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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

CHAIRPERSON: RICHARD WRIGHT

In the Matter of the:)
Public Hearing)
RE: All items on the)
Agenda, including but not)
limited to, Poseidon Resources)
Corporation, Proposed Carlsbad)
Desalination Project (Order No.)
R9-2006-0065, NPDES No. CA0109223);)
Other Business.)
_____)

PARTIAL TRANSCRIPT OF PROCEEDINGS

San Diego, California

Wednesday, February 11, 2009

Reported by:
MARIANNE SEGALLA
Hearing Reporter
Job No. :
B0958WQSD(P)

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

2 SAN DIEGO REGION

3 CHAIRPERSON: RICHARD WRIGHT

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15 PARTIAL TRANSCRIPT OF PROCEEDINGS,
 16 taken at 9174 Sky Park Court, San Diego,
 17 California, commencing at 9:00 a.m.,
 18 on Wednesday, February 11, 2009, heard before
 19 THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
 20 BOARD, SAN DIEGO REGION, reported by
 21 MARIANNE SEGALLA, Hearing Reporter.

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1 APPEARANCES:

2 CHAIRPERSON: Richard Wright

3 BOARD MEMBERS: Eric Anderson
4 Wayne Rayfield
5 Kris Weber
6 Grant Destache
7 George Loveland
8 Gary Thompson
9 Marc Luker

10 EXECUTIVE OFFICER: John H. Robertus
11 ASSISTANT EXECUTIVE
12 OFFICER: Michael McCann

13 LEGAL COUNSEL: Catherine Hagan

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I N D E X

1		
2	SPEAKERS:	PAGE
3	Mr. Robertus	9
4	Mr. Garrick	11
5	Mr. Lewis	15
6	Ms. Kulchin	18
7	Ms. Nygaard	21
8	Mr. Pocklington	23
9	Mr. Quist	26
10	Mr. Singarella	30
11	Mr. MacLaggan	31
12	Mr. Mayer	52
13	Mr. Nordby	56
14	Mr. Balletto	58
15	Mr. Garrett	69
16	Mr. Marco Gonzalez	77
17	Mr. Durkle	95
18	Ms. Spehn	96
19	Ms. Rubin	98
20	Mr. Elliot	99
21	Mr. Vidoric	100
22	Mr. Lemmon	101
23	Mr. Ruker	101
24	Mr. Howes	102
25	Ms. Villagrana	104

I N D E X (Continued)		
	SPEAKERS:	PAGE
1		
2		
3	Mr. Owen	105
4	Mr. Arant	106
5	Mr. Elliott	108
6	Mr. Ball	109
7	Mr. Alonso Gonzalez	110
8	Ms. Solorzano	111
9	Mr. Barrett	113
10	Ms. Guerin	113
11	Mr. Simmons	115
12	Mr. Weinberg	116
13	Mr. Anderson	118
14	Ms. Vereker	119
15	Mr. Lahsaie	119
16	Mr. Knight	121
17	Ms. Thorner	122
18	Ms. Driscoll	123
19	Mr. Christiansen	126
20	Ms. Krebs	127
21	Mr. Pazokas	128
22	Mr. Everts	131
23	Mr. Kimura	134
24	Mr. Peugh	136
25	Ms. Hagan	139

	I N D E X (Continued)	
2	SPEAKERS:	PAGE
3	Mr. Thompson	139
4	Mr. Wyels	140
5	Ms. Clemente	143
6	Mr. Rayfield	149
7	Mr. Loveland	155
8	Mr. Anderson	158
9	Mr. Weber	160
10	Mr. Destache	161
11	Mr. Luker	162
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 San Diego, California, Wednesday, February 11, 2009

2 (Partial transcript)

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5 MR. WRIGHT: Before we introduce this item, I have
6 just a brief statement to make. And then, what I'd like
7 to do is offer the opportunity to the elected officials,
8 the ones that we've been able to identify here, are
9 Assemblyman Martin Garrick, Mayor Bud Lewis, Councilwoman
10 Ann Kulchin, and Julie Nygaard an opportunity to speak if
11 they wish at this, after we hear initial presentation
12 from Mr. Robertus.

13 I know some of you have busy schedules. We all
14 have busy schedules, but I understand that there are a
15 few budgetary problems in Sacramento, and everywhere I
16 guess.

17 But I'll leave it up -- I'll leave it up to
18 you. If you decide not to speak at that time, or early
19 on, why we'll call you later on.

20 First, before I hear from Mr. Robertus on
21 Item 6, I'd like to just note that a number of the Board
22 members received mail regarding this Matter from Poseidon
23 and other members of the public. And it's certainly an
24 indication of the importance of this Matter.

25 But I would like for everybody to know that

1 when we receive mail on a pending matter directly at our
2 place of business or homes, it should be clear that the
3 mail is also being provided to John Robertus and the
4 Regional Board staff for inclusion in the record for the
5 pending matter.

6 Otherwise, we do not know whether we can read
7 the mail we've received without violating ex parte
8 communication restrictions. In this case, staff having
9 looked into it, it appears that all the mail received was
10 also provided to the Regional Board for inclusion in the
11 record.

12 And I don't know if any of the Board members
13 have a statement that they need to make on this Matter,
14 but presumably that will take care of everybody. That's
15 okay.

16 All right. Let's then get into the meat on
17 Item 6. At this time I'd like to offer
18 Mr. Assemblyman -- or Assemblyman Martin Garrick an
19 opportunity to make a statement.

20 I'm sorry. Would you prefer that
21 Mr. Robertus --

22 MS. HAGAN: Mr. Robertus had a brief comment, that I
23 think it might be worth taking first.

24 MR. WRIGHT: Okay. Would you mind just -- it will
25 be a brief statement.

1 So, Mr. Robertus?

2 MR. ROBERTUS: Thank you, Mr. Chair, Members of the
3 Board. I'd like to make this statement. We would like to give
4 the Board the opportunity to take final action on the
5 Flow Minimization Plan considered last
6 April, 2008, and the Marine Life Mitigation Plan Poseidon
7 submitted in November, including the opportunity to make
8 appropriate findings under California Water Code Section
9 13142.5(b) concerning these plans.

10 But I do not recommend that you take the final action
11 today. We would propose that you hear the Matter today, take
12 testimony, but do not take final action on any items before
13 you. The staff recommends that you continue the Matter
14 to the Board's April 8, 2009 meeting in Dana Point for
15 final action.

16 We understand that this Matter has been pending
17 before this Board for quite some time. It involves a
18 matter of great public importance, this region's water
19 supply. We also recognize that a number of comments have
20 been received by the Board, urging the Board to take
21 action without further delay.

22 We acknowledge that it is very important for
23 this Board to take action as quickly as possible. Staff
24 has been working with Poseidon, and staff and Poseidon
25 are no longer asking the Board to take action today.

1 Staff is accepting Poseidon's offer to limit
2 mitigation sites to those that are within the San Diego
3 Region. And staff agrees that it is premature to select
4 the final site at this time. We have committed to
5 Poseidon to provide them with our complete list of
6 staff's remaining concerns about the plans before you,
7 and would commit senior staff to working them out
8 expeditiously.

9 The list is as follows; placing Regional Water
10 Board and its Executive Officer on equal footing,
11 including funding with the Coastal Commission and its
12 Executive Director in the Marine Life Mitigation Plan
13 while minimizing redundancies, such as the
14 Scientific Advisory Panel and details of a dispute
15 resolution process that could be worked out.

16 Second, reducing the number of sites to five in
17 consultation with the Coastal Commission, with the
18 existing proviso that other sites within the
19 Regional Board boundaries could be added.

20 Third, that Poseidon provide the flow
21 proportioned calculation for Poseidon's impacts due to
22 impingement to help support the Board's determination that
23 these impacts are de minimus.

24 And fourth, Poseidon is to provide
25 consolidated -- a consolidated set of all requirements

1 imposed to date by various agencies. Staff plans to
2 bring the entire Flow Minimization Plan required by the
3 NPDES permit issued to Poseidon back to the
4 Regional Board at its April, 2009 meeting for the Board
5 for final approval of the full plan, and withdrawing its
6 April, 2008 conditional approval.

7 Today the Board should take all the time to
8 obtain any information they need, and have any questions
9 answered regarding the project and the Marine Life
10 Mitigation Plan. We'll propose a motion for your
11 consideration consistent with this recommendation at the
12 end of this Matter.

13 Thank you.

14 MR. WRIGHT: Thank you, Mr. Robertus. Could you
15 provide copies of that to the Board members. I think it
16 would be useful in relation to discussion that we'll have
17 later on.

18 All right. That's really encouraging that staff
19 and Poseidon's interests are continuing to talk. That's,
20 glad to see that.

21 Now, Mr. Garrick, I apologize for having gotten things
22 out of order there.

23 MR. GARRICK: It's quite all right, Mr. Chairman.
24 Thank you, first, for allowing me to go first. I did fly
25 down last night with the intent of being here early this

1 morning, and intending on flying out after I read my
2 statement into the record here and discuss the urgency
3 that we, up in Sacramento, feel that this project needs
4 your attention and to move forward with.

5 With that, I'll take a moment here and read
6 some of my comments and conclude with just a list of
7 those people that have signed on here.

8 San Diego County has over 3 million residents.
9 It lacks, as all of us know, a reliable drought-proof
10 water supply. While San Diego County Water Authority has
11 made great strides in promoting water conservation and
12 recycling programs, we still currently import over
13 85 percent of our water from the Colorado River and the
14 Sacramento, San Joaquin Bay Delta area through the
15 Metropolitan Water District.

16 The San Diego County Water Authority adopted a
17 Urban Waste Management Plan that identifies
18 desalinization as a critical component of its plan to
19 diversify local supplies and reduce the burden of
20 imported sources.

21 The Carlsbad facility, which I wanted to share,
22 and I skipped over, is in my district. And I'm pleased
23 to have it there. I represent the area of the
24 74th Assembly District, which starts in Del Mar, goes
25 north, including all of Solana Beach, Encinitas,

1 Carlsbad, a little bit of Oceanside, and then all of
2 Vista, San Marcos, 2/3 of Escondido, and comes back along
3 the Del Dios Highway, taking in Lake Hodges, Olivenhain,
4 Elfin Forest, Rancho Santa Fe, that rural area up there,
5 and a few other communities, you know, Whispering Palms.
6 Roughly half a million people, what I'm pleased to
7 represent the 74th Assembly District.

8 But the project, which is in Carlsbad, is an
9 integral part, it's linked to state and regional efforts
10 to supply the existing water supply. And it's a critical
11 component to San Diego County's future health and our
12 economic welfare.

13 The project has undergone 8 years, 8 years
14 gentlemen, of planning and research to ensure that it is
15 an environmentally responsible solution for the Region's
16 water needs. The City of Carlsbad certified the
17 environmental documents back in 2006, concluding that
18 there were no significant impacts for both the
19 construction and ongoing operation of the plant relating
20 to 13 different areas of studies, including marine impacts.

21 All of the water produced by this facility will
22 be appropriated for the public use through long-term
23 water purchase agreements. My understanding is that
24 there are 9 long-term water agreements that have been
25 signed. That means it's fully subscribed. And those

1 water agreements make a commitment of 30 years on both
2 parties' part to both produce the water and to purchase
3 the water.

4 These water purchase agreements provide
5 important rate-payer protections by guaranteeing both the
6 quantity, quality, reliability, and the price of the
7 water. Drought conditions and the environmental impact
8 of climate changes, coupled with looming legal
9 constraints placed by the Colorado River Mandate, a
10 strategy to diversify our -- or San Diego's water supply.

11 Desalinization is just one part of the
12 solution. But it's a critical part that must be pursued.
13 To this end, we, and I'll identify the "we" that I'm
14 referring to in a moment, cannot afford further delays of
15 this critical water infrastructure. And the, "we," I'm
16 referring to, gentlemen, I'll conclude with this, because
17 I know you have a busy schedule, and that there are
18 others that would like to speak.

19 The, "we," although, we have difficulties in
20 getting a budget, this "we," is a bipartisan we, with all
21 11 members, both Senators and Assembly Members on the
22 Republican side and Democratic side, have signed a
23 letter urging this project go forward here. And I
24 encourage you to move forward with it.

25 Thank you for allowing me to speak.

1 MR. WRIGHT: Thank you, sir. We appreciate your
2 taking the time to speak to us.

3 Mayor Bud Lewis, do you wish to speak at this
4 time, or do you want to hold off? It's up to you.

5 MR. LEWIS: Good morning, Board members. I am in a
6 very unique position. I am the Mayor of the City of
7 Carlsbad. I'm also the Chairman of the San Diego County
8 Water Authority. Mr. Garrick mentioned 8 years, for some
9 of us it's almost been 11, trying to get this process
10 through.

11 And today's Hearing, I was hoping, would
12 conclude all of these meetings that we've attended to try
13 to get this information before you. I don't have to go
14 over the severity of the San Diego Water Authority's
15 crisis. You know that. You've heard about this all the
16 way through. But for the Water Authority, this project
17 is actually a necessity. When we look at the total
18 spectrum of where the water is coming from, this project
19 represents 10 percent of this Region's water, 10 percent,
20 gentlemen.

21 And the delays that are ongoing by your staff,
22 I'm just dumbfounded. Every delay costs money. The
23 money will eventually be paid by the rate payers. And so
24 it's driving the price of water up. So I -- as I
25 mentioned to the Coastal staff, that we went through in

1 trying to get this thing set up. The Coastal staff
2 fought us all the way.

3 I mean, I don't know if this is a badge of
4 honor or what, but we go through and things come up, and
5 I expect it. In a democracy such as ours, everyone has
6 the right to have their say, but good Lord, you know, 10,
7 12 years.

8 And it would seem that your staff would be able
9 to get all these things ironed out. If they haven't,
10 they need to bring it to you, and you decide if it's
11 right or wrong. But another delay, gentlemen, I -- it's
12 really hard for me to understand, being involved in
13 politics as long as I have, and I've been involved in
14 them for 38 years, that this thing can get so out of
15 whack. And I realize it's very controversial for some
16 folks, especially Surfrider and some of the others.

17 But to me it's kind of a badge of honor. I
18 mean, I expect that, because I live in a coastal
19 community. Everything we try to do in the coastal area
20 is always challenged. I expect that. But this has gone
21 on 10 years plus. And the only people that are getting
22 reamed are the rate payers, because water is going up all
23 the time.

24 You know what's happened in the Delta, and you
25 know what's happened at the Colorado River, because our

1 supplies are diminishing either because of drought or
2 because of federal restrictions.

3 And, I mean, I'm just amazed that staff cannot
4 have worked this out so fast. And I've been to every
5 meeting, and I feel like this is my second home to a
6 degree as far as meetings, because I'm getting to where I
7 recognize your faces. And usually when you go in, you
8 just kind of see a blur of faces, but I can really recognize all
9 of you that were here the last time I was here. You're
10 to be commended for that. You do a great job, but you're the
11 policy makers. They're you're staff.

12 And I thought the last time we were here that you
13 instructed your staff to get the job done. Maybe you're
14 short of staff. I don't know. I mean, we're having
15 problems as you know in every community about the
16 economics and potentially laying off staff and what have
17 you. And maybe that's the problem. I don't know.

18 But I'll tell you folks, the longer you wait,
19 the longer you put off this tough decision, the more our
20 rate payers are going to suffer. And I -- I would really
21 hope that on behalf of my municipality and especially the County
22 Authority, that your staff can get this together and do
23 a -- hopefully, a complete job, because we thoroughly
24 expected the folks in the back of me, we come to every
25 meeting, trying to make you aware, and you are aware,

Water

1 because you're involved in water.

2 But for goodness sakes, folks, just let's do
3 something. And we assumed, as I said before, that this
4 would be resolved the last time, but it's not,
5 apparently. And we do appreciate your leadership and
6 hope you will get something from your staff, so we can
7 act on it, and try to get this thing going, because every
8 day we wait, it costs the rate payer. And I'm a rate
9 payer. You're a rate payer. Please make a move on it.

10 MR. WRIGHT: Thank you, Mayor. Appreciate your
11 concerns. And we are getting there I think.

12 Councilwoman Ann Kulchin, did you wish to speak
13 at this time?

14 MS. KULCHIN: Good morning, gentlemen. Did you ever
15 see a woman that didn't want to speak? Don't answer it, don't.
16 Good morning. I am Mayor Pro Tem, Ann Kulchin, and I
17 represent the City of Carlsbad, not quite as long as our
18 Mayor. He's been on for 38 years. I've only been on for
19 28. As I mentioned, I've been on the City Council since
20 1980. And during that time, I've had the opportunity to
21 become involved in many regional agencies, dealing with
22 water and environmental issues.

23 You already know that we must import almost
24 90 percent of our water, and that the region's supply of
25 water are dealing with the environmental challenges and

1 severe drought. We are already experiencing water
2 restrictions and for the foreseeable future, things are
3 going to get worse. The Mayor made a lot of comments
4 about that. And we all know that.

5 In Governor Schwarzenegger's February 2nd
6 letter to the Regional Board, he wrote, "We need
7 desalination. It is not a choice." I could not agree
8 more. I believe that the Carlsbad desalination project
9 is the best solution for our County's water needs. I
10 also believe that they have developed a sound mitigation
11 plan that addresses all of the Board's concerns.

12 This plan was developed with the input of
13 regulatory agencies throughout the state through the
14 interagencies process that was suggested by this Board.
15 My concern today is that the project is being asked to
16 comply with a shifting baseline.

17 The discharge permit approved by the
18 Regional Board in 2006, required Poseidon to prepare a
19 plan to assess the feasibility of mitigation. In April
20 2008, the Regional Board conditionally approved the
21 project -- the project's flow, and
22 entrainment minimization -- these words are hard for me,
23 and require that the development of the specific proposal
24 for mitigation as an amendment to the plan. And I was
25 back here -- back -- along with the Mayor, back when we

1 talked about that in April.

2 In April, the Regional Board also asked
3 interested parties, included the City of Carlsbad, and
4 various State agencies to participate in the development
5 of the mitigation plan, a plan that would satisfy all
6 agencies. The Coastal Commission, State Fish and Game,
7 State Lands Commission, and many others weighed in and
8 developed a plan that provides great opportunities for
9 mitigation, as well as establishing standards for
10 measuring success.

11 In approving the project's mitigation plan, the
12 Coastal Commission and the Mayor alluded to this, one of
13 the more conservative-minded commissions in the state,
14 determined implementation of the plan will ensure the
15 project's entrainment-related impacts will be fully
16 mitigated and will enhance and restore the marine
17 resources and the biological productivity of coastal
18 waters.

19 Now it appears that the Regional Board staff
20 would like to take a new approach to determining what
21 type of mitigation plan would be acceptable. This is
22 clearly not what the Regional Board directed last April.
23 And it appears that the rules and requirements are
24 changing as the months go by. The plan before you is
25 100 percent responsive to the resolution this Board

1 approved last April.

2 Those of you that were here in 2006 and 2008,
3 will remember that the Coastal Commission and
4 State Lands Commission staff raised concerns about the
5 Regional Board's approval of the project on the eve of
6 the Regional Board's hearings. These agencies are silent
7 now, because they did participate in the interagency
8 process, and ultimately approved the plan that is before
9 you today.

10 You have the opportunity today to help
11 San Diego implement an environmentally responsible
12 solution to the drought. I ask you to please approve the
13 Carlsbad Desalinization Project and their Marine Life
14 Mitigation Plan, and do it as soon as possible. The
15 Mayor had such great comments about, the longer we wait
16 the more money it's to going take. And the more money
17 it's going to take, it's going to come from those of us,
18 the taxpayers.

19 Thank you for your time.

20 MR. WRIGHT: Thank you very much.

21 Ms. Julie Nygaard?

22 MS. NYGAARD: Good morning, gentlemen. I'm here
23 today to support the Carlsbad Desalinization Project. My
24 name is Julie Nygaard. I'm a former City Council member
25 in the City of Carlsbad. And I've also served on the

1 Water Quality Control Board. Prior to joining the City
2 Council, I served as a member of the
3 Sea Water Desalinization Stakeholders Group, a community
4 organization designed to provide input to the Carlsbad
5 Desalinization Project's developer, Poseidon Resources.

6 Consequently, I've had many years of experience
7 on this project and its journey through the State, Local,
8 and Federal permitting process. A lot of focus has been
9 placed on the regional importance of this project in
10 terms of a drought-proof water supply during the time of
11 mandatory water cutbacks and restrictions.

12 But equally important for many of us in the
13 City of Carlsbad is the role that this project will play
14 in preserving the marine environment. Poseidon will take
15 on the restoration and enhancement of up to 55.4 acres of
16 coastal wetlands habitat in Southern California. The plan
17 before you sets performance standards and processes for
18 monitoring the success of the restoration.

19 And in addition, the plan provides an
20 additional mitigation for those standards that are not
21 being met. The plan fully mitigates the minimal marine
22 impact of desalinization once the power station has been
23 decommissioned. This level of mitigation not only
24 consistent with the applicable policies of the Federal,
25 State, Local, and Regional agencies, but it exceeds the

1 mitigation formulas typically used by State agencies and
2 will result in additional valuable acreage and wetlands
3 completely unaffected by the desalinization plant
4 operations.

5 After 10 years of planning and study, I firmly
6 believe that the Carlsbad Desal Plant is
7 environmentally responsible solution for the region's
8 water reliability needs. Carlsbad's desalinization
9 project is a multi-phase project providing water supply,
10 water storage, and environmental preservation,
11 restoration and enhancement. Frankly, the science is clear.
12 We need to get on with it. Without hesitation, this
13 project deserves your full support today.

14 Thank you.

15 MR. WRIGHT: Thank you. Let's see. I want to make
16 sure we -- we cover all the elected officials since we
17 started this process. And I see Mr. Bud Pocklington had
18 filled out a speaker slip. And he's a director on the
19 Sweetwater Authority.

20 Are there any other elected officials? Now
21 that we've started down that track, I want to make sure
22 everybody has an opportunity then we can hear from
23 Poseidon.

24 Mr. Pocklington?

25 MR. POCKLINGTON: Chairman Wright, Board Members,

1 it's a pleasure to be here this morning. I am the
2 Chairman of the Sweetwater Authority. We both provide
3 180,000 customers of water -- 180,000 customers water in
4 National City, Bonita, and Western Chula Vista. As a
5 member of the San Diego Desal Partners, our agreement to
6 purchase water from the Carlsbad Project will increase
7 Sweetwater's drought tolerance supplies to 36 percent.

8 This new water supply will replace on a
9 one-for-one basis the water we import through the
10 San Diego County Water Authority. I just want to comment
11 briefly on the adequacy of the Mitigation Plan before you
12 today. Multiple scientific experts reviewed the Plan,
13 including the Coastal Commission's independent expert,
14 Dr. Pete Raimondi of UC Santa Clara -- Santa Cruz, and the
15 Coastal Commission's scientific advisory panel.

16 The Plan as adopted requires 55 acres of
17 mitigation acreage, more than the 37 identified by the
18 Regional Board last April. The 55 acres of mitigate for
19 for entrainment effects are sufficient for all the
20 sites in the Mitigation Plan. As a policy maker, I truly
21 think the project has benefited from the interagency
22 review process that the Regional Board initiated
23 last April.

24 Now's the time to approve the Plan and build
25 the project. We desperately need the water. On behalf

1 of the Sweetwater Authority Board of Director and our
2 rate payers, I ask that you act today and approve the
3 Mitigation Plan.

4 I'd like to put my other hat on. I'm also a
5 Director at the Metropolitan Water District. And I spent
6 the last two days there talking about rates and so forth.
7 And the Metropolitan Water District raised their water
8 rates this past January 14.4 percent. We're now looking
9 at raising them in January of 2010, 20.7 percent.

10 This is because of two reasons. One, the
11 drought. But the other one is the endangered species
12 problem, in which we can't pump even when the water is
13 there. I can tell you, I've been in the water business
14 now for 23 years. It is frightening. It is frightening.
15 And we don't know how long this drought is going to last.

16 We had a representative from the Australian
17 government visit Metropolitan last month. They're in a
18 12-year drought. They are working feverishly to get
19 desal on the line. We need to do the same.

20 Thank you very much.

21 MR. WRIGHT: Thank you, Mr. Pocklington.

22 Okay. I understand there will not be a staff
23 presentation; is that correct?

24 Okay. So at this time I'd like to move to --
25 is there somebody else back there? Did you fill out a

1 speaker slip?

2 MR. QUIST: Yes, sir, I did.

3 MR. WRIGHT: Okay.

4 MR. QUIST: I'm Greg Quist, Rincon del Diablo. I'm
5 a relative new comer to the water business. I've only
6 been here 19 years. Rincon is a district that surrounds
7 Escondido in north San Diego County. We have 35,000
8 customers. Rincon has proudly moved from being
9 100 percent dependent on imported water to providing
10 one-third of our water now to our customers that's reclaimed.
11 So we're doing our job. To use reclaimed water to do our
12 job in terms of using our water wisely.

13 Why am I here? I'm here because the first
14 meeting I had in 1991 at Rincon was filled with people.
15 Typically on Tuesday nights, the second Tuesday of every
16 month when we have our meetings, "Home Improvement" was
17 on TV, so we had to compete with that.

18 But the first night in -- in 1991, in January,
19 our board room was packed because we were just dealing
20 with the drought that was happening, and Metropolitan was
21 announcing a 30 to 50 percent cutback. And people were
22 there, they were angry. Their livelihoods were being
23 threatened. Their investments were being threatened.
24 And fortunately, the miracle rains of March of that year
25 caused us to avoid that problem.

1 I'm also a member of the Aqua Water Quality
2 Committee, and I've seen the issues regarding the
3 state -- the water situation up and down the state for a
4 long time. And in my 19 years, I've never seen a
5 situation as bad as it is now. I am not in favor of a
6 project that's environmentally wrong. In fact, when I
7 first heard about this project, I was skeptical about it
8 from an economic and environmental standpoint.

9 But I've been turned around because I felt that
10 we need this project from an economic standpoint. The
11 economics make sense now. And frankly, Poseidon, as a
12 private company, has done a wonderful job. I originally
13 thought this should have been a public project. But now,
14 as it's been run by Poseidon, they've done a very good
15 job of pulling this thing together. And I appreciate
16 what they've done.

17 And I'm here to urge you today, on behalf of my
18 district and 35,000 customers that are using one-third
19 reclaimed water in Escondido, to please approve this --
20 this Mitigation Plan and move forward as fast as
21 possible.

22 Thank you.

23 MR. WRIGHT: Thank you, sir.

24 All right. Now, let's move to the presentation
25 by Poseidon.

1 MR. LOVELAND: Mr. Chairman, before you do that, can
2 I ask a process question?

3 MR. WRIGHT: Yes.

4 MR. LOVELAND: We've heard from the
5 Executive Officer a recommendation to -- I'm sorry. I
6 forgot the procedure here. I guess that's part of my
7 problem. I need to know more about the procedure. Do
8 we -- do we act on his recommendation now? What are our
9 options? Do we wait until Poseidon makes a presentation,
10 and then we decide whether we're going to act today or
11 accept the recommendation or what?

12 MR. WRIGHT: We will hear from Poseidon and all
13 individuals that have filled out speaker slips. And then, we
14 will proceed to a discussion and take action.

15 MR. LOVELAND: Okay. And all options are then still
16 on the table at that point?

17 MR. WRIGHT: That's correct.

18 MR. LOVELAND: Okay. Thank you.

19 MR. WRIGHT: And -- and -- and before we -- we hear
20 from Poseidon and representatives and others, I just want
21 to make a comment. And that is that I think it goes
22 without saying, but I'll say it anyway, that all of us
23 sitting here are acutely aware of the water problems in
24 the State and in San Diego specifically. So we don't need
25 to be informed of that again and again and again. I'm

1 just saying, don't be repetitious is all I'm saying.

2 And also I would, I don't -- and I may be wrong on
3 this, but I don't think so. I think all the members of this
4 Board are certainly aware of the potential value of water
5 from all sources, including desalinization. So we
6 probably don't need to be sold on desalinization either.

7 So I just want say that so we don't get into
8 this kind of mode of thinking or of saying that somehow --
9 or feeling that somehow we need to convince the Board of
10 those two aspects of water.

11 And I don't know if anybody else wants to
12 comment at this time, but -- and if somebody disagrees
13 with me, please say so.

14 MR. RAYFIELD: If I may, I certainly don't disagree
15 with you. I'm also a director of a water district in
16 Orange County. And we're very, very aware of the crisis
17 situation that all of us face in terms of water supply.
18 And I would echo your comments, Mr. Chairman, that, you
19 know, I think we're all well aware of the benefits and
20 the need for desalinization. And I guess our role, and
21 the issue that faces us is to make sure we do that in an
22 environmentally sensitive and appropriate manner.

23 For me it's not a question of whether
24 desalinization is something we want to pursue, it's
25 merely making sure we do it in a way that creates all the

1 benefits from it without hurting the environment.

2 MR. WRIGHT: Okay. I think you've sort of moved
3 into your -- some of your closing statements after all
4 the presentations, but that's okay.

5 MR. RAYFIELD: I thought I was commenting on your
6 comments.

7 MR. WRIGHT: That's all right.

8 Mr. Singarella? Mr. Paul Singarella?

9 MR. SINGARELLA: Singarella. Good morning, Mr. Wright.

10 MR. WRIGHT: I have a number of speaker slips. I'm
11 trying to identify who's the lead speaker.

12 Are you the lead speaker?

13 MR. SINGARELLA: I am not the lead speaker. I'm
14 glad to introduce our lead speaker.

15 MR. WRIGHT: Okay.

16 MR. SINGARELLA: That would be Mr. MacLaggan. So
17 if it's okay with the Chair, I'll turn it over to
18 Peter MacLaggan of Poseidon.

19 MR. WRIGHT: Okay. Thank you.

20 MR. SINGARELLA: Thank you, Chairman Wright.

21 MR. WRIGHT: Mr. MacLaggan, did you fill out a
22 speaker slip?

23 MR. MACLAGGAN: I will do so.

24 MR. WRIGHT: Please do so.

25 MR. MACLAGGAN: Is it okay if I do it --

1 MR. WRIGHT: Absolutely. And since I don't have a
2 speaker slip from you at this point, I think I just need
3 to have you affirm that the testimony that you're going
4 to present to the California Regional Water Quality
5 Control Board, San Diego Region, orally or in writing
6 will be the truth, the whole truth, and nothing but the
7 truth under the penalty of perjury under laws of the
8 State of California, as we say.

9 MR. MACLAGGAN: So affirmed, Mr. Chairman.

10 MR. WRIGHT: Okay. Thank you.

11 MR. MACLAGGAN: Good morning, Mr. Chairman, Board
12 members. I am Peter MacLaggan with Poseidon Resources.
13 And we are here today to respond to the direction that we
14 received from your Board.

15 MR. WRIGHT: Mr. MacLaggan, before you get into
16 this, how much time does your group need? And who are
17 the speakers that will be part of your organized
18 presentation?

19 MR. MACLAGGAN: Let me provide you, Mr. Chairman, just an
overview
20 of what we're planning this morning. I want to be very
21 sensitive to Mr. Robertus's remarks that the purpose of
22 the Hearing today is to get a full and complete airing
23 of all of the information and issues associated with this
24 remaining aspect of the review and approval of the
25 Carlsbad Desalination Project by the Regional Board.

1 So what we have put forward in the way of a
2 presentation would be a general overview of the project,
3 the Carlsbad Desalination Project and the
4 Marine Life Mitigation Plan that will be provided by me.
5 And I'm also sensitive to the fact that we have four new
6 Board members on the Board today that have not been
7 through this process before, so I thought I would provide
8 a little bit of background on the Project in my remarks.

9 Then, I have three experts that I would like to
10 have just very quickly summarize their involvement in the
11 Project and the work that they have brought to bear in
12 the form of science and information and technology to
13 address the question that you've asked us to address as to
14 how we're going to fully protect the marine environment
15 as we go about producing water from the Pacific Ocean.

16 They will -- they will take about 3 minutes
17 apiece. And then, I would like to have my counsel sum up
18 with some closing remarks. So we were thinking we could
19 wrap all that up in somewhere between 40 to 45 minutes.

20 MR. WRIGHT: Proceed.

21 MR. MACLAGGAN: Thank you, Mr. Chairman. Board
22 members, Good morning.

23 As I mentioned, we are here today to respond to
24 your direction from last April. And at your April Board
25 meeting you conditionally approved Poseidon's Flow

1 Entrainment and Impingement Minimization Plan. At that
2 hearing, the Board had an opportunity to understand the
3 entrainment and impingement impacts associated with the
4 proposed Carlsbad Desalination Project and learn -- learn
5 about the specific plans, procedures, and practices
6 Poseidon has committed to incorporate in the project to
7 minimize those impacts when the desalination facility
8 intake requirements exceed the volume of the water
9 being discharged by the Encina power station.

10 Today you will have the opportunity to
11 understand the provisions of the Marine Life Mitigation
12 Plan that's before you. It has been prepared responsive
13 to your direction and to ensure that the impacts of the
14 desalination facility, that cannot otherwise be avoided,
15 will be fully addressed. The Marine Life Mitigation Plan
16 represents a culmination of a comprehensive interagency
17 planning process involving scientific study and public
18 involvement.

19 It is designed to ensure that the potential
20 entrainment and impingement impacts to marine resources
21 associated with the Project be fully mitigated. In its
22 current form before the Regional Board, the Marine Life
23 Mitigation Plan will provide up to 55.4 acres of tidally
24 exchange wetlands restoration. The Plan contains a much
25 more developed and robust mitigation proposal than the

1 37 acre mitigation plan that was before you when we
2 discussed the minimization plan at your hearing last
3 April.

4 At the conclusion of the April Hearing, the
5 Board directed Poseidon to subject its mitigation
6 planning process to an interagency review. It has had an
7 extremely positive influence on the Plan and the content
8 thereof. The term, Marine Life Mitigation Plan was first
9 used by the Coastal Commission, which ordered
10 preparation of this Plan in November 2007, as a
11 condition of Poseidon's coastal development permit.

12 The Coastal Commission organized an all day
13 interagency meeting in May of last year to coordinate
14 input on the development of the Marine Life Mitigation
15 Plan. That meeting included interested State and Federal
16 agencies, including the State Lands Commission,
17 the Department of Fish and Game, the United States Fish and
18 Wildlife Service, and the Regional Board's staff.

19 This collaborative process set the tone and
20 direction for the Plan that was to follow. And the
21 interagency process resulted in significant improvement
22 to the Marine Life Mitigation Plan. Subsequent to that
23 all day meeting, the Coastal Commission provided Poseidon
24 with a Marine Life Mitigation Plan template, reflecting
25 direction received from that meeting, as well as

1 patterning it after its highly successful San Dieguito
2 River Valley restoration project for the Southern
3 California Edison San Onofre Nuclear Generating Station.

4 In July, Poseidon took that template that was
5 provided by the Coastal Commission and converted it into
6 a plan reflecting the Carlsbad Desalination Project needs
7 and requirements for mitigation. And we submitted it to the
8 Coastal Commission. And the Coastal Commission,
9 thereafter, distributed it to the participants of the
10 interagency process for comment.

11 After receiving the expert review on the
12 Marine Life Mitigation Plan, Dr. Pete Raimondi, who is
13 considered by the Coastal Commission, a leader in the
14 field, the Coastal Commission's science advisory panel
15 also reviewed the plan. The Commission approved the plan
16 with those comments on August 6th, 2008.

17 Immediately thereafter, on August 22nd, 2008,
18 the State Lands Commission took similar action and
19 incorporated the terms of the Marine Life Mitigation Plan
20 into the lease that has been issued for the project to
21 use the intake and outfall at the Encina Power Station.

22 The mitigation to be implemented under the
23 Marine Life Mitigation Plan is not needed today, as
24 construction for the project has yet to begin. Mitigation
25 is only relevant after the Carlsbad Desalination Plant

1 begins to operate in 2011 or early 2012, and only when
2 Poseidon cannot get the necessary feed stock from the
3 power station where it's co-located.

4 The Marine Life Mitigation Plan conservatively
5 provides Poseidon to construct enough wetlands to offset
6 all entrainment and impingement impacts as though the
7 power plant is not operating, and we are solely using the
8 intake for our purposes. So it envisions a day when
9 the power station will shut down, and it mitigates
10 accordingly in advance of that occurrence.

11 Because the Marine Life Mitigation Plan
12 provides mitigation to offset all entrainment impacts
13 associated with the intake of sea water, it essentially,
14 over mitigates until which time the Encina Power Station
15 is no longer operating.

16 Failure to approve the Marine Life Mitigation
17 Plan this Spring may jeopardize Poseidon's orderly
18 planning and implementation of the Carlsbad Desalination
19 Project, placing an unnecessary cloud over Poseidon's
20 ability to move forward with construction later this year
21 and deliver the project's much needed water supply
22 30 months thereafter.

23 With that introduction, Mr. Chairman, I'd like
24 to move to a Power Point presentation and provide you a
25 summary of the project as we discussed, and then, the

1 Plan itself. I'm hopeful that you have before you two
2 documents. You should have a copy of our
3 Power Point presentation. Do each -- was each of the Board
4 Members provided a copy of this document?

MR. WRIGHT: I do not have a copy.

5 MR. MACLAGGAN: The second is a copy of the actual Marine
6 Life Mitigation Plan as approved by the Coastal Commission
7 and before your Board today.

8 MR. WRIGHT: Mr. MacLaggan, I know we have a
9 number of new Board members that haven't heard your
10 presentation before, but I just wanted to remind you that
11 the new Board members are pretty much up to speed on this
12 project, having received all the materials, the rather
13 large supply of materials. And so I just ask you to be
14 as efficient as possible in your presentation.

15 MR. MACLAGGAN: Absolutely. Will do,
16 Mr. Chairman. Let me just start with a quick overview of
17 the project. The site, which you have in the figure
18 before you. It's an artists rendering of the
19 Carlsbad Desalination Project at the Encina Power Station
20 shown in the circle.

21 And it is approximately 60 years ago today that
22 we had -- see a change water supply for San Diego County.
23 Up to that point we were self-reliant on water
24 supply. All of our water came from within. Today that
25 situation has reversed to, now 85 percent of our water

1 coming from outside of the area. And that equation needs
2 to change for the reasons that have already been
3 discussed this morning.

4 We have a water supply situation today that we
5 cannot continue to rely on that overdependence of outside sources.
6 So what you have before you is a regional effort to look
7 to the Pacific Ocean for a partial solution to San Diego
8 County's water supply needs. And we are doing so in
9 conjunction with local and regional agencies, that are
10 also simultaneously pursuing aggressive conservation and
11 water recycling programs. All in an effort to ensure
12 that they have sufficient water supply reliability going
13 forward.

14 This action before you is the last permitting
15 action for this project to move forward. And I would
16 just summarize what this project is all about. It's not
17 only a water supply project, but it is also an
18 environmental restoration project.

19 It's a water supply project in that it is to
20 provide 50 million gallons per day of fresh clean
21 drinking water for San Diego County residents. It's a
22 drought-proof supply in that it comes from the largest
23 reservoir in the world. It's not likely to dry up any
24 time soon. And it's a highly reliable supply in that
25 we've designed this facility in such a way that it will

1 be producing water when perhaps other sources are not
2 available to us.

3 We also, in terms of an environmental
4 restoration project, we are before you today to talk
5 about restoration of 55.4 acres of marine wetlands. We
6 also have made a commitment to preserve, enhance, and
7 maintain Agua Hedionda Lagoon, as it's known today, once
8 the power plant continues operating, and no longer needs to
9 dredge the lagoon to preserve its current function.

10 And we have made a commitment to dedicate many,
11 many acres around the lagoon area to increase access for
12 public use, recreation, and other functions, including
13 expansion of the fish hatchery on the north shore.

14 And then, lastly, another environmental issue
15 that doesn't necessarily fall under your purview, but
16 equally important, is the production of greenhouse gases
17 and the need to control the emissions of greenhouse
18 gases. And we have made a commitment to offset the
19 energy usage of the project here, even though we don't
20 generate greenhouse gases in our facility, we do buy
21 electricity from San Diego Gas and Electric. And we have
22 agreed that the net utilization of that industry will be
23 offset. We will buy offsets. And we will install solar
24 panels and plant trees in burned out areas of San Diego
25 County and numerous other functions.

1 Next slide, please. With respect to the
2 recipients of the water, we have 9 public agency partners
3 that have agreed to purchase the entire output of this
4 supply. They stretch from the coastal regions in north
5 county, Carlsbad, Oceanside, Encinitas, Vista,
6 San Marcos, all the way up into the agricultural corridor
7 of Valley Center and Rainbow, Bonsall. And then, all the
8 way down south to Chula Vista and National City.

9 So what we have in the project is truly
10 regional in its reach. We reach out to the city of
11 Escondido as well. And we'll be serving, approximately,
12 a water supply sufficient to meet the needs of 300,000
13 San Diego County residents.

14 Next slide, please. The project location
15 at the Encina Power Station. We have an existing power
16 plant that is using sea water for cooling. They bring
17 the water in from Agua Hedionda Lagoon. They put it back
18 out to sea through a cross-the-beach outfall structure.
19 There are two operating scenarios that would be in play
20 here. One with the power plant operating. In which
21 case, we take the discharge from the power plant, and
22 there's no additional pumping of water required, no
23 additional entrainment or impingement impacts under that
24 scenario. Clearly a de minimus impact when the power
25 plant is supplying our water.

1 Without the power plant operating, what happens
2 is the flow through the plant is greatly reduced. So
3 that, in and of itself, reduces the impacts. And we
4 were -- it was found in our environmental impact report
5 that there is no significant impacts to marine species
6 under the stand-alone operating conditions as well.

7 Nonetheless, under the Water Code and the
8 Coastal Act, we are required to mitigate, so to
9 minimize those impacts, and thus the Marine Life
10 Mitigation Plan that's before you today. And that plan
11 has been found to result in a net increase in the
12 restoration and enhancement of marine wetlands above and
13 beyond just compensating for project impacts.

14 There are several primary advantages to
15 co-locating with this facility. We're able to use existing
16 infrastructure, to prevent the construction of a new
17 intake, a new outfall, the costs associated with
18 that, and the environmental impacts are avoided.

19 Obviously, we have compatible zoning and in the
20 last year we had 60 percent of the water supply that
21 would have met the needs for the plant come from the
22 power station, so we avoid those impacts by sharing the
23 use of that water, getting two uses for the same gallon
24 of water.

25 Next slide, please. Just in terms of progress,

1 it has been mentioned that this project has been under
2 development for over 10 years. And we've been in the
3 permitting process for over 6 years. And you can see
4 that we've got a little checklist here of all the things
5 that have been accomplished. And there are 3 things left
6 to do. There's the approval by the Regional Board of the
7 Mitigation Plan and the action that's going to be back
8 before you next April.

9 We'll complete the regulatory permitting
10 process, the entitlement process. And then, we're
11 planning to start construction later this year. It will
12 take 30 months to finish the plant and make it
13 functional, and begin delivering water.

14 Next slide, please. The Flow Entrainment and
15 Impingement Minimization Plan that's before you was
16 originally required as a condition of the permit that
17 your Board issued for this project in 2006. And the
18 permit provision, I think it's very important that we
19 understand what we were required to do, because this is what
20 grounds, why we're here today.

21 Permit provision says, "To prepare a Flow,
22 Entrainment, and Impingement Minimization Plan to assess
23 the feasibility of site-specific plans, procedures, and
24 practices to be implemented and/or mitigation measures to
25 minimize impacts to marine organisms when the Carlsbad

1 Desalination Project intake requirements exceed the
2 volume of water being discharged by the Encina Power
3 Station. The Regional Board's review and approval of the
4 Plan will address any additional review required under
5 the Water Code Section 13142.5(b)."

6 At your last April hearing, we took care of the
7 first three elements of this four-step process, the
8 plans, procedures, and practices to be implemented. And
9 what we have before us today is assessment of the
10 feasibility of mitigation measures. I just want to note
11 that the permit requirements are very clear, in that this
12 is what's required of us. And it certainly does not
13 limit Poseidon nor the Regional Board to a single-site
14 solution.

15 Next slide, please. The Marine Life Mitigation
16 Plan is a Board-ordered plan. And the Coastal Commission
17 had its own process for developing a Marine Life
18 Mitigation Plan to address the potential impacts to
19 marine organisms during the desalination plant
20 operations. And this plan has now been combined into one
21 product versus -- during the interagency process.

22 And in the Coastal Commission's approval of the
23 Plan in August of 2008, the findings from that hearing
24 are -- are important in our deliberation on -- on what
25 this plan is and what it represents. And the key finding

1 by the Coastal Commission last August was that,
2 "Implementation of the Plan will ensure that the
3 project's entrainment-related impacts will be fully
4 mitigated and will enhance and restore the marine
5 environment, marine resources, and biological
6 productivity of coastal waters."

7 As I mentioned, subsequent to this hearing, the
8 Lands Commission adopted the same Plan. And adoption of
9 this Plan by you at your April hearing is critical to
10 keep the desalination plant moving forward. There have
11 been a number of improvements in the Plan resulting from
12 the interagency process that your Board directed. And I
13 just want to summarize a few.

14 We have gone from restoration of 37 acres
15 to now 55.4 acres of marine wetlands that will be
16 implemented in two phases. The mitigation sites will be
17 selected from eleven pre-approved candidate sites,
18 there are minimum standards and objectives that will determine
19 which one of those sites is ultimately selected.

20 There's an enforceable schedule for completion
21 of the project and performance of the mitigation site
22 itself. Strict standards for measuring performance,
23 there are monitoring management remediation provisions,
24 allowances for substitution of entrainment technology for
25 a portion of the restoration, about 18 acres in phase II.

1 And Poseidon is required to fund for the life
2 of the project scientific, technical, and administrative
3 oversight of this project, a science advisory panel that will
4 provide advice on design, implementation and monitoring,
5 an annual report, bi-annual public workshops to review
6 the status. And we are to post all the public scientific
7 data on a public website.

8 The minimum standards are lengthy, and they're
9 important because we cannot move forward with a site that
10 doesn't meet the minimum standards and we need to put
11 forward a site that meets the majority of the objectives.
12 So let me just summarize those. The site must be tidally
13 exchange wetlands with extensive intertidal and sub-tidal
14 areas similar to the habitat in Agua Hedionda Lagoon. We
15 must have buffer zones of at least 100 feet around all
16 sides of the site. Site preservation must be guaranteed
17 in perpetuity. Protection of long-term wetland values
18 must be provided. We cannot cause a loss in wetlands.
19 And we cannot impact endangered species.

20 Among the objectives, we must provide for
21 overall ecosystem benefits, provide substantial habitat
22 for fish, target a buffer zone of an average of 300 feet,
23 maximum upland transition areas, protect rare and
24 endangered species, and provide habitat for them, and
25 ensure that this can be accomplished in a reasonable

1 time fashion in the proximity to the Carlsbad
2 Desalination Project.

3 The time schedule that has been put forward in
4 the Plan, Poseidon has essentially 10 months to get to a
5 final site for the phase I restoration project and
6 deliver that recommendation to the Executive Director of
7 the Coastal Commission for his review and approval.

8 And within 24 months we must secure land-owner
9 approvals, achieve a certified environmental impact
10 report on the mitigation projects, secure all the local
11 approvals, and complete a coastal development permit
12 application. 6 months after the coastal development
13 permit application is approved by the Coastal Commission,
14 we must begin construction of the phase I restoration
15 project.

16 And within 5 years thereafter, all the
17 performance criteria must be met or Poseidon is subject
18 to remediation and enforcement action by the
19 Coastal Commission. And if your Board acts, by your
20 Executive Director as well.

21 The same schedule is applicable to the phase II
22 restoration requirement, the final 18 acres that trails
23 by 5 years from the start of the phase I restoration
24 schedule.

25 We have very strict performance standards that

1 have been set forth for monitoring, management,
2 maintenance, and remediation that shall be conducted over
3 the entire life of the desalination facility, projected
4 to be 30 years. The performance will be measured against
5 four relatively undisturbed existing natural tidal
6 wetlands reference sites. And the standard for comparison
7 is a high bar to meet.

8 The standard provides that within 5 years of
9 the start of construction, the constructed wetlands must
10 match habitat values found with the reference sites
11 within 95 percent confidence level for development of
12 biological communities, vegetation, reproductive success,
13 food chain support, density of fish, birds and habitat,
14 topography, water quality, tidal prism in habitat areas.

15 Poseidon's commitment to fully implement the
16 Marine Life Mitigation Plan starts with a bond that's
17 been required to be posted by the State Lands Commission
18 of 3.7 million dollars to ensure that we perform under
19 this Plan. And then, we have to fund a budget for
20 monitoring and management that includes funding or
21 oversight by the Coastal Commission and the science
22 advisory panel.

23 Monitoring data is to be made available for
24 public review and comment. And the Coastal Commission
25 and Lands Commission require that we submit annual

1 reports on progress, and that there will be bi-annual
2 hearings open to the public to judge the success of the
3 project.

4 The Coastal Commission Executive Director
5 approves the site selection, performance, orders
6 remediation to make up any deficiencies. And the Marine
7 Life Mitigation Plan, this is important for your
8 consideration, would be equally enforceable by the
9 Regional Board's Executive Officer, once it is approved
10 by the Regional Board.

11 The State Lands lease requires -- also requires
12 compliance with the Marine Life Mitigation Plan, in which
13 case, if we were in default on our lease, we can no longer use
14 the property. And any amendments to the Marine Life
15 Mitigation Plan must be approved both by the
16 Coastal Commission and by the State Lands Commission.

17 We received a letter yesterday from the
18 environmental groups, Coastkeeper and Surfrider. And
19 it raises a concern that states that, "It would be
20 improper to approve the Plan without selection of a site
21 or sites where mitigation can take place."

22 And I guess the first question that comes to
23 mind when I -- when I see this concern raised, given the
24 fact that the Coastkeeper and Surfrider have challenged
25 every approval this project has received to date, why did they not

1 challenge the approval of the Coastal Commission's
2 approval of the Marine Life Mitigation Plan.

3 The statute of limitations for them to
4 challenge that has lapsed. By not doing so, it suggests
5 that they're comfortable with the Coastal Commission's
6 plan. But once again, they're raising a concern here in
7 this Hearing that perhaps a single site must be
8 identified before we move forward.

9 And that is clearly not the case from the direction
10 that you provided us, which was in the permit that was
11 issued in 2006, to assess the feasibility of mitigation
12 measures. Furthermore, as I mentioned, requiring a
13 single site will result in a 24-month delay of the start
14 of construction of the desalination facility. And it
15 will delay the availability by an equal amount of time of
16 a critically needed water supply during a period in which
17 the Director of the Department of Water Resources has
18 described as the worst drought in modern history.

19 The Coastal Commission concluded that because
20 of the strict objectives, performance criteria, and
21 enforcement, that there is a very high degree of certainty of
22 success. And they captured that in their findings that
23 read, "Implementation of the Plan -- excuse me, that
24 identifies 11 candidate sites will ensure that project's
25 entrainment-related impacts will be fully mitigated and

1 will restore and enhance the marine environment and
2 biological resources -- will restore the marine resources
3 and biological productivity of coastal waters."

4 You have received a tremendous amount of
5 communication on this Matter. And there are 49 documents
6 in the record for this Hearing, all of which either
7 support or recommend approval or provide a tremendous
8 amount of substance as to the science, thought, and
9 effort that has gone behind finding this Plan.

10 And I just want to point out that among those
11 that have urged your support, we have the Governor of the
12 State of California, the Secretary of Cal EPA, the
13 Secretary of the California Natural Resources Agency, and
14 the Director of the Department of Fish and Game, all of
15 whom have important jurisdiction over the Matter that is
16 before you as well, and have as part of their purview,
17 the responsibility of ensuring that the environment of
18 this state is protected. And they've reviewed this Plan
19 and found it to be appropriate and ready for approval.

20 If you could just go to the last slide. I'd
21 like to just briefly introduce our three experts that
22 will be addressing you this morning. And I want to start
23 with Dr. David Mayer. He is the principal scientist of
24 Tenera Environmental, which is one of the nations
25 foremost experts on the assessment of impingement and

1 entrainment impacts. His work was that which was peer
2 reviewed by Dr. Pete Raimondi at the direction of the
3 Coastal Commission, and also by the California Coastal
4 Commission's science advisory panel.

5 Dr. Mayer will be bringing the Board up to date
6 on the evaluation of the mitigation
7 requirements set forth in the Marine Life Mitigation
8 Plan, and will address its conservative nature and
9 assumptions.

10 Following Dr. Mayer will be Chris Nordby. Chris
11 is a biologist specializing in coastal wetland
12 restoration. He has studied the wetland restorations
13 opportunities throughout the region. He has specifically
14 looked at each of the 11 sites that are included in the
15 Marine Life Mitigation Plan. And he will address the
16 site selection process and the stringency of the
17 performance standards included in the Marine Life
18 Mitigation Plan approved by the Coastal Commission.

19 And lastly, John Balletto. Mr. Balletto is a
20 wetlands ecologist specializing in the assessment and
21 mitigation of entrainment and impingement impacts. He is
22 an expert in the field who Poseidon has asked to provide
23 an independent peer review of the Marine Life Mitigation
24 Plan.

25 With that, Mr. Chairman, I will conclude my

1 remarks.

2 MR. WRIGHT: Will Mr. Garrett and Ms. Halter be
3 speaking?

4 MR. MACLAGGAN: Yes. Well, following our three
5 experts, we'll have closing remarks from two members of
6 our legal counsel, Mr. Singarella and Mr. Garrett.
7 Ms. Halter will not be speaking to my knowledge.

8 MR. WRIGHT: Thank you.

9 MR. MACLAGGAN: So I would like to ask
10 Mr. Mayer to come up. And then, following him will be
11 Mr. Nordby, and then Mr. Balletto.

12 Thank you very much for your time.

13 MR. WRIGHT: Thank you.

14 MR. MAYER: Good morning, Chairman Wright and Board
15 members. I am David Mayer, President of Tenera
16 Environmental. We're the firm who conducted the jointly
17 run study of the Encina Power Plant and the Carlsbad
18 Desalination facility - the intake and impingement
19 effects of that sea water intake.

20 The study and the -- excuse me, the methodology
21 that was employed has been the same over the last
22 10 years for a number of studies of sea water intakes,
23 salt water intakes along this coast, and has been
24 approved and endorsed in our studies and findings have
25 contributed to decisions by 6 of California's Regional Water

1 Quality Control Boards, including San Diego.

2 The methodology has been reviewed and approved
3 by a number of participating agencies, including the
4 California Energy Commission, California Department of
5 Fish and Game, National Marine Fishery Service, Coastal
6 Commission, EPA, and Fish and Wildlife in the case where
7 it was appropriate.

8 The methodology that has been employed over the
9 10 years. And in a number of those cases, at least a
10 third of them, the assessment of the impacts of the sea
11 water intake have been -- have led to the mitigation, and the
12 methodology that was used in the case before us today.

13 The Plan that we put together for the study was
14 sponsored and hosted by your Regional Board staff, some
15 time ago. The study spanned a year's worth. We had a
16 technical working group process where we had others come
17 in, the National Marine Fishery Service, California Department
18 of Fish and Game, participated as well as scientists
19 from Scripps, and your Board staff.

20 When the Plan was prepared and submitted to the
21 Board, they -- Board staff used an EPA contractor to give
22 it a third-party independent review. Even that
23 contractor sent it to another party for a secondary
24 third-party independent review. The study plan has been
25 thoroughly reviewed, and it led to, along with some other

1 work, I think a very solid database for the assessment of
2 the impacts of the sea water intake proposed by Poseidon
3 for the desal plant.

4 The next step in this process is taking those
5 impacts and converting them, if you will, into a
6 mitigation plan. Since I last was here in April, I
7 guess, last year, thereabouts, I met with Coastal
8 Commission staff and their expert, Dr. Raimondi. And
9 following your resolution requiring coordination with
10 other agencies in the mitigation plan. And Dr. Raimondi
11 and I discussed the entrainment study impact,
12 calculations that drive the mitigation plan.

13 Now, originally we had proposed this 37 acres
14 you've heard about already. And it, in fact, encompassed
15 mitigation for nearly 90 percent -- 96 percent of the
16 entrained species that would be taken in by the sea water
17 intake. Dr. Raimondi, however, felt that it was
18 important -- and in those species, 96 percent of them come from
19 the lagoon. Dr. Raimondi, in reviewing this, agreed with
20 all the methodology that we used to get to that 37 acres,
21 the data -- underlying data. But he felt strongly that there was
22 an omission of attention for the ocean species, which are
23 a very small percentage, something 5 to 6 percent -- 4 to
24 5 percent in the entrainment samples that we collected.

25 So working together, Dr. Raimondi proposed a

1 methodology to account for those ocean species in the
2 mitigation plan. And having done that, it was further
3 decided, he recommended to the Coastal Commission, as
4 their consultant, that they adopt an approach to give
5 insurance to the mitigation plan itself. This was
6 something that's never been done before in the State of
7 California.

8 And so having a mitigation plan in place,
9 adding more acreage, strictly for the purpose of adding
10 insurance, if you will, for the uncertainty of the
11 science, and how we got there, and eventually for the
12 mitigation itself. So at that recommendation, Poseidon
13 agreed. And that's why we have an increase from the 37
14 acres that was originally proposed up to the 55.4 acres
15 that are currently involved in the mitigation plan.

16 He found a method -- as I said, Dr. Raimondi
17 found the methods of all our work to be completely
18 appropriate, and consistent with the kind of study that would
19 lead to this. So with that, I think that the scientific
20 basis for the mitigation plan has been soundly laid,
21 documented, thoroughly reviewed by independent parties.
22 Dr. Raimondi, who is an expert in this area also blessed,
23 if you will, the application of those findings to this
24 mitigation plan.

25 And so with that, I would urge the Board to

1 adopt the mitigation plan as proposed, going forward to
2 look at the alternative sites.

3 MR. WRIGHT: Thank you, sir.

4 Mr. Nordby? And you get more time this time
5 than last time.

6 MR. NORDBY: Thank you. I appreciate that.

7 MR. WRIGHT: I cut Mr. Nordby off, I think, last
8 time a bit, so.

9 MR. NORDBY: I forgot that.

10 MR. WRIGHT: I didn't forget.

11 MR. NORDBY: Good morning. My name is Chris Nordby.
12 I am a wetland ecologist. I specialize in wetland
13 restoration. For -- since last year, I've been working
14 with Poseidon to try to identify a site and develop a
15 restoration plan. And I'd like to talk today briefly, a
16 little more detail about the stringency and rigorousness
17 of the Coastal Commission's performance-based criteria
18 that you heard Mr. MacLaggan just recently discuss.

19 These were originally developed for
20 Southern California Edison's SONGS restoration project
21 at San Dieguito and they have been imposed on Poseidon. And
22 the main issue is this 95 percent confidence level, and
23 what does that really mean to us on the ground. And
24 really, what it means is any -- any restoration site that
25 Poseidon undertakes has to be 95 percent similar to up to

1 four reference sites. And they would be selected by the
2 Coastal Commission.

3 And they have to be 95 percent similar in a
4 number of biological parameters. 95 percent similar in
5 terms of species and densities of fish, invertebrates,
6 and birds, 95 percent similar in terms of vegetation
7 cover of both vascular plants and algae, 95 percent similar in
8 terms of cord grass, in particular marsh species, canopy
9 architecture, including the percentage of stems that
10 are over 3 feet tall, 95 percent similar in terms of
11 reproductive success of selected plant species, and
12 95 percent similar in terms of food chain support for
13 birds as evidenced by bird feeding activities.

14 So in other words, whatever a bird eats,
15 whether it's a pollen eater or a fish, or even another
16 bird, it has to be 95 percent similar at the restored
17 site to up to 4 restoration sites, so it's -- the
18 4 reference sites.

19 So, as you can see, these are extremely
20 rigorous, and very -- they'll be very strict standards to
21 meet. And the Coastal Commission recognized that by
22 Poseidon's commitment to meeting these standards, that
23 there's a reasonable scientific chance for success at any
24 number of potential sites. And so it built in
25 flexibility into where this restoration site will be.

1 And they recommended 11 sites be looked at in detail.

2 And we are looking at those.

3 We recognize that a specific site will, of
4 course -- is going to have to be selected and
5 a detailed plan developed. But by committing to these
6 very rigorous success criteria, Poseidon has -- will
7 demonstrate -- will be, its an insurance policy that they will
8 to do a successful restoration project.

have

9 Thank you.

10 THE COURT: Thank you for your brevity. I
11 appreciate it.

12 Mr. Balletto? Mr. John Balletto?

13 MR. BALLETTTO: Yes, sir. Good morning. My name is
14 John Balletto. I'm a principal ecologist for the
15 consulting firm of Arcadis. And I'm appearing her today
16 on behalf of Poseidon. Poseidon has asked me to
17 undertake an independent review of the proposed Marine
18 Life Mitigation Plan, which I'll refer to as the Plan.

19 By way of background, I am currently serving on
20 a national management committee of the corporate wetlands
21 restoration partnership, an affiliate of Coastal America.
22 It's a public-private partnership whose goal is the
23 protection and restoration of wetlands and coastal
24 habitats. Coastal America is comprised of 16 Federal
25 agencies, and chaired by Nancy Sutley, the chair of the

1 President's council on environmental quality, I'm also a
2 board member of the Coastal America Foundation.

3 I've worked on cooling water withdrawal issues
4 for 35 years, and mitigation of those losses, including
5 the restoration of thousands of acres of wetlands for
6 over 15 years. I hold a Masters of Science in Marine
7 Science. And I've also brought a copy of my resume and offer
8 it into the record.

9 I was not involved in the development of this
10 plan. I have reviewed it, and various supporting materials,
11 including relevant published literature. Based on my
12 review it is my opinion that, Number 1, the proposed plan
13 contains all required elements and necessary components
14 for successful mitigation. Two, the proposed plan is
15 based on sound science and conservative approaches.
16 Three, the proposed plan is more than adequate in
17 mitigating any possible losses resulting from entrainment
18 or impingement.

19 I'd like to first comment on the overall
20 elements of the Plan. The Plan contains all of the
21 essential elements and safeguards that have been employed
22 in other projects to maximize the potential for successful
23 restoration.

24 These elements include maintaining site
25 selection flexibility to respond to changes in

1 agencies needs or requirements, and to work around any
2 potential site constraints that may arise, continuing the
3 process of coordinating with appropriate agencies on site
4 selection, requiring both proactive plan requirements and
5 standards and post-construction success criteria, an
6 adaptive management approach to manage the mitigation
7 process to success, monitoring and management plans and
8 associated reporting, use of multiple relatively
9 undisturbed reference marshes as standards, a peer review
10 of the restoration process and management, periodic
11 review by the regulators, and requiring aggressive
12 success criteria and an aggressive implementation time
13 frame.

14 In other words, it is my conclusion, that you have a
15 complete and robust plan before you that -- that is fully
16 consistent with the highest standards I've seen in other
17 sites. I also have reviewed entrainment loss estimates, the plan
18 is based on the empirical transport model, and the mitigation
19 area that uses the area of production foregone model. These
20 methodologies are based on sound science, and are
21 methodologies used nationally and on numerous occasions
22 in California, and are accepted by appropriate
23 California agencies.

24 In addition, the Plan was reviewed by
25 Dr. Raimondi on behalf of the Coastal Commission --

1 California Coastal Commission. Dr. Raimondi indicated the
2 acceptability of the approach used and recommended
3 several additional features, which increased the
4 mitigation acreage from 37 to 55.4 acres.

5 I'm familiar with Dr. Raimondi's work, and he has
6 providing an acceptable analysis. I have also reviewed
7 impingement. It's generally accepted that impingement
8 losses are insignificant when water velocities at the
9 intake are in the order of 0.5 feet per second.

10 The intake velocities when Poseidon is operating in
11 stand-alone mode, will be low. And this is achieved
12 because the -- they will be operating at 300,000,000
13 gallons a day, while the structure was originally built
14 with a capacity of 857,000,000 gallons per day.

15 In conclusion, you have before you an excellent
16 plan that provides an appropriate and quite conservative
17 level of mitigation.

18 Thank you.

19 MR. WRIGHT: Thank you, sir.

20 Mr. Singarella?

21 MR. SINGARELLA: Good morning, Chairman Wright,
22 other members of the Board, staff and counsel. My name
23 is Paul Singarella. I'm here this morning on behalf of
24 Poseidon. I'm with the Law Firm of Latham & Watkins.
25 And as a preliminary, I'd like to say that we were very

1 happy to hear the Executive Officer's statement at the
2 beginning of the hearing here today. We think that the
3 path forward that he has laid out will provide us with
4 the kind of certainty that we're seeking in our water
5 supply planning and environmental planning, and also
6 afford the Agency the protections it needs under the law.

7 So we're looking forward to working with
8 Mr. Robertus and his staff and counsel in the weeks ahead
9 as we head to what we hope will be a final -- final
10 Hearing on April 8. And I would like to urge the Board
11 members to consider the motion wrapped around his
12 statement.

13 Let me establish my bona fides for you just a
14 bit here. I haven't appeared in front of you before, but
15 I've been working behind the scenes on your behalf and on
16 behalf of Poseidon. And what I mean by that is back in
17 2006, when this all started, and you issued to Poseidon
18 an NPDES permit, there was a challenge to that permit.

19 And those that challenged that permit are here
20 in the room today, and they'll be up presenting in front
21 of you. And I was the lead attorney for Poseidon working
22 with counsel and your staff in defending that permit that
23 you issued in 2006. And as you will recall, that defense
24 was -- was very successful.

25 So I see my role here today very similarly,

1 working with the Agency and with my client to build an
2 administrative record, and a clear record that will withstand the
challenge
3 that I am sure is coming.

4 Let me just say, in terms of timing, I think
5 I've got maybe 5 or 6 minutes more. And then, I'd like
6 to turn it over to my partner, Mr. Garrett. And I would
7 be very remiss if I didn't protect his time. So I would ask
8 your indulgence. We might go over the 45 minutes by a
9 few, but I think we can wrap it up fairly quickly here.

10 And I think it's really important that we do
11 take the time today, while we're all gathered. More now
12 will be, hopefully, less come April. And so with that,
13 let me say that on our way to providing potable water for
14 hundreds of thousands of people in the San Diego region
15 and 55 acres of new wetlands, it has become very apparent
16 that the Surfrider and the Coastkeeper are going to be
17 challenging these proceedings at every turn.

18 So we can't -- we can't overstate the
19 importance of establishing a clear record. And my goal,
20 in the next few minutes, is simply to walk you through
21 some of the key events as we have worked with
22 staff over the last year, and asked staff to consider
23 this information as it moves forward into the process of
24 preparing a staff report for the final action in April.

25 Now, the first point relates to the timeliness

1 of our submittal of the Mitigation Plan last fall. And
2 the Coastkeeper has really tried to stir the pot on this
3 issue. I'm going to tell you what really happened. If
4 you'll look at your April resolution, you will see that
5 moving forward into October, that the due date per the
6 resolution was October 8th.

7 Let me roll you back 3 months from that, back
8 into July, July 8, specifically. By July 8, we had --
9 Poseidon had prepared a draft of the mitigation plan and
10 had submitted it to the Coastal Commission. What the
11 Coastal Commission did in turn, on July 8, is forward the
12 plan to you, to your staff. And so you had the original
13 version, the Poseidon version, of the mitigation plan on
14 July 8th of last year, a full 3 months before the due
15 date of your April resolution.

16 Over the next few months, we were in our
17 Coastal Commission proceeding, as well as the
18 interagency, staff were involved in the interagency, and
19 the mitigation plan started to change. It changed
20 fundamentally. And by September, there was a new version
21 of the mitigation plan. And that new version was a red
22 line. Peter MacLaggan sat down with John Robertus on
23 or about September 17, and explained to the Executive
24 Officer that we weren't going to have a clean version
25 reflecting the final wording from the Coastal Commission

1 by October 8.

2 And Mr. MacLaggan asked Mr. Robertus, "Would
3 you like to have this redline?" But why would
4 Mr. Robertus want to have a redline, because he knows
5 it's not the final version. So he said, "You know, I
6 don't really want a redline. I want a clean version of
7 this. So why don't you give it to me when you have a
8 clean version, and final wording from the
9 Coastal Commission." All made perfect sense to us.

10 Mr. MacLaggan said at that point, "You know,
11 Mr. Robertus, that's great, but please understand, we
12 won't have that by October 8." Mr. Robertus said, "I'd
13 rather wait." I know Mr. Robertus will back us up on
14 this. And so then move forward through October, we're
15 working with the Coastal Commission. You get to
16 November 7th, and we finally reached closure with the
17 Coastal Commission on the wording of that plan, so that
18 we could give to Mr. Robertus a clean version of it that
19 he could be confident reflected what the Coastal
20 Commission wanted.

21 And shortly after November 7, we submitted it
22 to him. There was no mystery here. That's how it
23 happened. No cloak and dagger. No effort on the side of
24 Poseidon to avoid its obligations. The record will show
25 that every step of the way, we were working with you to

1 get you the version of this thing that you wanted at the
2 time that you wanted it.

3 Now, with respect to the minimization plan,
4 which was before you last April, Coastkeepers would have
5 you think that there are all these loose ends in the
6 record, that -- that staff identified dozens and dozens
7 of issues, and that instead of engaging in a scientific
8 process to lock down those issues, that Poseidon hired --
9 a group of lobbyists. And we saw this just yesterday
10 in their letter. Nothing could be further from the
11 truth.

12 And I know what happened last year was what
13 happened last year, but I want to go over it just for a
14 few minutes to remind you of it. Coming into last year,
15 we had in front of you a couple-hundred page version of
16 the Flow Minimization Plan from 2007. In February of
17 last year, staff sent us a letter and said, "We've got
18 17 comments on your minimization plan."

19 The record shows that by the end of April,
20 Poseidon, working with staff of your agency, had whittled
21 and narrowed that list down to basic -- basically two
22 areas. How did we do that? We submitted a monster
23 revision of the minimization plan in March. We submitted a
24 very science-based, point-by-point statement responding
25 to all 17 of the issues identified in February. That

1 document is in the record.

2 And we also brought our expert team to the
3 Hearing last April. And they talked about issues that
4 had been identified by staff, including issues identified
5 by staff in their April 4, technical report. So by going
6 through that process, coming to you, and having you say
7 to us on April 9, "Get busy and make sure there are no
8 loose ends."

9 What did we do? We got real busy. After
10 April 9, Mr. MacLaggan contacted staff and said, "Let's
11 meet. Let's figure out what the additional issues are."
12 At that point in time, we got an e-mail from the Agency,
13 from Ms. Clemente, it was great. We appreciated it. And
14 she said, "There are a couple aspects left." And that's
15 a quote, "A couple aspects, and here they are." And she
16 listed them out in an e-mail to us.

17 And there were a few issues on impingement, and
18 a few issues on entrainment. And we looked at that list,
19 and we said, "Well, is there any need to meet?" And she
20 said, "No need to meet. It's just a couple aspects. Why
21 don't you just send me an e-mail." So we put an e-mail
22 together. We got our scientists to provide some input on
23 her issues. We sent that into the Agency on April 30, on
24 the two basic areas.

25 And after that, we never received anything else

1 in writing identifying any specific issues. And the
2 reason I'm walking you through this is to explain how
3 satisfied staff was with us at that point in time. And
4 after hearing Mr. Robertus's statement this morning, I
5 think they're similarly happy with us today.

6 And just to put a button it, on July 8, when
7 the Coastal Commission submitted the original version of
8 the mitigation plan to your staff, the Coastal Commission
9 said, "We're reaching this next month. And we want your
10 input, because we're working with you on this
11 interagency. So take a look at it, and let us know if
12 you have any comments. And let us know in 2 weeks,
13 please." That was what the Coastal Commission staff
14 requested of your staff.

15 Your staff, not surprisingly to us, because we
16 felt that we had worked through all the issues on the
17 minimization plan, didn't have any comments. The
18 technical issue raised by Mr. Robertus today about our
19 flow calculations, that's -- that's the -- the -- the
20 residue of a two-and-a-half year, very successful process
21 of going through a tremendous collaboration with your
22 staff, and really narrowing things down.

23 And so when you hear from the Coastkeeper that
24 it's been an unwieldy, undisciplined process, and that
25 the Coastkeeper hasn't brought the good science to bear

1 that the Agency needs to make these decisions, they're
2 dead wrong.

3 Thank you.

4 MR. WRIGHT: Thank you.

5 Mr. Garrett?

6 MR. GARRETT: Chair Wright thank you for your
7 indulgence. I'm going to be the last speaker for
8 Poseidon. I will take only 5 minutes. I'm going to
9 cover 3 points. And I'll be as brief as possible and then
10 we will conclude our presentation, I believe, we've just
11 run a few minutes over the 45 minutes. And I appreciate
12 that.

13 I'm Chris Garrett. I'm also with
14 Latham & Watkins. And I'm here to speak -- I was -- we
15 were in front of the Board, the 4 members that were here
16 last April, and spoke, and actually had some dialogue
17 with you about the resolution that you adopted last
18 April. And I also listened carefully to the remarks of
19 Chair Wright and Member Rayfield. And I want to make
20 sure that we respond to those points today.

21 I was also a participant in the interagency
22 process. I attended with Mr. MacLaggan the interagency
23 meeting that was held at the Agua Hedionda Lagoon on
24 May 1st with Executive Officer Robertus and your staff
25 member Clemente. I want to speak about that interagency

1 process for just a moment.

2 I'm also the litigation counsel for Poseidon.
3 We're part of the litigation that's been filed by
4 Coastkeeper. Mr. Gonzalez, Ms. Borak, Ms. Silver, who
5 will all be speaking to you today. They filed the
6 lawsuits against the Coastal Commission, the State Lands
7 Commission, the Regional Board, the City of Carlsbad, and
8 all 8 other agencies which have signed water contracts,
9 and -- and Poseidon.

10 We have a trial on the Coastal Commission
11 permit that will be next month on March 13th. The trial
12 on the State Lands Commission approval for our project,
13 which will also be in front of Judge Hayes, will be on
14 May 8th. And there is a trial scheduled on the lawsuit
15 that was filed against both Poseidon and the
16 Regional Board on your action last April. And that is
17 scheduled for June 12th at the moment, also in front of
18 Judge Hayes.

19 And I want to talk for a moment about how your
20 decisions today, and hopefully in April of this year,
21 will interrelate with that litigation. First, on the
22 interagency process, I do want to mention one of the
23 things that the Board stressed, we receive comments. And
24 it was very important, both to staff and the Board last
25 April, was that we engage in an interagency process.

1 When Poseidon started the permitting process,
2 and this is a point that Mr. Gonzalez will make to you as
3 well, our original position was that the Regional Board
4 should really take care of all these issues related to
5 entrainment and impingement. Let the Regional Board
6 handle it. The other agencies should stay out of the
7 way. It's our reading of the statutes that this is
8 really within your primary jurisdiction. You decide on
9 entrainment and impingement. The other agencies should
10 just accept the plan that you think is appropriate.

11 Unfortunately, your staff didn't agree with
12 that. I think they wanted to work more closely with the
13 other agencies. And also the other agencies didn't agree
14 with that. And one of the criticisms that we received,
15 which we addressed last April, was that our original flow
16 minimization plan did not provide for this full
17 interagency process. Ms. Solmer got up and said, "Gee,
18 you need -- you shouldn't be approving this. You should
19 be going through an interagency process, and talking to
20 other agencies."

21 A representative from the State Lands
22 Commission appeared in front of you last April and said,
23 "Please go through an interagency process. We have
24 concerns. Please make sure our concerns are addressed."
25 So with that point, you know, we got the message. You

1 wanted an interagency process. And so we participated in
2 it. And the plan which came out of that interagency
3 process addressed some of the concerns the Coastkeeper
4 raised. We wound up with additional acres of mitigation.
5 We're addressing the ocean species, which is another
6 point, reviewing the transcript the Coastkeeper made at
7 that time.

8 And having gone into that interagency process,
9 you know, we think that the Board should think carefully
10 when you take final action about how your actions fit
11 into that process. But let there be no mistake, our
12 position is consistent. You don't have to follow the
13 interagency process if you don't want to. You have
14 primary jurisdiction on these issues. We've always said
15 that.

16 But certainly, you certainly have the
17 discretion to go ahead with the other agencies. And a
18 point that we've made with the other agencies, which they
19 agree, is that it's better to have one plan, instead
20 of 5 separate, perhaps conflicting plans. So I would encourage
21 you today, as on all the other issues, to ask questions
22 about this interagency process, ask why the
23 Coastal Commission, after extended hearings, State Lands
24 Commission agreed with the plan, and to get into those
25 technical issues.

1 The other two points that I wanted to -- to
2 mention to you relate to the concerns that Board Member
3 Rayfield and Chairman Wright made at last April's
4 meeting. We listened very carefully to what you had to
5 say at those meetings. I know Member Rayfield in
6 particular asked about a independent analysis of our
7 mitigation plan, that Surfrider said would be developed.
8 And you asked for a time schedule, and when that
9 information would be made available to the Board.

10 I believe what happened is there was an expert
11 who was engaged, Ms. Strange, who did speak to the
12 Coastal Commission. Her results were submitted to the
13 Coastal Commission in August, and were considered. We
14 have -- it's not in the record in front of you, but
15 Coastkeeper did send, by e-mail, to your staff,
16 apparently, a copy of Ms. Strange's work, which we -- we
17 obtained through a public records act request.

18 And for all we know, Ms. Strange or the results
19 may be presented to you today. Unfortunately, you know,
20 they haven't been given to us before, and they're not in
21 your record, but certainly you should ask questions about
22 that.

23 And Board Member Rayfield, if that's an
24 important issue to you, I would encourage you to ask all
25 those questions, and ask the experts that have testified

1 today in favor of the Plan, what their view is of those
2 concerns. We certainly want for you to get into that
3 searching examination of those environmental issues.
4 It's a good plan. And we're happy to talk about it and
5 answer all those questions.

6 I just would point out that in the interagency
7 process, this expert that was promised last April did
8 appear, and did testify, and the Coastal Commission
9 adopted the Coastal Commission's staff plan, not our
10 plan, but did not accept all the recommendations of the
11 expert that the opponents of this project have presented.

12 But again, I think that's important for you to
13 consider. That was one of the remarks. Chair Wright
14 was, I think, unhappy with our focus on a specific site,
15 the San Dieguito site. And he asked us to come back with
16 a plan which addressed other mitigation alternatives.
17 And we've tried very hard to do that, and to talk about
18 the quantity and quality of these other sites. And so
19 hopefully we've addressed your concerns about that.

20 You know, last April, it seemed like the
21 concern was we were locked in too much on a specific
22 site. And I'm sure you'll hear criticism today that we
23 haven't narrowed it down to one site. And there's several
24 reasons for that. We do have this performance criteria,
25 but we also are now winding up with 58 acres of

1 mitigation. And it may not be possible to do that at a
2 single site. We may have to do it at two sites, as is
3 allowed under the Plan.

4 I wanted to mention one last issue, which deals
5 with how -- how this interrelates with the litigation
6 that's pending. And some of you may have seen in the
7 material that I submitted, the brief that was filed by
8 the Attorney General on behalf of the Coastal Commission
9 in the Coastal Commission case. And that will be going
10 to trial next month.

11 But one of the arguments made there is that the
12 Coastal Commission made a mistake, that they didn't
13 provide for specific enforceable mitigation for
14 marine life impacts. And I think the Attorney General in
15 her brief has indicated -- Deputy Attorney General has
16 indicated that, in fact, the Coastal Commission did
17 provide for full mitigation of marine life impacts.

18 That same issue and criticism was presented to
19 the State Lands Commission, and Commissioner Garamendi
20 spent several hours at the State Lands Commission Hearing
21 last August going through this interagency plan in
22 detail, and making sure it had enforceable mitigation
23 measures.

24 But again, the opponents of the project have
25 sued the State Lands Commission. And at our trial on

1 March 13th, we'll be defending whether or not the
2 interagency plan has the specifics and the detail that
3 are required for mitigation.

4 So you should just bear in mind that this
5 question about whether or not there's enough detail in
6 the Plan is one that we are happy to answer. We believe
7 it's there. We're ready to answer. But it is the same
8 issue that's been raised in -- in the lawsuits that have
9 been filed against all of the agencies, including you on
10 your action in last April.

11 In closing, I just wanted to mention we are in
12 favor of the staff recommendation today. We hope to work
13 closely with your staff counsel to make sure that all the
14 appropriate notices and material are presented for
15 a full hearing in April. And if so, we're willing --
16 even though we had asked previously for a final decision
17 today, we're willing to accept that. I think with --
18 with the understanding that we will have a final hearing
19 in April.

20 We don't want you to rush this Hearing today.
21 We don't want you to just simply wave your hand and say,
22 "This is a great plan. These other agencies have said
23 it's great. I have no questions." We want you to ask
24 questions. We want you to get into the details of what's
25 being proposed here. We want you to listen to the

1 opponents. We want you to get answers to that.

2 That's what we expect in this process. And I
3 think the worst thing you could do is simply skip over
4 this and say, "Oh, well, we'll hear it in April." This
5 is a detailed plan. It's a very important plan. We're
6 very proud of it. And we're ready to answer any
7 questions or concerns you have. And we certainly welcome
8 any concerns or issues that you feel haven't been fully
9 addressed. We want to make sure they're all fully
10 addressed in this hearing.

11 Thank you.

12 MR. WRIGHT: Thank you. I appreciate your comments
13 regarding the importance of this Board looking at these
14 things carefully. Good comment.

15 Let's take a 10-minute break. And then, we'll
16 get back to the rest of the speakers.

17 (Recess.)

18 MR. WRIGHT: We have one more organized
19 presentation. And this is a presentation from the
20 Surfrider, Coastkeeper organization.

21 Mr. Gonzalez, how much time are you requesting?

22 MR. GONZALEZ: Mr. Chair, our original request was for
23 10 minutes. We may go one or two minutes over. I have
24 approximately a dozen slides.

25 MR. WRIGHT: Please go ahead.

1 MR. GONZALEZ: Thank you, Mr. Chair, members of the
2 Regional Board. My name is Marco Gonzalez. I'm a
3 partner with Coast Law Group in Encinitas. We
4 represent the Surfrider Foundation and San Diego Coastkeeper.
5 We have participated in virtually every step of
6 this process. We were first approached by Poseidon about
7 10 years ago, asking for Surfrider support. And we have
8 paid attention ever since.

9 What I would like to do today is provide you,
10 really, two broad points. The first is what we call
11 the fundamental flaw. It's a problem with how we got to
12 where we are. And then the second is a look at the
13 historic -- the history of the process that got us here.
14 Touching on a couple of points that will hopefully make
15 you understand why we're not in agreement with Poseidon,
16 and why we're rather frustrated with the way things have
17 gone.

18 But first and foremost, I want to be very clear
19 with respect to what we hope to see from the Board. Now,
20 we expected a decision today, but we think this equally
21 applies today as well as at the next Hearing. First, don't
22 be bullied. Listen to your staff. At every single
23 agency hearing we have had, the staff have raised
24 significant concerns and the elected and appointed
25 officials have seen themselves to be more expert in

1 technical issues and overridden their staff.

2 Now, that just doesn't sit well with the
3 public, who expects the staff of at least three State
4 Agencies to be competent and to be experts in their
5 field. It's very important that you consider this is the
6 first and the largest of its kind in the
7 Western Hemisphere.

8 There is no desalination project of this size
9 anywhere in the United States. The only one that even
10 comes close was half as big in Tampa Bay, and it failed
11 miserably. And, yes, it was designed by Poseidon. We
12 don't talk about that very much. But you should talk to
13 your -- your friends in Tampa Bay and see how they feel
14 about Poseidon's performance there. And, of course,
15 Poseidon has its arguments as to why it wasn't their
16 fault.

17 But the fact is there's 20 or more proposals
18 along the coast of California. And what you do here
19 today will be used as precedent. The efforts of the
20 Coastal Commission are already being thrown back in their
21 face in Huntington Beach. And frankly, the broken
22 process that we've engaged in here is now on the verge of
23 becoming law. And it will take us 20 years to overturn
24 that.

25 Understand the project history, there has never

1 been a process in the last 10-plus years that I've been
2 practicing environmental law that has been this
3 disjointed, this non-transparent, and frankly, this
4 political.

5 Respect the legal framework, the first thing
6 I'm going to do is provide you the most basic argument
7 that we've been trying to get you to latch onto, and you
8 still haven't. And it's going to explain some of the
9 things that -- that we're being accused of by Poseidon
10 today. But pay attention, because it's critical, and
11 it's the key to all the litigation, frankly, and our
12 position going forward.

13 And then, of course, as you always do, do the
14 right thing. We continue to have optimism that despite
15 those letters, most of which come from the Governor's
16 appointees, which all of you are as well, actually
17 reflect a political consideration regarding drought and
18 not a scientific or technical balancing of issues
19 regarding marine life versus the way we use water in
20 Southern California.

21 So the first thing I want to focus on is, what
22 we call, the fundamental flaw. The fundamental flaw has
23 to do with the legal requirement that applies to you, the
24 Regional Board. And you see this throughout the
25 documents, both by staff, and the -- and Poseidon.

1 Porter-Cologne Section 13142.5 is the cornerstone of
2 where you begin your, and really, end your consideration.

3 It says that the desalination plant shall use
4 the best available site to minimize the intake and
5 mortality of marine life. What does this mean? It means
6 you have to put the desal plant in a place where you can
7 minimize the intake and mortality of marine life. That
8 doesn't mean you consider where you put the physical
9 plant, you consider where you put the intake.

10 All of the alternatives analysis that's been
11 given to you talks about where you locate the actual
12 physical plant. But we've only, since day one, talked
13 about one intake. And that's the intake at the
14 Encina Power Station. Now, there may have been an
15 alternative study done for subsurface intakes at the
16 Encina Power Station, but we've seen no alternative
17 location anywhere around the coast.

18 And you will hear Poseidon at some point say,
19 "But wait a second, this is a Carlsbad-specific project.
20 We define our project so narrowly that it has to be in
21 Carlsbad." No, it doesn't. Look at all the water
22 agencies that are purchasing water. They're not getting
23 it directly piped. It's paper transfers, as anybody who
24 deals with water knows.

25 Further, in their presentation, they say this

1 is a regional problem. The drought is a statewide
2 problem. Locating a desalination plant that's
3 purportedly going to meet the County Water Authorities
4 fabricated need for 56,000 acre feet is not a Carlsbad
5 local issue. And your standard of review under
6 Porter-Cologne says you have to choose the best available
7 site to minimize intake and mortality of marine life. We
8 don't even have that analysis. We don't know where the
9 best available site is because they've only looked at one
10 site.

11 The best available design to minimize intake
12 mortality, we've only looked at a 50 MGD site -- or
13 design. We haven't looked at a 30 or a 20. We've
14 invalidated all of the alternative intakes that could be
15 done here in Carlsbad, because they don't meet the
16 criteria of producing 50 MGD. That may not be the best
17 available design, but we don't see this standard
18 appropriately applied or considered anywhere in the
19 record.

20 The best available technology and the best
21 available mitigation measures, remember to minimize
22 intake, because this is important when you consider the
23 standard that Poseidon thinks applies to it. And I'm
24 taking this straight from the letter that they submitted
25 back in -- on March 2nd, 2008, before that last approval,

1 conditional approval. And it's important because this
2 was threaded through everything that they did.

3 Look at what they talk about. They think
4 13142.5 says that you have to choose site design
5 technology and mitigation to minimize the impacts to
6 marine life. And you see they went into great detail
7 to -- to specify that their Marine Life Mitigation Plan
8 at that point dealt with the best site to minimize
9 impacts to marine life, the best design to minimize
10 impacts.

11 And so we have to ask ourselves, what's the
12 difference between minimize intake and minimize impact?
13 It's really a plain reading. It's common sense. One,
14 it's the wrong standard. You've got to go by with what the
15 statute actually says. And no one seems to want to. It
16 gets thrown into the resolutions when the standard is
17 recited, but the analysis has not focused on the
18 difference between minimizing intake and minimizing
19 impacts.

20 Now, interestingly, we're talking about a
21 co-located plant here, one that would take advantage of
22 the once-through cooling technology currently at the
23 Encina Power Station. And we all know that Section
24 316(b) applies to that power station. And the language,
25 we should look at that, because it's relevant to this

1 whole discussion about minimizing intake versus
2 minimizing impact.

3 316(b) says on its face that you have to
4 minimize adverse environmental impacts with respect to
5 the location design, construction, and capacity of
6 cooling water. Now, we've had this discussion. It's in
7 your own resolution from April. 316(b) does not apply.
8 So the question we ask ourselves, why is Poseidon
9 applying 316(b) standard, or language regarding impacts
10 instead of intake when we all know that 13142.5 is the
11 applicable standard.

12 Well, we're not really sure why they did it up
13 front, except that for the last 30 years, more or less,
14 once-through cooling power plants have been allowed to do
15 compensatory mitigation, or off-site mitigation to
16 account for the incredible destruction that they have
17 tendered to marine life, most of which, in California,
18 has been done based on studies done by their exact
19 consultant here today, Tenera.

20 All of these power plants that use once-through
21 cooling up and down the State have had studies done that
22 show this off-site compensatory mitigation is the
23 appropriate way to account for the destruction of marine
24 life. And frankly, when this was rolling along, Poseidon
25 wanting to co-locate, not wanting to find significant

1 impacts, was trying to take advantage of that same thing.

2 But the problem is that liberal construction of
3 316(b) no longer exists. The idea that a technology
4 forcing statute in the Clean Water Act could be read to
5 allow you to have the impact and then go mitigate
6 elsewhere, it's been turned on its head by the
7 River Keeper case.

8 Now, we will agree, 316(b) doesn't apply. But
9 the important thing to realize is even using the liberal
10 standard as Poseidon interprets it, the courts have said
11 that doesn't fly. And your own State Water Resources
12 Control Board, in a document last year, or maybe a year and a half
13 ago, the scoping document on once-through cooling
14 addresses there is a very concrete distinction between
15 minimizing intake and minimizing impacts. You have to
16 cross that threshold. You have to do the analysis.

17 Now, we're seeing in our legal briefing, where
18 the Coastal Commission is kind of juggling and trying to
19 say, "Well, we impliedly kind of did this already."
20 But I ask you, look in your packets, and tell me where
21 you see the minimization of intake spotlighted with
22 respect to site design, technology and mitigation
23 measures.

24 The fact of the matter is it's a more
25 restrictive standard, and it applies before the impact

1 takes place. It just hasn't been addressed. It hasn't
2 been appropriately considered. And until it gets done,
3 it's a fatal flaw that frankly, it is fatal. Much was
4 made by Poseidon about why we didn't challenge the
5 Mitigation Plan by the Coastal Commission. We find that
6 an interesting argument to put forward now after we've
7 filed three lawsuits, and we're told that we're being
8 excessively litigious.

9 Now, they're saying we should have filed more.
10 Well, more are coming, I guess. That's all we can say.
11 But the reality is once we cross the threshold, and that
12 threshold is once we say that the last 30 years of
13 incredibly destructive technology as applied to power
14 plants is going to be allowed to continue with
15 desalination, we've already lost the fight in a lot of
16 ways.

17 Remember, all of these power plants, they're
18 doing their mitigation. Look at the Southern California
19 Edison mitigation upon which the Applicant is relying.
20 It's a big off-site mitigation. It's 30 years after they
21 started operating. Are we going to wait that long to see
22 a successful mitigation? And we don't even know if
23 that's successful, because frankly, it's not fully
24 constructed yet or operational.

25 But the fact is, our decision not to sue on the

1 Coastal Commission Marine Life Mitigation Plan is, in
2 part, due to the fact that you have to approve it under a
3 different standard, under Porter-Cologne. And also, if
4 we get to that point, frankly, we haven't followed the law.
5 And if the law isn't followed by you or the courts,
6 we've -- we've essentially taken ourselves back 30 years.
7 And we're going to have to just get in the trenches and
8 spend a lot more time getting back to where we are now in
9 once-through cooling.

10 So with that understanding, I'm going to run
11 through the history. And the project history is
12 interesting because there should be a logical sequence of
13 events for a project from inception to final
14 groundbreaking. And here what we've seen is this is a
15 first of its kind. And so Poseidon had taken this
16 position of, just let us build it. Just -- we'll do
17 whatever we need to get each stage of approval. And we
18 promise, promise, promise we're going to do whatever it
19 takes down the road.

20 We all know, whether you're talking about CEQA
21 the Coastal Act, the State Lands Commission's public
22 trust requirement or Porter-Cologne, the idea is you need
23 to have a measure of certainty at the time of approval.
24 Conditional approvals mean nothing. And we'll get to
25 that in this project history.

1 I'm going to go through fairly quickly, but I want
2 to show you about the evolution of this project, and why
3 we're frustrated standing here today, hearing some of the
4 rhetoric that we have out of Poseidon. The City of
5 Carlsbad in 2006 in June, they approved a co-located
6 plant. All of their approvals say they're going to take
7 water from the Encina Power Station. There's going to be
8 no significant impacts to impingement and entrainment.
9 And therefore, there's no mitigation required whatsoever.

10 That's not the project we're talking about
11 today. But that's what was approved by the City of
12 Carlsbad. The weight of that CEQA document is directly
13 relevant to the project that was before it. And when you
14 considered, subsequent to that in August of 2006, the
15 so-called approval that Poseidon wants to rely on now,
16 you recognized you were approving a co-located plant, not
17 the plant that is before you now.

18 You were approving a -- you said that a
19 stand-alone plant would require additional CEQA review.
20 You relied on the subsequent review. And you even
21 embodied it in that approval. And you said, if by chance
22 the EPS doesn't have the full amount of flows that you
23 need to desalinate your water, because at the time it was
24 looking around 500, but it was about to drop, million
25 gallons per day. You need to come back with this flow

1 plan.

2 Almost immediately, it was recognized in 2007,
3 that there would be maybe a 5th of the flow going through
4 the EPS as was estimated by Poseidon. And the flow plan
5 would absolutely be required. In 2007, we reached a
6 seminal point when the Encina Power Station owner
7 submitted an application to the California Energy
8 Commission essentially saying, "We're done. We recognize
9 that the River Keeper case means once-through cooling
10 technology will not work." They're one of 6 plants
11 statewide that recognized the impending doom of their
12 antiquated technology, and they applied to repower.

13 Now, some of you may have read in the paper,
14 there's this fight going on whether the repowered
15 non-once-through cooled plant belongs on the coast in
16 Carlsbad, totally irrelevant. The most important thing
17 is at that point, this became a stand-alone plant. It's
18 no longer unreasonably foreseeable as they said in the CEQA
19 process at Carlsbad, whether this would end up standing
20 alone. We know for a fact that it would. And we know
21 for a fact that they don't to do any kind of alternative
22 intake, that they want to perpetuate the once-through
23 cooling technology.

24 The reason why the Coastal Commission took so
25 long to get things rolling is, because with this change,

1 they needed a lot more information. And as they
2 considered how they would then have to deal with what was
3 previously considered insignificant with respect to
4 marine life impacts, they had difficulty in identifying
5 how the mitigation would take place.

6 They knew in permitting once-through cooled power
7 plants that this off-site mitigation was one way that it
8 was done. But the fact is they didn't have that before
9 them. And Poseidon was again saying, "We need an
10 approval now. We need an approval now." And our
11 appointed officials succumbed against staff's
12 recommendation.

13 They inserted a requirement in their
14 conditional approval that said, "We need site-specific
15 information when you come back to us with your Marine
16 Life Mitigation Plan." They also said the Coastal Act is
17 not Porter-Cologne. We're not going to apply
18 Porter-Cologne. We're going to rely on the Regional
19 Board to do that. And the decision of this -- or the
20 recommendation of staff was overridden.

21 So then, we enter this period between, really,
22 about December of '07, through April, May, June of '08,
23 where we had this Marine Life Mitigation Plan refinement.
24 Somewhere around the end of that, we had this interagency
25 process. One thing I want to be absolutely clear, we didn't

1 get to participate in the interagency process. We, the
2 public, we, the environment groups who put our
3 hard-earned time and money into this process were
4 specifically excluded. That should ring a bell right
5 there.

6 You have a bunch of agencies all underneath the
7 Governor's direction, who are saying, "Hey, we have a lot
8 of sites up and down the coast where we could really use
9 money to do mitigation." We never even reached the
10 Porter-Cologne analysis whether this is minimized
11 intakes. We're jumping immediately to the mitigation.

12 Well, the first thing that Poseidon did is they
13 came back and they said, "We're going to go to
14 Southern California Edison's site, and we're going to tag
15 along an extra 37 acres." Southern California Edison
16 said, "Hey, we haven't constructed our site. We haven't
17 began to meet our performance criteria. We're not going
18 to be able to differentiate your site from ours."

19 And the joint powers authority said,
20 "Yeah, you've got to through CEQA before you jump on our
21 bandwagon. It's taken us over a decade to get this thing
22 underway." Oh, no. Poseidon says, "We don't have a
23 mitigation plan. What are we going to do? Hey, let's go and
24 look at what they did 30 years ago with Southern
25 California Edison. Let's adopt a multi-location model."

1 Don't believe for a second that the
2 Coastal Commission told Poseidon this would be good.
3 This was brought forward by Poseidon as the only way to
4 conditionally get their project approved without having
5 to provide the level of specificity that was required in
6 special condition 8 by the Coastal Commission. And they
7 worked the political angle to get that through.

8 Now, during this time the Regional Board issued
9 its conditional approval. The resolution itself says
10 this is but a plan to create a plan. Kind of sitting
11 here you have to wonder what it was that you actually did
12 in conditionally approving it, other than feed into this
13 notion that by creating momentum by these agency
14 approvals, you're giving Poseidon the ability to go to
15 the next agency and say, "Well, we have an approval."

16 And if you don't believe they've done that, I'm
17 sorry. We can give you that at your next hearing. But
18 at every stage that they get a conditional approval or an
19 incremental movement forward, they go to the next agency
20 and say, "Rely on that agency, they already looked at
21 it." Just like they're doing here today with respect to
22 the Coastal Commission's approval.

23 So we have a requirement in April of 2008, by
24 your Board that says, "Come back with an amendment
25 containing a specific mitigation alternative." You guys

1 said, "For purposes of where we are in the process, we
2 accept what you've done." This broad 30,000 foot level
3 that looks at 11 sites, and looks at, you know,
4 30,000 foot level performance criteria, but we cannot,
5 until we have site-specific data, site-specific baseline
6 information, at least the sites identified where it will take
7 place, we can't really assess whether it's even feasible.

8 So we're litigating that. We don't think that
9 the Board has the discretion to conditionally approve
10 something and essentially admit that you don't have the
11 information to approve it in the context of your actual
12 resolution.

13 And so we get to August of '08, at the -- at
14 the point where the agency, the interagency discussion is
15 taking place. We see that the Coastal Commission in its
16 approval of the Marine Life Mitigation Program, they
17 abandoned the idea that they need site-specificity,
18 largely under the pressure that they had previously
19 allowed Southern California Edison to come forward with a
20 multi-site model. Granted, it was 30 years prior, but
21 they felt politically it was an out for
22 them. They were able to get out from underneath it.

23 They adopted -- or they required an additional
24 amount of acreage space on Pete Raimondi's recommendation.
25 It wasn't on our -- our expert's recommendation. We're

1 pretty much ignored at every stage in this by the
2 agencies. They adopted a Marine Life Mitigation Plan
3 with this multi-site model specifically saying, "This is
4 a Coastal Act approval. We're going to also wait and
5 see what the Regional Board does," because you have a
6 different standard.

7 And in the briefs that the -- that were
8 provided to you by counsel for Poseidon, they go to great
9 lengths to say, "The Coastal Act is a different standard
10 than Porter-Cologne."

11 MR. WRIGHT: Mr. Gonzalez, you're well over your 10
12 minutes.

13 MR. GONZALEZ: I apologize, I'll be done. I'm on my second
to last slide.

14 MR. WRIGHT: You need to move towards closure.

15 MR. GONZALEZ: So what we have now -- I'm going to
16 skip over the State Lands Commission situation, other
17 than to say, that's subject of other litigation. And it's
18 probably unnecessary for you to understand that. But
19 it's just another piece of the puzzle.

20 In conclusion, the Porter-Cologne standard,
21 13142.5 has never actually been applied. And we'd like
22 to see you follow the law before you render any sort of a
23 final approval for this project. Both the Coastal
24 Commission and the State Lands Commission are relying on
25 you, expressly in their documentation to apply 13142.5.

1 They have not done so for you.

2 The conditional approval that we are supposedly
3 responding to today required specific alternatives. The
4 straw men that have been put up before you that somehow
5 the staff is not allowing multiple sites. That's just
6 not the condition. It's, we've reached a point where
7 the 30,000 foot level is no longer appropriate. We're
8 done with conditional approvals.

9 We're at the end of the process. And at some
10 point at the end of the discretionary process, we, the
11 public, you, the Board, the staff, we're all entitled to
12 see the beef, the end of the road. We need to see that
13 before a final approval. And we ask you to declare the
14 NPDES permit unsatisfied. And we'll see you in April.

15 MR. WRIGHT: Thank you.

16 Well, we have about 35 speaker slips. So
17 that's about 2 hours or so worth.

18 I would urge you, if you're speaking, to be as brief
19 as possible. And again, please try not to be
20 repetitious. If somebody has already made your point,
21 please just affirm that, so we can move on.

22 Let's hear from Cameron Durkle. Sir, I'm not
23 sure I pronounced your last name correctly, so --

24 MR. DURKLE: That is correct. I can't be sensitive
25 with my name. My name is Cameron Durkle with the

1 Governor's Office, here in San Diego. First of all, I
2 want to thank you all for your service and continued
3 service. These are challenging, difficult issues to deal
4 with, but I do want to urge, on behalf of the Governor,
5 urge your support of this mitigation plan.

6 You all have in the record the letter from the
7 Governor. I won't read these letters to you. We have
8 letters from a number of the Secretaries of State
9 agencies. Very unusual circumstance to have that kind of
10 broad-based support, both locally and in the state.

11 And I urge your bringing this matter to a
12 positive conclusion as soon as possible. And I'll leave
13 it at that. I know we've got a number of speakers.

14 Thank you again for your time.

15 MR. WRIGHT: Wow, I really appreciate that. We all
16 appreciate it. So Mr. Durkle has set a high standard for the rest
of you.

17 If somebody from the Governor's Office can be that brief,
18 the rest of you can.

19 Deanna Spehn, Policy Director for
20 State Senator, Christine Kehoe.

21 I'm sorry I didn't do a proper introduction to
22 the representative from the Governor's Office.

23 MS. SPEHN: Good morning. I'm Deanna Spehn,
24 S-p-e-h-n. And I have a letter which I'm passing out
25 that was sent in by Senator Kehoe that you should have

1 received already.

2 "In 2006 and 2008, I wrote the San Diego
3 Regional Water Quality Control Board requesting your
4 support for the Carlsbad Desalination Project. I write
5 today asking that the Regional Board reaffirm its support
6 for the project by approving its Marine Life Mitigation
7 Plan during your February 11th, 2009 meeting.

8 "As a member of the San Diego City Council for
9 7 years, as a California State Assembly Member for 4, and
10 4 years as a State Senator, I am well versed on
11 California's water issues at both the local and state
12 levels. It is important that our region continue its
13 effort to diversify its supply of potable water.

14 "There is no question that San Diego's water
15 supply system has many challenges. As a fire-prone
16 region with heavy agricultural use that imports almost
17 90 percent of its water, diversifying our water supply
18 portfolio must include developing local water sources.
19 Desalination is a key element of both the San Diego
20 County Water Authority's Urban Water Management Plan, and
21 the California Department of Water Resources Water Plan
22 Update.

23 "It has been 10 years since the Carlsbad
24 Project was first proposed. Numerous agencies, including
25 the California Coastal Commission and State Lands

1 Commission have reviewed and approved the project.
2 Research conducted by Poseidon Resources demonstrates
3 that effects on the marine environment will be minimal
4 and offset by the wetland habitat restoration plan that
5 will restore up to 54 -- 55.4 acres of coastal habitat as
6 described in the Marine Life Mitigation Plan.

7 "In addition, the Carlsbad Project will be a
8 good steward for the Agua Hedionda Lagoon, ensuring that
9 this 388-acre wetland is preserved for future generations
10 to enjoy.

11 "The Carlsbad Project offers a local solution
12 to our long-term water supply needs that will reduce the
13 region's dependence on imported water, especially during
14 this period of extended drought. I urge your favorable
15 consideration of this project. Sincerely,
16 Christine Kehoe, Senator, 39th District."

17 Thank you so much for your time.

18 THE COURT: Thank you for your time.

19 Chris Rubin from Senator Mark Wyland's Office.

20 And followed by Craig Elliot, if you would be
21 ready.

22 MS. RUBIN: I'm Christine Rubin, District Director
23 for Senator Mark Wyland. The Senator is in Sacramento
24 today, and he has asked me to -- to offer his support for
25 the Carlsbad Desalination Project located in his

1 district. He urges you to finalize your approval of the
2 project's Marine Life Mitigation Plan.

3 And in keeping with the Cameron Durkle model, I
4 thank you for your time.

5 MR. WRIGHT: Thank you.

6 Mr. Elliot, followed by David Vidoric.

7 MR. ELLIOT: Chairman Wright, Members of the Board,
8 John Robertus, Chiara Clemente. I'm Craig Elliot. I've
9 come here to talk to you about water. Fresh water, clean
10 water. I live on the north shore of Agua Hedionda
11 Lagoon. My back yard is about 100 feet from the high
12 tide line. I have dedicated a lot of my time in the last
13 11 years to work associated with preservation of
14 Agua Hedionda Lagoon.

15 I've worked with members of the staff of the
16 Regional Board on studies concerned with coliform
17 bacteria collection in the outer lagoon. I've been
18 the -- the Lagoon Foundation Chairman for -- for work
19 on the caulerpa taxifolia eradication project for the
20 last 8 years.

21 I've worked with Greg Peters, rest his soul,
22 from the Board, Bruce Posthumus of the Board. And
23 Chiara Clemente, we've worked together for a long time on
24 a lot of different projects. I represent myself today,
25 and also come as a representative of the Agua Hedionda

1 Lagoon Foundation, of which I've been a member for
2 11 years.

3 The foundation sent a letter to all of you,
4 probably about 3 weeks ago, stating our -- our strong
5 support for the mitigation plan submitted to you for your
6 consideration. It's time to -- to get on with the work.
7 I encourage you to -- to approve this plan at the next
8 meeting so that -- so that Poseidon can get on with the
9 project to mitigate something else, mitigate the need for
10 water rationing in San Diego County.

11 Thank you.

12 THE COURT: Thank you, Mr. Elliot.

13 David Vidosic, followed by Tom Lemmon.

14 MR. VIDOSIC: Mr. Chairman, Members of the Board.

15 My name is David Vidosic, I'm a representative for
16 Assemblyman Nathan Fletcher. On behalf of the
17 Assemblyman, I just want to urge you guys to approve the Marine
18 Life Mitigation Plan at your next meeting. As you know,
19 San Diego County is mired in a historic drought. It's
20 already cost our region good-paying jobs, and threatens
21 to further weaken the economy. And as such, ensuring
22 that San Diego has a top water supply is -- or a good
23 supply is a top priority for the Assemblyman. So I just
24 want to urge your support.

25 That's all. Thank you.

1 MR. WRIGHT: Thank you for your brevity.

2 Tom Lemmon, followed by William Rucker.

3 MR. LEMMON: Good morning. My name is Tom Lemmon,
4 Business Manager of the San Diego Building and
5 Construction Trades Council. And we're here -- I'm here
6 to support, or ask your support for the mitigation plan.
7 We have an agreement, a project labor agreement with
8 Poseidon that's going to guarantee local hire, training
9 of apprentices. And with today's economy and the need
10 for jobs, we need to get this thing moving as quick as
11 possible. And we urge you to -- to address that in your
12 next meeting in April and approve this project.

13 Thank you.

14 MR. WRIGHT: Thank you.

15 Mr. William Rucker, followed by Mike Howes.

16 MR. RUKER: Yes, I'm William Rucker, the General
17 Manager for Vallecitos Water District, County Water
18 District, one of the nine public partners who will use a
19 7500 acre feet a year, which meets about 44 percent of
20 our demand.

21 Having attended all the meetings, the district
22 believes that the specific proposal for mitigation
23 complies with your directive. And we would urge you to approve
24 that mitigation plan.

25 MR. WRIGHT: Thank you, sir.

1 Mike Howes, followed by Angelika Villagrana.

2 Your hair is not as red as it used to be.

3 MR. HOWES: No, it's been a while. My name is
4 Mike Howes, a lot of people know me as Mick, in days in
5 the past. When I first came and toured the project site,
6 I did not have to wear reading glasses. And when the desal
7 project was originally being contemplated, I brought my
8 son in a back pack. He was a toddler. He's a freshman
9 in high school now.

10 During all that time, we have not come up with
11 a better solution to meet our water needs in San Diego
12 County. We've all become aware of the problem. We're
13 starting to try and do what we can to conserve water.
14 But that's not going to solve the problem. Maybe if some
15 of the opponents would just take a basic entry-level
16 geography course, they'd realize, we live in a desert,
17 and have to import 90 percent of our water. That's not
18 going to change, and our population is not going to stop
19 growing.

20 San Diego is a great place to live in. That's
21 why we're all here. And more people are going to come
22 here in the future. And most of us that currently live
23 here do not want to leave. My son has already informed
24 me, he wants to go to San Diego State. He cannot wait to
25 start college and get a place of his own. There's some

1 nights I can't wait for him to move out and get a place
2 of his own.

3 That being said, many of the other young people
4 in San Diego feel the same. They want to stay here, go
5 to school here, get a job, and reproduce. We need a
6 reliable local water source. Poseidon has spent years
7 addressing the requirements of every Federal, State, and
8 Local Agency. They are proposing to build the most
9 efficient, energy efficient, environmentally responsible
10 desalination plant in the country.

11 A lot of my neighbors are shocked when I
12 explain to them that -- that the staff of the Regional
13 Water Quality Control Board has concerns about a plant
14 that's going to provide good, clean, usable water for
15 San Diego. They all thought this review process was over
16 a long time ago.

17 In conclusion, Poseidon's mitigation plan goes
18 above and beyond what the law requires. There's no
19 reason to delay this project any longer. I'm just asking
20 the Board to please do the right thing for the citizens
21 of San Diego and approve this project now. It would be
22 great to see it done before my son is in college.

23 Thank you.

24 MR. WRIGHT: Thanks Mike.

25 Angelika Villagrana, followed by Ted Owen.

1 MS. VILLAGRANA: Thank you, Mr. Chairman, Members of
2 the Board, Mr. Robertus. My name is Angelika Villagrana,
3 and I represent the San Diego Regional Chamber of
4 Commerce, our 3,000 members and their 400,000-plus employees.
5 The chamber has been a long-time supporter of this
6 project. We believe that it is in all our interests to
7 invest in our region's water infrastructure. And this
8 project gives us an additional excellent tool to do so.

9 With the historic drought hanging over all of our
10 heads, this additional resource is critical to our region
11 and to our economy. We are confident that Poseidon has
12 created a substantive comprehensive mitigation plan.
13 Therefore, the San Diego Chamber urges you to approve the
14 Marine Life Mitigation Plan. We urge you not to delay it
15 any further. It is in all of our interests that this
16 additional water resource comes online as soon as
17 possible.

18 Thank you very much.

19 MR. WRIGHT: Thank you.

20 Ted Owen, followed by Gary Arant.

21 MR. ROBERTUS: Mr. Chairman?

22 MR. WRIGHT: Yes, sir.

23 MR. ROBERTUS: Could you please ask the speakers to
24 provide a business card to the court reporter?

25 MR. WRIGHT: Yes. If you have business cards,

1 please provide those to the court reporter.

2 THE REPORTER: Also, if you're reading from
3 something, if you could give that to me, that would be
4 helpful.

5 MR. OWEN: Well, I was going to tear it in half as a
6 stroke of editing, but I'll give it to you instead.

7 My name is Ted Owen. I'm the President and CEO of
8 the Carlsbad Chamber of Commerce. And I'm going to take
9 out all the things that the Commission and the Chairman alluded to
earlier.

10 You know more about water than I do, except I'm a user.

11 But I wanted -- I only wanted to stipulate that
12 for a city like Carlsbad, which is one of the finest
13 cities in America, certainly in San Diego County and
14 California, water is an ingredient that we just
15 cannot not be too loosely protecting. And we cannot have
16 enough of in order to grow our economy.

17 But I would say we've endorsed this for
18 5 years. I've been the CEO of this chamber for 5 years,
19 so I've been to a lot of meetings all over the state on
20 this issue. But I would say in addition to the water for
21 Carlsbad, what this project will create, it will also
22 create 2100 good paying jobs for nearly 3 years at a time
23 when unemployment continues to decline in this economy.

24 This is not a government bailout project, but a
25 true job creation and a stimulus project. And we hope that

1 in your April Hearings that you'll see -- see your way
2 clear to approve the -- the final plan and get on with
3 it. And we'll see you all at the ribbon cutting.

4 Thank you.

5 MR. WRIGHT: Thank you.

6 Mr. Arant, followed by Mr. Elliott.

7 MR. ARANT: Chairman Wright, Members of the Board.

8 My name is Gary Arant, and I'm the General Manager of the
9 Valley Center Water District. I'm also a member of the
10 Board of Directors of the San Diego County Water
11 Authority, and one of the desal partners, and a former
12 member of this body from 1983 to 1997.

13 As a former member of this Board, I appreciate
14 and respect the hard work you do, the complexity of the
15 issues, and the fact that while you sit in your seats you
16 are pushed and pulled and tugged between various
17 interests on the same issue.

18 Well, let's set some of this noise aside and
19 review a few facts about the process that brought us to
20 this point. Also, I want to point out that I am
21 strangely in awe of the Coastkeeper and their commitment
22 to sue you and everyone else until you all get it right
23 in their opinion.

24 I was here in April of 2008, when the
25 Flow Impingement and Entrainment Minimization Plan was

1 conditionally approved. The record is clear. The
2 direction was given to Poseidon to engage the
3 Coastal Commission and other agencies in the development
4 of the mitigation plan that was specific and enforceable.
5 The fact is the plan before you today, which has
6 been vetted by the Coastal Commission, by the State Lands
7 Commission is responsive to your direction in April of
8 2008.

9 Though it is the recommendation of your staff
10 to defer this item until April of this year, I would
11 recommend that you make value of today's proceeding and
12 to answer any questions, doubts, concerns, even have the
13 Coastal -- Coastkeeper discuss their alternative. The
14 plant off Dana Point with slant wells.

15 And let's go through this issue today, so that
16 when we go back -- come back in April for one more
17 meeting, we have all of the issues before us, and we
18 understand what's being proposed.

19 I want to thank you all for your patience. I
20 want to thank Poseidon for their tenacity to stay with
21 this process, because as a water manager responsible for
22 the water supply for 26,000 people and 1200 family farms,
23 I am concerned about the lack of water supply for the
24 people I represent and serve. Thank you very much.

25 MR. WRIGHT: Thank you.

1 Jim Elliott, followed by Ron Ball.

2 MR. ELLIOTT: Good morning and -- good morning and
3 thank you for the opportunity. I think Cameron Durkle did set a
4 high standard. I'll try to do my -- my part.

5 Jim Elliott, I'm the Deputy City Manager for the City of
6 Carlsbad. I've headed up the City of Carlsbad's desal
7 team since 2000, so I have approximately 9 years of
8 experience with this whole project.

9 Cutting through a lot of what I was going to
10 say, the City of Carlsbad did attend the May 1st meeting
11 where we talked about the interagency work that would
12 come up with a plan. The City of Carlsbad came to that
13 meeting with the idea of trying to encourage keeping
14 mitigation inside the City of Carlsbad. And we offered
15 up some sites.

16 And at that meeting your staff indicated to us
17 why it was necessary to look at multitude -- a
18 multitude of sites outside of the City of Carlsbad. And
19 we left that meeting in May with the understanding that
20 we would come up with a list. And that's exactly what's
21 happened. We're encouraged by the work that's been done.
22 We are in favor of the effort that you're about to
23 undertake. Yes, we'd like to have an action today, but
24 we understand why that won't happen. And that's fine.

25 The other thing I would say is we would like to

1 echo the comments that you got from Commissioner
2 Ben Hueso. In his comments to you, he said, basically,
3 that this project has been vetted, and it's time to move
4 forward. That's a summary of what he said.

5 The other thing I was going to do was offer to
6 answer some of the questions you had, sir, about the City
7 of Carlsbad and the use of reclaimed water. I'll put
8 that on hold. And if you want to hear that, we have
9 people who can answer the questions.

10 MR. WRIGHT: Thank you very much.

11 Ron Ball, followed by Alonso Gonzalez.

12 MR. BALL: Good morning, Chairman Wright and Members
13 of the Board. My name is Ronald Ball. I'm the City
14 Attorney for the City of Carlsbad and the General Counsel
15 for the Carlsbad Municipal Water District. And by
16 special arrangement, I'm General Counsel to
17 Vallecitos Water District for the litigation that you've
18 heard about this morning.

19 And I think I wanted to address -- at the
20 beginning of the meeting you talked, I think it was
21 Commissioner Loveland, you asked about procedures,
22 everything on the table for procedure. And as I've
23 listened to the events this morning, I think my
24 recommendation to the -- to the Board would be to hear
25 everything today as most people have urged you, and to do so,

1 and then close the public hearing, as you've heard all
2 the evidence that you need, I think.

3 And then, in April, come back for
4 deliberations. And you can, as the mayor has suggested,
5 order your staff to return with a resolution of approval.
6 The most important thing in that is the findings and
7 the -- the evidence to support those. And that's what
8 the Board could consider and deliberate over. And then,
9 the factual issues are -- are resolved. And they're
10 resolved when the Board takes its final action. But
11 anyway, all the facts have been presented to you, so
12 there's no sense to reopen the public hearing at that
13 time.

14 I'd be happy to answer any questions. I did
15 have some prepared remarks, but I think that's the most
16 important thing I can do today, Mr. Chairman.

17 MR. WRIGHT: No. We appreciate any and all
18 suggestions.

19 MR. BALL: Thank you.

20 MR. WRIGHT: Mr. Gonzalez?

21 We have a number of speakers from other elected
22 officials' offices, so Mr. Gonzalez is one of those.

23 MR. ALONSO GONZALEZ: Good morning, Chairman,
24 Members of the Board. I am Alonso Gonzalez, Deputy Chief
25 of Staff for San Diego Council President, Ben Hueso. And

1 I also serve as his alternate on the Coastal Commission.

2 It was in that capacity on the Coastal Commission that

3 Commissioner Hueso made the motion that approved

4 Poseidon's application last year at the Commission.

5 He couldn't be here today, but he did submit a
6 letter last month to your Board. And I will briefly read
7 just a small section, which I think is most pertinent.

8 MR. WRIGHT: Thank you. We have that letter, so --

9 MR. ALONSO GONZALEZ: You have it? Okay. In that
10 case I'll --

11 MR. WRIGHT: Please go ahead.

12 MR. ALONSO GONZALEZ: I'll just highlight the actual
13 principal finding, which stated, Implementation of the
14 Plan will ensure the project's entrainment-related
15 impacts will be fully mitigated and will enhance and
16 restore the marine resources and biological productivity
17 of coastal waters.

18 But in summary, we hope that you find that you
19 have all the information that's necessary to find
20 approval at the next meeting.

21 MR. WRIGHT: Thank you.

22 MR. ALONSO GONZALEZ: Thank you.

23 MR. WRIGHT: Rachel Solorzano. I apologize if I
24 butchered your last name.

25 MS. SOLORZANO: Thank you. Good morning. My name

1 is Rachel Solorzano. And I'm here on behalf of
2 Assemblymember Mary Salas, District 79. Our constituents
3 live in the cities of Imperial Beach, Chula Vista,
4 National City, Coronado, and San Diego. Many of them are
5 Sweetwater Authority water customers and will benefit
6 greatly from the new water supplies produced by the
7 Carlsbad Desalination Project.

8 It is crucial that we have a safe and abundant
9 drinking water supply, and we have encouraged residents
10 and local businesses to conserve water and reduce usage
11 whenever possible. However, we realize that these
12 efforts of conservation will only go so far in stretching
13 our resources and a new source of potable water. Sea
14 water desalination is a tested technology that can
15 guarantee San Diego's water -- future water needs are
16 met.

17 Assemblymember Salas is proud to support this
18 successful public-private partnership between
19 Poseidon Resources and the City of Carlsbad, and urges
20 you to approve the Marine Life Mitigation Plan in your
21 April meeting.

22 Thank you for your time.

23 MR. WRIGHT: Thank you.

24 Mr. Jim Barrett, followed by Christine Gueren.

25 Welcome, Mr. Barrett.

1 MR. BARRETT: Good morning, Chairman Wright, Members
2 of the Board. I am here representing Mayor Sanders. The
3 Mayor sends his regrets and apologies. He's back in D.C.
4 talking to our Federal representatives over the
5 Economic Stimulus Bill.

6 In my capacity with the City, I'm the Director
7 of Public Utilities over water and waste water, so I'm
8 not only a user, I'm an enabler of use, probably the
9 biggest enabler in this region with 274 potable water
10 accounts, serving 1.3 million people. The Mayor has
11 spoken publicly previously in support of this project,
12 commends the work that you have done in approving the
13 discharge permit, recognizes and respects the work of
14 staff, but we'd urge you to approve this project moving
15 forward as quickly as you deem appropriate.

16 Thank you. I've left my remarks with the court
17 reporter.

18 MR. WRIGHT: Christine Guerin, followed by
19 Bob Simmons.

20 MS. GUEREN: Good morning. Thank you for your time.
21 My name is Christy Guerin. I'm District Director for
22 Congressman Brian Bilbray and former Mayor of the City of
23 Encinitas. I'm here on behalf of Congressman Bilbray as
24 a congressional representative for residents of Carlsbad
25 and the coastal region, which includes approximately

1 17 miles of coastal beaches.

2 Congressman Bilbray has taken a position of
3 support for the Carlsbad Desal Project. Like the rest of
4 our Congressional Delegation, that's four other members
5 in this County, which has endorsed the project, he
6 understands the critical importance of this project to
7 Carlsbad and to San Diego County.

8 The Carlsbad Desal Project is integral to our
9 region's future health and economic prosperity. It has
10 already undergone 10 years of planning and research to
11 ensure that it will be constructed and operated in an
12 environmentally responsible manner.

13 With deepening cuts to our water allocations
14 and mandatory water restrictions looming, San Diego can
15 no longer afford to wait for approval of this project.
16 On behalf of Congressman Bilbray, I ask that you approve
17 the project's mitigation plan today.

18 And I thank you. And I just want to make a
19 point. I hear Coastkeeper refer to, "the public, the
20 public," and you have a tremendous amount of elected
21 officials that have sent representatives here who do
22 represent hundreds of thousands of people in this County.
23 So I think that's important to remember. Thank you.

24 MR. WRIGHT: Thank you.

25 Mr. Bob Simmons, followed by Ken Weinberg.

1 MR. SIMMONS: Mr. Chairman, Members of the Board.

2 I'm Robert Simmons. Based upon some 20 years of
3 experience in environmental law, professor of law,
4 former chief trial lawyer for the Sierra Club, I think
5 I'm qualified to offer an opinion on the plan that's
6 before you.

7 This is a good plan. It's reasonable. It's
8 practicable. It's cost effective. It complies fully
9 with all applicable laws. And it satisfies every
10 condition that you issued last April when you granted the
11 permit to it. So I was stunned a few days ago to find out that
12 your staff has recommended against the plan and has
13 sought from you further delays.

14 I could not understand the reason why. Now, I
15 understand it better. I think your staff has been
16 influenced by the two local environmental groups who have
17 opposed this project every step of the way over the last
18 4 years. Surfriders, Coastkeepers, they've opposed it
19 before every permitting agency and lost every time.

20 They've opposed it in court, and thus far have
21 lost every one of them. They appealed to the State Board
22 your decision last April to grant the permit and lost
23 there. But they don't give up. And they're here again.
24 Speaking as representatives, Mr. Gonzalez said, of the
25 environmental movement and the public. They don't

1 represent the environmental movement or the public.

2 If there was a survey taken, I'd venture to say
3 90 percent of environmentalists, many of whom I know
4 well, and the public would support this plan. No,
5 they're more interested in suing whenever necessary and
6 winning attorney fees as often as possible.

7 Now, I'm asking you to consider this possible
8 dreadful alternative. Their hope and my fear is that
9 Poseidon Corporation will pull out of this and pull the
10 plug. You think that's impossible? Please, consider
11 they've spent millions of dollars over these 8 years and
12 have yet to turn over one spadeful of dirt toward the
13 project.

14 In this time of dire economic straits, it's
15 plausible to me, isn't it to you, that they may decide
16 enough is enough, no more money after bad money and pull
17 out. I ask you as an agency, the last most important
18 agency involved in this decision, don't be the agency
19 that triggers the pull out and termination of this
20 project.

21 Thank you.

22 MR. WRIGHT: Thank you.

23 Mr. Weinberg, followed by Casey Anderson.

24 MR. WEINBERG: Thank you, Mr. Chair, Board Members.

25 I'm Ken Weinberg. I'm the Director of Water Resources

1 for the San Diego County Water Authority. Appreciate
2 you having us here today. I will heed the Chair's
3 direction and appreciate your understanding of the
4 current water supply situation.

5 I was here before you in April of last year,
6 and the situation was pretty dire, and the need was
7 urgent. And I'm just here again to tell you that it
8 hasn't gotten any better. In fact, it's gotten worse.
9 And the situation continues to deteriorate. We seem to
10 be in a never ending series of decisions regarding fish
11 protection actions taken for restricting pumping from the
12 delta. And we're in a third dry year. Snow pack
13 survey last week was 61 percent of average for this time
14 of year, so we're all very concerned.

15 I will add on the water supply front, that we
16 expect to be in mandatory cutbacks by the summer. I can
17 also assure you as a technical staff person, that the
18 need for this project is real. The 56,000 acre feet that
19 this project provides is an integral part of our
20 long-term water supply reliability. I can also assure
21 you that a lot more than 56,000 acre feet or 8 percent of
22 our current supply is at risk of being lost.

23 We are in a serious situation. And we don't
24 see a short-term end in sight, which brings me to the
25 reason why it is urgent. We are looking at cutbacks this

1 summer. We're counting on this supply being online by
2 the end of 2011, early 2012. And that will bring major
3 relief to us in what we think is a prolonged drought.

4 I would also say as the Water Authority, as an
5 Agency that works closely with the Regional Board and
6 other regulators and resource agencies on mitigation
7 plans and capital projects, whenever resource agencies get
8 together and coordinate, that's a good thing on
9 mitigation, so that all the agencies are asking the same
10 thing.

11 And if you move in that direction to have a
12 single mitigation plan, I think that's a very positive
13 thing. So on behalf of the Water Authority, we would
14 urge your approval in April of the mitigation plan, and
15 allow this project to move forward and bring much needed
16 water to the region.

17 Thank you.

18 MR. WRIGHT: Thank you, sir.

19 Mr. Anderson, Casey Anderson, followed by
20 Ms. Lori Vereker.

21 MR. ANDERSON: Chairman Wright, Members of the
22 Board, good morning. My name is Casey Anderson, speaking
23 on behalf of the San Diego County Farm Bureau. I'm here
24 today to urge you to finish what you started almost
25 3 years ago and approve Poseidon's Marine Life Mitigation

1 Plan.

2 All of you are aware of the regulatory and
3 drought conditions that are plaguing the state. Few
4 people realize that San Diego's agricultural industry is
5 now in its second year of a 30 percent mandatory use
6 restriction. By summer we fully expect those
7 restrictions to go deeper. To deal with the water
8 shortages, farmers have substantially reduced or eliminated
9 crop production, which affects their income for years.
10 Sadly, many of these businesses won't be able to remain
11 economically competitive and may have to sell their land.
12 Time is not on their side.

13 On behalf of San Diego's 5,000 farmers, I hope
14 you heed the call for leadership and approve Poseidon's
15 Marine Life Mitigation Plan so the plant can be built as
16 soon as possible.

17 Thank you.

18 MR. WRIGHT: Thank you.

19 Ms. Vereker, followed by Mo Lahsaie.

20 MS. VEREKER: Chairman Wright and Board Members, I
21 am actually speaking on the next item, but go Poseidon.

22 MR. WRIGHT: Thank you.

23 Mr. Knight, Gary Knight. I'm sorry.

24 Mo Lahsaie next, and then Gary Knight.

25 MR. LAHSAIE: Mr. Chairman, Members of the

1 Regional Board, Mr. Robertus, good morning, I guess.
2 It's 5 minutes before noon. My name is Mo Lahsaie. I'm
3 the Clean Water Program Coordinator for the City of
4 Oceanside. And I'm here today on behalf of the City of
5 Oceanside. In 2007, Oceanside joined with many of our
6 neighboring public work agencies -- I'm sorry, public
7 water agencies in a partnership with the developer of the
8 Carlsbad Sea Water Desalination Plant,
9 Poseidon Resources, to create a new local supply of
10 drinking water.

11 Oceanside's water purchase agreement with
12 Poseidon Resources guarantees the City rate payers
13 5,000 acre feet annually from the Carlsbad Desalination
14 Plant. The plan before you is a specific proposal for
15 mitigation as required by the Board's April 2008
16 resolution.

17 Moving forward, the plan requires Poseidon to
18 coordinate with the Coastal Commission, State Lands
19 Commission and Regional Board. Ample enforcement
20 measures are in place, and plan is complete. The
21 City of Oceanside respectfully requests your approval of
22 the MLMP today.

23 Thank you for your time.

24 MR. WRIGHT: Thank you.

25 Mr. Gary Knight, that will follow by

1 Kimberly Thorner.

2 MR. KNIGHT: My name is Gary Knight. I'm the
3 President and CEO of the San Diego North Economic
4 Development Council. And representing our Board
5 here. We have approved the project from the beginning
6 and continue to support it. It is one of the few sources
7 that we're going to be able to rely upon during these
8 times.

9 In multi-regional planning, we look at two
10 things as being the primary drivers of our economy,
11 electrical -- or energy and water. And one of the
12 concerns we have is that 80 percent of agriculture, as
13 being mentioned earlier, exists in north county, which is
14 the area that we represent. We're seeing trees stumped.
15 We're watching growers go out of business. It's having
16 dramatic impact on our economy.

17 Toward this end, the Marine Life Mitigation
18 Plan has been reviewed and approved by numerous agencies
19 and found to meet all requirements of those entities,
20 including your own. On behalf of the San Diego North
21 Economic Development Council and our members, I offer our full
22 support to this project and ask that in April you approve
23 the project without any additional delays.

24 Thank you.

25 MR. WRIGHT: Thank you, sir.

1 Kimberly Thorner, followed by Jan Driscoll.

2 MS. THORNER: Gentlemen, we have to stop meeting
3 like this. Good morning. My name is Kimberly Thorner.
4 I'm the General Manager of Olivenhain Municipal Water
5 District, also one of the desal partners that have signed
6 a contract with Poseidon.

7 We serve about 63,000 residential,
8 agricultural, industrial and commercial customers in
9 north county San Diego. In order to honor the Chair's
10 request, I am going to skip the first three paragraphs of
11 my testimony about water supply, but will summarize with
12 6 words, Dear God, we need this water.

13 I have a second point that I'd like to make.
14 And I'm not sure if we had a representative from the
15 Regional Board at the State Lands Commission Hearing in
16 August, but I think it's important to point out that the
17 lease that they unanimously approved, included a deposit
18 in advance of 3.7 million dollars.

19 This is non-cancelable it has to be paid prior
20 to the commencement of operation of the facility. And
21 it's to ensure compensatory mitigation, monitoring, and
22 maintenance. And I think it's important to point out
23 that the mitigation/monitoring plan has been vetted over
24 and over again. And it does contain stringent
25 enforcement measures.

1 I also think I speak for every water manager in
2 town when I say we're very frustrated over the delays and
3 the reopenings. As a general manager of a public agency,
4 I do know what it means to be threatened with litigation,
5 as your Board has and continues to be. I actually
6 believe the only point I agreed with Mr. Gonzalez on is
7 that you should not be bullied. And you should not be
8 bullied by the continuing litigation.

9 I ask you not to allow such threats to impede
10 your ability to undertake correct and swift action. And
11 I ask you to follow through with your prior approvals of
12 this project and allow San Diego County to be water
13 self-sufficient.

14 Thank you for your time.

15 MR. WRIGHT: Thank you.

16 Jan Driscoll, followed by David Knuckle.

17 MS. DRISCOLL: Good morning or afternoon, whichever
18 it is now, Chairman Wright and Board Members. Excuse me.
19 My name is Jan Driscoll. I'm an attorney with Allen
20 Matkins. I'm outside litigation counsel for the City of
21 Carlsbad, the Carlsbad Municipal Water District, and the
22 Vallecitos Water District. I represent these entities in
23 the litigation filed by Surfrider and Coastkeeper against
24 the Coastal Commission, the State Lands Commission and
25 this Board.

1 In my practice, I routinely advise clients on
2 CEQA and other laws that require mitigation and
3 monitoring plans. It's very common for such plans to
4 have deadlines for implementation of different phases,
5 performance standards, and means of measuring
6 compliance and success in the future.

7 And I'd like to remind you that despite
8 Mr. Gonzalez's contention that this plan does not focus
9 on minimization, there is an over 300-page minimization
10 plan. The mitigation plan is focused on mitigating the
11 losses that occur despite the minimization. There are
12 very concrete minimization measures that Poseidon has
13 agreed to, reducing velocity, there's no more heat, getting
14 variable speed pumps and the like.

15 So this Marine Life Mitigation Plan is the last
16 step and just a part of the larger plan. I was going to go
17 through all of the specifics in it, but I think
18 Mr. MacLaggan did a very good job of that. Just to
19 remind you, this plan, the mitigation plan is replete
20 with safeguards to ensure implementation, compliance with
21 performance standards and milestones to measure success
22 of the mitigation. It contains an unusual amount of
23 direct consultation with and supervision by the Coastal
24 Commission staff in every phase of the plan.

25 The Coastal Commission has a -- will have a

1 technical staff and scientific advisory panel to review
2 all phases of the project, all of which will be paid for
3 by the Applicant. And finally, the Coastal Commission
4 Executive Director is to convene a public workshop during
5 year one of the project and every other year thereafter,
6 where the public has an opportunity to comment on the
7 success or failures. And the Executive Director can make
8 changes, if he deems it appropriate.

9 The plan is very specific and calls for an
10 incredible amount of regulatory oversight and management
11 through every step of the project. My point is that your
12 staff, your Board, could have the same involvement in the
13 project if it chooses to do so. So you can ensure, by
14 your own direct supervision of the implementation of the
15 plan that it is being carried out.

16 The point about one specific site that
17 Coastkeeper keeps pressing, there is no legal requirement
18 that a mitigation plan have a specific chosen site. This
19 is done all the time. It's better to have multiple
20 sites, so in case one site doesn't pan out, you have others
21 to fall back on right away.

22 So on behalf of the City of Carlsbad and the
23 Carlsbad Municipal Water District, we ask that you
24 exercise your impartial and objective judgment in this
25 matter and approve the Marine Life Mitigation Plan and

1 unconditionally approve the Revised Flow, Entrainment,
2 and Impingement Minimization Plan, if not today then in
3 April.

4 MR. WRIGHT: Thank you.

5 MS. DRISCOLL: Thank you.

6 MR. WRIGHT: David Knuckle, followed by
7 Don Christiansen.

8 Mr. Knuckle, are you here?

9 Don Christiansen?

10 MR. CHRISTIANSEN: My name is Don Christiansen. I
11 live in Carlsbad, and am actively involved in
12 sustainability issues. I was an early advocate of
13 Carlsbad's Sea Water Desalination Plan. The primary
14 reason I was an early advocate is because I grew up on a
15 farm in the Midwest during extreme drought conditions. I
16 experienced firsthand what happens when we don't have
17 enough water. It's ugly. I did not want to see that
18 happen again in my new hometown.

19 I mentioned earlier that I am involved with
20 sustainability issues. There's three components of
21 sustainability. There's the economic. There's the
22 social. There is the environmental. You can look at
23 those three as the legs to a stool. They need to be in
24 balance, not perfectly in balance, but they need to be in
25 balance to support the weight.

1 I heard the term earlier, "best available
2 practices." In my opinion, best available practices need
3 to be feasible, and they need to apply to all three areas
4 of sustainability, the economic, the environmental, and
5 the social.

6 I request that you don't sacrifice the
7 necessary in quest of the perfect. I am reminded of a
8 line from a Star Trek episode. An alien said to the
9 human crew of the Enterprise, he referred to them as,
10 "ugly bags of mostly water." Well, we ugly bags of
11 mostly water need water. We need a reliable supply.
12 This will give us a reliable supply.

13 I request that you approve this project as soon
14 as possible.

15 MR. WRIGHT: Thank you.

16 Mr. -- or Ms. Patti Krebs, followed by David Seymour.

17 MS. KREBS: Chairman Wright, Members of the Board.
18 My name is Patti Krebs with the Industrial Environmental
19 Association. We represent manufacturing companies in
20 some of San Diego's fast growing high tech and biotech
21 industries. Water agencies have been out telling us
22 literally that the water party is over. And as
23 Mr. Weinberg said in his remarks, we can expect that
24 there will be mandatory allocation reductions coming up
25 as soon as summer of this year.

1 This is having a very chilling effect on
2 industry. Those that depend on water to operate their
3 plants to make their products, and especially for ones
4 that have growth and expansion plans, they have to now
5 look at, is it wise to grow our business here in
6 San Diego.

7 We do think that time is of the essence.
8 The Marine Life Mitigation Plan is extensive. Poseidon
9 has gone above and beyond. Desal is our future. And we
10 would just ask you to move the project forward as quickly
11 as possible.

12 Thank you.

13 MR. WRIGHT: Dave Seymour, followed by -- I don't
14 see Mr. Seymour.

15 Dr. Scott Jenkins, followed by William --
16 Mr. William Paznokas. Mr. Jenkins? Okay.

17 Mr. Paznokas?

18 MR. PAZNOKAS: By the way, good job with the
19 pronunciation.

20 MR. WRIGHT: Thank you.

21 MR. PAZNOKAS: That was perfect. Mr. Chairman and
22 Members of the Regional Board, my name is
23 William Paznokas. I'm a Senior Staff Environmental
24 Scientist in the Marine Region with the California
25 Department of Fish and Game. I have been with the

1 Department for almost 16 years. Previous to that, I
2 worked for this Regional Board for 9 years. My duties
3 for Department include review of all water quality issues
4 related to marine waters of the state, including such
5 things as water quality planning, development of
6 monitoring programs, permit and project review, habitat
7 restoration, contaminant issues, power plant --

8 THE REPORTER: I'm sorry. Can you slow down?

9 MR. PAZNOKAS: I'm sorry. Power plant impacts, and
10 last but not least, I'm the invasive species coordinator
11 for the Marine Region.

12 I am here today to give testimony on behalf of
13 the Department of Fish and Game on Agenda Item Number 6,
14 the Poseidon Resource Corporation's proposed Marine life
15 Mitigation Plan. The MLMP was developed to address
16 impingement and entrainment impacts associated with the
17 operation of the proposed Carlsbad Desal Facility. It is
18 my understanding that you have our letter in your Agenda
19 Package, if not, I have copies of that that I can provide
20 to you.

21 I'm going to be brief. I'm here to reiterate
22 that the Department's position, as indicated in the
23 Director's February 2nd letter, that the proposed MLMP
24 submitted by Poseidon to the Coastal Commission, Regional
25 Board staff, and this Board will be adequate to mitigate

1 the impingement and entrainment impacts associated with
2 the operation of this facility.

3 Department's staff, including myself and
4 the staff of Region 5, which is a local land region, has
5 reviewed the proposed project draft MLMP, and have been
6 actively involved in the determination of the impingement
7 and entrainment impacts associated with the facility.
8 I've worked with many of the folks that have talked here
9 today on many of the various impingement, entrainment
10 studies up and down the state.

11 We collaborated with staff from the Coastal
12 Commission, State Lands Commission, as well as other
13 state agencies in the development of the proposed MLMP.
14 Region 5 staff has met with Poseidon representatives on
15 more than one occasion to discuss various mitigation
16 opportunities located throughout Southern California.

17 The Department believes that the MLMP, as
18 approved by the Coastal Commission and presented to you
19 today, establishes a process that will result in a
20 mitigation project that creates viable and sustainable
21 habitat for the benefit of the fish and wildlife
22 resources of the state and adequately mitigates the
23 impacts from the project.

24 Thank you.

25 MR. WRIGHT: Thank you.

1 All right. I have three more speaker slips.

2 Conner Everts, Ed Kimura, and Jim Peugh.

3 MR. EVERTS: Connor Everts, the Desal Response
4 Group. I want to thank you for this opportunity again.
5 But I think your staff had it right in that you need to
6 continue to review this. I realize that we are making
7 this decision in the midst of a drought, and I would
8 request that you look to the past. I was on a local
9 water board in Ventura County when Santa Barbara looked
10 at their response in the middle of a 6-year drought, and
11 that was to develop a desal plan and to bring in state
12 water project. That desal plant sits idle, because as we
13 often do in California, we could go from drought to flood.

14 However, the discussion here has been a lot
15 about water supply and San Diego's need. I have to say
16 as a geography student, we are in a semi-arid
17 Mediterranean area, not a desert yet. That we have
18 successfully, and I hope to give the City and the County
19 Water Authority -- commend them for the water
20 conservation and reclamation work we've done to this
21 point, which has kept us relatively flat in demand through
22 increases of population in the past.

23 In the short term, we're going to have to do
24 the same to respond to the drought. If you put a shovel
25 in the ground today, which isn't going to happen, on the

1 desal plant, it won't be a reaction to the immediate
2 situation, regulatory, and hydrological conditions we
3 face. But that will force us all across the state to
4 deal, as we have in the past, with a response to how we
5 use and waste water.

6 My background includes being Chair of the
7 California Urban Water Conservation Council and Drought
8 Coordinator for the City of Pasadena, where we saved 27
9 percent. Since then, the technologies have improved, and
10 we've moved to the outdoor landscape. There's a lot more
11 to do, recycling, especially regionally is still a big
12 issue on the table here. But obviously, there's a lot
13 more to do statewide as we continue to discharge treated
14 waste water.

15 I was on the State Water Resource Control Board
16 Stakeholder Process. We've just established, finally,
17 guidelines on recycled water. So there's a lot of
18 opportunity there. But today we're not talking about
19 those issues. And it is, again, very emotional for
20 people to say they need water, and that they may be cut
21 back.

22 My background includes working on this issue
23 for the late '80s. My original boss, many years ago,
24 went on to be a City Manager, got his Ph.D. in Florida.
25 He ended up being the General Manager of the Tampa Bay

1 Water Authority, Gerry Maxwell. He was going to retire
2 when that job was done. He didn't get to retire for a
3 long, long time.

4 As you've heard, they've had problems with it.
5 You cannot assume that this will be -- not a project
6 since it's the first on the Pacific Coast in colder
7 water, and the largest in the western hemisphere, it might
8 take a while to iron out. So the idea that this is
9 immediate response is wrong.

10 Let me get back to the mitigation issue. I am
11 glad you've taken this back and looked at it again. My
12 environmental colleagues, our ambition in life is not to
13 sue, we sue in response to decisions we feel are not
14 following the law. I'd be quite happy to be working more
15 on recycled water, and more on conservation and dealing with
16 storm water and urban runoff.

17 You know, we just went through a period where we
18 had a lot of rain. We could have captured more if we had
19 those programs in place and dealt with less pollution
20 going to the ocean. So given all that, I support the
21 staff report to go back, at least until April, and to
22 take a deeper look at this.

23 And I thank you for this opportunity.

24 MR. WRIGHT: Thank you.

25 Mr. Ed Kimura?

1 MR. KIMURA: Mr. Chairman, Members of the Board, my
2 name is Ed Kimura. I'm here speaking on behalf of the
3 Sierra Club, San Diego Chapter. I concur with the staff
4 assessment that the Marine Life Mitigation Plan fails to
5 comply with the conditions of the resolution. I also
6 believe that the design of the MLMP is flawed because it
7 fails to apply an ecosystem-based approach.

8 Now, a marine ecosystem is a dynamic complex of
9 plants, animals, microbes, and physical environmental
10 features that interact with each other. I have seen no
11 overt evidence that these complex interactions have been
12 addressed in the MLMP. Let me cite two examples where
13 this mitigation plan -- excuse me, fails to apply the
14 ecosystems-based approach.

15 One example is a vital role of the benthic
16 community in the Marine ecosystem. No sediment quality
17 data or benthic monitoring data for the nearshore or within the
18 Agua Hedionda Lagoon have been presented, or from local
19 sites that are not impacted by the once-through cooling
20 plant. These data are essential in selecting a
21 restoration site.

22 And another important factor is the
23 connectivity that exists between and among the ecosystems
24 provided by currents transporting larvae from one part of
25 the ecosystem to another. Understanding this very

1 complex connection is particularly important to select a
2 restoration site that's productive and successfully
3 offsets the entrainment losses caused by the
4 desalination project.

5 The MLMP proposes to select a restoration site
6 located somewhere within the Southern California Bight.
7 This is a coastal region covering over 450 kilometers
8 from the Mexican border to Point Conception. It
9 apparently assumes an essential requirement for the site,
10 that the members of the larval pool from the Carlsbad
11 site have been dispersed over time throughout this
12 region.

13 Now, this assumption is highly questionable,
14 based on a very scientific important paper that just came
15 out in January of this -- this year, of the Annual Review
16 of Marine Science, authored by University of Miami
17 scientists, Cowen and Sponaugle, entitled, "Larval
18 Dispersion and Marine Population Connectivity." The
19 paper provides a current overview -- an overview of the
20 current scientific knowledge of this subject. The
21 authors state that a full understanding of the population
22 connectivity has important applications for management
23 and conservation.

24 One important piece of information in the paper
25 is that it dispels the notion that local larvae marine

1 populations can be formed from all potential sources and
2 mixed together into a single pool over hundreds to
3 thousands of kilometers. The authors note that there is
4 now ample evidence that the dispersion distances can vary
5 from just tens to hundreds of kilometers.

6 So it's really clear to me that the MLMP does
7 not apply an integrated ecosystems-based approach in
8 assessing and mitigating the impacts of the
9 desalination project, and therefore is fundamentally
10 flawed. We urge you to support the staff recommendation.

11 Thank you.

12 MR. WRIGHT: Thank you.

13 Mr. Peugh, Jim Peugh?

14 MR. PEUGH: Hi, I'm Jim Peugh. I'm the Conservation
Committee Chair of

15 the San Diego Audubon Society. The environmental impacts
16 of this project are going to be huge. The standards in
17 the Marine Life Protection Plan are thoughtful, complex,
18 and essential, but it's not a plan.

19 Since Poseidon has been working on the project
20 for about a decade, it's difficult to understand why you
21 do not have a real mitigation plan in front of you today
22 when you're being asked to make these decisions. Without
23 it you have absolutely no way of knowing whether the
24 resulting mitigation project can or will satisfy these
25 performance standards, and actually offset the project's

1 significant environmental impacts.

2 You need the specifics. You need the time to
3 analyze them. You need the resources to analyze them, which
4 is a tough time right now with cutbacks. Richard
5 Ambrose, Professor Richard Ambrose of UCLA has done
6 research and discovered a large percentage of the wetland
7 mitigation projects in our region have not satisfied
8 their performance requirements.

9 Our region's wildlife continues to suffer from
10 their underperformance. It would be nice if wetland
11 restoration was as straightforward as building with
12 Legos, but it's not. To be really effective, a wetland
13 project must soon become self-sufficient and
14 self-sustaining. That takes a -- has a lot of things
15 that -- a lot of things have to happen to make that --
16 that work out.

17 The natural wetland has had hundreds of
18 thousands of years for these things to work out. But
19 when you're restoring one, it doesn't -- you have to make
20 sure the hydrology is totally appropriate, and that in a
21 time where our climate is changing and our sea level is
22 rising. So there are a lot of uncertainties to shoot for.
23 The inputs and outputs of sediments must be totally
24 appropriate in terms of amplitude, particle size, and
25 seasonal variation. Nutrient flows into, within, and out

1 of the project must be totally appropriate or it won't
2 work.

3 The project must be so healthy that it will
4 eventually inherently resist invasive species. There
5 are a lot of other effects. It has -- it has -- as Ed
6 mentioned, it has to have access to larvae and seeds from
7 other sites, so if something happens on this site, that
8 it can be recovered over time.

9 As people love to say, the devil is in the
10 details. It will take a lot of review and analysis of
11 specifics to assess whether this -- whether their
12 specified project has a chance to satisfy its goals. But
13 you won't even see the project until after you make these
14 improvements. You have no way, and your staff has no
15 way of making these assessments to figure out whether the
16 mitigation is feasible.

17 I strongly urge that you hold off for
18 longer than the staff asked, and you really ask Poseidon
19 to come up with what they're going to do so you make an
20 assessment of whether it has a prayer of being
21 successful for offsetting the impacts from this project.

22 Thank you.

23 MR. WRIGHT: Thank you very much. And thanks to all
24 the speakers. I think at this point, Mr. Robertus, did
25 you want to say anything else? Okay.

1 Ms. Hagan?

2 MS. HAGAN: I just wanted to make one comment
3 regarding some of the characterizations made about the
4 historical process regarding staff and indicate that in
5 the interest of your time, we'll make sure that staff
6 clarifies the record in April in their staff report.

7 MR. WRIGHT: Okay. Thank you very much.

8 Mr. Wyels, why are you here? You're just sitting there.
9 Are you here in relation to this project?

10 MR. WYELS: I'm just here to help, Mr. Wright.

11 MR. WRIGHT: All right. Well, we need all the help
12 we can get sometimes.

13 At this point I will just turn it over to
14 the members of the Board, and questions, comments, and
15 just -- and certainly we have before us this -- the staff
16 recommendation that Mr. Robertus read at the very
17 beginning and just to help focus things, not that I - that
18 questions outside of his comments are not appropriate, but his
19 comments he read at the very beginning might help us get
20 a little focus. It's all open, so, start with you,
21 Gary.

22 MR. THOMPSON: Thank you, Mr. Chairman. I do have a
23 couple of -- a few questions on the proposal from
24 Mr. Robertus and a couple of comments, if I may.

25 As I understand your proposal here, we're

1 really looking at four items, that we're confident now at
2 the staff level if these are resolved, this will move
3 forward as a potential resolution of approval; is that my
4 understanding?

5 MR. ROBERTUS: That -- that is correct.

6 MR. THOMPSON: Okay. So let me take each one of
7 these items one at a time, if I may, because I have some
8 questions on them. On item one, what we're talking
9 about, you know, a joint scientific advisory panel,
10 having equal footing with the Coastal Commission,
11 et cetera, et cetera, et cetera. I see this as an
12 interagency issue and not an issue for Poseidon, because
13 they have no control over what the different agencies
14 decide to do.

15 If for some reason this can't be worked out by
16 April, would that result in a -- in a recommendation of
17 not approval?

18 MR. WYELS: I think it's probably a little premature
19 to say. But, this is something that Poseidon did offer
20 to the Regional Board when it submitted the Marine Life
21 Mitigation Plan. It's not -- we haven't had a chance to
22 actually work through the details, but it is our
23 expectation that they will follow through with that commitment.

24 MR. THOMPSON: Well, my point is, though, is are
25 we -- is this a burden placed on them, because are we

1 asking them to get all these different agencies and
2 establish these requirements, or are we doing that?

3 MR. WYELS: Oh, I see. The Marine Life Mitigation Plan
4 that they submitted, if you read through it, there's
5 several provisions for interacting with staff. Selecting
6 the actual site, for example, goes to the Commission. A
7 lot of the decisions are made by the Executive Director of
8 the Coastal Commission.

9 When they submitted this to us, they said,
10 "Well, of course, this is all written with respect to the
11 Coastal Commission, not with respect to the Regional
12 Board." So their -- their plan at the time, and we need
13 to follow through on this, is to make sure that this same
14 process that the Coastal Commission staff and the Coastal
15 Commission itself would apply equally to the Regional
16 Board.

17 So I guess to answer your question, it means
18 that they will have one more set of staff and a
19 decision-making body that they have to run through the
20 same hoops with, in addition.

21 MR. THOMPSON: Has this been discussed with the
22 Coastal Commission yet?

23 MR. WYELS: I don't believe that we've had a
24 chance to do that.

25 MR. THOMPSON: I'm -- I'm -- I'm a little

1 apprehensive to think that this is going to get resolved in
2 2 months.

3 MR. WYELS: If I could, just for a moment,
4 Mr. Thompson, it would be helpful, I suppose, today if
5 we had some thoughts from the Board members about whether
6 you would like these decision points to come back to the
7 Board, just to give us some guidance as we sit down to write the
language.

8 MR. THOMPSON: Let me go through the rest of the
9 questions, then I'll have a couple of comments. On
10 Item 2, obviously, we've now changed our position from a
11 single site alternative to 5 within the region, and
12 possibly adding others, is the way I read this, which in
13 some respects is no different than having 11 sites up
14 front other than we've just now narrowed the scope, if
15 you will, a little bit.

16 So assuming that that's the case, we're going
17 to end up with a number of potential sites. The real --
18 the real issue there is we've defined it within the
19 regional boundaries versus anywhere in the state, which
20 is kind of how it was before; is that correct?

21 MR. WYELS: That's the way we were proposing to do
22 it. Mr. Robertus did mention a proviso that we want to
23 do this in consultation with the Coastal Commission, if
24 they have a strong sense of if there's a site outside the
25 region, we need to work that out with them.

1 MR. THOMPSON: Okay. But in some respects that
2 could have probably been taken care of administratively
3 through the original 11 site issue. If we
4 were to approve the resolution today, that's an
5 administrative matter of designating that, correct?

6 MR. WYELS: I suppose conceivably. We'd like to
7 wrap up everything before the Board acts.

8 MR. THOMPSON: On Item 3, this one concerns me.
9 Basically we're asking them to provide flow proportion
10 calculations for the impacts due to impingement. Has that
11 never been provided before? And if not, did we never not
12 ask for it until now?

13 MS. CLEMENTE: My name is Chiara Clemente. I'm the
14 Central Watershed Unit Supervisor. And to speak with
15 regards to that issue, that was part of the questions
16 that we raised in April to Poseidon after our Board
17 meeting, saying we still haven't received the numbers in
18 order to be able to figure out how you did the math. And
19 so now, with Tenera's report we have the raw data, and we
20 have the numbers to figure out how we got to the math for
21 the total flow. All we need from Poseidon is a flow
22 proportion calculation, so we can confirm that it is,
23 indeed, a de minimus impact.

24 MR. WRIGHT: So we're asking them to prove their math?

25 MS. CLEMENTE: We're asking them to do the final

1 step on the math.

2 MR. THOMPSON: Why was the Coastal Commission not
3 concerned about that?

4 MS. CLEMENTE: That's a good question. It seems
5 that the other agencies are not as concerned with
6 impingement as they are with entrainment. And they have,
7 I guess, assumed that it's de minimus. We just want to
8 confirm it.

9 MR. THOMPSON: Why are we so concerned about it?

10 MS. CLEMENTE: Because depending on the variability
11 in the data, it can, indeed, have a larger impact.

12 MR. THOMPSON: And Poseidon is more than willing to
13 provide us this information? In other words, they can
14 demonstrate that, I guess?

15 MR. ROBERTUS: I'd like to address that, then
16 Poseidon may. The dilemma for this Board is when you adopt
17 or act on -- on this Matter, there must be findings. And
18 I haven't been able to draft a finding that I want to
19 submit to this Board to rely on, other than saying
20 Poseidon has declared it de minimus. The issue of
21 minimization is a critical issue. And the flow
22 calculations and establishing a factual line of evidence
23 that it is, in fact, de minimus is a critical point. And
24 I haven't been able to do that for this Board.

25 MR. THOMPSON: When did we ask for these specific

1 calculations? How long ago? And how many times did we
2 ask for them in the course of from April until, well,
3 let's say November when it was in front of the
4 Coastal Commission? And did we raise this issue with the
5 Coastal Commission?

6 MS. CLEMENTE: When did we ask for the -- sorry.
7 Again, Chiara Clemente. When did we ask for the
8 information? We started asking for the information at
9 least as early as the February 19th, 2008 letter. We
10 received the March report, and the report still made
11 it -- made us unable to ascertain the information. Going
12 through, at the April Board meeting, April 2008, we still
13 didn't have the information. That was part of the reason
14 for supporting our position at the time.

15 And so following the Board meeting, that was an
16 e-mail where we sent a series of technical questions to
17 Poseidon. They responded. We still had some lingering
18 questions, and the Tenera report answered most of them.
19 But again, that's -- that's the lingering technical
20 issue. I'm sorry. What was your second question?

21 MR. THOMPSON: Well, I guess the question is,
22 Number One, when did the Tenera report come in? And
23 then, when did we go back to Poseidon and say, hey, we
24 need this last piece of data, number one. And Number
25 Two, did we address this with the Coastal Commission as

1 an additional concern that was still unresolved as far as
2 the Regional Board staff was concerned? Did we ever
3 bring that up to the Coastal Commission and express an
4 issue?

5 MS. CLEMENTE: No. And actually --

6 MR. THOMPSON: We did not?

7 MS. CLEMENTE: A key point is the Coastal Commission's
8 obligations, I believe, are focused on entrainment
9 because they -- they cite different requirements. We
10 have the Water Code requirements, and those obligate us
11 to focus on impingement and entrainment.

12 MR. THOMPSON: Well, I understand that. But my
13 point is, as another agency involved in the
14 interagency process, it seems to me that we should have
15 been expressing concerns of information we didn't have as
16 part of that process of them making their decisions as
17 well.

18 So I'm a little concerned that here we are at
19 the 11th hour looking for something that we probably
20 should have gotten a long time ago, especially if they
21 were willing to provide it. And I'm not sure just how
22 that -- how that happened. But be that as it may, so
23 what happens if they -- they don't prove it, at least
24 to your satisfaction? What science are we using? Whose
25 science really determines whether that's de minimus or

1 not? Is it our science? Is it Coastkeeper's
2 science? Is it the Coastal Commission's science? Whose
3 science will it be? How about the science that was used
4 for some of the agencies that have reviewed this? We've had
5 some testimony from scientists, if you will, experts in
6 the field? What is our science?

7 MS. CLEMENTE: That's an excellent question.

8 MR. THOMPSON: Okay. You don't have to answer it
9 today.

10 On Number 4, we're asking Poseidon to
11 provide a consolidated set of requirements imposed to
12 date. I guess that's probably not an issue. They have
13 that, and I'm surprised that you don't have that already.
14 And it's just a comment. I'm not sure just exactly what
15 that will do for us. Are we going to incorporate them
16 into our resolution as conditions, if you will?

17 MR. WYELS: Phil Wyels. No, not necessarily, but
18 some of the conditions that other agencies have imposed
19 on Poseidon's project may be useful for this Board in
20 terms of defending the Board's action if it does go ahead
21 and approve the Plan, the Minimization Plan in April.

22 MR. THOMPSON: That's all the questions I have. I
23 do have some comments.

24 MR. WRIGHT: Well, now is the time to make your
25 comments.

1 MR. THOMPSON: I'd like to make a couple comments,
2 because even though I -- this is my first Board meeting
3 where Poseidon was on Agenda, if you will, for public
4 session, I have read the banker's box full of information
5 that we've been presented. As a matter of fact, I spent
6 an entire weekend here just this last weekend as well as
7 2 nights from 6:00 o'clock in the evening 'til about
8 3:00 o'clock in the morning reading through items
9 to prepare for this.

10 And I'm -- I'm happy to hear, Number 1, that
11 we're close to resolving this. I was prepared to make a
12 decision today. I'm still prepared to make a decision
13 today. I'm not convinced that we need to go through this
14 drill, but I'm willing to do that.

15 One of the things that I want to state for my
16 colleagues on the Board, the entire focus at this point
17 in time seems to have to do with minimizing impacts on
18 certain species that live in the water, whether it's
19 larvae, whether it's invertebrates, whether it's small
20 fish that can get into the intake. We all understand that.
21 I get that.

22 But this is a subject matter that goes a little
23 beyond that in my mind that we need to consider while
24 we're thinking about to what level of science we'd have
25 to say we've made a finding or not. No matter how you cut

1 it, water is a problem in the State of California.

2 Now, we've heard some testimony that says that
3 water, it goes in cycles. Well, that's all well and good
4 in normal circumstances. But Number 1, we have
5 the Federal -- a Federal Judge cutting off water because
6 of the delta smelt. And if you believe that global
7 warming science, for those that espouse that, California
8 is going to be in a drought forever.

9 So here's my issue. At what point in time do
10 the residents of California become an endangered species
11 under the Federal Endangered Species Act because we no
12 longer have water to drink. And this is what we're
13 really talking about today. So I'm going to leave it at
14 that for now. And just, I'm willing to go along with the
15 delay, but we need to make a decision in April.

16 MR. WRIGHT: Okay. Any other questions or comments?

17 All right. Mr. Rayfield?

18 MR. RAYFIELD: Thank you, Chairman Wright. I'm
19 willing to go along with the delay also, but I am
20 wondering if, and I would like assurance that we have
21 identified all the issues that need to be resolved, that
22 we have a crisp statement of those issues, and that
23 Poseidon understands what we need. And that we have a
24 time by which we -- we need whatever information, like
25 the flow calculations from Poseidon so that the staff has

1 adequate time to review those and make sure they're
2 adequate.

3 So the simple question is do we have a complete
4 to do list here before -- so we can take action in April?
5 And does everybody know what's on that list?

6 MR. WRIGHT: Just one comment, there may be --
7 coming out of this discussion, there could be an
8 additional -- some added items. But you're asking, at
9 this point, does staff have it?

10 MR. RAYFIELD: Precisely. Yeah. And if added items
11 come up, they can be added to it, but -- like -- like
12 Gary, I don't want to be back in April and find that
13 there's something lacking so that we can't make a
14 decision. And I certainly don't want to hear comments
15 like, "The staff is the reason for the delays." Because
16 the staff hasn't been the reason for delays. And you
17 may have heard earlier a speaker say that. And I really
18 take exception to that. I think the staff have done an
19 amazing job in sorting through a lot of material here.
20 And I just actually want to set the record straight on
21 that, as far as my feelings.

22 But do we have an agreed to to-do list with a
23 very crisp statement of what the deliverables are and
24 what we need to -- to take action in April, if that's the
25 decision of the Board?

1 MR. WRIGHT: Do you have any additions?

2 MR. RAYFIELD: No. I don't have any additions. But
3 I'm really asking that of the staff and Poseidon
4 collectively here. Are we all on the same page about
5 what would need to be -- what needs to be done to
6 enable an April decision?

7 MR. WYELS: Thank you. Mr. Wright and
8 Mr. Rayfield, you might want to confirm this with the
9 Poseidon representatives, but we believe we do. We
10 actually circulated the same list that Mr. Robertus read at the --
11 in his opening statement this morning. I believe that we
12 have complete agreement as to that list. That's as of
13 right now, anyway.

14 The only existing four action items. We don't
15 have, to answer your question, a date specific by which
16 we'll receive those documents, a couple of them actually
17 require some back and forth discussions. But if -- by
18 all means, if you'd like to ask them to come up and
19 confirm that that's their understanding and give us a
20 date, that would be fine.

21 MR. WRIGHT: Would you like that?

22 MR. RAYFIELD: Yeah, I would love that.

23 MR. WRIGHT: Mr. MacLaggan, would you come forward then
24 and just confirm this. I thought I understood fairly
25 clearly. I understand what you're saying, but I thought

1 I heard from --

2 MR. RAYFIELD: Well, I thought that everybody was on
3 board, but I want to make sure they know what they're on
4 board with, kind of thing.

5 MR. WRIGHT: You need to get a greater feeling of certainty
6 in your life; is that it.

7 MR. RAYFIELD: Yeah.

8 MR. WRIGHT: Okay.

9 MR. GARRETT: Chair, would you like a response on
10 behalf of Poseidon?

11 MR. WRIGHT: Please.

12 MR. GARRETT: My name is Chris Garrett. It is a
13 crisp list. We understand those are the only things that
14 the staff is looking for from us. Like the staff, we would
15 also expect if the Board members want more things.
16 It's not an exclusive list, you're the decision
17 makers. And as to the calculations, we can deliver those
18 calculations by March 1st to the Board.

19 And as to the other three items, we're hopeful
20 those could be worked out rather quickly, within the next few
21 days. We were hoping to work out some of them later
22 today. And I think the only scientific deliverable was
23 Item Number 3. And again, we promise that by March 1st,
24 the calculations.

25 MR. RAYFIELD: Thank you. And if we get it by

1 March 1st, does that give us enough time, us being
2 the staff or the Regional Board, to review and assess
3 that?

4 MR. WYELS: I'll have to let the staff answer part of
5 that, but our intention is to put all of the things that
6 we receive that new out for public review and comment
7 30 days in advance of the April 8th Hearing. So that gives
8 staff 7 calendar days to review and distribute and
9 assess.

10 MR. RAYFIELD: Okay. Well, I haven't heard from the
11 staff.

12 MR. KELLY: I'm Brian Kelly the Senior Engineer in
13 charge of the Core Regulatory Unit. And from our
14 perspective, the April meeting could be a little bit
15 tight given that date that was just proposed as
16 March 1st, because we have to, and I believe the
17 attorneys will confirm this. We have to have a minimum
18 of 30 days notice for whatever action we're going to take
19 in April. So we'd have to make the decision at least
20 30 days prior to that April meeting and give enough time
21 for the public noticing. That's going to really be tight
22 for us.

23 MR. WRIGHT: Mr. Garrett?

24 MR. GARRETT: Mr. MacLaggan has agreed to pay the
25 mathematicians double time. So we're now promising the

1 data by February 18th, a week from today.

2 MR. RAYFIELD: Okay. That works?

3 MR. KELLY: That works.

4 MR. RAYFIELD: All right.

5 MR. KELLY: That will be fine.

MR. WRIGHT: So, Mr. Rayfield, are you satisfied?

6 MR. RAYFIELD: Well, I'm glad we got that one ironed
7 out. And well -- and one other comment. One of the
8 speakers suggested today that we close the public
9 hearing. And I think we do have new information coming
10 forth for the April meeting. And I'm thinking if -- we
11 should at least allow a public hearing on the
12 new information. I was wondering from our attorneys if
13 that's how we might go about doing that? Because I for
14 one don't want to close off public comment on items of
15 information that they haven't seen.

16 MR. WRIGHT: Ms. Hagan?

17 MS. HAGAN: Yes. Mr. Rayfield, I agree with you
18 that you -- you would need to hear -- allow public
19 comment on any new information that you're going to hear
20 on the resolution that would be drafted for you. One thing
21 that you can do, if you consider a motion today to
22 postpone the Matter is to direct us to ensure that we
23 have the public notice for the Matter, explicitly inform
24 people that they should not resubmit comments, written
25 comments that are already in the record, and shouldn't

1 restate oral statements that have already been recorded
2 for the Board. Because all of the -- the proceedings up
3 until today will continue through the April -- April 8th meeting
4 and be part of the record.

5 MR. WRIGHT: So we would not actually close the
6 Hearing, we would just -- we've done that before.

7 MR. RAYFIELD: I wanted to be clear.

8 MR. WRIGHT: Thanks.

9 MR. RAYFIELD: Thank you. That's it.

10 MR. WRIGHT: Mr. Loveland, since we're down on this
11 end.

12 MR. LOVELAND: Thank you. I think Mr. Rayfield
13 asked a very good question in very positive language.
14 But I'd like to ask it, to kind of put a bow around it
15 maybe in the negative. What does staff or Poseidon see
16 as the landmines to this thing that's going to blow it up
17 between now and April? Is there anything identifiable
18 that has got you worried that you are not going to be able to do
19 this?

20 MR. ROBERTUS: I'd like to comment. Poseidon just
21 stated they'll pay overtime or double time or something
22 to that effect. We've had an 11 percent cut in our
23 staff. We're facing, now, layoffs, if (inaudible) in
24 the paper this morning. We have not yet assessed the
25 impact of the layoffs -- or excuse, me the furloughs.

1 We've had one day furlough. And it's already
2 disrupted the day we're going to put out our next agenda.
3 I don't know the answer to the impact of the furloughs
4 yet.

5 Over the last 10 years this Board has seen the
6 funding for our work gravitate from general funding,
7 which is tax based, where I had pretty free conscience to
8 take money that we got and spend it wherever I thought.
9 We're pushing 900 hours on this case. It's fee based.
10 The money that was paid for us to do this work was paid
11 by a fee. That money has long since been spent. And
12 we're paying for this work now with money that was
13 provided to this Board to work on waste discharge
14 requirements and permits and other matters for fee payers.

15 That's why I believe there's some hesitancy by
16 staff. There is not an infinite pool of resources to do the
17 work. We are trying to minimize the list and focus on
18 the critical issues. So we will do our best with our
19 resources at hand to meet the timeliness and the demands
20 for this project.

21 But I will just close and say, I am not
22 compelled to push through for the sake of getting it
23 finished to give you item for adoption that is in my
24 opinion destined for a courtroom and present a judge with
25 half-baked, half-thought-out premise. I want to have

1 findings that are solid and an action that is
2 sustainable. So we'll do our best.

3 MR. WRIGHT: Thank you.

4 Mr. Loveland, any follow up?

5 MR. LOVELAND: Yes. Not being familiar enough with
6 your budgetary process and your constraints, and I'm
7 certainly not very familiar with all of the changes that
8 are coming down at you daily - and you probably aren't either at
9 this point. What is there that we can do as a
10 Regional Board, or you can do as the Executive Director
11 to ensure, or tap resources that are necessary to do what
12 needs to be done? Does the State Board have a fund? Are
13 there options to address this? Do we need to move something
14 else around. Is this a high enough priority that we need
15 to do that, or the State Board needs to do that, or the
16 State needs to do that?

17 MR. ROBERTUS: I believe the State Board is
18 supporting us. Phil Wyels is with us today. He's the --
19 Phil is the supervisor of all the attorneys for all the
20 Regional Boards. He's elected to use his time to be here
21 today. He's been instrumental in working with us on
22 issues, not just in this immediate situation, but for
23 some time.

24 There is a matter of a lawsuit that this Board
25 is dealing with. And that -- that is also driving some

1 of what we're doing. And there's some hesitancy -- the
2 State Board in their own right may have to deal with
3 this item under -- as a petition, so they're -- they're not going
4 to provide expertise necessarily to help us, because
5 they'll have to reserve their arms length for the
6 condition of the petition.

7 I believe we've -- we're closing in on this.
8 And, I'll just repeat. I think we can do what I
9 stated in the recommendation this morning.

10 MR. WRIGHT: Okay.

11 Eric, why don't you comment. Let's try to
12 bring some closure to this.

13 MR. ANDERSON: I'm glad to hear the progress, and
14 I'm ready to consider this. Just a quick question. On
15 the pipe, when you stop heat treating to get rid of the
16 mussels and stuff, will it eventually clog up, I, I -- or is
17 there an alternative way the -- it stays open, just, because that
18 was important on the --

19 MR. MACLAGGAN: Peter MacLaggan, Poseidon
20 Resources. The question from Board Member Anderson was
21 related to the power plant's current operations that
22 every 6 to 8 weeks they will close the gates that allow
23 the water to come in, recirculate the water through
24 the power plant so it heats up to a temperature well in
25 excess of 100 degrees, which causes the shell fish that

1 are growing in the system to drop off the walls and be
2 flushed out.

3 And the question was what are we going to do
4 once the power plant stops operating. And our
5 expectation is that will use a manual cleaning method
6 that will involve physically scraping the channels of the
7 intake and using -- they have little BBs or plastic balls you
8 can put in the pipelines that will scrub the walls. And
9 you do that in a recirculation mode instead of using hot
10 water. So its -- and then you capture the balls when you're done
11 and haul them out of the system.

12 THE REPORTER: And all the what?

13 MR. MACLAGGAN: Capture the scrubbing balls. And
14 then, you -- at the end of the process. And then, you
15 remove them from the intake and go back into normal operation
16 mode.

17 MR. WRIGHT: Mr. Anderson, anything else before we
18 move on?

19 Mr. Thompson, I think you had a follow up?

20 MR. THOMPSON: Just a real quick follow up based on
21 what Mr. Loveland brought up concerning the ability of
22 staff to meet the date. What I heard was, "Well, yes, we
23 can, but well, we can't commit to that." Poseidon has
24 moved up their date to submit the data 2 weeks from what
25 it was when they first presented it a few minutes ago.

1 And I'm still hearing, "We think we can make it, but
2 we're not sure, yet we're recommending an April 8th
3 date."

4 I want to -- I want to be very clear. You
5 know, this has gone on for quite a while. It seems to me
6 that those of us on the Board that spend weekends and nights
7 preparing for meetings like this. You know, if we can do
8 it, staff can do it. It's that simple. And I want to
9 make that clear. One thing that -- I'm just going to
10 give you a little bit of my philosophy. Bureaucracy is
11 something I will not put up with. We need to move
12 forward, we need to get this done. If they submit
13 their data as said, a week from today, which is February
14 18th, there's no reason why we can't have this finished
15 in time to publicly notice everything. That's my opinion
16 and position.

17 MR. WRIGHT: When Mr. Robertus says they'll do their
18 best, that's a fairly strong commitment from
19 Mr. Robertus. So I think they'll do their best. That's
20 all they can do.

21 Go ahead, Mr. Weber.

22 MR. WEBER: Thank you, Chairman Wright. I also, as
23 many of the other Board members, came today prepared to
24 take action on this. And like several of the comments
25 that have been made, I don't want to see this go beyond

1 April. I did have one question possibly of Ms. Hagan on
2 the -- Mr. Gonzalez cited some of the Porter-Cologne sections.
3 And can you add some clarity to that?

4 MS. HAGAN: My apologies. I don't remember which
5 specific sections he referred to. The 13142.5, I can
6 read the entire section for you. It's fairly brief, if
7 that's what you were referring to.

8 MR. WEBER: I am not clear on the point that he was
9 trying to make between the two sections, I guess.

10 MS. HAGAN: Well the section reads, 13142.5
11 subdivision (b), "For each new or expanded coastal power
12 plant, or other industrial installation using sea water
13 for cooling, heating, or industrial processing, the best
14 available site, design, technology, and mitigation
15 measures feasible, shall be used to minimize the intake
16 and mortality of all forms of marine life."

17 And I believe that he was comparing that to the
18 use of the word impacts, reducing impacts. And not to
19 speak for him, but I think what he was indicating is that
20 the statute requires measures to minimize the intake and
21 mortality.

22 MR. WRIGHT: Okay. Let's go on to Mr. Destache.

23 MR. DESTACHE: You know, this is probably getting to
24 be an old theme, but all of us really did come here to
25 make a decision and spent a specific allotted time that

1 we had to do this -- the investigation. And well, to reiterate
2 Mr. Thompson's time period, it took at least that much to
3 get through it. Being new Board members, we hadn't heard
4 a significant amount of the testimony.

5 I would love to get this resolved. And it
6 is -- it is a critical issue to the region. My only
7 specific issue was the number of sites that were going to
8 go under study. And it's nice to hear that we're going
9 to try to reduce that to 5. And that they'll be locally
10 sited, because I think that's critical. It's important
11 for the local environment and the local constituents.

12 Thank you.

13 MR. WRIGHT: Mr. Luker?

14 MR. LUKER: Mr. Chairman, I don't have any
15 comment.

16 MR. WRIGHT: Thank you.

17 I just had a couple of things. First of all, I
18 really appreciate the discussion that's been going on
19 today. And frankly, I -- I came in to this meeting
20 with -- with an open mind. And -- and I'm still -- I still
21 have a few concerns that I think will be addressed as a
22 result of Mr. Robertus's -- the staff memorandum.

23 I forget who it was. Somebody said that we
24 need to look to the past to see what has happened and
25 learn from the past. But I think as Board Members, we

1 also to need to look to the future. Remember this permit
2 is going to be with us -- the plant will be in operation
3 presumably for at least 30 years.

4 And so I think we need to -- you know, it's --
5 what do they say? Democracy is not always pretty, but
6 we're working that way. I think we're going to get
7 there. But I do think it's important, and Mr. Destache
8 brought it up, that we be as specific as possible about
9 mitigation sites and their characteristics. And I'm not
10 arguing. I never argued that we were talking about one
11 specific site. I think it is possible to mitigate using
12 a combination of sites, for example. So -- but, I think
13 we need to be as specific as possible. That's what my
14 interpretation of specific has always been. That we
15 need to narrow it down as quickly as we can.

16 The other thing I just wanted to check on is --
17 has to do with language in the permit that relates to the
18 Encina Power Plant. What happens if the Encina Power
19 Plant goes away in a few years, and it's, maybe,
20 necessary to look at the permit again, are there
21 reopeners built into this permit?

22 I know we do that with respect to other permits.
23 For example, San Onofre, we look at it from time to time.
24 And I think we need to be as flexible as possible because
25 conditions do change.

1 Mr. Wyels?

2 MR. ROBERTUS: I'd like to address that, and then
3 have Mr. Wyels comment. We focused a great deal on that
4 issue. The permit that this Board has adopted has been
5 in effect for a couple of years. It is good for 5 years.
6 And when the permit was issued, as has been pointed out,
7 the report of waste discharge submitted by Poseidon indicated
8 that that was going to be operating a desal plant using
9 water that came from the generation of electrical power
10 and the entrainment and impingement issues were covered
11 under 316(b).

12 If the electrical generation plant doesn't
13 produce 305 million gallons per day for Poseidon to use,
14 then you're going into a mode of operation that we don't
15 feel is appropriately covered by the report of waste
16 discharge. But nonetheless, 5 years from the adoption of
17 that permit, this Board will have to adopt a new permit.
18 And the intent was that the new permit would cover
19 operation of the plant in isolation from involvement with
20 the entrainment and impingement of organisms
21 for once-through cooling for electrical power.

22 Well, one thing that shifted is now it
23 appears that that electric plant with some capacity
24 will still be there. So what we'll look to Poseidon to
25 do is submit a new report of waste discharge to provide this

1 Board the information to provide new findings and the basis
2 for an update of the permit. One of the concerns I have is in
3 that process of renewing the permit every 5 years, how
4 will that interface with the conditions that are
5 established with the other agencies and the involvement
6 of the group of experts that will be watching the
7 mitigation and the comparison of the balance with the
8 reference sites. And then, equating that to the impacts
9 that are occurring of entrainment and impingement at
10 the power plant.

11 And we see that as an iterative process, because we do
12 it every 5 years. Other agencies don't necessarily do that.
13 They'll look at this as a one-time event. They'll set
14 the bar. And then, they'll operate in perpetuity.
15 That's part of the problem that we have. The Board
16 doesn't operate with a one-time event. We revisit this
17 every 5 years. Our monitoring includes core regulatory
18 monitoring, regional monitoring and special studies.

19 And this Board may well be presented with a
20 situation, we'll have to require them to examine some
21 things. And they may resist and say, "We've looked at
22 that once and for all, and that's final."

23 So the Porter-Cologne and the operation of the
24 Regional Board in many ways needs to be isolated from all
25 these other agencies and their processes. We can't just join

1 in and say, "Well, it's good enough for them. It's good
2 enough for us." So that's how I see it.

3 Mr. Wyels?

4 MR. WYELS: More specifically, with respect to the
5 issue that has been before the Board for a while now, the
6 Flow Minimization Plan. The 2006 permit specifically
7 says that if the situation occurs in the future where the
8 Encina Power Station ceases operations, it may happen, it
9 may not. We're not sure exactly what's going to happen.
10 But if that situation does occur, then Poseidon is under
11 the requirement to submit a new Flow Minimization Plan -- Flow,
12 Entrainment and Impingement Minimization Plan that will
13 come before the Board.

14 The Board will look at it under that
15 circumstance that's existing at that time. This existing
16 Flow Minimization Plan is designed for the circumstance
17 that's in effect now while Encina is continuing to operate.

18 MR. WRIGHT: Thank you. That's helpful.

19 MR. RAYFIELD: Can I follow up?

20 MR. WRIGHT: Sure.

21 MR. RAYFIELD: Thank you. It was my understanding,
22 and perhaps not based on fact, but when we look at the
23 reissue of an NPDES permit every 5 years or so, will that
24 also include an assessment of the success or lack of
25 success of the mitigation plan?

1 MR. WYELS: The short answer is yes. The longer
2 answer is that there's actually a specific process for
3 reviewing the success or the performance of the mitigation
4 that's contained in the mitigation plan that's going to
5 come back to you in April.

6 MR. RAYFIELD: I think that's a vital element of it
7 and particularly in view of comments we've heard about
8 how unsuccessful many wetland mitigation plans have
9 been. So we may have high standards now, but I think
10 we've got to be sure we are constantly measuring
11 performance against the objectives and standards set
12 now.

13 MR. WRIGHT: Mr. Rayfield, since you have a mic, do
14 you want to make a motion?

15 MR. RAYFIELD: Yeah. Well, I see in the report from
16 our Executive Director that at the end of the discussion and
17 consideration, there would be a recommendation at -- at
18 the end. If there is one, I'd like to hear it. If not,
19 I would move that we continue this item to the April
20 meeting.

21 MR. WRIGHT: Mr. Wyels?

22 MR. WYELS: Mr. Wright, Board Members, we actually have
23 drafted a motion if you care to hear it. But before we get to
24 that, there is just a follow up on a couple of Board Members'
25 comments about the mitigation and about making sure that

1 we have everything wrapped up nicely for you in April.

2 It would be useful, not necessary, but useful
3 for us, as we sit down with Poseidon this afternoon, if
4 we could get a sense from the Board members about what
5 role the Board itself would like to play as this
6 mitigation process, you know, unfolds.

7 And right now, the -- I mentioned before, the
8 mitigation plan is written for the Coastal Commission's
9 Executive Director and the Coastal Commission itself to
10 make certain decision points along the way. We will be
11 sitting down to figure out how to plug in the
12 Regional Board's Executive Officer and the Regional Board
13 into that some sort of process.

14 But if I could outline 3 or 4 key areas and get
15 a sense from the Board whether this -- these are specific
16 decision points or areas where you would like to have
17 issues come back to the Board itself, that would be
18 helpful.

19 MR. WRIGHT: Okay.

20 MR. WYELS: Okay. Let me -- let me just, if I can,
21 just read to you essentially -- what these key issues and
22 decision points are. The first is at some point, they
23 will actually propose a specific site or combination of
24 sites for their mitigation. And as the plan is written,
25 the final approval of those sites goes to the

1 Coastal Commission itself. The question is whether you
2 would like that to come back to the Board also for the
3 Board's final approval?

4 MR. WRIGHT: Yes.

5 MR. WYELS: The next key point is after the
6 mitigation is constructed, as Mr. Rayfield just
7 mentioned, it will be evaluated and determined whether
8 it's meeting the performance goals that are laid out in
9 the MLMP. And if it's not, then of course, additional
10 work will be required under the terms of the MLMP. The
11 question is whether the decision -- the review and the
12 decision about whether the mitigation is properly
13 functioning in accordance with the performance goals, whether
14 that's something the Board would like to come back to it?

15 MR. WRIGHT: Yes.

16 MR. WYELS: Ok, there's one more as we move along. If
17 things are - if the the agencies are satisfied with, and the
18 mitigation is performing as it's intended to perform,
19 there's a provision to reduce some of the ongoing
20 performance monitoring. That -- if there's a dispute,
21 about whether to do that, that goes to the -- to the
22 Coastal Commission. Is that something that this Board
23 would like to be involved in, or is that something you're
24 satisfied to delegate?

MR. RAYFIELD: Yes.

25 MR. WRIGHT: I think, yes.

1 MR. WYELS: Okay. And then, the final one is
2 everything that I haven't talked about so far, if there's
3 a dispute between Poseidon and the staff,
4 Executive Officer, or in the Coastal Commission's case,
5 the Executive Director, all disputes are finally resolved
6 by, in their case, the Coastal Commission itself. Would
7 you like all disputes to be resolved by the
8 Regional Board itself?

9 MR. WRIGHT: I think yes, generally, but
10 Mr. Thompson?

11 MR. THOMPSON: Well, generally, yes. But it would
12 seem to me there might be some disputes that certainly
13 could be handled at the Executive Director level. I
14 mean, I wouldn't think that we would want to have every
15 dispute coming back to the Board. There's going to be
16 disputes as this process goes on. There's no
17 question about that. But I'm not so sure, and there's no
18 answer today, but maybe as part of this iteration you
19 could kind of work what those -- what that level might
20 be.

21 But I certainly don't think, in my opinion
22 anyway, that everything should come back to the Board. I
23 think we have a capable staff in resolving a lot of
24 disputes.

25 MR. WYELS: Right. I think the issue is assuming --

1 this only comes into play if the Executive Officer is
2 unable to persuade Poseidon to go along his way.

3 MR. THOMPSON: That would be fine.

4 MR. WRIGHT: I think yes is the answer.

5 Mr. Rayfield?

6 MR. RAYFIELD: I think yes, too. I just want to
7 suggest, I don't know that the Board needs -- there may
8 be issues that are solely within the Coastal Commission's
9 sand box. And I don't think that we -- you know, that
10 things like that, I don't think need to come back here.

11 MR. WRIGHT: Mr. Loveland.

12 MR. LOVELAND: Mr. Thompson spoke a minute about
13 personal philosophy, and let me add some of my own.
14 Interagency wrangling is the death of us in trying to
15 make decisions. And while I would not abdicate --
16 advocate abdicating any responsibility of this Board to
17 take a position that, by God, we're not going to let anybody else
18 make a decision, that we don't make an independent
19 decision, I think is wrong-headed, too. We need to work
20 with the Coastal Commission and any other agency, as
21 evidenced by the interagency process that went on in this
22 project already.

23 So I would urge and encourage anything we can
24 do to make sure that that interagency cooperation results
25 in a streamlined process that is mindful of our

1 responsibility, but also mindful of our responsibility to
2 minimize bureaucracy, not just entrainment.

3 MR. WRIGHT: Mr. Destache?

4 MR. DESTACHE: I would -- I'd like to add one more
5 thing to that comment. And that is, we have a lot of
6 stakeholders, tremendous number of them are here today.
7 And more importantly, the constituents, customers,
8 clients we all serve. It's above and beyond the agencies
9 that are sitting in this room's duty to help resolve
10 these issues, because they can help that. And without
11 that, we're not going to be successful.

12 And so I would ask that of all the agencies
13 that are sitting here today.

14 MR. WRIGHT: Very good statements. Excellent statements.

15 Do you we have anything else, Mr. Wyels?

16 MR. WYELS: No.

17 MR. WRIGHT: Do you we have something in the form of
18 a motion?

19 MS. HAGAN: I have a suggested motion for you.

20 MR. WRIGHT: Please read it.

21 MS. HAGAN: That the Regional Board continue this
22 Matter to its April 8th, 2009 meeting, and the
23 Regional Board direct staff to work with Poseidon to
24 expeditiously address the list of outstanding issues
25 identified by Mr. Robertus, and direct staff to prepare

1 for the Board -- for Board consideration a resolution or
2 order approving the Flow Entrainment and Impingement
3 Minimization Plan required by the NPDES permit issued to
4 Poseidon in 2006.

5 And finally, the Board directs that the public
6 notice for this item make clear that it is not necessary
7 to resubmit written comments that are already in the
8 record or to repeat oral statements already made and
9 captured in the record at the - at or for the April 8th
10 meeting.

11 MR. WRIGHT: I think that's a good motion.

12 Any comments? Do we hear -- somebody make a
13 motion.

14 MR. RAYFIELD: I'll move the recommendation as read
15 by our attorney.

16 MR. LOVELAND: I'll second it.

17 MR. WRIGHT: We have lots of seconds.

18 Mr. Thompson? Mr. Loveland?

19 MR. THOMPSON: I'll second it.

20 MR. WRIGHT: Anything else?

21 All those in favor of the motion say, "Aye."

22 (Motion carried unanimously)

23 MR. WRIGHT: Thank you. Thank you very much.

24 We greatly appreciate the comments.

25 We will now adjourn for lunch and a closed session.

1 We're in closed session.
2 (End of partial transcript)
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