

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  
LICENSE NUMBER 12277

## 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 Gendreav, 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 the opportunity to share an overview.

2           Before we start, I'd like to introduce a few of  
3 our staff members who are in the front row, if you'd stand  
4 up. That's Zena Aguilera and Diana Simeroth. We have  
5 other staff -- thank you. We have other staff members who  
6 are in the lobby assisting our customers. And at the very  
7 end of this presentation, there's actually a list of the  
8 staff of the Ombudsman office.

9           So our office has three key functions.

10                           --o0o--

11           OMBUDSMAN BOWEN: They are to meet the legal  
12 mandates. We have federal and State mandates. The 1990  
13 Clean Air Act amendments established this office and  
14 others like it across the country. And the purpose was to  
15 help small businesses understand and comply with air  
16 regulations. And over the years, these programs have  
17 matured to include small business participation and  
18 regulatory development, because it's easier for them to  
19 comply with rules they helped to establish.

20           This presentation will focus on stakeholder  
21 engagement. Future presentations will cover other aspects  
22 of the Ombudsman's office.

23           We also have State requirements that the  
24 Government Code 1148 also requires the Ombudsman to  
25 perform similar functions, such as responding to



1 complaints, providing technical advice and assistance, and  
2 along with outreach and various other reporting functions.

3           There's also a requirement for procurement that  
4 the small business liaison would ensure that the  
5 California Air Resources Board and other agencies spend 25  
6 percent of their contract dollars with small businesses.  
7 And in 2008 and 2009, CARB exceeded this goal, spending 26  
8 percent of its contract dollars with small businesses.  
9 And there's also a requirement for three percent with  
10 disabled veteran enterprise businesses, and we reached 1.8  
11 percent of that on \$14 million last year. But in 2007 and  
12 2008, CARB exceeded both goals on \$20 million in spending.

13   --o0o--

14           OMBUDSMAN BOWEN: So our mission is intended to  
15 implement these requirements. We want to implement these  
16 requirements in ways that support the California Air  
17 Resources Board's other programs in obtaining its clean  
18 air objectives. And we want to ensure that the  
19 perspectives of small business owners and other  
20 stakeholders are integrated into policy.

21   --o0o--

22           OMBUDSMAN BOWEN: We believe that to achieve air  
23 that is healthy to breathe and to embrace the cleaner  
24 energy economy ahead a strong relationship and enhanced  
25 communication between Air Resources Board and its

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           Like most states, California maintains an office  
2 in Washington to advocate our interest. California, being  
3 the largest state, has a relatively large office with half  
4 a dozen policy experts in the full range of federal  
5 issues. I focus on climate and energy both for Governor  
6 Schwarzenegger and the Air Resources Board.

7           Regardless of title, I work with Congressional  
8 offices to advise and advocate for the affect of federal  
9 legislation on California's energy and climate activities.

10           I work with the federal agencies, connecting them  
11 with California staff and working to ensure that federal  
12 initiatives/regulations respect and build off the work  
13 we've done in California, and that they provide maximum  
14 benefit to California residents and industry.

15           I do a lot of work with other states in both  
16 formal associations and ad hoc coalitions to advocate for  
17 common state interests, to move the federal legislative  
18 debate, and advocate for legislation. And on occasion,  
19 I'm called upon to put a public face and to represent  
20 either the Governor or the Air Resources Board to various  
21 interest groups or the general public.

22   --o0o--

23           MR. TURNER: I was appointed to my position in  
24 April of 2008. As you probably know, there's been quite a  
25 bit of activity in Washington since then.



1 I do a lot of work, as the Chair mentioned, on  
2 both House and Senate climate legislation. We've been  
3 fairly successful in advocating our interests there and  
4 moving legislation that has been very respectful of  
5 California's interests and, in fact, builds off of a lot  
6 of the work we've done. And I'll talk about some of those  
7 priorities shortly.

8 That also applies to energy legislation. The  
9 federal government is discussing its own renewable energy  
10 standards, energy efficiency standards for appliances and  
11 buildings, new clean energy financing mechanisms,  
12 transmission authority, a whole range of energy priorities  
13 that we are active and watching and advocating on.

14 And certainly not least, I do a lot of work for  
15 federal spending to support California's energy and  
16 climate priorities.

17 I'll talk quite a bit about the Recovery Act,  
18 forthcoming jobs bills, ongoing appropriations, and tax  
19 provisions that are very helpful and I think over the next  
20 couple of years especially will be very helpful in helping  
21 us reach, in fact, the goals of AB 32.

22 Next slide.

23 --o0o--

24 MR. TURNER: As you know, ARB has always worked  
25 closely with the U.S. Environmental Protection Agency, and

1 that's more true now than ever as both agencies'  
2 responsibilities expand to include addressing global  
3 warming pollution.

4           Three programs of particular note: The  
5 development of federal greenhouse gas standards for  
6 vehicles, which is soon to become a nationwide program  
7 based on California's; the development of our  
8 collaboration on the best science and life cycle emission  
9 assessment for biofuels and other fuels under our  
10 low-carbon fuel standard and federal renewable fuel  
11 standard; and the current ongoing development of  
12 greenhouse gas standards for major stationary sources, as  
13 the Clean Air Act is further engaged on climate change.

14           On the energy, I do a lot of coordination between  
15 our California Energy Agency and U.S. Department of Energy  
16 on such activities as the energy efficiency assignment,  
17 smart grid deployment, and clean transportation research  
18 and development with U.S. Department of Interior,  
19 Department of Agriculture, Department of Commerce through  
20 the National Oceanic and Atmospheric Administration. We  
21 work on the permitting of new renewable development,  
22 transmission lines, also quite a bit of work on planning  
23 for adaptation to climate change.

24   --o0o--

25           MR. TURNER: And, finally, we work with the White

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 principles that support federal climate legislation and  
2 the importance of states in building up the response to  
3 climate and the building of clean energy economies and  
4 serves as a clearinghouse and advocacy for federal  
5 legislation.

6           And lastly, the state voice, which is state voice  
7 group which is more of an ad hoc coalition of State  
8 Environmental Agency Commissioners that has been effective  
9 in diving into the details of federal legislation and  
10 working for climate legislation that harnesses but does  
11 not quash the state initiative.

12   --o0o--

13           MR. TURNER: So I know you are interested in my  
14 own handicapping of the federal legislative prospects. I  
15 listed here the most major legislation in order of  
16 development.

17           As you know, the Markey-Waxman bill passed last  
18 year in June in a bipartisan but narrow vote, 219 to 212.  
19 This bill is comprehensive in that it includes both  
20 climate measures of Cap and Trade Program and  
21 complimentary greenhouse gas standards, as well as a  
22 number of energy provisions, renewable energy standards,  
23 efficiency standards, et cetera.

24           At the same time as Waxman-Markey was being  
25 passed, the Senate was working on its own energy bill that

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 rules first and put off the more problematic aspects of  
2 applying Clean Air Act authority with the greenhouse gases  
3 for the near future certainly.

4 EPA has already indicated that they will begin  
5 work on greenhouse gas regulations for heavy-duty vehicles  
6 in the near future, perhaps draft rules to be released in  
7 June. This may be coordinated with the first ever federal  
8 fuel economy regulations on heavy-duty vehicles. And the  
9 agency is facing outstanding petitions to regulate  
10 non-road engines, including aircrafts, boats, farm, and  
11 construction equipment. So that may be soon on their  
12 agenda.

13 Also potentially on tap are new source  
14 performance standards for specific industry stationary  
15 sources, such as cement, electricity, or oil refineries.  
16 We don't have any insider information about when these  
17 rules will be coming out, but there are indications that  
18 the agency is working on them.

19 --o0o--

20 MR. TURNER: Next I'd like to talk about some of  
21 the priorities we are working on in federal policy.

22 Speaking broadly, our main interest in working  
23 with Congress and the administration is to craft a  
24 state/federal partnership on clean energy and climate  
25 change. Such a partnership would embody the successful

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 more successful in reducing their engine use and  
2 greenhouse gas emissions would receive greater funding to  
3 continue those programs.

4 So, for instance, there's wide agreement -- we've  
5 been successful in getting into federal climate programs  
6 funding for states to continue the energy efficiency and  
7 renewable programs so we, for instance, in California have  
8 been investing a lot in already.

9 Next slide.

10 --o0o--

11 MR. TURNER: So this is a quote that I should  
12 probably skip now. This is from the Governor's Energy and  
13 Climate Coalition, but kind of describes that partnership  
14 we're seeking. But in the interest of time --

15 --o0o--

16 MR. TURNER: I'd like to highlight some of the  
17 ways we're working for federal support for the states in  
18 both policy and funding support.

19 In policy support, we're finding that the federal  
20 recognition of California's leadership by the adoption of  
21 our policy is actually proving the reverse of an often  
22 heard but I think misplaced critique that California  
23 environmental policy puts us at a disadvantage to other  
24 states.

25 To the contrary, because we've already adopted

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 Brieanne 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 Brieanne 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 Brienne 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 GOLDSTENE: 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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