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STATE OF CALIFORNIA  
COASTAL COMMISSION

CERTIFIED COPY

VOL. 2 of 2  
pgs 163 - 347

POSEIDON RESOURCES, LLC )  
CITY OF CARLSBAD )  
COUNTY OF SAN DIEGO )

Application No. E-06-013  
(Channelside)  
Revised Findings &  
Condition Compliances

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday  
August 6, 2008  
Agenda Items Nos. 4.a., 5.a., 5.b.

City of Oceanside  
Council Chambers  
300 N. Coast Highway  
Oceanside, California

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Hope Schmeltzer, Staff Counsel  
Haley Peterson, Deputy Attorney General  
Allison Dettmer, Coastal Program Manager  
Tom Luster, Environmental Specialist  
Sara Townsend, Coastal Staff Analyst

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1 With that -- oh, go ahead, sir.

2 MR. KORTHOF: Doug Korthof, and I am a member of  
3 the general public, and I come from Seal Beach, and I have  
4 good news, and bad news, but it is the same. The good news  
5 and the bad news there will never by a geyser of water coming  
6 from desalination. You know, we have to rely upon other  
7 methods, such as conservation, and reclamation. That is the  
8 facts.

9 The outrageous thing here, we are talking about,  
10 Poseidon says there are no impacts to their air pollution.  
11 The idea that this is all new water, all old water, is very  
12 difficult to swallow. In reality, what will happen is it  
13 will go into new construction, and you know, we have 200  
14 gallons a day goes in, and 100 gallon a day goes out in  
15 sewage, and the more people the more usage.

16 Some of this water will probably all go to new  
17 construction, because you have to have new water before you  
18 can justify new construction.

19 Now, this is an enormous use of energy. It is  
20 about \$500 in current prices per acre foot in electrical  
21 costs alone, that is the electrical costs. And, it is  
22 extremely energy intensive.

23 Now, MWD says they will pay \$250 in subsidies, but  
24 what the reality is, is that we will pay, all over  
25 California, we will be chipping in for San Diego's water, and

1 \$250 will be the start of it -- if it ever happens -- and  
2 there will be much more. It will be by a geyser of money from  
3 everybody in California, as MWD is nothing but us.

4 What I suggest, if Poseidon has a problem finding  
5 offsets, and I think that you have to worry about things like  
6 credits. The California Air Resources Board hands out  
7 credits like candy. They give extra credits, partial  
8 credits, and credits all over the place. The only real  
9 credits that count are the benefits to the communities.

10 I suggest that it would be a lot easier for  
11 Poseidon, so long as it exists in this incarnation -- we know  
12 it is not going anyway -- why don't they do something like  
13 finance solar power? We installed solar power systems all  
14 throughout California, and Poseidon could do something like,  
15 you know, the amortized costs for solar power on your roof is  
16 less than the cost of the utility electric that it replaces.

17 So, if Poseidon puts in solar power on the roofs  
18 of houses in Carlsbad, you know, it wouldn't have to cost  
19 them any money at all. All they would have to do is float  
20 the bonds, could be public service bonds, tax free bonds, put  
21 in solar power, and the vast majority of the money comes from  
22 the citizens. They could, maybe, give a little bit extra,  
23 and finance it, and the majority of the money and the private  
24 property -- the roofs come from the citizens, and this would  
25 be a real benefit for the local communities. It wouldn't

1 involve arcane credits, and replanting trees that are just  
2 going to be burned down again as the climate is changing, and  
3 would actually have a benefit for the people of Carlsbad, and  
4 Oceanside, and all of San Diego.

5 So, I think that that would be the best way, if  
6 you are going to do offset credits, you know, so long as  
7 Poseidon exists, which will be for long.

8 **CHAIR KRUER:** Thank you, sir.

9 And, with that, that was the last speaker slip,  
10 and now we are going to have rebuttal. We will go back to  
11 Mr. Zbur, and you have five minutes for Poseidon.

12 **MR. ZBUR:** Good afternoon, Chairman and members of  
13 the Commission. I just wanted to make a couple of responses,  
14 and then Mr. MacLaggan, I think, will finish, if I have any  
15 additional time.

16 First point I wanted to address was Mr. Mitton's  
17 assertion that we have asserted that water will not be used  
18 in other places. That is actually not accurate. What we  
19 have said is that Poseidon's customers, the water districts,  
20 have agreed to replace the water, and therefore that the  
21 water that is replaced, where that goes is speculative, but  
22 wherever it goes, CEQA will apply to require those people to  
23 mitigate it.

24 So, our view is that the new users of the water  
25 should be responsible for the environmental mitigation of



1 that. That is consistent with CEQA methodology. That is  
2 consistent with -- we have assurances that the attorney  
3 general will enforce that.

4 In addition, this Commission determined that the  
5 project was not growth inducing. That was part of your  
6 findings. The requirement that Poseidon be assigned the  
7 mitigation for the replaced water is just not consistent with  
8 the determination that you have already made that the project  
9 is not growth inducing.

10 Another point that we wanted to address is the  
11 request by Mr. Massara that the AB32 criteria should apply to  
12 the energy reduction from replaced water. This is really the  
13 key issue related to the growth versus net issue, and is the  
14 crux of what is before the Commission. Essentially, what the  
15 staff does is they apply these vague principles to the  
16 replaced water, which, in effect, would impose the growth  
17 requirements, because the principles would require that the  
18 replaced water would have contractual agreements that the  
19 replaced water would be retired and not used by anyone. That  
20 effectively would not allow -- it effectually imposes the  
21 growth requirement.

22 Your staff has indicated that it does not have the  
23 expertise in this area to evaluate this. Each of the  
24 agencies that are responsible for the implementation of AB32,  
25 have supported Poseidon's ability to take credit for the

1 replaced water, and in the packets are the letters from the  
2 California Air Resources Board, the California Energy  
3 Commission, the Resources Agencies are in the blue packet we  
4 distributed. They have supported the net approach, and  
5 supported Poseidon's calculation of the net approach.

6 Finally, the last point I would like to raise is  
7 with respects to the references to the committee to verify  
8 the offsets that was originally in the Poseidon's proposal.  
9 I am a little bit frustrated, in that what we are asking you  
10 to adopt today is the proposal that is attached to your green  
11 sheet. We made a number of changes to respond to the staff's  
12 concerns when we got the staff report a week ago Friday. We  
13 got those into the staff, and the staff has not responded to  
14 the changes that we made to address their concerns.

15 One of those was that they said that they had a  
16 concern about the committee verifying the offsets. The  
17 committee that we had originally proposed, included Poseidon,  
18 it included CCSE, the California Center for Sustainable  
19 Energy, and the San Diego APCD, a three-member committee.

20 The APCD had concerns about their ability to do  
21 this, because of their authority, so that was an issue that I  
22 think was valid upon the staff's part. They recommended,  
23 instead, that we buy all of our offsets through CCAR. We  
24 have not problems buying our offsets through CCAR. We think  
25 they are a high quality verifier. Our concern is that CCAR

1 is in very early stages of the implementation.

2 As you heard, they have three forestation  
3 protocols, one for land fills and one for dairies. That  
4 really limits the offsets we can buy in the early year, and  
5 while we are hopeful that they will progress fast with these  
6 other protocols out there, we want to be able to buy offsets  
7 in the broadest market to keep the costs reasonable.

8 So, what we have done is, the proposal you have  
9 takes out the committee that the staff had concerns about,  
10 and it says we will buy credits through CCAR, or three of the  
11 other entities that are all part of the offset quality  
12 initiative, which are listed in your program, that we think  
13 that they are equivalently high quality entities. CCAR is  
14 one of the four entities that is a member of that quality  
15 initiative, and includes some other think tanks that don't  
16 sell credits, but that is what we are proposing. So, we do  
17 think that these are CCAR equivalents. It would broaden out  
18 the market, and that is really our proposal.

19 There are some other things that are in there,  
20 that we tried to respond to the staff's concerns, which I  
21 don't think I am going to have time to go through, but we  
22 would be happy to walk you through that if you have any  
23 questions related to the proposals.

24 So, the main things that are in that are the  
25 differences on gross and nets, and in order to apply the net

1 approach, you need to not apply these AB32 principles to the  
2 offsets to the replaced water. The application, by  
3 definition, means that Poseidon cannot take credit for it.  
4 The other main differences are the CCAR issue, with the three  
5 other entities, and the two contingency plans.

6 If I have any more time, I would like to --

7 CHAIR KRUEER: You don't.

8 MR. ZBUR: No, so.

9 CHAIR KRUEER: Thank you.

10 MR. ZBUR: We will close.

11 CHAIR KRUEER: Appreciate it.

12 With that, I will close the public hearing and go  
13 back to staff for staff response.

14 Mr. Luster.

15 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, Chair  
16 Krueer. I'll start with a number of comments.

17 First, in response to the last comment by Mr.  
18 Zbur, staff did respond to Poseidon's latest changes last  
19 week. We concurred with Poseidon's proposal to allow the use  
20 of CARB, CCAR and additionally any programs adopted by state  
21 air districts for any of their emission reduction programs.

22 We did not concur with Poseidon's proposal  
23 allowing use of programs developed by any government entity.  
24 We weren't sure how widespread that would be, that could  
25 include all sorts of things, water districts, very small

1 government entities that may not have the expertise, but we  
2 did concur with their proposal to use air districts, along  
3 with CCAR and CARB for approved programs. We didn't concur  
4 with their proposal to allow them to use SDG&E programs.

5 And, regarding the proposal to change their  
6 committee structure for reporting, we asked for more  
7 information about that. We didn't have enough information to  
8 go on. They just said that they were going to do away with  
9 that, and we had some more questions about it, and we haven't  
10 heard what those changes are. They may be reflected in this  
11 latest document, but we haven't had a chance to review that,  
12 yet.

13 Going on, just covering on AB32, Poseidon is  
14 subject to the Coastal Act and the only methods to address  
15 greenhouse gas emissions that are approved by the state are  
16 those established in AB32, so through your findings and  
17 Special Condition, staff is recommending that Poseidon's  
18 Greenhouse Gas Emission Reduction Program be implemented  
19 using the guidelines provided by AB32. The Coastal Act  
20 doesn't have independent guidance on how to deal with those  
21 issues, so staff believes the best and only real protocols  
22 and mechanisms approved at the state level are those that are  
23 being developed and are developed through AB32.

24 Poseidon has also asked to use some emission  
25 reduction methods not established through the state system.

1 For example, they reference the offset quality initiative,  
2 which includes three entities, the Climate Trust, the  
3 Environmental Resources Trust, and the Climate Group.

4 Staff researched what was available through these  
5 entities, and found that they do not have consistent  
6 standards or protocols, so staff believes Poseidon's proposal  
7 would be confusing and onerous to implement, and would not  
8 provide the level of independent verification the state has  
9 identified as a necessary part of its greenhouse gas  
10 reduction approach.

11 Additionally, AB32 does have mechanisms for  
12 developing these guidelines and protocols for voluntary  
13 efforts for regulated entities, pretty much any sort of  
14 emission reduction measure that is meant to be part of the  
15 state's program, regulated community, voluntary, market based  
16 incentives are covered by AB32, and we believe that is the  
17 appropriate method to use.

18 That has also been supported by the agencies we've  
19 worked with. You heard from CARB. They still support the  
20 use of AB32. The air district supports staff's recommend-  
21 ations, so we believe our coordination efforts with the  
22 involved agencies supports staff's recommendations, as well.

23 Regarding comments about the Commission's  
24 authority being limited by Coastal Act provisions. Staff is  
25 not suggesting imposing an emission control program,

1 therefore we don't believe our proposal is inconsistent with  
2 Section 30414. It is not inconsistent with what CARB is  
3 doing, and in fact CARB and the air district supports the use  
4 of AB32.

5 Additional authority the Commission has for  
6 implementing this program, is through the use of Section  
7 30260, the override as determined in your findings. The  
8 findings state that the project's adverse effects will be  
9 mitigated to the maximum extent feasible, and staff's  
10 recommendation would help carry out that aspect of the  
11 Commission's findings.

12 Regarding gross versus net, that whole question,  
13 again staff is not asking that Poseidon mitigate its gross  
14 emissions, just the net. Much of the difference in the two  
15 proposals is that staff is addressing the expected net  
16 emissions from the facility's electrical use, and Poseidon is  
17 relying on speculative changes in water deliveries to somehow  
18 reduce emissions. As you have heard several times today, the  
19 state water project will not necessarily reduce its  
20 electrical use or its emissions, due to Poseidon's project.

21 The state water project is affected by any number  
22 of issues that may increase or decrease its pumping rates,  
23 and regardless of how those issues play out, Poseidon's  
24 project is expected to continually use about 30 megawatts of  
25 electricity to produce its water, and the emissions would

1 result from that use of that electricity.

2 Also, regarding the state water project, you  
3 received a letter from the Metropolitan Water District. The  
4 letter, however, is not consistent with the Met's program  
5 that establishes its desal incentives, or Met's water  
6 management plans. Met describes its desal program as  
7 allowing Metropolitan to redirect imports, not necessarily  
8 reduce them. For example, Met's recent integrated water  
9 resources plan from 2004 -- which staff is adding to the  
10 record -- states that desal is expected to offset water use  
11 in one area of its service area, and allow it to send  
12 additional imported water to other parts of its service area.

13 Moreover, Metropolitan doesn't say anything about  
14 reducing its electricity use in its emissions, which is the  
15 impact that the Commission is addressing today. Even at the  
16 local level, some of the planning documents from as recently  
17 as earlier this year, from the water districts Poseidon has  
18 contracted with, show expected increase in imports over the  
19 next 25 years, in addition to their desalination supplies.

20 For example, the January 2008 update of the  
21 Oliveheim Water District urban water management plan -- which  
22 staff is adding to the record -- shows that it and three  
23 other associated districts will increase their imports.

24 Further, the state water project has a lower  
25 emission factor than Poseidon's electricity supplies, so if



1 there is an offset, it would be a much lower level than  
2 Poseidon proposes. Similarly, in the San Diego region, much  
3 of the imported water comes from the Colorado River, and  
4 pumping that supply has its own emission factor adding more  
5 complexity to the issue.

6 Again, however, staff is not asking that you  
7 decide this question today, but to allow the agencies with  
8 expertise to make the determination to work through these  
9 issues and to figure out what offset, if any, is appropriate.

10 You also heard a comment earlier about staff  
11 treating an Edison project differently than this project. We  
12 are not recommending emission reduction requirements for that  
13 project, because its net emissions are so low. You will hear  
14 the details of that project a little later, today, but if you  
15 would like, Ms. Dettmer is available now to answer any  
16 questions you may have about the difference between the  
17 Edison project and Poseidon's.

18 I believe the Edison project is in the range of  
19 something like 750 tons of emissions over its 30-year life.  
20 With Poseidon, their gross emission are expected to be about  
21 90,000 tons per year, so there is a significant range between  
22 the two projects, and staff believe that the Edison project  
23 is small enough whereas Poseidon's was significant enough for  
24 the Commission to handle.

25 Regarding CEQA, we should note that the project's

1 environmental impact report did not address greenhouse gas  
2 emissions at all, and so the Commission establishes the  
3 baseline, just Poseidon's project, what emissions would  
4 result from it.

5 I also want to note that the California Air  
6 Pollution Control Officers Association, in January published  
7 its report called CEQA and climate change -- which staff is  
8 adding to the record -- and it provides guidance on how it  
9 intends to address climate change issues through CEQA,  
10 including those associated with meeting AB32's emission  
11 reduction targets.

12 Staff believes this provides further support for  
13 staff's recommendation that the Commission allow the air  
14 districts, along with CARB and CCAR to address the issues  
15 involved with verifying Poseidon's proposed plan.

16 A couple of points on the cost of the mitigation,  
17 based on your findings, staff's recommendations will not  
18 prevent the project from being built, or render the project  
19 economically infeasible. Your findings identify costs of up  
20 to several hundred dollars per acre foot, above Poseidon's  
21 stated costs, and Poseidon has stated that had it included  
22 those cost then its assessment of project feasibility --  
23 Poseidon's proposed \$6 million program over 30 years -- would  
24 increase the costs of its water by about \$3.50 per acre foot,  
25 and its estimates of \$32 million would add about \$19 per acre

1 foot, and that is well below the range of the costs that  
2 staff identified in the report, and that Poseidon said it had  
3 already assessed as part of its feasibility.

4 We note, too, that an even larger desal facility  
5 being built in Australia has committed to use entirely  
6 renewable energy for its operations, and will purchase that  
7 energy using a government regulated offset program, which is  
8 similar to what staff is proposing in having Poseidon use  
9 CARB CCAR or air district approved measures.

10 And, I think that is all that I have for now. I  
11 believe Ms. Schmeltzer and Director Douglas have something.

12 EXECUTIVE DIRECTOR DOUGLAS: I just have a couple  
13 of comments, and then ask Ms. Schmeltzer to address some of  
14 the legal issues Mr. Zbur raised.

15 But, I just want to underscore, again, the  
16 assertion that somehow we are using Coastal Commission  
17 authority to subject Poseidon to AB32 is simply wrong. We  
18 recognize that this project is not subject to AB32 controls  
19 at this time, but what we are saying is we are using the  
20 Coastal Act the policies and authorities that you have under  
21 the Coastal Act, and the responsibility that this Commission  
22 has to protect coastal resources consistent with the policies  
23 in the Coastal Act leads to a requirement for greenhouse gas  
24 mitigation, and offsets and reductions of emissions. And,  
25 that the best way to deal with that is to use the protocols

1 and the approaches set forth in AB32, that that makes sense,  
2 because that is where the expertise lies.

3 And, if in fact, Poseidon is going to keep its  
4 promise of being carbon neutral, I don't understand why they  
5 object to a review by an entity that will, in fact, verify  
6 whether or not that is the case, and that is exactly what we  
7 have recommended.

8 In terms of the state water project, or the  
9 reductions and the offsets there, that just doesn't make  
10 sense to us. We are not talking about water here. We are  
11 not talking about displacing or placing water, and where that  
12 is going to go. We are talking about the energy that it  
13 takes to provide the desalinated water by Poseidon.

14 And, if they are looking to get credit because  
15 there is going to be a reduction in energy generation, or  
16 energy use in the state water project, as a result of the  
17 Poseidon project, we just don't see how that happens. All of  
18 what we have heard is speculative -- that may or may not  
19 happen. We have no reason to believe that there is going to  
20 be any reduction whatsoever in energy usage for bringing  
21 state water from the north to the south, as a result of this,  
22 or any other project that we know about at this point. So,  
23 that just doesn't match.

24 But, in any event, we are not saying that it can't  
25 work that way, if in fact there is a reduction in energy

1 usage. We are just saying that that needs to be verified by  
2 somebody who has got the expertise, who could look at it, and  
3 say, "Yes, indeed, as the result of this project, or but for  
4 this project, there would be this level of energy production  
5 for the state water project, but because of this project  
6 there is going to be a reduction, which means less air  
7 emissions, and they get credit for it," they would get it,  
8 under our recommendation.

9 The final point is, we have not said this project  
10 is not growth inducing. We have said this project is not  
11 growth inducing in the coastal zone. What happens outside of  
12 the coastal zone, as a result of this water being freed up  
13 for the Met, that they could use elsewhere for projects that  
14 are waiting for water, that don't have water now, that is  
15 beyond the purview of this Commission, and we have never  
16 expressed an opinion on that.

17 So, I think it is misleading to say that we have  
18 concluded this is not growth inducing. It is not growth  
19 inducing in the coastal zone.

20 With that, let me ask Ms. Schmeltzer to make some  
21 comments on legal issues.

22 **CHIEF COUNSEL SCHMELTZER:** Thank you.

23 Poseidon's attorney, Mr. Zbur, stated that the  
24 Commission only had three statutory provisions under which it  
25 could assert authority. He specifically mentioned 30253(4)

1 30253(3) and 30414(a).

2 The first is the Commission's ability to minimize  
3 energy use, which he asserted that Poseidon was doing.

4 For the second, he paraphrased what that statutory  
5 language said, and he said that it said that the Commission  
6 may only impose conditions requirements that have been  
7 imposed by CARB. That is actually a misstatement of that  
8 statutory provision. That provision that says that "For the  
9 minimization of adverse impacts new development shall be  
10 consistent with the requirements imposed by an air pollution  
11 control district, or CARB," which the Commission's staff  
12 proposal in having this follow AB32 and CCAR, we believe is  
13 consistent, and that it does comply with that, and it is not  
14 contrary to it, as described.

15 In addition, as Mr. Luster described, 30414(a)  
16 only talks about not creating a new air program, which again  
17 staff is not proposing.

18 What he left out was 30260, which is the override  
19 provision, that the Commission made in its findings that it  
20 adopted this morning. Under the override provision of the  
21 findings, which begins -- the discussion begins on page 115  
22 of your findings.

23 There is extensive discussion of adverse impacts,  
24 the impacts to coastal resources that can occur from green-  
25 house gas emissions, and global warming, and the Commission

1 does have the authority, and does exert that authority under  
2 Special Condition 10, in this case, and so the authority for  
3 Special Condition 10 also flows from 30260.

4 CHAIR KRUER: Okay, thank you, is that it from  
5 staff.

6 EXECUTIVE DIRECTOR DOUGLAS: Yes.

7 CHAIR KRUER: Thank you for your presentation, and  
8 your comments.

9 Now, I will go to the Commission, and Commissioner  
10 Hueso, first, and then Commissioner Reilly.

11 [ MOTION ]

12 COMMISSIONER HUESO: Yes, I move that the  
13 Commission approve the Energy Minimization and Greenhouse Gas  
14 Reduction Plan as attached to the letter submitted by the  
15 permittee, Poseidon Resources LLC, dated August 6, 2008, as  
16 compliant with Special Condition 10 of the Coastal  
17 Development Permit E-06-013.

18 CHAIR KRUER: I have a motion, is there a  
19 "second"?

20 COMMISSIONER POTTER: Second.

21 CHAIR KRUER: Seconded by Commissioner Potter --

22 EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman.

23 CHAIR KRUER: What?

24 EXECUTIVE DIRECTOR DOUGLAS: I just wanted to  
25 check with counsel.

1           The motion that staff has recommended, I am just  
2 wondering whether that is the motion that needs to be made,  
3 and then that motion needs to be amended, or whether or not  
4 the motion proposed by Commissioner Hueso is the correct way  
5 to go? I thought it needed to be --

6           **CHAIR KRUER:** I don't think so, but, we will see  
7 what the attorney says, but I think -- I am not a lawyer, but  
8 it sounds like he can do it.

9           **CHIEF COUNSEL SCHMELTZER:** It would be helpful if  
10 the entire motion was read. I think you just referred to the  
11 motion as it was stated here, but if you could read the whole  
12 motion into the record, that would be helpful.

13           **COMMISSIONER HUESO:** I actually did, but you want  
14 me to also state the resolution to the proof.

15           **CHIEF COUNSEL SCHMELTZER:** I have that, so I --

16           **COMMISSIONER HUESO:** I did.

17           **CHAIR KRUER:** He did read the whole motion.

18           **CHIEF COUNSEL SCHMELTZER:** Okay.

19           **CHAIR KRUER:** And, the question was, can he do it  
20 that way? to the general counsel, from Director Douglas.  
21 And, I think he can.

22           **CHIEF COUNSEL SCHMELTZER:** Yes.

23           **CHAIR KRUER:** So, with that, and there has been a  
24 "second" by Commissioner Potter.

25           Commissioner Hueso, would you like to speak to



1 your motion?

2 COMMISSIONER HUESO: Yes, and I have some  
3 questions of staff.

4 CHAIR KRUER: That's fine.

5 COMMISSIONER HUESO: This came back to the air  
6 quality issues, specifically to this project.

7 What disturbed me a little bit -- and I will just  
8 give you some general feedback concerning the Oxnard facility  
9 -- you said that facility doesn't generate a lot of energy,  
10 so you don't really see fit to apply the state's AB32  
11 regulations to that project, because it was not a big  
12 generator.

13 What are we talking about, in terms of the amount  
14 of wattage that that facility is going to be generating? just  
15 to compare it to this project? do we know what the amounts  
16 are, in terms of this project is going to be using 50  
17 megawatts, per year, or is it -- what is the usage of this  
18 desal project?

19 EXECUTIVE DIRECTOR DOUGLAS: Okay.

20 COMMISSIONER HUESO: And, if we can get that as a  
21 comparison to the Oxnard one?

22 EXECUTIVE DIRECTOR DOUGLAS: Well, Allison is  
23 going to come back and address this, she has been working on  
24 it.

25 But, just so that you know, we have been looking

1 at projects coming before the Commission, and as we have  
2 indicated to you before, we are only suggesting the  
3 application of greenhouse gas reduction conditions on major  
4 projects, that have major emissions per year of carbons. We  
5 are not applying them to every project that comes along.

6 So, we have identified new subdivisions; we have  
7 identified new Caltrans projects, major energy projects, but  
8 when we looked at this particular project -- and Allison can  
9 explain to you why -- we just felt it was not an area where  
10 we wanted to enter into this particular issue.

11 **COMMISSIONER HUESO:** I understand that, and just  
12 to get an idea of what criteria you are using, what are we  
13 talking about here? in differences?

14 **COASTAL PROGRAM MANAGER DETTMER:** Sure, for the  
15 Edison project, on your agenda later today, we did ask Edison  
16 to do a greenhouse gas analysis, which they did do. They  
17 submitted their calculations to us, as well as their analysis  
18 of what their net emissions would be over the 30-year life of  
19 the project.

20 We had that analysis peer reviewed, independently  
21 reviewed by Steve Radus with Marine Research Specialists. At  
22 the end of the day, Mr. Radus agreed with Edison's analysis.  
23 And, what the conclusion was, was that over the 30-year life  
24 of the project, there would be about 726 metric tons of CO2  
25 emitted, and that is over a 30-year period, which is a

1 relatively small number. In the staff report, we go through  
2 that, and we give an example that that equates to driving 8  
3 Prius for 15,000 miles over that 30-year period.

4 And, just to back up a little bit, Edison's  
5 project is a direct emitter, and so they will come under AB32  
6 requirements, probably in the next 3 or 4 years. I  
7 understand that may be 2011 or 2012, and they will be  
8 regulated system wide.

9 So, what we were looking at for the Coastal  
10 Commission is to actually look at that gap, if Edison had  
11 their project approved, and that they were going to be in  
12 operational phase later in 2008, that this Commission would  
13 consider, possibly, requiring mitigation or offsets for that  
14 gap period, so maybe for the next 4 or 5 years. So, we are  
15 really talking about a very small number.

16 So, in staff's judgment, we did not think that  
17 this Commission needed to require mitigation or offsets.

18 **COMMISSIONER HUESO:** But, you didn't answer the  
19 question about what the desal facility --

20 **ENVIRONMENTAL SPECIALIST LUSTER:** Yes.

21 **COMMISSIONER HUESO:** Okay.

22 **ENVIRONMENTAL SPECIALIST LUSTER:** The Edison  
23 project, as Allison said, is just over 700 tons, over a  
24 30-year life. Poseidon's project looks like about 2.7  
25 million tons over the 30-life of this project, so

1 substantially greater, and that is why Commission staff  
2 worked so hard on this emission reduction program for the  
3 Poseidon project.

4           **COMMISSIONER HUESO:** In and around the facility,  
5 itself, in and around the plant, will the air quality be  
6 effected in the area around the plant? will the facility be  
7 discharging pollutants in the area in which the construction  
8 for this project is proposed?

9           **ENVIRONMENTAL SPECIALIST LUSTER:** Our understand-  
10 ing of --

11           **COMMISSIONER HUESO:** And, the specific number of  
12 the 2.7 million, will that discharge be in and around the  
13 facility --

14           **EXECUTIVE DIRECTOR DOUGLAS:** No.

15           **COMMISSIONER HUESO:** -- of the plant?

16           **ENVIRONMENTAL SPECIALIST LUSTER:** That discharge  
17 is just from the electrical generation needed to run the  
18 plant, so the air quality impacts would be based on where the  
19 energy production facilities are. If they use some of the  
20 power from the Encino Power Plant, there could be some nearby  
21 emission effects.

22           **COMMISSIONER HUESO:** So, we don't necessarily know  
23 where this project is going to effect the air quality?

24           **ENVIRONMENTAL SPECIALIST LUSTER:** Because we are  
25 only looking at greenhouse gas emissions, that is not really

1 considered a local problem, as much as a world wide problem  
2 and so, generally, any emission reduction anywhere in the  
3 world affects the greenhouse gas problem.

4 **EXECUTIVE DIRECTOR DOUGLAS:** Well, it is also a  
5 difference. It is not an air pollutant. We are not talking  
6 about that. We are talking about emissions of a gas that  
7 goes into the atmosphere, and that effects the climate, and  
8 the temperature on the planet, not the kind of air pollutants  
9 that are discharged and regulated by air pollution control  
10 limits. So, it does not affect the air quality around the  
11 facility.

12 **COMMISSIONER HUESO:** Because every project we've  
13 looked at -- you have cited some projects, like the LNG where  
14 we looked at air quality, where air quality in the area of  
15 the coastal resources were directly affected, and because you  
16 use those as examples, I thought it was slightly misleading  
17 because we were talking about air quality in the coastal  
18 zone, and here we are talking about air quality regionally,  
19 statewide or --

20 **EXECUTIVE DIRECTOR DOUGLAS:** In the LNG case, for  
21 example, one of the big issues was air quality, separate from  
22 greenhouse gases, they are distinct.

23 And, one --

24 **COMMISSIONER HUESO:** The number had to do with the  
25 shifting and the exchange of the material, so it had a more

1 direct -- from my recollection, in the testimony and the  
2 arguments, it had to do more with an immediate impact of the  
3 air quality in the area.

4 EXECUTIVE DIRECTOR DOUGLAS: That was a separate  
5 issue, and that was one on what rule would be applied, would  
6 the onshore rules for air quality, air pollutants, air  
7 emissions, be applicable, or would the rules that apply to  
8 the islands be applicable? That is for air quality.

9 For greenhouse gases, that was totally different.  
10 That was the question of how much, in terms of greenhouse  
11 gases, were going to be emitted, and that was a different  
12 issue. Both of those were issues that formed the basis for  
13 our recommendation of denial, but they were distinct.

14 COMMISSIONER HUESO: Would you agree that in  
15 future years, the power sources that are going to electrify  
16 the grid, are going to be more diverse. We might see more  
17 wind power come on line? more solar power come on line? more  
18 hydro-thermal power? is that something that we contemplate in  
19 this action?

20 EXECUTIVE DIRECTOR DOUGLAS: I think it is  
21 inevitable, and it is already occurring, and we understand  
22 that part of the source here needs to be renewable. We just  
23 don't know what that is going to be, unless Tom you have  
24 something?

25 COMMISSIONER HUESO: But, it is possible in the

1 future, that a greater source of our grid is going to come  
2 from renewable sources, and sources that are friendly to the  
3 environment?

4 EXECUTIVE DIRECTOR DOUGLAS: We hope so.

5 COMMISSIONER HUESO: So, it is possible that this  
6 project will have a smaller carbon footprint in future years,  
7 if that improves?

8 ENVIRONMENTAL SPECIALIST LUSTER: That is correct,  
9 both Poseidon's proposal and staff's are based on an annual  
10 reporting and recognition that the emission factor for the  
11 San Diego Gas and Electric will change every year, as they  
12 put more renewable energy sources on line, their emission  
13 factor will go down, and Poseidon would have to, presumably,  
14 do fewer mitigation measures, because of that.

15 COMMISSIONER HUESO: But, are you taking that into  
16 consideration in our policy, in staff's policy towards this  
17 project?

18 ENVIRONMENTAL SPECIALIST LUSTER: Yes.

19 CHIEF COUNSEL SCHMELTZER: Yes, and also, to  
20 answer your question, relatively anticipated that that will  
21 happen over time, and we can't base mitigation on speculative  
22 increases in renewable power in the future. We don't know  
23 when those will occur, and how much they will occur, so we  
24 can't do something now that relies on something unknown in  
25 the future.

1           But, what we have built into the review process is  
2 an annual report that will look at what is happening on the  
3 ground as it happens, and then in that way be able to take  
4 account of actual improvements to the power grid, as far as  
5 renewable resources, as they occur.

6           **COMMISSIONER HUESO:** Okay, and I think that that  
7 is the principal issue that I am looking at here. I think  
8 this power plant is definitely a consumer of electricity,  
9 thereby having an impact on air quality regionally, and I  
10 think we are using, in this instance, the Commission to kind  
11 of effect air quality regionally, which I think is a good  
12 goal, but I think, from my perspective, we are looking at the  
13 *Coastal Act* and it endeavors to specifically concentrate in  
14 the coastal zone.

15           I remember having a project, the Pebble Beach  
16 Project, that sought to replace trees in the Del Monte Forest  
17 at a rate of 10:1 -- I forget what it was -- and I remember  
18 us being told specifically that we cannot mitigate for  
19 impacts, you know, outside of the coastal zone in an area  
20 that wasn't in the coastal zone, because it wasn't, it wasn't  
21 identical, and here we are trying to apply that policy  
22 towards air quality, which I think kind of exceeds the scope  
23 of coastal area.

24           But, I understand that this is a very, very  
25 sensitive issue, and I am very concerned about air quality,



1 but there is always, you know, there is always some  
2 contradiction in terms of we heard some person speak earlier,  
3 during non-agenda public comment, about San Diego's waiver  
4 for water treatment, and that we are the only city that  
5 obtains a waiver. Well, one of the arguments our city has  
6 been making is because we don't go through tertiary  
7 treatment, we have been able to show that we haven't  
8 negatively affected the coastal resources and the water, due  
9 to the depth of our outfall.

10 But, because of that, we haven't been negatively  
11 affecting air quality, because tertiary treatment is a very,  
12 very intense industrial use that has an impact on air  
13 quality. So, on the one hand, we've been contributing to  
14 better air quality to try to find a balance between good  
15 water quality, and good air quality, and this is one of those  
16 projects that falls into the balance, where we need water,  
17 but it is going to affect air quality.

18 And, from my perspective, in terms of what we are  
19 doing in our city, in terms of trying to reduce our  
20 dependence on the river delta in Sacramento, this is one  
21 those efforts that would really have a real effect on  
22 reducing our dependence on the river delta. In addition to  
23 conservation, in addition to other methods of retreating  
24 water, we are really trying to reduce our dependence on  
25 foreign water, and that does have a direct impact on air

1 quality.

2 And, I do think that this project will reduce our  
3 dependence on outside water, thereby reducing our impacts for  
4 air quality, so I do think there is a direct relationship  
5 there between this project and our intent to make our city  
6 self sufficient, and create a well balanced portfolio of  
7 predictable and affordable water.

8 CHAIR KRUER: So, you recommend a "Yes" vote?

9 COMMISSIONER HUESO: So, I recommend a "Yes" vote.

10 CHAIR KRUER: Thank you, sir.

11 COMMISSIONER POTTER: Thank you, Mr. Castro.

12 CHAIR KRUER: Commissioner Potter, as the  
13 "seconder", would you like to speak to the motion?

14 COMMISSIONER POTTER: Sure, I'll try to speak to  
15 the condition, itself.

16 I want to talk, just for a second, about my level  
17 of comfort with being the "seconder" of this motion, and I  
18 will talk specifically to what Director Douglas talked about  
19 for a moment, which was what is the level of reduction in  
20 gases that are going to go into the atmosphere, as a result  
21 of this project? And, I am comfortable that what is before  
22 us today, in this GHG plan, does comply with Special  
23 Condition 10, that the measures that are provided through  
24 this will provide enough reductions that are certain and  
25 verifiable, and would reduce to zero the impacts of this

1 project.

2 And, you know, there is one element that I am not  
3 overly compelled by, but I do think that there is significant  
4 investment into energy reducing portions of this project that  
5 make a difference. The commitment to the use of solar seems  
6 kind of weak to me. What it says is if it is economically  
7 feasible over the life of the project, then we will do it. I  
8 would prefer to see it done, period, because I do think it is  
9 a viable source of energy that would be appropriate for this  
10 project.

11 The reforestation plan, I think that is a good  
12 idea. There is, certainly, quantifiable return on that  
13 investment, and if there is another fire, there is another  
14 fire, but that is not an issue before us today.

15 And, in the purchase of offsets, I think makes a  
16 difference. There is a proposal as part of this, that there  
17 be, at least, third party providers who would be verifying,  
18 quantifying, through annual reports to this Commission, the  
19 viability and successes of those purchases, and I think that  
20 is an appropriate way to verify the success of that intent.

21 And, then, finally, it does seem to me that the  
22 carb process is going to require, you know, public review and  
23 the associated findings, and I think it is feasibility,  
24 equitability, and cost effectiveness, something like that,  
25 but I think those are reasons why, specific to the GHG

1 portion of this -- which is Special Condition 10 -- that is  
2 why I have a level of comfort with what is before us, as  
3 proposed, and the motion, itself.

4 CHAIR KRUER: Thank you, Commissioner Potter.  
5 Commissioner Reilly.

6 COMMISSIONER REILLY: Thank you, Mr. Chair.

7 I was going to ask for some additional comments by  
8 one of the folks who testified, and then offer -- I have a  
9 couple of questions about the motion, itself.

10 CHAIR KRUER: Sure.

11 COMMISSIONER REILLY: The gentleman from CCAR, the  
12 registry, I think you weren't quite able to complete your  
13 comments within the three minutes that we gave you, and  
14 assuming that you don't have too many more minutes, I think  
15 your testimony was certainly pertinent to the issues before  
16 us, and I would like to hear your concluding comments.

17 MR. LEVIN: Okay, sure, and I was pretty close to  
18 done. I just wanted to talk a little bit about supply. I  
19 know that has been an issue that people talked about, whether  
20 there would be --

21 CHAIR KRUER: Your name, for the record, please.

22 MR. LEVIN: Sorry, Joel Levin, with the California  
23 Climate Action Registry.

24 So, what I was summing up to say is that we  
25 currently, the reserve program that we track and register

1 greenhouse gas reduction projects has been operational for  
2 just a couple of months. We currently have two project  
3 registered, with about 200,000 tons of credits issued. We  
4 have about another 5 in hand that we are reviewing, and about  
5 another 25 that I have been actually talking with developers  
6 and expect to be delivered over the next 6 to 12 months, or  
7 so.

8 So, just in terms of projects that I am aware of,  
9 conservatively, we are expecting to have about 1.5 million  
10 tons, or so, by next year, and about 5 million tons  
11 registered by the end of 2012. So, the kind of volumes that  
12 you are talking here with this project are, actually, fairly  
13 minor, in the scope of our program. Unless our program is,  
14 you know, a complete failure, the volumes we are looking at  
15 are much greater than what you would need for this.

16 But, I wanted to say that I don't think supply  
17 would really be an issue.

18 **COMMISSIONER REILLY:** So, just to be clear, what  
19 is CCAR seeing as their preferred relationship relative to  
20 Poseidon project before us?

21 **MR. LEVIN:** A preferred relationship? Well, what  
22 we understood was the staff proposal was to, essentially, say  
23 that they would buy -- to have an account on the reserve, and  
24 then they could negotiate purchases with project developers,  
25 and those would be tracked through the reserve, and then they

1 would buy them and retire them, and that would be publicly  
2 visible.

3 So, that is sort of how we operate. It is,  
4 essentially, it is a banking system where people can register  
5 projects, and then we track trades of those credits and  
6 verify them.

7 COMMISSIONER REILLY: So, it is both sale and  
8 verification?

9 MR. LEVIN: Yes, we don't get involved in the  
10 financial transactions --

11 COMMISSIONER REILLY: No, that's right.

12 MR. LEVIN: -- but, we track ownership of the --

13 COMMISSIONER REILLY: Fine, thank you.

14 MR. LEVIN: -- and it is all very public visible.

15 COMMISSIONER REILLY: Thank you.

16 MR. LEVIN: Yes.

17 COMMISSIONER REILLY: Staff had mentioned that the  
18 air quality board and CCAR and CARB had all indicated support  
19 for having the verification be part of their process, as  
20 opposed to some other process. It seems like a lot of the  
21 same agencies, along with State Lands.

22 And, I would also say Lieutenant Governor  
23 Garamendi, who I have tremendous respect for, is also sort of  
24 saying that they see the argument that Poseidon should, in  
25 fact, get credit for the energy saved in the MWD imports.

1 So, it seems like they are agreeing with you on one point,  
2 and they are agreeing with them on the other point.

3 I am sympathetic on allowing these credits, but  
4 what I am not clear about, in terms of the motion before us,  
5 as opposed to CCAR or CARB verification, is under the motion  
6 before us, who actually does the verification on -- who does  
7 the verification, you know, in a publicly transparent way,  
8 under the current motion before us --

9 EXECUTIVE DIRECTOR DOUGLAS: We have --

10 COMMISSIONER REILLY: -- and I --

11 EXECUTIVE DIRECTOR DOUGLAS: -- no idea.

12 COMMISSIONER REILLY: Okay.

13 EXECUTIVE DIRECTOR DOUGLAS: And, that is one of  
14 the problems, that we don't know what it is that you are  
15 going to be adopting here, if you adopt this --

16 COMMISSIONER REILLY: Yes, why don't you take a  
17 shot at that.

18 EXECUTIVE DIRECTOR DOUGLAS: -- unless it was  
19 changed.

20 MR. ZBUR: There are two separate provisions that  
21 are part of the motion, and they are sort of getting muddled  
22 a but, so if I could sort of take one at a time.

23 One provision in the Poseidon proposal, basically,  
24 allows for Poseidon to opt in to offset programs that may be  
25 developed by government agencies, like the AQMD, you know,

1 the air districts, and we did have SDG&E on that. We don't  
2 have any problems taking SDG&E, and just limiting it to the  
3 air districts on that piece of it.

4 **COMMISSIONER REILLY:** I think staff's problem was  
5 the court of all of the governments, because they didn't know  
6 what that meant.

7 **MR. ZBUR:** All of the governments, I mean we,  
8 basically, want to make sure that, you know, that basically  
9 government supervise their programs, but if you wanted to  
10 limit it to the -- you know, we think the most likely folks  
11 that will do it will be CARB, probably the South Coast  
12 District air districts, will probably be the most likely ones  
13 that will develop them, if they do, soon.

14 So, that piece crossed, is really just something  
15 we thought that if it is a government supervised program, we  
16 should be able to opt in. That is probably better  
17 verification than anything else. So, that is one piece. We  
18 don't have any limits. We don't have any concerns, and could  
19 take out the small governments, the SDG&E, if you would like.

20 The other piece, which is a separate provision, is  
21 that the staff's proposal would require that all of our  
22 purchase of credits be run through, or purchased through  
23 CCAR. We have no problem doing that. We think CCAR is a  
24 high quality entity. Our concern is, as you have heard, is  
25 that it is simply that we are going to be subject to this for



1 the next 30 years, and then next 3 or 4 years, we don't know  
2 how fast things are going to be moving, and we need to be  
3 able to buy the credits that we need, and in fact we are  
4 going to be buying some credits up front.

5 So, we are just concerned that there may not be  
6 enough credits from CCAR, and what we have asked is that,  
7 just like CCAR, we would be able to buy credits that are run  
8 through other entities that are doing the same thing as CCAR,  
9 and those three other entities are all entities that are part  
10 of offset quality initiative, and we can provide more  
11 information about that, if you would like.

12 **COMMISSIONER REILLY:** My interest is, not only in  
13 the acquisition of credits, it is also the verification of  
14 reductions --

15 **MR. ZBUR:** The way our proposal works is that  
16 basically, all of them would have to be run through one of  
17 those four entities, and we are happy to have CCAR to be the  
18 main one, so long as we can get credits that are sort of at  
19 the market price through CCAR.

20 But, it would be run through those entities, and  
21 we would, at the end of each year -- I mean, there are time  
22 periods in our plan, but that basically, there are two things  
23 that have to happen. One, we have to sort of have CCAR  
24 emission factors to measure the emissions from our -- that  
25 are going to be offset, and once the emission factors are

1 available, we have to, within a certain amount of time,  
2 submit a report that says what needs to be offset, and at  
3 that point demonstrate that we have provided offsets.

4 We can do the annual report that would, basically,  
5 show what our emissions are, what our offsets are. We would  
6 have to show that it was run through one of those four  
7 programs, and we have to provide documentation that they were  
8 verified through one of those four programs.

9 **COMMISSIONER REILLY:** All right, and don't go  
10 away.

11 Is that any clearer for staff, then it has been in  
12 the past? does staff want to comment on that?

13 **ENVIRONMENTAL SPECIALIST LUSTER:** Well, we still  
14 have to call this a verification issue.

15 CCAR has a very clear transparent verification  
16 mechanism in place. We have looked into --

17 **COMMISSIONER REILLY:** What are these other three  
18 entities that are listed there on the quality program?

19 **ENVIRONMENTAL SPECIALIST LUSTER:** The Climate  
20 Trust, the Environmental Reserve Trust, and I don't recall  
21 the other name, right off hand. They each have their own  
22 different protocols, and don't appear to have independent  
23 third party verification built into their processes.

24 We have just found a little bit out about them  
25 through their web sites, which don't provide a whole lot of

1 detail, but there is not enough for staff to assume that  
2 those entities would provide the same level of verification  
3 that CCAR would, and that is established in AB32 as being  
4 necessary for state programs.

5 **COMMISSIONER REILLY:** Well, let me ask this of the  
6 applicant, then, would Poseidon be will to accept the  
7 requirement of going through CCAR unless you can come back  
8 and demonstrate to the executive director that that is  
9 infeasible because they just don't have the credits, or they  
10 are not available to you?

11 **MR. ZBUR:** Yes, I mean, really the key issue for  
12 us we are worried that we are not going to have enough  
13 credits, and we would actually like that the infeasibility  
14 issue be focused in part on whether the credits are available  
15 at a generally domestic market price, and if is -- you know,  
16 if we can show that it significantly exceeding that of going  
17 through CCAR, we would like to have the ability to evaluate  
18 --

19 **COMMISSIONER REILLY:** Through CCAR unless you come  
20 back and get an "Okay" then? can you live with that?

21 **MR. ZBUR:** Say that again?

22 **COMMISSIONER REILLY:** It is CCAR unless you come  
23 back and get an "Okay" for mediation.

24 **MR. ZBUR:** Yes, we are fine with that, and we  
25 would just like the criteria to take the cost into account.

1                   **COMMISSIONER REILLY:** All right.

2                   And, what I am also hearing is that we modified  
3 your other language about local governments, and stuff, you  
4 are staying with?

5                   **MR. ZBUR:** That is acceptable, as well. We would  
6 like to have the major air districts and CARB included in  
7 that.

8                   **COMMISSIONER REILLY:** Mr. Chair, that clears up a  
9 couple of things for me, thank you.

10                  **CHAIR KRUER:** Thank you, very much, Commissioner  
11 Reilly, for those questions.

12                  Commissioner Burke.

13                  **COMMISSIONER BURKE:** First of all, let me try and  
14 help out the discussion between Commissioner Hueso and Mr.  
15 Douglas.

16                  What one was talking about was particulate matter,  
17 2.5, which is a particle in the air which is small enough to  
18 transfer to your blood vessels, through your lungs, when you  
19 are breathing, and go into your blood stream. The other was  
20 a gas which goes into the air, and causes diminishing of the  
21 air quality, in that manner, so they are totally two  
22 different things. And, one is a regional -- one is a very  
23 localized, and one is a regional, regional problem.

24                  And, I don't think that this project should be  
25 penalized because they are facing a problem that is an

1 international problem. First of all, we are asking them to  
2 go out and buy credits, at the best known institution that we  
3 can find. Well, there is no place the world -- forget the  
4 United States of America -- in the world, because after this  
5 project came along, I asked them to go to the South Coast Air  
6 Quality District, and they did that. They met with the  
7 people out there. The guys went through their whole plan,  
8 and found it to be acceptable. So, when they made the  
9 briefing to me, my question was if these people who are  
10 verifying these credits, are not government organizations, or  
11 government licensed, how do you know that this credit is not  
12 from some guy in the small village burning a fire in front of  
13 his hut, and selling air credits by putting the fire out?

14 So, he looked at me and said, "There is no way  
15 that you can know that."

16 So, but that is not our job, and that is not what  
17 is before us today, but that definitely has an impact on any  
18 project that we are going to consider, which has, as part of  
19 its mitigation, the purchase of air credits, pollution  
20 credits.

21 So, I think that what staff is trying to do is  
22 admirable, but I don't think it is doable. So, I am going to  
23 support yours and Commissioner Hueso's motion, to go ahead  
24 and get this done in this manner.

25 **CHAIR KRUEER:** Thank you, Commissioner Burke.

1 Commissioner Wan.

2 COMMISSIONER WAN: Yeah, I just want to deal with,  
3 maybe just three or four issues, very quickly.

4 The first one deals with the issue of what the  
5 amount of credits we should be dealing with, and that is the  
6 replacement water issue. Poseidon says that this will  
7 directly replace water, and therefore they only need to  
8 offset the net energy -- and we are talking about the energy  
9 offsets here for that replacement water.

10 From my perspective, if there were conditions that  
11 actually required that water be replacement water, and not  
12 new water, I would agree with that, okay. But, there aren't  
13 any such conditions. There are promises, but there aren't  
14 any contractual agreements, and therefore there is no  
15 certainty that they will really offset this water from the  
16 state water project. And, as we have heard, in fact, it will  
17 probably be diverted to other uses, and that is not really,  
18 therefore an offset.

19 And, therefore, they may not be reducing the  
20 overall energy use for the state water project, and that is a  
21 very serious issue, in terms of the amount of credits that  
22 they need to have.

23 Therefore, from my perspective, this needs to be  
24 dealt with by either providing the proof. If you can provide  
25 the proof to us that is fine, but if you don't then we need

1 to deal with this the way the staff is recommending.

2 There is a second issue, major issue, for me, and  
3 that is this, quote, opt out -- what I can an opt out  
4 provision, where they are allowed to pay just \$10 per ton --  
5 rather than doing what we have all been talking about. If  
6 they are allowed to retain that opt out provision, that is  
7 the cheapest way to go, and they are going to do that, and  
8 you are going to see a token replacement here. You are not  
9 going to see real replacements. And, I am not sure I  
10 understand why that opt out provision is in there, given all  
11 of the other ways, particularly after this discussion with  
12 Commissioner Reilly, for them to make sure -- and that we  
13 make sure that they can actually buy these credits, why the  
14 opt out provision?

15 But, there is one thing that is most important  
16 here, okay. Poseidon maintains that this is voluntary,  
17 because they don't directly emit anything, and it is through  
18 their use of electricity that we are dealing with it, and  
19 that we don't have the authority to require this of them.  
20 That is a very dangerous path for this Commission to go down.

21 Section 30253(4) requires that new development  
22 minimizes energy consumption. That is directly on point to  
23 what is happening here. We are talking about energy usage.  
24 It is not talking about direct emission, it is talking about  
25 energy consumption, and 30260 requires that all impacts be

1 fully mitigated. It does not exempt energy consumption  
2 impacts from that.

3 The two sections together give this Commission its  
4 regulatory authority. To decide that this is voluntary will  
5 set an unacceptable precedent for all future projects that  
6 need greenhouse gas emission reductions. If you find that  
7 the *Coastal Act* does not allow us to require greenhouse gas  
8 mitigations, regardless of what plan you adopt, whether you  
9 go with the applicant's plan, or not, please don't undermine  
10 our long term regulatory authority by saying that this is  
11 voluntary. Because, if you say it is voluntary here, and  
12 that we don't have that authority, then it is voluntary with  
13 everything else, as well.

14 And, you don't need to do that, to even agree with  
15 the applicant's plan, and I think that is a very, very  
16 important thing for everyone here to remember, relative to  
17 this Commission's regulatory authority.

18 **COMMISSIONER REILLY:** Well, Mr. Chair, just  
19 quickly, is there anything in the motion before us that would  
20 restrict or effect the Commission's jurisdiction? And, I ask  
21 counsel to respond to that.

22 **COMMISSIONER WAN:** Can I answer that question, in  
23 fact, there is, because in this --

24 **COMMISSIONER REILLY:** Either attorney can answer  
25 it, so that is fine.



1           **COMMISSIONER WAN:** Let me answer, and then the  
2 attorneys can answer, because this was my question, my issue.

3           Let me tell you that in here, which we have asked,  
4 according to Commissioner Hueso's motion, we adopt this in  
5 its entirety, there are statements in here about it being  
6 voluntary.

7           **COMMISSIONER REILLY:** Where?

8           **COMMISSIONER WAN:** First page.

9           If you remove just the word "voluntary" that would  
10 change it.

11          **CHAIR KRUER:** Okay, well, we will hear from our  
12 other counsel, now.

13          **EXECUTIVE DIRECTOR DOUGLAS:** Well, one of the  
14 problems we have got -- as they are looking -- is that we  
15 have not had time to review everything that, apparently, will  
16 be adopted if this motion passes.

17          I was under the impression that there was nothing  
18 in the motion that would say this is a voluntary plan, but  
19 rather that this complies with the requirements of the  
20 Commission's condition for a Greenhouse Gas Reduction  
21 Mitigation Plan. If I am wrong, on that, please let me know.

22          **COMMISSIONER HUESO:** I agree with that.

23          This entire motion is designed to comply with  
24 Special Condition No. 10 --

25          **EXECUTIVE DIRECTOR DOUGLAS:** Right.

1                   **COMMISSIONER HUESO:** -- which is condition of  
2 approval of the project.

3                   So, none of this is being stated as voluntary, but  
4 rather -- and if there is any language that implies that this  
5 is a voluntary requirement, it conflicts with Special  
6 Condition No. 10, so, if there are some comments regarding --  
7 because I know there were some comments here with voluntary  
8 offsets, but I think that doesn't get to the point of this  
9 being a voluntary matter. This entire plan is specifically  
10 designed to get to Special Condition No. 10 --

11                   **EXECUTIVE DIRECTOR DOUGLAS:** Right.

12                   **COMMISSIONER HUESO:** -- and I think in its spirit  
13 and intent, it does that.

14                   **CHAIR KRUER:** Commissioner Potter.

15                   **EXECUTIVE DIRECTOR DOUGLAS:** And, as far as we are  
16 concerned, Mr. Chairman, the maker of the motion having  
17 clarified that, if that is agreeable with the "seconder" then  
18 that is the way the motion, if it is approved, will be  
19 passed, and we will make whatever adjustments have to be made  
20 to, in fact, reflect that.

21                   **CHAIR KRUER:** I see both Commissioner Potter  
22 nodding his head, that he is fine with that, and Commissioner  
23 Hueso.

24                   **COMMISSIONER REILLY:** Well, just to try to  
25 complicate it a little bit further.

1 I don't think it matters if it is a voluntary  
2 plan, or not. They offered a voluntary plan, we codified it  
3 under Condition 10, and made it a requirement, and so it  
4 doesn't matter whether you call it a voluntary plan, or not.

5 The issue is that there is nothing -- we don't  
6 want to have anything in the motion before us, to indicate  
7 that the Commission does not have the authority to require  
8 measures above and beyond what they submitted.

9 COMMISSIONER HUESO: That is precisely correct.

10 CHAIR KRUEER: I think you are right, Commissioner  
11 Reilly.

12 Commissioner Potter, you have no problem with  
13 that, either, right?

14 COMMISSIONER POTTER: No, in fact, I concur  
15 exactly with what Commissioner Reilly just stated. I was  
16 about to do the same.

17 CHAIR KRUEER: Thank you.

18 Okay, Commissioner Burke, or Commissioner --

19 COMMISSIONER SCARBOROUGH: We've taken care of it.

20 CHAIR KRUEER: It is taken care of.

21 COMMISSIONER BURKE: Yes, we are doing a tag team  
22 over here.

23 I just wanted to report that I had an exparte,  
24 just a few seconds ago, with Rick Zbur, because what I wanted  
25 to do was clarify the fact that if, in fact, a government

1 institution like South Coast Air Quality Management District,  
2 did organize a qualification unit, and license some one of  
3 these companies to sell credits that had been verified by a  
4 government agency, that they would be willing to do that. He  
5 said it was already in the proposal.

6 So, that is what my ex parte is.

7 CHAIR KRUEER: Okay.

8 Commissioner Thayer.

9 EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman?

10 CHAIR KRUEER: Yes.

11 EXECUTIVE DIRECTOR DOUGLAS: Can I just clarify --

12 CHAIR KRUEER: Are you Commissioner Thayer?

13 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

14 CHAIR KRUEER: Commissioner Thayer was going to  
15 speak.

16 EXECUTIVE DIRECTOR DOUGLAS: Well, he was a little  
17 slow.

18 CHAIR KRUEER: He said that about you.

19 EXECUTIVE DIRECTOR DOUGLAS: He's been saying that  
20 for 30 years.

21 CHAIR KRUEER: Commissioner Thayer, do you want to  
22 yield to Director Douglas?

23 COMMISSIONER THAYER: No.

24 CHAIR KRUEER: No, so go ahead, Commissioner  
25 Thayer, and then Director Douglas.

1 COMMISSIONER THAYER: Now?

2 CHAIR KRUEER: Yes.

3 COMMISSIONER THAYER: Okay, sorry, I just wanted  
4 to clarify one small point, and that is Commission Reilly,  
5 earlier on made the discussion of some of the agencies that  
6 had weighed in, and had worked on the air issues, and the  
7 offset issues, and as he pointed out, the Lieutenant Governor  
8 did write a letter on that issue, as Ann Sheehan, another one  
9 of our Commissioners, but the State Lands Commission hasn't  
10 yet weighed in on that issue.

11 And, of course, as you know, the Lands Commission  
12 heard this last fall, about the same time as the Coastal  
13 Commission, and had almost the exact same concerns, and  
14 directed that staff return with additional information on, in  
15 essence, both Conditions 8 and 10. We have worked closely  
16 with your staff, in that regard.

17 Our staffs have a lot of the same concerns and the  
18 same analyses of these issues, and we will be reporting to  
19 our own Commission on August 22, and so at that point, the  
20 State Lands Commission will be evaluating the same thing, and  
21 the people with whom I almost have a first name basis, at  
22 this point, in the crowd, will be there, as well, I am sure,  
23 and we will hear all of the same issues, again, and the State  
24 Lands Commission will figure out what it will do then.

25 But, I wasn't sure whether Commission Reilly was

1 inferring that the State Lands Commission had already weighed  
2 in on this, and it hasn't, really.

3 CHAIR KRUER: Okay, anything else, Commissioner  
4 Thayer, okay.

5 Director Douglas, what were you going to say?

6 EXECUTIVE DIRECTOR DOUGLAS: I just wanted to  
7 clarify.

8 There was some conversation in which Mr. Zbur  
9 indicated -- in an exchange with Commissioner Reilly, I  
10 believe it was -- that they were prepared to just use only  
11 purchase from CCAR, unless the executive director approves  
12 others, in case there aren't enough available. Is that  
13 incorporated into the motion?

14 CHAIR KRUER: Yes.

15 COMMISSIONER HUESO: From my reading of the  
16 motion, there is a Special Exhibit A where it talks about  
17 priority acquisition and verification, and it talks about  
18 CCAR or CARB, and I am fine with CCAR being the first choice,  
19 and then having any other options available pursuant to  
20 approval of the executive director, just so long as they have  
21 the opportunity to look at other cost effective savings,  
22 because, from my perspective, as long as we make sure that  
23 the credits are purchased through a program that accomplishes  
24 what --

25 EXECUTIVE DIRECTOR DOUGLAS: Okay, there are a

1 couple of issues, just to make clear, because we don't want  
2 to come back and have an argument over this.

3 Poseidon would only purchase from CCAR, unless the  
4 executive director approves other sources for acquisition  
5 because they don't have enough credits available. That is  
6 what I understood on that part of it.

7 CHAIR KRUER: And, reasonably priced. Price was  
8 one of the issues, too. In other words, if they go to CCAR  
9 -- I am just telling you what they said, and we agree or  
10 disagree, but I am just saying they added a caveat on that.

11 EXECUTIVE DIRECTOR DOUGLAS: Okay, but they would  
12 have to come back --

13 CHAIR KRUER: Right, they would --

14 EXECUTIVE DIRECTOR DOUGLAS: -- if they are going  
15 to go to somewhere else, they would have to come back and  
16 say, "We can't buy the credits we need here, because of this  
17 reason" --

18 CHAIR KRUER: Right.

19 EXECUTIVE DIRECTOR DOUGLAS: -- "therefore can we  
20 go somewhere else."

21 CHAIR KRUER: Yes.

22 EXECUTIVE DIRECTOR DOUGLAS: And, if we have a  
23 dispute, it comes back to you.

24 CHAIR KRUER: Right.

25 EXECUTIVE DIRECTOR DOUGLAS: And, then, the second

1 question was, they would use any programs adopted by any air  
2 districts, by CARR, or CCARB and eliminate all of the other  
3 governmental entities, local. I heard them say that, but I  
4 wanted to make sure that that was included in the motion.

5 COMMISSIONER HUESO: That is fine. That is  
6 acceptable.

7 EXECUTIVE DIRECTOR DOUGLAS: Okay.

8 COMMISSIONER BURKE: [ remarks off microphone ]

9 COURT REPORTER: Please use your microphone.

10 CHAIR KRUEER: On your mike, please.

11 EXECUTIVE DIRECTOR DOUGLAS: Well, I thought they  
12 said any --

13 COMMISSIONER BURKE: Well, let's call them up and  
14 ask that, because I want to get that clarified.

15 CHAIR KRUEER: Fine, Commissioner Burke, that is a  
16 good idea.

17 Mr. Zbur, you heard what Director Douglas said.

18 MR. ZBUR: We are happy and it is acceptable to  
19 have any major air district, or CARB and the South Coast,  
20 either one of those is acceptable to us.

21 CHAIR KRUEER: Okay.

22 EXECUTIVE DIRECTOR DOUGLAS: That is included,  
23 okay.

24 CHAIR KRUEER: And, the "second" they can adopt  
25 that?



1           **COMMISSIONER POTTER:** Yes.

2           **CHAIR KRUER:** Is there anyone else?

3           Director Douglas.

4           **EXECUTIVE DIRECTOR DOUGLAS:** Yes, this is not  
5 relative to what is in the motion. This is for clarification  
6 because we are going to have to implement this.

7           One of the opt out provisions does indicate that  
8 they can opt out if the market is unstable for credits. And,  
9 I don't understand any criteria for what is unstable, and  
10 what that means? If we could get some guidance, so that we  
11 don't end up being in an argument over that, because that is  
12 still part of the motion.

13           **COMMISSIONER POTTER:** Mr. Douglas, as the  
14 "seconder" I would be in support of knocking out the opt out  
15 piece. I think to keep buying your way into this does  
16 nothing for the environment. It is just paying for a sin.

17           So, I would support, or offer as the "seconder" if  
18 the maker agrees, that the condition is that the opt out  
19 piece is eliminated.

20           **COMMISSIONER HUESO:** I am okay with eliminating  
21 it, but I would ask that we include at least some provision  
22 for review --

23           **COMMISSIONER POTTER:** Bring it back here.

24           **COMMISSIONER HUESO:** -- given extenuating  
25 circumstances that are beyond anyone's control, if we can

1 have, at the executive director's discretion, working with  
2 the applicant to determine a condition which fits that, where  
3 we can either have the executive director make a recommend-  
4 ation back to the Commission that we can act on.

5 I am just --

6 COMMISSIONER REILLY: Mr. Chair --

7 COMMISSIONER HUESO: -- from my perspective, I am  
8 not interested in having them opt out of a requirement. I  
9 don't want that, at all, but given certain circumstances, it  
10 may be prudent to wait out a certain period, to purchase  
11 credits that either are at a more favorable rate, or I don't  
12 know, if the program ends, and if there is no substitute  
13 program, if they were in transition in programming. I mean,  
14 there may be a situation in which it may render the applicant  
15 in default, and we don't want to put this project in that  
16 situation.

17 MR. ZBUR: Mr. Chair, would it be in order for me  
18 to explain what the proposal does, because I think a lot of  
19 the concerns would be addressed, although I do believe that  
20 Mr. Douglas is right, that the opt out has a subjective  
21 standard.

22 So, essentially, what it says is if there are  
23 market disruptions, or the price of offsets make the  
24 compliance infeasible, we would have to come back to the  
25 executive director, first, and he would have to make a

1 determination that those factors occurred, and if that is the  
2 case we would be able to go into the opt in program. It may  
3 be for a temporary period of time. It may be for a longer  
4 period of time. It is up to the executive director to make  
5 that determination.

6 We are just worried about the fact if there are  
7 not offsets on the market, as there have been many cases with  
8 other offset markets. But, anyway, if there is a disagree-  
9 ment, then it would come to the Commission.

10 **EXECUTIVE DIRECTOR DOUGLAS:** That's right.

11 **COMMISSIONER POTTER:** Exactly, this placing the  
12 money into an escrow account, and then letting that account  
13 sit there is perpetuity, does nothing as far as zero  
14 reductions.

15 **MR. ZBUR:** I think the term of the escrow period  
16 is subject to the Executive Director's determination, and if  
17 there is a disagreement we would bring it to the Commission.

18 So, this isn't something that is permanent, it  
19 also has contingencies.

20 **COMMISSIONER HUESO:** I'm fine with that.

21 **COMMISSIONER POTTER:** I am absolutely fine with  
22 it.

23 **CHAIR KRUER:** Okay, we are fine.

24 Commissioner Shallenberger.

25 **COMMISSIONER SHALLENBERGER:** Yes, I would like to

1 ask Joel Levin of the California Registry to come up for just  
2 a question, and that is that I am talking now about the  
3 baseline reason, which seems to be the other major issue  
4 before us, the disagreement between the project proponent and  
5 the staff recommendation.

6 If the Commissioner were to request the project's  
7 baseline be determined through the California Registry, how  
8 would you calculate that? how would it be calculated?

9 MR. LEVIN: Okay, well, if you can bear with for a  
10 second, as I need to talk a little bit about greenhouse gas  
11 accounting rules.

12 There is, in international practice, all green-  
13 house gas emissions are divided into Scope 1, Scope 2, and  
14 Scope 3 emissions. Scope 1 emissions are direct emissions,  
15 which in this project are very small, and hasn't really been  
16 any discussion.

17 Scope 2, is indirect emissions from purchases and  
18 sales of electricity, and schemes -- there is no scheme here  
19 -- so, Scope 2 emission would, basically be -- and this an  
20 international standard -- essentially, your purchases of  
21 electricity, minus your sales of electricity, so that is your  
22 net purchases of electricity.

23 Scope 3 is all other kinds of indirect emissions  
24 that go up and down the supply chain, and so, for example  
25 what you are talking about with the State Water Project, the

1 way I understand that, that would, essentially, be a Scope 3  
2 emission.

3 In international accounting standards, you keep  
4 all three of those separately. They are all significant,  
5 each one of them is real, but they are different. They are  
6 apples and oranges, so you can't add Scope 1 and Scope 2  
7 together, or Scope 2 and Scope 3.

8 Under our program, we require people to report  
9 Scope 1 and Scope 2. Scope 3 is voluntary. Some people  
10 report certain aspects of their Scope 3, some don't.

11 So, if we were to calculate this, it depends a  
12 little bit on what you ask for. If you said you would like  
13 the California Registry just to calculate the base line, and  
14 we'd like it to be their Scope 2 emissions, then, it would be  
15 just that, it would be their net electricity purchases, which  
16 is not to say that the emission reductions associated with  
17 the State Water Project are nothing, but it is a different  
18 type of emission. It is not something that we have a  
19 calculation methodology for right now.

20 So, that would be sort of a policy decision for  
21 you, if you wanted to, to put those together, and math them  
22 out, but in terms of the way we calculate, Scope 2 would be  
23 just straight electricity purchases.

24 **COMMISSIONER SHALLENBERGER:** May I ask you one  
25 more question.

1                   MR. LEVIN: Sure.

2                   COMMISSIONER SHALLENBERGER: If I were to tell you  
3 -- and we can talk later about whether it is true -- but, if  
4 I were to assert that this project coming online will make no  
5 difference in the exports through the State Water Project  
6 into the Metropolitan Water District, how would you then  
7 calculate that, in this project?

8                   MR. LEVIN: Well, again, we don't have a protocol  
9 for that. It is not something -- the way that we operate is  
10 we develop accounting standards through a big public process,  
11 with a working group, and we will establish rules for how you  
12 measure a specific source. To look at what are the emissions  
13 associated with water from the State Water Project, we just  
14 have never tackled that, so I am not even sure I could answer  
15 that.

16                   COMMISSIONER SHALLENBERGER: Okay, thank you, I  
17 did want to address that.

18                   As my fellow Commissioners know, I worked in water  
19 policy for 15 years, began with the Peripheral Canal Bill  
20 passing the legislature, and ditch ditch, and many bonds,  
21 right up and including the current proposal about  
22 alternatives to the delta, and there has been a lot of talk  
23 about the use of the words gross versus net, which I think is  
24 a bit of a smokescreen as opposed to what is really going to  
25 happen here.

1           The State Water Project is over contracted, and  
2 when Metropolitan Water District says it is not fully built  
3 out, that is absolutely true, and nobody would disagree with  
4 that, nor will it ever be fully built out. It was a grand  
5 concept, and it didn't -- there was no understanding at the  
6 time of what the impact of the State Water Project and the  
7 Central Valley Project would have on the delta. The delta is  
8 now in a state of -- and I don't think anybody would disagree  
9 that it is in a complete state of deterioration, and we are  
10 not sure -- nobody is actually sure that it can be saved.

11           There are actually three different alternatives  
12 being floated now for ways to save it, but none of those  
13 alternatives include fully building out the State Water  
14 Project.

15           So, the Metropolitan Water District -- and these  
16 are round numbers, so if somebody ends up going to court, you  
17 are going to have to look it up on your own -- but, the  
18 Metropolitan Water District, I believe, has contracted for,  
19 approximately, 2 million acre feet of water a year. I don't  
20 believe they have ever gotten more than 1.7 million acre  
21 feet, and it has gone down way below that in times of  
22 drought.

23           We have heard a lot of statements about being in a  
24 time of drought, and we are. I absolutely agree that we need  
25 to have a broad portfolio of new water sources, and

1 desalination is one of them, and this project, absolutely,  
2 should be one of the pieces in the portfolio for increasing  
3 reliability of water, but if it were to go online tomorrow,  
4 and have maximum productions, it would not reduce the amount  
5 of water being pumped through the State Water Project into  
6 the Metropolitan Water District, and yes, that is over the  
7 Tehachapis, and no it would not have to go through an EIR  
8 review, because that is contracted water.

9           The Metropolitan Water District has a contract for  
10 that water, and every year they go through how they are going  
11 to distribute that water within their jurisdiction, which  
12 includes selling it to San Diego.

13           So, I have to commend staff, our staff, for what I  
14 understand working very constructively with both the Energy  
15 Commission staff and the Air Resources staff. The first  
16 letter we got from the Energy Commission, dated July 18, was  
17 very clear and constructive and told us where it needed to be  
18 strengthened.

19           Eleven days later we get a letter which is about  
20 as mealy-mouthed as a state agency can be. This is a Governor,  
21 an administration who has claimed AB32 as the most strongest  
22 legislation in the country. He has gone abroad, he has gone  
23 to Germany, he has gone to many places, and California is  
24 leading on what we are doing about climate change.

25           And, then, the first big project to come before



1 us, happens to be before the Coastal Commission, it is going  
2 to have a huge impact on climate change, and we get letters  
3 like this from the Air Resources Board, who we know staff has  
4 been working constructively on real substance with our  
5 staff.

6 But, as I read these, none of them, including the  
7 Deputy Director of the Department of Science, who admits the  
8 State Lands has not had a hearing on this yet, but  
9 apparently, already has an opinion on it, none of them --  
10 actually, they are very careful about how they word this.  
11 They talk about it should only be the net greenhouse gases  
12 that are taken into account. None of them say that there is  
13 going to be a reduction of State Water Project energy use to  
14 pump it over the Tehachapis.

15 Metropolitan Water District is going to, and needs  
16 to, and has a right to take all of the water that is  
17 available to them out of the delta.

18 This project is going to increase reliability. It  
19 is going to increase, kind of stop the ebs and flows of  
20 drought, and time of plenty.

21 So, I really, on the baseline, and here is -- now  
22 I am getting to the problem, is that we have a 32-page  
23 redlined proposal that comes from the project proponent,  
24 which I got this morning, I admit I have not read, and  
25 therefore the motion that is before me, I don't know what it

1 does with this baseline.

2 So, now I am going to turn to staff and say with  
3 the motion that is before us, and with your understanding of  
4 the amendments that have been made to it, with having to do  
5 with the Registry, what else is different between your  
6 proposal for a motion, and the one that is before us, because  
7 I am going to need to vote on this without having actually  
8 read the proposal that is before us.

9 ENVIRONMENTAL SPECIALIST LUSTER: Staff's  
10 understanding, addressing your concerns as I understand it,  
11 one of the main differences, is that Poseidon refers to the  
12 state water offset as a project related measure that is,  
13 essentially, automatically included in calculating where it  
14 starts for its net emissions.

15 And, so, although CCAR would -- it would work with  
16 CCAR to get agreed emission credits in place, the issue of  
17 the State Water Project would not be included in that review.  
18 That is staff's understanding, just having briefly read  
19 through the plan we received this morning.

20 COMMISSIONER SHALLENBERGER: Well, it is funny,  
21 because our critics say, you know, you are specialists in  
22 greenhouse gases, and you are not specialists in climate  
23 change, and the Air Resources Board is the specialist, and  
24 Assembly Bill 32 put them in charge for determining things  
25 like this, and yet we are about to, perhaps, pass something

1 which says that we are, in fact, in a position to know what  
2 the baseline is.

3 So, I would like to urge my fellow Commissioners  
4 not to approve the resolution, as it sits before you, because  
5 of the baseline calculation, which we are not in a position  
6 to foreclose the Air Resources Board making their own  
7 determination.

8 CHAIR KRUER: Commissioner Scarborough.

9 COMMISSIONER SCARBOROUGH: Yes, thank you.

10 Talking overarching, I agree with Commissioner  
11 Shallenberger about the importance of adding desal to the  
12 portfolio of the water supply. Getting to the elements of  
13 baseline, yes AB32 staff have worked together at many  
14 different levels.

15 What the new letter from the Energy Commission  
16 describes is a further understanding with further meetings --  
17 and the executive director was here this morning, I am sorry  
18 you weren't able to ask her further questions, Ms.  
19 Shallenberger, when she was here, but she tried to describe  
20 in her letter the better understanding of, perhaps, is the  
21 glass half full, or is it half empty?

22 The concept of net or gross has been wrestled  
23 around through CARB, through the CEC, through the Resources  
24 Agency, through many, in fact, as I know in here with many of  
25 our staff.

1           In essence, what I understand from a Resources  
2 perspective -- indeed, we are arguing within our family as  
3 well -- is that, yes, Met will continue to receive that  
4 water. They are not going to turn the state tap off. Other  
5 projects that will then need to use that water will have to  
6 go through a process by which they get the okay to use that  
7 water. And, it is that new project that will then have to be  
8 in compliance with CARB and APCD, or whatever local district,  
9 on their greenhouse gas emission reductions for that project.

10           So, therein lies the neutrality of the 100, with  
11 the charts of 100 and the 25. So, net versus gross is pretty  
12 clear that the impacts on the increase of the 56,000-feet  
13 that they are providing, that is what they are reducing.

14           So, from a Resources Agency perspective, from  
15 CARB, naturally, it still astonishes me how people refer to  
16 AB32. Yes, it was a bill, you understand that, Commissioner  
17 Shallenberger, and it got signed. The implementation of that  
18 bill is still being done.

19           It was noted by several local speakers that just  
20 last week some of the documents had hit the street. It is  
21 not final. It is not approved. A scoping plan is out for  
22 public comment. You can't refer to AB32 as having guidelines  
23 by which a project will have to mitigate, yet, it will, and  
24 that is why, therefore, a sister agency, as CARB, should be  
25 adjoined to this, which it is. CCAR, CARB, they are all a

1 collected family, of which you are joining by approving this  
2 mitigation plan that has CARB connected to it.

3 So, Resources Agency, for one, agrees that the  
4 project mitigation plan as an overall water supply portfolio  
5 expansion, completely supports the concept of it going net,  
6 as justified in the letter attached from the Energy  
7 Commission, and the ARB.

8 **CHAIR KRUER:** Thank you, Commissioner Scarborough.

9 And is that it, before I call for the motion?

10 I'm sorry, Commissioner, do you want to go again.

11 No. I am going to wait until last, just so we don't get into  
12 a debate here.

13 **COMMISSIONER SHALLENBERGER:** Yes, I just wanted to  
14 respond that either this is water being freed up for new  
15 development, or it is not.

16 It is my understanding, given the condition of the  
17 Metropolitan Water District's water supply, that this isn't  
18 for new development, and I agreed with people who said that  
19 it was not growth inducing. They don't have enough water for  
20 reliable water source, given what is already on the ground.

21 So, when I hear the Resources Agency saying that  
22 it will have to go through, get a permit for new development,  
23 now I am hearing that it is new development. So, I don't  
24 believe that is true. I don't think it is, and if it is not  
25 due to new development, there will be no environmental

1 review, because it is already contracted for.

2 My question to staff is, given that we are not  
3 working off your motion, is there a way to have this baseline  
4 issue addressed by the agencies, state agencies, who in fact  
5 are recognized as that is their expertise, not ours, rather  
6 than us foreclosing that now?

7 **ENVIRONMENTAL SPECIALIST LUSTER:** My initial  
8 suggestion, as you heard earlier from the CCAR represent-  
9 ative, of the different, three different forms of emissions,  
10 if the Commission required CCAR to evaluate all Scope 2 and  
11 Scope 3 forms of emissions from the project, that would allow  
12 CCAR to review the state water project offsets, and to see  
13 whether they meet various criteria.

14 **EXECUTIVE DIRECTOR DOUGLAS:** I think that the most  
15 important element of that is since we have a real difference  
16 of opinion here, on what the baseline is, and we agree with  
17 your analysis of this, to have a credible independent review  
18 of what the baseline is, if you could ask CCAR to look at the  
19 category 3 -- I know they don't have any protocols yet for  
20 that, but at least they have got the expertise to be able to  
21 look at that and determine, in their best judgment, what they  
22 think the baseline might be. You could look at that as an  
23 alternative.

24 **COMMISSIONER SHALLENBERGER:** And, if there is an  
25 amending motion to do that, would the project proponent

1 probably come forward and say this is going to cost time, and  
2 delay?

3           **EXECUTIVE DIRECTOR DOUGLAS:** Well, you could  
4 approve the plan today, which would get you passed that issue  
5 of prior to issuance, with a provision, a proviso, that you  
6 have the baseline determined by CCAR, and that if they have a  
7 dispute with what that means, in terms of feasibility or  
8 costs, again they could come back, and you could authorize  
9 them to come back for an amendment, if they wish.

10           **CHAIR KRUER:** Okay, I am going to go to  
11 Commissioner Lowenthal, and then I will address this last  
12 idea of yours, Director Douglas.

13           Commissioner Lowenthal.

14           **COMMISSIONER LOWENTHAL:** Actually, was wondering  
15 if the applicant -- looked like the applicant had a response  
16 to that. Would that be appropriate, on the baseline being  
17 described by CCAR, would that be appropriate, just to hear  
18 what his response would have been? from Mr. Zbur?

19           **CHAIR KRUER:** You can do that.

20           **COMMISSIONER LOWENTHAL:** May I ask Mr. Zbur to do  
21 that?

22           **MR. ZBUR:** We would not like that. We would want  
23 it to be clear, as I think the ARB letter said, that it be  
24 the net approach, which allows us to automatically reduce the  
25 water that is foregone from the State Water Project, so we

1 would actually prefer that the plan be adopted, as the motion  
2 would do.

3           **COMMISSIONER LOWENTHAL:** Okay, and I also wanted  
4 to just make a couple of comments regarding the imported  
5 water from the State Water Project.

6           I think we all understand that Metropolitan has a  
7 contract for the amount that it does take annually, and I  
8 don't look to creating additional facets to water portfolios  
9 necessarily as a 1:1 trade. I think, in the reality of a lot  
10 of what is going on with water in our state, drought being  
11 one of them, it is difficult to make that 1:1 assumption if  
12 there are 100 units of water produced by the desal project,  
13 that 100 units would be reduced in terms of imported  
14 supplies.

15           I think what we are seeing in communities across  
16 California, we have been seeing this for many, many years,  
17 separate from various contamination issues, so where they may  
18 have had ground water resources in the past, they actually  
19 take greater imported supplies, and so that ends up upsetting  
20 this 1:1 offset that we may expect when we add new facets to  
21 the portfolio.

22           So, I understand the difference in the total  
23 landscape and what has changed, and why. For instance, water  
24 imported into San Diego may continue at the same level, or  
25 into other areas, one accounting for increase in population,



1 not necessarily inducing the growth, and two, accounting for  
2 any changes in local portfolio that need to take place  
3 because of their need to address any contamination issues.

4 And, so, I just wanted to make that remark, and  
5 also mention that I am a board member of the MWD and am very  
6 familiar with their operations, and do understand the  
7 challenges that members of the audience and communities may  
8 experience when it comes to looking at why we continue to  
9 take the same amount of contractual water annually.

10 But, I think it is a little bit more complex, than  
11 the 1:1 offset we would expect from every project.

12 **CHAIR KRUER:** Thank you, Commissioner Lowenthal.

13 I'll go to Commissioner Thayer, then myself, and  
14 then I am going to call the question.

15 **COMMISSIONER THAYER:** I'll be brief.

16 I wanted to respond, in connection to the question  
17 about Ms. Sheehan, one of my Commissioner's letters. I think  
18 she does a good job of speaking two different voices here.

19 One of them, she speaking as a representative of  
20 the administration, and advocating that the approach taken on  
21 the replacement versus additive questions for the water  
22 offsets is something that the Commission, this Commission,  
23 the Coastal Commission, should feel satisfied with the permit  
24 conditions -- not a State Lands Commission issue. In the  
25 next sentence, she gets onto the State Lands Commission role

1 that she has, a separate one, indicates she will be  
2 considering this matter further, before she acts as a  
3 Commissioner.

4 So, I think, her letter reflects knowing a lot  
5 about the project for her work as a State Lands Commissioner,  
6 but she is speaking as a official who is not a State Lands  
7 Commissioner, in this letter.

8 CHAIR KRUEER: Okay?

9 COMMISSIONER THAYER: Yes, thank you.

10 CHAIR KRUEER: Thank you.

11 Yes, I would like to just say that at this point  
12 in time, this project has been before us quite some time ago,  
13 and before that, and I think it is time to move forward today  
14 with this motion. I have heard a lot of testimony, some  
15 things got cleared up, like voluntary, that I had issue with,  
16 those words. But, I am concerned that we move forward today,  
17 and take a decisive action on this.

18 In listening to the testimony of all of the  
19 people, today, it was excellent, but listening to the  
20 regulatory agencies, that are going to be responsible for  
21 AB32, at this juncture, on an approved project like this, I  
22 have no problem understanding, from my own perspective, that  
23 there is the net versus the growth.

24 If somebody is going to spend \$300 million on a  
25 project, and it goes under the old "no good deed goes

1 unpunished," they should get some credits. And, what happens  
2 is AB32 comes along, which is fine, et cetera, but if you add  
3 -- I don't want to have happen -- the support, in this case,  
4 of the staff recommendation because if you did that, and  
5 added -- the testimony was given that the mitigation plan  
6 went from \$55 million to \$121 million -- and it isn't just  
7 \$19 a ton, or some of the numbers you had.

8           The infrastructure costs of putting all of that  
9 money up front, and putting all of that money that you have  
10 to amortize over a period of time, those are the things that  
11 create very big difficulties, that delay projects, and that  
12 makes them, sometimes, infeasible. You just can't add \$50 or  
13 \$60 or \$70 million to a project like that. The capital  
14 markets won't allow it.

15           And, in this case, there is a good participation  
16 between the private sector and the public sector, and I think  
17 there has been a lot of testimony that now is the time. I  
18 think I have heard enough about that the plan is flexible,  
19 good, fair, and equitable.

20           And, it is always good to hear from Mr. Simmons.  
21 I think he is one of the most astute men in law today, that  
22 has for so many years been in water, et cetera, and his  
23 testimony was very important to hear that today, along with  
24 Dr. Cook, and others.

25           So, with that we will move on.

1           The maker and seconder are asking for a "Yes"  
2 vote, and Clerk, would you call the roll, please.

3           **SECRETARY MILLER:** Commissioner Achadjian?

4           **COMMISSIONER ACHADJIAN:** Yes.

5           **SECRETARY MILLER:** Commissioner Blank?

6           **COMMISSIONER BLANK:** Yes.

7           **SECRETARY MILLER:** Commissioner Burke?

8           **COMMISSIONER BURKE:** Yes.

9           **SECRETARY MILLER:** Commissioner Lowenthal?

10          **COMMISSIONER LOWENTHAL:** Yes.

11          **SECRETARY MILLER:** Commissioner Hueso?

12          **COMMISSIONER HUESO:** Yes.

13          **SECRETARY MILLER:** Commissioner Kram?

14          **COMMISSIONER KRAM:** Yes.

15          **SECRETARY MILLER:** Commissioner Neely?

16          **VICE CHAIR NEELY:** Yes.

17          **SECRETARY MILLER:** Commissioner Potter?

18          **COMMISSIONER POTTER:** Aye.

19          **SECRETARY MILLER:** Commissioner Reilly?

20          **COMMISSIONER REILLY:** Yes.

21          **SECRETARY MILLER:** Commissioner Shallenberger?

22          **COMMISSIONER SHALLENBERGER:** No.

23          **SECRETARY MILLER:** Commissioner Wan?

24          **COMMISSIONER WAN:** No.

25          **SECRETARY MILLER:** Chairman Kruer?

1 CHAIR KRUER: Yes.

2 SECRETARY MILLER: Ten, two.

3 CHAIR KRUER: Ten, two, the motion passes, and the  
4 Commission hereby finds that the Compliance Plan entitled  
5 Carlsbad Seawater Desal Plant Energy Minimization and  
6 Greenhouse Gas Reduction Plan, prepared and submitted by the  
7 permittee, Poseidon Resources, Channelside, LLC, dated August  
8 6, 2008, is adequate and fully implemented to comply with the  
9 Special Condition 10 of the Coastal Development Permit  
10 E-06-013.

11 We are going to take a break now, a 10-minute  
12 break.

13 [ Recess &

14 Item No. 5.b. Condition Compliance

15 Marine Life Mitigation Plan ]

16 CHAIR KRUER: Is everybody ready to go? Director  
17 Douglas, are you all set? Okay.

18 EXECUTIVE DIRECTOR DOUGLAS: We are ready to  
19 proceed, Mr. Chairman, if you are.

20 CHAIR KRUER: And, that is what we are going to  
21 do, Director Douglas, go to 5.b.

22 EXECUTIVE DIRECTOR DOUGLAS: Tom.

23 ENVIRONMENTAL SPECIALIST LUSTER: Okay, thank you,  
24 Chair Kruer and Commissioners. This next item is Condition  
25 Compliance report for Poseidon Resources proposed Marine Life

1 Mitigation Plan.

2 Staff has been working since November with  
3 Poseidon, several agencies, and the Commission's scientific  
4 experts to develop an acceptable plan.

5 Poseidon's most recent plan is attached as Exhibit  
6 1 to your staff report, and staff is recommending you  
7 approved the plan as modified in the staff report, and in the  
8 addendum, which you received from staff last night, or this  
9 morning. The addendum also includes correspondence received  
10 regarding the plan.

11 I'll first briefly describe some key elements of  
12 Poseidon's proposed plan, then staff's recommendations and  
13 reasons for those recommendations, and then address some of  
14 Poseidon's concerns.

15 Again, staff believes, with our recommended  
16 modifications, Poseidon's plan would conform to Special  
17 Condition 8, and would be consistent with the Commission's  
18 findings.

19 The Special Condition requires Poseidon to develop  
20 a plan that would emphasize creation, enhancement, or  
21 restoration of marine habitat. The plan was to be based on  
22 results of an entrainment study Poseidon conducted in 2004  
23 and 2005, in which Poseidon provided the staff in March of  
24 this year. It was also to identify specific goals, criteria,  
25 performance standards, and other measures at proposed

1 mitigation sites.

2           Until recently, Poseidon was proposing to do most  
3 of its mitigations at the San Dieguito Lagoon here in San  
4 Diego County, at a site adjacent to the restoration site  
5 Southern California Edison is implementing pursuant to its  
6 Coastal Development Permit for the San Onofre Nuclear  
7 Generating Station.

8           You may recall the discussion at the November  
9 hearing about the standards that the Commission had  
10 established for that project, and the staff has recommended  
11 to Poseidon that it include those standards in its proposed.  
12 Those standards, which staff modified to match Poseidon's  
13 situation are in Exhibit 2 of the staff report.

14           Recently, however, Poseidon has proposed more of a  
15 process to develop mitigation. Its plan now proposes to  
16 provide estuarine restoration at one or two sites somewhere in  
17 the Southern California bite. Poseidon would select these  
18 sites and conduct the necessary CEQA review over the next  
19 couple of years, and would return to the Commission with a  
20 new Coastal Development Permit application to implement the  
21 proposed project.

22           Poseidon is also proposing a phased mitigation  
23 approach, in which it would provide some mitigation through  
24 the process just described, and would then consider  
25 additional mitigation at some future date, depending on

1 potential changes in policy that might reduce the  
2 desalination facility's entrainment impacts, or based on  
3 changes in how the co-located power plan operates.

4 Poseidon wishes to also seek credit for taking on  
5 the dredging activities now conducted by the power plant  
6 owner that are needed to maintain the water intake channel  
7 for both facilities.

8 As noted earlier, staff has consulted with other  
9 agencies to evaluate Poseidon's proposal, and has worked with  
10 the Commission's scientific experts to better identify the  
11 impacts resulting from the project, and the type and amount  
12 of mitigation needed to address these impacts.

13 We worked with the Commission's science advisory  
14 panel, which the Commission charged with overseeing  
15 implementation of the SONGS restoration project at San  
16 Dieguito. Dr. Pete Raimondi of that panel is here today, and  
17 will provide a brief presentation on his findings regarding  
18 impacts and mitigations.

19 Even with this coordination, there are some key  
20 differences between Poseidon's proposed plan, and the  
21 elements staff recommends the Commission include as part of  
22 the plan. They include the amount of the mitigation needed  
23 to adequately address outside impacts and concerns about the  
24 proposed phased approach.

25 Regarding the amount of mitigation Poseidon has



1 proposed to initially create 37 acres of wetland restoration,  
2 with possible future mitigation to follow, based on staff's  
3 consultation with the Commission's scientists, and through  
4 concurrence with staff in other agencies, including State  
5 Lands Commission, California Department of Fish and Game,  
6 U.S. Fish and Wildlife Service, the National Marine Fisheries  
7 Service, we are recommending Poseidon restore between about  
8 55 and 68 acres of estuarine habitat.

9 This acreage range is based on what Poseidon's  
10 entrainment study identified as impacts that would be caused  
11 by the desalination facility's use of 304 million gallons per  
12 day of water from Aqua Hedionda. This impact also served as  
13 the basis for the Commission's conclusions in its findings.

14 These acreage figures represent a departure from  
15 how the Commission has determined needed mitigation in the  
16 past, and we have asked Dr. Raimondi, as part of his  
17 presentation, to describe how these various acreage levels  
18 were derived.

19 Generally, the Commission requires mitigation at  
20 various ratios to the identified impact, for example 2:1, or  
21 3:1. However, staff's recommendation today, essentially  
22 trades the need for higher ratio for more certainty about the  
23 success of the mitigation; that is, if combined with the  
24 appropriate design and construction methods adequate  
25 performance standards, and thorough monitoring less

1 mitigation acreage may be able to provide the necessary level  
2 of mitigation to address the impacts.

3 We note that the addendum includes a change to the  
4 staff report that clarifies part of Dr. Raimondi's review,  
5 and in which it shows Poseidon's study resulted in an even  
6 higher acreage level than those Dr. Raimondi calculated. We  
7 should also note that you received another analysis in your  
8 packet yesterday, or this morning, which describes a method  
9 Surfrider identifies as resulting in a 138-acre mitigation  
10 level. Staff believes you will hear from both Poseidon and  
11 Surfrider a little later today, about their proposed ranges.

12 And, I do have one slide, just as an illustration  
13 of the acreage ranges that staff is presenting today.

14 This should just give you an idea of the different  
15 positions by Poseidon, staff, Surfrider, and also illustrates  
16 the acreage that would be required if the Commission were to  
17 require 2:1 or 3:1 mitigation.

18 [ Poor Quality Slide ]

19 But, perhaps we will skip that.

20 EXECUTIVE DIRECTOR DOUGLAS: Actually, our  
21 explanation is much clearer than that slide.

22 [ slide ]

23 ENVIRONMENTAL SPECIALIST LUSTER: Okay, there we  
24 go, that was it. That just gives an idea of what you will be  
25 hearing about this evening.

1           Poseidon's lesser mitigation amount also relies  
2 upon a phased approach, which staff believes would not  
3 provide the Commission assurance of the facility's impacts  
4 are adequately mitigated in conformity to Coastal Act  
5 policies. Poseidon suggests that the Commission not require  
6 full mitigation at this time, based on speculative future  
7 operations of the co-located power plant, which is expected  
8 to operate sporadically over the next few years, until its  
9 expected retirement in 2017.

10           As noted a moment ago, the Commission's review is  
11 based on the impacts caused by Poseidon's use of just over  
12 300,000 million gallon per day of estuarine water, which is  
13 expected to continue for up to 90 years; therefore, even if  
14 the power plant does operate at times during the next few  
15 years, it would use only a small percentage of the water, and  
16 cause a small percent of the impacts that are expected from  
17 the desalination facility, as illustrated by Poseidon's  
18 entrainment study.

19           Poseidon also bases its phased mitigation proposal  
20 on the possibility of future technological changes that would  
21 reduce its entrainment impacts. Again, staff regards this as  
22 speculative and not adequate reason to reduce the necessary  
23 mitigation level. We note that all of the technologies  
24 considered over the past several decades, such as screens,  
25 flow diverters, and others, none have been effective for

1 reducing entrainment in the marine environment.

2 Further, Poseidon has already required through its  
3 NPDES permit to use all feasible technologies to reduce its  
4 entrainment impacts, both now and in the future. If there is  
5 a need for such a device, Poseidon would need to submit  
6 either a new Coastal Development Permit application, or an  
7 application for an amendment, and any mitigation changes  
8 could be properly addressed at that time.

9 I'll now ask Dr. Raimondi to provide his  
10 presentation on this entrainment study and mitigation, and  
11 his review of those issues.

12 MR. RAIMONDI: Could I get my slides up, please.

13 [ Slide Presentation ]

14 I am here today to talk about numbers, really.  
15 And, what I have done for the Coastal Commission as part of  
16 the Scientific Advisory Team for the Coastal Commission is I  
17 did a review of the Marine Life Mitigation Plan, and in  
18 particular I looked at their assessment of impacts, using the  
19 approach that they used.

20 So, I want to make a few general comments, first.  
21 The first was that the review was of the proposal submitted  
22 by Poseidon. We didn't do anything new here. What we did is  
23 we evaluated the proposal and the numbers that Poseidon  
24 submitted, so it is based upon their studies. There are  
25 other types of work that could be done, we didn't explore any

1 of those issues.

2 Secondly, this study is designed for entrainment  
3 sampling, including historic water sampling, as consistent  
4 with the recent entrainment studies under the 316B Rule,  
5 which is the NEPA standards that apply here. In fact, it was  
6 a very well done study. This is characteristic of Tenera  
7 International, which did the work, and that work was done  
8 very well.

9 Calculations of these terms, which I am going to  
10 explain later on, but these are proportional: mortality,  
11 source water body, and area of production forgone -- which is  
12 a term which is going to be of importance later on -- are  
13 generally consistent with recent studies; however, I made  
14 additional calculations to incorporate the uncertainty  
15 associated with the calculation of acreage required to  
16 compensate for entrainment. These are completely consistent  
17 with the standard statistical approaches. There is nothing  
18 new there. I am not making anything up here. These are  
19 standard statistical approaches.

20 And, finally, in the report there was no  
21 mitigation that was proposed for losses of larvae to open  
22 water habitat. Those are species that are open water species  
23 and in there the areas of production foregone is small, but  
24 not at zero, but I also included those species into the model  
25 that does add to the acreage.

1           So, here are the major issues, and I am going to  
2 go over them pretty briefly. The use of uncertainty in the  
3 estimation of the area of production foregone, that is the  
4 key issue in front of us here. So, I want to go over three  
5 things. I want to go over what is the area of production  
6 foregone, what does it mean? It is a pretty simply premise,  
7 really, once you understand the terms in it.

8           Secondly, how do you use that to calculate the  
9 appropriate mitigation? and third, how does uncertainty  
10 provide a context for the likelihood that you will actually  
11 get full compensation for the impacts? because that is what  
12 we want. We want full compensation for the impacts.

13           And, so first I always do this. I want to explain  
14 what is entrainment, because you have got to understand  
15 entrainment before you can get to any of these impact  
16 assessments.

17           So, this is entrainment, and I usually do this in  
18 the context of power plants, so I have changed it for desal  
19 plants, and the idea here is that fish and other organisms  
20 are entrained -- which means they are brought in from, in  
21 this case an estuary, and they are brought into the plant,  
22 and usually there is going to be a screen that sort of  
23 screens out all of the big things. Those big things that are  
24 impinged on that screen and then deposited -- usually, they  
25 are killed -- are called impinged. We are not talking about

1 this today. We are talking about the things that make it  
2 through that first set of screens, and these are typically  
3 larvae or other papery gills, could be eggs, larvae, and they  
4 go through these screens, and they go into -- in this case --  
5 the desal operation, and they are considered to be killed as  
6 a result of the operation, so there are many reasons why they  
7 are considered to be killed.

8 And, then they go out with either the mixed water  
9 in a co-located plant, which is a plant that is co-located  
10 with a power generating facility, or if it is by itself they  
11 go out in brine, which would be water that is elevated above  
12 the receiving water.

13 Well, once the area of production is foregone --  
14 this is a key slide here, so we are going to walk through  
15 this. The area of production foregone is the product of two  
16 terms. The first term is proportional mortality, and that  
17 term just refers to the proportion of vulnerable larvae that  
18 is lost to entrainment. So, as an example, 20 percent --  
19 that is could be a number that could be confused -- 20  
20 percent of vulnerable larvae are lost due to entrainment.

21 The second one is the source water body, and that  
22 is the area from which the larvae could have originated.  
23 Most of the time today, we are going to be talking about Aqua  
24 Hedionda Lagoon, in there there is about 302 acres from which  
25 these larvae could have arisen. So, in this example, for

1 gobies, these are real numbers, the source water body is 302  
2 acres, that is the area of Aqua Hedionda, and the  
3 proportional mortality of .216, which is 21.6 percent, and  
4 that means, very simply, that 21 percent, or 21.6 percent of  
5 the larvae in Aqua Hedionda Lagoon, that were gobies, are  
6 lost due to entrainment, that is what it means.

7 All right, now, how do you use this? Well, we  
8 usually multiply it. We say there are 300 acres. We  
9 multiply it by .216 and we come up with this acreage, which  
10 is about 65 acres, and this says that 65 new acres, if you  
11 restored 65 new acres, and they had the same habitat mix in  
12 the source water body, Aqua Hedionda, you would then produce  
13 larvae sufficient to make up for those lost gobies, that  
14 particular species -- pretty straight forward.

15 The problem is we can't make this assessment for  
16 all of the species that are lost; therefore, we must estimate  
17 the acreage that would compensate for the impacts to the  
18 threatened species, and the by products of such estimation is  
19 uncertain, because you can't do it for all of them. That is  
20 the nature of the impact assessment, that you can't do it for  
21 all of them.

22 So, this is the problem. This is the inverse  
23 triangle in entrainment assessments. You have got this light  
24 blue, which is the species that are entrained. You have got  
25 the dark blue, which are the species that are actually



1 sampled in the entrainment sampling. It is a much smaller  
2 triangle. And, then, you have got this red, which is the  
3 species for which impacts are actually assessed.

4 So, if you go up from here, these are the species  
5 for which you do the assessment, the impact assessment, these  
6 are the ones you actually sample, and these are the ones that  
7 are left unsampled and unassessed. And, we have to go from  
8 this red to the blue in estimating the impacts to the whole  
9 system. That is the key thing. We want the impact the  
10 assessments, the impacts for the whole system.

11 And, so the goal is to use information from the  
12 species for which impacts were assessed -- the red guys -- to  
13 estimate the overall impacts of entrainment, and to estimate  
14 the mitigation that would be compensatory for the whole  
15 triangle, the whole thing, light blue, dark blue, red.

16 All right, here at Aqua Hedionda, I said that I  
17 think they did a really nice job, completely consistent with  
18 other entrainment studies in there., We don't know the  
19 number of species that were entrained, because you don't  
20 sample them all. There were at least 40 types fish that were  
21 entrained and sampled. Three base species of fish were  
22 assessed for impacts, five coastal species of fish were  
23 assessed for impacts, so in this case 8 out of the 40 fish  
24 species, and only one species of an invertebrate, cancer  
25 crabs, were sampled for entrainment, and we didn't use that

1 for an estimation of impacts. So, this is a list.

2 Let's go back to this inverse triangle. So, we go  
3 over here, and I have a new part over here: numbers  
4 entrained. So, how many -- there were 3.4 to 4.5 billion  
5 larvae per year that are lost due to entrainment, 4 of the  
6 species that were sampled -- that is our clue part. We don't  
7 know. I mean, we want to use this information, especially  
8 the information in the red, to estimate the impacts to all of  
9 the other stock that hasn't been sampled.

10 This is not new stuff. This is exactly what you  
11 do with samplings here, and this is why you do samples in the  
12 field, is you take a few samples, and you extrapolate it into  
13 the population at large, so when you do that there will be  
14 uncertainty in your estimation. That is what we want to  
15 incorporate here. That is all that we want to do, is to  
16 incorporate that level uncertainty.

17 So, this is the key question here, what is the  
18 size of the impact? we can use estimation to get to that.  
19 What acreage would be compensatory for that impact? how  
20 confident do you want to be in that assessment? Those are  
21 the three questions I want to address here.

22 So, there were 3 species that were sampled, and  
23 one of them were blennies, the proportional mortality there  
24 was 8.6 percent of blennies in the lagoon were lost, and that  
25 would lead to a restoration of 26 acres. Gobies, 65 acres of

1 compensation: garibaldis, 20 acres of compensation.

2 Now, here are some scenarios. The first scenario  
3 is that you can be completely precautionary, you choose the  
4 maximum, 55.23 acres, and if you do that you know everything  
5 is going to be covered, because that is the maximum value you  
6 have got there. You might think that is overdoing it,  
7 because that is the maximum value, not the average, not some  
8 sort of estimate of it.

9 Second, you could weigh the risk of over  
10 estimation, which is providing excess habitat, and under  
11 estimation, providing too little habitat, equally. Many  
12 choose the average. That is what Poseidon did, they chose  
13 the average. That is about 37 acres.

14 The third thing you could do -- and this is what I  
15 am going to talk about now -- you could use what we call  
16 confidence intervals, which is just a statistical tool to  
17 guide the assessment. And, this is a policy decision. You  
18 select the acreage that reflects the desired degree of  
19 certainty that the mitigation requirements will completely  
20 compensate for the impact. So, this graph here is an example  
21 of that.

22 I am going to walk you through it. This is  
23 mitigation acres on the x-axis here. This is the likelihood  
24 that you are going to get complete compensation, all right.  
25 So, if you want to have a 50 percent likelihood that you are

1 going to get complete compensation, choose the average. If  
2 you wanted 80 percent likelihood that you are going to get  
3 complete compensation, go 49 acres. If you want a 95 percent  
4 likelihood that you are going to get complete compensation,  
5 go 61 acres. The 95 percent confidence intervals is typical  
6 what is used in non-mitigation type work, in traditional  
7 science, and I wanted to give you the range.

8 The key thing is, what do you guys want? what is  
9 wanted by the public, and by the Commission? in terms of the  
10 confidence that you are going to get complete compensation  
11 for the impacts?

12 So, here are the results for the bay esturane  
13 species, and ours is not the only model that you can use to  
14 calculate confidence intervals. The CCC staff, the model that  
15 I am presenting, ends up with this level of acreage for these  
16 different confidence intervals: 37, 49 and 61.

17 There are also error rates that are associated  
18 with the Poseidon report, itself. They calculate error  
19 rates, themselves. And, if we use the error rates that were  
20 in the Poseidon document, they do the same thing, they  
21 calculate the 50 percent confidence interval, the 80 percent  
22 confidence interval, the 95 percent confidence interval, then  
23 when we get a 37 to say -- if you only want a 50 percent  
24 likely you are going to get full compensation, 87 acres would  
25 be required using these data, allowing for 80 percent.

1 confidence, and 133 acres would be required if you wanted to  
2 get the 95 percent confidence interval.

3 I have to say I have reviewed this with the Tenera  
4 scientists. I don't think that these are the correct error  
5 rates. I am presenting them just as the documents, that  
6 there are error rates in that document, in the Poseidon  
7 documents, and if you use them these are the numbers you can  
8 come up with. I think they overestimate the acreage.

9 There is a separate model. It is completely  
10 different from the approach we took, that was done by Stratus  
11 Consulting, and I think they are going to talk about it later  
12 on about single species gobis, and that yielded an estimate  
13 of 138 acres.

14 So, what are the assumptions here? the assumption  
15 is that the restored acres, if you did the restoration, and  
16 you did it correctly, it would have to have a similar habit  
17 mix as at Aqua Hedionda, because that is where the impact  
18 occurs. This would produce larvae sufficient to make up for  
19 those lost to entrainment, and the key thing here is it  
20 works. The restoration works. Just getting the estimation  
21 right doesn't mean it is going to work. You are going to do  
22 the test, the construction, all sorts of things go on there,  
23 and then the mitigations and restorations don't always work.  
24 And, this could be insured by monitoring, or the possibility  
25 of remediation, which is exactly what it has been held to in

1 the SONGS requirements.

2 So, as I said earlier, there are these other  
3 species, coastal species -- you remember coastal species --  
4 using the same approach, I am just going to cut to the chase.  
5 This is what we end up with. Based upon the CCC model is the  
6 only one that has a 60 percent likelihood of getting full  
7 compensation so you choose 42 acres. If you want 80 percent  
8 likelihood of getting full compensation, you would choose 55  
9 acres, and if you want 95 percent you would use 68 acres, and  
10 again, using the error rates presented in the Poseidon  
11 document, it would be 42, 100, 156.

12 So, I hope that helps you understand how these  
13 calculations arose, and what is meant by using uncertainty as  
14 a guide to acreage that might be necessary.

15 CHAIR KRUEER: Thank you.

16 Staff.

17 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, Mr.  
18 Raimondi.

19 One other point staff should address is Poseidon's  
20 statement that its 37-acre mitigation acreage is consistent  
21 with the methodology used by the California Energy Commission  
22 to determine mitigation requirements at various power plants  
23 that use intakes similar to Poseidon's.

24 These power plants use the same sort of study that  
25 Dr. Raimondi just referred to, the entrainment studies, and

1 although the Energy Commission, and other agencies, including  
2 the Regional Board, the Coastal Commission, Fish and Game,  
3 USEPA, all agree on the types of protocols used for those  
4 studies, there is no consistent methodology for determining  
5 how much mitigation has been needed at the various power  
6 plants.

7 So, the studies are all done very similarly,  
8 determining the mitigation has varied case by case and site  
9 specific, and it has ranged from requiring creation of  
10 estuarine habitat to providing upland protection, to enhance  
11 certain water quality improvements, and it has been different  
12 for each power plant. So, there is really no single  
13 methodology that we can look to, as Poseidon states.

14 Further, in each case, during the past decade the  
15 Commission, in reviewing the consistency of the various power  
16 plant projects with the Coastal Act has identified the need  
17 for more mitigations than the Energy Commission identified as  
18 necessary under the *Warren Alquist Act*.

19 So, I will close now by stating that staff's  
20 recommendation of 55 to 68 acres of wetland mitigation is  
21 based on the impacts identified in Poseidon's study, and does  
22 not rely on future speculative developments. Staff believes  
23 this level of mitigation, combined with conditions based on  
24 those the Commission required of Edison for its San Dieguito  
25 Restoration Project, is both necessary and appropriate to

1 insure conformity with the special condition, and to be  
2 consistent with the Commission's findings and relevant  
3 Coastal Act policies.

4 With that, I'll close, and be available for your  
5 questions.

6 CHAIR KRUER: Thank you, sir, thank you for your  
7 presentation.

8 Ex partes, and again, Commissioners, if they are  
9 on file, or just use what was previously stated.

10 COMMISSIONER HUESO: Mine are the same as before.

11 CHAIR KRUER: Thank you.

12 Commissioner Lowenthal.

13 COMMISSIONER LOWENTHAL: Same.

14 CHAIR KRUER: Okay.

15 Vice Chair Neely.

16 VICE CHAIR NEELY: Mine are on file.

17 CHAIR KRUER: Mine are on file, plus the one I  
18 stated on August 1st in the previous 5.a.

19 Commissioner Wan, anything?

20 COMMISSIONER WAN: No.

21 COMMISSIONER REILLY: Mine are on file, Mr.

22 Chairman.

23 COMMISSIONER POTTER: Same as previously.

24 CHAIR KRUER: Commissioner Achadjian.

25 COMMISSIONER ACHADJIAN: Same as this morning.



1 CHAIR KRUER: Thank you, Commissioner Achadjian.  
2 Commissioner Blank.

3 COMMISSIONER BLANK: Same.

4 COMMISSIONER KRAM: Same as this morning.

5 CHAIR KRUER: Thank you, Commissioner Kram.  
6 Commissioner Burke.

7 COMMISSIONER BURKE: Last night I had a brief ex  
8 parte with Susan McCabe and the applicant, and they discussed  
9 the issues of mitigation with me.

10 CHAIR KRUER: Okay, thank you.  
11 Commissioner Scarborough.

12 COMMISSIONER SCARBOROUGH: Gave it this morning.

13 CHAIR KRUER: Okay, thank you.

14 And with that we will open the public hearing, and  
15 we will go to Mr. Zbur, or Peter MacLaggan, which one wants  
16 to come up, and how much time, sir, are you requesting on  
17 this item?

18 MR. MAC LAGGAN: Ten minutes, please, Mr.  
19 Chairman.

20 CHAIR KRUER: And, how much for rebuttal.

21 MR. MAC LAGGAN: Five minutes, please.

22 CHAIR KRUER: Okay, 10 and 5 it is.

23 MR. MAC LAGGAN: We have a presentation, if you  
24 would bring that up.

25 Thank you, Mr. Chairman, Commissioners. My notes

1 here say good morning, so I guess I owe you a debt of  
2 gratitude and thanks for your time today.

3 We are here to speak to you about Poseidon's  
4 proposed Marine Life Mitigation Plan that was submitted to  
5 satisfy Special Condition 8. We submitted the letter to the  
6 Commissioner that includes -- on the pink form this time --  
7 includes the form of a motion, which would allow you to adopt  
8 Poseidon's plan. Attached to that letter is the version of  
9 the plan Poseidon seeks approval of today, copied on that  
10 pink copy.

11 The plan was developed in conjunction with and  
12 incorporates input from multiple state and regional agencies  
13 since the submission of the plan last fall. Poseidon has  
14 worked closely with your staff to address a number of staff's  
15 concerns, and these discussions lead to a number of agreed  
16 upon modifications to the plan, which are listed in the  
17 attachment to our August 2 response to the staff report;  
18 however, there are 4 areas of disagreement that remain  
19 between Poseidon and the proposed staff recommendations and  
20 modifications to the plan, thus Poseidon is recommending that  
21 the Commission adopt the plan, but not adopt staff's  
22 recommended modifications.

23 Moving into the presentation, let me start by  
24 reminding you of how we got here. We certified -- or the  
25 City of Carlsbad, I should say, certified an Environmental

1 Impact Report for the entrainment and impingement impacts.  
2 Unlike our existing water supply, we found that there were no  
3 threatened and endangered species, and commercial or sports  
4 fishing impacted by the project represented less than 1  
5 percent of the total.

6 Aqua Hedionda Lagoon, today, is thriving, and it  
7 is thriving under extraction conditions that are roughly  
8 double that that would exist under the stand alone desal  
9 plant, so our expectations are that conditions would only get  
10 better as we move from co-located operations to a joint  
11 operation with the power plant.

12 The proposed Marine Life Mitigation Plan,  
13 therefore, is not to mitigate for impacts that were found  
14 significant under CEQA, but to comply with the Coastal Act  
15 goal to maintain, restore, and enhance coastal resources.

16 This next slide gives you a perspective of the  
17 difference between the two plans, that proposed by your  
18 staff, and that proposed by Poseidon. Poseidon is proposing  
19 to restore 42.5 acres of marine wetlands. We are seeking  
20 phased implementation, phased implementation that would  
21 provide 37 acres up front, and 5.5 after the power plant is  
22 retired. We think the phased implementation will encourage  
23 the use of new technology to avoid impacts, and therefore it  
24 is good public policy.

25 We are also requesting the opportunity to have

1 considered at a future date, when we go to phase 2, the  
2 restoration and environmental benefits associated with  
3 Poseidon taking on the stewardship of the Aqua Hedionda  
4 Lagoon. That, of course, would be at the Commission's  
5 discretion. The staff recommendation, as you just heard, is  
6 for 55.4 to 68.2 acres, no accommodation for phasing, no  
7 encouragement of new technology, no dredging credits,  
8 recommended from staff.

9 The restoration area of 42.5 acres, as you just  
10 heard from Mr. Raimondi, the very conservative estimate of  
11 the area needed to address the impacts associated with the  
12 project, and I just wanted to bring out one key point that  
13 has been lost in this whole discussion, and that is the fact  
14 that two-thirds of the water that will be used at the  
15 desalination plant will never go through the facility. It is  
16 dissolution water for the concentrated seawater leaving the  
17 plant, and once we dis-locate from the power plant, that is  
18 the power plant shuts down, we are then simply lifting out  
19 water from where I am standing to where you are standing, and  
20 the assumption is that the vast majority of the organisms in  
21 that water will survive.

22 The assumption that got us to staff's recommend-  
23 ation before you today is that there is 100 mortality. We  
24 can't prove that there is survival until the plant is  
25 operating, and they can't prove there isn't, so the default

1 is to assume the worst case scenario, 100 percent mortality,  
2 and that is how you get to 50, and we think that is how you  
3 get to 42.5 acres. That is how staff also got to their  
4 recommended acreage.

5 Dr. Raimondi confirmed that Poseidon's methodology  
6 is consistent with that used by the CEC. Staff just told you  
7 that there has been a wide array of outcomes to that process.  
8 We were directed by staff to follow that process over a year  
9 ago, and we did so, to the letter of what has been done in  
10 the past, and low and behold when we got it done, there was  
11 the request for more acreage.

12 The analogous, the Coastal Commission decisions  
13 that follow right down the line that we are recommending  
14 before you today are the Moss Landing Power Plant, and the  
15 Morro Bay Power Plant projects. Staff's proposal for 55.4 to  
16 68.2 acres is unprecedented, and it is inconsistent with any  
17 previous CEC mitigation plans, in terms of the approach that  
18 was just described.

19 Dr. Raimondi talked about the glass that is half  
20 full situation, where you have a 50 percent chance of under-  
21 mitigating using the mean as your choice of where you place  
22 yourself on the curve. He described you also have a 50  
23 percent of over-mitigating, and that is precisely why they  
24 picked that point on the curve, because it is more likely  
25 than not you are going to be right. If you go higher on the

1 curve, you are more likely than not that you going to be  
2 right, but you are also more rightly than not to over  
3 estimate, so this is why 50 percent has been the standard  
4 used by CEC in the past.

5 Poseidon is proposing phased mitigation, and we  
6 are doing so because we think it provides us an opportunity  
7 to confirm that the actual impacts are less than demonstrated  
8 in the projection that is before you in the entrainment  
9 study. We will have an operating system, and we will fully  
10 mitigate that operating system while we operate together with  
11 the power plant, but it will also be incentivised to  
12 everything we can once that power plant shuts down, to  
13 minimize those impacts, and protect those marine organisms.

14 Therefore, we are proposing 37 acres going to the  
15 ground right up front, when the project starts construction,  
16 and that will fully mitigate the impacts while the power  
17 plant continues to operate. In fact, if we were operating  
18 during the past 6 months, we would have found that we are  
19 more than 2.5 times over mitigated with that 37 acres, while  
20 the power plant continued to operate, because in the last 6  
21 months, the power plant would have provided 75 percent of our  
22 water.

23 The project will continue to be fully mitigated  
24 until the power plant no long provides at least 13 percent of  
25 the water we need. Staff just suggested, that if Poseidon

1 wants to get some relaxation to the mitigation requirement,  
2 we can come back and prove it to them, and seek a permit  
3 amendment, but by the time we prove it to you, the plant will  
4 have been built, the mitigation restoration will have been  
5 built, there is nothing for us to avoid, and nothing to  
6 incentivise us to conduct a study and look at the  
7 technologies to avoid the impacts. We have already spent the  
8 money, the restoration is in the ground, because they are  
9 asking that it all go in up front. We think phasing is a  
10 tremendous public policy benefit, and would incentivise  
11 Poseidon to look at every opportunity to save fish, rather  
12 than mitigate after the fact.

13           Moving onto Phase 2 Mitigation. Phase 2 is  
14 triggered when the power plant is decommissioned, or provides  
15 less than 15 percent of the project's water. Under Phase 2,  
16 Poseidon would provide 5.5 acres of additional mitigation,  
17 unless those new studies that I was referring to can  
18 demonstrate to the satisfaction of the Commission, that the  
19 impacts are lower than expected, or that we can deploy  
20 state-of-the-art technology that is implemented to reduce the  
21 impacts, such as the low impacts pumps I talked about, when  
22 the power plant will no longer be operating, and we will no  
23 longer have to go through their mechanical equipment to get  
24 our water, so we can just lift the pump from where I stand to  
25 where you sit, and we think we can do so in a very sensitive

1 manner, and protect a lot of species, and save some money on  
2 mitigation because we are incentivised to do so.

3 The phased implementation, from our perspective is  
4 a good public policy, it will incentivise Poseidon to  
5 maximize opportunity to avoid impacts.

6 Now, how is it enforced? not only does the  
7 Commission have enforcement authority through your permit  
8 condition, so it is speculative of whether or not we are  
9 going to do Phase 2 mitigation, it will be a condition of our  
10 permit, and if we don't do it, you have the ability to  
11 require us to discontinue operations of the desal plant.

12 Additionally, the State Lands Commission, in its  
13 proposed lease, as was last presented to us, had a require-  
14 ment that there will be a new environmental assessment,  
15 essentially, new entrainment studies, upon the decommission-  
16 ing of the power plant, or within 10 years of startup of our  
17 operation, it will reassess all of the actual ongoing impacts  
18 and assess opportunities for new technology to minimize those  
19 impacts, and the Lands Commission has reserved the right to  
20 order us to implement that technology.

21 Similarly, the Regional Board permit, our  
22 discharge permit, has a provision within that permit that  
23 says when the power plant ceases to operate our permit is  
24 reopened and they can require implementation of best  
25 technology at that time.



1           Last point I wanted to make, with respect to the  
2 dredging credit. We find that this is consistent with past  
3 Commission decisions. You have allowed this in the case of  
4 the SONGS project. The Commission may decide at a later  
5 date, we are not asking you to decide today, but to leave the  
6 door open to decide at a later date whether dredging should  
7 entitle Poseidon to a restoration credit. That credit would  
8 recognize environmental benefits to Aqua Hedionda Lagoon;  
9 specifically, we would be preventing the closure of the  
10 lagoon, that would surely result in the absence of somebody  
11 dredging that lagoon, and result to significant impacts to  
12 over 300 acres of coastal resources.

13           Secondly, sand dredged from the lagoon will be  
14 used to maintain, restore, and enhance habitat for grunions  
15 spawning, and public access to the beaches in Carlsbad.

16           In closing, Mr. Chairman, we request the  
17 Commission approve Poseidon's version of the Marine Life  
18 Mitigation Plan.

19           Thank you, very much.

20           **CHAIR KRUER:** Thank you.

21           With that, and then we will move to Marco  
22 Gonzalez, for the organized opposition. Mr. Gonzalez, how  
23 much time are you requesting, sir.

24           **MR. GONZALEZ:** Since we will not have rebuttal  
25 time, we are asking for 20 minutes. We believe we will be

1 able to get it within the 15 that the applicant is  
2 requesting, but given the gravity of this, and given that we  
3 have brought out an expert, we would like the full 20.

4 CHAIR KRUER: That's fine, sir, we will give it to  
5 you.

6 MR. GONZALEZ: Thank you, Mr. Chair, Marco  
7 Gonzalez, Coast Law Group, on behalf of the Surfrider  
8 Foundation, and San Diego Coast Keeper.

9 Folks we have had a rain check on reality today,  
10 and throughout this entire process. That's right, a rain  
11 check on reality. We have been pushing this project forward  
12 based on what we believe to be our need for water, not based  
13 on what should be controlling your consideration under the  
14 Coastal Act, and that is science.

15 Three times you have had your staff recommend to  
16 you that you do something three times, and you have decided  
17 to do something entirely different. It is time that we put  
18 aside the simply policy debate over whether we have a  
19 drought, because your charge as the California Coastal  
20 Commission is to consider the impacts of projects just like  
21 this to natural resources. It is about science at this time,  
22 folks. It is not about the public subsidy that we need to  
23 give to somebody to get them water. It is about science.

24 Now, we have brought up an expert to discuss the  
25 very issues that Dr. Raimondi presented to you. Her name is

1 Dr. Liz Strange. Her resume has been attached to the letter  
2 that we delivered to staff yesterday, and made copies for you  
3 this morning. She is nationally renowned for her work on  
4 restoration scaling. She is going to touch on some specific  
5 issues, and then I will sum up with some of the bigger  
6 picture issues.

7 But, you have today, an opportunity that isn't  
8 usually afforded you as a Commission. You have two very well  
9 respected experts on the very issue you are deciding on, Dr.  
10 Raimondi and Dr. Strange.

11 I would encourage you to take advantage of their  
12 presence to ask them questions, to perhaps ask them to engage  
13 with you, together, on answering some of those questions,  
14 because they agree on a lot, and there are specific points  
15 where they diverge, but it really is a unique opportunity.

16 And, so, with that, I will bring up Dr. Strange.

17 **MS. STRANGE:** Thank you, and I welcome the  
18 opportunity to speak before you tonight. Again, my name is  
19 Liz Strange, and just to say a little bit about my back-  
20 ground, I am an environmental scientist, working with a  
21 consulting firm that actually has worked over the last 20  
22 years on restoration, and problems related to scaling  
23 restoration.

24 Scaling restoration is a concept, something that  
25 originated back at the time of Exxon Valdez, when people were

1 faced with the loss of habitat, damage to the services  
2 provided by that habitat, and there was the need to figure  
3 out what do you do to offset that loss. Now, scaling is very  
4 simple in concept. You have got a loss, you need a gain.  
5 You, basically want to have an equation that says the two are  
6 equal. So, in concept is very straightforward thing, but as  
7 with everything, and particularly everything in ecology, the  
8 devil is in the details.

9 And, what I want to talk about here today are some  
10 of those details, both in terms of the data available, and  
11 the uncertainties that Pete has talked about, in terms of  
12 some of those data, and also the methods that we are using to  
13 try and figure out what that equation is.

14 And, rather than talk about specific numbers, or  
15 even details of a particular method, I think it would be  
16 helpful if we kind of step back and really try and think of  
17 this in the simplest possible terms. And, in my mind the  
18 simplest way is to think in terms of buckets. Let's think of  
19 this as the ocean, and I have got a bucket, and I am going to  
20 dip into that bucket, and pull out what is in there.

21 You want to know what is in that bucket. You are  
22 in charge of that bucket, that is your bucket, and you  
23 require somebody to figure out what is in there. You want  
24 them to count the fish, you want them to tell you what fish  
25 they are, you want to know all of the details you can about

1 what is in that bucket, because I've come along, and I've  
2 said I need that bucket. I would like that bucket for  
3 something that I think is going to be very helpful, very  
4 beneficial, so I would like that bucket, and I'll give you  
5 another one in exchange.

6 So, your question is well, what is the bucket you  
7 are going to give me? Is it going to be exactly like the one  
8 you just showed me, and you have given me all of this  
9 information about? That is the bucket, actually, that  
10 Poseidon is talking about, and that Pete is talking about.

11 There has been a lot of detailed work done to  
12 figure out what is in that starting bucket. And, I agree  
13 with Pete, that it is excellent work that has been done. Not  
14 with uncertainty, because that is impossible, and I think,  
15 you know, Pete has talked about some of the ways to address  
16 the uncertainty in figuring out what is within that starting  
17 bucket.

18 But, the point I want to make is that bucket is  
19 just the impact. You still want to know how do you all  
20 accept that, so I am coming along with my bucket, and you  
21 want to know what is in it. Well --

22 [ Voice fades out of hearing range. ]

23 CHAIR KRUEER: Could you come speak into the mike,  
24 please.

25 MS. STRANGE: Okay, whatever is in this bucket

1 over here, you know, just give me what is in there, make it  
2 the same.

3 And, the problem that we have in this case is that  
4 we don't know anything about that other bucket, so we are  
5 trying to infer from this bucket what it might be. Let's say  
6 -- I'll use a percentage. Let's say that what is in this  
7 bucket is 10 percent of the fish that were in this area that  
8 was sampled, and what Pete has point out is that you can  
9 think of that also, in terms of 10 percent of the habitat of  
10 those fish.

11 So, the idea would be let's use that 10 percent,  
12 and go over here and fill our bucket with 10 percent of  
13 whatever is over here. And, it sounds great, and it would be  
14 great if what was over here -- first all we knew what it was,  
15 and secondly it was identical to what is over here.

16 Now, the reality is, first of all, in this  
17 particular proposal, we don't even know what the area is that  
18 we are going to get to be able to dip our bucket in to get an  
19 offset. And, the second thing is, there is almost no cases  
20 or very few habitats exactly the same. They are going to  
21 differ. And, the question is that we are faced with is how  
22 do they differ? are the fish the same? or are they different?  
23 is the quantity of the fish the same? or are all of the  
24 details the same, or not? and, if they are different, what do  
25 we have to do to figure out how to match the bucket over

1 here.

2 Are we going to need two buckets of what's in  
3 here, or is one going to be enough? Those are the kinds of  
4 things that make scaling very complicated.

5 So, the first issue that I want to bring up, in  
6 terms of scaling, and how one goes about scaling, and  
7 interpreting scaling, has to do with this quality issue. Are  
8 the buckets the same, that is the first thing we have to know  
9 about. And, at this point, we don't know, because we know  
10 nothing about the other bucket.

11 The second thing we want to know about is are the  
12 fishes that are in that bucket? can they reproduce there? do  
13 they live there? do they reproduce there? so that we know  
14 next year we are going to have those same fish? Well, we  
15 don't know the answers to that, either.

16 In fact, what we do know, as Pete pointed out, is  
17 that some of those fish probably come in from the ocean, and  
18 are there only on a seasonal, or temporary basis. Do they  
19 reproduce there? what do we know about that? what do we know  
20 about their production?

21 Another thing that was brought out was the  
22 question of whether you use an average, or a maximum? In  
23 restoration scaling, typically, a maximum is chosen, and the  
24 reason for that is, if you can think back to Pete's numbers,  
25 gobi were the dominant loss, and it looked like they would

1 need 65 acres to be recovered, so what happens if you choose  
2 44? what happens to gobis? do we get some of the gobis back?  
3 and if so, is that okay? We don't have the answers to those  
4 things.

5           And, I guess there is one other thing that I would  
6 bring up, in terms of kind of standard approaches to scaling,  
7 has to do with something called discounting. Discounting, I  
8 guess the easiest way for you to think about it -- for those  
9 who like me are not economists -- is you have a certain  
10 amount of money in the bank. Is that money worth more to you  
11 now, than it would be in the future? Would you rather have  
12 your hands on that money now, or is it okay with you if  
13 somebody has that money for 10 years and then gives it to  
14 you? Well, the idea of discounting is that the preference,  
15 usually, is to have the money now.

16           And, so discounting takes the gains into the  
17 future and puts them in terms of a present value, and that is  
18 also something that needs to be accounted for.

19           Another part of discounting has to do with the  
20 restoration, itself. When I snuck over here and pulled my  
21 bucket up, is that all that I need to do? is the restoration  
22 already set to go? is it already producing what I need? In  
23 most cases, no. And, in fact, in terms of the SONGS  
24 mitigation, they estimate it is going to be at least 4 years,  
25 once they start the restoration, until they start to produce



1 -- or actually achieve what they hope to achieve. So,  
2 discounting is another way to take account of that lag.

3 So, what I am trying to bring up here are the  
4 issues of the details and the science. Both in terms of the  
5 data, and the methods, that are still unresolved, and I would  
6 also like to suggest that there are other ways -- there are  
7 ways of getting at the answers to some of those questions.  
8 Also, imperfect, but they may get closer to the answer than  
9 some of the methods we are using right now.

10 I provided one example, which has to do with,  
11 actually thinking not just in terms of the fish that you have  
12 here now today, but what those fish produce, because what you  
13 really want to know is, are you going to have those fish in  
14 the future, and how many of them are you going to have?

15 So, that is the rate of production of those fish,  
16 not just the area they occupy, but the time frame over which  
17 they are producing more fish.

18 But, I don't really want to dwell on the different  
19 methods, so much as I want to make a point about is that  
20 there are different ways of doing this. The science  
21 continues to evolve, and for us to kind of get fixed on one  
22 way of doing this is actually to our disadvantage. At least,  
23 if we want to be certain that what we are getting back is  
24 what we think we are getting back.

25 One of the ways that this is addressed, of course,

1 is through doing monitoring, so that is another thing that is  
2 missing from this plan, is the details about what that  
3 monitoring would be. We need to do the monitoring to know  
4 what, in fact, we are getting back, because we don't know  
5 yet. We have no assurance about it, and then we have no way  
6 of knowing.

7 So, in addition to the point about monitoring, I  
8 think there needs to be more information addressing some of  
9 the things that I have mentioned, in terms of the assumptions  
10 that are inherent, and the method that is being used, and  
11 where there are some limitations in that methodology.

12 And, I guess, finally, what I would say is that  
13 right now we have got a very good assessment of impacts, we  
14 are equating that to restoration, but restoration is not the  
15 same, and in fact, experience has shown that restorations do  
16 not achieve the equivalence of what has been lost, and in  
17 almost all cases.

18 It also depends on what you measure, as to whether  
19 you are actually getting all of the functions of a restored  
20 habitat back. And, in terms of what the habitats are, Pete  
21 has talked in terms of a mix of habitats, and that is  
22 important to get back, because different species have  
23 different habitats that they depend on.

24 But, in the mitigation plan, there is reference  
25 simply to wetland habitat. Well, what does that mean? and is

1 that going to provide the habitat that all of these species  
2 need? We know the gobis need mud flats. How much of this  
3 mitigation plan is addressing that.

4 So, really, that is the purpose of what I am  
5 trying to bring up here, today, is some of these  
6 considerations, that over years of experience, people have  
7 found are important to make with their scaling restorations,  
8 and that in the particular plan that you have before you now,  
9 a lot of these issues aren't being addressed.

10 The standard approach for registration scaling  
11 that my company and others implement are in the peer reviewed  
12 literature. They are available for people to look at, and  
13 people to consider. They have been approved by the courts,  
14 and other cases, and in settlement cases.

15 So, there is precedent beyond what has happened  
16 here previously in California, which is also of importance  
17 and concern.

18 **MR. GONZALEZ:** Just one thing, Marco Gonzalez, for  
19 Surfrider and Coast Keeper, I just want to touch on a couple  
20 of specifics on what Poseidon is asking for here.

21 The Edison precedent, remember that precedent is  
22 30 years old. They didn't have entrainment studies. They  
23 didn't have restoration scaling. They had to start from  
24 scratch.

25 The notion that today we go with all of the

1 knowledge that we have, and say, let's implement a 30-year  
2 old preliminary mitigation plan, that makes no sense. It is  
3 not based on science. It is not based on any kind of good  
4 policy.

5 The notion that all of a sudden, in the last  
6 month, this plan has changed from we are going to San  
7 Dieguito to we are going somewhere between Tijuana and Port  
8 Hueneme? You are telling me that today you, you, as the  
9 Commission, can say 37 acres in Aqua Hedionda is the same as  
10 37 acres in Los Angeles? or 37 acres in San Dieguito? or 37  
11 acres in San Diego? or 37 acres in Tijuana? That is not  
12 appropriate, it does not even pass the smell test. The  
13 buckets aren't the same.

14 They want to use up to 4 different sites to come  
15 up with the 37 acres. It just doesn't make sense. If they  
16 are not going to set a baseline for the place where they are  
17 going to do their restoration, then how do we know how it is  
18 going to change? how do we know it is going to get better?

19 They can't go into a habitat that currently exists  
20 and just protect it. They have to make it better, to the  
21 tune of 37 acres in Aqua Hedionda Lagoon, where now we all  
22 know there isn't 37 acres to restore. There is a fundamental  
23 problem here. Remember it is time to get rid of the rain  
24 check on reality. We have to face the facts and the science.  
25 We need some certainty.

1 Chairman Kruer made some comments earlier on the  
2 Greenhouse Gas Mitigation Plan, that really troubled me,  
3 really troubled me. His comments, quite frankly, were that  
4 we can't impose so much mitigation that it makes this project  
5 infeasible, that it makes it too expensive.

6 Let's go back to last November where there was  
7 really good questions about how in the world is Poseidon, who  
8 we know is going to have to spend about \$1300 to \$1400 maybe  
9 \$1500 an acre foot to make this water, how are they offering  
10 this water to the water districts at the price they currently  
11 pay? They are rolling the dice. They are rolling the dice  
12 on their own dime, on their own investments, but you are  
13 charged with protecting the investment of the people of the  
14 State of California. That is our ecological health. It is  
15 not your job to provide an ecological subsidy to this  
16 project, just so that it pencils out.

17 When you look at their phasing plan, the notion  
18 that at the most they will ever have to do is 5.5 additional  
19 acres over 37. What if they go into the estuary in Tijuana,  
20 and they have to do 50, 60, or 80, or even, like we say 100  
21 and something?

22 They need to write a blank check the same way that  
23 Edison did, because if you are going to do your job under the  
24 Coastal Act you have to insure that when they put something  
25 in the ground, it may not be enough. They have to monitor

1 it. They have to monitor it for a long time. They have to  
2 insure that it works, and if it doesn't they have go do more,  
3 and if that doesn't work, then they have to go do more.

4 And, quite frankly, at the end of the day, it  
5 makes water produced by desalination so expensive because  
6 mitigation for greenhouse gases and for marine life  
7 mitigation just costs so darned much that the water customers  
8 can't handle the costs -- well, folks, we have seen expensive  
9 water ideas in the past. Remember, bags of water from the  
10 Gualala River? remember those knuckleheads who wanted to  
11 bring icebergs down from the arctic circle? Those were  
12 expensive, therefore not feasible.

13 If desalination's time has not come, don't  
14 subsidize it on the backs of the public's resources, that is  
15 not your job. Let Wall Street deal with the risks, the  
16 financial risks of providing a product before its time. But,  
17 frankly, you owe us more. To date, you haven't given us  
18 that.

19 Mr. Hueso, you have made three motions, so far.  
20 Each time you followed it up with, quite frankly, an  
21 embarrassing representation of your knowledge of the project,  
22 and your knowledge of the science. You have hired --

23 **CHAIR KRUEER:** Mr. Gonzalez.

24 **MR. GONZALEZ:** -- as your Coastal Commission staff  
25 and experts who will tell you the science needs to be --

1           **CHAIR KRUER:** Mr. Gonzalez, why don't you stick to  
2 the mitigation plan, and not go back on the whole project.  
3 You are scattering all of us. You are entitled to talk, but  
4 with all due respect, we are on the plan itself, and it would  
5 be much more effective if you would talk about the plan.

6           **MR. GONZALEZ:** Gotcha.

7           **CHAIR KRUER:** Okay.

8           **MR. GONZALEZ:** The final point that I am trying to  
9 make here, Mr. Chair, Mr. Hueso, the maker of three motions,  
10 is that you, as a Commission, as appointees of various  
11 elected officials do not have the scientific expertise to  
12 override your staff, as you have, and certainly not to  
13 override Mr. Raimondi and Ms. Strange. You don't have the  
14 expertise. It is your job to look to staff, and make policy  
15 decisions, but don't try to change the science on us.

16           This is one, where there is no question, they are  
17 looking for a subsidy to get this project through because  
18 they know they are rolling the dice on the price of the  
19 water. They don't deserve it.

20           **CHAIR KRUER:** Okay, let's see.

21           Jack Minan.

22           **MR. MINAN:** Yes, thank you, it is Jack Minin.

23           **CHAIR KRUER:** Thank you.

24           **MR. MINAN:** I would like to start with just a  
25 brief description of my credentials --

1 CHAIR KRUER: Three minutes, go ahead.

2 MR. MINAN: -- still going?

3 CHAIR KRUER: Yes.

4 MR. MINAN: I have been teaching law at the  
5 University at San Diego for some 35 years, and during this  
6 time I have been involved with the theoretical, as well as  
7 the practical applications of environmental law. Also, from  
8 1999 through 2006, I served on the Regional Water Quality  
9 Control Board, and chaired that board for 6 consecutive  
10 years, so I bring a wealth of experience to this question  
11 that is impossible for me to capture in just 3 minutes.

12 I would make a couple of points, however. First,  
13 the greatest danger that you face today, I think, is  
14 contained in the idea of further delay. This has been a  
15 project that has been through an extensive 5-year review  
16 process. It has been looked at by a number of agencies, and  
17 therefore I would encourage you to take action today on the  
18 Marine Life Mitigation Plan, which I fully support.

19 I want to focus your attention on the staff's  
20 report, and it is really the inadequacy of the staff's report  
21 that causes me to enthusiastically support the Marine Life  
22 Mitigation Plan that has been proposed by the Poseidon  
23 Corporation.

24 If you will take a look at the phasing issue,  
25 which is one of the embedded issues here, you'll see that the



1 staff has given you two reasons why you, as a Commission,  
2 should support their view.

3 The first is that the power plant operator was not  
4 a co-applicant to this project. That, it seems to me, is a  
5 transparent attempt at further delay. Were you to accede to  
6 that, as a rationale, you can count on an ever-lengthening  
7 process of this permit before you.

8 The second reason they offer you is that it is  
9 speculative. I think Dr. Raimondi correctly indicated that  
10 there are important issues of policy that need to be decided  
11 by you, such as confidence levels, and so forth.

12 I would say that mitigation phasing is not a  
13 unique or new concept. It is one that is formally embedded  
14 in the law. In terms of incentivising Poseidon to do the  
15 right thing, I think they have all of the incentives in the  
16 world to make this a successful process, and to serve the  
17 public interests.

18 I think the staff broadly brushes away the fact  
19 that the *Clean Water Act*, *Porter Cologne*, as well as many  
20 other environmental laws are technology enforcing, and  
21 attempt to create real incentives for applicants like  
22 Poseidon.

23 I see that my time is over, and I appreciate the  
24 opportunity to address you, and I hope that you endorse  
25 Poseidon's recommendation on the mitigation plan.

1                   **CHAIR KRUER:** Diane Nygaard.

2                   **MS. NYGAARD:** It is almost evening now, so good  
3 evening, Mr. Chairman and Commissioners, Diane Nygaard,  
4 representing Peter Calavera.

5                   The Aqua Hedionda Lagoon, like all of our Southern  
6 California lagoons, is in trouble. We know only fools or  
7 tourists would think of swimming in our waters off the coast  
8 after a storm because the runoff is so polluted. You  
9 certainly wouldn't call it a thriving environment.

10                   Our stakeholder group has been working for over a  
11 year on a watershed management plan for Aqua Hedionda. A  
12 \$500,000.00 project funded by the Regional Water Quality  
13 Control Board, and sponsored by the City of Vista, and that  
14 watershed management plan identifies numerous projects that  
15 would benefit this area, and some would be appropriate  
16 mitigation for the impacts of this project.

17                   I think there are three key differences between  
18 Poseidon's proposal and what the staff has recommended. We  
19 would like to call to your attention, and that is, that  
20 first, there really should be full mitigation for all of  
21 impacts. We have looked at lots of projects over the last  
22 few years, impacting our coastal resources. The key is no  
23 net loss, and in order to achieve no net loss, it is typical  
24 that we look at mitigation requirements of 2:1 or 3:1, and  
25 not a 50/50 chance that we get to no net loss.

1           The staff recognizes that dredging is not  
2 mitigation. Dredging is really a cost of doing business in  
3 that lagoon. Dredging causes impacts to coastal resources,  
4 so dredging really shouldn't be counted as mitigation.

5           And, third, the staff report, we think, provides  
6 some flexibility so that some of the impacts of this project  
7 can really be addressed in Aqua Hedionda, the area that  
8 really is going to be impacted.

9           Thank you.

10          **CHAIR KRUER:** Thank you, very much.

11          Ed Kimira, then Mark Massara.

12          [ No Response ]

13          Then Rachel Davis, and Eric Munoz.

14          **MS. DAVIS:** Rachel Davis, the statewide desal  
15 assumptive.

16          First, I would like to agree with the organized  
17 opposition, we feel that Dr. Strange is an asset, and we  
18 encourage you to take advantage of her.

19          Open ocean intakes are not the best available  
20 technology, and will have significant impacts on the marine  
21 life. After-the-fact restoration of habitat, as proposed in  
22 the Marine Life Mitigation Plan, is not a legal or  
23 appropriate mitigation for this project. We maintain that  
24 the EIR certified by the City of Carlsbad did not accurately  
25 review marine mortality of future entrainment and impinge-

1 ment.

2 Poseidon Resources Corporation's admission that  
3 the impacts require restoration of at least 37 acres of  
4 coastal wetlands habitat, is not enough, but also contradicts  
5 the EIR. The amount of avoidable damage to marine ecosystems  
6 that would call for 37 acres of coastal wetland habitat  
7 restoration is indeed significant.

8 Thank you.

9 CHAIR KRUEER: Thank you, Ma'am.

10 Mr. Massara, three minutes.

11 MR. MASSARA: Honorable Chair, Commissioners, I am  
12 Mark Massara, Sierra Club Coastal Program.

13 Today we would like to address the independent  
14 stand along marine ecosystem impacts associated with  
15 Poseidon's use of 304 million gallons per day of ocean  
16 seawater in perpetuity, which you could not, and did not  
17 consider in your November 2007 approval of this project.

18 As you know, these ocean water draws will have  
19 devastating continuing permanent impacts on ocean fisheries,  
20 including destruction of millions of Garibaldi fish, our  
21 state fish. As you know, Poseidon proposes just 37 acres of  
22 mitigation, and a total future cap and limit of just 42 acres  
23 no matter how much damage they do to our fisheries forever.  
24 Great for their bottom line profit expectations, I suppose,  
25 but entirely irrelevant to the Coastal Act.

1           At the same time, you now have the opinions and  
2 analyses of Drs. Raimondi and Strange. As Dr. Raimondi  
3 demonstrates conclusively the Poseidon's Resources Plan gets  
4 you only a 50 percent chance of success involving a very  
5 limited data base of the universe of fisheries impacts  
6 association with Poseidon's enormous ocean water draws.

7           It should go without saying that the desperate  
8 measures currently underway in California to save our last  
9 remnant fisheries, no take and closure zones, require that  
10 you employ the most conservative, highest confidence level of  
11 mitigation, that being a minimum of 61 acres of mitigation.

12           Yet, that 61 acres of mitigation is literally just  
13 the tip of the iceberg in the actual tangible species-wide  
14 impacts associated with the operation of the plant. That is  
15 the whole point behind the bucket concept, and the rationale  
16 behind the concept, and past practice, of requiring 3:1 ratio  
17 mitigation requirement. It is because, historically, we have  
18 dramatically underestimated entrainment kills. You have had  
19 entire workshop on that subject: the inadequacy of entrain-  
20 ment mitigation, alone.

21           Commissioners, think of the huge we don't know  
22 portion of Dr. Raimondi's graph. You don't know because for  
23 years Poseidon has refused to model these impacts. Despite  
24 that, you have an obligation to protect all of these fish  
25 species, and fish kill. This isn't a free fire zone. In our

1 view that justifies, indeed, requires a 3:1 mitigation ratio,  
2 or at least 183 acres of mitigation.

3 If you add to this all of the uncertainty involved  
4 in the fact that you don't even know whether you are going to  
5 get wetland or rocky reef habitat mitigation. It just  
6 underscores the high level of uncertainty.

7 CHAIR KRUEER: Mr. Massara, your time is up, sir.

8 MR. MASSARA: Please deny the Poseidon Resources  
9 Plan, and impose reasonable mitigation.

10 CHAIR KRUEER: Thank you, sir.

11 Eric Munoz, and Joey Racano, and Doug Korthof.

12 MR. SANDQUIST: Mr. Chairman, before I start, Eric  
13 Munoz had to go to a Carlsbad Planning Commission meeting,  
14 and asked me to speak on his behalf. I was also going to  
15 speak on behalf of the Batiquitos Lagoon Foundation.

16 CHAIR KRUEER: You get 3 minutes, total.

17 MR. SANDQUIST: Yes, I just wanted to --

18 CHAIR KRUEER: Is your name in here?

19 MR. SANDQUIST: Yes, I have a slip.

20 CHAIR KRUEER: What is your name?

21 MR. SANDQUIST: Fred Sandquist.

22 CHAIR KRUEER: Fred, okay, then go ahead, then.

23 MR. SANDQUIST: I am Fred Sandquist, president of  
24 the Batiquitos Lagoon Foundation, and also speaking for Aqua  
25 Hedionda Lagoon Foundation, Eric Munoz is the president

1 there.

2 I am here to address our support for the staff  
3 recommendation on the mitigation plan, and your endorsed --  
4 hopefully your approval of the mitigation plan as proposed.

5 We feel that it is extremely important to look at  
6 the total picture associated with our lagoons in Carlsbad,  
7 not only do we have Aqua Hedionda, but we have Buena Vista  
8 and Batisquitos Lagoon, as well.

9 We feel that the opportunity for sustaining our  
10 wetlands goes beyond in looking at an investment. It  
11 includes our beaches, nearshore areas, and the watersheds  
12 that feed them. Our lagoons are one of the components of a  
13 large dynamic and complex system, and must be managed  
14 accordingly.

15 The desalination project mitigation requirements  
16 present an opportunity to provide sustainable stewardship and  
17 management, and we highly recommend that when considering  
18 mitigation projects, that the priority be considered of first  
19 Aqua Hedionda, and also the other two lagoons in the City of  
20 Carlsbad.

21 We strongly, therefore, support the staff  
22 determination that the Marine Life Mitigation Plan should be  
23 performance-based plan that identifies specific mitigation  
24 requirements and performance criteria, and provides a 24-  
25 month timeline for identification of one or more of the

1 mitigation projects.

2 I strongly, both myself and Eric Munoz, strongly  
3 supports the recommendation of the staff, and thank you for  
4 the opportunity to address you today.

5 CHAIR KRUER: Thank you, sir.

6 Doug.

7 MR. KORTHOF: Joey Racano, I am sorry was called  
8 off to save another area of the coast, but he sends his love.

9 Doug Korthof, and I stand here as the president of  
10 a growing organization called Taxpayers Against Big Oil. We  
11 are a dues paying organization, and oppose all destruction of  
12 the coast, such as the power plants on the coast using single  
13 pads.

14 I wanted to clarify some things that passed by  
15 before. Power is in kilowatts. We, in California, have a  
16 total capacity of 52,000 megawatts of power. Energy is in  
17 kilowatt hours. How much energy it takes to make one acre-  
18 foot of water was never clarified. It, apparently, takes  
19 4500, which is, at current rates, about \$500 worth of  
20 electricity. So, how much it takes is a big question.

21 You have to take the amount of acre feet you have,  
22 multiply it by kilowatt hours, and that gives you the energy  
23 that you are using. The power that is required is the total  
24 kilowatts to do that.

25 Now, as to pollution, the pollution that comes



1 from a power plant, it could be a coal plant, or a natural  
2 gas power plant, whatever it is, natural gas has ultrafine  
3 particulates, which are considered now to be a very serious  
4 problem, similar to diesel exhaust.

5 The greenhouse gas issue is entirely different.  
6 It is now considered, according to the State of California,  
7 and according to the EPA, a court decision, to be one of the  
8 pollutants, so CO2 and methane use are considered pollutants,  
9 and there was some big confusion about that earlier.

10 Now, we are for healing the entire Aqua Hedionda  
11 Lagoon. That means taking out the power plant, which is  
12 going to go out anyway. Telling us that because you are  
13 going to replace it with something slightly less destructive,  
14 and therefore it is okay, doesn't satisfy the problem.

15 The problem is we need to save the animals that  
16 are in this lagoon, where they are at, and not destroy them  
17 at that place. The only way this power plant -- desalination  
18 plant should be allowed to exist in this Aqua Hedionda Lagoon  
19 is if it has no impacts, at all.

20 As the developer said, it should have no impacts,  
21 that is, it shouldn't take any water in from the lagoon, and  
22 it shouldn't kill one single sea creature. Now, if they can  
23 do that, you should allow it. If it can't do that, any kind  
24 of mitigation you do is impossible. There are no wetlands  
25 left.

1           To do mitigation for the Port of Los Angeles, they  
2 had to go to Bolsa Chica. Everybody is fighting for  
3 wetlands. We used to joke about the fact that the developer  
4 who wanted 50 acres in mitigation, would go and mitigate 50  
5 acres. The next year, another developer wanted to mitigate  
6 this same 50 acres, so you have everybody looking for stuff  
7 to mitigate, but it doesn't solve the problem that you are  
8 killing this lagoon. That is what you have to do, if it has  
9 no impact it can be allowed. And, we want to heal this  
10 lagoon, and not further destroy it.

11           **CHAIR KRUER:** Thank you, sir.

12           Joe Geever, and then Charlotte Stevenson.

13           **MR. GEEVER:** Thank you, Mr. Chair. My name is Joe  
14 Geever.

15           First, I want to read you a quote by Commissioner  
16 Thayer, from your November 2007 hearing, who was quoting the  
17 Lieutenant Governor:

18           "What is the who, what, why, when and where  
19 of the mitigation of the 37 acres? where is  
20 it going to occur? when is it going to occur?"

21           He wasn't satisfied with the details, either, so  
22 he asked that that be nailed down before he it came back to  
23 our Commission, the State Lands Commission.

24           Then, as now, the plan is simply not right for  
25 approval. There is not enough substance to even characterize

1 the document as a plan. It is, effectively, a plan to draft  
2 a plan. None of Commissioner Thayer's questions have been  
3 answered. This type of less than satisfactory submission is  
4 what continues to stall final approval.

5 We think, also, that there are legitimate and  
6 important differences in the scientific community about what  
7 is the most direct approach to restoration scaling.  
8 Obviously, we think Dr. Strange's review, that is in your  
9 packet, has given the Commission substantial evidence that  
10 there is a better approach than the one the Poseidon experts  
11 and the staff's consultants have used.

12 We think an open discussion here, when the experts  
13 are available would be extremely valuable. I encourage you  
14 to ask clarifying questions of the experts.

15 Finally, Poseidon's argument that past decisions  
16 set irreversible precedent are groundless. Of course, you  
17 have the flexibility to require a different method for  
18 restoration scaling, if it is a better method than used  
19 previously. The policy of using best available science is to  
20 encourage and recognize evolving science.

21 Even more oddly, Poseidon rests on precedence, yet  
22 requests a phased approach that has never been considered  
23 before, and is counter to the standard of adaptive  
24 management.

25 We ask that you not approve the current draft,

1 MLMP. There is simply not enough detail to insure that the  
2 MLP will meet the goal of fully replacing marine life from  
3 the project. Make sure you get this right, so that the  
4 future projects have clear guidance, and use the best  
5 available science.

6 Thank you, very much.

7 **CHAIR KRUER:** Thank you, Mr. Geever.

8 Charlotte Stevenson, then Kevin Sharrar.

9 **MS. STEVENSON:** Hello, Chairman Krueer and  
10 Commissioners. My name is Charlotte Stevenson, and I am a  
11 staff scientist with Heal the Bay. Heal the Bay is a  
12 nonprofit organization, representing over 12,000 members, and  
13 25,000 volunteers, dedicated to making Southern California  
14 coastal waters, and watersheds, safe, healthy, and clean.

15 Heal the Bay does not support the Marine Life  
16 Mitigation Plan for the Carlsbad Poseidon plant, because it  
17 relies on inadequate and after-the-fact mitigation,  
18 continuing the devastation of the marine environment through  
19 impingement and entrainments and setting a bad precedent  
20 statewide by continuing the use of a highly damaging intake  
21 technology which its colocated power station is, ironically,  
22 phasing out.

23 This project does not allow for implementation of  
24 the best available site design and technology to minimize the  
25 intake and mortality of marine life, as mandated by the

1 California water code, and Coastal Act.

2 As it has been argued by many groups since the  
3 beginning of the draft EIR on this project, this was not a  
4 prudent design, or location because it was reasonably  
5 foreseeable that the Encino Power Station would soon be  
6 discontinuing their once-through cooling process, and phasing  
7 out their intake and discharge.

8 Even assuming that it is legal to use restorative  
9 measures without first minimizing marine life, mortality,  
10 through better design and technology, the current marine life  
11 mitigation plan does not fully mitigate for the plans  
12 environmental impacts.

13 The best available science is not used to  
14 calculate the necessary mitigation, as documented in Status  
15 Consulting's recent report on this project, as you heard from  
16 Dr. Strange. Thirty-seven acres is a vast underestimate.  
17 Additionally, the lack of identification of the restoration  
18 site, and the delay in the phased timeline for restoration  
19 are unacceptable.

20 We understand the critical need for water in  
21 California, but approval of this project, with the current  
22 conditions would set a terrible and unnecessary precedent.  
23 This would certainly be a shame when California has been able  
24 to be a global leader in so many other marine coastal and  
25 greenhouse gas issues.

1           The science studies and technologies are available  
2 to do this, with substantially less environmental impact, and  
3 are already being demonstrated by other water agencies.  
4 Please hold Poseidon to its prior commitment and respons-  
5 ibility and demand, that at the very minimum, the Carlsbad  
6 Poseidon desalination plant fully mitigate its environmental  
7 impacts.

8           Thank you.

9           **CHAIR KRUER:** Thank you, Ma'am.

10          Kevin Sharrar, Steve Aceti.

11          [ No Response ]

12          Larry Porter.

13          [ No Response ]

14          **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, Mr.  
15 Aceti submitted a letter for the record, which we have  
16 entered into the record.

17          **CHAIR KRUER:** Okay.

18          Joy Shih.

19          [ No Response ]

20          Bruce Reznik, Marty Benson.

21          **MR. REZNIK:** Good evening, Chairman Kruer and  
22 Commissioners, my name is Bruce Reznik, with San Diego Coast  
23 Keeper.

24                 My points have been pretty much covered by others,  
25 so I will just take this opportunity to remind you that you

1 are -- I still believe in the coastal protection business,  
2 not in the corporate welfare and environmental degradation  
3 business. I know that the reminder may seem presumptuous, it  
4 was a little confusing after the last deliberation.

5 Thank you.

6 CHAIR KRUER: Thank you, Mr. Reznik.

7 Marty Benson, Gabriel Solmer.

8 MS. SOLMER: Good evening, Mr. Chair and  
9 Commissioners, my name is Gabriel Solmer, and I am the legal  
10 director for San Diego Coast Keeper.

11 And, I agree with the points that have already  
12 been raised by the opposition, and I will limit my comments  
13 in two areas. One is I have to say, where is the beef? This  
14 is the problem when you approve a project and then go back  
15 and look at the required conditions, and try to fit those  
16 conditions into an approved project, and we are seeing the  
17 problems that that creates.

18 Don't exacerbate that problem now, by putting off  
19 specifics again, which are lacking in this current plan. As  
20 Joe Geever mentioned, this is a plan to plan, and this  
21 mitigation plan should not be nice to have, it should be a  
22 required part of the approved valid permit.

23 The applicant must, before its construction, if  
24 nothing else, tell you where the mitigation is going to be --  
25 we don't know that, how large the area will be, and whether

1 that is going to be enough? -- you have heard a lot of  
2 scientific debate on that -- and when it is going to take  
3 place? and what criteria is going to be used to judge  
4 success? You don't have any of that before you today.  
5 Certainly, we don't believe you should give up your oversight  
6 of all of those areas today, with the approval of this plan.

7 Secondly, the applicant tries to address these  
8 issues, these really baseline concerns, by a new phasing  
9 requirement, which we hadn't seen until about a month ago.  
10 We would simply reject this phasing approach as patently  
11 offensive, and I'll point out two problems with it.

12 One, is that it gives you a 5.5-acre cap. No  
13 matter what you see in the future, you only have the ability  
14 to raise the mitigation by 5.5 acres. That just cuts across  
15 all of your authority.

16 The other problem is the 3-year average. You are  
17 not going to be able to look at this until a triggering point  
18 in the phasing, and that is surely a problem, because you  
19 will be taking a 3-year average when we know that there are  
20 seasonal and annual variations in the data, and you will be  
21 looking across a 3-year modeling set. That is a problem.

22 And, we ask that you reject at least that part of  
23 the mitigation plan, and the plan, in general.

24 Thank you.  
25



1           This is the time now for rebuttal, five minutes,  
2 from the applicant. Who is going to represent? Mr. Zbur? or  
3 Mr. MacLaggan?

4           **MR. ZBUR:** I am just going to take a minute. I  
5 just wanted to take a minute to sort of take a bit of a step  
6 back.

7           What we are talking about is mitigation related to  
8 impacts in the Aqua Hedioda Lagoon, which is a lagoon that  
9 was created by the dredging for the power plant, and in which  
10 the marine impacts are thriving today with the power plant  
11 operating at its existing operations.

12           This project will, essentially, not increase the  
13 level of withdrawals that have occurred from the power plant,  
14 and so we are talking about, essentially, mitigation to a  
15 lagoon that was created for the power plant, and in which if  
16 the power plant goes away, this project would assume the  
17 dredging of the lagoon, and if they didn't assume that, the  
18 impacts are to a lagoon that wouldn't exist. So, I think we  
19 sort of need to keep that in perspective.

20           The second thing is, I am a little bit concerned  
21 about just the applicant's due process rights, in that we  
22 talked to the staff just day before yesterday, and asked if  
23 there were any submissions. We have never received the Dr.  
24 Strange's report. We think that we should have an  
25 opportunity, if there is going to be weight placed on it, to

1 at least look at it. And, as I understand Dr. Raimondi's  
2 figures, assumed figures from the Raimondi report, as of two  
3 days ago we were told that there was nothing in the file.

4 So, with that, I would like to turn it over to Mr.  
5 MacLaggan, who will -- oh, one other thing.

6 There has been some assertions that our plan  
7 doesn't have adequate monitoring. Essentially, what happened  
8 is it does. We are going to be coming back within 24 months  
9 with the CDP that your staff will review, and you will have  
10 discretionary authority over the restoration plan. The plan  
11 requires that baseline data be provided, and that the  
12 performance standards be met, after construction.

13 There will be annual reports to the Executive  
14 Director on the status and success on the monitoring of the  
15 plan, and every 5 years there will be workshops convened with  
16 the Commission to review the status and success to make sure  
17 that the plan is effective to mitigate impacts.

18 So, with that, I would like to turn it over to Mr.  
19 MacLaggan, who wanted to talk about some of the technical  
20 response.

21 **MR. MAC LAGGAN:** Mr. Chairman, Commissioners,  
22 Peter MacLaggan for the applicant. Three quick points.

23 First of all, with respect to the proposed acreage  
24 requirement, I want to point out that it is consistent with  
25 the accepted methodology used on the Morro Bay power plant,

1 and the Moss Landing power plant.

2 The phasing approach, good public policy, it  
3 incentivises Poseidon to avoid impacts. It encourages the  
4 use of new technology that will lead to greater protections  
5 for marine resources.

6 And, the third point, Mr. Chairman, Commissioners,  
7 the dredging credit proposed for demonstrated environmental  
8 benefits is consistent with past Coastal Commission  
9 decisions, and the Coastal Commission would have an  
10 opportunity to decide, at a later date, whether this is an  
11 appropriate amendment to our permit.

12 With that, I would like to ask our expert on the  
13 entrainment study, John Steinbeck, to come up. While he is  
14 coming up I will just briefly introduce his credentials. Mr.  
15 Steinbeck has been involved in virtually every entrainment  
16 study on the west coast for the last decade. He is the  
17 author of the CEC's methodology that we have been talking  
18 about today. He is on the State Water Resources Control's  
19 expert panel for once-through cooling, and you heard Dr.  
20 Raimondi's glowing remarks about his work on this project.

21 Thank you.

22 **MR. STEINBECK:** John Steinbeck, Tenera  
23 Environmental.

24 Just a quick point on the comments by Dr. Strange.  
25 I was recently a peer reviewer of a report she prepared on

1 restoration scaling, and I can go into detail, but there is  
2 no time. I will just say that the method that she promotes  
3 has been rejected by the EPA for use in scaling projects that  
4 would have occurred for 316B if mitigation was allowed.

5 On Dr. Raimondi's presentation, I don't really  
6 have any arguments with that. I agree that uncertainty needs  
7 to be taken into account in restoration scaling. The way the  
8 scaling was done for this project was that averaging did take  
9 into account a lot of uncertainty, by instead of using the  
10 specific habitats that occupy -- the three fishes occupy --  
11 in the case of the garibaldi, it is the small strip of rock  
12 in the outer lagoon, and in the case of gobis it is more, but  
13 by not using those, and by using the hole again you end up  
14 with a much bigger number. This accounts for uncertainties  
15 in where those habitat are, and a number of other uncertain-  
16 ties associated with the process. So, that 37 acres does  
17 include a lot --

18 CHAIR KRUEER: Mr. Steinbeck.

19 MR. STEINBECK: -- accounts for a lot of uncertain-  
20 ties, already.

21 Thank you.

22 CHAIR KRUEER: Thank you, sir.

23 Okay, and with that, I will close the public  
24 hearing, and go back to staff, Mr. Luster, for your response.

25 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, Chair

1 Krueer, a number of comments.

2           Regarding what you just heard about the value of  
3 Aqua Hedionda, staff wishes to notes that it is one of 19  
4 wetlands along the coast that are specifically protected in  
5 the Coastal Act through the alteration prohibitions in  
6 Section 30233(c), and in recognition of the project's non-  
7 conformity to that Coastal Act provision that your findings  
8 implemented the override in Section 30260, which requires  
9 mitigations to the maximum extent feasible.

10           So, two quick points on that, first, the impacts  
11 to Aqua Hedionda are recognized by the Coastal Act as more  
12 significant than were characterized by the applicant.

13           And, second, there is nothing in the record that  
14 shows mitigations staff's recommended, its levels would be  
15 infeasible.

16           Regarding Poseidon's proposed plan, we have  
17 concurred with several of Poseidon's proposed changes. Those  
18 are identified in the addendum you received last night. We  
19 still have a number of differences between staff's recommend-  
20 ation, and Poseidon's plan. One of the key one is that staff  
21 does not recommend you adopt a plan that would allow the  
22 phased approach to mitigation. A number of issues are  
23 associated with that, for one thing, Poseidon proposes that  
24 its Phase 2 would occur if during any 3-year period the power  
25 plant operated at 15 percent of its full capacity.

1           Those numbers appear to be arbitrary. There is no  
2 basis in the record for why those were chosen. They are not  
3 associated with anything that staff recognizes, and why those  
4 are the numbers, as not another set of numbers, I don't know.

5           Also, there is no assurance that future phased  
6 mitigation would occur. We could possibly get 5.5 acres of  
7 restoration somewhere. There could possible be some  
8 technological changes. There could possibly be dredging  
9 occurring, which Poseidon may, or may not, be able to take  
10 on, since they don't own the lagoon, and the dredging is  
11 currently the responsibility of the power plant owner, and  
12 that dredging may, or may not result in various environmental  
13 benefits, while it also causes environmental problems.

14           Also, regarding the mitigation credit for  
15 dredging. Poseidon has stated that staff's recommended plan  
16 offers no possibility for restoration credit for dredging.  
17 That is not accurate, however, because, as with any Coastal  
18 Development Permit Poseidon could later request the  
19 Commission to amend its mitigation requirement.

20           For example, after Poseidon selects its mitigation  
21 site, it may be evident to the Commission that the site  
22 requires dredging to support the mitigation, and it could  
23 then consider providing dredging credits, as it did with the  
24 SONGS restoration project.

25           We note that the Commission's initial approval of

1 the SONGS restoration project did not include credit for  
2 dredging. It came about only after the site's character-  
3 istics were better understood. In the case of Edison's  
4 project, the restoration the Commission required was almost  
5 entirely dependent on maintaining tidal flows in over 100  
6 acres of its mitigation area, mitigations that the Commission  
7 had required. In that case, and only after a couple of years  
8 of scientific review and deliberation did the Commission  
9 allow mitigation credit for keeping the lagoon mouth open in  
10 order to maintain the restoration site, which staff believes  
11 is the only instance where the Commission has included  
12 dredging as part of the mitigation credit for a restoration  
13 project.

14 Unlike Edison, Poseidon is not, at this time,  
15 conducting any restoration work in Aqua Hedionda that would  
16 rely on dredging. Also, at this point, we do not yet know  
17 where Poseidon will mitigate, and there is nothing in the  
18 record that supports putting off until a later date, the  
19 mitigation needed to address the currently identified  
20 impacts. Further, approving Poseidon's phased mitigation  
21 proposal would not insure that the project is mitigated to  
22 the extent feasible, as required by the Commission's  
23 findings.

24 Regarding new technology, staff's recommendation  
25 doesn't prohibit use of new technology. It just recommends

1 that the Commission not approve a plan that would rely on  
2 future speculative mitigation to address the impacts before  
3 it today.

4 Also, as staff mentioned, Poseidon is already  
5 required by the Regional Board to use all feasible  
6 technologies to reduce entrainment, and if those technologies  
7 become available Poseidon would presumably come before the  
8 Regional Board, and the Commission, to use that technology,  
9 and at that time, you would be able to better identify what  
10 effects that technology would have on entrainment.

11 Regarding the issue of 100 percent mortality,  
12 Poseidon argues that their project is not likely to cause  
13 that level of mortality; however, the study Poseidon used  
14 included the assumption of 100 percent mortality. That is  
15 based on how the study has been implemented by all California  
16 agencies, and by the USEPA and there are no peer reviewed  
17 studies that support using a lesser rate. Poseidon has  
18 suggested to staff some time ago that it be able to use a  
19 lower mortality rate, and staff recommended that it conduct  
20 the necessary peer review study that would support that  
21 suggestion; however, Poseidon has not provided any such  
22 studies.

23 Poseidon also compared its project to Moss  
24 Landing, in coming up with mitigation. Staff's understanding  
25 from Dr. Raimondi is that if the Commission use the same



1 criteria to require mitigation for Poseidon as was required  
2 at Moss Landing, Poseidon's mitigation would be about 3 times  
3 higher than what it is currently proposing.

4           Regarding the length of time Poseidon proposes to  
5 mitigate, Poseidon's plan proposes that its mitigation last  
6 30 years from when it submits its as-built plans for its  
7 restoration site; however, Special Condition 8 required  
8 mitigation in perpetuity and the Commission's findings  
9 identified the facility and its impacts for lasting up to 90  
10 years.

11           If I could get the slide back from 5.a. the single  
12 slide that showed the range of mitigation acreages. As we  
13 noted earlier, you have been presented with a range of  
14 restoration acreages needed to address the impacts identified  
15 in Poseidon's study. Staff has recommended using a different  
16 approach than you have used before.

17 [ Slide Presentation ]

18           No, it is a single line with some figure on it.  
19 While that is going up, I'll continue.

20           Staff is recommending using a different approach  
21 than you have used before, but only if the company who buys  
22 the condition that lead to the exemplary restoration work  
23 being done by Edison for a similar type of impact. We note  
24 that if you would prefer to use the approach you have  
25 generally used in the past, your biologist, Dr. Dixon, has

1 recommended a mitigation ratio of between 2:1 and 3:1 to  
2 reflect the out-of-kind nature of the mitigation, and the  
3 uncertainty as to where it would be located. This would  
4 result in a range of between 74 and 111 acres, as shown on  
5 the slide.

6 And, we would like Dr. Raimondi to address one  
7 point, as well.

8 MR. RAIMONDI: I just wanted to make sure that you  
9 understood what Tom just said about Moss Landing, versus  
10 here.

11 The point was about whether there is a consistency  
12 in the application of this approach, and the consistency is  
13 in how the data are collected, and that has been very  
14 consistent from Diablo, which is the first place that this  
15 has worked on, to Moss, to Morro, to Huntington Beach, it has  
16 all been very consistent, all very well done.

17 How those data have been applied and the  
18 calculation impacts have been an evolving standard, and the  
19 point that Tom made was -- and what I would like to reinforce  
20 -- is that if we use the current methodology for assessing  
21 impact, what we are doing now -- even prior to this case --  
22 at Moss Landing, which is the first time it had been really  
23 officially used, the assessment of the impacts at Moss  
24 Landing would have been three times what was done at that  
25 time.

1           So, the whole point is not that Moss Landing was  
2 particularly incorrect, it is just that things evolve, that  
3 these standards have evolved. This is a new technology and  
4 new technique. It is about 8 years old within California,  
5 and we are just getting to understand how to use it.

6           **CHAIR KRUER:** Okay.

7           **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, that  
8 completes the staff comments, and I am just trying to figure  
9 out how to best structure this for the Commission to deal  
10 with it, when you get to a motion, so we don't go through  
11 what we just went through before.

12           My suggestion is that the motion be per staff, and  
13 then you have amending motions to address the points of  
14 difference that were on a slide, and I would ask the  
15 applicant to put that back up, one by one, and then we can  
16 make conforming changes, depending on what your decide, But  
17 at least that seems to me to be a manageable way to go  
18 through it, because if you look at all of these documents,  
19 you don't really know what we are doing.

20           So, if that is okay with you, if I could ask Peter  
21 or Rick to put that slide back up where you had a chart,  
22 showing the differences between the applicant and the staff  
23 -- if that is okay with the Commissioners.

24           **CHAIR KRUER:** Well, we will have to see.

25           **EXECUTIVE DIRECTOR DOUGLAS:** Okay, so it is up to

1 whoever makes the motion.

2 CHAIR KRUER: Exactly.

3 EXECUTIVE DIRECTOR DOUGLAS: Right.

4 CHAIR KRUER: Exactly, and your process sounds  
5 rational, but then it might even take longer. I am not sure.

6 EXECUTIVE DIRECTOR DOUGLAS: Yes, those are the  
7 points of differences, right.

8 CHAIR KRUER: Okay.

9 You don't get to speak, Mr. Geever.

10 MR. GEEVER: Mr. Chairman, I am going to ask you  
11 for an exception.

12 CHAIR KRUER: No, I am not going to give any  
13 exceptions tonight, at this hour, no, sir, cannot do it.

14 MR. GEEVER: I wanted to take issue with --

15 CHAIR KRUER: Well, you are not entitled to  
16 rebuttal. We have closed the public hearing, first of all.

17 MR. GEEVER: Okay.

18 CHAIR KRUER: Thank you, sir.

19 Okay, Commissioner Hueso.

20 [ MOTION ]

21 COMMISSIONER HUESO: Thank you.

22 I am going to move that we approve the Marine Life  
23 Mitigation Plan attached to the staff recommendation, as  
24 Exhibit 1, if modified as shown in Section 1.1 below, and  
25 Exhibit 2 of this memorandum as compliant with Special

1 Condition 8 of CDP E-06-013.

2 And, I will have some modifications.

3 CHAIR KRUER: Okay, it has been moved by  
4 Commissioner Hueso, seconded by --

5 Is there a "seconded" to your motion?

6 Anyone want to "seconded" it.

7 COMMISSIONER LOWENTHAL: Second.

8 CHAIR KRUER: Seconded by Commissioner Lowenthal.  
9 Would you like to speak to your motion?

10 COMMISSIONER HUESO: I would actually like to go  
11 through some of the modifications with staff, and maybe go  
12 over some of their recommendations that they have made, just  
13 to understand how they apply it.

14 We have gone over this in the discussion, but I  
15 would like to go over, for example, Modification No. 1, says  
16 Poseidon shall create or restore between 55 and 68 acres of  
17 coastal estuarine wetland habitat within the Southern  
18 California bite.

19 My question to staff about that, I mean, there  
20 were a lot of complaints about there not being a specific  
21 area, and staff also followed up that there aren't really  
22 expressed locations, in terms of where this mitigation will  
23 take place. In your recommendation, is that still the  
24 condition, in terms of we don't know where this is going to  
25 take place?

1                   **ENVIRONMENTAL SPECIALIST LUSTER:** Staff consulted  
2 with the SONGS Scientific Advisory Panel, and our recommend-  
3 ation is based on input we got from the panel.

4                   The conditions that the Commission imposed on  
5 Edison for the San Dieguito site, those were issued before  
6 Edison had selected its site, and so we feel that if Poseidon  
7 meets the same conditions that Edison was held to, and  
8 selects a site within the Southern California bite, that  
9 would provide adequate assurance that subsequent plans that  
10 come to you would be sufficient.

11                   **COMMISSIONER HUESO:** So, we can still work out  
12 locations, in terms of optimizing the location, and there is  
13 the benefit of the improvements.

14                   **ENVIRONMENTAL SPECIALIST LUSTER:** Right, as long  
15 as they are held to the same conditions SONGS was.

16                   **COMMISSIONER HUESO:** And, getting to this specific  
17 acreage, you put a range of 55 to 68, that was your  
18 recommendation. Now, that is not a very, very specific  
19 number. Is that based on, again, putting the burden on the  
20 applicant to come back with a plan that mitigates the impacts  
21 of the project?

22                   **ENVIRONMENTAL SPECIALIST LUSTER:** Staff felt that  
23 that was a decision for the Commission.

24                   The two figures are based on the levels of  
25 confidence that derive from the study. If the Commission

1 wants 80 percent confidence that they would insure full  
2 mitigation for the impacts, the 55 acres, staff believes,  
3 would be sufficient. If you want 95 percent confidence in  
4 your decision, then you go with the higher number.

5 So, the Commission could either decide on a  
6 specific figure, this evening, or if Poseidon came back  
7 later, with a mitigation proposal, somewhere within that  
8 range, that would be the other option.

9 **COMMISSIONER HUESO:** So, is it so accurate, is it  
10 possible to get 95 percent with 37 acres? You are saying, is  
11 it impossible? is it improbable? is it that accurate? in  
12 terms of the possibility of getting the kind of mitigation  
13 that we want within a certain amount of acreage? Can that be  
14 achieved through a very intense mitigation monitoring of a  
15 specific acreage amount?

16 **ENVIRONMENTAL SPECIALIST LUSTER:** If you don't  
17 mind I will ask Dr. Raimondi to answer that.

18 **COMMISSIONER HUESO:** Sure.

19 **ENVIRONMENTAL SPECIALIST LUSTER:** He has far more  
20 expertise.

21 **MR. RAIMONDI:** There are really two issues here,  
22 you have addressed one of the. One of them is the amount of  
23 acreage that is required, and the other is insuring that it  
24 works, because, clearly, you could put in 50, 70, 100 acres  
25 and if it doesn't work, you get no compensation.

1           The key thing here is using the information that  
2 Poseidon provided, and just using what I laid out there --  
3 and again, we are not using any data that didn't come from  
4 Poseidon -- the 80 percent really is 55 acres, and the 95  
5 really is 68. In addition, you would still need to monitor  
6 it, to make sure that it works, because 68 acres of garbage  
7 is no compensation.

8           So, there are two issue, really.

9           **COMMISSIONER HUESO:** So, in terms of maybe hearing  
10 from Poseidon's representatives, in terms of what they can  
11 guarantee, in terms of providing the adequate mitigation for  
12 the project, you are saying you can do it with 42.5 acres is  
13 the claim that you are making?

14           **MR. ZBUR:** Yes, I mean I think we think that based  
15 upon the standards that were used for the Morro Bay Plant,  
16 and for the Moss Landing Plant, that the acreage amount  
17 consistent with that would be 42.5 acres.

18           **COMMISSIONER HUESO:** And, what level of mitigation  
19 would 42 acres provide?

20           **MR. ZBUR:** It would provide --

21           **COMMISSIONER HUESO:** In terms of a percentage?

22           **MR. ZBUR:** It would present 100 percent mitigation  
23 for the stand-alone operations.

24           **COMMISSIONER HUESO:** If monitoring showed that it  
25 didn't, would that mean that you are not let off the hook.



1 You would have to come back and do some work?

2 MR. ZBUR: Well, I think that one of the concerns  
3 that we have about the adoption of the staff recommendation  
4 is that it, basically, is just a very vague recommendation,  
5 if we conform it to the SONGS approach, which had a lot of  
6 details, which were related to a much, much larger  
7 restoration program, including very significant costs.

8 So, one of the things that we were hoping you  
9 would do is to use the -- start with the Poseidon plan, and  
10 if you wanted to make changes with respect to the acreage,  
11 and I think we want -- phasing is an important thing. Not  
12 having any phasing, really restricts the number of sites that  
13 we can do, that we can get entitled and ready to go on line,  
14 within the 24 months that the plan has required.

15 I mean, one of the things that is very important  
16 for us is that we are able to not delay the operation of the  
17 plant, and in order to not delay the operation of the plant,  
18 we need as broad a number of sites, as possible, and  
19 obviously, we are requiring all of that up front, so it  
20 potentially restricts the number of sites, and that makes it  
21 less likely --

22 COMMISSIONER HUESO: And, that would be required  
23 to come back to the Coastal Commission for approval, for each  
24 project?

25 MR. ZBUR: What the Poseidon proposal does is it

1 would require 37 acres up front. We would have to come back  
2 to the Coastal Commission within 24 months for a CDP for that  
3 project, at least 37 acres.

4 **COMMISSIONER HUESO:** That is 24 for the 37 acres?  
5 and, then?

6 **MR. ZBUR:** And, then, the Poseidon proposal was  
7 that we would have to do the additional acreage at the time  
8 that there was stand alone operations occurring, which would  
9 be that the power plant would completely shut down, or  
10 provides less than 15 percent of the water.

11 And, I actually wanted to dispute, there is a lot  
12 of information on the record which we can site, that provides  
13 explanation as to what the basis was of those figures.

14 **COMMISSIONER HUESO:** So, how did you come up with  
15 the 42.5? that is the 37 plus the 5.5 acres?

16 **MR. ZBUR:** Yes, the 37 plus the 5.5 acres. The 42  
17 acres is using the CEC methodology that was used for the  
18 Morro Bay and Moss Landing. The 37 acres was, in part,  
19 picked because the San Dieguito site, which is not the site  
20 that we will, necessarily, go to -- there are still issues  
21 with respect to permitting on that site -- but, we know that  
22 we can get 37 acres out of the San Dieguito site, if we can  
23 resolve issues with the JPA and some of the other entities  
24 involved in the site.

25 **COMMISSIONER HUESO:** So, under of the staff's

1 recommended modifications, now where it says, under 1.1 on 1  
2 we have to come up with a determination on the acres, and on  
3 No. 2 in conformity with Exhibit 2 -- and we will get to that  
4 a little bit later -- and in No. 3 it says when the 60 days  
5 of the Commission's approval of the modified plan, Poseidon  
6 shall submit for Executive Director's review an approval and  
7 review -- excuse me -- of a revised plan that includes these  
8 modifications.

9 So, that is not necessarily -- you are asking for  
10 24 months, as opposed to 60 days? does that condition apply  
11 to that?

12 **MR. ZBUR:** I didn't think we had any disagreement  
13 with the staff on the timing of when the CDP had to come  
14 back.

15 **ENVIRONMENTAL SPECIALIST LUSTER:** Right, and the  
16 60 days refers to once we decide on a plan this evening, that  
17 Poseidon returns within 60 days, and that incorporates all of  
18 the changes that are made. If we end up with some  
19 conditions, some Poseidon has proposed, and some staff has  
20 proposed, that there is one plan that encapsulates all of  
21 that.

22 **COMMISSIONER HUESO:** So, that would be taken care  
23 of by No. 3? there is no disagreement on timing for that?

24 **ENVIRONMENTAL SPECIALIST LUSTER:** I don't think  
25 there is any disagreement.

1                   **COMMISSIONER HUESO:** Special Condition No. 2, that  
2 refers to Exhibit 2, are there any disagreements on Item No.  
3 2?

4                   **ENVIRONMENTAL SPECIALIST LUSTER:** Yes, staff's  
5 recommendation in Exhibit 2, those are the conditions that  
6 the Commission required of SONGS. Staff modified some of  
7 those conditions to reflect some updates, and mitigation  
8 approaches, and you know, removed references to SONGS and  
9 Edison and replaced them with Poseidon.

10                   **COMMISSIONER HUESO:** Why are we referencing SONGS,  
11 specifically, because of their approach to the mitigation?  
12 what you are doing is recommending that exact same approach?

13                   **ENVIRONMENTAL SPECIALIST LUSTER:** Yes, going back  
14 a ways, over the last several months we have been working  
15 with Poseidon and up until about a month ago, Poseidon's  
16 proposal was to mitigate at San Dieguito adjacent to the  
17 SONGS restoration site, and they had come up with a very  
18 detailed preliminary plan, showing the number of acres of the  
19 different types of habitat, hydraulic analyses, showing the  
20 change in tidal flows, that sort of thing. And, so we were  
21 basing our approach, up until then on consistency with the  
22 adjacent SONGS restoration site. It all changed in the last  
23 month.

24                   We now no longer have that site as the selected  
25 mitigation area, but in consulting with the SONGS scientists,

1 we believe that the conditions that SONGS was held to would  
2 be applicable to Poseidon if they did estuarine restoration  
3 somewhere else in the Southern California bite.

4 So, that is how we ended up with proposing the  
5 SONGS conditions.

6 COMMISSIONER HUESO: Okay, and what part of those  
7 conditions can't you achieve?

8 MR. ZBUR: The SONGS conditions?

9 COMMISSIONER HUESO: Yes.

10 MR. ZBUR: I think what you have attached to the  
11 motion that we suggested that you make, included many things  
12 to respond to the staff's concerns relating to the  
13 inconsistencies within the SONGS plan. I don't think that  
14 there are very many, but I am trying to figure out what they  
15 are, frankly.

16 I think the only change, really, is with respect  
17 to how significant the funding and -- you know, the SONGS  
18 plan required the funding of a number of scientists, and  
19 really very frequent reports back to the Commission about the  
20 restoration plan. And, I think our plan, because it is a  
21 much smaller restoration effort, did not anticipate imposing  
22 that kind of costs, I mean, the number of scientists that  
23 would be employed full time with annual reports -- workshops,  
24 it wasn't even reports -- workshops back to the Commission.

25 So, I think that is the major change that remains

1 isn't it? plus the phasing and the number of acres.

2 **COMMISSIONER HUESO:** Couldn't you propose that as  
3 part of your mitigation plan? I mean, tell me here where it  
4 is that specific, where it calls out a specific number of  
5 scientists, and project management staff, and the other  
6 things you alluded to?

7 **MR. ZBUR:** Well, basically, it is not in our plan.  
8 It is in, basically, the old SONGS plan. There is a general  
9 recommendation, and a staff recommendation that we make this  
10 consistent with the SONGS plan.

11 It is in Section 1.0 Administration, and 2.0  
12 Budget and Work Program. There are differences between the  
13 SONGS approach, which required --

14 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, if I  
15 may, I think this is going to be virtually impossible for us  
16 to work through tonight.

17 **COMMISSIONER HUESO:** I agree, I mean --

18 **EXECUTIVE DIRECTOR DOUGLAS:** I think, if you would  
19 just work on major issues --

20 **COMMISSIONER HUESO:** Exactly.

21 **EXECUTIVE DIRECTOR DOUGLAS:** -- and then ask us to  
22 work with Poseidon, in terms of how we implement it, I think  
23 that is what everybody is looking to at the end of the day.

24 You know what our recommendations are on the  
25 points of contention. If you go with our recommendation on

1 acreage, fine, we will work through what the nature of the  
2 plan will have to be. If you go through each one of these,  
3 at least you will be able to act on the plan tonight, and we  
4 then come back and work through some of the details of what  
5 exactly has to be in the plan, relative to whether or not it  
6 is exactly tracking with the SONGS approach, or not.

7 But, that is something that we can work out. You  
8 have to decide the fundamental questions here, and if we have  
9 a dispute over any of those other items, we can bring those  
10 back to you, too. But, at least, in terms of what you have  
11 got before you, and what you have asked us to bring to you,  
12 was something that you could act on today that would lead to  
13 the issuance of the permit, and we were trying to do that.

14 I think the best way for you to go through it is  
15 to address the issues in contention.

16 **MR. ZBUR:** I think we would be comfortable in  
17 working out the issues with the staff, in terms of consistent  
18 with the SONGS, as they really are not that different.

19 I think the one thing we would ask that the  
20 Commission consider as part of the motion is that the detail  
21 with respect to the budget is something that we could work  
22 out with the staff, and potentially that would be -- the  
23 budget, in terms of how much we have to spend could be  
24 determined at the time the CDP comes forward.

25 **COMMISSIONER HUESO:** And, would you like a

1 specific acreage amount to be decided today? or could that be  
2 done through your discussions with the applicant?

3 EXECUTIVE DIRECTOR DOUGLAS: I think that is  
4 pretty fundamental. I get the sense, from talking with them,  
5 that that is what they want you to decide, and we would like  
6 that guidance, too.

7 COMMISSIONER HUESO: Well, I am going to propose  
8 then, a --

9 CHAIR KRUER: Well, you have prefaced your --

10 COMMISSIONER HUESO: Okay.

11 COMMISSIONER LOWENTHAL: [ Inaudible ]

12 COMMISSIONER POTTER: Mr. Chair, if I might, I am  
13 prepared to move through these items in an amending form, and  
14 then we can give direction accordingly.

15 CHAIR KRUER: Well, just a --

16 Yes, go ahead, sir.

17 COMMISSIONER LOWENTHAL: [ Inaudible ]

18 COMMISSIONER POTTER: Unless there is the desire  
19 to belabor this kind of conversation, anyway.

20 CHAIR KRUER: Commissioner Lowenthal, you don't  
21 have a problem with Commissioner Potter going?

22 COMMISSIONER LOWENTHAL: No.

23 CHAIR KRUER: Okay, thank you.

24 [ MOTION ]

25 COMMISSIONER POTTER: Okay, I offer an amending



1 motion that the restoration acreage be 55.4 acres.

2 I need a "second" and then I will speak to it,  
3 briefly.

4 COMMISSIONER HUESO: I'll second it.

5 CHAIR KRUEER: It has been moved by Commissioner  
6 Potter, seconded by Commissioner Hueso.

7 COMMISSIONER POTTER: My concern is that wetland  
8 restoration, I am compelled by the testimony by staff that  
9 the higher percentage of success is with the 55 or 68 number.  
10 That said, I also am concerned that this deal of like-kind  
11 restoration, that they not get credit for a restoration  
12 project that is not similar to this wetland.

13 The attachment that is here, Exhibit A, it does go  
14 through a fairly involved criteria, with minimum standards  
15 and objectives. I believe that that incorporated with the  
16 increased acreage would get us to a successful wetland  
17 mitigation project. That is my logic.

18 CHAIR KRUEER: Okay, and the "second"   
19 Commissioner Hueso, no question, please. Do you want to  
20 speak to it?

21 COMMISSIONER HUESO: No.

22 CHAIR KRUEER: Okay, any other Commissioners?

23 Yes, Commissioner Shallenberger.

24 COMMISSIONER SHALLENBERGER: Question to the maker  
25 of the motion. If it turns out that this doesn't adequately

1 -- I mean, are there any performance standards that you are  
2 proposing to put in so that we know whether or not at the end  
3 of monitoring that 55.4 has, in fact, mitigated it?

4 **COMMISSIONER POTTER:** I think the CDP that comes  
5 in is going to be conditioned for the project, is due in 24  
6 months, and is going to have all of those necessary standards  
7 as part of that CDP application, that is my belief.

8 **COMMISSIONER SHALLENBERGER:** My question is which  
9 one rules? In other words, if we adopt the 5.4 now, and --

10 **COMMISSIONER POTTER:** It is 55.4.

11 **COMMISSIONER SHALLENBERGER:** -- 55.4, sorry, and  
12 right you are, and when we, in 24 months when we get the CDP,  
13 and the performance standard show that maybe that doesn't --

14 **COMMISSIONER POTTER:** It is proposed --

15 **EXECUTIVE DIRECTOR DOUGLAS:** No, if I may.

16 **CHAIR KRUER:** Yes, Director Douglas.

17 **EXECUTIVE DIRECTOR DOUGLAS:** The way that I  
18 understand this would work is that 55.4 acres is what they  
19 have to restore. There are performance standards that have  
20 to be met, and to the extent that those performance standards  
21 aren't met, they have to take remedial action, but that  
22 doesn't necessarily mean an increase. It means that they  
23 have to go back and make the changes that are necessary to  
24 make it function to the level that it meets the performance  
25 standards. And, that is built into the --

1                   **COMMISSIONER POTTER:** And, specific to that, the  
2 5.0 in here, with the wetlands monitoring management  
3 remediation, reads monitoring management remediation shall be  
4 conducted over the full operating life of Poseidon's  
5 desalination facility, which shall be 30 years.

6                   So, there is never going to be a lapse of non-  
7 monitoring or mitigation.

8                   **CHAIR KRUER:** Okay.

9                   Commissioner Wan.

10                  **COMMISSIONER WAN:** Yeah, along the lines of what  
11 Commissioner Shallenberger was talking about, you know, I  
12 don't have -- I think the problem here is that, as it has  
13 been pointed out, we don't really have the plan in front of  
14 us. We have the elements here of what will be a plan, and  
15 that makes things very difficult and very uncomfortable,  
16 because you can say, well, they will come in in 24 months,  
17 and they will be required to do 55.4 acres of restoration,  
18 and there will be some performance standards, of which I  
19 don't know what they are now.

20                  There will be monitoring, of which I, essentially,  
21 don't know what that monitoring is, and then they will be  
22 required to meet these performance standards on these 55.4  
23 acres, but what happens if it turns out that they can't? what  
24 happens if it turns out that after all is said and done,  
25 because at this point, we do not even know where these acres

1 are going to be located, so it is very difficult to really  
2 know if it is adequate. What happens then? and there is  
3 where I am really uncomfortable with what we am doing now.

4 I was going to talk about the total issue of  
5 uncertainty, and whether you use 50 percent uncertainty, or  
6 80 percent in the 50 percent, plus mitigation.

7 But, even if you go with the 55.4 it is the  
8 uncertainty because we don't have a plan in front of us now.  
9 We are putting off the actual plan for 24 months that I don't  
10 know how you can do it.

11 CHAIR KRUER: Okay.

12 Commissioner Reilly.

13 COMMISSIONER REILLY: Well, the uncertainty isn't  
14 with performance standards or whether they are going to be  
15 able to do it. The uncertainty has to do with the impact of  
16 their project. And, it is not going to change.

17 Whatever performance standards we put on their  
18 mitigation, for success, is not going to change the analysis  
19 or the level of confidence that this Commission needs to be  
20 able to set mitigation acreage, so those are two separate  
21 issues, I believe.

22 And, you know, when this comes back, and you know  
23 a couple of us were here for Edison -- little grayer than we  
24 were then -- but, we were here, and when this comes back what  
25 is going to be before the Commission is adoption of an entire

1 restoration plan, you know, agreement on baselines, agreement  
2 on what performance standards we are going to use on this,  
3 and I am sure we are going to go back to some of the ones we  
4 have done before, and take a look at that. We are going to  
5 make decision on status reports. We are going to make  
6 decision on workshops and what period of time we do them  
7 over, and so all of those things will be before us, along  
8 with we will have an identification, hopefully, by then, of  
9 the sites that are involved, and but none of that has to do  
10 with setting the acreage. The acreage is based on the  
11 analysis, and the percentage level of confidence we have  
12 based on uncertainties.

13 I don't have a problem with going forward with  
14 this.

15 CHAIR KRUER: Okay, thank you, Commissioner  
16 Reilly.

17 EXECUTIVE DIRECTOR DOUGLAS: And, this is the  
18 approach that we took in San Onofre.

19 CHAIR KRUER: And, I am going to call for the  
20 question.

21 COMMISSIONER HUESO: I do want to include the  
22 concept of phasing into --

23 COMMISSIONER POTTER: I am going to move each one  
24 individually.

25 CHAIR KRUER: Phasing is in there.

1                   Okay, with that, again the maker and seconder are  
2 asking for a "Yes" vote on the amending motion.

3                   Would the Clerk call the roll.

4                   **SECRETARY MILLER:** Commissioner Blank?

5                   **COMMISSIONER BLANK:** Yes.

6                   **SECRETARY MILLER:** Commissioner Burke?

7                   **COMMISSIONER BURKE:** Yes.

8                   **SECRETARY MILLER:** Commissioner Lowenthal?

9                   **COMMISSIONER LOWENTHAL:** Yes.

10                  **SECRETARY MILLER:** Commissioner Hueso?

11                  **COMMISSIONER HUESO:** Yes.

12                  **SECRETARY MILLER:** Commissioner Kram?

13                  **COMMISSIONER KRAM:** [ Absent ]

14                  **SECRETARY MILLER:** Commissioner Neely?

15                  **VICE CHAIR NEELY:** Yes.

16                  **SECRETARY MILLER:** Commissioner Potter?

17                  **COMMISSIONER POTTER:** Aye.

18                  **SECRETARY MILLER:** Commissioner Reilly?

19                  **COMMISSIONER REILLY:** Yes.

20                  **SECRETARY MILLER:** Commissioner Shallenberger?

21                  **COMMISSIONER SHALLENBERGER:** No.

22                  **SECRETARY MILLER:** Commissioner Wan?

23                  **COMMISSIONER WAN:** No.

24                  **SECRETARY MILLER:** Commissioner Achadjian?

25                  **COMMISSIONER ACHADJIAN:** Aye.

1 SECRETARY MILLER: Chairman Kruer?

2 CHAIR KRUER: Yes.

3 SECRETARY MILLER: Nine, two.

4 CHAIR KRUER: Nine, two, the motion passes.  
5 Next, on this.

6 COMMISSIONER POTTER: Yes, Mr. Chair --

7 CHAIR KRUER: Yes, Commissioner Potter.

8 [ MOTION ]

9 COMMISSIONER POTTER: -- before the tech crew took  
10 away the chart of options, and decided it was better to look  
11 at us -- okay, there we go.

12 I believe the next issue was the phased  
13 implementation, and I am prepared to move the phased  
14 implementation approach, that is proposed in the Poseidon  
15 recommendation, and if I get a "second" I'll speak to it.

16 COMMISSIONER HUESO: Second.

17 COMMISSIONER POTTER: The original approach was to  
18 take the 37.5 and then the balance up to the 42 and phase  
19 that. I am under the impression that they can do the 37 in  
20 the 2-year period, so then it leaves, basically, the balance  
21 between the 37 and 55, so whatever that is -- and my math  
22 says it is 18.4, so that would be the second phase.

23 And, the details of that is to be worked out by  
24 staff. What staff wanted was direction on these items, and  
25 so for that reason I would throw that out as the approach.

1                   **CHAIR KRUER:** Okay, Commissioner Hueso?  
2                   Commissioner Reilly.

3                   **COMMISSIONER REILLY:** I would be willing to  
4 support that if the Phase 2 had a time certain placed on it.  
5 And, you know, we are talking about bringing it back within 2  
6 years. They are anxious to get this project up and going, I  
7 understand, and in their concern, they may not be able to get  
8 -- well, they were concerned that they weren't going to be  
9 able to get 42.5 acres, I am assuming they are concerned they  
10 are not going to be able get 55.4 within a 2-year period.

11                   I am willing to let them come back with 37 on a  
12 Phase 1, but from the time of that approval of Phase 1, I  
13 don't think we should let more than 5 years pass before we  
14 require the Phase 2 to come back.

15                   **COMMISSIONER POTTER:** And, I would include that --

16                   **CHAIR KRUER:** Is that okay with you, Commissioner  
17 Potter, as the maker of the motion?

18                   **COMMISSIONER POTTER:** -- in my recommendation.

19                   **CHAIR KRUER:** Commissioner Hueso, is that okay  
20 with you?

21                   **COMMISSIONER HUESO:** Yes.

22                   **CHAIR KRUER:** Okay, is there anyone else who wants  
23 to speak to that amending motion?

24                   Commissioner Lowenthal.

25                   **COMMISSIONER LOWENTHAL:** So, with the acreage



1 change to 55.4 what would Phase 2 acreage be?

2 COMMISSIONER POTTER: It would be 18.4.

3 COMMISSIONER LOWENTHAL: So, it will be clearly  
4 the difference as what is in the report?

5 COMMISSIONER POTTER: Yes.

6 CHAIR KRUER: Yes, and thank you, Commissioner  
7 Lowenthal.

8 EXECUTIVE DIRECTOR DOUGLAS: What I understand the  
9 motion to be is that the initial acreage is 37, that has to  
10 be done, and then according to their suggestion for phasing,  
11 which is when the power plant goes down --

12 COMMISSIONER POTTER: No, that got changed to 5  
13 years.

14 EXECUTIVE DIRECTOR DOUGLAS: Okay, so the second  
15 phase comes in when?

16 COMMISSIONER POTTER: Within 5, that is per the  
17 Reilly idea.

18 COMMISSIONER REILLY: Five years after your  
19 approval on Phase 1.

20 EXECUTIVE DIRECTOR DOUGLAS: All right, that is  
21 more workable, thank you.

22 CHAIR KRUER: Commissioner Wan.

23 COMMISSIONER WAN: I still have a problem with the  
24 phasing, although with the time certain, it is a little bit  
25 better, because we are going to have a long period of time

1 where are going to have impacts, and we are not going to have  
2 any mitigations for those impacts.

3 And, in part, that is because I don't know when  
4 this is going to come on line, relative to these dates, and  
5 you have to remember, that if you start with 37 acres 2 years  
6 from now, it takes time to build it, and it takes even more  
7 time, quite a few years, before it is actually functioning.

8 So, we are now looking at 2 years before they  
9 start, to, probably, you know, 5 or 6 years down the road  
10 before we even start to get anything out of the first phase,  
11 and if you add some time on it, by the time you get, quote,  
12 full mitigation, if you ever do, you are talking about 10  
13 years, and you have had all of those impacts you haven't  
14 accounted for.

15 And, so pushing this out, remember it takes time  
16 for all of this. Pushing it out this way really leaves us  
17 with a whole lot of impacts to that ocean without any  
18 mitigation.

19 **CHAIR KRUER:** Commissioner Reilly.

20 **COMMISSIONER REILLY:** I don't disagree with what  
21 Commissioner Wan said, but I would point out that SONGS  
22 operated for 20 years before we got that mitigation, so and  
23 we finally got it, and it is happening, and I think there is  
24 a balance here between being able to move forward on this  
25 project, for the local water needs, and our being able to

1 nail down the mitigation that fully mitigates what is going  
2 on, in terms of impacts.

3 EXECUTIVE DIRECTOR DOUGLAS: And, I might add that  
4 the 5-year component is 5 years from what?

5 COMMISSIONER REILLY: Adoption of Phase 1.

6 EXECUTIVE DIRECTOR DOUGLAS: The permit for Phase  
7 1. It may be that they decide, in looking at that, that it  
8 is better to do it all at once, and they may, indeed, find an  
9 area that is big enough to accommodate the whole thing, so  
10 that would be an option open to them.

11 But, at least, this way, it is workable and we  
12 don't get into the ambiguity of when does it trigger, and  
13 when does it not.

14 CHAIR KRUEER: Commissioner Scarborough, then  
15 Commissioner Shallenberger.

16 COMMISSIONER SCARBOROUGH: That was -- thank you,  
17 Chair, that was part of my question, was it 2 plus 5, or how  
18 did you get to the 5 plus 5, but I also wondered what would  
19 be the association, or the relationship between the 5 years,  
20 versus when the power plant does, potentially, close? I  
21 didn't understand why Poseidon had chosen the plant closing,  
22 and was wondering if I could enquire with them why that was  
23 chosen, and how it relates to 5?

24 CHAIR KRUEER: Okay.

25 MR. ZBUR: The reason why we had suggested doing

1 the phasing at the plant closing is because, essentially, at  
2 that time we think there will be other kinds of technologies  
3 we can put in place that would reduce the potential impinge-  
4 ment entrainment impacts that we don't have now, because we  
5 have to, basically, rely on the power plant flow, so that is  
6 why we thought that at that point we would have a technology  
7 incentive to avoid additional mitigation by doing it through  
8 avoidance and technology.

9 So, that is why we prefer doing it at the power  
10 plant closure.

11 **COMMISSIONER SCARBOROUGH:** What is the estimated  
12 time of that? time frame?

13 **MR. ZBUR:** It is uncertain. I mean, it could be a  
14 few years, or it could be a long time. According to the  
15 methodology, we are fully mitigated in the interim on the 37  
16 acres, under the 50 percent compensated criteria, we would be  
17 fully mitigated, 2.5 times mitigated at the get go, until --  
18 that is where that 15 percent number came from. We are fully  
19 mitigated until you get to the power plant only operating 15  
20 percent of the time.

21 **COMMISSIONER REILLY:** That is where we got the 7  
22 years.

23 **CHAIR KRUER:** Commissioner Shallenberger.

24 **COMMISSIONER SHALLENBERGER:** Yes, I would like to  
25 hear from staff, Dr. Raimondi, about what you think about the

1 phasing? and how workable that is?

2 MR. RAIMONDI: I am not going to comment about the  
3 motivation for the phasing, but the practicality of it, as we  
4 have had some experience with SONGS.

5 In the SONGS permit there was language that  
6 allowed there to be restoration, and up to 2 wetland areas.  
7 There was the initial phase where there was the selection of  
8 the wetlands, where restoration could be done, and in the  
9 end, Southern California Edison, and their partners, decided  
10 it was logistically more easily to do it at a single wetland  
11 for all sorts of reasons. It minimized the monitoring, it  
12 minimized the costs associated with the permitting, it  
13 minimized the construction costs, it was just cheaper to do  
14 it.

15 Another thing about it, and again, it is going to  
16 matter how you decide to do the monitoring, but with SONGS  
17 they are on the hook for working for what they call the full  
18 operating life of the plant.

19 So with phasing you are going to have two  
20 sequences. You will have the first 37 acres, which will go  
21 for a 30-year period, if you adopt that, and then the second  
22 17 or 16 acres that will be out of phase with that, and will  
23 go longer, so that becomes problematic from a monitoring  
24 standpoint, financially, as well, because you have to carry  
25 the monitoring longer.

1                   **COMMISSIONER SHALLENBERGER:** But, it is  
2 problematic to the project proponent, not to us, in terms, I  
3 mean, they could decide to do them all at once.

4                   **MR. RAIMONDI:** Yes, but there is a stronger issue,  
5 and that is it is way better. It is possible, and I am  
6 sympathetic to them, at this point, about being able to find  
7 the acreage, but it is way better for the system if it is 55  
8 rather than two pieces. You are going to have much more  
9 likelihood of it working, and it is probably going to link  
10 into other restorations, so from an ecological point of view,  
11 bigger is better.

12                   **CHAIR KRUER:** Right, okay.

13                   **COMMISSIONER POTTER:** Well, just as the maker, to  
14 that issue. It is a real estate issue. I mean if the  
15 opportunity is out there, and during this period of working  
16 with staff, they realize we would do better to do it in one  
17 fell swoop, fine then come back and tell us that.

18                   I understand the logic behind what you are saying,  
19 but it is going to be more of a property acquisition problem  
20 is my suspicion.

21                   **CHAIR KRUER:** Okay.

22                   Commissioner Lowenthal, and then we are going to  
23 call for the question, if that is okay with everybody, unless  
24 there is somebody who hasn't spoken yet.

25                   **COMMISSIONER LOWENTHAL:** I wanted to just be clear

1 on when the second -- I know we have the 5-year time frame,  
2 but just from the proponent's presentation there were  
3 different triggering mechanisms, so under our new scheme what  
4 would actually trigger Phase 2?

5 **EXECUTIVE DIRECTOR DOUGLAS:** It would be 5 years  
6 from the first phase, that is, the 37 acres, which has to  
7 come in for a permit within 24 months, as I understand it,  
8 right, and then once that permit is issued, that is what I  
9 understand, then the 5-year period is triggered.

10 But, I would suggest that the maker of the motion  
11 also incorporate in it that if they want to do the entire  
12 amount together, that that would be okay, they don't have to  
13 wait.

14 **COMMISSIONER POTTER:** I literally stated that 3  
15 minutes ago, but that is my intention, and I think everybody  
16 else concurs, that if they come back and can do it great,  
17 okay.

18 **EXECUTIVE DIRECTOR DOUGLAS:** Okay.

19 **CHAIR KRUER:** Okay, and we are going --  
20 Ms. Schmeltzer, we are going to call for the  
21 question. I thought I mentioned.

22 **CHIEF COUNSEL SCHMELTZER:** I am sorry, I just did  
23 want to make sure, on this timing question, I thought I heard  
24 the Executive Director say two different things.

25 There is the provision of coming in for a permit

1 within 24 months, and it being issued within the 24 months --

2           **COMMISSIONER POTTER:** Specific to the 37, and if  
3 they want to go ahead and try to do more at that time, for  
4 economy sake, then fine, they can go to the full 55.4, but  
5 they have an option to go ahead and do it in a phase.

6           **CHIEF COUNSEL SCHMELTZER:** Right, and I understand  
7 that, but if they just do the 37 within the first 24 months,  
8 that the trigger is not -- the trigger is within 24 months.  
9 It is not if the permit takes longer than that to issue.

10           **COMMISSIONER POTTER:** No.

11           **EXECUTIVE DIRECTOR DOUGLAS:** No, my understanding  
12 was, that they have to come in for a permit within 24 months,  
13 and then it depends on what the Commission does. They may  
14 have conditions about the issuance of that permit. My  
15 understanding was that the 5 years starts from the issuance  
16 of the permit.

17           **COMMISSIONER REILLY:** That is correct.

18           **COMMISSIONER POTTER:** Correct.

19           **CHAIR KRUEER:** That is correct, Mr. Douglas, thank  
20 you.

21           Yes, Commissioner.

22           **COMMISSIONER SCARBOROUGH:** I am not sure where you  
23 are headed with your phasing in your motions, where does the  
24 dredging fit into this?

25           **COMMISSIONER POTTER:** I was going to that in the



1 next --

2 CHAIR KRUER: We will get to -- I think we are  
3 going to call the question, here, and then we will get to the  
4 other amending, if there are other amending things.

5 Again, the amending motion, the maker and seconder  
6 are asking for a "Yes" vote.

7 Would the Clerk call the roll, please.

8 MR. ZBUR: Mr. Chair, can I just so there is not a  
9 dispute on this, can I just make sure there is clarity on  
10 what the timing is on the motion. We are assuming it is 24  
11 months --

12 COMMISSIONER POTTER: I am hoping it gets moved  
13 sometime tonight.

14 MR. ZBUR: -- 24 months -- well, only because I --  
15 24 months to get our application in, which is what we thought  
16 it was, and then from the date that the permit is issued, so  
17 if it takes 9 months or a year to get the permit approved,  
18 from the date the permit is issued, then the 5 years runs,  
19 and then I assume that we have to get another permit  
20 application in within that 5 years?

21 COMMISSIONER POTTER: That is correct.

22 CHAIR KRUER: Correct.

23 MR. ZBUR: Thank you for that clarification.

24 CHAIR KRUER: Okay, thank you.

25 Would the Clerk call the roll, please.

1           **SECRETARY MILLER:** Commissioner Burke?  
2           **COMMISSIONER BURKE:** Yes.  
3           **SECRETARY MILLER:** Commissioner Lowenthal.  
4           **COMMISSIONER LOWENTHAL:** Yes.  
5           **SECRETARY MILLER:** Commissioner Hueso?  
6           **COMMISSIONER HUESO:** Yes.  
7           **SECRETARY MILLER:** Commissioner Kram?  
8           **COMMISSIONER KRAM:** Yes.  
9           **SECRETARY MILLER:** Commissioner Neely?  
10          **VICE CHAIR NEELY:** Yes.  
11          **SECRETARY MILLER:** Commissioner Potter?  
12          **COMMISSIONER POTTER:** Aye.  
13          **SECRETARY MILLER:** Commissioner Reilly?  
14          **COMMISSIONER REILLY:** Yes.  
15          **SECRETARY MILLER:** Commissioner Shallenberger?  
16          **COMMISSIONER SHALLENBERGER:** Yes.  
17          **SECRETARY MILLER:** Commissioner Wan?  
18          **COMMISSIONER WAN:** Yes.  
19          **SECRETARY MILLER:** Commissioner Achadjian?  
20          **COMMISSIONER ACHADJIAN:** Aye.  
21          **SECRETARY MILLER:** Commissioner Blank?  
22          **COMMISSIONER BLANK:** Yes.  
23          **SECRETARY MILLER:** Chairman Kruer?  
24          **CHAIR KRUER:** Yes.  
25          **SECRETARY MILLER:** Unanimous.

1                   **CHAIR KRUER:** Okay, the amending motion passes.  
2                   Commissioner Potter, do you have anymore amending  
3 motions?

4                   **COMMISSIONER POTTER:** I am going to actually ask  
5 for staff clarification on these last two items. I think  
6 they blend together.

7                   Staff is saying that new technologies not appropo,  
8 or in this consideration, and the applicant is saying they  
9 would like the ability to utilize new technology.

10                  And, the other one is this dredging credits, can  
11 you explain what the conflicts are here?

12                  **EXECUTIVE DIRECTOR DOUGLAS:** What I understand,  
13 relative to the new technology, that is that if they can come  
14 up the way that they had originally proposed it, if they come  
15 up with technology that shows that they can filter the water  
16 and avoid entrainment impacts, because of new technology,  
17 that there ought to be some adjustment in the mitigation  
18 requirement.

19                  It seems to me that one way you could address  
20 that, and you know, we have some sympathy for that position.  
21 Obviously, if we could avoid the impacts altogether, that  
22 would be the best. But, if in that 5-year period, for the  
23 second phase, they can come up with technology that shows  
24 that they are not having impacts, you could then factor that  
25 into whether or not it necessary to add that. But, take that

1 into account in the permit that would be applied for in the  
2 Phase 2.

3 COMMISSIONER POTTER: Okay, with that said, I move  
4 that we amend to allow to encourage the use of new  
5 technologies --

6 CHAIR KRUER: Commissioner Potter.

7 COMMISSIONER POTTER: He spoke, I didn't preface.

8 CHAIR KRUER: Let me, just to be clear on it. I  
9 am not sure about that.

10 Let me just go to Vice Chair Neely for one second,  
11 and then I am coming right back to you for your motion.  
12 There is a question of you prefacing.

13 COMMISSIONER POTTER: I would like to know where  
14 in the law you can't speak anyway. I think that is something  
15 that Rusty Arias made up from his stay in the state assembly.

16 VICE CHAIR NEELY: Mr. Chairman, I don't have any  
17 questions at this time.

18 CHAIR KRUER: Okay, Commissioner Potter.

19 [ MOTION ]

20 COMMISSIONER POTTER: All right, I'll move to  
21 amend, and incorporate in the motion that we encourage the  
22 use of new technologies under the framework that was  
23 expressed by the Executive Director.

24 COMMISSIONER HUESO: I'll second it.

25 COMMISSIONER POTTER: With the intent of lessening

1 the impact.

2 CHAIR KRUER: Just a second.

3 Commissioner Potter has made the motion, and  
4 recommending a "Yes" vote, and Commissioner Hueso seconded  
5 that motion.

6 Commissioner Potter, would you like to speak to  
7 that motion?

8 COMMISSIONER POTTER: No, I think Mr. Douglas and  
9 I worked pretty well on that item. That was exactly what I  
10 wanted him to say, so thank you.

11 COMMISSIONER REILLY: Mr. Chairman.

12 CHAIR KRUER: That is why it was prefaced.

13 COMMISSIONER REILLY: Let me ask.

14 Staff is going to be incorporating the concept of  
15 the 2-year application, and the 5 years afterwards, is staff  
16 willing, in discussing that 5 years, willing to incorporate  
17 language that suggests that they look into new technology to  
18 lessen impacts, and that as part of that 5-year hearing, if  
19 they are able to do that, could be a review of mitigation  
20 requirement?

21 EXECUTIVE DIRECTOR DOUGLAS: Well, that is what I  
22 discussed, and I think that is what the motion would do, and  
23 we don't have a problem with that.

24 COMMISSIONER REILLY: Are you willing to just  
25 incorporate that into the staff?

1                   **EXECUTIVE DIRECTOR DOUGLAS:** I would rather have  
2 the Commission do it.

3                   **COMMISSIONER REILLY:** That's fine, okay.

4                   **CHAIR KRUER:** Commissioner Wan.

5                   **COMMISSIONER WAN:** I just have a question on this  
6 one, and that is, I am assuming it is always okay, if you can  
7 avoid the entrainment, that is the best, because the fact is  
8 -- I don't care what you say -- no matter what mitigation you  
9 perform, no matter how you try to compensate for it, you  
10 never get full compensation. So, the best thing is always  
11 avoidance, so I am certainly not opposed to that.

12                   The question I want to make sure is that when they  
13 come back for the review, that we are talking about a review  
14 that requires some kind of proof, and not just a statement,  
15 "We want to use it." That there is going to be some real  
16 scientific analysis done to make sure that that is the case,  
17 because up until now there doesn't seem to be anything that  
18 has been developed that can avoid the entrainment, and we  
19 went through that in great and painful detail when we did  
20 SONGS.

21                   So, I am not aware of it, and I just want to make  
22 sure that we know how this is going to be handled.

23                   **EXECUTIVE DIRECTOR DOUGLAS:** Obviously, the proof  
24 would have to be that there are reductions in impacts, or  
25 elimination of impacts, in order for us to consider -- if

1 this motion passes -- a reduction of the Phase 2 mitigation  
2 requirement.

3 But, this leaves that open, and it is up to them  
4 to try to find that technology, and again, if they decide  
5 right up front, we are not going to worry about that, we are  
6 just going to do the 55.4 acres, then it becomes a moot  
7 point.

8 CHAIR KRUER: Okay.

9 EXECUTIVE DIRECTOR DOUGLAS: But, it leaves open  
10 that opportunity.

11 CHAIR KRUER: Okay, I am going to call on the  
12 amending motion.

13 Priscilla's got her pen up, and we'll need a brief  
14 break.

15 Call the roll, please, on the amending motion, on  
16 the technology.

17 SECRETARY MILLER: Commissioner Lowenthal?

18 COMMISSIONER LOWENTHAL: [ inaudible ]

19 VICE CHAIR NEELY: Speak up, she can't hear you.

20 COMMISSIONER LOWENTHAL: Yes.

21 SECRETARY MILLER: Commissioner Hueso?

22 COMMISSIONER HUESO: Yes.

23 SECRETARY MILLER: Commissioner Kram?

24 COMMISSIONER KRAM: Yes.

25 SECRETARY MILLER: Commissioner Neely?

1 VICE CHAIR NEELY: Yes.  
2 SECRETARY MILLER: Commissioner Potter?  
3 COMMISSIONER POTTER: Aye.  
4 SECRETARY MILLER: Commissioner Reilly?  
5 COMMISSIONER REILLY: Yes.  
6 SECRETARY MILLER: Commissioner Shallenberger.  
7 COMMISSIONER SHALLENBERGER: Yes.  
8 SECRETARY MILLER: Commissioner Wan?  
9 COMMISSIONER WAN: Yes.  
10 SECRETARY MILLER: Commissioner Achadjian?  
11 COMMISSIONER ACHADJIAN: Aye.  
12 SECRETARY MILLER: Commissioner Blank?  
13 COMMISSIONER BLANK: Yes.  
14 SECRETARY MILLER: Commissioner Burke?  
15 COMMISSIONER BURKE: Yes.  
16 SECRETARY MILLER: Chairman Kruer?  
17 CHAIR KRUER: Yes.  
18 SECRETARY MILLER: Unanimous.  
19 CHAIR KRUER: The amending motion passes.  
20 Commissioner Potter, any more?

21 [ MOTION ]

22 COMMISSIONER POTTER: I am going to move that the  
23 dredging restoration credit be at the Commission's  
24 discretion, and if I get a "second" I'll speak to it.

25 COMMISSIONER HUESO: Second.



1           **CHAIR KRUER:** Moved by Commissioner Potter,  
2 seconded by Commissioner Hueso.

3           Commissioner Potter, would you like to speak to  
4 your motion?

5           **COMMISSIONER POTTER:** I think my concern is, and  
6 this is sort of an open ended question, that whether they can  
7 even get ownership of the dredging operations, and can  
8 incorporate that in, remains pretty much unanswered, and may  
9 remain there for awhile.

10           So, if there does seem to be a dredging plan that  
11 comes forward, and we can get something tangible there about  
12 how is going to be operated? who is going to do it? when it  
13 is going to occur? all of those ingredients, then it is up to  
14 the Commission to decide if that is something that we want to  
15 entertain at that time. That is my thought behind it.

16           **CHAIR KRUER:** Okay, Commissioner Potter or  
17 Commissioner Hueso, anything else?

18           Anyone else? Commissioner Wan.

19           **COMMISSIONER WAN:** Just very quickly, if you are  
20 going to leave this open for the discretion -- and I think I  
21 heard Commissioner Potter say this, but I just want to make  
22 sure -- there is one thing, there is a big difference between  
23 dredging connected with maintaining the project, and dredging  
24 for mitigation, because as in SONGS it is required for the  
25 mitigation, and as long as the dredging credit is understood,

1 it is for whatever future project they are going to be  
2 dredging for, not for the desal plant, then I would find that  
3 acceptable.

4 **COMMISSIONER POTTER:** That is --

5 **COMMISSIONER WAN:** You understand the distinction?

6 **CHAIR KRUER:** Commissioner Reilly.

7 **COMMISSIONER REILLY:** If I understood the staff  
8 correctly, earlier, your statement was if dredging becomes  
9 part of the project, and becomes a reality, as opposed to a  
10 possibility, then staff would do a full analysis of that  
11 activity, at that time, both in terms of impacts and in terms  
12 of benefits, and be prepared to make recommendations relative  
13 to whether additional conditions had to be added, or benefits  
14 would be accorded to that.

15 I guess, I would prefer to wait to see what  
16 happens with that issue, before we pre-judge it, that's all.

17 **EXECUTIVE DIRECTOR DOUGLAS:** That is the way we  
18 understand it, and this motion would just say that they could  
19 come in for credit for dredging, but they would have to prove  
20 that it warrants it, so that is fine with us.

21 **CHAIR KRUER:** Okay.

22 Call for the question.

23 Clerk, would you call the roll, please. They are  
24 asking for a "Yes" vote, on the amending motion.

25 **SECRETARY MILLER:** Commissioner Hueso?

1 COMMISSIONER HUESO: Yes.  
2 SECRETARY MILLER: Commissioner Kram?  
3 COMMISSIONER KRAM: Yes.  
4 SECRETARY MILLER: Commissioner Neely?  
5 VICE CHAIR NEELY: Yes.  
6 SECRETARY MILLER: Commissioner Potter?  
7 COMMISSIONER POTTER: Aye.  
8 SECRETARY MILLER: Commissioner Reilly?  
9 COMMISSIONER REILLY: No.  
10 SECRETARY MILLER: Commissioner Shallenberger?  
11 COMMISSIONER SHALLENBERGER: Yes.  
12 SECRETARY MILLER: Commissioner Wan?  
13 COMMISSIONER WAN: No.  
14 SECRETARY MILLER: Commissioner Achadjian?  
15 COMMISSIONER ACHADJIAN: Aye.  
16 SECRETARY MILLER: Commissioner Blank?  
17 COMMISSIONER BLANK: Aye.  
18 SECRETARY MILLER: Commissioner Burke?  
19 COMMISSIONER BURKE: No.  
20 SECRETARY MILLER: No?  
21 COMMISSIONER BURKE: [ Inaudible ]  
22 SECRETARY MILLER: Commissioner Lowenthal?  
23 COMMISSIONER LOWENTHAL: Yes.  
24 SECRETARY MILLER: Chairman Kruer?  
25 CHAIR KRUER: Yes.

1                   **SECRETARY MILLER:** Nine, three.

2                   **CHAIR KRUER:** Nine, three, the amending motion  
3 passes.

4                   And, now we will need back to the main motion,  
5 okay. Back to the motion, and again the maker and the  
6 seconder are asking for a "Yes" vote.

7                   Commissioner Wan has her hand up.

8                   **COMMISSIONER WAN:** Just on the main motion, this  
9 is not an amending motion, and I just want a quick  
10 explanation as to why I am going to vote "No" and the reason  
11 I am going to vote "No" is that I don't believe, if you look  
12 at this whole thing, that we really are getting the kind of  
13 assurances we need that this is real mitigation, and the  
14 reason is -- and that this is adequate mitigation -- this is  
15 going to be doing, this facility, once it becomes a stand  
16 alone facility, essentially, what once-through cooling does,  
17 and once-through cooling has been found by the courts to be a  
18 violation of the *Porter Cologne Act*, and I don't see how -- I  
19 don't even know why you bother to phase out the power plant,  
20 if you are just going to substitute something that is going  
21 to do exactly the same thing. It is not acceptable, because  
22 it is not protective of the ocean.

23                   Our oceans are under horrific assault, and this  
24 kind of thing is simply not appropriate, particularly, when  
25 we get a plan that is -- we deferred our decision, we passed

1 the power plant, deferred the decision on the mitigation, and  
2 now we are again with all of the things that we had in the  
3 amending motions, deferring the real plan for another 2  
4 years.

5 We will not see a full plan, and I don't think you  
6 can approve a mitigation without the appropriate plan, and if  
7 I had a full plan in front of me, it might be different, but  
8 I don't, and without that I don't have the confidence to know  
9 just the real extent of the mitigation that is going to take  
10 place here.

11 And, let me, again, say mitigations here, as  
12 elsewhere, does not give you complete compensation.

13 CHAIR KRUER: Okay, would the Clerk call the roll  
14 on the main motion, please, as amended by the Commission.

15 SECRETARY MILLER: Commissioner Kram?

16 COMMISSIONER KRAM: Yes.

17 SECRETARY MILLER: Commissioner Neely?

18 VICE CHAIR NEELY: Yes.

19 SECRETARY MILLER: Commissioner Potter?

20 COMMISSIONER POTTER: Aye.

21 SECRETARY MILLER: Commissioner Reilly?

22 COMMISSIONER REILLY: Yes.

23 SECRETARY MILLER: Commissioner Shallenberger?

24 COMMISSIONER SHALLENBERGER: Yes.

25 SECRETARY MILLER: Commissioner Wan?

1                   **COMMISSIONER WAN:** No.  
2                   **SECRETARY MILLER:** Commissioner Achadjian?  
3                   **COMMISSIONER ACHADJIAN:** Aye.  
4                   **SECRETARY MILLER:** Commissioner Blank?  
5                   **COMMISSIONER BLANK:** Yes.  
6                   **SECRETARY MILLER:** Commissioner Burke?  
7                   **COMMISSIONER BURKE:** Yes.  
8                   **SECRETARY MILLER:** Commissioner Lowenthal?  
9                   **COMMISSIONER LOWENTHAL:** Yes.  
10                  **SECRETARY MILLER:** Commissioner Hueso?  
11                  **COMMISSIONER HUESO:** Yes.  
12                  **SECRETARY MILLER:** Chairman Kruer?  
13                  **CHAIR KRUER:** Yes.  
14                  **SECRETARY MILLER:** Eleven, one.  
15                  **CHAIR KRUER:** Okay, the Commission hereby approves  
16 the main motion, as amended by the Commission.  
17                   We will take a break.

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20                  [ Whereupon the hearing concluded at 7:35 p.m. ]

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STATE OF CALIFORNIA        )  
                                  )        SS.  
COUNTY OF MADERA         )  
                                  )

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 347 pages represents a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission on August 6, 2008.

Dated: August 25, 2008

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PRISCILLA PIKE