the issue is
8 not, in fact, really on the backburner. In fact, there's
9 a lot of activity, but it's just not quite getting the
10 attention at this point that the health care is getting,
11 understandably so.

12 So our input in this is being sought on a regular
13 basis. And the person who represents us in all of this is
14 here today to give us a more detailed presentation. Brian
15 Turner is sitting back at the staff table there behind a
16 sign that says "staff," which is helpful.

17 And I think Mr. Goldstene wanted to say a few
18 more words about his role and then we'll move on.

19 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
20 Nichols.

21 The purpose of the item is to brief the Board on
22 federal level climate change, regulatory, and legislative
23 activities; to facilitate the coordination of ARB climate
24 change activities with those occurring in the federal
25 government. Staff has been tracking and, when

1 appropriate, providing input to the federal legislators
2 and others in the administration. We're fortunate to have
3 Brian on our team leading these efforts on behalf of ARB
4 and California.

5 Mr. Turner is based in Washington, D.C., in the
6 Governor's office back there. He's an Assistant Executive
7 Officer for Federal Climate Policy with ARB, and he's also
8 the Deputy Director in Governor Schwarzenegger's office
9 back there. He works closely with Congress and federal
10 agencies to promote federal action on climate change and
11 clean energy that builds on and influences California's
12 leadership in these areas.

13 I'd now like to ask Brian to present an update on
14 his activities.

15 (Thereupon an overhead presentation was
16 presented as follows.)

17 CHAIRPERSON NICHOLS: We're getting an unusual
18 amount of static. Someone has their cell phone close to
19 their mike. We're not naming names. Okay.

20 MR. TURNER: Thank you, Mr. Goldstene. And good
21 morning, Chairman Nichols and Board members. It's a
22 pleasure and an honor to be here today.

23 I've been working for the Air Resources Board in
24 Washington for close to two years now. And this is the
25 first opportunity I've had to share my perspective on the

1 very important role that the Air Resources Board plays in
2 the national clean energy and climate change effort.

3 --o0o--

4 MR. TURNER: In my presentation, I'd like to give
5 you a flavor for the type of activities I engage in on
6 behalf of the Governor's office and Air Resources Board.

7 I'll also dive into some of the most important
8 policy priorities for Governor Schwarzenegger in federal
9 legislation and agency rulemaking.

10 And I'd like to describe some of the success
11 we've had and we hope to continue to have in bringing
12 federal support in both policy and funding back to
13 California for these clean energy and low-carbon
14 priorities.

15 And, finally, I can't pass up the opportunity
16 when describing California's role in Washington to
17 recognize the critical and powerful role of California's
18 leadership, your leadership, in moving the national
19 discourse and the cutting edge of environmental policy.

20 --o0o--

21 MR. TURNER: So as Executive Officer Goldstene
22 mentioned, I work in Governor's Schwarzenegger Washington,
23 D.C., office. The picture on the slide there is taken
24 from outside my office. So the proximity to Capitol Hill
25 is geographic as well as policy-wise.

1 House, which serves a coordinating function between all
2 federal agencies to connect them with California
3 leadership and ensure that both within and between
4 California and federal agencies we are breaking down the
5 silos and building new cooperation to address the unique
6 challenges of climate.

7 --o0o--

8 MR. TURNER: Lastly, I do a lot of work in
9 coalitions with other states. The National Governors
10 Association, which represents all Governors nationwide,
11 has a lot of influence, when they can agree around
12 specific policy positions. And we've been fairly
13 successful in moving the association to recognize and
14 support state-based efforts to build a clean energy
15 economy in each state.

16 The Western Governors Association, association of
17 all the Governors in the west, is engaged in several
18 specific initiatives around clean energy and climate: One
19 very promising initiative currently on state-based climate
20 adaptation; another on planning for the large-scale
21 transmission that will be necessary to move large-scale
22 renewable power generation throughout the west.

23 The Governor's Energy and Climate Coalition I'd
24 like to mention. That's a coalition of 31 governors
25 nationwide bipartisan that have signed onto a short set of

1 in many ways mirrors the energy provisions of the
2 Waxman-Markey bill, including renewable energy standard,
3 energy efficiency standards, et cetera. And that's
4 expected to form the basis of whatever comprehensive
5 climate and energy bill comes out of the Senate, hopefully
6 as soon as possible.

7 Last fall, things became a bit more complicated
8 when Senators Kerry and Boxer introduced their climate
9 legislation, the Clean Energy Jobs and American Power Act.
10 This faced a more partisan environment in the Senate
11 Environment Committee. When it was passed out of
12 Committee, it did so over a Republican boycott, which is
13 generally seen as having tainted that particular piece of
14 legislation. So it is not likely to move forward,
15 although the provisions within it still established a
16 precedent and we'll likely see future action.

17 So the action now is with a tri-partisan group of
18 Senators Kerry, Liberman, independent of Connecticut, and
19 Graham, Republican of South Carolina, that are working
20 with their colleagues to form a comprehensive climate and
21 energy package that can attract the 60 votes that's likely
22 to be necessary in the Senate.

23 The details of this legislation are not yet
24 public. We expect them to publish hopefully a draft bill
25 in the coming weeks in March.

1 Hints are emerging. We expect that they are
2 looking at a hybrid approach to putting a price on carbon.
3 There are some suggestions that this may include a Cap and
4 Trade Program for the electricity and other major
5 stationary source sectors and perhaps a fee-based approach
6 or perhaps a low carbon fuels approach for the
7 transportation sector. Again, we need to wait to find out
8 the details exactly and what they're looking at.

9 The energy part of this package will be very
10 important in moving it to the attaining 60 votes in the
11 Senate. So they are looking at perhaps a clean energy
12 standard as opposed to a renewable energy standard that
13 would include nuclear energy, clean coal with carbon
14 capture and sequestration, as well as further incentives
15 for nuclear energy development, some liberalizing of oil
16 and gas drilling provisions, again, in an effort to
17 attract the 60 votes necessary.

18 They've suggested they'll release this
19 legislation in March, and Senator Reed continues to
20 profess that he will bring the bill to the floor in April.

21 But as you know, things are looking difficult in
22 Washington right now. And I know enough to know that it's
23 very difficult to predict -- almost impossible to predict
24 what will happen in Congress. We all know it's a very
25 partisan environment in Washington right now and there are

1 many other priorities on the schedule. So it's not
2 looking great for climate legislation this year.

3 I would say there is still a chance. Things can
4 change very rapidly and a policy window can open in the
5 next few months. So I do give it some percentage, but
6 it's not terribly hopeful.

7 However, after the November elections, things may
8 change dramatically. And there may be another significant
9 opportunity in the first half of 2011 to move the bill.
10 So it is very important what they put out in the near term
11 and what kind of work we do on it over the coming months
12 to be prepared when that window opens.

13 I also wanted to touch on action around the U.S.
14 EPA authority on the Clean Air Act. As you know, the
15 endangerment finding was finalized in December starting a
16 series of rulemakings from U.S. EPA. They will be
17 issuing, we expect, their vehicle greenhouse gas
18 regulations at the end of March. And they've also
19 proposed a tailoring rule to ensure that permitting
20 requirements for major sources only apply to the largest
21 stationary emitters.

22 California has been very supportive of U.S. EPA
23 exercising Clean Air Act authority. After all, the Clean
24 Air Act has been one of the most successful environmental
25 laws in the country. And we have worked closely with U.S.

1 EPA and we're appreciative of the deliberate sense they're
2 taking to promulgating rules. Unfortunately, not everyone
3 is so sanguine, and there are multiple challenges to EPA
4 authority over greenhouse gases, including many lawsuits,
5 which, not being a lawyer, I'm not qualified to comment
6 on.

7 I will mention the Lekowski resolution in the
8 Senate to basically invalidate the endangerment finding.
9 This is under a particular Congressional process, the
10 Congressional Review Act, that allows a majority vote
11 within the Senate to -- when passage, it goes over to the
12 house and then it proceeds by a regular legislative
13 process at that point.

14 We are working actively along with a coalition of
15 other states to impose the Lekowski resolution. We expect
16 it to be brought to a vote to the Senate in March. I'm
17 not totally sure what way that vote will go at that time.
18 As I say, we're currently in the midst of the battle. I
19 don't expect it to pass out of the Senate. But it is an
20 ongoing issue currently.

21 Assuming that EPA is not undercut by
22 Congressional action, it will remain extremely important
23 to follow EPA rulemaking over the coming years. We do
24 have confidence that they're proceeding in a deliberate
25 series of rulemakings that will focus on the most feasible

1 federal structure in which the federal government sets
2 minimum standards and states are free to add on further
3 policies according to their needs.

4 One overriding goal is that we retain traditional
5 authority of California and other states to protect the
6 health and welfare of our residents. So I work
7 continually along with other states to ensure that we
8 retain our authority to:

9 A. Set overall binding emission targets for the
10 state and;

11 B. To pursue a variety of the programs to
12 realize those targets.

13 Now, we know there is a push at the federal level
14 that would make federal greenhouse gas regulations the
15 "sole controlling authority" for greenhouse gas
16 regulations in the country. This broad preemption would
17 have tremendous negative impacts as it could implicate a
18 range of programs, including our energy efficiency
19 programs, renewable energy incentives, adaptation, and
20 greenhouse gas reporting, let alone emission standards for
21 vehicles and electricity that saves consumers money.

22 So we fully oppose this broad preemption, and
23 that kind of outcome is not likely. However, there is
24 more targeted preemption efforts, and one of the best
25 known and most obvious is that which would preempt state

1 Cap and Trade Programs that overlap with the federal Cap
2 and Trade Program.

3 And it's important to be very specific. By Cap
4 and Trade Program, I mean the issuing of a limited number
5 of commission allowance permits. Otherwise, if we use
6 phrases like cap and trade broadly, it can be used to
7 implicate of our setting of an overall state target or the
8 other programs that we use to pursue that overall state
9 cap.

10 So Cap and Trade Program, we expect that neither
11 California nor other states have any interest in running a
12 Cap and Trade Program that is redundant to a federal
13 program. A redundant program would have no environmental
14 benefit. The allowances would cost basically zero. It
15 would be redundant.

16 However, we have imposed drastic measures that
17 would remove this tool from state's repertoire. Because
18 as has been proved time and again in environmental and
19 other policy areas, keeping state authority presents a
20 hedge and a backstop against federal inaction.

21 For instance, if we were to face a federal
22 administration intent on actually preventing something on
23 climate change, something not unfamiliar to anyone that's
24 been paying attention for the past decade, we would need
25 once again to rely on state action. So we argue

1 strenuously for the necessity of empowering states to
2 preserve the certainty of climate policy.

3 So besides retaining that authority, I work to
4 preserve the incentive for states to continue to lead.
5 For instance, when and if state Cap and Trade Programs
6 transition into a federal program, we work to ensure that
7 the investments private individuals and companies have
8 made and state allowances and offsets are recognized in
9 giving full faith and credit under a federal system.

10 So we've made great progress and wide support for
11 a dollar for dollar exchange for state allowances that
12 have been issued under a state Cap and Trade Program to be
13 recognized on a federal program on a dollar for dollar
14 basis.

15 The transition of offset credits is a more
16 difficult issue. And while we argue for recognition of
17 state recognized offsets, we also want to make sure that
18 the value of high integrity offsets would not be undercut
19 by having low integrity offsets from other systems
20 recognized at the same value level. That's an ongoing
21 issue we're following.

22 Lastly, I want to mention the performance-based
23 funding programs that we've been arguing for. And there's
24 a lot of interest in this across a range of policy issues
25 in Washington where states that are doing more are being

1 many of the policies, that federal policy is increasing
2 asking of all states, California, and California
3 businesses, and residents, is solidifying it's first move
4 or advantages in the state's race to the top.

5 So, for instance, in energy legislation, federal
6 policy is building off of California efficiency standards,
7 nationalizing the market for efficient technologies and
8 bringing down the cost for California consumers.

9 Federal policy to streamline electricity
10 transmission for renewables is funding and pushing
11 interstate cooperation that California has been seeking
12 for years.

13 And in draft federal renewable energy standards
14 legislation, states that have their own RPSs in place, as
15 long as they comply with the minimum federal standards,
16 are encouraged to maintain the lead authority in
17 implementing those programs and achieving the legislative
18 goals.

19 And in draft cap and trade legislation, I
20 mentioned some of the funding that flows to the states,
21 energy efficiency and renewables, but it's important to
22 know those states that have Cap and Trade Programs up and
23 running, such as the northeast RGGI states, are making the
24 argument and achieving a lot of traction with the argument
25 that states should be funded for energy efficiency and

1 renewables to make up for the allowance value they're
2 already receiving through those programs and spending
3 energy efficiency and renewables in their state. So
4 they've definitely achieved a first mover advantage there
5 by having the cap and trade programs up and running and
6 making the investments in energy efficiency and
7 renewables, so the federal program will backfill that
8 investment.

9 I think the Recovery Act is a very impressive
10 story that will only begin to really be told over the
11 coming months. Already, 1.6 billion has been awarded to
12 California for clean energy programs that is just starting
13 to hit the streets now and will continue to over the next
14 six months and then throughout 2010 and 2011.

15 About half of that is going to private companies,
16 another half to public governments that decides investing
17 in their own buildings and activities will be sending out
18 most of that money to California consumers to buy new
19 energy-efficient appliances, to weatherize their homes,
20 deploy renewable energy systems, and a whole host of clean
21 energy programs that save consumers money and reduce
22 greenhouse gas emissions.

23 315 million flow into the California Energy
24 Commission for a whole host of programs. I'll mention one
25 suite. They are financing consumers' and business' demand

1 for clean energy systems, energy efficiency and
2 renewables. They are setting up a low-interest loan
3 program to bring and keep the manufacturing of these clean
4 energy systems in California and setting up the largest
5 workforce training initiative in the country to train the
6 workers that will build, install, and maintain these clean
7 energy systems.

8 Similarly, the \$267 million is flowing to 300
9 California cities, counties, and tribes through the Energy
10 Efficiency Block Grant Program for investments in energy
11 efficiency and renewables, from LED street lights, to
12 methane capture on wastewater treatment plants.

13 And, finally, companies are racing to claim
14 billions of dollars in tax credits and loan guarantees for
15 new utility scale renewable energy programs. Just Monday,
16 a \$1.4 billion loan guarantee was announced for a
17 400-megawatt concentrated solar development in California.
18 And in aggregate, these projects have the potential to
19 bring many thousands of megawatts of clean renewable power
20 online in California over the next several years.

21 On industry incubation, these are programs under
22 the Recovery Act, under forthcoming jobs bills, and
23 ongoing appropriations to establish geographically
24 concentrated industry sectors throughout the
25 United States. But California is making some very good

1 claims for those dollars, such as in clean vehicle
2 manufacturing, in bioenergy, especially advanced biofuels
3 production, and workforce training. And energy-efficient
4 building systems is a new one that was just announced, a
5 program to create a DOE innovation hub that California's
6 making a very strong bid to host that innovation hub.

7 And the last part of federal support I wanted to
8 mention was in clean transportation, an area I know is of
9 particular concern to the Air Resources Board. Besides
10 things like the Diesel Emissions Reduction Act Programs
11 that we've been successful in bringing to California, the
12 federal adoption of our Clean Car Program actually
13 nationalizes the demand for more efficient vehicles and
14 bringing down the cost for California consumers.

15 They also directly support our clean vehicles
16 program, such as DOE participation in zero emission
17 vehicle implementation, the California Fuel Cell
18 Partnership, hydrogen technology validation programs, the
19 Clean Cities Program, which gives grants to cities and
20 regional associations of governments for clean vehicles
21 and clean vehicle fueling infrastructure.

22 And I have to mention SB 375 and sustainable
23 communities efforts. There's intense interest at the
24 federal level for more performance-based funding programs
25 for transportation. And the groundwork we're laying

1 through the SB 375 program is being looked at very
2 strongly as a model type of encouraging that kind of
3 performance-based funding for communities.

4 Both the federal transportation reauthorization
5 bill that is still at a proposal stage, but also the
6 climate legislation as a proposal, both included measures
7 that would encourage states and regional planning
8 organizations nationwide to do the kind of planning that
9 we're already getting started under SB 375.

10 We're hopeful in the short term the Department of
11 Transportation will be investing in the kind of planning
12 tools that we need for the integrated land use
13 transportation planning as part of 375. And the U.S.
14 Environmental Protection Agency and Housing and
15 Transportation and Urban Development Agencies have formed
16 a sustainable communities partnership that is spreading
17 the model that we're investigating with SB 375.

18 --o0o--

19 MR. TURNER: So in closing, one message I want to
20 be sure to bring you, in case you don't know, is that what
21 you do here resonates literally around the world. The Air
22 Resources Board has a global reputation for both the
23 technical quality of its regulations as well as the
24 ambition of its vision.

25 The policies that you're pioneering to

1 cost-effectively and feasibly reduce pollution are being
2 copied around the world. And this gives our state and
3 businesses a leg up nationally and internationally.

4 Of course, you know the clean car vehicle
5 standards were adopted by state, around the country, and
6 are law of the land, not only because of the leadership
7 and commitment of our Governor, but also because of the
8 technical quality of the analysis and thorough process
9 that the Air Resources Board staff carried out and that
10 you oversaw.

11 Mandatory greenhouse gas reporting will soon be
12 going live at the federal level, and the majority of the
13 federal protocol is clearly based on the California
14 standard. The investment of California firms in helping
15 to draft the California reporting protocols is paying off
16 in early compliance with the federal standards.

17 Our low-carbon fuel standard is being copied in
18 the northeast states, in the European Union, and
19 repeatedly proposed and continues to be under active
20 discussion at the federal level.

21 We're working closely with EPA staff, other
22 states, and Europeans and Canadians to share the latest
23 science on life cycle assessment. So we're pioneering
24 policy framework for a truly level playing field for the
25 best biofuels that prosper.

1 And your preliminary Cap and Trade rule and its
2 future iterations are being closely watched, not just by
3 our regulated entities and investors in third parties, but
4 by regulators at the federal and international level for
5 the precedent of your decisions.

6 And I want to mention one example here.
7 California has been leading a working group, the market
8 enforcement agencies, including our ARB enforcement and
9 legal personnel, but also the California Department of
10 Justice with federal agencies, including the Securities
11 and Exchange Commission, Commodities Futures and Trade
12 Commission to pool our expertise on what will be required
13 to ensure a new carbon emission allowance to market is
14 stable and safe, free from fraud, manipulation, or excess
15 volatility.

16 So the insights gained from this group are
17 informing the California process, which will in turn be
18 more likely to be consistent with, if not form the basis
19 for, the federal program.

20 So I hope you heard enough, but let me ensure you
21 that from my perspective California is looked to and in
22 fact is relied upon for its fearless leadership in setting
23 the cutting edge in environmental policy. Clean energy
24 policy and climate policy is as true as it's ever been.
25 As goes California, so goes the nation.

1 Thank you for the opportunity to present to you
2 today, and I'd be happy to answer any questions.

3 CHAIRPERSON NICHOLS: Thank you, Brian.

4 I think you've covered an awful lot of territory,
5 and I hope you're going to leave your slides behind, so if
6 people have any specific questions about any of the items
7 that were raised.

8 But I think it is fair to say if you think that
9 Brian covers a lot of territory for a single person in one
10 office, you would be correct about that. He really is
11 getting California's needs and California's programs out
12 there to an amazing degree and very, very well networked
13 with a lot of other people, because obviously this can't
14 be done alone.

15 But for those of you who get back to Washington
16 in connection with other organizations that you belong to,
17 local government groups, for example, the Washington,
18 D.C., office is also a good host. They are in the Hall of
19 States Building, which is right next to the Capitol. And
20 I know they welcome visitors and provide accommodations
21 for all kinds of people who are in town. So I, on his
22 behalf, will invite you to stop in if you happen to be in
23 Washington.

24 Are there any questions or comments people would
25 like to make now?

1 We'll start with the far end with Supervisor
2 Yeager.

3 BOARD MEMBER YEAGER: Yes, thank you.

4 And thank you, Brian, for that. I was one of the
5 Board members who encouraged you to come and talk to us
6 just to see what's happening in Washington.

7 I know you said it didn't look great for major
8 climate change legislation this year, but after the
9 November election things might change and improve. That's
10 perhaps being very optimistic. And I think any pessimist
11 would say things might drastically get worse depending on
12 if a new party comes in.

13 I think maybe my caution to you is to also think
14 in terms of worst-case scenario. I'm concerned that we
15 will spend a lot of time and energy and staff time on some
16 very important initiatives, only perhaps to have
17 Washington come in and say -- and you sort of alluded to
18 this -- well, states, this is not your purview, and we're
19 going to make sure that there is a national program rather
20 than state by state. And a lot of the work we will have
21 done will be for not.

22 And again it's just a caution. I suppose if you
23 aren't someone who thinks trouble lurks in the fog, maybe
24 you don't spend a lot of time on it.

25 I just worry maybe it was a more optimistic

1 report to us than perhaps is warranted. And I don't know
2 if there is a way for you to continue your communication
3 with us so we can get a pulse of what's happening in
4 Washington in terms of what we are working on just so we
5 see the full perspective. It's so easy for us to look at
6 what we're doing here in California and not always seeing
7 the impact it might have. You certainly stressed the
8 positive impact, but there might also be some pushback at
9 some point. I just think we need to be aware of it.

10 CHAIRPERSON NICHOLS: Thank you.

11 Sorry. Dr. Telles.

12 BOARD MEMBER TELLES: Thank you for your
13 presentation.

14 In the climate legislation, you omitted one thing
15 that's being discussed in D.C. I read an article in the
16 Economist that raved about the piece of legislation that's
17 being produced by a Senator from Maine and a Senator from
18 Washington. It's called cap and dividend. Can you just
19 kind of elaborate on that for a few minutes?

20 MR. TURNER: Sure. The Cantwell-Collins CLEAR
21 Act, I believe it is -- I don't know what CLEAR stands
22 for -- but it is referred to as cap and dividend. And it
23 is getting a lot of attention right now.

24 I didn't include it, because it's not a very
25 substantive bill. It's relatively short, which is a

1 benefit, but it's drastically underspecified. Setting up
2 a carbon Cap and Trade Program is very complicated. And
3 the bill leaves out many provisions that would be
4 necessary, such as the market oversight piece that I
5 mentioned that we're active in helping to develop.

6 So the some of the principles from that bill I
7 think will carry forward, such as the idea of returning
8 most of the value from the system. About 75 percent under
9 the Cantwell-Collins bill is set aside to be returned to
10 every consumer -- every resident in the country in per
11 capita checks, is how it's suggested now. Now the bill is
12 underspecified how exactly that would occur, through what
13 mechanism. But the idea of returning the majority of
14 value to consumers is quite attractive to a lot of folks.
15 So I think that's one of the reasons it gets a lot of
16 attention.

17 Another provision of it is its limited trading
18 component. The initial carbon market is restricted solely
19 to regulated entities. And there is a secondary market
20 and there is a sharp firewall between regulated entities
21 and the secondary market. If you're a regulated entity,
22 you can't play in the secondary market directly. And
23 secondary market participants can't play in the initial
24 carbon market directly. So that is an interesting
25 structure.

1 Again, there's a lot of questions about how
2 exactly that would function.

3 CHAIRPERSON NICHOLS: But the concept of
4 returning value of the allowances directly to the people
5 is one that was taken up by our own Economic and
6 Allocations Advisory Committee. And it is definitely one
7 that the Governor has expressed interest in as well.

8 So I think while there has been criticism of the
9 bill for being, as you say, short on specifics that you
10 need. It has attracted a lot of positive attention as
11 well. So I think at least those ideas are going to have
12 to be dealt with as part of any final package that goes
13 through.

14 Do you have a question?

15 Yes, Mayor Loveridge.

16 BOARD MEMBER LOVERIDGE: Very quick comment,
17 question, and then request.

18 Just the comment is I strongly support a green
19 economy. You identified all kind of pieces of that that
20 are moving around. But somehow we almost need a green
21 economic strategic plan so we can see how the pieces
22 connect and monitor progress and know where we're going.

23 The question is on the energy block grants, which
24 are not in the President's budget proposed. The National
25 League of Cities and the U.S. Conference of Mayors

1 strongly support another round of energy block grants. I
2 think they have a transformative affect on cities in terms
3 of conservation and new technology.

4 Where is I guess the Governor and the state in
5 supporting those second round of those grants? That's the
6 question.

7 And then the request is I think you quite rightly
8 emphasized the importance of SB 375. I think a major key
9 to success is funding. And I know the Obama
10 administration's emphasizing regional incentives. It
11 seems to me one thing that the state of California should
12 try to figure out is how to take some of those incentives
13 that are being talked about in D.C., and we are I think
14 leading the parade in looking at urban forum and so forth.
15 But funding is a key to really success of SB 735.

16 MR. TURNER: So in answer to your question on
17 energy efficiency and conservation block grant programs,
18 yes, it's not in the President's budget.

19 It does have a lot of support within California
20 within the Governor's office and on Capitol Hill. It
21 seems to be a very effective program. And certainly
22 cities and the kind of programs they can do with their
23 businesses and residents are going to be one of the most
24 positive ways to get clean energy implemented.

25 I think one of the reasons it's not in the budget

1 is because it is more a mechanism for delivering of the
2 large pulses of money, such as the Stimulus Act, and
3 actually, such as climate legislation would provide. One
4 of the most positive uses of the block grant program was
5 in the Waxman-Markey and Kerry-Boxer bills where that was
6 a significant avenue for channeling funds for clean
7 energy.

8 So we've been strongly supportive of that. We'll
9 continue to be, and I think we would be. I don't think
10 the Governor's office has taken a position on continuing
11 appropriations for that program.

12 CHAIRPERSON NICHOLS: So as far as the
13 transportation issue is concerned, Brian alluded to it
14 briefly. But the state is actively participating in
15 efforts to extend and reauthorize transportation funding
16 legislation that would specifically include incentives for
17 SB 375 like programs. And the lead on that is coming from
18 Caltrans, but Caltrans has fully embraced the concept and
19 is I think doing a really good job of appearing in various
20 forums and trying to galvanize behind that.

21 This is one where I think Senator Boxer is going
22 to be very active. She's staged a really interesting
23 forum in L.A. last week trying to round up support from
24 all the various constituency groups and seems like she's
25 certainly got a lot from the labor and local government

1 and all of those constituencies going. So I'm at least
2 hopeful that we might get somewhere.

3 We did have one request to speak on this item.
4 Although it's not an action item, we should take testimony
5 briefly. Randall Friedman from the United States Navy
6 representing the Navy, which is opposed to climate change.

7 MR. FRIEDMAN: Madam Chairman, Board members,
8 Randal Friedman. As the Navy's representative here, I'd
9 be remiss in not commenting on this agenda topic and to
10 take the opportunity to again stress the military's strong
11 commitment to the full spectrum of activities involved in
12 minimizing climate change. Whether it be our commitment
13 to funding next generation biofuel research, some of which
14 is showing very promising results here in California, our
15 commitment to in general alternative energy projects, the
16 strong commitment of our installations over the last 15
17 years to substantially reduce our energy and carbon
18 footprint, and this has been reinforced recently by
19 President Obama's executive order to reduce even greater.

20 Our new Secretary of the Navy has issued some
21 very aggressive objectives for renewable energy use,
22 including our weapons systems. In fact, he's called for a
23 green fleet to sail around the world, reminiscent of
24 President Roosevelt's Great White Fleet.

25 Perhaps one of the greatest symbols of this new

1 effort is actually setting in San Diego right now, the
2 Navy's newest ship, the USS Makin Island, which is
3 nicknamed the Prius of the Navy because of its
4 revolutionary hybrid electric drive that results in
5 substantial energy savings while meeting its mission
6 objectives.

7 Again, as the largest federal agency, I think
8 we're very proud of what we have done over the last 15
9 years and what our future plans are to be a leader in this
10 field and would certainly welcome the opportunity to
11 provide the Board a greater presentation of our efforts.

12 And certainly, Supervisor Roberts, if you would
13 ever want to host some of our fellow Board members on one
14 of our installations in San Diego and see firsthand, let
15 us know, and we'd be happy to do that.

16 CHAIRPERSON NICHOLS: Thank you very much. And
17 you do have a lot to be proud of in this regard. And it
18 shows what the military can do when they put their minds
19 to a problem. Really impressive.

20 All right. Thank you very much, Brian.

21 We will now take up an item directly related to
22 California's climate program. It's the proposed
23 regulation to reduce sulfur hexafluoride emissions from
24 gas insulated switchgear, which is primarily used in
25 electricity transmission and distribution systems.

1 Sulfur hexafluoride is not necessarily the best
2 known gas that we deal with, but it is the most potent of
3 all the greenhouse gases that are addressed by
4 California's Global Warming Solutions Act. And about 80
5 percent of the state's emissions originate from this one
6 type of source, the insulated switchgear. So this measure
7 will have a very important impact on our state's efforts
8 to reduce greenhouse gases.

9 I'd like to turn this over to Mr. Goldstene.

10 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
11 Nichols.

12 Today, we are proposing for your consideration
13 that would reduce sulfur hexafluoride, or SF6 emissions,
14 from equipment used by the electricity sector.

15 As you recall in the Scoping Plan, this was one
16 of the strategies that was incorporated.

17 Several emissions reductions measures contained
18 within the Scoping Plan targeted the reduction of high
19 global warming potential gases like SF6. And Dave Mehl
20 from the Stationary Source Division will be making the
21 presentation.

22 Also I'd like to introduce -- is Rich Corey here?
23 Okay. I wanted to let the Board know that Richard Corey
24 has been promoted to be the Division Chief for the
25 Stationary Source Division. He is Bob Fletcher's

1 replacement. So we just want to fill the Board in on that
2 as well.

3 So, Dave, go ahead.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 ENERGY SECTION MANAGER MEHL: Thank you, Mr.
7 Goldstene.

8 Good morning, Madam Chairman and members of the
9 Board.

10 Today, I will present our proposed regulation for
11 reducing sulfur hexafluoride emissions from gas insulated
12 switchgear.

13 --o0o--

14 ENERGY SECTION MANAGER MEHL: This slide outlines
15 today's presentation.

16 --o0o--

17 ENERGY SECTION MANAGER MEHL: First, some
18 background information on sulfur hexafluoride, its uses,
19 and its global warming impacts.

20 --o0o--

21 ENERGY SECTION MANAGER MEHL: Sulfur hexafluoride
22 is a colorless, odorless, and non-toxic gas with a global
23 warming potential of nearly 24,000 times that of carbon
24 dioxide. In other words, releasing a single pound of
25 sulfur hexafluoride has the same effect as emitting ten

1 currently there is no substitute as effective as sulfur
2 hexafluoride for high voltage switchgear, the proposed
3 regulation will help ensure good gas management practices
4 and result in reduced emissions.

5 --o0o--

6 ENERGY SECTION MANAGER MEHL: I will now discuss
7 how we developed the proposed regulation.

8 --o0o--

9 ENERGY SECTION MANAGER MEHL: The proposed
10 regulation will affect about 75 entities, including
11 electrical utilities and other public and private entities
12 that own gas insulated switchgear. Only one State agency
13 is expected to be impacted. The Department of Water
14 Resources uses sulfur hexafluoride in its electrical
15 transmission and distribution equipment.

16 --o0o--

17 ENERGY SECTION MANAGER MEHL: In developing the
18 measure, we began with a survey of the affected
19 industries. We provided initial concepts and updates
20 through a list serve and on a web page established for the
21 measure.

22 During the past year, we held three technical
23 working group meetings, toured several utility
24 substations, and discussed our draft proposal at two U.S.
25 EPA sulfur hexafluoride volunteer program conferences. We

1 also held a public workshop and had numerous informal
2 discussions to develop today's proposal.

3 --o0o--

4 ENERGY SECTION MANAGER MEHL: Throughout the
5 development process, a core group of technical industry
6 representatives provide valuable guidance that helped us
7 draft the proposed requirements.

8 As shown on this slide, the proposed regulation
9 sets annually declining emission rates and allows affected
10 entities to determine how best to meet them using
11 currently available technology and gas management
12 techniques.

13 --o0o--

14 ENERGY SECTION MANAGER MEHL: Current gas
15 management techniques range in cost from those that create
16 a savings, such as leak detention and repair and gas
17 recycling, to those which cost much more but have a
18 greater emission reduction potential. These include
19 equipment refurbishment and replacement.

20 --o0o--

21 ENERGY SECTION MANAGER MEHL: The annual reports
22 required under the proposed regulation expand on but do
23 not duplicate current ARB reporting rules.

24 --o0o--

25 ENERGY SECTION MANAGER MEHL: Although

1 California's sulfur hexafluoride emissions represent a
2 small percentage of the state's greenhouse gases, this
3 proposal will become the first enforceable standard in the
4 nation. This measure is designed both to achieve
5 substantial emission reductions in California, 70 percent
6 over a ten-year period, and to be a model emission
7 reduction measure for other states and the U.S. EPA.

8 --o0o--

9 ENERGY SECTION MANAGER MEHL: Initial cost to
10 achieve the projected emission reductions are expected to
11 be low and may even create cost savings for some affected
12 parties.

13 Costs are expected to rise during latter years of
14 the regulatory period as the emission rate declines and
15 the higher cost options of equipment replacement and
16 refurbishment are needed to meet the lower emission rates.
17 The total average cost including recordkeeping and
18 reporting are expected to range from \$18 to \$28 per metric
19 ton of carbon dioxide equivalent emissions reduced.

20 --o0o--

21 ENERGY SECTION MANAGER MEHL: The cost savings
22 occurring in the early years of the proposed regulation
23 would likely be absorbed by the regulated entities. Those
24 costs which cannot be absorbed may be passed on to
25 consumers as increased electricity costs. Staff estimates

1 that the cost passed onto residential consumers would
2 increase an average bill by about one to two cents per
3 year.

4 --o0o--

5 ENERGY SECTION MANAGER MEHL: The proposed
6 measure will be enforced by ARB inspectors based on
7 current Health and Safety Code enforcement and daily
8 penalty assessment provisions.

9 These statutes provide penalty factors to be
10 considered in order to assess fair and appropriate
11 penalties for non-compliance. The enforcement provisions
12 proposed for this regulation are consistent with those
13 established for other ARB regulations adopted under AB 32.

14 --o0o--

15 ENERGY SECTION MANAGER MEHL: Over the last few
16 weeks, we've been working with affected entities to refine
17 the proposed language. As a result of these meetings, we
18 are proposing several amendments, including revising the
19 submission date of the first annual report and the
20 definitions of active equipment and emergency event.
21 These changes are highlighted in the document entitled,
22 "Proposed Modifications to the Staff's Original
23 Regulations," available in your folders and on the table
24 outside the hearing room.

25 --o0o--

1 ENERGY SECTION MANAGER MEHL: This measure
2 achieves a very cost-effective 70 percent reduction in a
3 highly potent greenhouse gas.

4 Therefore, staff recommends that the Board
5 approve to adopt the proposed regulation with our proposed
6 changes.

7 This concludes my presentation. I would be happy
8 to answer any questions.

9 CHAIRPERSON NICHOLS: Thank you.

10 We can proceed directly to public comment, unless
11 there are any questions. Let's do that.

12 May I have the list of witnesses, please?

13 We have seven people that have signed up to
14 testify. I'll call the first three: Lily Mitchell,
15 Victor Yamada, and Cindy Parsons.

16 So Ms. Mitchell.

17 MS. MITCHELL: Good morning. I'm Lily Mitchell.
18 I'd just like to --

19 CHAIRPERSON NICHOLS: And there is a three-minute
20 timer when you start speaking.

21 MS. MITCHELL: Thank you.

22 I'm Lily Mitchell. I'd just like to defer the
23 first speaker to Susie Berlin.

24 MS. BERLIN: Good morning. My name is Susie
25 Berlin. I represent the Northern California Power Agency.

1 NCPA is a joint powers agency comprised of
2 publicly-owned utilities. And we're speaking today on
3 behalf of NCPA, but also like to introduce the joint
4 utility comment. NCPA has been working collectively with
5 a number of joint other utilities across the state,
6 including Southern California Edison, Pacific Gas and
7 Electric Company, San Diego Gas and Electric, the
8 Sacramento Municipal Utility District, and the Southern
9 California Public Power Authority. Together with NCPA,
10 these entities submitted some joint comments proposing
11 various revisions to the draft regulation that we
12 submitted this morning.

13 We've also been working over the last nine months
14 collectively with staff and appreciate the time and effort
15 and openness staff has had in working with us to craft a
16 regulation that reduces SF6 emissions and also that goes
17 towards avoiding being overly prescriptive, avoids
18 creating unnecessary work and recordkeeping burdens for
19 compliance entities, but also minimizes additional cost
20 burdens for consumers, and importantly, maintains reliable
21 operation of the state's electricity infrastructure.

22 The staff appreciates the 15-day language that --
23 excuse me -- the joint utilities appreciate the 15-day
24 language that has been proposed by staff and as will be
25 discussed in more detail by some of my colleagues. I

1 think there is still additional changes that need to be
2 addressed with regard to some of the recordkeeping and
3 reporting obligations.

4 NCPA would like to focus our comments on the
5 provisions of Section 95358 regarding enforcement. While
6 we agree that the enforcement provisions are consistent
7 with other AB 32 regulations that have been adopted to
8 date, simply put, the current enforcement mechanism
9 contemplated in the proposed regulation is irreconcilable
10 with an annual compliance obligation, which is what is set
11 forth in the proposed obligation.

12 While AB 32 provides in Section 38580(b)(3) that
13 CARB may develop daily penalties, it expressly notes it
14 may be done where appropriate. In instances where the
15 compliance obligation is a total maximum annual emissions
16 rate as in the case of the FS6 regulation, a daily penalty
17 provision is simply inappropriate.

18 Additionally, the enforcement provisions do not
19 include any guidelines or directions to compliant entities
20 regarding the penalty determination factors, notice, or
21 appeal provisions. The penalty -- there is no provisions
22 regarding notice for insufficiency of reports, yet there
23 is contemplated daily penalty provisions for insufficient
24 reports in addition to daily exceedances. NCPA urges the
25 Board to direct the enforcement provisions be reviewed.

1 Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 Ms. Berlin. Your name is also on the list. Were
4 you also planning to get up again to testify?

5 MS. BERLIN: No. We were just mixing up the
6 order a little. Unless you want to give me another three
7 minutes.

8 CHAIRPERSON NICHOLS: No, thank you. You did
9 fine with your three minutes. Thanks for your written
10 testimony as well.

11 Okay. Victor Yamada and Cindy Parsons and Wendy
12 Mitchell.

13 MR. YAMADA: Good morning. My name is Victor
14 Yamada representing Southern California Edison.

15 First point, also to echo, we really appreciate
16 the openness and the discussion formats that we had with
17 the ARB staff. That's been very valuable as we proceeded
18 ahead.

19 The second point, again to reiterate, Southern
20 California Edison was a part of the joint comments letter
21 that was submitted to you folks. So just wanted to
22 acknowledge that. We support the principles that are in
23 there related to emergency breakdowns, enforcement, as
24 well as recordkeeping, and some of the other provisions.

25 Third, what I'll spend my minute or two on is

1 focusing on the inventory measurement, the recordkeeping,
2 and the reporting aspects just to reemphasize points that
3 have been made in the joint letter, as well as Southern
4 California Edison's separate letter, which we delivered to
5 you folks, to you on the Board.

6 On the inventory measurement procedures, the
7 proposed rule initially included a provision that each gas
8 container be weighed before and after each of its use.
9 And we thought that that was overly burdensome and was not
10 necessary for the calculation of the annual emission rate,
11 which is what the compliance is set up on. We felt -- and
12 we've shared this information with the staff -- that that
13 would be adding to the labor and to the computerized data
14 management system that we and others would have to put in
15 place to accomplish that.

16 And that those estimates of labor and system
17 costs would be considerably more than what was included in
18 the staff report. The staff report indicated something in
19 the range of 500 to \$2,000 in a typical year for
20 compliance. We estimated that just putting in the data
21 management system would be about over \$200,000 plus labor
22 to operate that.

23 The end point on this discussion is that with the
24 staff's recent proposal we're supporting that particular
25 change in the last few weeks, which talks about an annual

1 requirement versus the per-use kind of an approach.

2 My second detailed point is on the proposed
3 regulation where it speaks toward a system nameplate
4 capacity. The proposed regulation right now requires that
5 the average system nameplate capacity be calculated on the
6 number of days each of those equipment are in use during
7 the year. We feel tracking the number of days on which
8 each of the pieces of equipment that are in active service
9 during the year is not necessary and is beyond the current
10 industry practice. So we proposed a simpler approach that
11 follows the EPA approach on this.

12 CHAIRPERSON NICHOLS: Thank you. Your time is
13 up. We do have your letter though. Thank you.

14 Cindy Parsons.

15 MS. MITCHELL: Lily Mitchell again. I just
16 wanted to put it my comment now rather than -- just wanted
17 to let Susie Berlin give the first --

18 CHAIRPERSON NICHOLS: We can't hear you. Sorry.
19 You need to speak directly into the mike I guess.

20 MS. MITCHELL: Good morning. Lily Mitchell for
21 the Southern California Public Power Authority. Thanks
22 for the opportunity to speak today.

23 Many of the issues raised in the SCPPA
24 submissions on SF6 have been addressed by the changes
25 proposed by the staff -- thank you -- or will be covered

1 by other speakers today.

2 SCPPA supports the other comments made today.

3 I'll concentrate on the joint ownership of SF6
4 equipment and equipment that is operated by an entity
5 other than the owner.

6 Firstly, transmission and distribution facilities
7 and SF6 equipment may be jointly owned. However, the
8 proposed SF6 regulation does not address how to account
9 for jointly-owned facilities in the annual report. It is
10 not appropriate for each owner to report the full
11 emissions from equipment in which it has only a part
12 share. The regulation should specify how emissions from
13 jointly-owned equipment should be divided by and reported
14 by the individual owners.

15 The simplest approach is for each owner to report
16 the portion of emissions and nameplate capacity of the
17 jointly-owned equipment equal to that owner's equity share
18 in the equipment.

19 We recommend adding a paragraph to the proposed
20 regulation to that effect. And we have included suggested
21 drafting in our submission.

22 Secondly, equipment may be jointly owned but is
23 operated by one entity, which may or may not be one of the
24 owners or the obligations in this regulation are on the
25 owners of the equipment. In most cases, this doesn't

1 cause any concern. However, the calculations for the
2 annual emissions in the proposed regulation do not reflect
3 some circumstances which may arise when the owner and the
4 operator are separate.

5 For example, Company 1 may maintain and own its
6 own SF6 equipment as well as maintain and operate SF6
7 equipment on behalf of Company 2. So Company 1 may use
8 the same SF6 gas containers to service both its own
9 equipment and the equipment belonging to Company 2. And
10 Company 1 may remove SF6 gas from Company 2's equipment
11 and return it to Company 1's own storage facility.

12 Both companies will need to report their own SF6
13 emissions. The regulations should ensure that the SF6
14 used by each company can be distinguished.

15 To address these situations, we propose certain
16 amendments to the equations in the proposed regulation.
17 These are set out in our written amendments of February
18 16th.

19 Thanks very much.

20 CHAIRPERSON NICHOLS: Okay. Thank you.

21 BOARD MEMBER RIORDAN: Madam Chairman, may I just
22 ask if staff has those suggested amendments and have you
23 had time to review them?

24 ENERGY SECTION MANAGER MEHL: We just received
25 those comments and have not had time to receive them

1 completely yet.

2 BOARD MEMBER RIORDAN: Thanks.

3 CHAIRPERSON NICHOLS: It's disappointing with all
4 these detailed comments that they would just come in on
5 the day of the hearing when I gather people have been
6 aware of what the staff proposal is for a considerable
7 length of time.

8 Yes? You are Cindy Parsons?

9 MS. PARSONS: Correct.

10 CHAIRPERSON NICHOLS: Go ahead.

11 MS. PARSONS: Good morning, Chairman Nichols and
12 members of the Board.

13 My name is Cindy Parsons. I'm with the Los
14 Angeles Department of Water and Power.

15 I'd also like to say a thank you to the staff who
16 have worked on this regulation for their open door policy
17 and the many hours spent discussing issues and concerns
18 with stakeholders and also for the staff-recommended
19 changes that they presented this morning.

20 LADWP along with the other utilities have done an
21 in-depth review of this proposed regulation from both an
22 implementation and operational perspective. We encourage
23 ARB to review and consider the detailed written comments
24 that have been submitted by SCAPPA and the joint
25 utilities.

1 In addition, I'd like to draw your attention to
2 three items in particular.

3 Number one, consistency with the U.S. EPA
4 mandatory reporting rule for SF6. ARB should strive to
5 make this regulation consistent with the SF6 subpart of
6 the U.S. EPA mandatory reporting rule in order to
7 streamline recordkeeping and reporting for California
8 utilities that will be subject to ARB and EPA rules.

9 It is expected that EPA will finalize their SF6
10 rule sometime this year. Once EPA's rule is finalized, we
11 ask that ARB revisit this rule to ensure that it is as
12 consistent as possible with EPA's rule.

13 Number two: Resource impacts. The recordkeeping
14 and reporting requirements of this proposed regulation
15 will create significant additional demands on our staff
16 resources. We ask that ARB take a close look at the
17 administrative burden imposed by this regulation and
18 consider possible ways to reduce the burden.

19 For example, the proposed regulation requires
20 utilities to calculate an annual average nameplate
21 capacity by multiplying the nameplate capacity of each
22 piece of equipment by the number of days in service.

23 For large utilities that may have from hundreds
24 to thousands of pieces of equipment, this is a very
25 data-intensive calculation that will be prone to errors.

1 On the other hand, EPA takes a much simpler
2 approach to determining annual nameplate capacity, which
3 is total nameplate capacity at the beginning of the year,
4 plus nameplate capacity added during the year, minus
5 equipment removed during the year. It's a much simpler
6 approach, and we recommend that ARB consider simplifying
7 that.

8 Number three: Regulations should create an
9 incentive to reduce emissions early. AB 32 states that
10 regulations to reduce greenhouse gas emissions should be
11 designed in a manner that is equitable, minimizes costs,
12 maximizes benefits, and encourages early action to reduce
13 emissions.

14 Other AB 32 regulations, such as the low carbon
15 fuel standard and proposed renewable energy standard,
16 include a mechanism to create compliance credits that can
17 be carried forward and used towards compliance in future
18 years. Adding such a mechanism to the SF6 regulation --

19 CHAIRPERSON NICHOLS: Sorry, your time is up.
20 You have written testimony, do you?

21 MS. PARSONS: No, I don't.

22 CHAIRPERSON NICHOLS: You do not. Okay. Well,
23 sorry.

24 MS. PARSONS: Okay. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Wendy Mitchell and then Tim Tutt.

2 MS. MITCHELL: Good morning, Madam Chair and
3 members.

4 My name is Wendy Mitchell. I'm here on behalf of
5 my client, Pacific Gas and Electric.

6 PG&E strongly supports the Air Resources Board's
7 effort to significantly reduce sulfur hexafluoride
8 emissions. And, in fact, PG&E over the last decade has
9 reduced our SF6 emissions by ten percent with a very
10 aggressive program. We will continue to do so under this
11 regulation.

12 We also support the proposed staff revisions and
13 the joint utility letters. We are a signatory.

14 There was only one point in this proposed
15 amendment that I wanted to address. It says under the
16 95354 SF6 inventory measurement, it says that gas
17 canisters are to be weighed at the beginning and the end
18 of each calendar year. That would be weighing like
19 December 31st and weighing January 1st.

20 We weigh annually and when a container goes in
21 and out of service. But weighing twice, at the beginning
22 and the end of the year, the language says "and the end of
23 the year."

24 And we do want to thank Michelle Garcia and Dave
25 Mehl, because they worked very tirelessly with us on this

1 regulation and never lost sight of the objectives of
2 reducing SF6.

3 So thank you very much.

4 CHAIRPERSON NICHOLS: Thank you for that.

5 It's not clear to me whether Fred Paul wants to
6 testify or not. He does. He will be our last witness.

7 MR. TUTT: Madam Chair, Board members, thank you
8 very much for the opportunity to speak this morning.

9 SMUD supports a reasonable SF6 regulation and
10 supports in the general goal of AB 32 of reducing
11 greenhouse gas emissions. SMUD's locally elected board
12 has adopted a guiding policy to reduce our own greenhouse
13 gas emissions to ten percent of our 1990 levels by 2050.

14 The regulation in front of you is substantially
15 better than the initial draft of the regulation last
16 summer. ARB staff and the affected utilities I believe
17 have a very good working relationship. And we have made
18 several substantial points to staff over the months.
19 They've always listened politely and professionally. We
20 appreciate the way they have had that professional
21 activity.

22 I'd like to thank them for considering all of our
23 points and for making changes to the draft regulations
24 when they agreed with us and for their attention and lack
25 of rancor even when they disagreed and said no to us. We

1 really appreciate that.

2 CHAIRPERSON NICHOLS: Thank you.

3 MR. TUTT: We support the joint utility comments
4 that are in front of you today. Many of these comments
5 have already been addressed by the changes that staff has
6 proposed today. We thank staff for those changes.

7 I'd like just to bring up two aspects of those
8 comments to emphasize for you today.

9 First, as you know, the main structure of the SF6
10 regulations is an annual emissions limit. And yet, the
11 SF6 regulations propose a daily penalty where every day of
12 a year in which that limit is violated, 365 days could be
13 a separate penalty. We don't think this makes sense. We
14 think that ARB has the flexibility of establishing an
15 annual penalty structure for an annual limit and should do
16 so.

17 We believe that a daily penalty for an annual
18 limit is similar to imposing an hourly penalty. For
19 example, for a daily limit, that's never been done in the
20 past I believe by ARB or the districts. And we think that
21 as we move to these annual limit structures, we should
22 think about and establish a reasonable penalty structure
23 for the regulations.

24 Second, the emergency event provision that's in
25 the regulations we very much appreciate being in there.

1 We think it's essential. We do think that it should be
2 broadened to include instances of impending electrical
3 outages. There will be times when utilities will be faced
4 with the choice of keeping equipment that is leaking SF6
5 online and temporarily in order to keep the lights on for
6 your customers or shutting this equipment down. And it's
7 a public safety issue for us. Shutting down loads can be
8 a bit dangerous to our customers. We appreciate the
9 consideration of including that broadening of that
10 provision.

11 Thank you very much.

12 CHAIRPERSON NICHOLS: Thanks. That's helpful.

13 Mr. Paul.

14 MR. PAUL: Thank you, Madam Chair and Board.

15 As a native Californian and also as a
16 representative of a major electrical equipment
17 manufacturer, thank you for the opportunity.

18 In no way would I as an individual or as a
19 corporate representative want to encourage further
20 government regulation. However, when we see economic
21 necessity that is either corporate greed or balance sheets
22 may be put the welfare of the majority at the side, I feel
23 compelled to speak up.

24 The Eaton Corporation is happy this is finally
25 being addressed by a government entity at this scale.

1 Having said that, one issue that doesn't really
2 stick out in this proposal is the private entity. I know
3 we list those that are affected, but there is a lot of SF6
4 gas in the private sector that's being used and
5 continually being consumed in a sense those products are
6 still being allowed to be sold in California.

7 And so it's somewhat like the proposal -- and I
8 applaud it -- is we found the leaky tires. Let's go
9 measure them, monitor them, and try to stop the leaks and
10 hopefully change that tire, if you will. But why not
11 initiate in the proposal an immediate ban on any type of
12 product with SF6 gas for electrical installation at 38,000
13 volts and down since air gap and vacuum bottle technology
14 is proven, it's cost effective, and there's really no
15 reason to use SF6 at that voltage.

16 Additionally, a step program up to 72,000 volts
17 because vacuum technology, vacuum bottle technology once
18 again is readily available. It's economical. There's
19 multiple players in it. So up to 72,000 volts, there
20 really is no reason to import into California and a lot of
21 times from off-shore products that contain SF6 gas. It's
22 like letting them dump their garbage in our backyard.

23 So as well as it is to regulate and reduce by
24 restrictions in the future, it would seem there would be
25 an immediate necessity to ban the leaky tires and let's

1 start specifying the tires that are the proper parameters
2 that would enhance our environment and really show we're
3 taking the lead on SF6 gas.

4 Thank you.

5 CHAIRPERSON NICHOLS: Thank you very much.

6 That concludes the list of witnesses.

7 Was there anybody else who was here for that
8 item? If not, then I think we will go ahead and close the
9 record.

10 Mr. Goldstene, do you have any or staff have any
11 comments at this time and/or responses to the comments?

12 EXECUTIVE OFFICER GOLDSTENE: Well, we'd
13 certainly like to take the time to look at the new
14 comments that came in that we were not aware of. I think
15 we generally agree with the second Ms. Mitchell's comment,
16 Wendy Mitchell, about the December 31st/January 1st annual
17 thing. But we'd like to take some time and work with the
18 stakeholders who brought those letters to us.

19 CHAIRPERSON NICHOLS: So would you do that prior
20 to putting out the 15-day notice? Is it your intention
21 that you think that the comments are sufficiently
22 technical and capable of being incorporated into a 15 day?

23 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes.
24 And I'd like staff to just comment on a few areas,
25 particularly the enforcement provision.

1 But I did want to clarify on the first Ms.
2 Mitchell's comments that we did have those letters and we
3 have had some discussion with them. This was the issue
4 related to the upcoming jointly-owned equipment issues.
5 So we got a couple letters at the same time, but we did
6 have hers. And we have had some discussion, and we do
7 think we can fix that.

8 CHAIRPERSON NICHOLS: I withdraw my criticism.

9 STATIONARY SOURCE DIVISION CHIEF FLETCHER: I
10 would like Dave Mehl to respond to the endorsement
11 provision and a few of the other ones to clarify where
12 we're at.

13 ENERGY SECTION MANAGER MEHL: We worked very
14 closely with the regulated parties in developing the
15 annual emissions standard. We think this approach gives
16 the most flexibility possible to reduce the emissions,
17 while still allowing them to reduce their emissions in a
18 system that best fits their operational needs.

19 If a violation of an annual limit were considered
20 a violation, it could be cheaper for parties to violate
21 than to comply. To give you some idea of what this means
22 in actual practice, if violating an annual standard was
23 considered a single violation, a likely fine would be
24 somewhere between maybe a thousand to \$10,000 maximum. We
25 would expect that in most instances, however, it would be

1 on the lower end of that scale. And, therefore, it would
2 be quite often possible that it would be far cheaper to
3 violate the standard than spend the money to comply.

4 Also for the recordkeeping and reporting, the
5 joint ownership, we definitely think we can work with the
6 regulated parties to clarify the language in a 15-day
7 notice. For the mandatory reporting via the EPA, we
8 definitely want to coordinate with what the EPA will
9 eventually do and we can work with EPA and potentially
10 bring that issue forward.

11 CHAIRPERSON NICHOLS: Okay. Thanks.

12 ENERGY SECTION MANAGER MEHL: And for the banning
13 SF6, we'd like to say in the early stages of the
14 regulation and development, we actually evaluated the
15 impact of doing a ban for lower voltage GIS equipment and
16 the cost and the impacts to the utilities and determined
17 that the emission rate method would actually get us good
18 emission reductions without the cost that would have been
19 associated with the outright ban of equipment.

20 CHAIRPERSON NICHOLS: Thank you for addressing
21 that comment. I was going to ask you. Okay.

22 Are there -- oh, I guess before we proceed we
23 need to remind Board members that we need to disclose any
24 ex parte communication.

25 Does any member have any ex partes communications

1 on this item? I see none. Okay.

2 Well, I think in that case we need to consider a
3 resolution on this item.

4 BOARD MEMBER D'ADAMO: I'd like to move adoption
5 of the Resolution.

6 BOARD MEMBER RIORDAN: Second.

7 CHAIRPERSON NICHOLS: I'll just ask for a voice
8 vote then. All in favor, please say aye.

9 (Ayes)

10 CHAIRPERSON NICHOLS: Any opposed?

11 I'm sorry. You have a question? I apologize.

12 BOARD MEMBER BERG: Thank you. No problem.

13 On the enforcement issue, I agree that 1,000 to
14 10,000 on an annual would not work at all.

15 I think I would just like to ask that we would
16 look at the reverse, however, of 360,000 versus 3.6
17 million for -- I just think we need to weigh.

18 And what I hear from industry is they would like
19 some guideline that we know that we're not going to take
20 either extreme. So I would like to encourage that.

21 And also I think the request for recordkeeping
22 consistency with the U.S. EPA requirements to the best of
23 our ability is very important. And I didn't understand
24 whether we really took care of the recordkeeping weighing
25 issue they were talking about. Some people were saying

1 thank you for taking care of that.

2 So again if we can be very mindful as a staff
3 that whatever recordkeeping we're requesting or requiring
4 that we really make sure that it is critical to the
5 implementation of the rule and not burdensome.

6 Thank you, Madam Chair.

7 CHAIRPERSON NICHOLS: Thank you. I apologize for
8 taking the vote before you had a chance to express your
9 comments. But I trust it's --

10 BOARD MEMBER BERG: I vote aye.

11 CHAIRPERSON NICHOLS: - a technical error.

12 Thanks.

13 So the Board has unanimously adopted it, but with
14 the understanding there will be a new proposal with
15 changes that will be issued and further opportunity for
16 the public to comment on those changes during the period
17 after the 15-day notice.

18 Okay. Thank you very much. I know the staff is
19 appreciative of your comments, especially on that
20 recordkeeping issue.

21 All right. We have I think time to take up the
22 amendment to the greenhouse gas regulations for passenger
23 vehicles. And I would like very much to get through that
24 item before we take a break.

25 I guess I can begin with the introduction. This

1 is an important decision that we're making today, although
2 I think it will not be difficult or controversial, but it
3 is the last and key step in implementing the agreement
4 that we reached with the Obama Administration and the auto
5 industry to turn California's Pavley emissions standards
6 into a national program with the national compliance to
7 constitute compliance in California.

8 So rather than go through the whole history on
9 this, I think we can turn to the staff presentation and
10 take it from there.

11 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
12 Nichols.

13 After the Board approved the Pavley regulations
14 in 2004, California spent many years in court defending
15 our authority to adopt and implement them.

16 Then in May 2009, the Obama Administration
17 announced the national program that would provide uniform
18 federal standards for fuel economy and greenhouse gas
19 emissions while preserving California's legal authority to
20 require its own greenhouse gas standards.

21 In order to facilitate the national program,
22 however, the automobile manufacturers and the State of
23 California committed to a series of actions designed to
24 end these legal challenges. California's first two
25 commitments designed to provide manufacturers with more

1 compliance flexibility and lower cost were approved by the
2 Board in September 2009 and will be briefly described in
3 the staff presentation. Staff's proposal today implements
4 our third and final commitment.

5 The third commitment will allow compliance with
6 national greenhouse gas standards for model years 2012
7 through 2016 to serve as compliance with the Pavley
8 regulation.

9 It is important to mention that California made
10 this commitment based on our understanding that U.S. EPA
11 and the Department of Transportation will adopt a final
12 rule that preserves the greenhouse gas benefits of the
13 Pavley regulations. If U.S. EPA's final rule, which is
14 due out in March, is significantly delayed or does not
15 preserve these benefits, the staff proposal before you
16 today would direct staff to not finalize the adoption of
17 today's amendments. Instead, staff would return to the
18 Board to request direction on how best to proceed.

19 Ms. Sarah Carter of the Mobile Source Control
20 Division will now give the staff's presentation.

21 (Thereupon an overhead presentation was
22 presented as follows.)

23 STAFF AIR POLLUTION SPECIALIST CARTER: Thank
24 you, James.

25 Good morning, Chairman Nichols and members of the

1 Board.

2 Today, I will be presenting staff's proposal to
3 amend the regulations to control greenhouse gas emissions
4 from new passenger vehicles.

5 --o0o--

6 STAFF AIR POLLUTION SPECIALIST CARTER: In 2004,
7 the Air Resources Board approved landmark regulations,
8 known as the Pavley regulations, to significantly reduce
9 greenhouse gas emissions from new passenger vehicles sold
10 in California. These regulations, developed in accordance
11 with AB 1493, were designed to achieve the maximum
12 feasible and cost effective reduction of greenhouse gas
13 emissions beginning with the 2009 model year. U.S. EPA
14 granted a waiver of preemption for the Pavley regulations
15 on July 8th, 2009, which California needed to enforce the
16 regulations.

17 --o0o--

18 STAFF AIR POLLUTION SPECIALIST CARTER: The
19 Pavley regulations are based on a combined value of four
20 greenhouse gas emissions from motor vehicles: Carbon
21 dioxide, methane, and nitrous oxide from the tailpipe, and
22 refrigerants from vehicle air conditioning systems.

23 The standards are expressed in CO2 equivalent
24 terms so that each greenhouse gas is weighed according to
25 its global warming potential when determining compliance

1 with the emissions standards.

2 --o0o--

3 STAFF AIR POLLUTION SPECIALIST CARTER: As the
4 Board is aware, its adoption of the Pavley regulations was
5 followed by years of legal wrangling between ARB and
6 industry, which challenged these regulations both in court
7 and during the waiver process.

8 Finally, in May of last year, the challenging
9 parties, auto manufacturers, California, and the federal
10 government committed to a series of actions that should
11 resolve current and potential future disputes over the
12 standards through model year 2016.

13 President Obama announced the parties' mutual
14 commitments in a Rose Garden ceremony on May 19th, 2009.

15 --o0o--

16 STAFF AIR POLLUTION SPECIALIST CARTER: The next
17 few slides will briefly describe the commitments made by
18 each party.

19 The automobile manufacturers and their affiliates
20 committed to dropping their current lawsuits against
21 California regulations and forgo future similar legal
22 challenges to the program as it currently applies to the
23 2016 model year. Manufacturers also agreed to drop their
24 opposition to California's waiver request.

25 The U.S. EPA committed to develop national

1 greenhouse gas regulations for passenger vehicles,
2 applicable for the 2012 through 2016 model years, which
3 would achieve equivalent emission reductions to the
4 California regulations. This effort is being done in
5 concert with the U.S. Department of Transportation, which
6 is developing new corporate average fuel economy
7 regulations for these same model years that are compatible
8 with the national passenger vehicle greenhouse gas
9 program.

10 --o0o--

11 STAFF AIR POLLUTION SPECIALIST CARTER: On May
12 22nd, the U.S. EPA and the National Highway Traffic Safety
13 Administration, or NHTSA, initiated their part of the
14 commitment when they issued a federal notice of intent for
15 joint rulemaking. The notice of proposed rulemaking, or
16 NPRM, which describes the proposed for a national
17 greenhouse gas program, was published in the Federal
18 Register on September 28th, 2009.

19 A public comment period was initiated with the
20 release of NPRM which ran through November 27th.

21 U.S. EPA and NHTSA also held public hearings on
22 this rulemaking in Detroit, New York City, and Los
23 Angeles.

24 I'd like to mention at this point that ARB staff
25 have been active participants in this process.

1 STAFF AIR POLLUTION SPECIALIST CARTER: To
2 summarize: Staff's proposal will implement the third and
3 final commitment made by California as part of the
4 agreement we signed in May with the federal government and
5 the auto manufacturers. There are no significant
6 environmental or economic impacts of this proposal.
7 Therefore, staff recommends that the Board adopt this
8 proposal.

9 CHAIRPERSON NICHOLS: Thank you, Ms. Carter.

10 We do have four witnesses that have signed up to
11 speak. If we have no questions for the Board, we'll
12 proceed directly to the witnesses, beginning with John
13 Cabaniss and Julie Becker and Jamie Knapp.

14 MR. CABANISS: Good morning.

15 My name is John Cabaniss. I'm Director of
16 Environmental Energy for the Association of International
17 Automobile Manufacturers.

18 As you know, AIM fully supports the Rose Garden
19 agreement which has been mentioned by the staff.

20 CHAIRPERSON NICHOLS: I'm so happy our name for
21 it has taken over.

22 MR. CABANISS: We like that. It's catchy. Very
23 nice.

24 So, like you, we fully support that program, the
25 harmonized national program, and we greatly appreciate the

1 commitments that California has made to align your program
2 with the national program. And we support the proposal
3 today which provides the option of compliance with the
4 federal program as an option in California.

5 We understand that the federal program is on
6 track to be released by the end of March. So we look
7 forward to seeing that as well.

8 Like you, we provided comments to the agencies
9 and we've been working with them. We're looking forward
10 to seeing how they deal with all of the interesting issues
11 that were brought up.

12 In this particular rule of where you're aligning
13 your second phase amendments, we did submit a few
14 questions to the staff where we believe some
15 clarifications are in order in the regulations. And we'll
16 be working with staff on clarifying those in the 15-day
17 process. Nothing is major; just little edits here and
18 there we think would improve the readability and
19 understandability of the regulation.

20 And finally, we believe, as we've said before, we
21 believe it is very imperative for all of us to work
22 together. This program is an important first step. But
23 as we all recognize with the challenges we face for
24 climate change going forward, we need to work closely
25 together and for the next long period of time to hit our

1 2050 goals and even beyond that eventually. It's
2 imperative we all work together collaboratively on this
3 process. So we look forward to being part of that effort,
4 and hopefully we'll have another Rose Garden event soon.

5 So thank you very much.

6 CHAIRPERSON NICHOLS: Thank you.

7 Julie Becker, then Jamie Knapp, and Will Barrett.

8 MS. BECKER: Thank you, Madam Chair and Board.

9 My name is Julie Becker. I'm Vice President for
10 Environment at the Alliance of Automobile Manufacturers.

11 The Alliance and its members are committed to
12 developing and implementing policies that enable us to
13 introduce new technologies needed to support sustainable
14 mobility and help address climate change.

15 The best way to achieve this is to initiate and
16 achieve consensus-oriented dialogue among industry,
17 federal and state governments, and other stakeholders to
18 address our shared objectives.

19 Last year's negotiations and the resulting White
20 House announcement of the national program demonstrate how
21 a collaborative approach can produce environmental and
22 energy security benefits while preserving jobs.

23 I want to thank the Board for the opportunity to
24 comment today to thank CARB staff for the dedication and
25 coordination with auto makers and the federal government

1 that it took to put this proposal rulemaking together.

2 The proposal honors California's commitment to
3 the national program and provides manufacturers with a
4 roadmap for increasing average fuel economy in new
5 vehicles by 40 percent and reducing greenhouse gas
6 emissions by 30 percent by model year 2016.

7 The national program provides a certainty and
8 flexibility necessary for achieving emissions reductions
9 in greenhouse gases and significant savings in oil
10 consumption that would result from the proposed rules.

11 Further, by reconciling California and the
12 national programs, the current proposal would provide
13 manufacturers with the certainty and lead time necessary
14 to plan for the future and cost effective addition of new
15 technology. While the national program only covers model
16 years 2012 through 2016, we are already looking to 2017
17 and beyond.

18 And going forward, a key to reducing the impact
19 of greenhouse gases from the light-duty fleet is a
20 continuation of the joint coordinated national program. A
21 long-term cost-effective nationwide plan is necessary for
22 the future well-being of our industry.

23 To the extent they are effective and feasible,
24 additional approaches to reducing light-duty vehicle
25 greenhouse gases that are not embodied in the current

1 national program should be evaluated as we develop a
2 holistic second generation program.

3 As the U.S. moves forward to achieve significant
4 long-term greenhouse gas reductions, those involved should
5 seek the most cost effective means of achieving these
6 reductions on a economy-wide basis, utilizing a wide range
7 of options involving all sectors of the economy.

8 For transportation, we think this means you think
9 outside the powertrain, including fuels and measures to
10 reduce vehicle miles travel. This challenging goal is a
11 key reason why the alliance has supported California's
12 low-carbon fuel standard and other efforts to increase the
13 use of renewable fuels.

14 In closing, I want to thank the staff and the
15 Board for making this historic national program possible
16 and for the opportunity to testify today.

17 We look forward to a robust discussion leading to
18 a comprehensive second generation national program.

19 Thank you.

20 CHAIRPERSON NICHOLS: Thank you, Ms. Becker.
21 Appreciate that.

22 Jamie Knapp, followed by Will Barrett and Bill
23 Magavern.

24 MS. KNAPP: Good morning, Chairman Nichols and
25 members of the Board. I'm Jamie Knapp. I represent the

1 Clean Cars Coalition, which is a coalition of
2 environmental organizations, public interest and public
3 health groups, both national and state-based
4 organizations.

5 We submitted yesterday a letter signed by eight
6 California and national organizations in strong support of
7 staff's proposed amendment to the California Clean Cars
8 program.

9 As the staff has told you, your action today is
10 really the third and final step in this regulatory action
11 that you've committed to as part of the historic Rose
12 Garden agreement. And we believe and you are, in fact,
13 acting in good faith to implement the national program.
14 And that's per the letter of agreement that was signed
15 last May.

16 We do strongly support the Board approval. At
17 the same time, we recommend that ARB staff immediately
18 return to you, the Board, if, in fact, the final U.S. EPA
19 rule doesn't adequately address some of the concerns that
20 were outlined in the staff report to you.

21 We do share those concerns. The most important
22 of course, as staff has indicated in the resolution today,
23 the preserving emissions benefits. California accepted
24 the agreement with the understanding the federal rule
25 would in fact provide equivalent or greater emission

1 reductions. We don't know what the final federal rule is
2 going to look like. So it really is important that staff
3 retain that ability to come back and take another look at
4 what you are adopting today in case that federal rule does
5 not provide the degree of emissions benefits that we're
6 expecting.

7 We also support staff's request for an emissions
8 backstop in case the federal program doesn't deliver on
9 the forecasted benefits. And we shared the same concerns
10 that staff recognized in the staff report regarding the
11 electric vehicle credits and upstream scoring.

12 We do support the proposal. We agree with the
13 plan to return to you for direction.

14 And I want to close by saying you are holding up
15 your end of the bargain here. The national program, the
16 Rose Garden agreement, validate California's leadership in
17 vehicle regulations, in air quality. It's playing a
18 constructive role as a model for other states. And I
19 think you heard Brian Turner this morning tell you what
20 you do resonates around the world. And we agree. It's
21 true. Thank you very much.

22 CHAIRPERSON NICHOLS: Thank you very much.

23 Will Barrett and Will Magavern.

24 MR. BARRETT: Good morning, Chair Nichols and
25 members and staff. My name is Will Barrett. I work with

1 the American Lung Association California.

2 I'd just like to make some brief comments.

3 The American Lung Association of California and
4 the broader public health community was strongly
5 supportive of AB 1493 and the development of the program
6 now that we're discussing today, the clean car
7 regulations.

8 Among the other supporters in the public health
9 community are the American Heart Association, California
10 Medical Association, the California Nurse Association,
11 American Academy of Pediatrics, and many other state and
12 local associations. We feel strongly these regulations
13 offer critical clean air, climate change and health
14 benefits. And we're very enthusiastic that the leadership
15 of the Board is bringing a program that broadcasts these
16 benefits across the country.

17 So we applaud CARB staff for acting in good faith
18 to harmonize our rules with the national rules so we can
19 finalize next month.

20 We also signed onto the group letter that Jamie
21 Knapp referenced and share CARB's concerns that equivalent
22 emission reductions must be achieved in the final rule and
23 staff should be monitoring that to make sure you come back
24 and ensure that all the reductions are guaranteed in the
25 final project.

1 So in closing, we encourage the Board to approve
2 the amendments to the rule, for staff to carefully monitor
3 the development of the national standards to ensure your
4 concerns are met, and that the public health air quality
5 and climate change goals are achieved in the final
6 rulemaking. Thank you very much.

7 CHAIRPERSON NICHOLS: Thank you.

8 Bill Magavern.

9 MR. MAGAVERN: Good morning. I'm Bill Magavern
10 with Sierra Club California.

11 And we strongly agree with the Chair's comments
12 about the importance of the action you're taking today,
13 because it marks a key milestone in what has become
14 actually now a nine-year effort -- it's about nine years
15 since the bill was first introduced -- to clean up our air
16 and atmosphere, save consumers money at the pump, and
17 reduce our dependence on oil. These are all important
18 goals. So this represents a shining achievement by this
19 Board, by the California Legislature, and by two Governors
20 who strongly supported this effort.

21 We also, of course, support the national
22 agreement. We share the concerns that staff have
23 addressed in terms of wanting to make sure that we
24 preserve all of the greenhouse gas benefits of that
25 agreement; that we not have any backsliding.

1 And of course, we should address advanced
2 technologies like electric vehicles and hydrogen vehicles
3 on a life cycle emissions basis. This Board has taken
4 that approach in other areas and I think we made some good
5 comments, both those of us in the NGO community and the
6 ARB staff made good comments to U.S. EPA about making sure
7 that we do account for upstream emissions from those
8 technologies.

9 Want to note that Sierra Club California did
10 submit 4,206 comments by Sierra Club members and
11 supporters in California in support of the action that
12 you're taking today. So we think that shows that
13 Californians really want cleaner cars.

14 I also want to agree with the manufacturers on
15 the fact that we need to address not just the technologies
16 that can decrease emissions from our vehicles, but also
17 the fuels and reducing the vehicle miles traveled. And we
18 appreciate the fact that this Board is now moving forward
19 on all three of those. And that's not an easy thing to
20 do, but it's important.

21 And, finally, others have commented about the
22 role of the state, and we agree with the Chair's comments
23 that it's important for California to retain our authority
24 to set emission standards from mobile sources. We've
25 shown time and time again the importance of doing that

1 both for protecting California's own air and for also
2 setting a leadership standard for the rest of the country.

3 Lately, we're hearing critics who frankly are
4 people who never supported taking meaningful action
5 against global warming. One of the arguments they're
6 using is, well, when California gets out ahead, then we
7 disadvantage ourselves compared to the rest of the
8 country. What we are seeing today I think proves the
9 opposite. California has gone out in the lead and the
10 rest of the nation now is following, and it's very much to
11 our advantage.

12 So thank you very much.

13 CHAIRPERSON NICHOLS: Thank you, Mr. Magavern.
14 That was a great way to close off the public testimony on
15 this item I think.

16 I see no other witnesses or cards, so at this
17 point we can close the hearing and then mention to those
18 who aren't familiar with our process that there will be a
19 reopening of the record when a 15-day notice of public
20 availability is issued. And at that point, further
21 comments could be accepted. We're not anticipating any
22 changes however in that process in terms of the staff
23 position on these issues.

24 So we have before us Resolution Number 10-15,
25 unless staff has any additional comments they wish to

1 make.

2 SENIOR STAFF COUNSEL LIVINGSTON: Madam Chair,
3 you mentioned there are potential 15-day changes. The
4 resolution doesn't specifically mention that, so I would
5 advise when you bring it to a vote you say with the 15-day
6 changes -- technical changes as discussed in testimony.

7 CHAIRPERSON NICHOLS: Yes, thank you. All right.
8 Thanks for that.

9 So do I have a motion?

10 BOARD MEMBER D'ADAMO: So moved.

11 BOARD MEMBER RIORDAN: Seconded.

12 CHAIRPERSON NICHOLS: So we're moving the
13 resolution with any proposed 15-day changes.

14 May I ask all in favor to please say aye?

15 (Ayes)

16 CHAIRPERSON NICHOLS: And there is no opposition.

17 So this is great. Thank you so much.

18 I had indicated we would take public comment
19 before the lunch break. I don't think we should take up
20 another item at this point, unless we have anything that's
21 quick, and I don't think we have anything that's quick.
22 We have a briefing on offsets and the locomotive item.

23 We have a tradition which pre-dates my coming to
24 the Board of allowing an open comment period when anybody
25 can come in and talk about anything they feel like talking

1 about. This is carried over I believe from a number of
2 local governments where it is required that there be some
3 form of open comment period. It is not required of us,
4 but we have done it in any event. And I think
5 traditionally we would get one or two comments at the end
6 of a meeting from people who had sat through the meeting
7 and felt like they needed to get up and say something.

8 In recent months, we have learned that one of our
9 former -- actually, a former occupant of my chair has
10 discovered the usefulness of this procedure as a way to do
11 organized presentations on topics that were not part of
12 the Board agenda, presumably to bring them to the
13 attention of the Board members, but perhaps as a way to
14 get media or other kinds of public attention. And I think
15 it's frankly an abuse of the process. On the other hand,
16 we've made this available and so we have no choice but to
17 entertain it at least for today's purposes.

18 And I don't mean to be critical of any of the
19 individuals who have come here to speak in good faith.
20 But I do think that it should be duly noted that the topic
21 they are all here to testify about is one that is within
22 the scope of changes that the staff is working on
23 proposing at this time. Mr. Dunlap, who is the person
24 responsible for this little presentation we're about to
25 get here today, is fully aware of the fact that these

1 changes are, in fact, going to be proposed.

2 The Board is very available both as individuals
3 and at Board meetings when we have an item to hear from
4 members of the public on whatever is of concern to them.
5 I know every member of this Board receives phones calls
6 and letters from members of the public and is open to
7 hearing from them and is interested in hearing from them.

8 So I'm going to say I think the Board has a
9 choice here how they want to handle this. We have I
10 believe it is 16 people who have signed up to testify, all
11 of them about the cool cars issue, the cool cars
12 regulation this Board heard a number of months ago. We
13 could give them each three minutes. We could take the
14 first three. We could give them each one minute. We
15 could hear from some and then take a break. We can do
16 whatever the Board members would like in terms of process.

17 BOARD MEMBER RIORDAN: Madam Chairman, sometimes
18 groups, if they all have a particular same cause, will
19 designate a speaker that perhaps is given a little extra
20 time to represent all of them. And I don't know if that
21 is possible with this group, but it might be. And that's
22 something you, Madam Chairman, might ask of someone who is
23 representing the organization. I don't have a speaker
24 slip in front of me, so I don't know. But I've seen that
25 be very effective, and you give that individual the

1 opportunity to speak on behalf of those who are here.

2 CHAIRPERSON NICHOLS: That might be workable.

3 Anybody else --

4 BOARD MEMBER ROBERTS: I think that might be
5 okay. I'm not sure it's all one group.

6 CHAIRPERSON NICHOLS: They each have different
7 listings here: 3M Company, SMUD, Alliance of Auto
8 Manufacturers, Southwall Technologies, that's a glass
9 manufacturer, VMTA, American Medical Response.

10 I know the issues they want to cover. It cell
11 phone access. It's medical emergencies. It's monitoring
12 of felons with ankle bracelets. I think those are the
13 major topics.

14 And then, of course, the manufacturers of
15 different types of glass technologies who will either be
16 advantaged or think they won't be advantaged as a result
17 of this regulation going forward.

18 These are substantial and serious issues. I'm
19 not in any way trying to downplay the importance of the
20 concerns that these folks are raising. It's the process
21 that I'm concerned about here.

22 So, you know, it's really up to the Board. I
23 understood that -- I just saw Mr. Dunlap busily scribbling
24 away at a comment card. Maybe the best thing would be to
25 take a ten-minute break and we can talk to him and see.

1 I'm sorry. Oh, dear. I apologize. I've been
2 informed that Mr. Dunlap is not the organizer of this item
3 and I simply saw him maneuvering around in the back.

4 John, I give you credit for every client in the
5 world, but I sincerely apologize to you for that. Maybe
6 you should. Maybe you should do it anyway.

7 BOARD MEMBER RIORDAN: I think John once did
8 that.

9 CHAIRPERSON NICHOLS: I'm embarrassed. I truly
10 apologize for that. I think the fact you were here at the
11 same time made me simply assume this was your issue.

12 So whoever the organizer -- is there anybody who
13 is willing to stand up and say that they're responsible
14 for having put together this group that's appearing before
15 us this morning? And if so, perhaps we can talk to you.

16 If you want to come up to the microphone, that
17 would be great. Thanks.

18 MS. LIVINGSTON: There are people who have
19 traveled great distances to do this. And I don't know
20 that we were aware it was unprecedented. I think it is
21 preceded. And actually at least one of the Board
22 members suggested it.

23 I think everybody has a different point of view
24 and would like to be heard.

25 I guess the question is, Madam Chairman, would

1 we -- most of them brought written testimony. Would we be
2 allowed to submit that without --

3 CHAIRPERSON NICHOLS: Yes, of course. And
4 believe me -- I will say this one more time. I appreciate
5 the fact that you've come here in good faith to make us
6 aware of concerns you have. I don't dispute that in any
7 way, shape, or form. It's just we're a regulatory Board.
8 So we tend to approach things in an orderly way. And to
9 take testimony when we're actually dealing with a
10 particular regulation, not just kind of because we happen
11 to all be here.

12 MS. LIVINGSTON: I understand. I think all of
13 the people that signed up to speak on this issue on the
14 cool cars issue have been in contact with Board staff and
15 had multiple contacts with Board staff, all the way from
16 Mr. Cackette to the staff in El Monte. And we believe
17 that our issues were --

18 CHAIRPERSON NICHOLS: Not being addressed.

19 MS. LIVINGSTON: That we needed to reach out to
20 the Board in order to make sure that the Board
21 understood --

22 CHAIRPERSON NICHOLS: Sure. And I know --

23 MS. LIVINGSTON: -- the extent of our concern.

24 CHAIRPERSON NICHOLS: And there have been several
25 contacts with Board members that have made me aware of the

1 fact as well.

2 I guess what was a little frustrating to me
3 was -- and maybe this is just a communications problem --
4 is that I was under the impression that your group had
5 been informed -- I don't know about you specifically --
6 but some people within your broader group, whether you're
7 organized or not, that the staff was planning on making
8 proposed changes.

9 MS. LIVINGSTON: I'm unaware of that. You know,
10 you never know a difference between a rumor and a fact.
11 This is a large group. And when I spoke with Charlyn, who
12 was immensely helpful, I told her we had a group and got
13 some instruction about how to handle it and so forth. So
14 we certainly thought we were operating within -- and there
15 are people here, for example, the Crime Victims United,
16 California Peace Officers Association, people like that,
17 who have not been in contact -- I believe. I wasn't
18 prepared for this -- but who may not have made their
19 concerns known. I'm not even sure they're all here,
20 because they were told the comment period would be at the
21 end.

22 But we're looking for -- and I don't know that
23 all of the Board members have been reached so --

24 CHAIRPERSON NICHOLS: I think we might as well
25 just go ahead and hear from you.

1 Let me just say that for those of you who have
2 written testimony, if you are willing to either just
3 submit the written testimony and not speak or to limit
4 your testimony, that would be extremely helpful to all of
5 us I think.

6 Any additional thoughts or comments?

7 BOARD MEMBER BALMES: I was going to fess up. I
8 may be the guilty Board member that suggested they come to
9 the public --

10 CHAIRPERSON NICHOLS: Send you to the closet.

11 MS. LIVINGSTON: I wasn't going to out you, Dr.
12 Balmes.

13 BOARD MEMBER BALMES: The reason I suggested that
14 is -- at least as long as I have been on the Board, there
15 have been some organized efforts to present during that
16 period. And the rule has already been adopted by us. And
17 there was significant concern from multiple parties that
18 the staff was proceeding in a way that was ignoring their
19 concerns. I don't know that to be the fact, but that was
20 expressed to me. So I actually would like to hear at
21 least some of the testimony that they're prepared to give.

22 MS. LIVINGSTON: I would like to say I don't -- I
23 would like to say staff ignored our concerns. Staff has
24 been gracious in listening to every concern that has been
25 raised, but we didn't appear to be changing their minds.

1 CHAIRPERSON NICHOLS: Okay. Ms. D'Adamo.

2 That happens sometimes.

3 BOARD MEMBER D'ADAMO: I hear a lot of valid
4 points being made. We probably need to hear from folks
5 and then maybe in the future make some adjustments.

6 What I would say to the witnesses -- and I agree
7 with the Chair that usually we're a regulatory Board and
8 usually we receive things in the context of a greater
9 package. So it might be helpful for staff to set the
10 tone. I know I received a phone call; I contacted staff
11 and was informed of further work that staff is doing. So
12 perhaps if staff could make a few brief comments to put in
13 this context, that may alleviate some of the concerns the
14 witnesses have so we could move more rapidly.

15 BOARD MEMBER BERG: And also before staff starts,
16 I would encourage industry, because I have met with
17 several, if you could be very precise to what the issue is
18 that you have so we could limit the testimony to a couple
19 minutes.

20 BOARD MEMBER RIORDAN: And, Madam Chair, as
21 before, I'm going to have to recuse myself, because I have
22 an economic conflict of interest with this particular
23 item.

24 (Thereupon Ms. Riordan exited the proceedings.)

25 CHAIRPERSON NICHOLS: Let's go.

1 EXECUTIVE OFFICER GOLDSTONE: Chairman Nichols,
2 do you want us to give a brief overview of where we are on
3 this, or do you want to hear the comments first?

4 CHAIRPERSON NICHOLS: Well, sure. Why not?

5 EXECUTIVE OFFICER GOLDSTONE: Okay.

6 CHAIRPERSON NICHOLS: I think the Board would
7 probably appreciate it.

8 Please don't feel on the defensive about this,
9 despite my comments, which I do sort of feel that we are
10 being used in a sense here for a different agenda. But I
11 also feel we are responsible for this rule. We passed it,
12 and we're going to have to fix it. So it's definitely our
13 responsibility to listen.

14 EXECUTIVE OFFICER GOLDSTONE: Mr. Cackette will
15 frame the issue very briefly.

16 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: The
17 Board adopted the cool cars rule last year, and there was
18 a 15-day comment period, and we have received a lot of
19 input, a lot of meetings, some new issues from the
20 stakeholders since then, and the 15-day proposal to amend
21 the rule has not yet gone out. But we are getting within
22 a week or so of having to do that. If we wait very much
23 longer, the process will lead us to the point where the
24 rule will exceed its one-year period and we'd have to
25 start all over. There's the timing issue.

1 As you may remember in this rule, it's a cool
2 glass rule. It sets a performance standard for glass. It
3 affects two different phases. One is the 2012 through
4 2015 model year in which the windshields have to reflect
5 more and more -- reflect more sunlight to keep the car
6 cooler and use the air conditioner less. That's phased in
7 over that four-year period, 25 percent of the models and
8 then 50, 75, and 100. And in 2016, there is a tighter
9 standard that has to be met and has to met on all the
10 glass all the way around the car.

11 There's other issues like sunroofs and things
12 like that, but that's sort of a snap shot of the rule.

13 At the time the Board heard this, there was
14 testimony that cell phones would not work or not work as
15 well in a car that uses specific technologies that is able
16 to meet this standard which is the metal reflective
17 coating on windows. It's like the low e-glass that many
18 people have in their homes if you replace your home
19 windows.

20 People who were concerned about that wanted a
21 change which would allow a less effective absorbing type
22 window to be used. And it would eliminate most of the
23 electronic interference issues. So that's at least part
24 of what some of the manufacturers and suppliers are
25 looking for.

1 There were other issues at that time. But since
2 the Board meeting, there have been issues brought up about
3 RFDI items like Fastpass on the Bay Area toll bridge, for
4 example, which have to go on the windshield and send out a
5 signal. And that needs to be able to get through the
6 windshield.

7 Before the Board meeting, there was concerns
8 raised about GPS units and whether they would take longer
9 to secure a signal inside of a car. After the Board
10 meeting, the issue was raised that offenders released from
11 prison sometimes have to wear anklets and the anklets
12 including GPS as well as cell phone connection. And it
13 was alleged that we would lose track of where those people
14 are. And so there's been some studies to address that.

15 There's been some studies to look at the cell
16 phone interference issue. And while it was generally
17 presented to the Board that we're going to lose calls in
18 general, I think it's now boiled down to a question of
19 whether or not the E911 calls in rural areas will always
20 go through or not. The interference that -- at least from
21 our viewpoint, the interference that was alleged in the
22 city or urban areas is not as serious an issue as
23 initially thought.

24 And as far as the manufacturers of the windows
25 go, those who make the higher performing glass with the

1 reflective metal technology on it I'm sure will testify
2 they have invested the money, that they are signing
3 contracts with people today, and those people that have
4 the other kind of less effective glass that are arguing
5 for a slightly less stringent standard will say that their
6 technologies are good enough for now and why don't we
7 defer all this until 2016 when the standard takes a
8 quantum jump that goes from like 50 to 40 performance
9 standard and deal with it in that time frame.

10 So that's sort of the broad range of issues that
11 have been raised. There's some other ones, but I won't
12 prolong it. I'm sure the testifiers will bring it out.

13 CHAIRPERSON NICHOLS: Okay. Now we actually get
14 to hear from the witnesses. So let's quickly move through
15 this if we can.

16 Peggy Willett, Tim Tutt, Steven Douglas, and
17 let's just line up and do this if we can so that we can
18 take you all quickly.

19 If there's anybody not here on the cool glass
20 issue, you should probably say so.

21 MS. WILLITT: Good morning, Chairman Nichols and
22 Board members. My name is Peggy Willitt representing 3M
23 Company. We've submitted written testimony, and I'd like
24 to present the key points.

25 We support the ARB's goals to reduce greenhouse

1 gases emissions through the cool car regulation. We know
2 that the goal for 2012 is to reduce TTS to 50 percent for
3 windshield without interfering with electronic signals,
4 such as cell phones, GPS sensors, et cetera.

5 But discussion of this subject has often been
6 framed as a choice between two alternative technologies
7 that compromise that goal. Metal coated glass or film
8 that meet the requirement but cause electromagnetic
9 interference in the deletion zone and absorbing
10 technology, such as enhanced infrared absorbing PPV, which
11 freely pass the electronic signals but do not meet the TTS
12 requirement.

13 Our film, 3M solar reflecting film, is a means to
14 bridge that gap. It's a non-metallic film that can be
15 used as an inner layer in automotive glazing to enhance
16 solar performance without interfering with electronic
17 signals.

18 It's a clear plastic film that is engineered to
19 pass visible light but reflect heat. It doesn't meet the
20 TTS performance by itself. Instead, it's been shown to
21 work in combination with enhanced infrared absorbing PPV
22 technology to deliver the required level of solar
23 performance with no electromagnetic interference.

24 The point is that technology will be made
25 available for ARB solar requirement and to satisfy the

1 concerns of the industry regarding electromagnetic
2 interference.

3 We're in communication with ARB staff on our
4 technology, and I'd be happy to answer any questions from
5 the Board. Thank you for your time.

6 CHAIRPERSON NICHOLS: Let's go. Let's keep
7 going. Tim Tutt, Steven Douglas, Matthew Coda.

8 MR. TUTT: Madam Chair, Board, like Mr. Dunlap, I
9 was not an organizer of any cool car comments, nor do I
10 wish to speak about the cool car item. I wish to provide
11 public comment about a different item. I'm happy to wait
12 until the end of the meeting or do it now if you wish.

13 CHAIRPERSON NICHOLS: Go ahead. Why not. It's
14 free for all. Go ahead, whatever it is you want to talk
15 about. Hi.

16 MR. TUTT: Hi.

17 At your last Board meeting, you received an
18 update on the preliminary draft regulation for the cap and
19 trade, including a segment on the forthcoming Economic and
20 Allocation Advisory Committee recommendations on allowance
21 allocation and use of that allowance value.

22 Subject came up this morning in relation to the
23 federal cap and dividend bill that Senator Cantwell has
24 introduced. And it will come to you again when the
25 Economic and Allocation Advisory Committee presents their

1 formal report to you next month.

2 I just wanted to make you aware that the state's
3 electric utilities are universally interested in a
4 different structure than is being recommended by the
5 Economic and Allocation Advisory Committee. We believe
6 that with the disproportionate amount of emissions
7 reductions that are expected from the electric sector and
8 the costs of those emission reductions from investments in
9 renewable energy and energy efficiency and solar
10 distributed generation, cap and trade distributed
11 generation, other costs that our rate payers will have to
12 bear that it would be reasonable for the ARB to decide
13 that allocations should be administratively allocated --
14 allowances should be administratively allocated to the
15 LDCs. This does not mean we're opposed to auctioning
16 those. We feel auctioning those will provide a value to
17 the allowances and make for a competitive electricity
18 sector market. We just believe that it would be good for
19 the state to allow the LDCs to use the revenue from those
20 allowance auctions to fund and support the programs that
21 are going to be used for a significant amount of the AB 32
22 reductions that are expected.

23 That's the main thing I wanted to say. I'm sure
24 I will have a chance to say it again at the next Board
25 meeting, but I wanted to give you a preliminary review of

1 that. Thank you.

2 BOARD MEMBER LOVERIDGE: Could I just ask, is
3 that in writing?

4 MR. TUTT: We have provided comments in writing
5 to the Economic and Allocation Advisory Committee meeting.
6 And we are preparing a letter in writing to you.

7 BOARD MEMBER LOVERIDGE: Okay. I'd like to see
8 such letter.

9 MR. TUTT: Okay. Thank you.

10 CHAIRPERSON NICHOLS: Thanks.

11 Steven Douglas, Matthew Coda, James Gallagher.

12 MR. DOUGLAS: Thank you, Chairman Nichols,
13 members of the Board. I'm Steven Douglas with the
14 Alliance of Automobile Manufacturers.

15 I thought it might be helpful for me to just give
16 you a scope of this regulation and tell you what
17 manufacturers are planning to do in light of understanding
18 the regulation.

19 In terms of scope, this regulation applies to two
20 million vehicles and about eleven million pieces of glass.
21 Production of those vehicles begins in less than a year.
22 That means rolling down the assembly lines and arriving at
23 dealerships. So we do have some sense of urgency, as Tom
24 Cackette mentioned.

25 As far as the current plans, the regulations as

1 we understand them and as the staff interpreted them will
2 require reflective metal glazing. And we intend to
3 install those in the windshield and have a very large
4 deletion area as well.

5 We proposed a number of alternatives. Some of
6 those would require Board action. But one of those is an
7 alternative which Tom Cackette had mentioned, which is an
8 equivalency. It's equivalency with solar-absorbing glass.
9 This technology is available. It's equivalent. And it
10 has no wireless issues. It's a lower cost, so it's likely
11 manufacturers would apply this to all vehicles nationwide.
12 So, in fact, the benefits of this would exceed the
13 benefits of the original proposal.

14 So, again, those are the issues that we raised.
15 I thought it would just be helpful to have an update and
16 again tell you there are alternatives.

17 CHAIRPERSON NICHOLS: Thank you.

18 Matthew Coda, James Gallagher, James Tribble.

19 MR. CODA: Chairman Nichols, members of the
20 Board, thank you for hearing from me.

21 My name is Matthew Coda. I'm representing
22 Southwall Technologies. Southwall Technologies is a small
23 California-based company. We have been involved in energy
24 efficiency for the entire 30-year history of the company
25 and specifically in high performance automotive glazing

1 for the last 15 years.

2 We have fielded about 20 million vehicles in
3 Europe with this specific technology in the windshield.
4 That's from a total fleet of somewhere around 100, 120
5 million vehicles overall.

6 In the 15 years that those vehicles have been on
7 the road in Europe, we have never heard a substantial
8 concern or complaint from any industry user or regulatory
9 agency on cell phone attenuation or GPS signal
10 attenuation. We believe that the actual attenuation
11 caused by that technology in windshields is minimal at
12 best.

13 We also believe that the staff has built into the
14 regulation certain provisions that allow for what we call
15 deletion windows that further enhance or mitigate the
16 potential attenuation of any RF signal traveling through
17 the windshield.

18 We also have done independent testing on
19 absorbing technologies and have found absorbing
20 technologies do attenuate RF. Whether they attenuate on
21 the same level as reflective technologies I'm not able to
22 speak to. But we think that is something that the staff
23 and the Board need to consider before making any
24 substantial changes to the regulation.

25 So basically, in summary, we support the

1 regulation as has most recently been released by the
2 staff. We support it wholeheartedly. We've been working
3 for the last year and a half to bring our company in
4 alignment to be able to supply a substantial amount of
5 material for the California market and for the U.S. market
6 more broadly to be able to service the regulation.

7 That's it. If you have any questions, I'm happy
8 to entertain them.

9 CHAIRPERSON NICHOLS: Thank you.

10 James Gallagher, James Tribble, Carol Livingston.

11 Mr. GALLAGHER: Good morning, I believe still.

12 James Gallagher, Chief Toll Operations Officer
13 for the Transportation Corridor Agencies in Irvine,
14 California. We've submitted a letter. I'll summarize it
15 as briefly as I can.

16 The TCAs are a joint power authority in the state
17 of California. We operate 51 miles of tollways in Orange
18 County. These tollways were provided at no cost to the
19 taxpayers or the State. And we do have legal obligations
20 to repay the bond holding investors who provided us the
21 money to do this.

22 We're a leader in environmental consciousness.
23 We have a number of award-winning programs at the TCA.

24 We operate our tolling system with a RFID
25 transponder FasTrak, and we are the licensing agency for

1 all transponders in the state of California. Currently,
2 there are 12 agencies which have a license to use this
3 technology in California; six actually operate tollways or
4 bridges, and six are working on various programs for
5 congestion management in the state.

6 Our concern is that the proper operation of the
7 tags and the financial burden that changing those tags
8 would bring on us if the RFID technology is proven not to
9 work.

10 There is a requirement for this metal reflective
11 screen. We think it's unnecessary. There is an
12 alternative to this in absorptive film. It's optimal and
13 represents a win-win for all we believe.

14 Certainly, we support the overall objectives of
15 the Air Resources Board, but we do support the achievement
16 of those goals without destroying the accuracy and
17 reliability of our electronic tolling systems and those
18 systems around the rest of California. And we support
19 achieving those without an undue financial burden on our
20 customers and citizens of the state.

21 Thank you.

22 CHAIRPERSON NICHOLS: Do you have information
23 specifically about the impact?

24 MR. GALLAGHER: I'm going to leave -- if I may,
25 I'll leave the technical discussions to other individuals

1 and manufacturers of this equipment.

2 CHAIRPERSON NICHOLS: I do think since you all
3 are raising these issues, it would be really important for
4 the Board members to see any data that anybody is using
5 here.

6 MR. GALLAGHER: I'm sure I can speak for others
7 and say we'll provide you anything that you think you
8 want.

9 CHAIRPERSON NICHOLS: Thank you.

10 BOARD MEMBER BERG: Mr. Gallagher, I just want to
11 confirm specifically Transportation Corridor Agency
12 doesn't have any firsthand knowledge, nor has done any
13 specific testing on this. You're relying on information
14 from your suppliers?

15 MR. GALLAGHER: We rely on that information
16 and --

17 BOARD MEMBER BERG: Thank you. Go ahead. I
18 didn't --

19 MR. GALLAGHER: That's okay.

20 BOARD MEMBER BERG: Go ahead.

21 MR. GALLAGHER: Nothing further.

22 BOARD MEMBER BERG: Okay. Great. Thanks.

23 CHAIRPERSON NICHOLS: Mr. Tribble, Carol
24 Livingston, Dick Schnacke.

25 MR. TRIBBLE: Good day. My name is James

1 Tribble, and I'm representing Sekisui S-Lec America, who
2 is a manufacturer of that solar absorbing PVB, which I'd
3 like to clarify when we're talking about the
4 electromagnetic wave spectrum, it's quite large. And the
5 issue here is regarding radio frequency waves.

6 And just to clarify the comment that the
7 Southwall representative made a moment ago, our PVB does
8 not attenuate the radio frequency.

9 I'm pleased to have the opportunity to address
10 you and the honorable Board once again regarding some
11 issues regarding to the cool car regulation 15-day draft.
12 There seems to have been some liberties taken by a
13 conjecture to surmise a methodology which resulted in
14 perhaps an unintentional retroactive interpretation of
15 some of the performance equivalency guidelines set forth
16 at the first Board meeting resulting in somewhat of
17 seemingly unfair conditions having been laid down giving
18 way to somewhat of a biased unlevel playing field.

19 Now after we, Sekisui, had successfully met the
20 demands and developed our existing product and enhanced
21 that to meet the 53 percent TTS industry-agreed 53 percent
22 TTS equivalency metric, the goalpost was suddenly moved to
23 reflect a more stringent 51 percent TTS equivalency metric
24 based on what obscure models with little benefit to the
25 cause allowing one type of technology to benefit over

1 another.

2 And if you go to that second slide, the second
3 one, you can see here that deletion type non-EM passing --
4 and I should specify non-RF passing is 53.1 percent.
5 That's what's being allowed to create more GHG through a
6 deletion window of ten percent, which was not on the other
7 hand given to the non-deletion type, the solar absorbingly
8 type. Because you can see 51 percent was given to us as
9 the equivalency metric. We're not sure what that's based
10 on. The AAM director just said the industry plans to use
11 the ten percent. I don't know what other evidence that
12 you would need, because there it is right there. They
13 plan to use ten percent, which means 53.1 percent. So the
14 equivalency should be 53 percent at least that, if not 54.

15 I would like to add that the justifications I've
16 heard up until now do not seem to reflect equivalency at
17 all. And it appears somewhat arbitrary.

18 But to be fair, staff has been willing to work
19 with us, just as Madam Chair had indicated, on some of
20 these issues and iron out some of the inconsistencies.

21 If you please go to the first slide. And I just
22 wanted to say our company, Sekisui, we have products in 13
23 car makers, 39 models, three hybrid vehicles, with
24 approximately one million vehicles already contributing to
25 GHG reduction. Thank you.

1 CHAIRPERSON NICHOLS: Thank you. Time is up.

2 Carol Livingston, Dick Schnacke, Mike Rogge.

3 If you could be prepared so we don't have to
4 wait. Since I first began this discussion, more people
5 have decided they wanted to sign up.

6 MS. LIVINGSTON: Thank you. I'm here
7 representing Garmin.

8 Garmin is in total support of the environmental
9 goals of AB 32 and commends CARB for its hard work and
10 dedication and implementation of the Act.

11 You need to know, however, that Garmin,
12 TransCore, and other companies in the same business have
13 had experience in Asia and Europe with failed electronic
14 equipment from metallicized windows and automobiles.

15 We have stated this. I don't know how much
16 information we have given staff, but I will certainly see
17 that they're supplied. It's somewhat anecdotal, but I
18 think it's a misstatement to say they've had no trouble,
19 because Garmin has had GPS systems in the field in Europe
20 for years. And it's one of the reasons that it got
21 involved in this issue, because it knows there are
22 problems. And I think you have had adequate testimony
23 before the rule was adopted from Toyota and Honda about
24 the problems they had in Asia.

25 There is no question that a functioning GPS has

1 more benefit in reducing greenhouse gas emissions than
2 does the difference in savings between metallic and solar
3 absorbent windows, which is under one gallon of gas per
4 year. And there is no dispute from CARB or staff that
5 metallized materials interferes with RF signals necessary
6 for electronic equipment to operate. Deletion areas are
7 CARB's solution to that problem. But all of the testing
8 that was done by Garmin, by CTIA, by TransCore that you'll
9 hear about were done with deletion areas.

10 In order for the deletion window to serve any
11 purpose for the RF signal dependant devices, the devices
12 have to be placed inside the deletion window and have the
13 receivers pointing directly out the deletion window. And
14 when you talk about all of the electronic equipment that
15 relies on that space, you see the logistical challenges
16 are staggering, which is why the deletion window has to be
17 ten percent.

18 And Garmin has had many calls from car companies
19 asking where the deletion window will fit best for them.
20 And it's different for them than it is for other equipment
21 and so forth. It's a huge logistical problem.

22 The thing that is puzzling is that the
23 metallicized window that meets the 50 TTS requirement on
24 90 percent of the window and is clean and ten percent
25 deletion area only meets 53 and a half or 54 percent

1 overall. So that sort of absorptive has an equivalent
2 solar performance to a metallized window with a ten
3 percent deletion area. So it's -- we strongly support the
4 54 percent.

5 I'm also submitting letters for California State
6 Sherrifs Association and California Chapter of Emergency
7 Number Association, because they were unable to make the
8 schedule adjustment.

9 CHAIRPERSON NICHOLS: Your time is up. Thank
10 you.

11 Dick Schnacke, Mike Rogge, Jason Sorrick.

12 MR. SCHNACKE: Thank you to the Board.

13 I'm Dick Schnacke. I'm with TransCore. We're
14 one of the two companies that supplied transponders into
15 the toll systems in California.

16 I should say that Tonya Clark representing Cerit
17 (phonetic) is also in audience here today. That's the
18 other company supplying the transponders. So between us,
19 we've supplied all of the transponders used today in
20 California.

21 You asked who has the data. I'm the guy with the
22 data. And I did provide a package for the Board. It's a
23 leave-behind package that has some of our latest test
24 information. I think it's self-explanatory.

25 There are more than two and a half million

1 transponders circulating in toll usage in California
2 today. They have many benefits, not the least of which
3 has been a reduction in emissions at the tolling points.
4 But these devices unfortunately are very susceptible, the
5 transponders, to the presence of metal nearby, which is
6 precisely why we mount them on a glass windshield.

7 There is a great concern in our industry that the
8 regulation as it's currently drafted may require the
9 addition of a metallic layer to the windshield. This is
10 our safe haven area, and we cannot stand the thought that
11 might go away.

12 You should keep in mind of course these are
13 financial transactions. Money is changing hands when
14 tolls are collected. So people are very concerned these
15 systems may not be as precise with metal in the windshield
16 as they are today.

17 Our tests have verified that the absorptive films
18 you've heard here today have essentially no effect on the
19 transponder systems. We've also found that the reflective
20 films as expected completely block the transmissions. The
21 use of deletion areas is an acceptable way to mitigate
22 that if the deletion area is large enough and placed in
23 the proper place.

24 The problem with this is that there are limits
25 imposed by other federal regulations and auto

1 regulations -- auto industry regulations about what parts
2 of the windshield you can tint or essentially have any
3 effect upon. And the area that we require to stay clear,
4 in other words, the deletion area, often imposes in that,
5 especially in smaller vehicles where the visibility line
6 would intersect with conflict with the boundary of a
7 deletion area.

8 Some people have spoken about the use of external
9 transponders as an alternative. Such devices do exist.
10 They're used on a very small number of vehicles today, but
11 it's a poor alternative. It has all kinds of problems,
12 not the least of which is they are very susceptible to
13 damage, being mounted on the front license plate location,
14 susceptible to theft. And to be honest, they're just not
15 very pretty.

16 CHAIRPERSON NICHOLS: Thank you.

17 MR. SCHNACKE: So we certainly think that --

18 CHAIRPERSON NICHOLS: Your time is up, sir. This
19 is not a public hearing. Appreciate it if you'll leave
20 whatever data you submitted. Thank you.

21 MR. SCHNACKE: Thank you.

22 CHAIRPERSON NICHOLS: We'll hear from Mike Rogge,
23 Jason Sorrick, Duncan McFetridge.

24 MR. ROGGE: Mike Rogge with the California
25 Manufacturers and Technology Association.

1 I'd just like to preface my comments. I did
2 speak to James Goldstene this morning, and I'm hopeful
3 that we're going to be able to resolve the differences. I
4 think we may be able to move that way. So with that in
5 mind, I've cut my remarks down significantly.

6 I'd like to point out that we have among our
7 membership auto makers, windshield manufacturers,
8 manufacturers of both metallic and solar absorbent
9 technologies, GPS companies, wireless companies, and
10 electronics companies. So we really have a stake in
11 coming up with something that works. And I think that
12 there are methods that work.

13 I'd like to point out that in June when this came
14 up in June, a lot of us didn't find out until a week
15 before. Probably half of these people didn't even hear
16 about it at that point. So we really didn't get an
17 opportunity to talk then or to -- and what we asked for
18 was more time so we could run tests.

19 Testing has been done, a great deal of testing.
20 Since the June Board meeting, scientific testing by CTIA
21 and Garmin, TransCore, Toyota, and Honda engineers show
22 that equipment like cell phones, E911 calls, GPS devices,
23 bridge and toll road transponders and even ankle
24 bracelets, plus a multitude of high detection systems just
25 coming on the market will be negatively affected even with

1 a ten percent deletion window.

2 The auto manufacturers are ordering windshields
3 for the 2012 models now. Without urgent action, they will
4 soon be committed to produce vehicles that will render all
5 RF devices less functional. Requiring RF all the way
6 around a car by 2016 is pointing us directly toward a
7 train wreck.

8 There is a solution. Solar absorbing technology
9 currently available can achieve a 54 TTS standard, the
10 same as metallic reflective with a ten percent deletion
11 window. Solar reflective has none of the negative
12 shortcomings. It does not need deletion windows. It does
13 not block RF signals. GPS, cell phones, transponders, and
14 E911 will work with this technology. It costs one-tenth
15 as much. The fuel savings even by CARB staff calculations
16 is 85 percent, or less than three-quarters of a gallon
17 difference between the metallic and the absorptive
18 materials. We believe there needs to be flexibility built
19 into the regulation to incorporate all the other
20 technologies that can achieve comparable fuel savings by
21 whatever means.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Jason Sorrick, Duncan McFetridge, and Joe
25 Gregorich.

1 MR. LEECOX: Good afternoon, Madam Chair and
2 members.

3 My name is Jeffrey Leecox. Jason Sorrick
4 couldn't be here at this time for this hearing and asked
5 me to just read their comments to you. With your consent,
6 I'll proceed to do that.

7 American Medical Response is the nation's largest
8 provider of 911 emergency ambulance services with
9 operations in 40 states, including California. Reliable
10 communications are critical to the success of
11 high-performance EMS systems operated by AMR. Thus, any
12 interruption or delay in communication can have a
13 significant impact on the ability to reach and treat a
14 patient.

15 Recent studies show that the coating proposed by
16 CARB can cause disruption to equipment installed in AMR
17 vehicles and utilized by emergency crews. The most
18 notable disruption would occur during a major disaster
19 response in which strike teams consisting of non-resident
20 ambulance providers are given GPS satellite phones and
21 handheld radios that are not connected to external
22 antennas.

23 We're aware that the California Vehicle Code
24 provides an exemption for ambulances operated by private
25 companies under contract with public agencies. However,

1 it's not clear that the exemption would extend to all of
2 our vehicles.

3 In addition, cool car standards could force large
4 motor manufacturers to install coated windows on all
5 vehicles, including the vans and trucks that AMR modifies
6 into ambulances. This could lead to higher costs when
7 purchasing new vehicles, because they would have to pay
8 for coated windows to be removed and uncoated windows to
9 be installed.

10 As a secondary 911 PSAP -- I'm sorry I can't tell
11 you what that means -- our emergency medical dispatchers
12 not only obtain location and symptom information from
13 callers, but also provide life-saving medical instruction.
14 Many 911 calls we receive come from callers using cell
15 phones from inside their vehicles, and often these calls
16 are initiated in rural areas that already suffer from poor
17 cell phone reception. Thus, we have serious concerns that
18 the coating required could detrimentally impact 911
19 dispatching capabilities.

20 For the reasons stated, above we urge the Board
21 to reconsider the cool car regulations and modify the
22 standard so that no windows will be required to have
23 metallic reflective materials on them. Thank you.

24 MR. MC FETRIDGE: Madam Chair and members, Duncan
25 McFetridge representing the Bay Area Toll Authority.

1 My client is responsible for collecting all the
2 tolls in the Bay Area that pay for seismic improvements on
3 the bridges, bridge operations, and transit improvements
4 throughout the Bay Area region.

5 I want to associate my comments with TransCore
6 and with the TCA, identical concerns. Our concern is we
7 utilize transponders in 55 percent of our toll
8 collections. If there is a problem with collecting these
9 financial transactions, it becomes a serious impediment to
10 the bridge program in the Bay Area.

11 So as a result, we urge you to reconsider the
12 regulation and improve the utilization of the technology
13 so that the transponders can be utilized. Thank you.

14 MR. GREGORICH: Madam Chair and Board members,
15 I'm Joe Gregorich with Tech America, which is the nation's
16 largest high tech trade association. We represent 1500
17 high tech companies nationwide.

18 I'm here today to urge the Board to reconsider
19 the requirements on metal oxide and look towards coatings
20 on windshields that would not have impact on RF
21 technologies when using cars such as for cellular, GPS,
22 and FasTrak purposes.

23 Tech American does support the goals of the cool
24 car regulations to reduce greenhouse gas emissions in
25 California. However, we do believe the current standard

1 as studies have shown does have impact on RF technology.
2 And we urge the Board to take a step back, work with the
3 technology community and our stakeholders to find a
4 solution that does not have this impact on the technology
5 community.

6 Thank you.

7 BOARD MEMBER LOVERIDGE: Thank you.

8 Next, Steve Carlton and then Tom D'Agostino.

9 MR. CARLSON: Thank you. My name is Steve
10 Carlson. I'm with the California Government Affairs
11 Council for CTIA, the wireless association. We are the
12 trade association for cell phone carriers, handsets, and
13 other equipment providers.

14 Wanted to stress that we strongly support the
15 goals of AB 32 and certainly the intent of the cool cars
16 regulation. We'll renew our offer to work collaboratively
17 toward an agreeable outcome. I'd like to shout out to
18 staff. We've met several times with Mr. Cross and his
19 folks down in El Monte, and they have shown themselves to
20 be very patient in listening to our issues and our
21 concerns. And we very much appreciate that.

22 When we learned of the reg last June, we felt it
23 might be a problem, but the cell phone industry felt the
24 need to do our own testing before making any comments in
25 that regard. We communicated to staff that we hoped there

1 would not be a problem.

2 The details of our testing is contained in the
3 letter that we've supplied in January and a copy of which
4 is sent to you. You have there. We used equipment and
5 methodologies virtually identical to carriers that test
6 their networks 24/7. That's what they do. They want to
7 make sure their networks work and their customers get what
8 they're paying for.

9 Unfortunately, our testing did indeed indicate
10 that metal oxides glaze on windshields caused an
11 unacceptable level of interference with our signals in a
12 number of circumstances. As a follow-up to that letter,
13 we did arrange the meetings I just mentioned with Mr.
14 Cross and his staff in El Monte, bringing in network and
15 E911 engineering specialists from the two largest wireless
16 carriers to meet with staff in El Monte.

17 The purpose was to educate and respond to
18 questions from staff on design and operational issues with
19 wireless networks, why we believe it is a problem, and
20 seek alternatives that would not interfere with our
21 customer experience and wireless networks.

22 The greatest issue we found and concern was when
23 we tested E911 in rural areas. That is defined as a
24 scarcity of cell sites, not necessarily a scarcity of
25 people, although oftentimes it's one and the same.

1 In those circumstances, signal loss negatively
2 affected 911 call completion, maintenance, and
3 particularly call back, which is when the dispatcher needs
4 to call the 911 caller back if the call is dropped where
5 effected.

6 Also, we have an obligation under federal law to
7 locate E911 callers information on the displays to an
8 increasing degree of accuracy, which is also effected by
9 the metal oxide glaze.

10 We are very encouraged by comments of the chair
11 and comments with Mr. Goldstene and other staff of the
12 willingness of staff to work toward a solution that offers
13 alternatives that do not contain metal oxide. We very,
14 very appreciate working with you and look forward to doing
15 the same to reach a mutually agreeable outcome.

16 Thank you very much.

17 BOARD MEMBER LOVERIDGE: After Tom, Bonnie
18 Holmes-Gen, and Jamie Knapp.

19 MR. D'AGOSTINO: Good morning. I think I'll
20 forgo that in the essence of time. There is a hard copy
21 being delivered.

22 Good morning. My name is Tom D'Agostino with
23 Aaron Reed and Associates representing Solatia.

24 The implementation of AB 32 has provided some
25 extraordinary opportunities but also some very serious

1 concerns and challenges. I will go briefly through this.

2 There will be written testimony delivered to you.

3 Those us of in the marketplace want to be
4 reasonable. And we want to review alternatives. And we
5 want to work with the Board and staff.

6 Today, I want to focus on one particular issue.
7 We propose that using an advanced solar absorbing wind
8 screen is equivalent in solar performance with metal
9 coated wind screen utilizing ten percent deletion.

10 Solatia firmly believes that full ten percent
11 deletion allowance should be used to calculate the
12 equivalency of non-deletion wind screen for the
13 manufacturers' compliance 54 percent TTS.

14 CARB has approved a full ten percent deletion to
15 be used with the cool car program. Automotive
16 manufacturers have said they need ten percent in the zone.
17 But staff insists on using a four percent deletion window
18 for the calculations, allowing for ten percent deletion,
19 but using four percent deletions is really a problem to
20 follow logically.

21 The results that we would like to assist with the
22 54 percent TTS are very forward, and these alternatives
23 would include providing functional equivalence in solar
24 performance to a 50 percent TTS metal coating; wind screen
25 with ten percent deletion; alleviating electronic

1 interference issues; significantly reducing costs to the
2 automotive manufacturers by at least \$100 million for 2012
3 through 2015. And it meets to be GHG reduction goals for
4 CARB.

5 Our message is very simple and direct. We urge
6 you to allow the 54 TTS for the manufacturers compliant
7 option on non-deletion wind screens. Solar performance,
8 you will find it's the same and is equivalent. Our
9 experts would love to be available and work with staff
10 going forward at your discretion.

11 Appreciate your time.

12 CHAIRPERSON NICHOLS: American Lung Association,
13 Bonnie Holmes-Gen and then Tony Francois and Gavin McHugh.

14 MS. HOLMES-GEN: Good afternoon, Chairman
15 Nichols. Bonnie Holmes-Gen of the American Lung
16 Association of California and Jamie Knapp with Clean Car
17 Coalition. We're trying to be very brief and together
18 take three minutes.

19 Just want to remind you that the American Lung
20 Association, Natural Resources Defense Council, the Sierra
21 Club, and a broad range of groups under the Clean Cars
22 Coalition organization have strongly supported your action
23 to enact the cool cars regulation as a key part of our AB
24 32 strategy. And from our perspective, these regulations
25 have tremendous public health and air quality benefits

1 reducing the petroleum use, reducing harmful pollution
2 emissions, and making sure that California is getting the
3 full benefit of our efforts to clean up vehicle
4 technologies and fuels.

5 You know, many, if not all, really of these
6 concerns were heard during the regulatory process. You
7 had a very full and open public process. And I know your
8 staff is continuing to look into issues that are being
9 raised. And our basic message is that these regulations
10 make sense. They're based on significant research and
11 real world experience. And we strongly urge you to move
12 forward with implementation.

13 MS. KNAPP: This is Jamie Knapp.

14 I will simply add that as you have heard, staff
15 is working to resolve some of these issues. And the
16 environmental community pledges to work with staff and
17 industry to try to also address some of these issues and
18 to continue the discussions that have occurred.

19 But ultimately what we're trying to do is meet
20 your AB 32 goals and reduce greenhouse gas emissions,
21 reduce the air conditioning load in vehicles on hot days
22 in order to reduce greenhouse gas emissions, and frankly
23 make cars more comfortable for all of us.

24 Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Tony Francois and then Gavin McHugh.

2 MR. FRANCOIS: Good afternoon, Chairman Nichols
3 and members of the Board.

4 I've given the clerk a couple of just one-page
5 handouts. I don't know if you've received those or not.
6 One just has a schematic of a car that shows the weight
7 reductions that can be achieved through the use of
8 polycarbonate window material, which is a product
9 manufactured by my client, Exatec, LLC. This is an actual
10 sample of the part they are responsible for. It's used in
11 a European Volkswagen model.

12 What we wanted to clearly communicate to the
13 Board is our support for the Board's automotive greenhouse
14 gas reduction programs. The basic difficulty we're facing
15 in trying to resolve a lot of discussions with the staff
16 is the incompatibility of the technologies that are
17 available to accomplish the TTS standards in the cool cars
18 rule with the material that you make polycarbonate glazing
19 out of. There are physics and chemistry problems, and
20 we've supplied the Board and staff with significant
21 information on that.

22 What we do want to also emphasize is what we hope
23 the Board would agree with that in its overall view of the
24 automotive platform that something like a significant
25 weight reduction in the windows that can be achieved with

1 polycarbonate is a goal that the Board would
2 wholeheartedly embrace. And we are continuing to work
3 with the staff to try to find a way so that the cool cars
4 rule doesn't interfere with the adoption of technologies
5 like this under the Pavley and Pavley II programs.

6 We do have a significant research and development
7 effort underway to improve the TTS performance of
8 polycarbonate glazing, but there are significant timing
9 challenges of that. Anything we can amend today would
10 still require two years of weathering before we can get it
11 back out into the field. We have no technical line of
12 sight to being able to accomplish the 40 TTS goal or
13 requirement that's in the regulation now for 2016.

14 Now what we're finding is that because OEMs agree
15 they don't see a polycarbonate product that can meet that
16 2016 standard, they are discontinuing projects they have
17 currently underway. And we're seeing a significant
18 decline in interest in polycarbonate as a glazing material
19 because a vehicle model is going to be produced over a
20 series of years. And even if we could find a way to get
21 something in the market that meets the interim 60 TTS
22 guidelines -- right now we don't have that -- the auto
23 makers know by 2016 they have to hit 40 TTS. We cannot
24 supply them with that.

25 So we've seen a total of four -- that we're aware

1 of -- projects that have been canceled in the last several
2 months because of this.

3 The second sheet I've given you just supplies
4 some general ideas for how to I think within the 15-day
5 process improve the alternate performance standard that
6 may help bridge these problems.

7 Thank you for your time.

8 CHAIRPERSON NICHOLS: Gavin McHugh. And this is
9 the last.

10 MR. MC HUGH: Thank you, Madam Chair and members,
11 Gavin McHugh on behalf of Crime Victims United of
12 California.

13 We are concerned about the ARB cool car
14 regulation as it relates to the use of GPS electronic
15 monitoring devices for offenders and the potential
16 implications for urgency 911 call completion.

17 With California facing a prison over-crowding
18 crisis, state and local law enforcement has had to take
19 measures to reduce prison and jail overcrowding, one of
20 which is to place prisoners on GPS or electronic
21 monitoring. While CVUC understands local law
22 enforcement's need for alternative custody options, we are
23 concerned about the potential impacts of the specific
24 technology in the proposed regulation that resulted in a
25 doubling of dropped GPS signals according to ARB's own

1 analysis.

2 While this alone is enough to cause concern, we
3 are also concerned that the testing was only conducted on
4 an urban and suburban route without consideration for the
5 differences in rural landscape and cell tower options as a
6 backup to satellite monitoring and devices.

7 CVUC is also concerned about the public safety
8 risks associated with this proposed regulation that may
9 result in up to 30 percent lower chance of successful
10 emergency 911 calls, particularly in rural areas where no
11 testing has been done.

12 CVUC is and will continue -- I want to emphasize
13 this -- to work with staff as we go forward and the other
14 law enforcement entities to ensure our own safety concerns
15 related to this regulation are addressed.

16 Thank you.

17 CHAIRPERSON NICHOLS: Thank you very much.

18 All right. That concludes our open public
19 comment period. There is no action before us at the
20 moment. No item before us. But I think the Board members
21 have all listened attentively. I've seen them.

22 Supervisor Roberts is not going to tell us, "I
23 told you so."

24 BOARD MEMBER ROBERTS: No. No. No.

25 CHAIRPERSON NICHOLS: But he could.

1 BOARD MEMBER ROBERTS: So help me, I wasn't going
2 to do that.

3 The one thing in my mind that's an issue is we've
4 got something we have to deal with here. And we have a
5 timing issue based on a previously adopted rule. And I am
6 wondering if the staff could suggest what's the path to
7 maybe correct this unfortunate situation.

8 CHAIRPERSON NICHOLS: Yes.

9 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Well, I
10 think you've probably ascertained that of all the things
11 that were said that it's not stubbornness that's causing
12 us to not address them. We just disagree with many of the
13 people.

14 For example, on the crime bracelets. We went and
15 got them from Corrections. And we went and put them in
16 cars, and we went and drove them around and they never
17 lost the signal.

18 And you talk about there is a GPS unit there
19 which we know the GPS may go down, but they have a backup
20 cell phone.

21 BOARD MEMBER ROBERTS: Tom, I'm not --

22 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: I
23 understand what you're saying.

24 BOARD MEMBER ROBERTS: You are sounding stubborn
25 now.

1 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: So we
2 disagree with some of the concern here.

3 On the timing, as I indicated, we've taken a
4 couple of things that we're going to address in the
5 15-day. For example, on the polycarbonate windows, we
6 took your direction to do the equivalency things and let
7 them average all the windows. The window you saw there
8 was a fixed window. There's where polycarbonate is being
9 used now and that can be averaged with better performing
10 up and down and side windows and back lights. And that
11 would give more flexibility to that technology to be used
12 in the interim.

13 The key issue I think is whether or not
14 reflective glass versus absorbing glass is used. And this
15 is an equivalency issue that the Board asked us to look
16 at. And people are arguing that because you can use ten
17 percent deletion on a reflective window, that means that
18 only 90 percent of it's reflective. So it's going to have
19 a 53 or 54 equivalent performance.

20 The problem is in trying to look at the facts is
21 that the cars running in Europe do not have ten percent
22 deletion. They have three or four percent deletion.
23 We've talked to glass manufacturers, and some of the
24 orders that are coming in do not have ten percent
25 deletion. So what we tried to do is figure out what

1 deletion is likely to occur and then just do the
2 equivalency with that. That turned out to be 51, not 53.

3 BOARD MEMBER ROBERTS: We also heard testimony
4 some of those aren't working in Europe for systems.

5 So, you know, I guess I don't want to argue this
6 with you, because it sounds like you're just intent on
7 going down the same path again and that we're going to
8 have a standard that's prescriptive rather than
9 performance driven. And that's bothering me. It bothered
10 me last time, and it continues to bother me. And there is
11 a manipulation of the numbers that bothers me greatly.

12 Your standard is ten percent. Okay. You seem to
13 be manipulating this to fit a prearranged conclusion. And
14 the conclusion -- we've had testimony and testimony there
15 is a major problem here.

16 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
17 Supervisor, did you hear the witnesses at the beginning
18 that said that said they could provide 51?

19 CHAIRPERSON NICHOLS: I think --

20 BOARD MEMBER ROBERTS: They're saying they can
21 have equivalency based on the fact you've got a ten
22 percent allowance.

23 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
24 They said they can provide 51.

25 EXECUTIVE OFFICER GOLDSTENE: Supervisor

1 Roberts --

2 CHAIRPERSON NICHOLS: I really do not wish to let
3 this conversation go forward. I'm sorry. But the
4 question was timing. So could we just address the timing?

5 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: On the
6 timing, to complete the rulemaking within the one-year
7 period and given that we have a 15-day package that still
8 has to go out and get public comment and then post the
9 final requirements, we're within a couple of weeks at the
10 most of having to put that 15-day package out. So we have
11 to make decisions on which trade-offs, if any. I listed
12 one of them that we've already worked on. There's other
13 things too that are in that 15-day package. And that's
14 roughly the time frame we have to do that.

15 If we don't do it roughly by then, then the rule
16 will not be finalized within the one-year period and it
17 goes away. That's what's driving the timing on all of
18 this right now.

19 CHAIRPERSON NICHOLS: And there might be people
20 that think that would be fine, if the rule just went away.

21 But just to go back to sort of the beginning of
22 all of this, what got us into all of this ironically was
23 the idea that this could be an early action item under AB
24 32. The idea was that there was low-hanging fruit that
25 could be realized that did not have to go through the more

1 arduous lengthy rulemakings involved in most of our work,
2 particularly with automobiles.

3 I wasn't around for the early stages of that, but
4 I do remember when we came up with our list of early
5 action measures and this was one of the ones that was on
6 the list.

7 And clearly there are people, not only the
8 manufacturers of these products, that would stand to
9 benefit under the rule, but also people in our sister
10 agencies and former members of this Board who were very,
11 very committed to the idea that we should be pushing for a
12 new, better generation of materials, which is going to be
13 one of the solutions ultimately towards reducing
14 greenhouse gas emissions.

15 So we understand the motivation here -- I'm
16 willing to assert that the motivation is not to come up
17 with a specific type of rule, but to try to get some quick
18 reductions.

19 The problem obviously is that in moving in this
20 direction we ended up not only stepping on the toes of a
21 number of stakeholders who weren't involved in the process
22 and don't feel that they were heard when the rule was
23 developed.

24 And also I think because of the fact that it is
25 limited to this one area of the vehicle, the amount of the

1 reductions are very small. They're significant. They're
2 important. But relative to other things that we are
3 working on, the amount of greenhouse gas reductions we are
4 getting from this rule are not huge.

5 So I think it's frustrating to all of us that,
6 you know, in the course of doing something that seemed to
7 be relatively simple and straightforward it's turned out
8 to be more complicated.

9 And we respect the fact that some of the
10 arguments that are being made, some of the points that are
11 being made may well be exaggerated. They may well be
12 incorrect. But I think that people feel that these are
13 serious and legitimate issues and they're not going to
14 take the word of ARB that we know better on subjects like
15 911 calls. It's just not going to be -- we're not going
16 to be the ones to be the determinants of whether there is
17 an issue or not at the end of the day.

18 So I think the staff in addition to technical
19 kinds of changes is going to need to think about some
20 additional process if this rule or anything like it is
21 going to be capable of succeeding in the marketplace of
22 public opinion, if you will, or else it's going to
23 continue to get the kind of undue attention that we've
24 received from it, regardless of the motivation.

25 I understand that there are people who are

1 fighting for market share for a particular view of their
2 industry and all of that, but we're used to that. That
3 happens all the time. Whenever you get into a regulatory
4 arena, you're going to arouse those kinds of issues.

5 It's just I think on this one the feeling is that
6 we don't enjoy the kind of broad support for the specific
7 rule that we've generally been able to achieve in our
8 other rulemakings and we are used to getting the not
9 everybody but the kind of middle of the community kind of
10 going along and saying, yeah, this is pretty much the
11 right way to do it. And we're not quite there yet with
12 this rule.

13 So I think there is going to need to be some
14 additional work done. I don't think we're in a position
15 to say what it is right now. But I hope we can have some
16 further discussions about this before it's completed.

17 EXECUTIVE OFFICER GOLDSTENE: We are planning on
18 doing that and making sure that all the stakeholders that
19 spoke today and others are contacted as we look at other
20 ways to approach this.

21 CHAIRPERSON NICHOLS: Okay. Thank you very much.

22 BOARD MEMBER ROBERTS: Madam Chair, I just want
23 to be clear. I want the rule. And my comments are not
24 because I don't want the rule. And I would like to see it
25 have the flexibility so we are not driven by one

1 technology that seems to have associated problems with it.
2 So I think there is a way to get what we would like and in
3 fact with the reductions in weight might even do better
4 with other technologies.

5 CHAIRPERSON NICHOLS: Okay. I think we don't
6 have any further -- oh, one more comment.

7 BOARD MEMBER TELLES: It's a question.

8 What's the difference between this equivalency,
9 the 54 percent and the 51 percent, from just a greenhouse
10 gas emissions point of view? I mean, what are we talking
11 about here? To have a rule that's going to cause so much
12 inconvenience and potentially public health problems and
13 crossing bridge problems, is this really worth it?

14 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: I don't
15 know that I know the exact number. But the rule without
16 the side windows, which was a change the Board made. As
17 proposed, I think it was about a one million metric ton
18 per year rule. And I'm guessing that for these four years
19 where we're dealing with 54 versus 51, it's probably worth
20 a tenth or two.

21 The bigger issue I have is this standard goes to
22 40 in 2016 and beyond, and that produces a significant
23 amount of the reduction. And if these are show stopper
24 problems with reflective glass technology, they're
25 probably show stopper problems in 2016 as well. So that

1 part of the rule would -- the benefits of that part of the
2 rule arguably could go away if we don't make progress
3 toward to. So short-term difference in the interim years
4 is not that great, but it does have implications for the
5 outer years.

6 BOARD MEMBER TELLES: That's what I was wondering
7 too, if this is even viable in the future when you have to
8 get even more stringent. And it seems to me that the 54
9 percent is a reasonable alternative right now.

10 And I don't know too much about this technology,
11 but maybe that absorptive technology is the technology
12 that should be developed rather than this reflective
13 technology in the future, because it sounds like if you
14 did the same thing four years from now, you're going to
15 have the same testimony that it's not going to work in
16 certain situations.

17 EXECUTIVE OFFICER GOLDSTENE: We hope that the
18 rule, like many of our rules, will drive innovation and
19 new developments and different technologies. And I think
20 that's a stated goal we have to keep in mind as we move
21 forward.

22 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: And we
23 are doing the development of the procedures, which is
24 necessary to do the broader sort of hot box approach,
25 whole envelope approach that Supervisor Roberts suggested

1 last time. Because that's procedurally driven, you have
2 to have procedures to do all the measurements. That is
3 not available for the 2012 model year. It's going to be
4 more towards 2016 model year.

5 CHAIRPERSON NICHOLS: Okay. It is now 12:30. I
6 hope we can be back here by 1:30 after a lunch break.
7 Thanks, everybody.

8 (Thereupon a lunch recess was taken
9 at 12:30 p.m.)

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AFTERNOON SESSION

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1:34 p.m.

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CHAIRPERSON NICHOLS: We're going to get started, because we do have a quorum. We'll begin the presentation now. Thanks.

The next agenda item is actually two items, 10-2-4 and 10-2-9. And we're going to deal with them together. This is not an action item, but I think it's important information for the Board, the status of developing an offsets program as part of California's Greenhouse Gas Cap and Trade Program.

There will be one request for action relating to existing voluntary protocols that the Board has approved.

We're also going to hear an overview of the preliminary draft regulation of the Cap and Trade Program that was released last November, a description of the staff's evolving thinking on that.

The provisions for a high quality offset program as part of a cap and trade proposal are critically important, not just for the success of a California program, but really for the thinking that it's helped to spark regionally and nationally. Our staff has been working on these issues with their counterparts at U.S. EPA, who have been very supportive of the type of program that we've been developing here for offsets as well as the

1 Western Climate Initiative, which when it's fully
2 operational will involve linking our state's program with
3 other states as well. So it's important that we all
4 remain committed to very high quality of offsets in these
5 programs.

6 We were participants on the international
7 discussions this past year, the conference of parties in
8 Copenhagen, as well as through an organization called the
9 International Carbon Action Partnership, which includes
10 states and countries from around the world that are
11 sharing information and best practices about how to run
12 effective market-based programs for controlling carbon
13 dioxide.

14 I think it's important to recognize that even
15 with a federal climate policy, it's going to continue to
16 be important for California to continue making progress.
17 We are really the place where a lot of the implementation
18 is going to happen under a federal system. And by
19 developing some of these thoughts into regulatory
20 language, including the Cap and Trade Program, the
21 leadership that we're providing is not only going to
22 benefit the country or the world, but it's really going to
23 benefit us as well, because we hope our ideas will then be
24 adopted by others. And so far, the evidence on that is
25 pretty good, that when California does do the work to

1 develop a proposal, we can influence others to want to
2 follow in our footsteps.

3 So with that, I'm just going to ask Mr. Goldstene
4 to introduce this item and we'll get to it.

5 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
6 Nichols.

7 This is the second in a series of updates we're
8 presenting to the Board to keep you briefed as we move
9 towards the Cap and Trade Program regulation that we're
10 bringing to you for consideration later this year.

11 In addition to offsets, we're also planning to
12 brief the Board from now until next October on several
13 other aspects of the Cap and Trade Program. At our March
14 Board meeting, staff will present its report on the
15 economic analysis update for the Scoping Plan. Your March
16 public meeting will also include a presentation by members
17 of the Economic and Allocation Advisory Committee, who
18 will report their recommendations for allocating
19 allowances and distributing allowance value from the Cap
20 and Trade Program.

21 At future meetings, we will present additional
22 related topics that are timed to the release of the final
23 proposed cap and trade rule that we'll be bringing to you
24 later this year.

25 As adopted in the Scoping Plan, the Cap and Trade

1 Program would establish a cap covering about 85 percent of
2 the state's greenhouse gas emissions and allow trading to
3 ensure cost-effective emissions reductions.

4 As part of cap and trade, staff is proposing to
5 allow a limited amount of offsets to be used by covered
6 entities to help meet their compliance obligations. The
7 cap and trade regulation would set up the framework and
8 requirements for covered entities and offset providers to
9 participate in the offset program.

10 On November 24th of last year, we released a
11 preliminary draft of the cap and trade rule. This
12 preliminary draft proposal marks the beginning of the next
13 phase of the cap and trade rulemaking culminating in the
14 Board's consideration later this year. If adopted as
15 currently envisioned, the rule would go into effect
16 January 1st, 2012.

17 Within the preliminary draft regulation, there
18 are extensive offsets positions and discussions of key
19 concepts related to the offsets program that ARB staff is
20 specifically inviting public comment on. It's part of the
21 regulatory development process. We will also finalize GHG
22 offset protocols proposed for consideration.

23 For this reason, staff will ask the Board to
24 consider a resolution to withdraw Board adoption of the
25 previously adopted voluntary greenhouse gas accounting

1 protocols while staff performs the required regulatory
2 analysis of greenhouse gas protocols that can be used for
3 compliance.

4 Ms. Brieanne Aguila has been the primary staff
5 developing the Offsets Program, and she'll present an
6 update and an overview. Brieanne.

7 (Thereupon an overhead presentation was
8 presented as follows.)

9 MS. AGUILA: Thank you, Mr. Goldstene.

10 Good afternoon, Chairman Nichols and members of
11 the Board.

12 Today, I'll be presenting two items related to
13 the greenhouse gas offsets for the use in Cap and Trade
14 Program.

15 First, I will describe the role of offsets in the
16 Cap and Trade Program by giving you an overview of the
17 offset provisions and concepts in the preliminary draft
18 regulation. This is part of a series of updates to you on
19 the California cap and trade proposal that will culminate
20 in a proposed regulation we will ask you to consider in
21 October.

22 We are also proposing an action item for your
23 consideration to withdraw the Board's adoption of
24 voluntary greenhouse gas accounting protocols as part of
25 our transition to compliance based offset protocols for

1 use in the California Cap and Trade system.

2 --oOo--

3 MS. AGUILA: As we covered last month, the next
4 couple slides provide a general overview of what a Cap and
5 Trade Program is.

6 Cap and trade is a regulatory mechanism that
7 establishes a cap, or upper limit, on an amount of
8 greenhouse gas emissions allowed to be released into the
9 environment. The cap, also called an allowance cap or
10 allowance budget, is the total number of California
11 greenhouse gas allowances that ARB would issue over a
12 given period of time. Allowances are finite, tradable
13 permits that give one-time permission to emit a ton of
14 greenhouse gases.

15 Every year, California will issue allowances in
16 the amount equal to that year's cap. At defined periods,
17 for example, every year or every three years, ARB would
18 require covered entities to turn in allowances equal to
19 their greenhouse gas emissions. Covered entities would
20 also be permitted to use a limited number of high quality
21 offset credits for a small part of this obligation. We
22 will go more in-depth about offsets shortly.

23 Under a regional Cap and Trade Program, or the
24 Western Climate Initiative, allowances issued by regional
25 partners would also be tradable among all sources covered

1 is that they can help contain costs. Offsets allow
2 greater flexibility for entities to cover their emissions
3 by offering an additional supply of compliance instruments
4 that cost less than allowances.

5 Such flexibility can create a demand for
6 lower-cost emission reductions and reduce the overall cost
7 of achieving the emission reduction goals.

8 Another purpose for offsets is to expand demand
9 for additional emission reductions globally by linking a
10 California program to other accrediting programs of
11 similar quality and rigor. This concept of linkage
12 involves integrating one trading program with one or more
13 trading programs around the world.

14 In addition to increasing the cost effectiveness
15 of the program, a California offsets system can benefit
16 program goals by stimulating emission reduction
17 opportunities and technology innovation in sectors outside
18 of the capped sectors; encouraging early emission
19 reduction activities while providing a transition period
20 for industry to develop and deploy low-carbon
21 technologies; promoting technology and knowledge transfer
22 between developed and developing countries, such as
23 helping to preserve rain forests in danger of
24 deforestation, and providing environmental, social, and
25 economic benefits, such as reduced air or water pollution

1 through improved land management practices and wildlife
2 habitat.

3 --o0o--

4 MS. AGUILA: The Scoping Plan adopted in December
5 2008 by this Board gave staff significant direction on the
6 key goals of a Cap and Trade Offsets Program.

7 First, offsets must meet rigorous criteria that
8 demonstrate the emission reductions meet these six
9 criteria. They must be real, additional, permanent,
10 verifiable, enforceable, and quantifiable. If any of
11 these conditions is not met, a reduction would not qualify
12 as an offset.

13 The Scoping Plan established a policy that a
14 majority of reductions from cap and trade should come from
15 facilities covered by the program in order to encourage
16 investment in emission reductions at facilities in
17 California. This will also help our transition to a
18 low-carbon energy future and meet our long-term climate
19 goals. For this reason, the Scoping Plan put a limit on
20 the amount of offsets that could be used in the program.

21 The Scoping Plan also emphasized the importance
22 of not limiting offset creation based on where projects
23 are located. High quality offset projects located outside
24 the state, for example, in our WCI partner jurisdictions,
25 can help lower the compliance costs for covered entities

1 in California. Allowing international projects can
2 encourage greenhouse gas emission reductions in areas that
3 would otherwise lack the resources to do so.

4 --o0o--

5 MS. AGUILA: The public has been an integral part
6 of rule development since day one, and we will continue to
7 consult with all affected stakeholders, including:
8 Industry, business, environmental groups, and project
9 developers through the process.

10 In 2009 alone, staff held 21 public meetings and
11 received hundreds of comments on program concepts and
12 proposed design elements. Of these 21 meetings, five
13 meetings were devoted to offset-related topics. ARB
14 carefully considered both written and verbal comments as
15 we developed our initial proposal, in which we sought to
16 strike the right balance between environmental
17 effectiveness and economic efficiency.

18 Staff also worked with WCI partner jurisdictions
19 to coordinate our work with regional efforts on offset
20 program design. As part of the WCI process, staff has
21 helped to develop and publicly release multiple issue and
22 recommendation papers on offsets and played an integral
23 part in the WCI public process.

24 --o0o--

25 MS. AGUILA: As you know, staff released our

1 preliminary draft regulation, or PDR, in November of 2009.
2 This was nearly a full year before we ask you to consider
3 a proposed rule later this year. We did this to maximize
4 the opportunity for public comment and to advance the
5 public dialogue on the proposed structure and content of
6 the Cap and Trade Program.

7 The PDR includes preliminary regulatory language,
8 which details administrative process and regulatory
9 structure of the program, as well as narrative text that
10 describes concepts for discussion for regulatory
11 provisions that staff are still considering.

12 Staff included extensive offset provisions in
13 order to receive sufficient public comment to advance
14 staff's thinking on the issuance, approval, and use of
15 offsets in the Cap and Trade Program. We are working to
16 develop the next draft of the regulation, which we expect
17 to release in April.

18 While this next draft will include regulatory
19 language for all parts of the program, we will, of course,
20 continue to work with stakeholders leading up to that
21 release and through the summer to make sure that the
22 regulation we bring to you this fall is one that helps
23 achieve the environmental goals of AB 32, but is also
24 sensitive to the need for a smooth transition into the
25 program given the current state of California's economy.

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MS. AGUILA: In order to provide a balance between the need to achieve meaningful emission reductions from capped sources with the need to provide covered entities more cost effective reductions, the Scoping Plan called for offsets to be limited to no more than 49 percent of program reductions.

However, as we mentioned at the beginning of the presentation, the cap imposes a statewide level for allowable emissions. This means that each individual facility does not have a specific reduction requirement that they must meet under cap and trade.

In a Cap and Trade Program, it is actually each source's emissions as opposed to their emission reductions that are monitored for ensuring compliance. To comply with the program, a covered entity must submit a combination of allowances and offsets to cover their emissions that they reported for the compliance period.

At the end of the compliance period, the cap ensures that the emissions from each facility when added together do not exceed the allowable levels of statewide emissions. Since the program is designed to monitor individual facility emissions, it is necessary that the limit on offsets be expressed as a percentage of emissions and not emission reductions, in order to make the Cap and

1 Some examples of these external programs could
2 include: The Climate Action Reserve, or CAR; the Clean
3 Development Mechanism, or CDM; or another WCI partner
4 jurisdiction.

5 For those offsets ARB issues, the Board would
6 approve project protocols through a public process. The
7 Board would also need to approve external offset programs
8 in order to except any offset credits issued by those
9 programs for compliance purposes.

10 So far, we have received a lot of stakeholder
11 feedback on this issue. Some stakeholders, mostly
12 environmental groups, believe that ARB should retain tight
13 control over all aspects of the cap and trade market,
14 including the issuance of offset credits. Other
15 stakeholders, including some utilities, favor a dual ARB
16 role: ARB should both approve offset credits issued by
17 external programs in order to create a ready supply of
18 offsets at program startup and act as an offset
19 credit-issuing organization as the program moves forward.

20 Other stakeholders including marketers and other
21 covered entities believe this approach is resource
22 intensive and could result in the potential for ARB to
23 become a bottleneck in the offset generation process.

24 These stakeholders favor focusing ARB efforts
25 solely on the review and approval of credits from external

1 programs or using an independent entity that issues
2 credits pursuant to the ARB rules and then reports to ARB.

3 Staff will continue to evaluate what role ARB
4 should play in the offset market as it further develops
5 the regulation.

6 --o0o--

7 MS. AGUILA: It is essential to ensure that
8 offsets comply with program requirements to maintain the
9 environmental integrity of the overall Cap and Trade
10 Program. Staff is developing rule provisions to specify
11 requirements for third-party verifiers, offset project
12 developers, and users of offset credits, as well as
13 penalties for noncompliance.

14 Since offset projects can be located across the
15 globe, staff will propose that all offsets, whether they
16 are located within or outside of California, be verified
17 by an ARB accredited third-party verifier, and that ARB
18 have the ability to audit all accredited verifiers.

19 For projects located outside of California, staff
20 is proposing to enter into reciprocal agreements between
21 ARB and the jurisdiction in which the offset project is
22 located to ensure compliance, and in the case of
23 noncompliance, take appropriate legal recourse.

24 --o0o--

25 --o0o--

1 MS. AGUILA: We are now moving into the second
2 item, which is an action item.

3 I would like to now turn your attention to the
4 quantification methods for voluntary offsets that the
5 Board has previously approved and that are the focus of
6 the second offsets item on your agenda today.

7 As you know, the Climate Action Reserve and its
8 predecessor, the California Climate Action Registry,
9 developed and adopted protocols for use in the voluntary
10 offsets market.

11 Beginning in 2007, the Board adopted four of
12 these voluntary offset protocols and, in doing so,
13 recognized the rigor of the voluntary accounting
14 procedures contained in those protocols.

15 The Board took this action to encourage voluntary
16 early action to reduce greenhouse gas emissions. Since
17 Board adoption of the voluntary protocols, CAR has
18 continued to update them over time and has used them for
19 issuance of offset credits for the voluntary market. The
20 CAR process has been extremely successful in encouraging
21 early actors to make voluntary reductions, and staff
22 supports this effort. The proposed action today does not
23 in any way change ARB's continued support for early
24 action.

25 --o0o--

1 MS. AGUILA: Now ARB is moving towards the
2 adoption of a regulatory Cap and Trade Program. Because
3 our focus going forward is to bring protocols to the Board
4 for compliance purposes, we do not intend to bring any
5 additional voluntary protocols to the Board for adoption.
6 As we develop compliance protocols, we will perform an
7 environmental assessment of those protocols and establish
8 regulatory requirements for verification and enforcement
9 as required by AB 32.

10 We wish to emphasize that this proposed action
11 will have no effect on CAR's protocols, which will
12 continue to operate and supply offsets to the voluntary
13 market. Staff will continue to work with the Climate
14 Action Reserve and other stakeholders as we move through
15 the development of this Cap and Trade Program in the
16 coming months and into the implementation phase beyond
17 that.

18 --o0o--

19 MS. AGUILA: Staff will develop a public process
20 in order to get us to our goal of approving compliance
21 protocols for use in the regulatory Cap and Trade Program.
22 Though we did not do an environmental analysis of the
23 voluntary protocols before bringing them to the Board, we
24 intend to do an environmental analysis on any protocols
25 that we bring forward for compliance use with the AB 32

1 Thank you very much for your time and
2 consideration today.

3 CHAIRPERSON NICHOLS: I suspect we have a number
4 of people that want to talk to us, both about the general
5 offsets concept and about the voluntary offsets program.
6 Oh, my. Yes, indeed. We'll jump right into it.

7 I think the discussion will probably be clarified
8 as we hear from the witnesses. So why don't we just begin
9 with that.

10 I'll just call the next three, and I hope people
11 will be ready to come up promptly so we can listen to you
12 all and give you your three minutes. Lily Mitchell, Bruce
13 McLaughlin, Victor Yamada.

14 BOARD MEMBER TELLES: Can I ask a question?

15 CHAIRPERSON NICHOLS: I'm sorry. Of course.

16 BOARD MEMBER TELLES: This resolution that's with
17 us today, this is the first time I've seen this. And we
18 weren't sent any information by staff to look at --
19 there's three protocols that we're going to eliminate
20 here. These are not familiar to me. I would have a
21 difficult time in voting for this. I've said this before
22 in these meetings, if there is a resolution coming up, I
23 would like information about it before I vote on it.

24 CHAIRPERSON NICHOLS: I'm not sure what was -- I
25 understand what you're saying.

1 BOARD MEMBER TELLES: Do you get what I'm saying?
2 This was obviously prepared. Why weren't we given
3 information on this?

4 EXECUTIVE OFFICER GOLDSTENE: Well, some of the
5 Board members were briefed, as we always do. The
6 resolution was being written --

7 BOARD MEMBER TELLES: I'm going to vote no on
8 this, just because I know don't even know what it's about.

9 EXECUTIVE OFFICER GOLDSTENE: Okay.

10 CHAIRPERSON NICHOLS: We'll continue, and I'm
11 assuming you will learn as much as you want to know but
12 understand your objection on policy grounds.

13 I would just say that the process that we have I
14 believe is that staff is only allowed to brief a limited
15 subset of the Board in advance. And on each issue they
16 try to identify those members that want to be briefed.
17 But in terms of resolutions, oftentimes the resolution
18 itself -- the agenda item is noticed, but the actual
19 language of the resolution oftentimes is produced rather
20 late in the process for the simple reason the thing is
21 evolving.

22 EXECUTIVE OFFICER GOLDSTENE: We're often working
23 with stakeholders and other Board members and people who
24 are involved trying to make sure that we -- language is
25 correct.

1 CHAIRPERSON NICHOLS: But the substance of the
2 fact --

3 EXECUTIVE OFFICER GOLDSTENE: It's all out there.

4 CHAIRPERSON NICHOLS: -- was a proposal -- the
5 substance of the proposal was in tact.

6 BOARD MEMBER TELLES: My point is a simple point.
7 It was on the agenda, and there is no information sent out
8 to us. And I'm just not prepared to vote on anything. I
9 don't have anything information sent out to us. There was
10 nothing in my packet that I received. And it's not in the
11 Board book.

12 EXECUTIVE OFFICER GOLDSTENE: Most this was
13 informational.

14 BOARD MEMBER TELLES: There's something to vote
15 on, and it's to eliminate three protocols that I don't
16 know anything about the protocols, so I can't vote on it.

17 CHAIRPERSON NICHOLS: Actually, if I may, just to
18 make it clear, they are not being eliminated. They will
19 continue to exist and be used, and we're encouraging them
20 to be used. The issue is what the Board does with these
21 protocols.

22 I think the complexity here -- might as well say
23 it right now. We as a Board got into the habit into an
24 attempt to be helpful to the voluntary offset development
25 process of blessing protocols, which, as it turned out,

1 was a little bit of a misnomer, because the protocols kept
2 on evolving and changing. And so the action that we had
3 taken was, in effect, moot.

4 So I would argue -- and you could argue, in fact,
5 that we don't have to take any action at all here today
6 because it's moot. But it seemed like it was more -- it
7 would be more informative to the public and particularly
8 those who are interested in using these protocols one way
9 or the other to let them know that the Board's formal
10 action no longer stands, because the protocols that we
11 approved aren't in effect at this point. So you could
12 argue that we shouldn't have brought it before the Board
13 at all perhaps, but it seemed like a formality.

14 But I think it's a fair point that Board members
15 need to understand what exactly it is they're being asked
16 to do. So we'll take that comment to heart.

17 Okay. Let's proceed with the witnesses.

18 Go ahead.

19 MS. MITCHELL: Thank you. Good afternoon, Chair
20 Nichols and members of the Board.

21 My name is Lily Mitchell. I represent the
22 Southern California Public Power Authority.

23 I'd like to comment on just a few issues relating
24 to the role of offset within the California Cap and Trade
25 Program generally rather than on the specific issue of the

1 forestry protocols. This is in summary of the written
2 submission.

3 Firstly, offsets can be good. The ARB
4 requirements that Brienne discussed that offsets be real,
5 permanent, verifiable, enforceable, quantifiable,
6 additional. These requirements are stringent, and they
7 are important. SCPPA certainly supports these
8 requirements.

9 But once an offset has satisfied these criteria,
10 they must necessarily be real emission reductions and make
11 the same contribution to climate reduction by compliance
12 entities within California.

13 The best way to address any concerns about the
14 validity of offsets is not by limiting the quantity of
15 offsets allowed but by paying careful attention to the
16 quality of offsets using these criteria. And not all
17 offset programs will meet these criteria. The clean
18 development mechanism, which was one of the two that
19 Brienne mentioned, does meet these criteria.

20 Aside from variations on the CMD such as gold
21 standard projects, there is no offset system that is more
22 stringent than the CDM in terms of requirements for
23 additionality, monitoring, verification, and validation.
24 This is reflected in the fact that offsets from CDM
25 projects are accepted in cap and trade programs around the

1 world.

2 High quality offsets have valuable co-benefits,
3 such as sustainable local employment and reductions in
4 local pollutants in addition to being cost-effective
5 emission reductions.

6 These side benefits may actually be stronger in
7 developing countries when there aren't as many
8 environmental and safety protection laws as there are in
9 developed countries. And these benefits should be
10 recognized.

11 Secondly, there should be no limit on California
12 offsets. Some of the arguments put forward for limiting
13 the use of offsets include the desire for emission
14 reductions to occur within California to spur the clean
15 tech sector and to take advantage of co-benefits, such as
16 reduced pollution. These arguments do not support
17 imposing any limit on the use of offsets from projects
18 within California.

19 California offsets will reduce emissions here,
20 provide an incentive to develop low-emission technologies
21 for uncapped sectors, provide co-benefits within
22 California, and can be enforced directly by the ARB.

23 Finally and briefly, if the transport sector is
24 brought into the Cap and Trade Program in 2015 rather than
25 2012, we request that the Board consider setting different

1 sub-limits on the offset used for entities early as
2 opposed to in 2015.

3 CHAIRPERSON NICHOLS: Thank you.

4 Bruce McLaughlin and Victor Yamada and Shelly
5 Sullivan.

6 MR. MC LAUGHLIN: Good afternoon, Chair Nichols
7 and Board.

8 I have a couple comments here from the Offsets
9 Working Group. We are a collaborative of five public and
10 electricity utilities. We get about one-third of the load
11 in the state of California in municipal services.

12 Four quick points.

13 We do support the adoption of these three
14 protocols for compliance purposes. We request an
15 expeditious process of the covered entities and offset
16 project developers have the requisites of the certainty to
17 promote investment in these emission reduction projects.

18 In relation to resolving paragraph two, we
19 request that any environmental review would thoroughly
20 evaluate and acknowledge of the ecosystem services
21 provided by projects informing of the protocols.
22 Particularly, the environmental review should identify the
23 beneficial improvements to water quality and air quality
24 that are in addition to the GHG reduction benefits.

25 In relation to paragraph four, we fully support

1 the Board's direction such that many or most existing
2 offsets projects and credits would be certifiable.

3 Two ad hoc comments, since I have two minutes.

4 On the last point, I was counsel for the American
5 Forest Organization. We put together the Cuyamaca Rancho
6 State Project, the State Park Project. That's a fantastic
7 project, and it was fully our intent that those carrots
8 coming out of that would be eventually good for a
9 compliance grade. So I hope that we do go forward with
10 the forestry protocols and reforestation projects.

11 And pretty much ditto to staff on the whole
12 offsets concept. They've done a very good job evaluating
13 everything. And besides the four percent limitation and a
14 mention in the presentation that emissions are offsets,
15 offsets are emissions, that's exactly the opposite; they
16 are emission reductions. We fully support the staff in
17 these efforts. Thank you very much.

18 CHAIRPERSON NICHOLS: Thank you.

19 Mr. Yamada.

20 MR. YAMADA: Good afternoon. Victor Yamada from
21 Southern California Edison.

22 Brief comments compatible with what we've heard
23 before.

24 Overall, support the approach that the staff has
25 taken in terms of looking at all the considerations for

1 offsets.

2 The one point I would emphasize again is you want
3 to consider expansion of the quantitative limits on the
4 offsets. We look at this is a valuable compliance
5 instrument that should be given its broadest opportunity.
6 We look at it as a way to moderate costs for the overall
7 program to the regulated entities.

8 And the last comment is, as was said before, we
9 appreciate the protocols being rolled out early and being
10 inserted so we can all agree on valid offsets for the
11 program.

12 And my last comment goes back to the SF6, since I
13 was not pacing myself very well. Overall, Southern
14 California Edison supports the emissions reduction goals
15 of the State, including SF6. And we overall support SF6
16 reductions. What I was talking about was some minor
17 improvements and technical aspects to the regulation.

18 Thanks for you time.

19 CHAIRPERSON NICHOLS: Okay. Thanks.

20 Shelly Sullivan and Susie Berlin and Michael
21 Wang.

22 MS. SULLIVAN: Good afternoon, Madam Chair and
23 Board members.

24 I'm Shelly Sullivan with the AB 32 Implementation
25 Group. And my comments are going to be brief.

1 We have submitted comments regarding the
2 importance of a broad use of offsets in the cap and trade
3 regulation. The current cap and trade PDR regarding
4 offsets severely restricts their use. This limitation
5 will significantly increase the cost to the Cap and Trade
6 Program. So it's critical that in order to implement such
7 a program, a sound economic analysis guides the decision
8 making about the program elements. So at that point,
9 we're kind of wondering since the economic analysis is due
10 at the end of the month, if maybe staff can tell us if
11 there is a revised time line for that or --

12 CHAIRPERSON NICHOLS: Just continue.

13 MS. SULLIVAN: That's it. We're just wondering
14 if there is a new guideline or time line for the economic
15 analysis.

16 CHAIRPERSON NICHOLS: I'm not aware of any new
17 time line for the economic analysis.

18 Susie Berlin and Michael Wang.

19 MS. BERLIN: Good afternoon, Madam Chair and
20 Board.

21 My name is Susie Berlin. I represent the
22 Northern California Power Agency. NCPA is a joint powers
23 agency that's comprised of publicly-owned utilities
24 located throughout northern California. NCPA and its
25 member agencies have been very proactive in embracing the

1 goals of AB 32 and have taken steps to affect early
2 reductions and support a robust California offset program.

3 One thing that we believe offsets can be very
4 useful for is a cost containment mechanism in the context
5 of a Cap and Trade Program. And, however, we believe that
6 the four percent limit that's imposed per facility does
7 not provide a sufficient amount of offsets to allow for
8 the use of this tool as an effective cost containment
9 measure. And we are encouraged by Brienne's presentation
10 to hear that staff continues to analyze this issue,
11 especially in the context of allowance prices.

12 We're also looking forward to the updated
13 economic analysis and review of the stringency of the Cap
14 and Trade Program and the need for further cost
15 containment measures and the role that offsets will play
16 in that context.

17 It is also important to know about the
18 availability of offsets up front, not just in the context
19 of where the price of allowances goes down the road. This
20 is because offset programs are necessarily new and
21 innovative programs to meet the six stringent criteria set
22 forth in AB 32, and some of these programs may have long
23 lead times. In order for offset programs to be an
24 effective and viable cost containment tool, high quality
25 offsets must be readily available and they must be

1 developed in advance of when they're needed to be used.

2 So NCPA is encouraged by staff's continued review
3 of the use of offsets and encourages both staff and the
4 Board to look at further measures to expand the four
5 percent use of offsets in order to ensure that they are a
6 viable tool both for emission reduction measures and for
7 cost containment in order to protect rate payers across
8 the state.

9 Thank you.

10 CHAIRPERSON NICHOLS: Thank you.

11 Michael Wang, Kate Beardsley, and Ralph Moran.

12 MR. WANG: Good afternoon. I'm Mike Wang with
13 the Western States Petroleum Association.

14 As many of you know, we've had many speakers at
15 various times on various issues speak before you and that
16 reflects not only the importance of the issues that you
17 are dealing with, but also the importance that we've
18 placed in continuing a dialogue with you and the staff.

19 I would like to compliment staff's presentation
20 this afternoon. I think it's comprehensive. It says
21 exactly where we are in terms of an overview of the issues
22 and raises some of the questions that remain to be
23 resolved as we go forward.

24 You are no doubt aware that we've sent a series
25 of letters almost monthly since the beginning of this

1 process in 2007, '08, and '09 with respect to the
2 implementation of AB 32. We've supported and strongly
3 re-emphasized the need for a market-based program as the
4 most cost effective way to achieve the goals of AB 32.
5 And we think that a market-based program with elements
6 such as a Cap and Trade Programs can help minimize the
7 cost of meeting the emissions caps associated with AB 32.
8 It reduces also the adverse economic impacts to the
9 overall economy.

10 We site, for example, and -- we sent this in a
11 letter so I'm not going to re-issue it to you -- that a
12 study that we submitted two years ago now suggests that a
13 high quality tradable offsets program could save
14 California more than \$20 billion in gross state product by
15 2020 and could reduce compliance costs by up to 80 percent
16 in some cases. That's an important lever in trying to
17 achieve both the emission reductions that you're looking
18 for and maintaining the health of the economy.

19 It's important to stress also that a
20 cost-effective Cap and Trade Program is predicated on
21 robust trading elements that links with other schemes
22 throughout the western U.S. and throughout the world. And
23 that means we need a robust -- and robust in that sense
24 means real, quantifiable, but unlimited trading.

25 Finally, we'd like to re-emphasize the fact we'd

1 like to continue to work with staff as we continue to work
2 through the issues as we develop a means to really develop
3 an accurate and effective trend.

4 Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Kate Beardsley, Ralph Moran, Betsy Reifsnider.

7 MS. BEARDSLEY: Hi. My name is Kate Beardsley.

8 I'm from Pacific Gas and Electric. Thanks for the
9 opportunity to speak today.

10 We really appreciate staff's update on the role
11 of offsets in the greenhouse gas Cap and Trade Program and
12 believe high quality offsets are an essential part of any
13 Cap and Trade Program. Offsets reward the deployment of
14 technologies and facilitate investments in emission
15 reduction practices that would not have occurred
16 otherwise. We strongly believe that the use of
17 high-quality offsets will help California to achieve the
18 objectives of AB 32 while containing the cost of the
19 California economy.

20 The cost containment benefits of offsets to
21 California businesses and consumers are especially
22 important in these challenging times. Limiting
23 high-quality offsets by imposing either quantity or
24 geographic limits could leave the state with insufficient
25 options for avoiding unexpected high emission reduction

1 costs and for achieving AB 32 goals in the more
2 cost-effective manner.

3 As you've heard earlier, some advocate that
4 offset limits are necessary to ensure the cap sectors
5 implement direct emission reduction measures. However,
6 ARB has addressed this concern by emphasizing programmatic
7 measures in the Scoping Plan, which require actions from
8 the capped sectors.

9 Regardless of the quantitative limit placed on
10 offsets for compliance, PG&E recommends ARB ensures there
11 is sufficient number of appropriate protocols and project
12 types that can yield sufficient supply of offsets. PG&E
13 strongly recommends that ARB allow the use of offsets from
14 a number of external programs, such as the Climate Action
15 Reserve and CDM. Also prevent delays in approval of
16 offsets and be cautious about including restrictions that
17 could greatly impair the volume and liquidity of the
18 offset market.

19 PG&E believes any offset policies both related to
20 limits or the types of offsets that will be allowed for
21 use should encourage a robust supply of high quality
22 offsets in the early years of a Cap and Trade Program when
23 low carbon technologies are achieving economies of scale
24 and commercial maturity. Access to offsets in these early
25 years is a way to manage prices and price volatility,

1 which will help ease our state's transition to a low
2 carbon economy.

3 Thank you again for the opportunity to speak, and
4 we look forward to working with you over the next year.

5 CHAIRPERSON NICHOLS: Thank you.

6 Ralph Moran and then Betsy Reifsnider and
7 Michelle Passero.

8 MR. MORAN: Madam Chair, Board members, I'm Ralph
9 Moran with BP America.

10 CARB's approach to the use of offsets is one of
11 the most important decisions to be made in implementing a
12 program that both meets the environmental goal of AB 32
13 and is cost effective. There are persistent concerns
14 about the economic impact of AB 32, and these concerns are
15 a reminder that we owe it to the public to design a
16 program that achieves the environmental goal but that does
17 so at the lowest cost. Broad use of offsets is an
18 important tool that will help us meet both these
19 objectives.

20 I'd like to address what I believe are a couple
21 misperceptions about offsets in the California program.
22 The first one Brieanne covered nicely, and that is that
23 the 49 percent limit or the so-called 49 percent limit was
24 really a four percent limit. Regulated parties are able
25 to use offsets to satisfy four percent of their compliance

1 obligation versus a requirement to reduce emissions by 28
2 percent versus business as usual.

3 Second is a misunderstanding that but for the
4 proposed limit on offsets, most emission reductions could
5 or will occur out of state. This is simply not true. In
6 fact, even with no limit on offsets, a minimum of 80
7 percent of emission reductions will occur in the state due
8 to the direct measures that are prescribed on sources. So
9 it's not necessary to use offset limits to ensure the vast
10 majority of emission reductions occur within the state.

11 What have others said about the use of offsets?
12 CARB's own Market Advisory Committee concluded that
13 California should reject geographic or quantitative limits
14 on offsets so as to maximize the opportunity to reduce GHG
15 emissions at lowest cost. U.S. cap recommends generous
16 limits on the use of offsets to help moderate compliance
17 costs. A four percent limit is not a generous limit. For
18 example, the Waxman-Markey bill that passed the U.S. House
19 allowed almost ten times that amount. The European Union
20 trading system allows two to three times more.

21 And it's very likely a factor that limits
22 California's ability to meet the AB 32 targets and longer
23 term goals will not be technology limits, but rather
24 limits on the cost that the public is willing to bear.
25 Cost matters.

1 For all these reasons, we strongly recommend that
2 the Board ask staff to reconsider the current
3 unnecessarily restricted limit on the use of offsets in AB
4 32.

5 Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Betsy Reifsnider, Michelle Passero, Barry
8 Wallerstein.

9 MS. REIFSNIDER: Thank you.

10 My name is Betsy Reifsnider, and I represent
11 Catholic Charities and the Diocese of Stockton.

12 I would urge you to strengthen the offset limits.
13 The Stockton Diocese was an early advocate of AB 32, and
14 we continue to support its implementation.

15 And I'd just like to note that the National
16 Catholic Healthcare Association of America just published
17 "Climate Change and Catholic Health Care" in which the
18 association calls on catholic health facilities to
19 advocate for policies that reduce greenhouse gas emissions
20 and that specifically dedicate resources to help
21 low-income communities combat climate change.

22 By allowing fewer carbon offsets, there will also
23 be fewer co-pollutants. And this will lead to cleaner air
24 in places like the central valley and the sierra
25 foothills.

1 In the State of the Air Report that the American
2 Lung Association puts out, they have once again given a
3 grade of F to four counties in the Stockton Diocese: San
4 Joaquin, Stanislaus, Calaveras, and Tuolumne Counties.

5 I would also like to say that any offsets that
6 you do allow should target air quality benefits for
7 communities that are already suffering from
8 disproportionate levels of air pollution, such as in the
9 central valley. A purchaser of any offsets should be
10 required to keep the air quality benefits in the air basin
11 in which the polluting industry is located.

12 And then on the second agenda item, the offset
13 protocol, I'd just like to say that some of the greatest
14 strengths of the Air Resources Board, even in these times
15 of mandatory furloughs and slashing of state budgets, are
16 the expertise, the experience, and the dedication of ARB
17 staff and the open deliberative process of this Board.

18 So I would urge you, please, do not outsource
19 your offset responsibilities. Please maintain a public
20 regulatory process for developing and improving those
21 protocols. And please do not accept protocols developed
22 for a voluntary market or for a watered down national
23 standard. We've come so far with AB 32, and I would ask
24 you not to falter now. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Michelle Passero, Barry Wallerstein, and Tim
2 Tutt.

3 MS. PASSERO: Thank you.

4 Michelle Passero with the Nature Conservancy.

5 We'd first like to thank ARB and California for
6 its continued leadership and hard work to address global
7 warming.

8 The development of the preliminary draft cap and
9 trade regulation is an important milestone in this effort
10 and part of a great overall package to reduce greenhouse
11 gas emissions.

12 Among its many elements, the Nature Conservancy
13 supports the PDR inclusion of offsets as a complementary
14 mechanism to reduce greenhouse gas emissions. Their
15 inclusion provides an opportunity, as others have said, to
16 reduce costs of reductions and cost to consumers. They
17 also provide a key opportunity to include forests and
18 natural systems to reduce emissions through beneficial
19 actions like re-forestation, improved forest management,
20 and avoided deforestation.

21 It's critical to maintain our forests for the
22 climate benefits as well as many other benefits that they
23 provide across communities. These benefits include:
24 Protection of air quality, protection of water quality and
25 quantity, habitat for fish and wildlife, and jobs for

1 people.

2 We look forward to the transition of the
3 voluntary protocols, including the CARB forest protocols,
4 to regulatory compliance program. Certainly, California
5 has been a leader in this effort. And we urge California
6 to maintain this leadership and we believe we will.

7 And this is the part I was going to echo the
8 comment of my colleagues, but they haven't gone yet.

9 We would endorse ARB's public process to adopt
10 compliance-grade protocols to ensure, among other things,
11 that they meet the requirements of AB 32. And there is a
12 certain amount of standardization across protocols that
13 are used for compliance purposes. We encourage the
14 continued development of in-house expertise on all these
15 different subjects. We've submitted comments, and we look
16 forward to working with the ARB and staff as the process
17 moves forward.

18 CHAIRPERSON NICHOLS: Mr. Wallerstein.

19 MR. WALLERSTEIN: Good afternoon.

20 Barry Wallerstein, the Executive Officer of the
21 South Coast Air Quality Management District. It's a
22 pleasure to be here this afternoon.

23 I'm going to address the action item before the
24 Board today dealing with voluntary protocols. And I
25 communicated with James Goldstene the other day and sent

1 him some language in an e-mail a couple of nights ago.

2 Specifically, the local air districts are in the
3 process of having developed some protocols, and we have
4 submitted some to CARB staff for technical review. As you
5 can imagine, many who might use the protocols -- or if we
6 use them ourselves -- we would like to be assured that we
7 will receive technical comment on the protocols before we
8 put them into use. So our request is really a matter of
9 coordination, cooperation, and partnership.

10 And we would ask that a provision be added into
11 the resolution where the Board directs upon the request of
12 a local air district the Executive Officer to provide
13 customary and routine technical input on voluntary
14 greenhouse gas emission reduction protocols being
15 developed by local air districts and to provide such input
16 within 90 days.

17 This has real world implications. And in our
18 case, we actually have a million and a half dollars our
19 Board will be investing probably in the next 60 days. And
20 as we go to do that sort of investment, we would like to
21 know that as we dot the i's and cross the t's that the
22 CARB technical staff is in agreement with the calculation
23 methodology.

24 I'd also like -- and I should mention that this
25 language was vetted with the CAPCOA Board. And my

1 colleagues from San Joaquin had to go to a meeting at the
2 Capitol and asked me to express -- and this is a first, me
3 speaking for them before this Board.

4 The second thing that I want to note that James
5 has been working on is the issue of verification. The air
6 districts have sent staff through the verification
7 process, and our final approval of verifiers has been hung
8 up, as we understand it, on an issue of conflict of
9 interest that we as regulators, we as your partners who
10 are enforcing some of your regulations, have some sort of
11 conflict of interest or it would be out of sync with
12 international protocols. And we would hope that issue
13 could be resolved in the near term. And I'll provide the
14 clerk with copies of the e-mail that I sent James.

15 Thank you.

16 CHAIRPERSON NICHOLS: Thank you very much.

17 Tim Tutt, Dan Taylor, Vivian Parker.

18 MR. TUTT: Good afternoon. Thanks for the
19 opportunity to speak.

20 I represent your local public owned utility, the
21 Sacramento Utility District here in Sacramento.

22 And I'd just like to say that SMUD supports
23 offsets as a viable portion of the compliance instruments
24 that can be used in California's cap and trade system.
25 We've participated extensively in the process over the

1 last year. As was mentioned by staff, there were many
2 workshops on offsets.

3 We understand and do not oppose a limit on the
4 use of offsets to ensure that their emissions reductions
5 occur locally in state and covered industries.

6 We do note, however, that for electric utilities,
7 in particular, the AB 32 complementary measures will
8 ensure substantial emission reductions in our industry
9 through energy efficiency renewable procurement and
10 distributed solar and CHP investments. So you can be
11 assured there will be those reductions in the electric
12 sector.

13 We believe, of course, that offsets should meet
14 rigorous criteria associated with emission reductions that
15 are real, additional, quantifiable, verifiable. And we
16 believe there should be no geographic limitation on the
17 use of offsets in California, because emission reductions
18 and the infrastructure for and attention to these emission
19 reductions should be supported globally for this global
20 challenge.

21 With that said, SMUD would urge that the ARB
22 consider establishing no limit on offsets from uncapped
23 sources within California, as these offset sources do
24 provide local emission reductions that are intended
25 through a proposed limit on offsets more generally.

1 And to consider a broad interpretation of what is
2 meant by the term "reductions" here, which factors into
3 the calculation of the proposed offset limit and to
4 include, for example, any early reductions that are
5 undertaken prior to the 2012 effective date of the cap and
6 trade system. These are reductions that are also part of
7 the AB 32 structure. And to include the estimated
8 reductions from business as usual projections so as to
9 expand the amount of offsets available for cap and trade
10 compliance within the 49 percent of the factor in this
11 Scoping Plan.

12 This actually doesn't even count. The concept
13 that as an industry we are likely to be expected to have
14 additional reductions stemming from our investment as a
15 state and electric transportation infrastructure, we will
16 not be able under the current structure as I understand it
17 to consider offsets for those additional reductions above
18 and beyond what we call business as usual.

19 Finally, we would encourage expeditious
20 regulatory adoption of protocols for offsets so entities
21 in the marketplace can consider purchases as quickly as
22 possible.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 Dan Taylor, Vivian Parker, and Barbara Haya.

1 MR. TAYLOR: Chair Nichols, and members of the
2 Board, I'm Dan Taylor, Policy Director for Audubon,
3 California.

4 As an organization dedicated to wildlife
5 protection and conservation of birds in particular, we've
6 appeared before you on occasion through your Scoping Plan
7 and other venues to argue for the aggressive
8 implementation of AB 32. And that's what brings us here
9 today. We just really want to commend the staff for their
10 presentation on offsets. And we'd like to add our
11 organization's support for an effective and vigorous
12 effort to develop and implement an offset program. We
13 believe you're on the right track. We're impressed with
14 the rigor and comprehensiveness of your presentation today
15 and look forward to working with staff as you go forward.

16 As you've heard from some of the other speakers,
17 there are several reasons to go this way. But I think the
18 reason that is most compelling to us is that offsets
19 represents a very efficient and rapidly available way to
20 remove CO2 from the atmosphere; and that's we're on this
21 track to reduce greenhouse gases. And we are compelled
22 and ascribed to the belief that offsets are a clear and
23 available way to do that effectively and efficiently.

24 We also support the concept of the important
25 co-benefits that offsets can create. And we look forward

1 to working with your Board and staff to develop those in
2 more detail. But those co-benefits are important for
3 wildlife, water quality, and protection of quality of life
4 here in California.

5 Thank you for your effort, and we look forward to
6 working with you. We believe you're certainly on the
7 right track.

8 CHAIRPERSON NICHOLS: Thank you.

9 Vivian Parker and Barbara Haya and Payal Parekh.

10 MS. PARKER: My name is Vivian Parker. I'm a
11 biologist. And I've worked in the field of forestry
12 ecology for over 20 years.

13 I submitted written comments to the Board and
14 those are more detailed, but I wanted to highlight a
15 couple of points.

16 First of all, I believe the focus on cap and
17 trade in the development of regulations for implementing
18 AB 32 relative to the role which forests can play in
19 storing carbon is leading the ARB down a path which
20 threatens to derail this important process and potentially
21 weakens the significant contribution which the forestry
22 sector can contribute to reducing global warming. I'm
23 sure you're all aware of that great contribution our
24 forest has.

25 The Climate Action Registry forestry protocols

1 for cap and trade adopted by this Board are so fraught
2 with errors that they are, at best, ineffective to achieve
3 the objectives for AB 32 and, at worst, they may
4 incentivize an increase in the rate and intensity of a
5 particular form of timber harvest, which is clearcutting,
6 which now threatens California's rich native forest
7 biodiversity of plants and animals.

8 The forests of our state are the last remaining
9 real refuge for the great biological diversity that
10 California is famous for. California has more endemic
11 plants than any other state in California.

12 By the way, I'm here representing the California
13 Native Plant Society, the Center for Sierra Nevada
14 Conservation, the Motherlode Chapter of the Sierra Club,
15 and Sierra Forest Legacy.

16 The remedy to this error lies in switching the
17 emphasis on cap and trade to one of incentivizing
18 preservation and conservation of our forests. The way to
19 do this, first of all, is to eliminate the acceptance of
20 clearcutting of any type as an acceptable tool as a forest
21 offset. And currently under the voluntary protocols --
22 which by the way we really support the withdrawal of all
23 those voluntary protocols. Thank you very much.

24 But the use of clearcutting and the conversion of
25 native forests to plantation tree farms is referred to by

1 the forestry industry as being an acceptable tool to
2 combat global warming. But we have to look at what we're
3 losing every time we convert what industry calls so-called
4 marginal lands. These are forest lands that may not have
5 commercially viable timber on them, but they're fabulous
6 refugia for plants and animals which may be endemic to
7 particular type of soil or rock formations. This is
8 totally unacceptable.

9 The forest lands that are going to be traded as
10 offsets must be subject to legally binding conservation
11 easements.

12 CHAIRPERSON NICHOLS: Thank you. Your time is
13 up.

14 Barbara Haya.

15 MS. HAYA: I'm Barbara Haya, and I'm finishing up
16 my Ph.D. at the University of California Berkeley on the
17 CDM, particularly how the CDM is working in practice in
18 the power sector.

19 And the main point of my statement today is to
20 caution you about how poorly the CDM is working. We keep
21 discussing or mentioning high quality offsets, and that's
22 much easier to say than to actually carry out.

23 I found evidence that the majority of CDM
24 projects worldwide are business as usual projects that we
25 are going ahead anyway with or without the carbon credits.

1 So these are projects that don't actually reduce
2 emissions.

3 In addition, because of the uncertainties
4 involved in the over a year-long process of applying for
5 the CDM, the CDM is actually having very little effect on
6 enabling projects to go forward that otherwise wouldn't
7 have gone forward. Developers can't count on those
8 revenue at the time the decisions go forward with a
9 project.

10 And these projects won't be fixed by tightening
11 up the rules of the CDM or simply putting a filter on CDM
12 projects. But a more fundamental change is needed.
13 Particularly, there's no objective accurate indicator of
14 the motivation of the developer that would enable us to
15 accurately filter out business as usual or non-traditional
16 projects.

17 So there is clear evidence that the majority of
18 CDM projects are business as usual. Three quarters of
19 all registered CDM projects were up and running at the
20 time they were successfully registered under the CDM.

21 In India, it's a widely held belief among people
22 working on the CDM and renewable energy that many, if not
23 most, CDM projects are not additional that the CDM --
24 isn't having very much affect at all on the CDM
25 electricity sector.

1 And we've not seen evidence that domestic offsets
2 will be any better. Under a national bill, it looks like
3 agricultural offsets would be included, for example, from
4 activities which farmers are doing anyway under another
5 program called the Conservation Reserve Program. And then
6 we just heard from the previous speaker about problems
7 with forestry offsets and how dubious the reductions are
8 that would be calculated under them.

9 So what should California do? For one, we should
10 not accept CDM credits under a California offsets program.
11 If California will have an offsetting program, it must be
12 small. Some suggested a maximum of ten percent of
13 emissions reductions. This is for a variety of reasons.
14 One is emissions reductions are always less certain when
15 they're measured against counterfactual scenario compared
16 to if they're measured under a cap. And there are a
17 variety of other suggestions that I have that I've
18 submitted.

19 CHAIRPERSON NICHOLS: Thank you.

20 I believe Dr. Telles has a question.

21 BOARD MEMBER TELLES: I have a question. I read
22 your letter that you sent us, and thank you.

23 Do you know if anybody else has confirmed your
24 research? Anybody else do the same type of project and
25 can demonstrate that the CDM is 50 percent fraudulent?

1 MS. HAYA: There's several researchers that have
2 done similar projects. Down at Stanford, there are some
3 researchers that have looked into the CDM. They say
4 between one-third and two-thirds are not additional.

5 And then there are a few researchers in Germany
6 that have documented how poorly the CDM application
7 documents are and also that many of these are not
8 additional. And I can send you more information.

9 BOARD MEMBER TELLES: Just another quick
10 question.

11 Has anybody looked at these other entities that
12 are -- can give offset credits, and are they any better?

13 MS. HAYA: So the voluntary offsets programs that
14 we see in this country are generally believed to be less
15 stringent and less good.

16 And as I understand it, the problem is
17 additionality testing or filtering out business as usual
18 projects. It's very, very difficult to do inherently.
19 And what California needs to do is to implement -- if it's
20 going to do an offsetting program, it needs to implement
21 its own offsetting program based on its own analysis of
22 where it can really have an effect.

23 CHAIRPERSON NICHOLS: Thank you. Okay.

24 Payal Parekh and then Paul Mason and Tamara
25 Raspberry.

1 MS. PAREKH: Hello. My name is Paral Parekh.
2 I'm the Climate Program Director at International Rivers.

3 My organization is well poised to comment on
4 international offsets as we've been tracking the clean
5 development mechanism, the world's largest offset market,
6 since its inception.

7 Two major problems in the CDM are the large
8 number of non-additional credits, as Barbara Haya just
9 alluded to, as well as the adverse social and
10 environmental impacts of many projects.

11 According to various academic studies, not only
12 Barbara's, as she mentioned, between one-third to
13 three-quarters of emission reductions under the CDM are
14 not considered to be real, i.e., they are not additional.
15 This undermines the environmental integrity of the Cap and
16 Trade Program.

17 An example of a project with adverse
18 environmental and social impacts is Chowge (phonetic)
19 hydro-electric project in China. Despite the force
20 displacement of 7,500 persons and the failure to
21 adequately compensate displaced, the project was approved
22 by the CDM. And I would like to add this project is
23 unfortunately not an exception, but rather the rule.

24 We need real emission reductions here in
25 California, and we want to incentivize change that will

1 allow California to take the lead toward a greener
2 economy.

3 But offsets actually just delay the action that's
4 necessary. And instead, I would say they're akin to a get
5 out of jail free card.

6 Under AB 32, CARB is required to ensure the
7 validity of emission reductions, yet the further away they
8 occur, the more difficult it is for CARB to ensure that
9 emission reductions are actually real, putting the whole
10 program in jeopardy.

11 Therefore, we recommend the following:

12 First, we recommend that international offsets
13 should be prohibited;

14 Secondly, if offsets are deemed necessary, they
15 should be within the state of California and limited to
16 ten percent of required emissions reductions under the Cap
17 and Trade Program;

18 Thirdly, these offsets must be required to have
19 positive co-benefits for local communities;

20 And lastly, CARB should be responsible for
21 issuing offsets to ensure the quality of these offsets and
22 that they are truly real and additional.

23 Thank you.

24 CHAIRPERSON NICHOLS: Paul Mason, Tamara
25 Raspberry, Nico Van Aelstyn.

1 MR. MASON: Good afternoon, Chairman Nichols and
2 members of the Board.

3 Paul Mason on behalf of Pacific Forest Trust.

4 And I'm going to direct my comments to the action
5 item of withdrawing the endorsement of the voluntary
6 protocols, which our organization supports. We think it's
7 a useful and appropriate use of the staff time and
8 resources to focus on developing regulatory protocols.
9 There is inevitably some confusion and turmoil as you move
10 from these voluntary early action protocols to regulatory
11 protocols. And I think the best way to deal with that is
12 going to be to try and get the regulatory protocols done
13 as quickly as possible. So we would certainly urge you to
14 move forthwith on that project.

15 We'd also emphasize that I think there's real
16 benefit to the Air Resources Board clearly taking the lead
17 on that. I'm sure there's a lot of temptation to
18 outsource some of that, since you have so many projects on
19 your plate right now already. But this is clearly going
20 to be an important part of the program and is an area of
21 expertise that I think would really benefit the agency to
22 have some additional depth on offsets and particularly on
23 forest offsets. It also puts you in a position to make
24 sure there is a really good public process.

25 It was nice in staff's presentation to hear some

1 reference to projects that had been done previously under
2 some of these voluntary early actions. That's been one of
3 the areas of some confusion, given the timetable in the
4 PDR. That's sort of in conflict with Senate Bill 1771,
5 which was Senator Sher's bill back in 2000 which created
6 the California Climate Action Registry and made very clear
7 representations that those that were engaging in emissions
8 reductions pursuant to that process would use their best
9 efforts to include those in any regulatory program that
10 may happen. So it was a little bit concerning to see a
11 direct conflict there. And I hope you'll continue to
12 clarify how that's going to shake out.

13 One final observation. I think it will be very
14 useful to actually require the majority of offsets to
15 happen from within California for the same reasons other
16 folks have identified. I think it's going to make sure
17 that the co-benefits of offsets actually accrue to
18 Californians, benefits for fish and wildlife and air
19 quality, depending on the type of offsets they may be.
20 They're also going to be much easier logistics to deal
21 with than trying to do them in other states or other
22 countries entirely.

23 Thank you for your consideration.

24 CHAIRPERSON NICHOLS: Thank you.

25 Tamara Rasberry.

1 MS. RASBERRY: Thank you.

2 Hi. I'm Tamara Rasberry from Sempra Energy.

3 This is my first time in front of the Board, so I
4 appreciate the opportunity to speak. I actually want to
5 speak on the action item about withdrawing the protocols.

6 As ARB implements AB 32, it must remain mindful
7 of the need to create and market regulatory certainty.
8 Offsets result from voluntary investments that would not
9 have otherwise been made and which reduce GHG emissions.
10 To the extent potential investors are sent signals by the
11 Board that offset protocols on which they rely may be
12 changed in the future, they will be unwilling to make such
13 investments because they could become stranded. This
14 uncertainty would fly in the face of the overall objective
15 of AB 32 to reduce GHG emissions, because investments that
16 would otherwise have reduced GHG emissions would be
17 unnecessarily discouraged.

18 Additionally, the voluntary climate action
19 preserve protocols have each undergone an extensive
20 stakeholder involved process. Potential modifications to
21 the existing protocols may be a more viable and efficient
22 means to address these areas of concerns and, in turn,
23 help to maintain important market signals for existing
24 offsets and minimize the cost to ARB.

25 Where investments have already been made in

1 reliance on these protocols, will the Board provide
2 assurance these investments will not be stranded? If the
3 answer is no, it should be readily apparent why withdrawal
4 of these offset protocols would discourage voluntary
5 investments to reduce GHG emissions.

6 In order to achieve accurate market signals,
7 preserve work product, and minimize cost, Sempra
8 respectfully asks the Board not to withdraw the previous
9 adoption of voluntary protocols.

10 Thank you.

11 CHAIRPERSON NICHOLS: Okay. Nico Van Aelstyn and
12 then Gary Gero.

13 MR. VAN AELSTYN: Good afternoon. My name is
14 Nico Van Aelstyn, and I'm here on behalf of the Carbon
15 Offset Providers Coalition.

16 Madam Chairwoman and members of the Board, thank
17 you for the opportunity to speak. And I join with many of
18 the other speakers in commending the staff on their
19 presentation today and on the good work that has been done
20 thus far.

21 I have a number of comments I'd like to make very
22 quickly. We have submitted written comments, but I'd like
23 to highlight a couple of points in there.

24 The first is who are, the Carbon Offset Providers
25 Coalition. You've been hearing a lot from those that

1 might wish to purchase offsets and those that are opposed
2 to offsets, per se. We represent a coalition of companies
3 and NGOs that are in the business of actually creating
4 offsets and generating projects which develop offset
5 credits. We're on the ground. We're doing that work
6 across the United States in many different companies and
7 many different communities and providing a lot of very
8 good green jobs in the process.

9 Fours points I'd like to make. First on the
10 first agenda item with regard to offsets discussion
11 generally. We, too, were encouraged by Brieanne's report
12 that you will continue to consider the four percent cap.
13 We think the four percent cap is too low. And in part of
14 the way that it was presented, I think it presents a bit
15 of a false dichotomy, and the discussion here today feeds
16 into that, of environment versus economy.

17 We respectfully suggest that is a false dichotomy
18 and that the focus rather than being on quantity to
19 limits, which are arbitrary and create a lot of problems,
20 should be on offset quality. That's how you ensure
21 creating rigor is to ensure the offsets themselves meet
22 the criteria that have been referenced many times of real
23 additional, verifiable, and permanent. That's where the
24 focus should be.

25 To the extent there needs to be a quantitative

1 limit, we respectfully suggest four percent is way too low
2 and creates a number of problems. First, as has been
3 mentioned by many, offsets are a very important cost
4 containment mechanism. It's needed. A study by the U.S.
5 EPA analyzing the ACES bill that passed the House last
6 June concluded that without offsets, the cost of
7 compliance could be twice as high as with unrestricted use
8 of offsets. So they are needed to keep costs down.

9 They're also needed to ensure that greenhouse gas
10 reductions are achieved now. Ordering a company to
11 achieve a goal some years from now does not ensure
12 reductions are made today. Offsets generate reductions
13 today, sequestration today. And in deed, millions of tons
14 of greenhouse gas emissions have been reduced or
15 sequestered in the last 15 years in the voluntary market,
16 and those early actions should be endorsed and supported.

17 Very quickly, the start date of
18 December 31, 2006, is too late. Note that the bill that
19 passed the House had a 2001 start date. We should be
20 consistent with that.

21 Finally, very lastly, the actual resolution, I
22 join Dr. Telles in a concern about the not having seen it
23 and the notice was a little bit vague. We didn't know
24 exactly why. We have a number of issues with it. But one
25 of them is we suggest that the Board take advantage of the

1 WCI's work, the evaluation report of existing offset
2 protocols that's due out now and take advantage of that to
3 consider those protocols.

4 CHAIRPERSON NICHOLS: Gary Gero.

5 I'm going to take the liberty of interjecting for
6 a moment here while Gary is coming forward.

7 I don't mean to preempt your time. You get your
8 full time.

9 But I want to make sure that people understand
10 that the Climate Action Reserve, all though it is a
11 free-standing entity, it's a nonprofit organization in
12 California, is the successor to an agency that was created
13 by California state law. It was originally a part of the
14 Climate Action Registry, California Climate Action
15 Registry. I had the honor of serving as its first Board
16 Chairman when I was Resources Secretary. And it has
17 evolved now into a separate organization working on
18 voluntary carbon offsets and has a stellar Board, which is
19 chaired by our Secretary of U.S. EPA, Linda Adams. So
20 there has been a close relationship here and an evolution
21 over time.

22 And as the language of the proposed resolution in
23 front of you points out, AB 32 makes it clear that ARB was
24 supposed to identify opportunities for voluntary
25 reductions. We were supposed to reward those reductions

1 to the maximum extent possible under any kind of a
2 mandatory program that we came up with.

3 There is no deviation from that commitment. And
4 the reason why we've worked so closely with the Reserve
5 over the years is because we wanted there to be a supply
6 of the kind of high quality excellent offsets that
7 everyone who believes that offsets should exist at all
8 thinks are the sort that should be used.

9 So this was intended to be a model, and it has
10 served as a model. There is no question about that or
11 about the technical work that has gone into the creation
12 of those registered offsets that the Reserve is now
13 responsible for.

14 Our only concern now as we move into a Cap and
15 Trade Program is the need to maintain an arm's length
16 relationship with the CAR or any other organization that
17 would come forward and start to try to do the same thing
18 in terms of developing the kind of high quality offsets
19 that we need and to make sure that we don't inadvertently
20 by stamping these things with an ARB seal of approval turn
21 them into something regulatory when they were not intended
22 for that purpose.

23 And I know that I've been asked this question by
24 others, and so it seems like it's easier to just try to
25 say it one more time. We have every expectation that as

1 we move forward into the mandatory program, the Cap and
2 Trade Program, that the offsets that have been created
3 pursuant to the protocols that we approved are going to be
4 accepted for compliance purposes, by and large. They all
5 are going to need to have some additional bells and
6 whistles added in terms of reporting and monitoring,
7 because now we're moving into a mandatory world. So those
8 kind of changes are going to be needed.

9 Some of them may also need other technical
10 changes. They've already been amended several times. And
11 they all will need, if ARB is going to approve them for
12 offset purposes, to go through a process under the
13 California Environmental Quality Act, which we never did
14 for the voluntary offsets. It's been questioned whether
15 we should have done it or not, and I think there is a very
16 good argument to be made that it was governmental action,
17 but, at the time, we believed we were doing the right
18 thing encouraging voluntary action. So we said simply
19 yes, these are all good.

20 But the situation before us now is one where we
21 have to move onto the next phase of this process. And so
22 I just want to make sure that everybody knows that, you
23 know, we feel proud of the work that was done by CAR and
24 have been very involved over the years in facilitating
25 that work. And we do want to make sure that we, to the

1 maximum extent possible, honor the work that has been done
2 under that program.

3 So just to be very clear, I know the word
4 "offsets" covers a multitude of sins, and I'm well aware
5 of the problems with the CDM and other kinds of programs
6 people have offered up where there was a question about
7 the baseline and the monitoring and so forth. But we want
8 to make sure that people are aware that we are standing
9 behind the work that has been done here.

10 So if anybody else wants to comment on Gary's
11 time.

12 BOARD MEMBER RIORDAN: Thanks you, Gary.

13 MR. GERO: By all means.

14 BOARD MEMBER RIORDAN: As another former Board
15 member, I said this to the staff just not as eloquently as
16 you, Madam Chairman, but I certainly want us to look at
17 and be mindful of any unintended consequences that might
18 befall some of those early efforts that the business
19 communities have made. And that's why I was willing to
20 serve, because I did want to protect those who really
21 stepped forward at a time when it was really innovative
22 and, you know, there was a lot of time spent and
23 innovation with the company. So I'm glad to hear you say
24 that.

25 I'm going to reiterate it, because I felt so

1 strongly that we need to indeed recognize those early
2 efforts by people and we should not penalize them in any
3 way for that early effort.

4 So thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Okay. Now, Gary, do you have anything to say?

7 MR. GERO: I think you've said it for me. Thank
8 you. But let me do take a moment just to address the
9 Board.

10 And I'm Gary Gero, the President of the Climate
11 Action Reserve. And we've enjoyed a long partnership with
12 the State of California. As you note, we were originally
13 the California Climate Action Registry and created by
14 state law in 2001.

15 First, let me just say thank you for that strong
16 statement and for making it clear that the Air Resources
17 Board continues to support and encourage and recognize
18 early voluntary actions, particularly those that are
19 undertaken in accordance with high quality standards, such
20 as those that we as an organization have promulgated and
21 this Board has recognized. We certainly appreciate that.

22 As you note, that was, in fact, the fundamental
23 goal and mission of the original creation of the
24 California Climate Action Registry, and it remains our
25 sole purpose today. As an organization, we may have

1 changed our name, we may have expanded our geographic
2 scope, but we continue to state very clearly that our
3 mission and our sole mission is to encourage early actions
4 and ensure those early actions are recognized. And I
5 think that is clear from the statement you made that that
6 is consistent with how you see the work that we've done.

7 I want to actually say that I support the action
8 that's before you here today. In particular, the idea of
9 clearly defining early on in the process what the
10 compliance protocols can and should be for the Cap and
11 Trade Program. It is vital that market players, all
12 communities, and all stakeholders know what the rules are
13 going to be for offsets in the Cap and Trade Program as
14 early as possible so they can begin the process of
15 developing projects in accordance with those rules and
16 develop projects and offsets themselves.

17 We're pleased that you are articulating a clear
18 path for that. We stand behind that clear path. We want
19 to help inform that process.

20 One of the things you may not be aware of about
21 our organization is that we are now considered the
22 largest -- certainly considered the highest quality
23 offsets program in the United States. We have more than
24 200 projects in our system from 41 states. We expect to
25 issue ten million offset tons by the end of this year. So

1 clearly we are taking over a significant role in this
2 sector, and we want to use that experience in the
3 infrastructure we've built to help inform the ARB process
4 and work with you.

5 Clearly, this kind of public/private partnership
6 has achieved great success in the past, and we want to
7 make sure that we continue to build on those successes as
8 you move forward with your compliance program.

9 CHAIRPERSON NICHOLS: I think that's your time.
10 If you have written testimony --

11 MR. GERO: I'd be happy to provide it. And if
12 there are questions, I would be happy to answer them.

13 CHAIRPERSON NICHOLS: Thank you.

14 Next witness is Steve Elias, followed by Randall
15 Friedman and Jim Feichtl.

16 MR. ELIAS: I'll wave mine.

17 CHAIRPERSON NICHOLS: Are you Steve? Okay.
18 Thank you.

19 Randal Friedman.

20 MR. FRIEDMAN: Madam Chair, members, Randal
21 Friedman on behalf of the U.S. Navy.

22 We did submit written comments that I'll touch
23 on. I'm glad to be following this discussion of early
24 action, because that's the primary point I wanted to make.
25 And to do that, I'd like to use as an example our San

1 Clemente Island installation 50 miles off the coast of
2 southern California, critical installation for our
3 training and activities.

4 To get power at the island to run radar
5 communications and living quarters, we barge fuel from San
6 Diego. That's the only way to get power. That's the only
7 way to run the island.

8 Back in 1998, we thought there would be a better
9 way to do that, so we installed three wind turbans. We
10 now supply 15 percent of the island's power by these wind
11 turbans.

12 Fast forward to today, we think that -- and I
13 understand it is a very difficult question, but we think
14 there should be some avenue to recognize the fact that we
15 have installed those wind turbans under no requirement and
16 just to do the right thing. Yet, under the proposal,
17 there would be no avenue to obtain offsets for that or
18 recognition. I suppose we could have just continued to
19 barge the fuel the last ten years to the island and
20 combust the extra fuel and the pollution, and then we
21 would be in a situation where we could obtain the offsets,
22 but I don't think that would be doing the right thing
23 either.

24 So we want to raise that as a long-standing issue
25 of ours as an agency that has done a lot of early actions.

1 We believe that there should be some avenue to obtain some
2 recognition for that.

3 Also in terms of offsets, we operate globally.
4 We have installations all over the world and all over the
5 country. We certainly would support the widest
6 consideration of offsets. Certainly, if we move emissions
7 to California from another state, we would like to be able
8 to take that carbon with us so that we can -- whatever
9 offset requirements might exist in California from the --
10 we can use those emissions from where it was being
11 relocated from.

12 We did submit comments. I just wanted to
13 highlight on those two issues. And thank you.

14 CHAIRPERSON NICHOLS: Thank you.

15 Jim Feichtl, Timothy O'Connor, Bob Lucas.

16 MR. FEICHTL: Chairman, Board members, thank you.

17 My name is Jim Feichtl, and I'm with the Loma
18 Prieta Chapter of the Sierra Club.

19 I'd like to thank the Board for proposing the
20 forest project protocols. My main objection to the forest
21 project protocols is the inclusion of a provision that
22 allows the most destructive forestry method, clearcutting,
23 to be used in projects that are supposed to be good for
24 the environment. Clearcutting, as it is practiced here in
25 California, where 99.9 percent of everything is removed

1 from the land, the soil is plowed and compacted, and then
2 herbicides applied is never good for the environment.

3 The Sierra Nevada provides over 60 percent of the
4 water that's used in California. The clearcut areas, snow
5 pack melts faster. The water runs off sooner. It does
6 not -- a clear cut plantation, which is what replaces the
7 clear cut, is not as resilient as a naturally diverse
8 forest.

9 Here where we're dealing with climate change over
10 perhaps the next 100 years, the ability of a natural
11 forest is much greater to adapt to those climate
12 conditions. Young tree plantations use 70 percent more
13 water than an old growth forest in the dry summer months.

14 This is just not a good idea. I think we need to
15 really look at what kind of other environmental
16 destruction is happening when you decide to allow
17 something like clearcutting in a Cap and Trade Program
18 project. Thank you.

19 CHAIRPERSON NICHOLS: Thank you. We've heard
20 from a lot of people with that viewpoint.

21 Tim O'Connor and Bob Lucas and Marilyn Woodhouse.

22 MR. O'CONNOR: Good afternoon. My name is Tim
23 O'Connor. I'm an attorney with the Environmental Defense
24 Fund here in Sacramento.

25 Let me start by saying that EDF supports the

1 recommendation by the staff as well as the Board's
2 commitment to ensuring that offsets used by businesses to
3 meet compliance obligations are of the highest quality and
4 retaining integrity of the program as a whole.

5 The transition from a voluntary program to a
6 mandatory compliance grade program is an important step
7 that we look forward to working with the agency in, and
8 adopting compliance-grade protocols is something that I
9 think we all look forward to working on.

10 Offsets are an important part of the California
11 Emission Reduction Program. They can help contain costs
12 of the overall program and facilitate emission reductions
13 across many different sectors.

14 Since the Cap and Trade Program effectiveness
15 will be judged and reinforced by the cost of the program
16 as a whole, it's important that we provide to California
17 businesses the opportunity to find low-cost emission
18 reductions opportunities at the outset of the program and
19 continuing through the program durations.

20 Credits generated from projects that include
21 domestic and international forestry, agriculture and
22 nutrient management, landfills, high global warming
23 potential gas emissions, wetland restoration, manure
24 management are all very important and just the types of
25 projects that we're going to be seeking and needing to

1 generate emission reductions from in order to achieve our
2 climate change goals.

3 Over the next several months and starting today,
4 the conversation is going to center on how we can manage a
5 program that allows for the certification of
6 compliance-grade offset projects. Brienne discussed a
7 couple methods for improving some of those projects. And
8 EDF right now would like to talk about one particular
9 method that we think would be a valuable tool that the
10 Board could use to help them with that process.

11 The protocol development process, if it were
12 retained solely in-house, would take away valuable staff
13 time and resources that is needed to look at the program
14 as a whole and measure the effectiveness of the various
15 endeavors that we hope to achieve.

16 However, it's also important for the agency to
17 retain administrative oversight and interaction with the
18 approved protocols, since the credits are going to be used
19 in California to reduce our emissions and achieve our
20 emission reduction goals.

21 Therefore, EDF would propose the use of an expert
22 review board, possibly external with the agency, but arm
23 in arm with the agency in close coordination to assist
24 evaluation of the technical issues that are going to be
25 before the Board.

1 There are examples of boards like this in
2 programs like the ACES program as well as in the CDM. We
3 are preparing a proposal for the Board we will be
4 submitting soon. We look forward to working with the
5 Board starting in April at the next meeting and continuing
6 thereon. Thank you.

7 CHAIRPERSON NICHOLS: Thank you. This is a work
8 in progress, as you correctly point out.

9 Bob Lucas and Marilyn Woodhouse and Bill
10 Magavern.

11 MR. LUCAS: Thank you very much. My name is Bob
12 Lucas. I'm here today representing the California Council
13 for Environmental and Economic Balance, known as CCEEB.

14 And I also wanted to extend our appreciation to
15 the staff and acknowledge the very long, arduous path that
16 they've been on so far and also acknowledge their
17 willingness to work with us as these policies are
18 developed.

19 In fact, the slide that Brieanne showed here what
20 is the role of offsets, I thought it was a very fair
21 representation of how offsets work in the system and why
22 they're so important. Offsets are an important cost
23 containment mechanism, and we believe they should be
24 allowed to function within the program to reduce
25 compliance costs to the benefit of the program and to the

1 benefit of the state.

2 At the moment, in the current form, we believe
3 that the PDR is overly restrictive with regard to offsets.
4 Instead of quantitative restrictions on the use of
5 offsets, we believe that the PDR should focus on the
6 quality of offsets.

7 In addition, we think the ARB should consider
8 adopting standards of current operable trading partners in
9 order to create a marketplace that has available offsets.

10 With regard to linking, we think it's important
11 to link to existing markets that will allow covered
12 entities to enter into a larger market and have options
13 and compliance paths. Without trading partners from the
14 outset, the number of available offsets will be limited
15 and cause significant costs. We believe linkage and
16 offsets should be allowed to reduce costs and reduce
17 leakage.

18 And with regard to further program development,
19 we'd like to urge your recognition that it's important to
20 have verified offsets, third-party verifiers, approvals,
21 linkages, and dispute resolution processes in place from
22 the onset of the regulation.

23 Towards this end, we think that it would be good
24 for you to consider asking staff to develop a work plan if
25 they haven't already with clear completion deadlines for

1 tools, organizations, policies, and systems that must be
2 in place for regulated entities to comply with the
3 regulation.

4 And finally, just to highlight this point, we
5 believe alignment with current, international, national,
6 and regional programs would be the best opportunity for a
7 California Cap and Trade Program to work. We're concerned
8 that without aligning definitions and policies California
9 will be isolated, and we believe this will cause the
10 program to suffer significant leakage. We would like to
11 avoid that.

12 Thank you very much.

13 CHAIRPERSON NICHOLS: Thank you.

14 Marilyn Woodhouse, Bill Magavern, Luke Breit.

15 MS. WOODHOUSE: I have to arrange myself here.

16 Well, my name is Marilyn Woodhouse. I'm the
17 anti-clearcutting organizer for the Motherlode Chapter of
18 the Sierra Club and one of the founders of the Battle
19 Creek Alliance.

20 We appreciate that the Board is considering
21 withdrawing the adoption of the CAR forestry protocols,
22 and we would like to speak about that.

23 First of all, we have been collecting signatures
24 on a petition for some time now, and we would like to
25 present it to you. There are a couple of thousand signers

1 on this petition, and luckily not all of them are
2 requesting three minutes each.

3 This petition says that industrial scale
4 clearcutting is converting California's diverse forests to
5 fire-prone tree plantations, threatening water quality,
6 promoting extensive use of chemical herbicides,
7 contributing to global climate change, endangering
8 wildlife and their habitat, and damaging private property
9 values and businesses in affected regions.

10 We, the citizens of California and supporters of
11 sustainable logging, call upon the Governor of California,
12 the Legislature of California, California Department of
13 Forestry and Fire Protection, and the Environmental and
14 Natural Resource Agencies of the State of California to
15 use all means at their disposal to end this destructive
16 practice.

17 When the forestry protocols were approved last
18 fall, we were shocked and disappointed that clearcutting
19 was included in what could be used to sell as offset
20 credits. Some of us who are here today live in areas that
21 have been clearcut extensively, so we live with this
22 physical reality of what clearcutting does.

23 This is -- I don't know if anybody can see that.
24 That's Mount Lassen in the background there. There are
25 many thousands of acres of clearcuts already, and they are

1 planning more.

2 The timber industry likes to call trees a
3 renewable resource, but replanting a clearcut does not
4 replace a forest or its systems. Plantations of a single
5 kind of tree doused with herbicides and other
6 petrochemicals and cut and recut for the few cycles it
7 takes to destroy the soil are not going to maintain the
8 life support system that the forests provide for all of
9 us.

10 Besides living near thousands of acres of
11 clearcuts, I live where there was a fire in 2005. It was
12 started by human thoughtless, and it burnt about 90
13 percent of my 20 acres. When the trees were there, I
14 suppose that I took them for granted because I expected
15 them to always be there. But now that they're gone, I
16 watch the small tree seedlings that I planted afterwards,
17 and I know I will never see big trees on my land again in
18 my lifetime. And the reason that I won't see that is
19 because trees take a lot longer than a human lifetime to
20 grow large.

21 The deforestation and the clearcutting in the
22 county that I live in or the state or the country or the
23 world is causing irreparable harm to systems that took
24 hundreds to thousands of years to evolve, and they will
25 not recover in any comprehensible human time scale. We

1 hope that you will consider this when you are determining
2 how to monetize natural services that functioning forests
3 provide and reject any deceptive ideas that a replanted
4 clearcut can replace those forests.

5 Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Bill Magavern, Luke Breit, and Brian Nowicki.

8 MR. MAGAVERN: Bill Magavern, Director of Sierra
9 Club California.

10 To start with the big picture, cap and trade is
11 certainly not our favorite mechanism for reducing
12 greenhouse gas emissions. We think there are much better
13 ways that are sure to get those emission reductions. But
14 within the context of a larger package like the Scoping
15 Plan that includes many different measures, we could
16 support a well-designed cap and auction system. And
17 certainly the issue of offsets is one of the major issues
18 that would effect the program design.

19 We are not opposed to all use of offsets, but we
20 do think that the proposal in the preliminary draft reg
21 allows for far too liberal use of offsets and that that
22 really would undermine some of the central purposes of AB
23 32. AB 32 says that California will reduce our emissions
24 to 1990 levels by the year 2020. It does not say that we
25 will hire out that emission reduction work to other

1 jurisdictions. If we do hire out that work to other
2 jurisdictions, we lose a lot of the benefits of AB 32.

3 What we really need to do here in California is
4 to fundamentally transform our energy economy. And we can
5 show the way for the rest of the country and the rest of
6 the world.

7 We also can create those energy efficiencies here
8 in California which will create jobs here in California.
9 If we, instead, tell our big power plants and fuel
10 providers that what they can do is scour the world looking
11 for the cheapest possible offsets, which as you've already
12 heard, in many cases will not provide additional emission
13 reductions, will just be business as usual, if we send
14 that message, then of course that's what they'll do. And
15 you're hearing there are representatives say they want
16 more offsets available. And, sure, that's their job.
17 They want to find the cheapest possible ways to comply.

18 But what AB 32 says is we need to reduce our
19 emissions. And so we're very concerned that the offsets
20 if they are granted too liberally could become a large
21 loophole that could swallow up most of the benefits of the
22 proposed cap and trade regulations.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 Luke Breit.

1 MR. BREIT: Madam Chair and members, I'm here in
2 support of the resolution to withdraw the approval of the
3 voluntary protocols.

4 And I want to quote a very wise man who once
5 said, "The forest is a peculiar organism of unlimited
6 kindness and benevolence that makes no demands for its
7 sustenance and extends generously the products of live
8 activity. It offers protection to all beings, offering
9 shade even to those who destroy it."

10 I want to put this in the larger worldwide
11 context dealing with forests. Over the past century, the
12 earth's mantle of forests has been reduced to tattered
13 remnants. As the world population has grown from 2.3
14 billion in 1950 to 6.7 billion today, some 300 billion
15 acres of the world's original forests cover, nearly half,
16 has been lost. The destruction continues. In each of the
17 last dozen years, about 14.6 million hectares of forests
18 have been cut, bulldozed, or burned.

19 Vast forests are essential to life itself. They
20 absorb carbon dioxide, the main climate-altering gas, in
21 the atmosphere and produce oxygen anchor soils that
22 prevent erosion, regulate water flow, and protect
23 watersheds, modify climate, and cool the air, and provide
24 a habitat for millions of species and plants and animals.

25 Sorry. I had a stroke last year.

1 By providing water cycle regulations, soil
2 conservation, and biodiversity, forests are vital to
3 maintaining healthy ecosystems on which humanity depends.

4 In North America, farmers and forests depend on
5 migratory birds along with bats and insects to pollinate
6 crops, disburse seeds, and prey on pests. Mexican brown
7 bats, for example, dine on a variety of insects that
8 plague corn and cotton and potato crops in the U.S.,
9 saving farmers millions of dollars in damage while
10 reducing the use of pesticides.

11 The world's forests act as great reservoirs that
12 store about 830 million tons of carbon. The world's
13 remaining and old growth forests play a critical role in
14 the fight against global warming deforestation and
15 degradation account for nearly 20 percent.

16 I just want to add that remember that the forests
17 are the lungs of the earth and we forget it at our peril.

18 CHAIRPERSON NICHOLS: Thank you, Mr. Breit.
19 Appreciate that.

20 Brian Nowicki, Bonnie Holmes-Gen, and Michael
21 Endicott.

22 MR. NOWICKI: Madam Chair, members of the Board,
23 good afternoon. My name is Brian Nowicki with the Center
24 for Biological Diversity. We want to support the
25 resolution before the Board today and hope that you will

1 vote to pass it.

2 When the Air Resources Board adopted the forest
3 protocol last September, Board Member D'Adamo, among
4 several Board members expressing concerns about the
5 standards applied in the voluntary protocol, asked, "Can
6 we at a later point as part of our adoption of a cap and
7 trade insist on a higher standard for forestry or whatever
8 industry the protocols apply to?"

9 And Deputy Executive Officer Lynn Terry replied,
10 "We want to be very clear that this protocol is for
11 voluntary actions and that the Board's approval today is
12 restricted to that arena. And that for the purposes of
13 cap and trade, the Board will consider the rules of the
14 game in terms of offsets that may be brought into the
15 system. And so, yes, those kinds of criteria will be
16 developed going forward as part of the cap and trade rule
17 development process. That is, additional environmental
18 quality criteria will be considered before incorporating
19 the voluntary methodologies into the regulatory Cap and
20 Trade Program."

21 Nonetheless, the preliminary draft regulation for
22 the cap and trade rule released a few months later stated,
23 "The Air Resources Board believes that the previously
24 adopted quantification methods are of the highest quality
25 and should be integrated into the compliance system."

1 That directly contradicted those previous
2 statements and intentions and is one of the reasons we
3 strongly support the action before the Board today, which
4 we see as a good path to rectifying the situation.

5 Since then, we have communicated to Air Resources
6 Board our concerns that the adoption of the protocols
7 without independent review failed to take into account the
8 significant potential negative environmental impacts of
9 the protocol as required under the California
10 Environmental Quality Act, as well as the co-benefits
11 considerations of AB 32.

12 In short, well, the forest protocol adopted by
13 the Board for voluntary measures is not the gold standard
14 that is needed and to which California should aspire.
15 Although there is more than we have time to get into
16 today, in short, the Board's protocol is not ready for
17 prime time, and there is a great opportunity before us to
18 improve it. We strongly support ARB's commitment to do so
19 in the plan outlined today. And critical to that effort
20 is withdrawal of the volunteer protocols as you move
21 forward with the process to develop the review and then to
22 develop the protocols for a compliance mechanism.

23 Lastly, I would like to point out, Dr. Telles,
24 that when Air Resources Board adopted a voluntary forest
25 protocol, Dr. Telles specifically asked staff about the

1 potential for including air quality co-benefits,
2 particularly with regard to fire, in the further
3 development of the forest protocol for the regulatory
4 mechanism.

5 Thank you very much.

6 CHAIRPERSON NICHOLS: Okay.

7 Bonnie Holmes-Gen, followed by Michael Endicott,
8 and Susan Robinson.

9 MS. HOLMES-GEN: Thank you, Chairman Nichols and
10 Board members, for my three minutes.

11 I'm Bonnie Holmes-Gen on behalf of the American
12 Lung Association of California. And the American Lung
13 Association is committed to achieving a strong process
14 forward toward achieving our AB 32 goals and reducing
15 greenhouse gas emissions. But we want to make sure along
16 the way that we're achieving the most public health
17 benefits, that we are achieving the highest level of air
18 quality benefits also.

19 And so with regard to this discussion today,
20 there's been a lot of discussion about offsets and the
21 cost containment strategy. And we want to talk about the
22 public health aspects of our offset strategies.

23 And there's really two keys points I want to
24 make. One key point is I think the Board needs to get a
25 better understanding of how the use of offsets will impact

1 local communities and how the use of offsets will impact
2 public health outcomes in these communities.

3 Clearly, the availability of offsets will have a
4 great impact on decisions that are made by regulated
5 sources, on the level of cleanup and upgrading of their
6 facilities. And these decisions are of particular concern
7 for us to vulnerable communities, communities that are
8 already highly impacted. And these decisions impact
9 whether communities will experience improvements in air
10 quality or continue along the lines of the status quo in
11 the current level of poor health outcomes.

12 So the second key question I think the Board
13 needs to understand is how will the use of different
14 offsets policies impact local public health outcomes. And
15 I think you need this information to decide on the best
16 design for Cap and Trade Program.

17 We think that the Board should look carefully at
18 a number of the different strategies, including placing
19 stricter limits on offset, restricting the ability of
20 facilities in highly-polluted areas in your vulnerable
21 communities to use offsets and prioritizing offsets in
22 California.

23 And I know that the Air Board and Department of
24 Health Services in the context of public health working
25 group is beginning to look at a number of these health

1 impacts on local issues.

2 I wanted to raise these issues to, number one,
3 highlight the importance of public health analysis and the
4 development of the health impact analysis on the Cap and
5 Trade Program; and two, to request that the Board focus on
6 these issues of local public health impacts as key factors
7 to be considered in the development of the regulation and
8 to consider these factors now and not after the regulation
9 is adopted.

10 We're going to be continuing the dialogue with
11 you, and I appreciate the opportunity to raise these
12 issues.

13 CHAIRPERSON NICHOLS: Thank you.

14 Michael Endicott and Susan Robinson and Erin
15 Rogers.

16 MR. ENDICOTT: Can I pretend I'm Bonnie
17 Holmes-Gen for the last 22 seconds she had?

18 CHAIRPERSON NICHOLS: No.

19 MR. ENDICOTT: Michael Endicott, Resource
20 Sustainability --

21 CHAIRPERSON NICHOLS: That would be trading, and
22 we disapprove of that.

23 MR. ENDICOTT: -- for Sierra Club California.

24 Thank you for this opportunity to speak.

25 There is a little box there that says yes or no.

1 It's a little confusing. We're definitely in favor of the
2 proposed action to withdraw the ratification of the
3 protocols for now.

4 But with development, I want to follow up on my
5 colleague, Bill Magavern's, comment that not all offsets
6 are created equal. And we think it's really important
7 that you develop whatever cap and auction system that you
8 have or however you incorporate offsets into it. If you
9 don't prioritize them, you also will have a grave effect
10 on whether AB 32 will be effective. By that I mean is
11 that some offsets could be used here in California to
12 directly reduce the emissions in some other facility or
13 some offsets could be used to help people of low income,
14 for instance, get energy-efficient air conditioners or
15 refrigerators and thereby reduce the need to generate the
16 electricity and emit the gas in the first place.

17 Lastly is sequestration. Sequestration has some
18 potential benefits. Particularly, forestry has some good
19 aspects to it. But it also carries some very risky
20 proposals and could put the entire program at risk.

21 We appreciate the Chair's comments about the need
22 for the arm's length between and you CAR, which is a
23 nonprofit. In some ways, we're working in both places
24 with CAR and with them, but it is amazing to me that we're
25 going to have a debate in CAR about whether a sustained

1 yield plan is a regulatory document for purposes of
2 establishing baseline. And they're not a regulatory
3 agency. So when you ratify something, you are the
4 regulatory agency. And we would like to work with you to
5 make sure that AB 32 is enacted in a proper fashion.

6 So to that end, I would say specifically that
7 even within protocols, not all offsets are created equal.
8 So as you go into a regulatory compliance program, which
9 in some cases would include recognition of early actions,
10 that you need to distinguish between what protocols you're
11 adopting or not. It's one thing for me who decided to
12 come up here by my car rather than the train, to buy and
13 plant a tree in Israel to offset my carbon emissions today
14 that I could have saved by going by train.

15 But it's another thing when I'm actually going to
16 use that to avoid something that is regulatory required
17 upon me to reduce that emission.

18 So that's why we need to distinguish that
19 voluntary protocols have a role, but when they actually
20 are going to serve to offset or delay reduction of carbon
21 emissions, it's problematic. So we thank you and urge you
22 to withdraw what you've done. Let's get the regulatory
23 requirements together. Make sure that it really is
24 additional, because there is no certainty in some of these
25 items, especially in terms of enforcement potential for

1 leakage. We want to make sure that you actually do
2 incorporate the highest standards.

3 Thank you very much.

4 CHAIRPERSON NICHOLS: Thank you.

5 Susan Robinson, and Erin Rogers will be last.

6 MS. ROBINSON: Hello. I'm Susan Robinson. I
7 spent 25 years of my career -- I'm recently retired -- in
8 the oil and gas industry, but today I'm here to talk about
9 forestry protocols.

10 And I had a handout. I hope all the Board got
11 this handout that shows some of the clearcutting
12 practices. Lots of other people have talked about the
13 clearcutting, and we testified previously, so I'll try to
14 be brief. I'm representing Ebbetts Pass Forest Watch.
15 They're a not-for-profit organization located in Arnold,
16 California, in the sierra. We have many members
17 throughout the state that have vacation homes in our area
18 and are interested in the issue that we work on, which is
19 promoting healthy forests and healthy watersheds.

20 So thank you for your resolution today, and we
21 are supporting the withdraw of the adoption of the
22 forestry protocol.

23 Other people have talked about the issue of
24 forestry protocols, and I'll try to be very brief.
25 Clearcutting is a huge problem in the protocols as is the

1 conversion of native natural forests, biodiverse forests,
2 and plantations. We all read all the time about the
3 forest destruction in the Amazon. What we're saying here
4 in California is it's okay to clearcut our forests, but
5 not the Amazon forests. It's okay to clearcut our forests
6 and convert them into tree plantations, but that wouldn't
7 be good for the Amazon forests. So somehow we need to get
8 our heads around that.

9 And also the science; the common sense shows us
10 clearcutting produces more CO2 emissions than any other
11 form of logging. And plantations are not real forests.

12 So we support your action today. Having come
13 from an oil and gas industry background, the other thing
14 that I would like to say is that in the cap and trade
15 protocol environment, I think it would be problematic for
16 many large industrial companies to go to the shareholders
17 and the public and say that we are going to offset our
18 emissions by these credits which are coming from the
19 clearcutting of forests. And we don't think that would
20 fly too well.

21 Thank you very much.

22 CHAIRPERSON NICHOLS: Thank you.

23 Erin Rogers.

24 MS. ROGERS: Hi. Good afternoon, Chairman
25 Nichols and Board members. I'm Erin Rogers from the Union

1 of Concerned Scientists.

2 I just wanted to say that, you know, offsets are
3 not an inherent part of a cap and trade system. If you
4 look back at the acid rain Cap and Trade Program that many
5 see as a model for some of our greenhouse gas Cap and
6 Trade Programs, there were no offsets involved.

7 Offsets by nature are outside of the Cap and
8 Trade Program. And the Cap and Trade Program itself
9 without offsets is designed to be flexible to lower costs.
10 That's the purpose of the cap and trade program is to
11 allow flexibility within the capped sectors.

12 Offsets coming from outside of the Cap and Trade
13 Program bring in a whole new level of complexity and
14 bureaucracy that makes the cap and trade system I think
15 more onerous in the long run.

16 You know, the Governor Market Advisory Committee
17 said that the cap and trade system -- the offsets
18 component of the cap and trade system could take more
19 resources to run than the whole cap and trade system
20 itself. And because offsets by nature are so uncertain
21 and oftentimes you're measuring against a hypothetical,
22 getting some kind of certainty about whether those
23 emission reductions are real is costly. It takes a lot of
24 resources. It takes a lot of verifying and measuring, and
25 the transaction costs go up. And so when we talk about

1 cost containment and cost of the program, I think that we
2 need to look at what the cost to private entities are and
3 what the cost to the public are.

4 And while offsets may allow the private capped
5 entities to have a short-term economic benefit, we also
6 need to look at the public social cost of an offset
7 program by looking at the public subsidy that our
8 verification and monitoring systems provide to the capped
9 entities and also to the economic value of the co-benefits
10 that we are loosing out on, like increased air quality,
11 technology development, job creation in the state and all
12 of those things, and are the long-term costs to getting to
13 where we need to go by 2050 in our capped sectors. If we
14 can invest in our capped sectors now and avoid locking in
15 new fossil fuel technology, it's going to be a lot cheaper
16 in the long run to get to where we need to go. So we
17 think the offset limit should be lowered, and we support
18 the action item today.

19 Thanks.

20 CHAIRPERSON NICHOLS: Thank you.

21 That concludes our list of witnesses. I think
22 it's fair to say that the Board members have now heard a
23 full range of opinions from way too few to way too many
24 offsets are being considered by the staff. And I think
25 that gives you a pretty good capsule version of what the

1 staff is now attempting to make sense out of and to come
2 to a resolution here, which is going to be acceptable and
3 also actually fulfill the mandates of AB 32.

4 So this is just a preview, but hopefully by the
5 time this comes back for a decision, there will be some
6 further enlightenment on this issue.

7 In the mean time, we do have a resolution in
8 front of us, Resolution Number 10-22. Could I have a
9 motion to adopt that resolution?

10 BOARD MEMBER BALMES: So moved.

11 BOARD MEMBER RIORDAN: Second.

12 CHAIRPERSON NICHOLS: All those in favor please
13 say aye.

14 (Ayes)

15 CHAIRPERSON NICHOLS: Any abstentions?

16 BOARD MEMBER TELLES: No.

17 CHAIRPERSON NICHOLS: Okay. No or abstain? An
18 absolute no. Okay.

19 BOARD MEMBER RIORDAN: Madam Chair, maybe I don't
20 know if you're anticipating a break, but there is that
21 noise --

22 EXECUTIVE OFFICER GOLDSTENE: We're working on
23 it.

24 BOARD MEMBER RIORDAN: You're working on it.
25 Thank you. It's not a device that somebody is holding.

1 CHAIRPERSON NICHOLS: The noise at the moment
2 sounds like an air conditioning fan.

3 EXECUTIVE OFFICER GOLDSTONE: It's some kind of
4 static.

5 CHAIRPERSON NICHOLS: We had been offered -- I'm
6 sorry I asked for a passage of a resolution without
7 considering an amendment that has been presented by Barry.
8 I apologize. But I'm reminded that it was here.

9 I frankly don't understand the meaning of this
10 proposal, and I'm not inclined to commit our staff to a
11 90-day turn-around on technical review. If somebody wants
12 to ask that we pause and reconsider, I would do that.

13 BOARD MEMBER TELLES: I don't understand what
14 Barry's suggesting either. And after reading the
15 resolution, I don't see that there's any concerns. And
16 when we passed the Scoping Plan, his resolution basically
17 was adopted.

18 And one of the things we did was to assure that
19 the districts had an opportunity to participate in this
20 process. And am I not reading this correctly? Is it
21 somewhere in here excluding the district from that
22 process?

23 BOARD MEMBER BERG: My understanding is that the
24 districts are doing protocols that they're basing their
25 CEQA plans on and other types of regulations and

1 therefore -- and they're committing funds on the basis of
2 accepting programs that allow them to participate.

3 Barry, maybe you better come up and help very
4 quickly.

5 CHAIRPERSON NICHOLS: That actually was a fairly
6 good description.

7 The Placer County Air Pollution Control District
8 has developed a protocol for biomass to energy. We have
9 developed three or four protocols. In addition to that,
10 other air districts are doing that. We have set the
11 framework for a voluntary offset bank. So if someone
12 needed, for example, to do mitigation under CEQA, they
13 could call upon it. Sacramento is about to adopt such an
14 entity. The San Joaquin Valley is developing one. We
15 simply want, like with all of our technical documents,
16 whether it's a regulation or now in this case a protocol,
17 to have your staff simply provide us technical input.

18 BOARD MEMBER BERG: So I don't disagree with you
19 on the 90 days. I don't know if that's possible, but I
20 think it's a fair request.

21 CHAIRPERSON NICHOLS: If it's routine, it's
22 routine.

23 I would ask Mr. Goldstene to comment if you've
24 been refusing to review protocols that CAPCOA has given to
25 you.

1 EXECUTIVE OFFICER GOLDSTENE: I don't know if
2 we've had any submitted.

3 I'm still not understanding the purpose of the
4 review. This is for their own program in their districts.
5 They are the arbiters of what counts.

6 CHAIRPERSON NICHOLS: And it's going to put us in
7 the exact same business that we said we don't want to be
8 in with respect to voluntary protocols.

9 EXECUTIVE OFFICER GOLDSTENE: And I'm not
10 comfortable making decisions like that without bringing
11 them back to the Board for consideration. I mean, where
12 we would be opining on -- I'm not sure what level of
13 review Mr. Wallerstein is asking for.

14 CHAIRPERSON NICHOLS: If it's a voluntary
15 protocol, it's a voluntary protocol. If it comes to us
16 for approval in a formal sense, we're going to have to do
17 CEQA review and we're going to have to listen to whatever
18 objections people give us to those voluntary protocols.

19 If they want to use their protocols for CEQA
20 purposes where they're the lead agency and they're looking
21 for sort of a cover from the Air Resources Board, that's
22 exactly what we can't give them without a more serious
23 commitment. I don't mean that in a derogatory --

24 MR. WALLERSTEIN: Madam Chair, we're asking for
25 the same level of effort -- not even the same level of

1 effort -- the same courtesy being extended to CCAR. And
2 we've had protocols from my agency before the staff for
3 nine months. My understanding is the Placer County Air
4 District protocol has been here for a year.

5 CHAIRPERSON NICHOLS: Well, at one point, the
6 districts were talking about being in the business of
7 doing voluntary offset banks and running trading of
8 offsets. Is that still part of your plan?

9 MR. WALLERSTEIN: In terms of having a pool of
10 legitimate offsets available to businesses within our
11 jurisdiction, yes. But I would point out that the Climate
12 Action Reserve now is not just developing protocols. They
13 actually are providing an exchange. So why would a
14 nonprofit be okay to provide that kind of advise to, but
15 your partner local air districts somehow not appropriate?
16 We just simply don't understand that.

17 CHAIRPERSON NICHOLS: I think we're now trying to
18 not be in the business of providing it. I think that's
19 exactly what the motion that we just passed was designed
20 to do, which was to withdraw from the business of being an
21 advisor to CAR.

22 EXECUTIVE OFFICER GOLDSTENE: We really have our
23 hands full just working on the protocol what we want to be
24 going forward with purposes of compliance.

25 CHAIRPERSON NICHOLS: But, conversely, Barry,

1 while I have you up at the podium here, while we're
2 working on this cap and trade rule, we are looking at the
3 need for high-quality offsets and to have a pool of them.

4 I think if districts want to be out there looking
5 to develop protocols for compliance offsets, particularly
6 if they're in areas where we think we need more offsets
7 from within the state, that that would be something that
8 we should be trying to encourage that we should be trying
9 to get that to happen.

10 I'm looking at Kevin, who's looking a
11 little bemused.

12 DEPUTY EXECUTIVE OFFICER TERRY: Since my staff
13 did look at the Placer protocol, I can answer.

14 And the point about the resolution today was to
15 transition to compliance-grade protocols in a public
16 process. And so we have our hands full with the
17 commitments to take the existing protocols through that
18 public process.

19 From my standpoint, if the districts were to
20 produce a very high quality rigorous accounting protocol
21 that they would want considered for compliance purposes,
22 it could go into the queue to have a public process.

23 So, you know, our resolution does not preclude
24 them coming forward with a protocol that we could move
25 into that process ultimately.

1 But what we're not in the position to do is to
2 look at a number of voluntary protocols at the same time
3 we're meeting our commitment on the compliance grade.

4 CHAIRPERSON NICHOLS: I'm somewhat familiar with
5 the Placer protocol situation. And that's where I think
6 maybe the question is do you really want an answer.
7 Sometimes things sit there for a while, because people
8 wouldn't like the answer they got back.

9 MR. WALLERSTEIN: Actually, I can tell you they
10 would like an answer. I've talked to the Air Pollution
11 Control Officer. I can tell you to the extent there was
12 some deficiency identified in anyone's work, we would
13 naturally go about the process of simply correcting the
14 deficiency. But we don't know that without an answer.

15 CHAIRPERSON NICHOLS: If you're speaking for
16 them, I will speak back to them through you and tell them
17 we'll be happy to sit down with them and have that
18 conversation. But again, we're not going to be approving
19 it. We're not going to be approving or disapproving.

20 MR. WALLERSTEIN: We're simply asking to get the
21 feedback on the technical documents that we prepared.
22 It's just a matter of that.

23 CHAIRPERSON NICHOLS: I think you're asking for a
24 commitment in a public setting from this Board of
25 something that the staff is telling you that they don't

1 have the time to do. I don't think it's a matter of
2 refusal. I think it's a matter of if you want it at a
3 level other than cursory, we've got to provide a real
4 commitment of personnel to do that for you. And I think
5 we need to sit down and understand what that really would
6 mean before the Board could direct that to happen.

7 Yes?

8 BOARD MEMBER TELLES: You know, in the
9 presentation, one of the things was to have some kind of
10 consistent protocols between California and the Western
11 Climate Initiative. It seems to me it would make sense to
12 have some kind of consistent protocols with California and
13 California with our districts that there should be some
14 unified effort to have some way to develop offsets in an
15 area or whatever you're going to use it for. But listen
16 to the districts and come together on it rather than
17 having this kind of adversarial relationship, this kind of
18 surface when we get the Scoping Plan if you remember --

19 CHAIRPERSON NICHOLS: Well, I completely agree
20 with you, Dr. Telles. And maybe you could help as a
21 member of both Boards in assisting to make sure that that
22 happens, because there needs to be some sort of a joint
23 process as opposed to things being developed and then sent
24 up for a yes or no kind of a response. I mean, that's not
25 a partnership. That's a review process. It's not the

1 same thing.

2 BOARD MEMBER TELLES: Well, if communication
3 began early on the development of process and there was a
4 mechanism to communicate versus just -- he's hearing just
5 a no. I think that's what he said.

6 CHAIRPERSON NICHOLS: I think he said he wants to
7 send us his protocol and get it reviewed. And I don't
8 think -- you're not talking about sending something that's
9 somebody's work product and having it reviewed. I think
10 you're talking about some sort of actual joint process
11 where these things would be reviewed together.

12 BOARD MEMBER TELLES: Exactly. And maybe that's
13 --

14 MR. WALLERSTEIN: We all along the way have
15 invited the CARB's staff's participation. But as I
16 mentioned before, the Placer protocol has been here a
17 year. Ours have been here nine months. We're just simply
18 asking for the technical input.

19 Now, if the CARB can't provide that, then
20 obviously you leave us no choice but to proceed without
21 your input. But we would prefer not to be put in that
22 position.

23 EXECUTIVE OFFICER GOLDSTENE: I'm not sure what
24 position you're being put in. I'm not sure what our
25 technical review adds to your process.

1 CHAIRPERSON NICHOLS: I'm not going to suggest
2 that we act on any language here today one way or another.
3 This is an important enough issue so that I would be happy
4 to sit down with the approval of my fellow Board members
5 and convene a process where we would meet as we have in
6 the past occasionally, the Board members from other
7 districts, and try to hammer this out. This is not the
8 place to try to deal with this kind of comment.

9 Thank you.

10 I think we will take a ten-minute break at this
11 point for everybody's comfort and then we'll reassemble.

12 (Thereupon a recess was taken.)

13 CHAIRPERSON NICHOLS: We're going to start with
14 the Haagen-Smit award so that the people who came here
15 just for that item can break and go on and do other
16 things, and then we will pick up with the railroad item as
17 our last item of business of the day.

18 So if there are people here who have been waiting
19 for the railroad, I apologize, but I think it will be more
20 efficient if we do it this way.

21 And so I think I'm going to invite the people who
22 are presenting and the people who are receiving awards to
23 come up and sit in the front row if you would, please.
24 And then we'll get on with it.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 EXECUTIVE OFFICER GOLDSTENE: It's truly an honor
3 to showcase this year's Haagen-Smit Clean Air Award
4 recipients here today before our Board members, staff, and
5 members of the public. And to be reminded of the
6 important contributions the late Arie Haagen-Smit made to
7 air pollution, science, and regulation and the
8 significance of his career as our first Chairman. Today's
9 presentation will briefly go over the history of the award
10 program and will highlight the accomplishments of the 2009
11 award recipients.

12 Dr. Haagen-Smit was a native of the Netherlands
13 and a leader in developing air quality standards based on
14 his research efforts. Dr. Haagen-Smit is known by many as
15 the Father of Air Pollution Control and was a graduate of
16 the University of Utrecht and a biochemistry professor at
17 the California Institute of Technology in Pasadena for 16
18 years before beginning his air pollution research in 1948.

19 Through a series of experiments, he found that
20 most of California's smog resulted from photochemistry,
21 when exhaust from motor vehicles and industrial facilities
22 react with sunlight to create ozone. This breakthrough is
23 the foundation upon which today's nationwide air pollution
24 standards are based. The National Medal of Science and
25 the physical sciences discipline was presented to Dr.

1 screen; is that right? It will in a minute.

2 The first award recipient that I would like to
3 present is Timothy V. Johnson. This award goes to Mr.
4 Johnson for his dedication and hard work in the area of
5 emission control technologies.

6 And to say a few words about Dr. Johnson's work,
7 I'd like to invite up previous winner of the Haagen-Smit
8 award, Dr. Bob Sawyer, to come up and speak for a few
9 minutes.

10 DR. SAWYER: Thank you, Mary.

11 I'm honored to be able to introduce Tim Johnson,
12 although under the circumstances I'm standing in for Mike
13 Walsh. It's not how I would have favored doing this.

14 Tim spent his entire career or nearly his entire
15 career at Corning, where he was instrumental in the
16 development and then carrying onto the application of
17 ceramic materials in exhaust control systems.

18 I think he's probably the single person in the
19 United States that had the most to do with the development
20 and introduction of the catalyst trap for diesel engines.
21 He's sort of Dr. Diesel English Trap as far as I'm
22 concerned. And I am so delighted he was selected to
23 receive the award.

24 CHAIRPERSON NICHOLS: Thank you.

25 Just to be a little bit more formal about this,

1 Dr. Johnson is the Director of Emerging Regulation and
2 Technologies for Corning Environmental Technologies, which
3 is a part of Corning, Incorporated.

4 Dr. Johnson is responsible for tracking emerging
5 mobile emissions regulations and technologies that may
6 lead to improved air quality. He's been with Corning for
7 20 years. He's an acknowledged expert and frequent
8 speaker on diesel emission control technology and trends.
9 Dr. Johnson was recognized for his technical
10 accomplishments in 2008 by being made an international
11 fellow of the Society of Automotive Engineers.

12 He was instrumental in the development of the
13 National Clean Diesel Program, which is successfully
14 controlling pollutants from millions of legacy diesel
15 vehicles that continue to operate across the
16 United States.

17 Dr. Johnson is active in various advisory
18 committees. He currently co-Chairs the U.S. EPA's
19 Advisory Working Group on diesel emission control
20 retrofits. He's also a member of the U.S. EPA Clean Air
21 Act Advisory Committee and the U.S. EPA Mobile Source
22 Technical Review Subcommittee. Formerly, he served on
23 California Air Resources Board's International Diesel
24 Retrofit Advisory Committee, just to name a few of his
25 areas of public service.

1 He recently edited the book "Diesel Filter
2 Technology" published by SEA International.

3 On behalf of the Air Resources Board, we want to
4 present you with this award, Dr. Johnson, as well as a
5 resolution from Senator Fran Pavley, who as you heard is a
6 previous awardee and a member of the Committee and ask you
7 to except them with our congratulations.

8 (Applause)

9 DR. JOHNSON: I'm not very good at public
10 speaking.

11 Well, thank you very much, Ms. Nichols. This is
12 really a true honor and a highlight of my career. And
13 it's not too often where an individual can work in a field
14 that has such a profound impact on public health and
15 welfare.

16 And I would like to thank Corning, Incorporated,
17 for allowing me to fill this position. It's unique for a
18 company to allow someone like me to have free reign and
19 work on things that we think should be done both for
20 mutual benefit for society and for American enterprises.

21 So thank you very much.

22 CHAIRPERSON NICHOLS: Thank you.

23 (Applause)

24 CHAIRPERSON NICHOLS: Okay. The next award
25 recipient that I'd like to present is Margo Tsirigotis Oge

1 for her dedication and hard work in the area of
2 environmental policy. And to say a few words about Ms.
3 Oge's work, I'd like to invite Dr. Alan Lloyd, who's a
4 previous winner and also a previous ARB Chairman, to come
5 up and say a few words.

6 DR. LLOYD: Thank you very much, Madam Chair,
7 members of the Board.

8 First of all, I'd like to thank Dr. Balmes and
9 Dr. Telles for jumping to our friend Mike Walsh's aid when
10 he needed it. Thank you.

11 I'm delighted to be here to speak on behalf of my
12 colleague, a friend, a member of our council, Margo Oge.
13 Mike also was going to prepare some comments for her as
14 well.

15 So, again, she's universally admired around the
16 world, feared in some quarters. But I think it's a real
17 true honor to be here to work with her.

18 I would also say it's a testament of the current
19 Chairman that she spotted Margo's talent, pulled her from
20 the ranks. People didn't know who she was. And she's
21 been on the national scene ever since and doing a great
22 job.

23 Her accomplishments run all the way from the
24 light-duty vehicle, heavy-duty vehicle, railroads, coming
25 after aircraft now on the fuel economy, as stated there.

1 She's basically saved millions of millions of lives for
2 the U.S. population. She's shown great technical and
3 political skills as you know for different administrations
4 she has survived, not only survived, but thrived. She's
5 exhibited great courage, vision, and also these days
6 something I've highly value with things going on around
7 the world in different ways, great personal integrity,
8 impeccable.

9 She is also, as I was reminded by one of my
10 colleagues in San Francisco office I asked Father
11 Kamacate, "What I can say about Margo that I might not say
12 otherwise?" He said she is a wonderful role model for
13 professional women out there. I don't think there's
14 anything I could say better than that.

15 Together with the technical accomplishments, her
16 personal accomplishments, and her integrity, and through
17 it all, she takes time to talk to people, mentor people.
18 She's got a great staff and I think with Mary developed a
19 great relationship and also when I was here a great
20 relationship with California.

21 So it gives me wonderful pleasure to again
22 congratulate Margo as the other candidates as well and
23 congratulate all of them. Thank you.

24 CHAIRPERSON NICHOLS: Thank you very much, Alan.

25 I'll do the official introduction for Margo as

1 well.

2 Margo Oge is the Director of the Office of
3 Transportation and Air Quality for the United States
4 Environmental Protection Agency. She's been with U.S. EPA
5 since 1980 and has held various management positions in
6 the agency.

7 Under Ms. Oge's leadership, the U.S. EPA
8 finalized three of the nation's most significant
9 environmental accomplishments, the Clean Tier 2 Motor
10 Vehicle and Gasoline Sulfur Program, the historic 2007
11 Diesel Truck, Buses, and Diesel Fuel Rule, and the
12 recently finalized Clean Off-Road Diesel Program. These
13 programs set more than a 90 percent reduction in harmful
14 pollutants emitted from cars, trucks, buses, construction,
15 farming, and industrial equipment and gasoline and diesel
16 fuel.

17 As a result of these three rules alone, we
18 estimate that there will be more than 22,000 premature
19 deaths prevented, as well as thousands of respiratory
20 illnesses avoided.

21 In 2004, Ms. Oge was a recipient of the
22 Presidential Distinguished Executive Rank Award for her
23 outstanding leadership on environmental transportation
24 issues. She's also a previous winner of the presidential
25 meritorious award. In 2002, the Women's Council on Energy

1 and the Environment honored Ms. Oge with its Women of the
2 Year Achievement Award. The award recognized her for
3 leadership in shepherding the Tier 2 and heavy-duty diesel
4 rules to fruition. She was the first non-political
5 appointee to receive the award.

6 So it's my great pleasure to be able to present
7 this Haagen-Smit Award to Margo for her work.

8 And while she's coming up, I will also mention
9 since I have been revealed as a long-time friend of
10 Margo's that one of the things I admire most about Margo
11 is her courage. I know she came to the United States as a
12 very young woman barely speaking any English -- none at
13 all -- as a person of Greek decent. She married a Turk.
14 And she has worked very hard not to lose her Greek accent.

15 (Applause)

16 MS. OGE: Thank you, Mary and Alan Lloyd.

17 I'm a little bit upset -- actually, I'm very
18 upset with what happened with Mike Walsh, so I would like
19 to ask that all of us take a moment of silence and pray
20 for Mike. He's a mentor. He's been my mentor, one of the
21 best colleagues and friends.

22 (Thereupon a moment of silence was observed.)

23 MS. OGE: Mary, this is a greater honor. I'm
24 humble in receiving this award.

25 I think what makes it extraordinary special is

1 the admiration I have about this agency, CARB. Your
2 leadership, work, the forward thinking, and the work that
3 you have done in the last 30, 40 years saving lives,
4 promoting advances in clean technologies. And it has been
5 a real honor to be your friend and colleagues in the
6 efforts to address environmental issues, public health
7 issues in the transportation sector.

8 I would not have been here taking this award or
9 real accepting this honor without my colleagues at EPA.
10 There are a couple of them here I want to recognize. Chet
11 France, maybe you can stand up, Chet; Christopher Grandor,
12 Carl Simon, and Bill Charmley. Without them and the team
13 of outstanding people that we have in our office, none of
14 us would have been here accepting any awards. So thanks
15 to all of you. And thank you, Mary and Alan.

16 (Applause)

17 CHAIRPERSON NICHOLS: I don't want to give
18 anybody the impression that the Haagen-Smit award is
19 jinxed or associated with health issues, but our third
20 award recipient is not able to be with us here in
21 Sacramento because of health problems. And it's perhaps
22 somewhat ironic, because he's receiving the award for his
23 work in the area of environmental health research.

24 The award goes to John M. Peters. Dr. Peters is
25 the Hastings professor of preventative medicine at the

1 University of Southern California's Keck School of
2 Medicine and Director of the Division of Environmental
3 Health in the Department of Preventative Medicine. He's
4 also an adjunct professor of epidemiology in UCLA's School
5 of Public Health.

6 In an over 40-year career, Dr. Peters has
7 published over 150 research papers, reports, and chapters
8 on subjects such as the health effects of air pollution,
9 vinyl chloride, and other chemicals in both the work and
10 general environment. He's the principle investigator of
11 the children's health study, a landmark epidemiological
12 investigation to identify chronic health effects from
13 exposure to air pollution in southern California
14 communities, which has followed 11,000 children for
15 periods as long as 13 years. The study has led to broader
16 public awareness of health actions needed to protect
17 children's health.

18 He is also the principle investigator of a
19 National Institute of Environmental Health Sciences funded
20 project to continue to follow these children into
21 adulthood. Dr. Peters has received many awards and
22 recognitions throughout his career. In 2009, he received
23 the Harvard School of Public Health Alumni Award of Merit.
24 This award, the highest honor presented to alumni by the
25 Harvard School of Public Health, recognizes leaders who

1 advance the science of public health, improve its
2 community practice, provide exceptional leadership of
3 public health institutions, or contribute significantly to
4 the training and accomplishments of the fields' future
5 professionals. Dr. Peters was inducted into the Johns
6 Hopkins Society of Scholars in 2004.

7 And I would like to invite a friend and colleague
8 Bonnie Holmes-Gen from the Lung Association to come up and
9 say you a few words about Dr. Peters at this time.

10 MS. HOLMES-GEN: Thank you, Chairman Nichols.

11 It's a great honor and a pleasure to make some
12 comments on the importance of Dr. John Peters' life work
13 and particularly the tremendous contribution of his land
14 work research, the children's health study.

15 As Chairman Nichols stated, this study that was
16 developed in collaboration with the Air Board changed the
17 public health community's understanding of the harm caused
18 by air pollution to growing lungs. And as the findings
19 from the study rolled out over a ten-year period, there
20 were many revelations that not only break new scientific
21 ground that from my perspective became a wake-up call to
22 the public and to policy makers.

23 The Lung Association was particularly fascinated
24 with the findings about the link between air pollution and
25 new onset asthma, in addition to exacerbation of asthma

1 from air pollution.

2 And this study was one of the early studies to
3 directly measure traffic impacts and found children living
4 near busy roadways to be at increased risk for asthma.

5 The media was paying very close attention to Dr.
6 Peters' work. And I remember well when the headline came
7 out in the L.A. Times, "Smog Harms Children's Lungs for
8 Life, Study Finds. Eight Years of Research Yields the
9 Most Definitive Evidence Yet That Dirty Air Stunts Lung
10 Growth."

11 And I remember talking to Dr. Peters, and he
12 specifically said, yes, we can say there is abnormal lung
13 development in children. And this message sent
14 legislators clambering to hold hearings and briefings to
15 understand this new data and understand the critical
16 importance of the state's investments in pollution
17 control.

18 Dr. Peters and his colleagues work in conducting
19 this children's health study, had a tremendous impact on
20 the public health policy arena in California and at the
21 national and international level. And his study findings
22 have supported the development of stronger standards and
23 regulations to protect public health, including the state
24 and federal ambient air quality standards and new control
25 measures to ratchet down on ozone and particle pollution.

1 His research has also been critical to public outreach and
2 education efforts in communities around the state.

3 And it's important to note that Dr. Peters was
4 just not focused on his academic pursuits, but he really
5 cares about the human impact of pollution on the
6 communities he's interacted with and how pollution has
7 affected their lives.

8 As was mentioned earlier, Dr. Peters had the
9 foresight to nurture and develop a whole new generation of
10 excellent investigators at the University of Southern
11 California. And this is a tremendous contribution that we
12 are all thankful for.

13 It's unfortunate that Dr. Peters could not be
14 here with us today because of illness, but the American
15 Lung Association would like to applaud his extraordinary
16 contribution to research and public policy and to
17 congratulate all the award winners. Thank you.

18 (Applause)

19 CHAIRPERSON NICHOLS: Thank you, Bonnie.

20 I will be presenting Dr. Peters' award to him
21 personally at USC at a somewhat later date. His
22 colleagues have arranged a small reception for him. So
23 I'll be able to do that.

24 I'd also now at this time like to invite the
25 awardees and their guests and the staff who have worked

1 with them to adjourn at their convenience to a small
2 reception that's been organized for them. I realize that
3 it's a little bit difficult to be jolly at the moment, but
4 the fact is that we do need to celebrate accomplishments
5 whenever we have the opportunity. And as soon as the
6 Board members have completed their work, I know many of us
7 will be over to join you as well.

8 So again I want to congratulate you. Thank you
9 all for having not only done the things you've done, but
10 done them in a way that endured the slings and arrows of
11 the public process. It's always a sacrifice of time and
12 sometimes of even seems like one's health to get involved
13 in these issues, but I think the results have been
14 extraordinary for California and for the country. And so
15 we want to thank all the award winners once again.

16 This will conclude this portion of the program,
17 unless any of the other Board members would like to add
18 anything.

19 BOARD MEMBER BERG: Congratulations.

20 BOARD MEMBER BALMES: I'd like to say one thing
21 about Dr. Peters. Since I was one of the physician
22 scientists that was nurtured by him at USC, it gives me
23 great pleasure to see him get this award, especially at
24 this stage of his life. And I don't want to say any more
25 than that, but to say he's a wonderful person who deeply

1 cares about people as well as doing science at the highest
2 order.

3 CHAIRPERSON NICHOLS: We're now going to turn to
4 an update on the issue of railroads and risks from
5 locomotives and rail yards.

6 And I'd like to indicate at the outset that I
7 believe there's at least one person who requested Spanish
8 translation so if you could make that announcement that
9 there is Spanish translation available.

10 (Thereupon the announcement was translated
11 into Spanish.)

12 CHAIRPERSON NICHOLS: Okay. Today, staff is
13 going to be providing an update on the events that have
14 occurred since we met in September and directed our staff
15 to return to the Board with specific recommendations on
16 how to reduce the emissions and risks at the highest risk
17 rail yards in California as expeditiously as possible.

18 I'm going to ask Mr. Goldstene to introduce this
19 item.

20 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
21 Nichols.

22 In September, the staff estimated that current
23 ARB and U.S. EPA measures would reduce diesel PM emissions
24 at the state's 18 major rail yards about 50 percent in
25 2015 and 65 percent by 2020. These significant reductions

1 are directly attributable to the actions this Board and
2 the U.S. EPA have taken in the last few years.

3 However, the health risks posed by rail yards is
4 high, and we need to do more. Our analysis shows that the
5 emissions from locomotives must be further reduced to
6 significantly reduce the emissions and risks at rail
7 yards. Unfortunately, we are preempted by federal law
8 from directly regulating the vast majority of these
9 locomotives. There are our measures that may have small
10 benefits, but as presented in September, these measures
11 typically are costly, not cost effective, or have
12 practical limitations to their implementation.

13 Based on staff's evaluation of potential
14 opportunities for further emission reductions, we
15 recommend pursuing a commitment by the railroads to
16 achieve additional reductions starting in 2010 and
17 continuing over the next ten to 13 years. The approach
18 would include an enforceable provision if the railroads
19 fail to meet their commitments. This provision would
20 direct ARB to adopt specified regulations and take other
21 appropriate action.

22 Working out the specifics of the proposed
23 approach will require holding discussions directly with
24 the railroads and other stakeholders. Pursuant to past
25 Board directives with agreements on railroads on

1 emerging locomotive technologies that could further reduce
2 locomotive emissions. Staff also highlighted the benefits
3 provided by the existing ARB and U.S. EPA regulations and
4 agreements.

5 --o0o--

6 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

7 Just to recap those benefits, the ARB has adopted a number
8 of regulations that specifically reduce both locomotive
9 and rail yard emissions. The ARB regulations include
10 measures to require the best available emission control
11 technology for drayage trucks, transport refrigeration
12 units, and cargo handling equipment, as well as a
13 requirement to use cleaner fuel with interstate
14 locomotives.

15 The ARB also has two agreements with UP and BNSF
16 that provides significant diesel PM and NOx emission
17 reductions. These agreements require the cleanest Tier 2
18 locomotives as a fleet average in the South Coast air
19 basin and requirements to install idling reduction devices
20 on intrastate locomotives and the use of cleaner fuel for
21 interstate locomotives operating in California.

22 In addition, the U.S. EPA approved regulations in
23 1998 and 2008 that provide significant locomotive NOx and
24 PM emission reductions nationally and in California.

25 Finally, federal and state incentive funds have

1 and will continue to provide benefits in California. For
2 example, the U.S. EPA recently awarded the Air Resources
3 Board about \$9 million that, together with funds provided
4 by BNSF, will be used to repower 11 older BNSF switch
5 locomotives in the South Coast air basin by September of
6 this year.

7 As shown in the next slide, these actions have
8 and will continue to reduce the emissions from locomotives
9 and equipment operating in rail yards.

10 --o0o--

11 UNIDENTIFIED SPEAKER: Excuse me, Chairman
12 Nichols.

13 CHAIRMAN NICHOLS: Yes?

14 UNIDENTIFIED SPEAKER: It looks like the screen
15 has a timer that shuts off right after five o'clock, and
16 it takes about six to ten minutes before we can turn it
17 back on.

18 CHAIRPERSON NICHOLS: So the presentation won't
19 be visible.

20 EXECUTIVE OFFICER GOLDSTENE: Won't be visible to
21 the people in the audience. You can see it on your
22 screens.

23 CHAIRPERSON NICHOLS: I think you can just
24 present it orally. That will be all right.

25 EXECUTIVE OFFICER GOLDSTENE: This is available

1 on our website.

2 CHAIRPERSON NICHOLS: Okay. And it can be shown
3 on the screen there. We'll just make due then.

4 ENGINEERING EVALUATION SECTION MANAGER HOLMES:
5 Slide four then. There is a slide with significant diesel
6 PM emission reductions, number four.

7 This slide shows the estimate rail yard diesel PM
8 emission reductions from the existing U.S. EPA and ARB
9 regulations on average, for the 18 major rail yards. As
10 you can see, rail yard diesel PM emissions are estimated
11 to decline rapidly by greater than 50 percent by 2015 and
12 about 66 percent or about two-thirds by 2020.

13 It is important to note that the teal-colored
14 boxes illustrate the significance of locomotive diesel PM
15 emissions within the rail yards, which is that second
16 large box across there.

17 On average, locomotives account for over 85
18 percent of total rail yard diesel PM emissions.
19 Admittedly, these levels can vary by rail yard but the
20 impact is pretty consistent among all rail yards after
21 2015. However, even with this positive trend and
22 progress, remaining diesel risks at rail yards are still
23 too high and additional actions are warranted.

24 --o0o--

25 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

1 In recognition of these significant remaining risks and
2 considering the public comments provided at the September
3 Board meeting, the Board directed staff to develop an
4 approach for the railroads to prepare and implement risk
5 reduction plans for the high risk rail yards.

6 A particular emphasis was placed on using the
7 BNSF San Bernardino rail yard as a template for the other
8 high risk rail yards. As part of this effort, the Board
9 directed staff to investigate a potential enforcement
10 provision that would trigger ARB regulatory action if the
11 rail yard risk reduction approach was not effective.

12 Staff was also directed to coordinate with
13 stakeholders in evaluating options and to report back to
14 the Board with specific recommendations.

15 --o0o--

16 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

17 In response to this direction, the staff has sought input
18 from key stakeholders in assessing possible approaches.
19 To compliment this effort, staff collected additional
20 technical information on selected high risk rail yards and
21 including specifically the San Bernardino rail yard.
22 Staff also solicited input from stakeholders on possible
23 enforceable provisions. And all of this was done in an
24 effort to better inform the decision-making process.

25 --o0o--

1 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

2 Based on these discussions and our own analysis, staff has
3 identified an approach that can accelerate and further
4 reduce emissions and risk from high risk rail yards. The
5 overall approach entails obtaining a written commitment
6 from the rail yards to meet identified, rail-yard-specific
7 reductions at specified intervals over the next decade.

8 As we clearly need to develop the details of this
9 commitment approach through a stakeholder process, at this
10 point in time, staff chose to advise the Board of the need
11 to engage all stakeholders and seek the Board's
12 concurrence with our approach prior to engaging in
13 detailed discussions.

14 In general, staff believes that the commitments
15 can be established through an exchange of letters between
16 the Air Resources Board and the two affected rail yards.
17 The first letter would be from ARB to the railroads
18 setting forth ARB's expectations. The second letter would
19 be from the railroads to ARB committing to meet those
20 expectations.

21 The commitment letters, of course, would be
22 developed through an open and transparent process.
23 Following the exchange of the letters, the railroads would
24 begin meeting the commitments.

25 The next series of slides will outline the

1 framework and the timing for implementing the staff's
2 proposal.

3 --o0o--

4 ENGINEERING EVALUATION SECTION MANAGER HOLMES: A
5 logical question is what measures might the railroads
6 implement to meet these commitments. These commitments
7 will likely be based on a performance standard approach.
8 As shown in the slide and the next, there are a number of
9 options available. This slide simply indicates that there
10 are significant potential emission reductions that can be
11 achieved by replacing, retrofitting, or remanufacturing
12 locomotives.

13 Based on our analysis of the available data, the
14 major benefits at the individual rail yards will come
15 primarily from cleaning up the locomotives.

16 In general, ARB's ability to achieve these levels
17 of emission reductions through a direct regulatory
18 approach is very limited and primarily due to federal
19 preemption issues. Thus, staff believes the commitment
20 approach is the most viable strategy in obtaining the
21 greatest levels of rail yard and locomotive emissions
22 reductions and to achieve those reductions sooner.

23 --o0o--

24 ENGINEERING EVALUATION SECTION MANAGER HOLMES:
25 In some cases, there may be additional benefits from other

1 both preempted and non-preempted locomotives. In
2 addition, this approach can be implemented fairly quickly.
3 Also this approach facilitates dialogue between the
4 railroads and local communities.

5 --o0o--

6 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

7 Based on the benefits, staff recommends that the Board
8 support the approach of pursuing commitments from the
9 railroads to further reduce emissions and risks at high
10 risk rail yards.

11 We recommend that the Board direct staff to
12 initiate detailed discussions of the key provisions of the
13 commitment letters with interested stakeholders, also to
14 hold public meetings to provide opportunities for broad
15 public comment, and then return to the Board in April/May
16 time frame with the final commitment letters for Board
17 concurrence.

18 That concludes the staff presentation. I would
19 be glad to answer any questions.

20 CHAIRPERSON NICHOLS: Would Board members like to
21 ask questions now or wait until we've heard testimony?

22 Oh, just one.

23 BOARD MEMBER LOVERIDGE: This is not a question,
24 but really of quorum and ability to stay with this item.
25 And I think it makes a difference as we invite people to

1 testify what quorum boundaries we face. I would ask the
2 Board members when they need to leave.

3 CHAIRPERSON NICHOLS: Charlyn has informed we
4 will lose a quorum at 6:30. So I think she had already
5 polled the group.

6 EXECUTIVE OFFICER GOLDSTENE: Some might leave
7 sooner. Supervisor Roberts, what time do you think you
8 need to leave?

9 BOARD MEMBER ROBERTS: I'll be leaving at 6:00.

10 CHAIRPERSON NICHOLS: At 6:00.

11 BOARD MEMBER LOVERIDGE: I only make this point,
12 because there are 33 people listed to speak. When 33
13 people finish speaking, there will no longer be a quorum
14 on the Board.

15 CHAIRPERSON NICHOLS: Well, and I think this is
16 an issue really for the community people who have taken
17 the time and trouble and expenses to come and appear
18 before us. I know they are anxious to be heard. I know
19 they're also anxious for there to be progress, and I don't
20 want us to do anything that slows down movement. I know
21 everyone is impatient. I'm certainly impatient to get
22 moving on the next phase of this activity. And we do need
23 to hear from people.

24 There are a number of organizations that have
25 two, three, or more people all planning to speak. I mean,

1 one solution would be to just call for one from each
2 organization. Another would be to do a one-minute rule.
3 I think we can ask you to caucus if you'd like and take a
4 minute to decide what you want to do.

5 UNIDENTIFIED SPEAKER: We came a long way. We
6 want our three minutes.

7 CHAIRPERSON NICHOLS: There won't be anyone
8 listening is the problem if we all take the time.

9 BOARD MEMBER LOVERIDGE: If we all take three
10 minutes, there will not be a quorum and no action can be
11 taken.

12 CHAIRPERSON NICHOLS: There's no explicit action
13 required on this item. The staff is seeking direction and
14 guidance, but it's not actually a resolution item.

15 So I can stay, since I'm not going anywhere. I'm
16 happy to stay until the end. So we have a couple of Board
17 members who will stay and listen to all the testimony.

18 But just be aware that we won't be able to take
19 any formal action, but we can give direction. Those of us
20 who are here are always good at giving direction, speaking
21 for myself.

22 BOARD MEMBER RIORDAN: And I think that, Madam
23 Chair, let's begin with some of the community members and
24 see how well we do. We can offer some comments.

25 I'm one of those who has to leave early. So I'd

1 be interested and I'd like to hear from the community as
2 much as I can before I leave.

3 CHAIRPERSON NICHOLS: All right. Well, let's do
4 that. The very first person on our list was a person who
5 asked for a translation service, so let's start with her.
6 Maria Birrueta, please come forward.

7 And then the next witness after that would be
8 Graciela Larios. I think you all can see the list. I'm
9 going to take Ms. Riordan's advise and call community
10 group members first.

11 MS. BIRRUETA: Good afternoon. My name is Maria
12 Birrueta. I'm from the west side of San Bernardino.

13 And I belong to CCAEJ. And as you can see, we
14 are wearing black. And this is a way to show you how that
15 we are not in agreement and also to call your attention to
16 that our community is highly contaminated, highly
17 polluted. We're experiencing a very high level of
18 pollution. And you already know this and you already know
19 that we occupy the fourth place in the entire world,
20 number four in terms of pollution.

21 And this is something that impacts me
22 extraordinarily, because people are dying of cancer in my
23 community. There are children that are born premature.
24 There are a lot of illnesses due to the pollution. And
25 you know this. And what are you doing about this? What

1 is being done?

2 So we want solutions; we don't want any more
3 extensions because we are all guilty that people are
4 dying. And we're accomplices. And more than anything
5 else, the people who have a political post because the
6 people who cause this pollution do not apply -- the laws
7 don't apply. That's why I'm wearing black, because my
8 community is in mourning. Always in mourning. And we
9 want action. We want action now. We want strict laws
10 applied. We want restrictions from you to those companies
11 that are murdering people. Because we vote and you have
12 the right and the responsibility to respect us. You
13 need -- you're responsible to respect, because we have a
14 right to breathe fresh air.

15 Thank you very much.

16 CHAIRPERSON NICHOLS: All right. We will next
17 hear from number five, Ms. Larios.

18 MS. LARIOS: Hello. My name is Graciela Larios.
19 I work with the Center for Community Action Environmental
20 Justice. I'm a community organizer and working in the
21 west side of San Bernardino.

22 And we've seen on previous mitigation plans for
23 the railroad system has shown to be inadequate. And the
24 proof we show is that it only takes a few seconds, if not
25 minutes, to notice how bad the air quality is in the west

1 side of San Bernardino.

2 A solution: We need rules. We need regulations
3 enforced. We need less talk and more action now. If you
4 need to monitor and measure more, simply go door to door
5 and talk to the people, and they'll surely tell you how
6 bad the air has gotten throughout the years.

7 So basically I'm just asking you short and sweet,
8 we have no more time to spare and waste. And
9 unfortunately some of us or some others it's too late for
10 them. So time is valuable.

11 And thank you so much for your time.

12 CHAIRPERSON NICHOLS: Okay. Ms. Gendreav. You
13 can come up in order here.

14 MS. GENDREAV: Of course. Thank you.

15 My name is Megs Gendreav. I'm actually a Ph.D.
16 candidate from U.C. Riverside. I'm appearing here
17 currently today because I've been interning and doing
18 dissertation research with the Community Center for Action
19 and Environmental Justice.

20 Now, the focus of my research has been in the San
21 Bernardino area, the west side of San Bernardino around
22 BNSF rail yard. And we've seen a lot of data come out in
23 the past couple years, but you don't need to look at those
24 health risk reports to see what's going on in this
25 community. It's visible to the eye when you walk into

1 this community. People everywhere have stories of
2 neighbors and family members, loved ones, people they work
3 with who have died of cancer in the past few years. You
4 see little kids who need inhalers, right.

5 I had the first little boy who came to my house
6 this year for Halloween opened up his bag and he had an
7 enormous inhaler in it. It's like, come on. This kid is
8 going out to celebrate Halloween and get candy, and he
9 can't even go out without having to worry about being able
10 to breathe.

11 So like my colleagues, I'd like to ask that you
12 implement regulatory measures now. Don't wait for the
13 railroads to agree with you. Don't wait for them to
14 commit to things on letter. Create mitigative strategies
15 that are actually health protective and create them now.
16 The community needs it.

17 Thanks very much.

18 MS. BETANCOURT: Good afternoon, Board members.

19 My name is Sylvia Betancourt, and I work with the
20 Center for Community Action and Environmental Justice.

21 We've waited long enough. Many of you Board
22 members are familiar with my testimony. I come from a
23 community that is highly impacted. I work in two
24 communities that are highly impacted.

25 We've tried multiple routes to address the

1 problem of air pollution from the railroad industry.
2 We've tried MOUs. We've tried community-driven
3 legislation. And what has it gotten us? We aren't any
4 closer to finding any relief to what people are suffering
5 in our communities. And it's time now to take action. In
6 fact, I can count back, and we are beyond the 120 days
7 that this Board directed to its staff to come back with
8 some real solutions for our communities.

9 Moving beyond that date is an affront to this
10 Board. It's an affront to our communities that are
11 impacted by the activities from rail.

12 When I was -- I think as well, I was taken aback
13 by how late it came, how late the proposal by the staff
14 was presented to the public. It was something that was
15 finished just today. And I think that that's a reflection
16 of how little priority there has been on this issue. And
17 I really want to point out how just looking at it, it
18 doesn't have any teeth. It's vague. It's too vague, and
19 there aren't any real enforcement measures within it. In
20 fact, I ask, where's the CEQA review? Are there any
21 alternatives that were considered?

22 What our community needs is real commitments by
23 this Board. This Board has the authority and the duty to
24 protect the air and to protect these communities. It's an
25 air pollution issue. It's an air pollution issue caused

1 by a rail road industry that has not come to the table
2 voluntarily. What makes us think they're going to commit
3 to voluntary agreements if they haven't in the last twelve
4 years? We have very little faith that at this point the
5 railroad industry will comply with agreements that are
6 vague. What we need are real measurable outcomes for our
7 communities. What we need is strong regulation.

8 Thank you for your time today.

9 CHAIRPERSON NICHOLS: Josie Gaytan.

10 MS. GAYTON: Good afternoon. My name is Josie
11 Gayton, and I live in Riverside. And I'm a community
12 organizer in west side San Bernardino.

13 I was just coming here to ask the Board or to
14 tell the Board if they could help us, because I've worked
15 at the school district for 23 years, and I've seen these
16 kids at the beginning. Twenty years ago, kids were coming
17 out and playing in the yard and they would come out -- two
18 and three kids would come out with the inhalers. And now
19 we go out there and we have to carry a box to go out there
20 and do their PE. It's very sad.

21 We just urge the Board to publicly step forward
22 and defend our communities. This can be effected by
23 requiring the BNSF to take immediate steps to existing
24 conditions that pose health risks to the neighbors. They
25 are not doing nothing for neighbors. We just keep hearing

1 they're going to do more meetings and do more studies and
2 we promise you this and we promise you that. They're not
3 doing anything. We have to force them to do something.
4 We are here telling you guys we are dying in our
5 communities. And we are saying we need something done
6 today. Can't wait any more. Thank you.

7 CHAIRPERSON NICHOLS: Rudy Flores.

8 MR. FLORES: Thank you, ladies and gentlemen.

9 My name is Rudi Flores, and I'm from San
10 Bernardino, specifically the west side.

11 I'm a cancer survivor. And I'm a borderline COPD
12 patient.

13 On the west side, we have over 3300 in a million
14 dying from cancer. As the lady before me had stated,
15 fourth in the world in pollution.

16 There's been too much foot dragging going on in
17 12 years. There's no excuse for that. Absolutely not.
18 It's unconscionable. If we were asking for justice, it's
19 not coming. We haven't seen it. We're asking you now.
20 We're asking you now, not 12 years ago. We're asking you
21 now. Twelve years is a little too long to go on. We have
22 a body count. Maybe that's what it will take to get up
23 here to make you understand it has to be now.

24 I have for you here the petition of the people
25 that live on west side. There's over a thousand in here.

1 Also in this is a copy of the Sorell report, and
2 this should be aired like dirty laundry on corporations,
3 because these corporations use the Sorrel report on who to
4 dump on. And we are being dumped on.

5 The only thing that's really going to make any
6 difference is a complete moratorium on diesel-burning
7 fuels in this country. That's the only answer. The only
8 one. The only one.

9 We're asking you to take some action. And all of
10 us here who are in support of stronger regulations on the
11 rail yards, I'm going to ask my friends here to stand up.
12 Is that clear enough for you?

13 Thank you.

14 MS. KNOTT: Good evening, Board members.

15 I've spoken with a few of you. And as you may
16 know, I grew up right next to the Los Angeles Union
17 Pacific Rail Yard.

18 Initially, the view was a yard full of
19 containers, and now it's a facility that houses a
20 maintenance facility for the UP yard.

21 Our communities know how quickly changes can be
22 made in the rail yards and how not having to conform to
23 agreements might -- they might change the structure of
24 their yards.

25 Therefore, I, my family, my friends, we ask you

1 to adopt regulations that would make the air in our
2 communities cleaner. CARB needs to adopt regulations that
3 will force rail yards to comply rather than having
4 voluntary program that they may or may not follow.

5 In order to ensure that our communities are
6 protected and to prevent their communities from having
7 burdens placed on them, we ask you that you give direction
8 to the staff and to ask them to enforce regulation to
9 bring a plan that is meaningful to these communities.

10 Thinking back in 2005, we weren't part of an
11 agreement that was made with the rail yards. And we want
12 the opportunity to voice our opinion and voice the needs
13 that these communities need.

14 So once again, we ask you to give direction to
15 staff and move forward with regulation.

16 Thank you.

17 MR. MERIN: Good afternoon, ladies and gentlemen
18 of the Board.

19 I'm here representing a community that is asking
20 for -- from this Board that would demand the BNSF company
21 to regulate the regulations that the state of California
22 has required of other companies regarding diesel fuel
23 motors, engines.

24 This community, which is made up of Latin
25 American people, and who live around the yard in the City

1 of Commerce, we are worried because of pollution left
2 behind by heavy machinery left with working with diesel
3 engines, which they use to move the containers.

4 One example of this is the company has in this
5 yard more than 100 trucks that use diesel engines and they
6 use these trucks to move the containers. The cranes also
7 are operated with diesel fuel, the locomotives, of course.
8 And if we were to add to this all the owner-operator
9 trucks and driver trucks that bring the cargo from the
10 Long Beach Harbor to Los Angeles.

11 This is why this community is asking from you
12 that you require that the machinery be replaced that they
13 no longer use diesel operated machinery. They should use
14 new technology like natural gas, electricity.

15 I want to thank the lady who is patient enough to
16 listen to us. And that's all. Thank you very much.

17 CHAIRPERSON NICHOLS: Thank you.

18 I think it's Angelo Logan.

19 MR. LOGAN: Hello, Madam Chair. I would like to
20 ask permission to swap my time with Gideon Kracov.

21 CHAIRPERSON NICHOLS: Sure.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 MR. KRACOV: We have a very brief PowerPoint.

25 Good afternoon, Chairman Nichols and Board

1 preempted. For example, hundreds of the dirtiest switcher
2 and medium horsepower locomotives may be regulated
3 including numerous site-specific measures.

4 Then in September of 2009, after a thorough
5 hearing, this Board declined the incentive-only approach.
6 It directed staff to present specific plan for risk
7 reduction and a regulatory backdrop.

8 Next slide.

9 --oOo--

10 MR. KRACOV: Now here's some governing legal
11 principles for approaching the issue today.

12 First, your Board has the authority and a sound
13 legal basis to take action. I don't think your staff
14 disagrees, because the record for the past two years
15 identifies control measures that are feasible, cost
16 effective, and likely not preempted. And that is
17 consistent with this Board's charge.

18 Second, ARB's actions are required to be clear
19 and implementable, quantifiable, and enforceable.

20 Third, the Board heard this issue exhaustively
21 last September and made directives. Let's not rehash and
22 lose progress. Now is the time for detailed commitments.
23 The Board's directive focused on health risk reduction for
24 rail yards and a regulatory backstop. This should include
25 specific measures, such as monitoring and a time line for

1 compliance.

2 Now, an exchange of letters alone with uncertain
3 details is not sufficient. Enforcement is key. And the
4 Board must act formally by motion or resolution to be
5 convincing and accountable to the public.

6 In summary, let's make progress today. The
7 railroads can seize this opportunity to invest in rather
8 than continuing to fight these improvements. The
9 sustainability our goods movement industry depends on it.

10 Thank you very much.

11 CHAIRPERSON NICHOLS: Okay.

12 MS. RAMIREZ: Good afternoon or evening. I was
13 prepared to say good morning. It's been a while.

14 My name is Isella Ramirez. I'm here with East
15 Yards Community for Environmental Justice. I grew up in
16 the city of Commerce where all my family lives and where I
17 work.

18 I'm here today to urge the Board and the staff to
19 stop talking and start fighting, and I'll provide a short
20 anecdote for some context.

21 So there is a group of family and close friends
22 that was having dinner at the table. And the table was
23 filled with chatter, until suddenly the youngest party
24 member stood up and decided to speak up. "Stop talking.
25 Let's fight," the little boy cried. I can only assume the

1 boy had grown frustrated with the mindless chatter of his
2 adult family members and friends.

3 And today, I am this young boy. I'm here to
4 demand that this Board and this staff stop talking and
5 start taking some real action.

6 It is very concerning that ARB staff intends to
7 fall back on the usual voluntary agreements with the
8 railroads. I believe that the Board was very clear that
9 you were looking for a strategic plan that would include a
10 regulatory approach at the September hearing. And yet,
11 judging from the freshly available staff presentation, it
12 seems that six months and then some was just enough time
13 for staff to vacation and develop a very vague 15-slide
14 PowerPoint presentation.

15 Furthermore, it is very concerning that staff
16 believes that continuing to be pen pals with the railroads
17 will result in fruitful dialogue between community members
18 and the railroads. I've been to these so-called public
19 meetings between ARB and the railroads and the community.
20 And believe me, they're not productive, and it's not a
21 real conversation.

22 Given the fact that your own HRAs reported that
23 studies at the study rail yards alone released 210 tons of
24 diesel pollution a year, putting over three million
25 Californians at an elevated risk of cancer, we cannot

1 afford to continue talking. We need to start fighting.

2 The staff's technical options report details 37
3 different options that can become regulations. And staff
4 should be directed to explore their own document and stop
5 relying on vague industry-friendly agreements.

6 To close, I'd would like to remind you that the
7 impacted communities are that small boy in the midst of
8 your mindless chatter. Again, stop talking. Start
9 fighting. Stop talking about your concerns for our health
10 and start fighting. Start fighting to make sure that two
11 of the wealthiest corporations in the world become
12 responsible businesses and respectful neighbors.

13 Start fighting to push yourself and your staff to
14 develop real, meaningful, health-protective regulations
15 that truly hold the polluters accountable for their
16 actions.

17 And finally start fighting on behalf of the
18 communities that you all aim to protect. Please direct
19 your staff to remove the "if" on slide 11 and get busy on
20 developing regulation and implementation.

21 Thank you.

22 CHAIRPERSON NICHOLS: Staff, would you please put
23 up the slide that's on page 4 of your presentation? I
24 want you to keep that up there.

25 I want to ask you to look at this slide. And if

1 you don't believe it, because you think the data are wrong
2 or you think the regulations aren't real or you think that
3 something else is erroneous about it, then tell me.

4 But I have to respectfully ask the members of the
5 community who are here, you are all organized. You're all
6 activated and upset, but something is going on out there.
7 And it started in 2005, according to this slide. And it's
8 continuing on a downward slope.

9 Now, maybe it's not as much as you want. But I
10 just have to reject -- I just have to reject the
11 conclusion that nothing is happening. I think it hurts
12 your credibility if you tell me that there's nothing going
13 on here that's causing reductions in the levels of
14 pollution here based on these slides. I mean, unless you
15 have a factual basis for that disagreement.

16 Okay. I'm going to continue to listen. Thank
17 you.

18 MS. SANTANA: Good evening, Chair Nichols and
19 members of the Board.

20 I guess I'll just begin by saying this is just
21 me. I live in Commerce, and I can only tell you what I
22 experience. And so I don't know about numbers and data.
23 I just know what I go through on a daily basis and what my
24 family goes through.

25 So, Chair Nichols, earlier this morning you

1 stated we are a powerful regulatory agency. I believe
2 that to be true. This Board has the power to choose life
3 over big business.

4 I testified at the last Board meeting in
5 September, and I asked you to consider the health and
6 well-being of my beautiful nieces and countless other
7 children in my community and across the state who deserve
8 the clean air and a healthy life and who are also unable
9 to come up here to speak for themselves.

10 Three years have passed since the last HRA on the
11 18 rail yards in California. Four months have passed
12 since the last Board meeting.

13 So just the question is how much longer do we
14 have to breathe in the toxic air before you finally decide
15 to take some strong, strong action?

16 The railroads are operating from a business
17 perspective. Their bottom line, regardless of any
18 agreements or concessions they make is profit.

19 I'm here to ask that you stay true to the mission
20 of this Board and assume your powerful regulatory role
21 that you profess and make our health your bottom line.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Nathan Mata.

25 MR. MATA: Hello. My name is Nathan Mata. I'm

1 here with East Yard Communities for Environmental Justice.
2 And I'm here today because after living in Commerce for
3 most of my life, I've seen nothing change in the rail
4 yards. And I'm sure -- well, I guess I'm wrong, but I was
5 going to say you've seen it as well.

6 Even though you have the authority to, you know,
7 change it and actually implement laws, I'm not seeing much
8 be done. And it's sad that, you know, this is like the
9 most important thing to me, and it's like the last thing
10 on your agenda. And we came an eight-hour drive. And
11 you're getting mad at us, because we feel nothing is being
12 done.

13 And it's obvious to us that the rail yards don't
14 care about us, because, you know, they're not really doing
15 much either. They're just creating other projects and
16 like other cities and saying they're going green, but
17 they're complaining about fixing up the rail yards they
18 already have.

19 So I'm here today to tell you to do your jobs and
20 actually protect our health. Thank you.

21 CHAIRPERSON NICHOLS: Maria Reyes.

22 MS. REYES: Good afternoon. My name is Maria
23 Reyes.

24 I'm a very happy to see the statistics that
25 you're showing that pollution has gone down. But then

1 there must be something left to do, because there are
2 damages.

3 I represent the Long Beach Alliance for Children
4 Suffering from Asthma. And I know that in my community,
5 they want to expand the railroad yards. And at this time,
6 we have been very, very impacted by pollution. This area
7 would be extremely hurt, because close to the railroads
8 there are four schools and the students. And I see
9 emergency situations almost of day. And most of them,
10 their health is not in very good shape. Most of them
11 suffer from asthma. And for this reason, I'm asking for
12 real regulations, strict regulations, and that people
13 comply with them before other projects start underway,
14 projects that may hurt both the environment and our
15 health.

16 And I'm also requesting more information for the
17 community, and I would like to see a green project in my
18 community and clean air.

19 Thank you for your time.

20 CHAIRPERSON NICHOLS: Thank you.

21 I believe the next is Anna Arridla.

22 MS. ARRIDLA: Good evening. My name is Anna
23 Arridla. I'm here from the East Yard Communities for the
24 Environmental Justice.

25 If we're here late, it's because you changed your

1 agenda and put us late. It's not our fault.

2 We are here to discuss the subject of the Air
3 Resource Board responsibility.

4 Somewhere I read that the Board shall adopt and
5 implement control measures that are necessary, cost
6 effective, technicalology -- I can say the word -- because
7 I'm angry, that's way.

8 CHAIRPERSON NICHOLS: I'm sorry. Please, we're
9 here to listen, and we're sitting here listening.

10 MS. ARRIDLA: In heavy motor vehicles, utility
11 engines in locomotives unless preempted by the federal
12 law.

13 We are tired of the talk, talk, and no action.
14 The state has the authority and duty to regulate rail
15 yards in California. This Board represents the state of
16 California. We need rules and regulations to control the
17 toxic air contaminations that are produced in the rail
18 yards.

19 We cannot wait to the slow process you are
20 putting us through. People are dying. You don't
21 understand that. We need them now.

22 While the Board members sit here and talk and
23 talk, the toxic air contaminant our killing children,
24 citizens. The toxic air is producing asthma, cancers, and
25 other diseases. Our children are being sacrificed, are

1 being killed so that the railroad can make money.

2 Illnesses are destroying our lives, our communities.

3 The railroad has been conducting business since
4 the wild west days. These days are over, and we are in
5 the 21st century. The world has changed. But the
6 railroad runs their business as if they were in the 18th
7 century. The railroad has not changed. And it's job of
8 this Board is to make rules and regulations to make them
9 change. I know it's a big job. It takes guts to do it.
10 And nobody has them.

11 We are tired. We cannot wait. The railroad and
12 us have to share this earth, and you have to provide the
13 environment where both of us can survive. They can make
14 their money and we can breathe clean air. The Board must
15 make the rules, regulations, and enforce them. And that
16 is a big job. You're putting us against a wall. And
17 about the only thing left for us to do is change the
18 Board.

19 Thank you.

20 MS. VIVAR: Good evening, Chairman Nichols and
21 Board members.

22 I submitted a letter that hopefully you have in
23 front of you, but I'm going to read part of it for your
24 reference.

25 "We, the undersigned public health and

1 environmental justice organizations ask you to exercise
2 your authority in protecting the public health of
3 California communities by taking enforceable steps to
4 reduce emissions and health risks from rail yards and
5 locomotives.

6 "Several of us previously filed a petition for
7 rulemaking seeking enforceable regulations for California
8 rail yards and locomotives. On January 20th of 2009,
9 Executive Officer Goldstene granted the petition for
10 rulemaking in part.

11 "Air toxic emissions from California rail yards
12 and locomotives present a significant concern. Over three
13 million Californians are exposed by rail yard sources to
14 excess cancer risk from more than ten in one million. The
15 California Air Resources Board insists that every feasible
16 effort is needed to reduce localized risk in communities
17 adjacent to the states rail yards. Under state law, the
18 Board shall adopt and implement control measures that are
19 necessary, cost effective, and technologically feasible
20 for mobile goods movements sources. Yet, the Board has
21 not directly regulated California or locomotives; instead,
22 favoring controversial contractual agreements with
23 railroads or MOUs.

24 "Therefore, the petition for rulemaking was filed
25 to compel Board action. In light of the granting the

1 petition for rulemaking, several hearings including the
2 September 2009, were held to consider recommendations to
3 implement further locomotive and rail yard emission
4 reductions."

5 As you can tell, a lot of us came to that
6 meeting.

7 "And CARB staff agrees that ARB has the legal
8 authority to regulate rail yards in California because
9 they are significant sources of pollution in the area and
10 region. However, staff has made a judgment call to use
11 voluntary agreements to avoid litigation. This is
12 inconsistent with CARB actions to curb diesel emission
13 from trucks, off-road equipment, and marine vessels, all
14 of which have triggered legal action.

15 "CARB has been willing to go to court to protect
16 these very important diesel regulations, and these
17 residents living near rail yards deserve to be protected
18 with the same if not more vigor.

19 So, in September, you heard -- you remember the
20 motion that you gave, but unfortunately rail yard related
21 activity is having negative impacts on air quality and
22 public health. Adjacent communities primarily consisting
23 of large populations of low-income minority bear the
24 disproportionate burden of such activities. So we urge
25 you to please take these recommendations that they're

1 giving you and use enforceable measures to make sure that
2 they happen."

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 BOARD MEMBER RIORDAN: Madam Chairman, while the
6 next person is coming up, may I make a brief comment?
7 Because I'm one of those who needs to leave.

8 I think it was important that you asked for the
9 slide four to be put up, because we do see progress. It
10 may not be as quickly as everyone would like, but there is
11 progress. And there's steady progress. It's not
12 something that happened and then went away. But it's
13 steady progress, and it will continue to compound and be
14 even greater.

15 Slide number three is important, too, and it
16 shows what we have been able to do with the combination of
17 regulations, railroad/ARB agreements, and standards
18 established by EPA.

19 I think based on what I have experienced in the
20 process -- and remember, I was here with the first
21 agreement, second agreement, and now looking at the third
22 step.

23 I'm still, based on what staff has provided me in
24 terms of information, committed to working with an
25 agreement with some sort of a backstop, if necessary. But

1 I think we can achieve far greater good at each of these
2 yards if we proceed in the same fashion, because we want
3 to regulate things that we can't except by a mutual
4 consent between the ARB and the railroads.

5 So, Madam Chair, I realize I won't be here, but I
6 just wanted to have you know how I felt about the staff
7 recommendation, which is at this point in time support.

8 Also, to the community, there are many
9 opportunities to interact through public meetings, public
10 hearings. This is going to be fully in the open. So your
11 input is very valuable.

12 I had made to some of the community members that
13 I spoke to earlier a commitment to continue to work with
14 them. And I pledge that now. And I thank you.

15 And thank you for understanding that I need to be
16 on a plane.

17 CHAIRPERSON NICHOLS: Understood. Thank you.

18 Did you have any other comments at this point?
19 Okay. We will carry on. Thanks so much for your hard
20 work today.

21 Who is next? Here.

22 MS. CARRILLO: Chairman Nichols, my name -- my
23 voice is very bad. My name is Sofia Carrillo. I live in
24 Wilmington. I'm organizer for Coalition for a Safe
25 Environment.

1 THE INTERPRETER: She asked me to support her
2 because of her respiratory problems.

3 CHAIRPERSON NICHOLS: Understood.

4 THE INTERPRETER: The Coalition for a Safe
5 Environment wishes to request that the Air Resources Board
6 adopt measures that reduce toxic air emission to
7 insignificant that prevent public health impacts and
8 including enforceable compliance requirements.

9 Coalition for a Safe Environment would like to
10 request the following recommendations be included in
11 adopted measures: The prohibition of maintenance
12 facilities within 1,500 feet of fence line residents;
13 conduct a health risk assessment of VOC emissions of the
14 ambient leakage of VOCs from locomotive trains, from the
15 incomplete burning of diesel fuel, fuel storage tanks, and
16 ground contamination.

17 Benzene is a VOC of diesel fuel which can cause
18 leukaemia, lymphoma, myeloma, and anemia. Yet, there is
19 no reference to any study of public health impacts of
20 these toxic chemicals.

21 Require a comprehensive health impact assessment
22 in addition to an HRA in order to determine all the public
23 health impacts of rail yards and train routes.

24 The Los Angeles County Department of Public
25 Health and U.S. EPA Region 9 both support the use of HIAs.

1 Require the installation of air purification
2 systems in residents' homes, public schools, senior
3 citizen housing, and all sensitive receptors within 150
4 feet. Require the railroad industry to establish a public
5 health care trust fund to mitigate its public health
6 impacts.

7 Require the railroad industry to pay for the
8 relocation of residents who wish to move but cannot afford
9 to move.

10 MS. ARRIDLA: And, in February 23rd, I got a
11 surgery on my breast and my back. (Inaudible) I don't
12 have history to cancer. To me, it's what's very important
13 is stay here. Listen, we don't hear more words. We need
14 action. Please.

15 Thank you.

16 CHAIRPERSON NICHOLS: I believe that Shankar
17 Prasad -- oh, there you are. Okay. Welcome back.

18 I received a report, an update on Mike Walsh. I
19 can tell everybody that he is doing very well. He's alert
20 and talking. They don't seem to find anything other than
21 exhaustion from his recent incredible travel pace, which
22 was even worse than normal. They're going to keep him
23 under observation for a while, but he was talking and
24 appeared to feel fine just a short bit ago. Very good.

25 (Applause)

1 MR. PRASAD: That's very good news.

2 Good evening, Chairman Nichols and members of the
3 Board. It's always a pleasure to come before you and have
4 a word in expressing our views and positions.

5 In addition to myself, on behalf of -- my name is
6 Shankar Prasad from Coalition for Clean Air. And I'm also
7 a speaking on behalf of American Lung Association and
8 Union of Concerned Scientists.

9 People look up to you, as many of the awardees
10 noted, across the world for the actions you take because
11 you have shown the leadership and the approaches.

12 In same regard, we urge you all to consider
13 showing your leadership by, if you're proceeding with an
14 MOU agreement, please make sure that simultaneously and in
15 a parallel process develop those backstop regulations
16 along with the districts also included in the same
17 process.

18 We also urge you to direct the staff to show some
19 data as to how the two approaches would differ that would
20 give the benefit for us to know why one method is
21 preferred over the other, what steps can be taken are for
22 the lack of backstop regulations, what additional benefit
23 you are really getting through the MOU approach.

24 We also urge you to consider a fee mechanism to
25 provide incentives as matching funds for further emission

1 reductions.

2 Thank you.

3 CHAIRPERSON NICHOLS: Thank you. That's a very
4 constructive suggestion.

5 Now Angelo.

6 MR. LOGAN: Thank you, Madam Chair and members of
7 the Board.

8 Angelo Logan with East Yard Communities for
9 Environmental Justice.

10 And so the recommendations that are before you
11 today are basically a proposal to go into a negotiation
12 process. This negotiation process is to reach voluntary
13 agreement. A process without certainty that the actions
14 within the agreement will be acceptable are that even that
15 at the end of this four-month process that an agreement
16 will be reached between the two parties, that of the ARB
17 and the rail yards.

18 This basic concept has been the idea for
19 addressing the unacceptable high cancer risk in these rail
20 yards that were identified after the health risk
21 assessment in 2007. That's been three years ago. And I
22 think that this is the reason that you feel the sense of
23 frustration from the community. We've gone for three
24 years knowing there is unacceptably high cancer risk at
25 these rail yards. And to go into another negotiating

1 process with no certainty is very frustrating. And,
2 honestly, we just don't have faith that we're going to
3 reach an agreement that's acceptable.

4 In terms -- is that my time?

5 CHAIRPERSON NICHOLS: I think it is, but I think
6 you can continue.

7 MR. LOGAN: In terms of the charts and whatnot,
8 they're very complicated. As you know, we can put a chart
9 up and it's very deceiving. We're not saying -- I don't
10 think anyone is saying there's been no progress. But in
11 terms of this situation, it is a crisis situation, and we
12 need to leave no stone unturned to achieve health
13 protective measures for the communities. Thank you.

14 CHAIRPERSON NICHOLS: Thank you.

15 Daniel Mata, Bonnie Holmes-Gen, and I believe
16 that concludes the community witness, so we'll then give
17 the railroads a chance to speak.

18 Shankar, were you speaking for Bonnie also?
19 Okay.

20 MR. MATA: Good evening, members of the Board.

21 I come from the city of Commerce from the East
22 Yard Group and also representing the city of Commerce
23 where I lived for 15 years and where my children have
24 grown up. And I don't want in the future that they should
25 suffer from cancer or that my grandchildren should suffer

1 from cancer. So I'm asking you please do something right
2 now.

3 Thank you.

4 CHAIRPERSON NICHOLS: Okay. That was the end of
5 the testimony of the witnesses.

6 And in light of the fact that we asked for the
7 citizens to go first and the government people are going
8 to wait until the very end, I thought we would hear from
9 the railroads next.

10 MS. WHEELIS: Madam Chairman, members of the
11 Board, my name is Darcy Wheelis with the Association of
12 American Railroads. I'm speaking today for Mark Stehly of
13 BNSF railway. He was not able to stay today.

14 I'd like to recap some progress BNSF has made in
15 reducing emissions at their operations since September
16 when we were last before you.

17 First, the implementation of the fleet average
18 agreement has had a significant impact on the type of
19 locomotives currently operating in the South Coast. BNSF
20 is not running any Tier 0 line haul locomotives in the
21 basin. All the units are now Tier 1 or Tier 2, and all of
22 them purchased since 2003. Virtually every BNSF switch
23 engine is Tier 0 or better.

24 And as staff mentioned in their report, \$10
25 million in Dara funding will go to the purchase of eleven

1 ultra-low emitting switch locomotives; six will go to
2 commerce, three will go to San Bernardino and three to
3 Watson. And as you know, those locomotives reduce
4 emissions by 80 and 90 percent when compared to older
5 locomotives that we will replace. And those will go into
6 service later this year.

7 BNSF is also working with the city of San
8 Bernardino and SANBAG helping them to implement their
9 grants for more LNG drayage trucks in that city. Just
10 last week, Mark Stehly had a meeting with the mayor of San
11 Bernardino to try to move that project forward.

12 BNSF supports staff's proposal and is optimistic
13 that we can work with your staff and other stakeholders to
14 quickly fashion a comprehensive plan that will achieve
15 substantial emission reductions from these two yards in
16 the 2020 to 2023 time frame. And these reductions will be
17 faster and greater than any reductions that can be
18 achieved by regulatory path.

19 Thank you.

20 CHAIRPERSON NICHOLS: Okay.

21 MS. VALDEZ: Good evening, Chair Nichols and
22 members of the ARB Board.

23 My name is Lupe Valdez, and I serve as Director
24 of Public Affairs for Union Pacific Railroad.

25 Previously, I served as a DEO for the South Coast

1 AQMD, as well as Public Affairs Administrator for Metro
2 Link in southern California.

3 We support the staff's proposal for a commitment
4 approach to reduce emissions at Commerce and the ICTF by
5 about 85 percent between the years 2020 and 2023 time
6 frame. We expect that new inventories at all these yards
7 will be completed within weeks, which will form the basis
8 for our reduction plan.

9 In Commerce, we have had reductions with
10 repowered equipment and equipment that has added emission
11 controls on things like cranes, forklifts, and something
12 called cone trucks.

13 For ICTA, we are awaiting a draft EIR to be
14 released sometime early this summer for our modernization
15 that aims at reducing emissions as well as modernizing
16 that facility.

17 UP has committed to improve the environmental
18 performance of our locomotive fleet and of our rail yard
19 operations. We are open to discuss any ideas from
20 residents that will reduce emissions and risk, are safe
21 and feasible and comply with federal laws.

22 And with that, I say thank you. And thank you
23 for giving me this opportunity to speak. If you have any
24 questions, feel free to ask.

25 CHAIRPERSON NICHOLS: I would appreciate if you

1 will stick around in case we have questions when we go
2 forward.

3 Mike Barr.

4 MR. BARR: Thank you, Madam Chair and Board
5 members.

6 My name is Mike Barr, and I represent the
7 Association of American Railroads. Over the last decade,
8 the ARB has used regulation and resolutions and studies
9 and agreements to reduce emissions from locomotives and
10 rail yards in California. ARB regulation of equipment,
11 like TRUs, and early compliance by the railroads has
12 achieved substantial additional and early reductions.

13 Enforceable ARB agreements have avoided the
14 preemptions issues that we were talking about and achieved
15 many more reductions earlier than additional regulation.

16 Some stakeholders are now urging ARB to adopt
17 more regulation aimed at rail yards, but federal law
18 preempts most state and local regulation of railroads
19 facilities in rail yards, including regulation of most
20 locomotives operating at rail yards.

21 As an alternative, the railroads are willing to
22 make new commitments to reduce emissions at specific rail
23 yards of greatest concern.

24 This commitment approach will achieve greater
25 emission reductions earlier and more reliably than more

1 regulation, as explained by your staff in detail. We
2 believe this approach will produce clear and detailed and
3 quantified and additional and enforceable and early
4 commitments which the railroads will fully perform on
5 schedule as they performed in the past.

6 Thank you.

7 BOARD MEMBER BALMES: Can I ask a question?

8 CHAIRPERSON NICHOLS: Yes. Before you do, I
9 think Mayor Loveridge needs to say something, because he's
10 going to have to leave for a plane also.

11 BOARD MEMBER LOVERIDGE: Just several points.

12 First to acknowledge those who drove here, it's a
13 long day, a long drive. One of the things you value in
14 politics is people going with their feet and testimony is
15 important.

16 One first point is more than 120 days have
17 passed. I guess we are now into six months of September,
18 and one is a little disappointed that we didn't have this
19 kind of a hearing earlier.

20 When we talk about risk, it struck me we weren't
21 talking about what's happening in 18 yards. We're talking
22 what's happening in the high risk yard, particularly San
23 Bernardino, which had a risk which was much greater than
24 any other yard.

25 So it's not an abstraction. There's a kind of

1 urgency. You heard that from the statements of people who
2 live in and around the yards.

3 Third point, I do think we need to figure out how
4 to measure this stuff. So it isn't simply one risk
5 measurement at a period. There needs to be some sort
6 of -- I'm not sure the cost of how you do this, but I
7 think you need to do this and see what progress or more
8 progress is needed.

9 I guess my own position is we need to have the
10 best way to make a difference sooner rather than later.
11 This is not something we want to wait until 2020 or 2030.
12 It seems to me the risk that we saw requires us to act
13 sooner rather than -- sooner rather than later.

14 I do think the kind of agreements we talked about
15 need to be matched by backstop rules and in tandem with
16 something Mary Nichols has talked about.

17 When I first got into thinking about goods
18 movement, I remembered the kind of call for cleaner air
19 and faster freight. It does seem to me we need to figure
20 out how to get these to work in tandem so we see rail
21 traffic and communities in this context of faster freight
22 and cleaner air.

23 And, finally, just for San Bernardino, beyond the
24 commitment of CARB, I think we need to invite the
25 commitment of South Coast, county of San Bernardino, city

1 of San Bernardino. You certainly have mine. The private
2 sector needs to be involved.

3 The risk numbers for San Bernardino are so
4 unacceptable that it requires all of us to not simply
5 express concern, but to demonstrate through actions. So
6 you certainly have my best efforts. I look forward to
7 measurements that show the progress I think we can make
8 together.

9 CHAIRPERSON NICHOLS: Thank you.

10 Yes, John. Sorry.

11 BOARD MEMBER BALMES: I have a question for Mr.
12 Barr.

13 So, Mr. Barr, you mentioned yard-specific
14 measures that the railroads are prepared to take. Can you
15 tell me what those type of measures would be?

16 MR. BARR: Yeah, it depends on each yard. And,
17 of course, they have done some studies, and they're
18 starting with San Bernardino, as you know.

19 I'm sorry Mark Stehly isn't here to explain it in
20 more detail.

21 But they've looked at very detailed projections
22 of the emissions as actually measured over the last
23 several years throughout the yard and focused on those
24 measures that reduce emissions, but also reducing them
25 where they matter the most. And that includes, for

1 example, at San Bernardino a much upgraded gate entry
2 system for the trucks, a much reduced dwell time in the
3 rail yard, and a very much expedited exit system which has
4 reduced the actual dwell time of the trucks in the rail
5 yard by a very substantial number, which is I know being
6 discussed in detail.

7 But before we can make any further progress, the
8 Executive Officer needs to notify you that we're ready to,
9 you know, negotiate. And that's under your 2005
10 resolution. But the facts are being analyzed in great
11 detail, more detail than has ever been analyzed before at
12 any rail yard. And that needs to be reproduced at each
13 one of these four rail yards now, right away. That's a
14 very substantial action that's not occurring anywhere
15 else, and it's very important for this effort to succeed.

16 BOARD MEMBER BALMES: I would just say that I'm
17 not prepared to support anything that doesn't include
18 yard-specific measures like you're talking about.

19 CHAIRPERSON NICHOLS: Thank you. That's helpful.

20 MR. MARCKWALD: Good afternoon, Madam Chair and
21 members of the Board.

22 I'm Kirk Marckwald here for the California rail
23 industry. Just four quick points.

24 We believe the staff's proposal before you today
25 is faithful to your Board's direction last September. And

1 we also believe clearly that the commitment approach will
2 achieve reductions years earlier than the regulatory
3 pathway could. As both railroads have testified today,
4 they are ready to begin working with your staff and other
5 stakeholders immediately to begin to fashion a concrete
6 commitment that we believe that those four designated
7 yards can demonstrate a reduction of up to 85 percent over
8 time.

9 Third, by taking this approach, your Board will
10 retain any backstop authority you may have. And in the
11 future, for whatever reason, if the commitment approach
12 did not work out, you could immediately opt to go that
13 route.

14 But I want to be clear, the freight railroads
15 have a 15-year track record of success with the ARB of
16 keeping every commitment we have made. If your Board
17 ratifies this approach and we can reach agreement with
18 your staff, the railroads will keep our commitment as we
19 have over the past decade and a half to achieve the
20 agreed-upon levels of emission reductions on the
21 agreed-upon timetable. Thank you very much.

22 CHAIRPERSON NICHOLS: Thank you.

23 Question. Sorry.

24 BOARD MEMBER TELLES: Why do you believe that a
25 voluntary approach would gain more emissions reductions

1 than a regulatory approach?

2 MR. MARCKWALD: I think that as your staff has
3 pointed out, the reductions that could come about from a
4 regulatory approach are rather narrow and go to a certain
5 class of locomotives. And I will say that it's a group of
6 locomotives that are going to be cascading out of service
7 as they're replaced by newer locomotives. It's a very
8 narrow regulatory hook you have with respect to
9 locomotives. And as the staff pointed out in the
10 2015/2020 time frame, the locomotive emissions are the
11 most important part of the retaining pie.

12 And I think in the case of a commitment approach
13 that we can take actions, both yard-specific actions that
14 improve the real emission reductions in a variety of
15 actions, some of which your staff had indicated and we can
16 do that immediately.

17 If you went the regulatory approach, depending
18 how you did it, I think our belief is you would have some
19 number of months, if not years, of development of the
20 proposal and final approvals of other people like the EPA
21 I think would have to weigh in. We are ready to get going
22 right now, and we are ready to submit the plans for these
23 four yards in the July time frame of 2010.

24 CHAIRPERSON NICHOLS: Thank you.

25 I think it's now time for the government folks to

1 get their turn last. Appreciate your patience. So South
2 Coast, and I believe we also have Don Duffy from Placer.
3 Is he here? No.

4 MR. WALLERSTEIN: Chairman Nichols, we're trying
5 to get a slide shown so that we can help answer one of the
6 questions you've asked.

7 This is a slide that we showed to our Board
8 members last Friday. This is from the risk assessments
9 you've been hearing about.

10 As you look at that San Bernardino railroad,
11 that's equivalent to 250 large refineries being dropped
12 into a neighborhood. If we looked at Commerce, it would
13 be 50 large refineries.

14 If we reduced that risk by 95 percent, it would
15 still exceed the allowable risk that we currently specify
16 for refinery. We actually get them much, much lower.

17 And so we ask you to think about the fact that
18 you regulate dry cleaners. You regulate gas stations.
19 These are small businesses, not large major national
20 corporations.

21 You also have adopted a regulation for foreign
22 flagged ships, including operating outside of the boundary
23 of the state of California.

24 Why should this industry be different? It was
25 noted that they've already submitted risk assessments.

1 Well, when they submitted the risk assessments under the
2 last MOU, they followed up with a reduction plan.

3 Ask yourselves, why wasn't that a good plan? It
4 only contained measures that were rules on the books
5 today. So if the community seems concerned about a redo,
6 it's because they've been through this dance before.

7 I'd also like to point out that you have some
8 significant leverage here. You have Prop. 1B funds. We
9 jointly have Moyer funds. You have AB 118 funds. The
10 railroads are seeking significant financial contributions
11 from federal transportation reauthorization, and they want
12 authorization of new rail yards and expansion of existing
13 rail yards. And the communities are simply asking that
14 you treat this industry the way you have treated other
15 industries.

16 So our recommendation to you is to initiate
17 rulemaking, but at the same time initiate a process where
18 your staff can open dialogues on voluntary enforceable
19 agreements with the railroads. You have nothing to lose
20 by doing that.

21 If anyone suggests they would take their existing
22 Tier 2 locomotives and pull them out of southern
23 California because you initiated rulemaking because they
24 inserted a provision like that in the previous MOUs, I
25 would suggest that the political backlash that would occur

1 from southern California to Sacramento to Washington,
2 D.C., makes that an empty threat.

3 So we suggest that you negotiate from a position
4 of strength and treat this industry the way you have
5 treated every other industry, from large corporations to
6 small businesses.

7 Now my staff will provide some additional detail.

8 Thank you.

9 MR. GREENWALD: Good evening.

10 Peter Greenwald, South Coast Air Quality
11 Management District.

12 Your staff today presented information regarding
13 emissions from rail yards. I want to start by speaking
14 briefly about proximity and risk in residential areas.

15 The slide I'm showing you here is taken from your
16 website. It's taken from a May 2008 presentation by your
17 staff regarding health risks at the BNSF San Bernardino
18 rail yard. The right four bars show contribution by
19 source category to the maximum individual cancer risk in
20 2005. The medium high blue bar is trucks. The short
21 light blue is line haul locomotives. The tall greenish
22 bar is cargo handling equipment. And the tall gray bar on
23 the right is other equipment, such as refrigeration units.

24 Now, your Board has adopted important rules that
25 will substantially reduce the emissions from the tall

1 bars, cargo handling equipment, refrigeration units and
2 trucks. But because of their proximity to residents and
3 because their contribution to risk was so high to begin
4 with, cargo handling equipment could well be the greatest
5 contributor to maximum individual cancer risks at the San
6 Bernardino rail yard in 2020. That's the indication from
7 the information that your staff has provided.

8 Other significant contributors will be
9 refrigeration units, switching locomotives, trucks, and
10 line hauls.

11 Now, your Board has general authority to regulate
12 cargo handling equipment. You've done it before. You
13 also can and have regulated refrigeration units. And your
14 staff indicates that you have authority to regulate --
15 likely authority to regulate locomotive switchers and many
16 medium horsepower locomotives.

17 So are there opportunities for further control of
18 these sources to a very great degree? The answer clearly
19 is yes. The railroads have proposed new electrified
20 cranes and expanded rail yards near the Los Angeles and
21 Long Beach ports. If electrified technologies are good
22 enough for the residents of west Long Beach, they should
23 also be good enough for the residents of San Bernardino,
24 Commerce, and other highly impacted communities. The
25 largest source of diesel emissions from cargo handling

1 equipment at San Bernardino is yard hostlers.

2 South Coast AQMD along with the port of Los
3 Angeles funded development of a full electric yard hostler
4 which the port will soon begin to deploy. They're even
5 built in southern California.

6 Finally, a word about line haul locomotives.
7 Under your 1998 MOU, the railroads have in the last five
8 years since Tier 2 locomotives became available achieved a
9 fleet average equal to Tier 2 standards, at least that's
10 the requirement.

11 Based on this experience, based on the
12 demonstrated ability of the railroads to preferentially
13 route cleaner line haul locomotives to this region, your
14 staff, the CARB staff, recommended that the port set a
15 goal of 95 percent Tier 4 locomotives entering port
16 properties by 2020.

17 This is also an appropriate goal for rail yards.
18 It would provide significant risk benefits beyond what
19 your staff is proposing. Your staff is not -- the
20 proposal does not include Tier 4 locomotives, which have
21 much greater control than the other tiers.

22 EXECUTIVE OFFICER GOLDSTENE: Chairman Berg --
23 I'm not sure who.

24 I'd like to ask Deputy Executive Officer Fletcher
25 to comment on this slide for a moment if you don't mind

1 just to clarify a few points.

2 BOARD MEMBER BERG: That's fine. But could we
3 just have him wrap up his testimony?

4 And your time is up, so can you give us a
5 concluding sentence?

6 MR. GREENWALD: Sure.

7 The railroads buy new locomotives every year. We
8 simply ask why they could not route new Tier 4 locomotives
9 here as they do with Tier 2.

10 And if I may just make one more point. Your
11 recommendation -- your staff's recommendation to the ports
12 for 95 percent Tier 4s by 2020, we have great concern that
13 the staff proposal, which was just released today, will
14 undermine your recommendation to the ports. That's a real
15 problem, because the ports have projects which they are
16 considering to approve. If you are not willing to push
17 for the same actions which you've asked the ports to do,
18 what is that going to do to their inclination to act?

19 BOARD MEMBER BERG: Thank you very much.

20 And staff response?

21 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Just
22 briefly on the slide Mr. Greenwald has up, this is based
23 on data I believe from 2005. As we pointed out before,
24 there's been significant actions taken. As Mr. Greenwald
25 mentioned, the on-road trucks, the cargo handling

1 equipment, and the other categories have rules already in
2 place that will drop this. In fact, the trucks now are
3 already 85 percent cleaner.

4 So his characterization that cargo handling
5 equipment is going to be the single largest source in the
6 San Bernardino rail yard is not correct. The locomotives
7 will represent as we've shown in the previous slide in San
8 Bernardino approximately 80 to 85 percent of the overall
9 risk at that rail yard.

10 BOARD MEMBER BERG: Thank you very much.

11 MR. GREENWALD: I need to reiterate that the
12 statement related to the risk at the maximum exposed
13 individual, and our technical staff reviewed the
14 information and railroads' submittal, and that is the
15 indication.

16 BOARD MEMBER BERG: Okay. Thank you.

17 Our next speaker, Barbara.

18 MS. BAIRD: Thank you.

19 Good evening, Chairman Nichols and Board members.

20 I'm Barbara Baird, District Counsel for the South
21 Coast AQMD.

22 Want to point out that in litigation brought by
23 the railroads, the court has ruled that CARB is the agency
24 with authority to regulate locomotives. While we have
25 appealed, that decision remains in effect. Therefore,

1 CARB must take the primary role in regulation as applied
2 to locomotives. However, we will work cooperatively to
3 ensure that regulations make the maximum use of both
4 agencies authority.

5 Now Mr. Barr referred to preemption under ICTA.
6 But the Surface Transportation Board that implements ICTA
7 has repeatedly stated ICTA is not intended to interfere
8 with the role of the states in implementing the Clean Air
9 Act.

10 Indeed, ICTA preemption only occurs if a
11 regulation would unreasonably interfere with rail
12 operations. And in deciding whether it's reasonable, the
13 STB says you must balance the environmental benefit
14 against the degree of interference. Given the tremendous
15 environmental and public health benefits here, a
16 reasonable regulation should be upheld.

17 Now, staff is apparently concerned that if they
18 initiate regulation, the railroads will back out of the
19 1998 MOU. But EPA has committed to adopt a backstop rule
20 to make up any reductions lost by the MOU. In fact, that
21 commitment was signed by Chair Nichols when she was at EPA
22 and has been published in the federal register. If EPA
23 finds the railroads are not achieving the required
24 reduction, EPA must adopt emission control measures to
25 achieve such reductions from the rail yards, or if

1 necessary from other national transportation sources.

2 So the railroads would be taking a serious risk
3 if they were to back out of the MOU.

4 Moreover, CARB has authority to adopt a
5 risk-based regulation for rail yards. The law, as you
6 know, requires CARB to adopt air toxic control measures
7 for non-vehicular sources. Two California Attorney
8 General opinions treat indirect sources such as rail yards
9 as non-vehicular sources. ATCMs require the best
10 available control technology, unless CARB determines based
11 on an assessment of risk that an alternative level of
12 reduction is necessary to prevent endangerment of public
13 health. This provision allows you to adopt a rule setting
14 a risk level for the rail yards to reach.

15 We believe CARB needs to take action in tandem
16 and take the strongest action possible. The railroads
17 have used the 2005 MOU against us, and they have already
18 been given an opportunity to voluntarily reduce risk.

19 We urge CARB to initiate regulation concurrently
20 while seeking voluntary action by enforceable means.

21 Thank you. And I'll be happy to answer any
22 questions.

23 CHAIRPERSON NICHOLS: I don't have any questions.

24 Sorry.

25 BOARD MEMBER TELLES: A general question to

1 anybody who can answer it.

2 By 2020, what will be the cancer risk in the
3 neighborhoods around these rail yards?

4 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

5 Let's start with San Bernardino since there seems to be a
6 lot of focus there.

7 First of all, there is a little conclusion. The
8 MICR in 2005 was 2500 in a million. That's correct. In
9 2010, that's been reduced by at least 50 percent, probably
10 at a greater level. With an updated inventory and health
11 risk assessment, we'd be able to determine it's around
12 1200 or 1300 in a million.

13 When we look at 2015, we're looking at about 900
14 in a million and about 600 in a million in 2020. That's
15 without additional measures.

16 Also, one of the things we believe that will be
17 critical, especially the slide that was presented earlier,
18 is looking at the source weighted contribution. And
19 because trucks was about 70 percent of that contribution
20 at San Bernardino, our recent drayage truck regulation
21 actually significantly reduced the contribution. So that
22 slide when you look at it is already shifted this year
23 because of our regulations.

24 CHAIRPERSON NICHOLS: I'm afraid I was -- go
25 ahead.

1 BOARD MEMBER TELLES: Just a follow-up question.

2 By 2020, if it's 600, will it still be the highest in --

3 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

4 It will still be the highest of all the rail yards.

5 BOARD MEMBER TELLES: In the state and the

6 nation?

7 ENGINEERING EVALUATION SECTION MANAGER HOLMES:

8 No, not in the nation. Unfortunately, California is the

9 only one who's done health risk assessments. There is a

10 city called Chicago that has about 30 major rail yards

11 that probably would at least challenge us for some of

12 those numbers.

13 CHAIRPERSON NICHOLS: Particularly since there's

14 been no action there. But I mean, I don't think our goal

15 is to be better than Chicago, although Chicago is a pretty

16 nice city. I like Chicago, I really do.

17 You know, I think our goal is to reduce risk to

18 the maximum extent possible. It's an unfortunate thing

19 that the rail yards are also attractors of trucks, as San

20 Bernardino seems to be really at the epicenter of that.

21 So the city or the residents are being exposed to other

22 sources, but they're all part of I suppose one great

23 transportation corridor. But it comes from multiple

24 different directions.

25 You know, I think there is a couple of points

1 that I would like to make. And obviously, it would have
2 been better if the staff presentation would have been
3 available earlier and there could have been briefings and
4 meetings with other people so that they would have had a
5 better opportunity to focus on what is and isn't being
6 said.

7 But I guess my view is that we are not talking --
8 I should say -- you are not talking -- I'm not talking
9 about initiating some sort of a negotiating process with
10 the railroads. I don't think -- I think that was done
11 before. It led to the MOU. We obviously have a
12 disagreement I suppose with the district about whether
13 that was a good thing or not to do. And we all agree the
14 process wasn't what it should have been. But the results
15 I think have been verified and they were real. So the
16 question is: Could you do better?

17 My thought is that the next step in this process
18 does need to be something which is enforceable. And while
19 everyone likes to use the word "regulation" versus
20 "voluntary" as though those were sort of the only two
21 choices that were out there, I do think that there is a
22 middle ground here. And the middle ground, which is what
23 the staff was calling commitment, is something that would
24 be initiated by ARB with a letter that would state
25 specifically what we were asking the railroads to do and

1 the response would be a letter back from the railroads
2 saying, yes, this is what we're going to do.

3 Once we had those two letters in the file on
4 record in public available to everyone, they would be
5 available to the community to monitor.

6 And I think, you know, one of the things that has
7 to be in the letters is what the evidence is going to be
8 as to whether there's been compliance with the measures
9 that are spelled out, you know, in the letters.

10 And I believe that that sort of situation leads
11 to something that is enforceable, not only by us through
12 regulations that would be developed simultaneously with
13 this exchange going on, but also by the community as well.
14 They're beneficiaries of this process.

15 The thing that I -- well, I'm concerned about
16 timing, as everybody else is. But anybody who thinks the
17 regulatory process is quick doesn't understand how
18 regulations work in this state. If we were to publish a
19 proposed rule as an ISOR, I guess we would call it, in a
20 month, we wouldn't have something that had been approved
21 by OAL for a year. And that would be at warp speed.

22 EXECUTIVE OFFICER GOLDSTENE: It would take us a
23 lot longer than a month to put it together. It's at least
24 at a year after that point.

25 CHAIRPERSON NICHOLS: So I think that people have

1 been setting up a false dichotomy here.

2 I do want to say though that the ARB is not the
3 only agency with regulatory authority here. And I agree
4 with Barry that we should use the leverage that we have
5 with money that's available to us. South Coast District,
6 in the case of San Bernardino, needs to be using the
7 authority that they have, as does the city of San
8 Bernardino. You know, everybody has a piece of this.

9 And I realize that the staff here is focused on
10 their piece of it, because that's the thing that they do.
11 But I also think that some leadership is needed. And we
12 talked about this last September to bring these other
13 agencies together so this isn't just a case of, you know,
14 somebody coming in here and saying, "You guys don't have
15 enough guts. Well, you guys don't have enough guts."
16 Come on. Let's go over this, could we please, and
17 actually talk about who can do what.

18 So, you know, South Coast has indicated they have
19 some authority and some funding here. We should be
20 sitting down with them and the mayor of San Bernardino.
21 We know he's very concerned. Perhaps take advantage of
22 Mayor Loveridge's offer to be the liaison on this and put
23 everybody's cards on the table, everybody's authorities on
24 the table and look at what we can do.

25 The goal here is the risk-based approach, without

1 a doubt. It's to get down the risk levels at the worst
2 yards as quickly as we possibly can. And it needs to be
3 spelled out in writing in a way that everybody can see it
4 and so that it's enforceable. Not some back room deal or
5 negotiations. That's not going to work. And I don't
6 think anybody on this Board would sit still for something
7 like that.

8 So the only real question is are there legal
9 authorities that we have that we are not using or not
10 exercising appropriately? I don't think the staff has
11 gone through in exhaustive detail why, each and every
12 aspect of all the legal authorities they've looked at.

13 I've had an opportunity to sit with them, because
14 this is very painful to me. I mean, personally it's
15 painful, because I'm a believer in using every drop of
16 legal authority that you have to solve problems.

17 But, you know, as we've looked at what they have
18 to go through on the individual pieces of this rail yard
19 problem, it seems like they've done what they could do or
20 are proposing to do what they can do and are now prepared
21 to go the next step to do everything that would pass the
22 cost effectiveness test and maybe even beyond the cost
23 effectiveness test that we do have to live by. We are not
24 free to ignore that, even if we want to.

25 So I'm inclined to direct the staff to pursue the

1 approach that they've indicated here, but to do it in a
2 very timely and very clear manner.

3 I agree, and I hope that the tone of the
4 presentation and the slides was clear that this is not
5 just kind of waiting to see what the railroads are going
6 to do. This is about us articulating what we expect and
7 getting the response back from them.

8 Yes?

9 BOARD MEMBER TELLES: Can I ask one more
10 question?

11 CHAIRPERSON NICHOLS: You could, but John Balmes
12 had his hand up first.

13 BOARD MEMBER BALMES: I'll make some remarks
14 later, but there was one disconnect I had with your
15 comments.

16 Mostly, I liked what I heard.

17 But you said that the time for negotiations has
18 passed. And I agree on a certain level because we need to
19 act. But what I heard the railroad say, Mr. Barr in
20 particular, was that they were waiting for direction from
21 us to start negotiating.

22 CHAIRPERSON NICHOLS: Yes. Well, I think what
23 they will do -- and I understand this since they're being
24 asked to make a commitment, they're wanting to see what we
25 are asking them to commit to and whether they're going to

1 say yes or no. If they come back and say, "We like items
2 1, 3, 5 and 7, but don't like number 2 and 6, and could we
3 have it slightly different?" We'll have to see.

4 But I think that's -- I guess you would call it
5 negotiation. I would prefer to call it an exchange.

6 So --

7 BOARD MEMBER TELLES: I don't have any experience
8 with knowing how well the voluntary action has been going
9 on. So I'm asking a question to kind of give me some
10 information on that.

11 In the risk reduction from 2005 to now from 2500
12 to 1200, what percentage of that is related to voluntary
13 actions from the railroad industry versus regulation from
14 CARB?

15 ENGINEERING EVALUATION SECTION MANAGER HOLMES: A
16 great percentage of it is from the regulations.

17 I want to point out though that a significant
18 part is from the 1998 agreement in the South Coast air
19 basin that we negotiated with them. Fifty percent of the
20 PM emissions from locomotives are from that agreement.

21 Also, they've taken a number of actions beyond
22 our regulations. For example, accelerated cargo handling
23 fleet equipment turnover, that was their own voluntary
24 action. So there's a number that would supplement our
25 regulations.

1 BOARD MEMBER TELLES: How much is percentage from
2 the --

3 ENGINEERING EVALUATION SECTION MANAGER HOLMES:
4 Off the top of my head, I'd say a 75/25 split, something
5 like that.

6 BOARD MEMBER TELLES: Twenty-five from the
7 railroads and 75 from regulation. So 25 from some
8 voluntary action from the railroads and 75 from
9 regulations?

10 ENGINEERING EVALUATION SECTION MANAGER HOLMES:
11 Right.

12 BOARD MEMBER TELLES: Seems to me the regulation
13 is more successful.

14 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Let
15 me put some context on that. And that is we recognize we
16 had clear legal authority to go after the 75 percent.
17 That's the cargo handling equipment. That's the drayage
18 trucks and TRUs. Those are the three measures where those
19 are 70 percent.

20 When we get into the next phase and what we can
21 regulate, it really gets complicated because we are
22 limited to what we call pre-Tier 0 or un-remanufactured
23 locomotives. As you heard Darcy indicate that the San
24 Bernardino or BNSF has already pulled out all pre-Tier 0
25 zero locomotives. So if we were to do a regulation, we

1 would be essentially controlling locomotives that are not
2 there anymore.

3 And when we did our technical option report last
4 year, we did identify that there was a fair number of
5 pre-Tier 0 and a flag that is a regulation that we can do.

6 But the railroads always have the option of
7 bringing in Tier 0 or re-manufactured locomotives.

8 Our objective is not yet from a pre-Tier 0 to a
9 Tier 0. It's to get from a pre-Tier 0 to a Tier 3. And
10 that's what we would lose if we tried to do regulations is
11 that we just don't think they'll be very effective.

12 The reductions we're going for now in this
13 approach that we've suggested really are looking at taking
14 switch locomotives to the Tier 3, medium horsepower to
15 Tier 3, and then these line hauls from Tier 2 to what we
16 call Tier 3 plus. That was the table we had put up there.
17 Those are all locomotives that we do not have regulatory
18 authority to do for the most part.

19 So, you know, in looking at -- you've asked what
20 the difference was between regulations and agreement, we
21 really think we're talking about perhaps a five or ten
22 percent reduction in risks versus a 30 to 40 percent
23 reduction in risk as we go through time. So, you know, we
24 have taken all the regulatory -- most of the regulatory
25 authority that we've had to date.

1 CHAIRPERSON NICHOLS: Five to ten percent for
2 what versus --

3 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Five
4 to ten percent for -- if we did a regulation on
5 locomotives, we get five percent reduction.

6 CHAIRPERSON NICHOLS: That's the answer he's
7 searching for.

8 STATIONARY SOURCE DIVISION CHIEF FLETCHER: We're
9 looking for four times the benefits of the approach.
10 Those are estimates. It depends upon the nature of the
11 locomotives fleet. But the objective really is to get to
12 the higher tiers, and that's what our objective is here.

13 CHAIRPERSON NICHOLS: Ken.

14 BOARD MEMBER YEAGER: So, Mr. Fletcher, you're
15 saying that there really aren't any other regulations that
16 we might want to investigate?

17 STATIONARY SOURCE DIVISION CHIEF FLETCHER: There
18 are two other regulations that we identified -- or kind of
19 two sets.

20 One, we could do a risk reduction audit and plan
21 regulation that would have targets in it that would be
22 essentially unenforceable. They would be similar to what
23 we're proposing here in terms of saying we want you to get
24 to this level and we want you to do the following things.
25 But if it involves preempted locomotives, you don't have

1 to meet it. And that's the real rub here is that the only
2 way you're going to get substantial reductions is to go
3 after the preempted locomotives.

4 The other regulations that have been mentioned
5 are those that relate to the electrification of cargo
6 handling equipment, drayage trucks, TRU electrification
7 with the rail yards. And if you look at San Bernardino,
8 for example, and we think that probably 15 percent of the
9 total risk out into the future is related to the cargo
10 handling equipment and trucks are there. If you
11 eliminated that equipment completely, you would take the
12 risk from 600 in a million to probably 520 in a million or
13 525 in a million. That's completely eliminating all of
14 that equipment.

15 The other consideration on the electrification
16 that we're committed to re-look at it if we have to
17 trigger this other enforceable provision is that when we
18 did the analysis of the 37 options, those were options we
19 looked at certainly. But they did not pass the cost
20 effective criteria that this Board has established for
21 adoption of regulations. They were extraordinarily
22 expensive and not very cost effective. That's the other
23 problem.

24 BOARD MEMBER YEAGER: And you've communicated
25 most of this information to the community members? I know

1 that obviously many of them want more regulation, but it
2 sounds like it may not achieve the ends they like.

3 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes,
4 we have. But I think we haven't done a very good job of
5 it. And we are committed to -- again, we'd be happy to
6 sit down and walk through -- when we get additional data
7 as we're collecting, we keep getting more and more
8 information because we keep pushing this issue. I think
9 we can sit down and sort of walk through what we know
10 about the various sources in the rail yards and can deal
11 with things like operational measures that Dr. Balmes is
12 very interested in and show whether or not that has really
13 a measurable benefit. Is it a good thing to do or not
14 from an emissions and risk perspective?

15 BOARD MEMBER YEAGER: Just very briefly, I wanted
16 to echo what Chair Nichols was saying. Maybe there is
17 that middle ground. I can understand the hesitancy of
18 people want to go voluntary, but it doesn't sound like
19 coming up with a regulation would be timely or all that
20 effective.

21 But given that, too, I would hope that in another
22 year let's say if the issue isn't as resolved as we would
23 like, I'd hate for the response to be, well, we still need
24 to do some sort of voluntary, because it would take so
25 long to get the regulation in order. I'm just wondering

1 if it looks like we are not making progress in
2 negotiations, if we want to start some sort of regulation
3 so that we don't have to say, well, in a year, you know,
4 we need to wait another year.

5 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Our
6 objective is exactly that. We think that we can -- we
7 don't want to do them in parallel, because railroads have
8 pretty much made it clear you can't do both at the same
9 time.

10 On the other hand, the Air Resources staff can do
11 all the legwork necessary to develop the structure of a
12 regulation, so that if we have to trigger this backstop,
13 then we can put regulations to this Board within about
14 six months. And so we're not going to stop -- we're not
15 going to sit back and not do anything on that front.

16 We're also not -- the railroads again have a very
17 good track record of meeting the commitments they make to
18 us.

19 But on the other hand, we do not again want to be
20 in exactly the position you say, which is, well, now we're
21 going to do regs. We think we know how to do the
22 regulations. We just don't think they'll be as effective
23 as what we're trying to do here.

24 BOARD MEMBER BERG: I'm just highly distressed
25 over the fact that the community perception and the work

1 that we are doing is just so far apart.

2 And so I really appreciate, Mr. Fletcher, your
3 commitment. We've got to find a way to communicate more
4 effectively, to communicate sooner.

5 The sense of not having the participation -- or I
6 think their biggest fear, and I can really understand
7 this, is that this communication through letter will go
8 between us and the rail yards. And they will be brought
9 in after the fact. And it will be the same type of public
10 hearing and the same type of workshops that I personally
11 have attended. And it is extremely frustrating, and so I
12 can really relate to how they're feeling.

13 On the other hand, I do know that there has been
14 progress. And so we need to be able to communicate that
15 progress in a way and we need to set up a better mechanism
16 other than us speaking at the community and them feeling
17 like we're speaking at them and not hearing them.

18 Likewise, I do think that I have toured the
19 Commerce yard. And those residents that literally back up
20 to the rail yard, short of shutting the rail yard down, I
21 don't really know how we could come up with anything that
22 could be more acceptable, and we know that's not possible.

23 So maybe we need to hear from the communities as
24 well specifically what we can do within these agreements.

25 And you have given us your ideas on the

1 regulations. We need to get back to them as to what we
2 feel regulation, idea by idea, what we feel we can do and
3 what we can't do.

4 I feel so conflicted up here understanding that
5 if I were to support regulation only that I really feel
6 like I'd be doing the community a disservice. Because I
7 do feel that if we can come to an agreement with the rail
8 yards, we will get these emissions faster.

9 But I agree with my other fellow Board members,
10 it has to be rail yard specific. It absolutely has to be
11 measurable. The railroads have got to agree, and it's got
12 to be enforceable. And if not, then maybe what we have to
13 do is absolutely take the regulation route, understanding
14 that we're not going to get there either. And that's
15 what's so frustrating to me is because I know we all want
16 to achieve the goal and it's how to get there.

17 And so I really would like to call on the rail
18 yards companies for the railroad companies come to the
19 table earnestly. We need this done quickly.

20 At any point this falls apart, we need staff back
21 here saying it didn't work immediately and let's then go
22 on to the next step. Not waiting for the time line to
23 come back here in four or five months to say we've been
24 working and talking and going back and forth, and it at
25 the end of the day didn't work. I will have to let you

1 know that I would be one of the Board members that would
2 be very unhappy if we did it that way.

3 So we need to -- I'm hearing from the railroad
4 companies. I'm hearing from staff that this is a positive
5 way to go. That means that they should get back to us in
6 a positive in a short period of time. And if not, we
7 absolutely have to proceed on the regulatory route and
8 show the communities that we are willing to stand up.

9 CHAIRPERSON NICHOLS: Dr. Balmes.

10 BOARD MEMBER BALMES: I realize the hour is late,
11 so I'll try to be quick here, because many of my points
12 have been stated by my colleagues. But I have about six
13 points.

14 So first off, I think we have to do something to
15 address the community concerns. I was very moved in
16 September by the testimony. And as Mayor Loveridge said,
17 it's six months later. And I think progress is being
18 made. I'll really pleased to hear Mr. Barr of the
19 railroads say that the railroads are ready to make
20 specific commitments both to reduce locomotive emissions
21 where I think the biggest bang for the buck is and just
22 reducing emissions, but also yard-specific operational
23 changes, because that will address some of the concerns
24 that Ms. Berg put forward with regard to having something
25 visible to the community that we're actually making a

1 difference.

2 I know that and I'm persuaded by staff's
3 presentation that focusing on the locomotives the
4 voluntary agreement approach will have a great impact on
5 reducing emissions. But the community will trust us a lot
6 more when they see changes visible in their neighborhoods.

7 I also think that the parallel process of
8 backstop regulation development is critical. I was
9 pleased to hear Mr. Fletcher say that, you know, the staff
10 is ready to move that way. Six months seems to be a long
11 time. I think we should be ready to move quicker if we
12 fail to get the emissions reduction that the railroads are
13 promising.

14 I think that as Mayor Loveridge said, we need to
15 monitor the results. We need to come up with metrics and
16 milestones to make sure that we're achieving what we are
17 intended to achieve and then get back to us quickly, as
18 Ms. Berg suggested.

19 I think that the process has to be transparent.
20 And I realize the staff is making that commitment. I
21 heard from the railroads they are willing to make that
22 commitment to do it transparently. But we already see the
23 level of trust the community has for us. Not very much.
24 So we have to earn that trust back.

25 And even though Mr. Fletcher sort of pooh-poohed

1 the risk reduction idea because it's not really
2 enforceable, I think actually it's a good idea. Because
3 if the railroads weren't coming close to meeting those
4 risk reduction targets, they wouldn't look very good. And
5 it would be another lever potentially in terms of getting
6 cooperation.

7 And, finally, I think Dr. Prasad's suggestion
8 about incentives should be part of our approach. You
9 know, it's expensive to come up with new locomotives.
10 It's expensive to electrify cargo handling. If we can
11 come up with support for the ports to move forward, then I
12 think we need to figure out better incentives to move
13 forward with the rail yards.

14 And I think Barry Wallerstein's point about if
15 it's good enough for the ports, it should be good enough
16 for the rail yards is I think a good motto that we should
17 approach this with.

18 So I'm willing to support the staff approach with
19 these multiple caveats.

20 CHAIRPERSON NICHOLS: I was about to say, I've
21 been taking notes, and I think I'm going to try to sum up
22 some direction in a second.

23 But I saw Bob Fletcher sort of flinching when you
24 talked about the risk reductions. I just wanted to see if
25 you had a -- did you want to comment on that?

1 STATIONARY SOURCE DIVISION CHIEF FLETCHER: No.

2 I agree. I think that in our slide we put up, we
3 indicated that that -- if we go to the backstop, that is
4 the second regulation we would absolutely do.

5 CHAIRPERSON NICHOLS: So I think that's right.

6 STATIONARY SOURCE DIVISION CHIEF FLETCHER:

7 Sorry. Didn't mean to flinch.

8 CHAIRPERSON NICHOLS: Okay. So there is a couple
9 of terms that I've had propped up here that I just want to
10 reiterate.

11 What we're looking for is commitments that are
12 rail-yard-specific, that are measurable -- that contain
13 measurable commitments that are enforceable. We want them
14 to be transparent, meaning clear I guess. And also that
15 the community gets to look at them and ask questions and
16 figure out --

17 BOARD MEMBER BALMES: I think it behooves us to
18 have the community be involved in the process earlier than
19 later.

20 Ms. Berg said it well. Instead of us talking to
21 them --

22 CHAIRPERSON NICHOLS: Well, I'm completely in
23 favor. I just was mindful of people saying they didn't
24 want to sit in rooms and listen to talk anymore. So the
25 structure of this is going to be a little complicated I

1 think.

2 BOARD MEMBER BALMES: I think it's going to be
3 complicated, but I think it's really key.

4 CHAIRPERSON NICHOLS: The other point was that we
5 want to make sure that we are using incentives, and we
6 want there to be a backstop that's developed to the point
7 where it can be brought out and utilized quickly. I think
8 six months is too long. We would all agree with that.
9 And that it needs to include regulations which would
10 potentially test our authority, but that's what we would
11 be doing in the area of risk reduction.

12 So, yeah, I think that's it.

13 Oh, there is one other thing. One of the
14 witnesses from the community spoke about the desire to
15 have things done at the fence line and have people moved
16 away from the edges around the east yard, not San
17 Bernardino. But that level of community involvement and
18 the railroad's willingness to listen and to adopt feasible
19 measures I think is a very important element of what Sandy
20 is talking about. Because it's not easy for anyone,
21 including us, to interpret all of the monitoring data from
22 a station that anybody can see, whether a fence line has
23 been changed or there's been operational changes that they
24 look for.

25 And I believe I heard the representative of one

1 of the railroads saying that they were willing to -- I
2 don't think she quite said they would do it, but she said
3 they would at least seriously look at doing things of that
4 nature.

5 So I'd like to see that element put into the
6 discussion that we're having with both the railroads and
7 the community groups as well.

8 And I really do want to pursue my vision of
9 bringing in these other organizations that also have some
10 authority, including the cities and the districts and
11 having them involved in this as well and bringing what
12 they can to this equation. Because after all is said and
13 done, as I think Dr. Telles pointed out, the level of risk
14 is still very high. And so it would behoove everybody to
15 do whatever they can do using whatever authorities they
16 have to contribute to that.

17 Is that an acceptable summary? Are people
18 feeling like that covers the ground?

19 All right. I think that's it then. And I think
20 that concludes our meeting. Thank you very much.

21 (Thereupon the California Air Resources Board
22 adjourned at 7:05 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 10th day of March, 2010.

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