

BOARD MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

RONALD REAGAN STATE BUILDING
300 SOUTH SPRING STREET
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson

Mr. John Garamendi, Lieutenant Governor

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

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Acting Chief Counsel

Ms. Judy Brown, Land Management Division

Ms. Barbara Dugal, Chief, Land Management Division

Mr. Steve Mindt, Staff Environmental Scientist,
Environmental Planning & Management Division

ALSO PRESENT

Mr. Gary Arant, Valley Center Municipal Water District

Ms. Livia Borak, San Diego Coastkeeper

Dr. Andrea Cook, California Center for Sustainable Energy

Ms. Rachel Davis, The Desal Response Group

Ms. Nancy Donoven, Residents For Responsible Desalination

Mr. Ray Ergas, Dana Point Boaters Association

Mr. Conner Everts, The Desal Response Group

Mr. Joe Geever, Surfrider Foundation

Ms. Lorena, Gonzales, San Diego-Imperial Counties Labor
Council

Mr. Eric Larson, Farm Bureau of San Diego County

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Tom Lemmon, San Diego Building & Construction Trades Council

Mayor Bud Lewis, City of Carlsbad

Ms. Renée Maas, Food and Water Watch

Mr. Peter MacLaggan, Poseidon Resources

Mr. Jack Minan, University of San Diego School of Law

Mr. Jonas Minton, Planning and Conservation League

Ms. Merle Moshiri, Residents For Responsible Desalination

Ms. Eileen Murphy, Residents For Responsible Desalination

Ms. Julie Nygaard, Council Member, City of Carlsbad

Mr. Paul O'Neal, San Diego North Economic Development Council

Mr. Ted Owen, Carlsbad Chamber of Commerce

Mr. Larry Porter

Mr. Bruce Reznik, San Diego Coastkeeper

Ms. Joy Shih

Mr. Andrew Sienkiewich, Los Angeles Metropolitan Water District

Mr. Bob Smith, Residents For Responsible Desalination

Ms. Gabriel Solmer, San Diego Coastkeeper

Ms. Deanna Spehn, representing State Senator Christine Kehoe

Ms. Charlotte Stevenson, Heal the Bay

Mr. Charlie Stringer, Poseidon Resources

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Kim Thorner, San Diego Desalination Partners

Ms. Susan Varty, VOCAL

Mr. Robin Villa, Fugro West

Mr. Brett Wertz

Mr. Rick Zbur, Poseidon Resources

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1 PROCEEDINGS

2 CHAIRPERSON CHIANG: Good morning. My name is
3 John Chiang. I call this meeting of the State Lands
4 Commission to order. I am very pleased to be joined by
5 Lieutenant Governor John Garamendi and from the Department
6 of Finance, Anne Sheehan.

7 For the benefit of those in the audience, the
8 State Lands Commission administers properties owned by the
9 State as well as its mineral interests. Today, we will
10 hear proposals concerning the leasing and management of
11 these public properties. The first item of business will
12 be the adoption of the minutes from the Commission's last
13 meeting.

14 May I have a motion.

15 COMMISSIONER GARAMENDI: So moved.

16 ACTING COMMISSIONER SHEEHAN: Second.

17 CHAIRPERSON CHIANG: We've got a motion by
18 Garamendi, seconded by Sheehan. Without objection the
19 motion passes.

20 The next order of business is the Executive
21 Officer's report. Paul, may we have that report, please.

22 EXECUTIVE OFFICER THAYER: Thank you. Good
23 morning, Mr. Chair and members of the Commission. The
24 only item I have on the Executive Officer's report is to
25 continue our practice of reporting back on the violations

1 that the Commission has asked us to pursue. So if I could
2 do that -- just take a couple minutes to do that.

3 On the South Bay Yacht Club. Since we last met,
4 you'll recall that there had been complaints about the
5 condition of this club and that the Commission has set a
6 deadline in December for the club to remediate those
7 problems.

8 Since our last meeting, the South Bay Yacht Club
9 and the adjacent water district have entered into a lease
10 arrangement. A number of the boats have been removed.
11 There's still some debris left from 2 of the boats. The
12 contractor has been delayed in taking those off. The
13 district -- or the yacht club has indicated that if the
14 contractor doesn't proceed in the next couple weeks,
15 they'll look for somebody else.

16 The yacht club has filed its application with
17 BCDC for the repairs to the docks. And BCDC anticipates
18 issuing the permit by the end of August. A necessary
19 application to the Department of Fish and Game has been
20 prepared and expected to be submitted this week. And we
21 expect the district to prepare an EIR for their own slough
22 restoration project, which is in the adjacent area. And
23 DFG anticipates using that EIR in order to issue their
24 permit for the repairs to the club.

25 Moving on to Jeanne Bird Taylor. This was the

1 owner of the houseboat in the Delta which was being used
2 as a residence. It was advertised for sale as a
3 residence. She also has had an upland cabin that projects
4 out over State Lands. The Commission required that all of
5 that be removed or converted to a legitimate use by June
6 30th, and that she apply to the Commission for approval
7 for whatever activities she was going to undertake on
8 State Lands.

9 She has sold the houseboat and it has been moved
10 to Elk Slough. As far as we're concerned, all that's done
11 is moved an enforcement problem from one owner to another.
12 So we're working with DMV and have ascertained who the new
13 owners of that are. And we'll be pursuing them and
14 potentially coming back to the Commission for a new
15 enforcement action.

16 We're also asking Ms. Taylor to come in and
17 explain to us or make an application for the work that
18 she's already done out there without benefit of the lease
19 approval. Some of that work was to our benefit and to the
20 extent that it cut back the size of that upland facility,
21 that kind of thing. She was undertaking things that she
22 thought would bring her into compliance, but she neglected
23 to come back to us. So obviously this is a
24 work-in-progress and, you know, we'll continue to work on
25 that.

1 At the Courtland docks, Shawn Berrigan and Diane
2 House. This is an old marina set of docks in Courtland
3 that were recently purchased by these 2 individuals.
4 They've fixed up the house. They've moved into the house.
5 They've cut back where the house projects over the public
6 trust lands. And they're still in the process of putting
7 in their new docks and new gangways. But we expect them
8 to be completed fairly soon with that. We think we're
9 making good progress on it.

10 With respect to Hulbert, this is the one where
11 the gentleman built the dock -- the covered dock, the
12 boathouse much larger than the Commission had approved and
13 we're working with the AG's office on that. The Hulberts
14 have sued the Commission for its action of requiring them
15 to reduce the size of the facilities to the size that the
16 Commission had approved or to remove them. And we're
17 preparing a cross-complaint, because really the Hulberts
18 haven't been vigorously pursuing their own litigation,
19 which would have been a source of resolution of this.

20 The Spirit of Sacramento. This was the -- I
21 think it was an old ferry boat that's on the Yolo county
22 side of the river just south of downtown Sacramento. And
23 we're working with the Attorney General's office -- well,
24 the Commission had authorized staff to seek ejectment of
25 that boat. We're working with the Attorney General's

1 Office still on the paperwork and proceedings on that.

2 There are 2 additional vessels, the Faithful and
3 the San Diego located further down in the Delta at
4 Horseshoe Bend in Solano county. These are anchored there
5 at moorings that haven't been approved by the Commission
6 and the permanent anchorage there is illegal.

7 Again, the Commission had authorized the
8 ejection. We've sent demand letters to the owners which
9 we've identified. We have one of our retired annuitants
10 who is trying to work out things in a somewhat cooperative
11 way. Because these vessels are so large, that if we were
12 to move in there and have to abandon them ourselves and
13 take them apart, it would be very expensive. But there
14 are some possible leads in that a salvage yard in San
15 Diego may want them. And we're hoping to facilitate that
16 being a happy ending to this to have the boats towed down
17 there and demolished.

18 So that's where we are on those. So I'll
19 continue to report back on these as they progress.

20 CHAIRPERSON CHIANG: Very good.

21 Thank you, Paul.

22 The next item of business is the consent
23 calendar. Paul, what items have been removed?

24 EXECUTIVE OFFICER THAYER: We have 3 items that
25 have been removed. Those are items 46, 43 and 52. And we

1 won't hear those today. We'll hear those at a future
2 meeting.

3 CHAIRPERSON CHIANG: Very good. Is there anyone
4 in the audience who would like to make comments on any of
5 the items on the consent calendar?

6 ACTING COMMISSIONER SHEEHAN: I'll move approval.

7 CHAIRPERSON CHIANG: Thank you, Anne. We have a
8 motion by Anne.

9 Is there a second?

10 COMMISSIONER GARAMENDI: Second.

11 CHAIRPERSON CHIANG: Second by John.

12 Without objection, the motion passes.

13 Next item, please.

14 EXECUTIVE OFFICER THAYER: The next item refers
15 to the Regular Calendar items, which is Item 55 dealing
16 with the proposed Poseidon desal facility in Carlsbad.

17 I think the Chair's referred to staff about a
18 procedure to follow this morning. Did the Chair want to
19 outline that or staff can do that, if you prefer?

20 CHAIRPERSON CHIANG: Sure. First of all, we'll
21 have staff presentation followed by the applicant and then
22 the opponent. I believe they have organized
23 presentations, so we will give the applicant and then the
24 opponents 15 minutes each. And then we will give the
25 remaining public comments 3 minutes each.

1 EXECUTIVE OFFICER THAYER: Three minutes.

2 And as we discussed, I think following the
3 process that the Coastal Commission followed for its
4 hearing on this, we were going to divide up the 2 main
5 issues that were of concern to the Commission and hear all
6 the testimony first on the greenhouse gas issue. And then
7 the Commission would work on that and decide how it wanted
8 to proceed on those lease provisions and then hold a
9 second discussion on the wetlands matter. Those are the 2
10 main issues.

11 CHAIRPERSON CHIANG: Very good.

12 EXECUTIVE OFFICER THAYER: Great. Then we'll
13 start with the staff presentations. And I'm not sure --
14 Judy Brown from our Land Management Division will start
15 off.

16 MS. BROWN: Good morning, Mr. Chairman and
17 members of the Commission.

18 (Thereupon an overhead presentation was
19 Presented as follows.)

20 MS. BROWN: My name is Judy Brown and I work in
21 the Commission's Land Management Division.

22 Calendar Item 55 involves an application
23 submitted by Poseidon Resources Channelside LLC, and the
24 Commission's lessee, Cabrillo Power I LLC for use of
25 sovereign lands located in the Pacific Ocean within the

1 City of Carlsbad in San Diego county for the desalination
2 use of existing intake and outfall structures that are
3 authorized to provide seawater intake and discharge of
4 heated seawater for a once-through cooling powerplant
5 known as the Encina Power Station.

6 In October of 2007, the Commission heard
7 presentations by staff, Poseidon and others who expressed
8 an interest in staff's recommendations to the Commission.
9 No action was taken at that meeting. We're here today to
10 provide responses to greenhouse gas and the marine life
11 mitigation plan issues discussed at the October meeting
12 and to recommend approval of the lease amendment in the
13 staff report before you today.

14 Poseidon proposes to construct a 4-acre
15 desalination facility adjacent to the powerplant. I will
16 be providing a brief overview of Poseidon's proposed
17 project.

18 The powerplant's improvements authorized by the
19 existing lease consist of a tidal inlet channel protected
20 by a jetty at the north end of Agua Hedionda Lagoon and a
21 discharge channel also protected by a jetty located at the
22 south end of Agua Hedionda Lagoon. Because the actual
23 intake pumps of the powerplant are located inside Agua
24 Hedionda Lagoon, the powerplant relies upon the lagoon as
25 a source of seawater for cooling its 5 generators and then

1 discharges the thermal processed water into a discharge
2 pond also located in the lagoon, which then flows through
3 the tidal outlet channel to the ocean.

4 When operating the desalination intakes in
5 conjunction with the powerplant intakes, Poseidon proposes
6 to use 100 million gallons a day of powerplant cooling
7 water as its source water to produce approximately 50
8 million gallons a day of potable water. Approximately 55
9 million gallons per day of filtered backwash water and
10 concentrated saline wastewater would be diluted and
11 discharged back into the powerplant's cooling water
12 discharge channel before exiting through the tidal outlet
13 channel to the Pacific Ocean.

14 The 50 million gallons per day of water produced
15 by the desalination plant would be pumped to the City of
16 Carlsbad's water system for distribution to other water
17 customers. Eight water districts have signed agreements
18 to accept delivery of the water to their systems.

19 During the periods when the powerplant is not
20 operating its intake pumps for the purposes of generating
21 electrical power, Poseidon will coordinate with Cabrillo
22 to operate a combination of intake pumps to obtain up to
23 304 million gallons per day of water that would be needed
24 to produce 50 million gallons of fresh water and to enable
25 the dilution of the brine water pursuant to the regional

1 water quality control board's waste discharge
2 requirements.

3 A recent repowering proposal for the powerplant
4 is likely to result in the desalination facility being a
5 stand-alone operation that is obtaining no cooling water
6 from the powerplant.

7 On August 6th, 2008, the California Coastal
8 Commission took action on its final conditional approval
9 of the coastal development permit for desalination
10 facility and adoption of special conditions for the
11 greenhouse gas emission reduction plan and the marine life
12 mitigation plan.

13 I just want to let you know that Steve Mindt of
14 the Commission's Division of Environmental Planning and
15 Management staff is here to present, at a later time, more
16 information about the greenhouse gas emission reduction
17 plan.

18 And that ends my presentation.

19 EXECUTIVE OFFICER THAYER: Thank you.

20 Mr. Mindt, do you want to go now.

21 STAFF ENVIRONMENTAL SCIENTIST MINDT: Good
22 morning, Mr. Chairman and members of the Commission. My
23 name is Steve Mindt. I'm with the Commission's
24 Environmental Division.

25 The State Lands Commission has tasked Commission

1 staff to review the information that Poseidon Resources
2 has provided in the lease application associated with the
3 intake and outfall structures located in the Pacific Ocean
4 and Agua Hedionda Lagoon. There are 2 issues that the
5 Commission staff were directed to examine in detail.
6 These are the carbon footprint and the entrainment and
7 impingement impacts. At this time, I will address only
8 the carbon footprint.

9 At the October Commission meeting, staff was
10 directed to ensure that the project was carbon neutral.
11 Commission staff have worked extensively with staff of the
12 California Coastal Commission, California Energy
13 Commission and the California Air Resources Board
14 regarding Poseidon's energy minimization and greenhouse
15 gas reduction plan, which was formally called the carbon
16 action plan.

17 To become carbon neutral, the plan would need to
18 offset direct and indirect emissions. Direct emissions
19 include the transportation of construction materials and
20 the operation of construction equipment during that
21 construction, and the transportation related to the
22 operation and maintenance of the facility including
23 employees' commute.

24 The indirect emissions are primarily electrical
25 consumption from all aspects of the facility's operation.

1 Poseidon has not provided Commission staff with the
2 information requested to accurately determine the carbon
3 footprint for the construction of the desalination
4 facility.

5 However, Commission staff was able to locate
6 information that allowed an estimate to be made of the
7 carbon footprint for industrial building construction.
8 The footprint for Poseidon's proposed building is
9 estimated about 1,320 metric tons of carbon.

10 The majority of the greenhouse gas plan deals
11 with the electricity, consumption or indirect emissions
12 from the ongoing operation of the desalination plant,
13 which is estimated to be at least 95 percent of the annual
14 emissions associated with the plant. The remaining 5
15 percent includes direct emissions from construction,
16 employee commute and landscaping activities.

17 One remaining issue that will affect Poseidon's
18 ability to truly offset all their indirect emissions is at
19 the largest proposed offset, the State Water Project.
20 This will likely not qualify as an offset under the
21 current protocols for the voluntary market.

22 The collaboration with Poseidon, the Coastal
23 Commission, California Energy Commission and the
24 California Air Resources Board resulted in a greenhouse
25 gas plan that was approved by the California Coastal

1 Commission at their August 6th, 2008 meeting.

2 The key elements included:

3 Acceptable emissions reduction measures, credits
4 and offsets. The Coastal Commission required that
5 Poseidon's proposed emission reduction measures, except
6 those that may result from Poseidon's proposed State Water
7 Project offsets, be subject to review and approval using
8 the protocols, mechanisms and criteria adopted by the
9 California Air Resources Board and the California Climate
10 Action Reserve or any regional air district in California.

11 Number 2. They required an annual report showing
12 the net 0 greenhouse gas emissions.

13 And number 3. They approved a contingency
14 mechanism where Poseidon proposed a greenhouse gas
15 contingency measure that would allow Poseidon to deposit
16 funds in an escrow account instead of purchasing renewable
17 energy certificates or RECs, if certain conditions exist.

18 Staff recommends that the State Lands Commission
19 approve the same plan with the following changes:

20 Number 1, the State Water Project water shall be
21 used as an offset only to the extent that when Poseidon's
22 facility is operating, metropolitan water district does
23 not receive all of the State Water Project water to which
24 it is entitled.

25 And 2, do not include the greenhouse gas

1 reduction contingency to place a cap on the RECs, but
2 instead acknowledge potential disruption or instability in
3 the market for offsets of RECs and allow a 3-year period
4 to acquire all carbon offsets or RECs following approval
5 by the Commission's Executive Officer.

6 Thank you.

7 EXECUTIVE OFFICER THAYER: That concludes staff
8 presentation. I think staff Emailed the Commission
9 offices sort of a short-form list of the additional
10 enhancements that staff is recommending to be made to what
11 the Coastal Commission has done. And I'll make sure
12 copies of those are available to you now so that you
13 can -- it might facilitate the discussion.

14 CHAIRPERSON CHIANG: Paul, I'm sorry. I missed
15 that last comment. What do you have available?

16 EXECUTIVE OFFICER THAYER: I'll pass out copies,
17 of, in essence, a cheat sheet, a shorthand form of the
18 enhancements that staff is recommending to be made to what
19 was approved by the Coastal Commission.

20 CHAIRPERSON CHIANG: And do we have in written
21 record the comments just made by staff immediately
22 available?

23 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

24 CHAIRPERSON CHIANG: Could we have copies of
25 those please.

1 EXECUTIVE OFFICER THAYER: I think we only have
2 one copy to use.

3 CHAIRPERSON CHIANG: If we could have somebody go
4 make copies.

5 Thank you very much.

6 EXECUTIVE OFFICER THAYER: Certainly.

7 CHAIRPERSON CHIANG: If we could have the
8 applicant make their presentation please.

9 (Thereupon an overhead presentation was
10 Presented as follows.)

11 CHAIRPERSON CHIANG: Just a clarification so that
12 everybody understands. As Paul indicated, we have
13 bifurcated the 2 issues. So your initial comments would
14 address the first issue regarding greenhouse gases and
15 later we'll talk about the wetlands restoration.

16 EXECUTIVE OFFICER THAYER: And if I could
17 interject here. The staff presentation that was just made
18 did acknowledge our concern about the direct impacts.
19 Those are the impacts that occur from operation of the
20 plant, vehicle use, forklifts, that kind of thing, as well
21 as the construction impacts. The presentation did not
22 specifically say that we are recommending that there be
23 lease provisions that require those to be mitigated. In
24 fact, that's part of the recommendation that's the third
25 point on the sheet that we just gave you. So I just

1 wanted to clarify that.

2 CHAIRPERSON CHIANG: Thank you, Paul.

3 MR. MacLAGGAN: I think Mr. Chairman -- Peter
4 MacLaggan on behalf of the applicant, Poseidon Resources.
5 If I may indulge you in 2 procedural questions.

6 CHAIRPERSON CHIANG: Sure.

7 MR. MacLAGGAN: First, regarding your comment a
8 moment ago, I just wanted to let you know that our
9 presentation we prepared addresses both issues and they're
10 in sequential form. Was it your intent that we go through
11 both now or just one?

12 CHAIRPERSON CHIANG: Actually, my understanding
13 was we were going to bifurcate it, but if it's -- for your
14 convenience sake, is it okay for you to split? Are you
15 comfortable doing that? Or did you want to address the
16 entire issue at once?

17 MR. MacLAGGAN: I think it would probably be
18 simplest if we just went through our entire presentation
19 and then we could make ourselves available to ask
20 specific -- if you had specific questions that weren't
21 addressed in our presentation. But it's your choice, Mr.
22 Chair.

23 CHAIRPERSON CHIANG: No. I'll make that
24 accommodation for you.

25 MR. MacLAGGAN: And my second procedural question

1 was we had initially planned on a 20-minute presentation,
2 and if you could indulge us in that regard, we would be
3 happy to extend the same amount of time to the opponent's
4 coordinated presentation, if that would be possible?

5 CHAIRPERSON CHIANG: Paul, do you have any
6 objections?

7 EXECUTIVE OFFICER THAYER: No, not at all. And
8 of course we were contemplating 15 minutes on each issue.
9 So if they're going to do one 20-minute presentation,
10 that's still less time.

11 CHAIRPERSON CHIANG: Very good.

12 MR. MacLAGGAN: Great. Thank you.

13 CHAIRPERSON CHIANG: You may proceed.

14 MR. MacLAGGAN: So if I may, Mr. Chairman and
15 members of the Commission, Pete MacLaggan on behalf of the
16 applicant, Poseidon Resources. And it is our pleasure to
17 be back before you today. As you will recall, we were
18 before you on October 30th. And, at that time, staff and
19 Poseidon were both in agreement on a lease amendment for
20 this particular project that was recommended for approval,
21 but the action at that time was delayed in deference to
22 those that were impacted by the wild fires in San Diego
23 county.

24 So you have requested that we come back before
25 you and complete this action. We are pleased to be here

1 in that regard and I would like to thank your staff for
2 the diligent efforts that they have made to work with us
3 to complete the outstanding issues over the last 9 months.

4 We have been engaged during that period of time
5 in a lengthy and collaborative interagency process that
6 would bring this regulatory approval process to a close.
7 And as a result, since we were last before you, the
8 Coastal Commission and the regional water quality control
9 board have both issued additional approvals for the
10 project that are related to the matters before you today.

11 In the case of the Coastal Commission permit,
12 that permit includes approval of a voluntary energy
13 minimization and greenhouse gas reduction plan and our
14 marine life mitigation plan. And as I will detail in my
15 presentation, there are 3 key areas. I think we're
16 actually down to 2 key areas of disagreement between
17 Poseidon and the Commission staff as to the content of the
18 lease agreement.

19 To help you illustrate those differences, we
20 prepared and submitted to you yesterday a modified version
21 of the lease agreement that has in strike-out fashion
22 shows the areas that we're requesting some changes to the
23 latest version of the lease from staff. And we
24 respectfully request today that the Commission approve the
25 lease agreement as proposed by Poseidon.

1 Approving our proposed lease amendments for this
2 project will be responsive to the direction that you
3 provided us in October 2007. It will be complementary not
4 in conflict with the greenhouse gas plan that was adopted
5 by the Coastal Commission and the marine life mitigation
6 plan approved by the Coastal Commission and fully
7 protective of the environment. So I'd like to start my
8 presentation here with where we left off in October.

9 --o0o--

10 MR. MacLAGGAN: Let me see if I can make this
11 work.

12 At your October hearing, Poseidon voluntarily
13 committed to reduce and offset the incremental or net
14 increases in greenhouse gas emissions from the electricity
15 usage for the project. And at that time your commission
16 directed Poseidon to return with a detailed plan of how we
17 would achieve this objective.

18 And so what we have before you is that in terms
19 of being responsive to that direction is that Poseidon has
20 submitted numerous and various versions of the greenhouse
21 gas plan to the Lands Commission and Coastal Commission.
22 The Coastal Commission held a multi-agency staff workshop
23 in which State agencies and local agencies provided input
24 on both plans and 4 of your staff attended that workshop.

25 Subsequently, the California Air Resources Board

1 and the California Energy Commission concluded that
2 Poseidon's net offset proposal is consistent with State
3 policy.

4 I'm sorry, Mr. Chairman do the Commissioners have
5 copies of our presentation? I see you're having to look
6 over your shoulders.

7 CHAIRPERSON CHIANG: Yeah, we're looking for it.

8 MR. MacLAGGAN: I'll stop for a moment.

9 CHAIRPERSON CHIANG: Can you refer to the page.

10 MR. MacLAGGAN: I'm on page 3.

11 CHAIRPERSON CHIANG: Very good. Thank you.

12 MR. MacLAGGAN: I apologize for not having that
13 in front of you when I got started. As I was mentioning,
14 this plan, the greenhouse gas plan, that was ultimately
15 adopted by the Coastal Commission, and specifically the
16 net reduction of greenhouse offsets proposal as adopted,
17 has the support of both the California Air Resources Board
18 and the California Energy Commission. And noteworthy here
19 is the fact that the energy -- the Air Resources Board
20 under State law has direct responsibility for
21 implementation of AB 32, the Global Warming Solutions Act
22 in California.

23 The Coastal Commission approved our plan on
24 August 6th.

25 --o0o--

1 MR. MacLAGGAN: The key elements of the plan are
2 that it requires that the California Climate Action
3 Registry and the California Air Resources Control Board
4 protocols be used to determine the project's greenhouse
5 gas emissions. And it specifies use of state-of-the-art
6 energy minimization measures and green building design
7 features to minimize the energy load for the desalination
8 facility. It provides for reforestation of San Diego
9 areas that were impacted by the 2007 wild fires, and
10 requires purchase of carbon offsets from CCAR and/or CARB,
11 and requires verification of reporting by the Climate
12 Action Registry in California.

13 Next slide please.

14 --o0o--

15 MR. MacLAGGAN: Now one thing to note here that
16 is new information since your last hearing. We now have a
17 plant that is fully subscribed for the next 30 years, and
18 we are selling water to 9 public water agencies in San
19 Diego county that stretch from the Riverside border to the
20 north coast all the way down within 5 miles of the U.S.
21 border with Mexico, the City of Chula Vista and National
22 City. And these customers have committed to buy that
23 water for the next 30 years at a predetermined price that
24 was established before the passage of the Global Warming
25 Solutions Act for most of them.

1 --o0o--

2 MR. MacLAGGAN: There are 2 key differences with
3 the greenhouse gas plan that was described by your staff
4 as to what they're proposing versus that adopted by the
5 Coastal Commission.

6 First of all, with respect to offset of indirect
7 emissions, the Coastal Commission plan embraces Poseidon's
8 proposed incremental offset to render the project carbon
9 neutral or net carbon neutral. And the State Lands' staff
10 is recommending offset of gross emissions. I'll come back
11 to how that works.

12 And then with respect to the contingency plan, we
13 have an approved contingency plan. Under the Coastal
14 Commission plan, staff is proposing some modifications of
15 that plan.

16 Next slide, please.

17 --o0o--

18 MR. MacLAGGAN: This is the graphic that shows
19 you what we have committed to do with respect to the
20 greenhouse gas.

21 My light is out.

22 But if you look at the colors that are before
23 you, the light blue is the incremental increase of this
24 project over the State Water Project energy utilization
25 that will be foregone by our 9 customers when they

1 purchase the water from us. They are substituting on a
2 1-for-1 basis the water from the plant.

3 Next slide, please.

4 --o0o--

5 MR. MacLAGGAN: And then this slide, as you all
6 are aware, under State law, water agencies are required
7 every year to project where they're going to get their
8 water and how much they're going to need for the next 25
9 years. So if you look at the dashed line, that's our
10 customers' utilization of imported water under their plans
11 absent the desalination facility. And if you look at the
12 solid blue line where it drops down, the drop is the
13 56,000 acre feet of new water supply from the desalination
14 facility. And you can see that there's a 1-for-1 offset
15 in imported water for our 9 customers from this project.

16 And we have a very clear verification measure to
17 ensure that this is the case, in that these 9 public water
18 agencies will be entering into long-term contracts with
19 the metropolitan water district to receive a financial
20 incentive to help defray their cost to participate in this
21 project. MWD provides that incentive expressly because
22 they want to offset demands on imported water. And as a
23 requirement of receipt of that money, once a year at the
24 end of the calendar year, they're required to submit a
25 report to metropolitan to show where the water was used,

1 how it was used and clearly demonstrate that it was used
2 to offset what otherwise would have been a demand for
3 imported water on MWD.

4 So we think there's a clear verification method.
5 That method is subject to audit by Met as necessary and
6 appropriate.

7 Next slide, please.

8 --o0o--

9 MR. MacLAGGAN: Now, moving on to the marine life
10 mitigation plan. Also, in October you directed Poseidon
11 to return with a collaborative in detail marine life plan
12 that was at least 37 acres of wetlands. And we have done
13 that and that was approved earlier this month by the
14 Coastal Commission.

15 We submitted numerous versions of this plan to
16 both the Coastal Commission and State Lands. And similar
17 to the greenhouse gas plan, there were multi-agency
18 workshops in San Diego where we received input from a
19 broad array of State and local agencies. And then on
20 August 6th the Coastal Commission approved the plan as
21 proposed by the Coastal Commission staff with some
22 modifications.

23 --o0o--

24 MR. MacLAGGAN: So, again, similar to the
25 greenhouse gas, I have a chart here that basically walks

1 you through the differences between the Coastal Commission
2 plan and that proposed by your staff.

3 With respect to the comprehensive performance
4 standards, the Coastal Commission plan has based their
5 standards on past experience with the Southern California
6 Edison restoration project in the San Dieguito River
7 Valley. It's a product of a 10-year R&D effort. It has
8 substantial science and engineering behind it. Staff is
9 proposing that we leave to the discretion of the executive
10 director perhaps the ability to change those standards at
11 some point. We see potential conflicts in our ability to
12 comply with the plan and we think that the standards from
13 the Coastal Commission are adequate.

14 Similarly, the wetlands plan provides for a
15 dredging credit as approved by the Coastal Commission.
16 And essentially what that says is that if Poseidon can
17 demonstrate at some future date that the executive -- to
18 the satisfaction of the executive director of the Coastal
19 Commission that we are doing -- implementing a dredging
20 project that has net environmental benefits and we can
21 show that those benefits are quantifiable, there is the
22 potential that our second phase of wetlands restoration,
23 which could take us from 37 acres up to 55, could be
24 proportionally reduced by the executive director.

25 Your staff is recommending deletion of that. We

1 think it's premature to delete that provision at this
2 time. We would be happy to make sure that your executive
3 director was in the communication and approval loop with
4 that of the Coastal Commission, but we would not like to
5 see that item taken off the table arbitrarily. We think
6 there's some potential wonderful opportunities for the
7 environment here and we want to preserve them.

8 With respect to the mitigation bond, there is no
9 such bond in the Coastal Commission approval. However,
10 there is in the Lands Commission approval, \$3.7 million.
11 We think it's a large number, but we have agreed to that
12 in our proposal. What we are looking for with respect to
13 the bond is that staff be given more specificity on the
14 release of the bond.

15 And specifically what we're asking for, rather
16 than just leave it to the discretion of staff when we
17 release it, when we complete the construction of those
18 plans, per the plans preapproved by the Coastal
19 Commission, and we have agreement from the executive
20 director that those plans are constructed and complete, we
21 should release 50 percent of the bond at that point and
22 retain the other 50 percent to be released as we proceed
23 with performance of those bonds out through 100 percent
24 completion of the performance standards.

25 Next slide, please.

1 --o0o--

2 MR. MacLAGGAN: With respect to the staff's
3 assertion that the marine life plan lacks quantitative
4 performance standards, I'd just point you to the comments
5 that you received a letter from Peter Douglas a couple of
6 days ago. And in that letter to Mr. Thayer he states
7 that, "The restoration site selection, designed monitoring
8 and other similar elements of the marine life plan are
9 based on provisions similar to those the Commission
10 required of Southern California Edison for its San
11 Dieguito Restoration project."

12 And adding to that to just round out the robust
13 nature and the detailed thought given to these plans, at
14 the hearing on August 6th, Coastal Commission staff
15 scientist Tom Luster stated that, "We feel that Poseidon
16 meets the same conditions that Edison was held to and
17 selects a site in southern California that would provide
18 adequate assurance that subsequent plans that come before
19 you would be sufficient."

20 --o0o--

21 MR. MacLAGGAN: In conclusion, Mr. Chairman and
22 Commissioners, Poseidon's proposed lease is responsive to
23 the direction you provided us last October. The
24 greenhouse gas plan and the marine life mitigation plan
25 were approved by the Coastal Commission after a

1 collaborative 9-month interagency process. We think they
2 have been extensively vetted. We think they're
3 comprehensive in nature and will provide full protection
4 of the environment.

5 In contrast, staff's lease is in conflict with
6 many of the provisions, at least 3 that we've noted here,
7 and unnecessarily burdensome to the applicant. We're
8 requesting that you approve Poseidon's lease. We think it
9 will be fully protective of the environment.

10 With that, I would like to turn the podium over
11 to our counsel for some additional comments.

12 Thank you for your time this morning.

13 MR. ZBUR: I am getting old, so I need glasses,
14 so I apologize for looking over them.

15 Good morning, Chairman Chiang and Commissioners.
16 My name is Rick Zbur with Latham and Watkins, counsel for
17 the applicant, Poseidon Resources.

18 I'd like to walk you through the specific changes
19 that Poseidon is proposing today. You have a packet that
20 under I think it's tab A, there's some yellow sheets. So
21 these reproduce -- the slides here reproduce the yellow
22 sheets that are marked to show the changes.

23 --oOo--

24 MR. ZBUR: I would like to first start to talk
25 about paragraph 10. As you can see, we've retained the

1 language in Lease Paragraph 10 requiring Poseidon to
2 comply with the energy minimization and greenhouse gas
3 reduction plan as approved by the Coastal Commission and
4 as amended from time to time by the Commission at all
5 times during the lease term.

6 In addition, we've retained language that allows
7 the Executive Officer of the State Lands Commission to
8 receive reports to monitor compliance.

9 We've removed paragraphs A and D, which would
10 effectively impose the gross offset requirement that was
11 rejected by the Coastal Commission. Paragraph D
12 effectively imposes a gross offset requirement because it
13 would only allow Poseidon to take credit for water the
14 project was replacing by demonstrating that MWD overall is
15 not importing water and distributing it to other
16 jurisdictions.

17 That sort of area-wide obligation, we believe, is
18 unworkable. We would have to be understanding, sort of
19 where water is being moved throughout the whole state of
20 California. And we think it's inconsistent with the
21 Coastal Commission's plan approval and unfair because MWD
22 has confirmed that the 7 water districts receiving water
23 from Poseidon must replace the water in order to get the
24 necessary subsidy, and that is subject to audit and
25 verification.

1 It would also assign, unfairly, responsibility
2 for the carbon impacts to replace water to the 7 water
3 districts, which we think should be assigned to those that
4 would be using the replaced water.

5 We've also removed paragraphs B and C because
6 they would eliminate and conflict with the contingency
7 measure adopted by the Coastal Commission to ensure that
8 Poseidon can comply with the plan during periods of market
9 disruption.

10 Paragraphs B and C would effectively make the
11 contingency measure imposed by the Coastal Commission
12 unworkable.

13 --oOo--

14 MR. ZBUR: We have retained all -- on paragraph
15 11, we've retained all of the language in paragraph 11
16 that requires Poseidon to comply with the marine life
17 mitigation plan as approved by the Coastal Commission and
18 amended from time to time at all times during the lease,
19 and have removed 2 of staff's changes to the lease that we
20 believe are inconsistent with the plan.

21 First, subparagraph C was removed because it
22 would allow the executive officer to apply different --

23 COMMISSIONER GARAMENDI: Excuse me. Mr.
24 Chairman, might I?

25 CHAIRPERSON CHIANG: Please.

1 COMMISSIONER GARAMENDI: The information in the
2 packet does not go paragraph by paragraph or else I'm
3 missing something. The information in the letter that you
4 sent to the Commission -- to the Chair goes paragraph by
5 paragraph. I'm a bit confused as to what we are looking
6 at.

7 MR. ZBUR: If you go into the -- you can either
8 follow along on the slide that is up or if you would like
9 to go look at the yellow sheets, which is attached to our
10 letter.

11 COMMISSIONER GARAMENDI: Okay. And we're
12 working -- I don't have the yellow sheet in front of me,
13 but I do have your letter. Is the letter consistent with
14 the yellow sheet?

15 MR. ZBUR: This one right here has the yellow
16 sheets.

17 COMMISSIONER GARAMENDI: Thank you.

18 MR. ZBUR: And they are consistent. The white
19 sheet and the yellow sheet are consistent.

20 COMMISSIONER GARAMENDI: Thank you.

21 MR. ZBUR: So subparagraph C was removed because
22 it would allow the executive officer to apply different
23 performance standards to Poseidon's wetland mitigation
24 plan than those adopted by the Coastal Commission. The
25 marine life mitigation plan adopted by the Coastal

1 Commission contains specific detailed performance
2 standards that are based on the SONGS' restoration project
3 in the San Dieguito Lagoon.

4 Since the Coastal Commission has coastal
5 development permit authority over the restoration project
6 that Poseidon will perform, we believe it would be
7 unworkable to impose staff's provision if they apply
8 conflicting performance standards.

9 Subparagraph B was removed because it would
10 prohibit Poseidon from receiving any mitigation credit for
11 dredging, which is inconsistent with the Coastal
12 Commission's approval. And that approval they're not
13 necessarily going to get dredging, but they have the
14 opportunity to come back in and make a demonstration that
15 if dredging has positive marine impacts, it could reduce
16 the 18-acre incremental mitigation requirement for phase
17 2. So this doesn't do anything for the 37 acres of phase
18 1. It gives them an incentive to come in and make the
19 demonstration and also undertake the dredging if it's
20 required.

21 Now with respect to paragraph 16, 16(A)(2).

22 --o0o--

23 MR. ZBUR: In this paragraph the Lands Commission
24 staff has imposed a \$3.7 million bond prior to
25 commencement of project operations. We are questioning

1 the size of the bond, because it is significantly larger
2 than other mitigation bonds the State Lands has imposed
3 before for restoration sort of projects. Poseidon would
4 agree to this bond, but requests the Commission to allow
5 release of 50 percent of the bond once the restoration
6 site is constructed and the executive director --
7 executive officer of the State Lands Commission determines
8 that it is in conformance with the plans approved by the
9 Coastal Commission.

10 We believe this is a reasonable request, because
11 Poseidon will have incurred substantially all of its
12 construction costs by this time and State Lands would
13 still be able to retain 50 percent of the bonds to ensure
14 that the wetlands are fully functioning over the 5-year
15 period that monitoring would take place.

16 --o0o--

17 MR. ZBUR: With respect to paragraph 16(C), this
18 would ensure that the 3.2 -- the wetland performance bond
19 is available only to cure wetlands defaults and that the
20 operational bond, the \$1 million bond is available to cure
21 all other defaults under the lease.

22 Now, I'd like to turn specifically to staff's
23 proposal that Poseidon offset the project's gross
24 greenhouse gas emissions and demonstrate why the staff's
25 proposal, we believe, is inconsistent with State policy --

1 --o0o--

2 MR. ZBUR: -- and why offsetting gross -- the
3 gross emissions would create bad policy.

4 In approving the GHG plan, the Coastal Commission
5 correctly rejected a gross offset requirement, because
6 such a requirement would be inconsistent with Poseidon's
7 unprecedented commitment to offset its net indirect
8 emissions and because it would violate other State policy.

9 AB 32 is the State's air pollution control
10 statute and is the framework under which CARB is
11 developing regulations. CARB only released a discussion
12 draft of its climate change scoping plan in June of 2008,
13 and both AB 32 and the scoping plan focused on the
14 regulation of direct emitters. This project generally,
15 other than very small amounts, with 2 -- has 2 fleet
16 vehicles, doesn't produce direct emissions. This is about
17 the emissions related to the purchase of its electricity,
18 which is regulated at the electricity level.

19 The scoping plan does not anticipate imposing
20 requirements on direct emitters like the project, but
21 rather contemplates developing incentives for voluntary
22 reductions.

23 --o0o--

24 MR. ZBUR: To illustrate how far this is -- we
25 are early in the process -- CARB will need to undertake a

1 thorough rule-making process in accordance with the
2 State's Administrative Procedures Act, before it may
3 promulgate any regulations under AB 32. That process will
4 require both public review and comment on the proposed
5 regulations and would require CARB to adopt findings that,
6 among other things, the regulations are cost effective,
7 feasible and equitable among sources. CARB hasn't done
8 any of that yet and may never do it with respect to
9 indirect emitters.

10 --o0o--

11 MR. ZBUR: Staff's proposed gross emission offset
12 program is also inconsistent with the standards and
13 rationale underlying a CEQA impact analysis.

14 Under CEQA, a project's impacts are measured from
15 a baseline, which is the environmental conditions as they
16 exist when a project undergoes environmental analysis.
17 The use of a baseline allows for a reviewing agency to
18 examine the project's actual impacts as compared to
19 conditions as they exist today in the project's absence.

20 --o0o--

21 MR. ZBUR: For example, under existing
22 conditions, water is imported to San Diego county through
23 the State Water Project, which requires energy that
24 produces carbon emissions. If 100 units represent the
25 carbon emissions resulting from the imported water, then

1 MR. ZBUR: Standard CEQA methodology would allow
2 for a project to account for beneficial impacts that are
3 reasonably anticipated from the project. The replacement
4 of imported water by the project is not only reasonably
5 anticipated, it has been confirmed by MWD. MWD has
6 committed to provide Poseidon's customers with a financial
7 incentive of \$250 per acre foot of desalinated water
8 purchased from Poseidon. Receipt of a subsidy requires
9 the water districts to demonstrate that they're replacing
10 an equivalent amount of water. And there's the language
11 from their letter which verifies that.

12 --o0o--

13 MR. ZBUR: The assertion that Poseidon should
14 offset the carbon from this imported water because it
15 cannot guaranty that it will not be used by others as part
16 of the State Water Project, if that water continues to be
17 pumped to southern California from the State Water
18 Project, it would be for new or expanded uses. Those new
19 uses would be required under CEQA to address impacts of
20 importing that new water.

21 In addition, as a result of SB 97, the Office of
22 Planning and Research is preparing guidelines for the
23 mitigation of greenhouse gas emissions under CEQA, which
24 are anticipated to be effective next year. Moreover, the
25 Attorney General has begun using enforcement powers under

1 CEQA to assure that greenhouse gas emissions are evaluated
2 and mitigated.

3 --o0o--

4 MR. ZBUR: So according to staff's proposal
5 Poseidon would need to offset carbon emissions associated
6 with the imported water it is replacing. But since only
7 new and expanded projects would be using imported water
8 and those projects are required to mitigate the carbon
9 impacts under CEQA, staff's proposal would result in
10 double mitigation for those impacts. Using staff's logic,
11 the Commission would require a project using a low-flush
12 toilet to demonstrate that the foregone water would not be
13 used by another hypothetical project.

14 --o0o--

15 MR. ZBUR: In summary, there are 4 key
16 differences between the staff's proposed lease
17 modification and Poseidon's mitigation plans as approved
18 by the Coastal Commission.

19 First, and again, Poseidon's greenhouse gas plan
20 requires offsetting of net emissions that is at or above
21 the project baseline, while staff would require the
22 project to offset gross emissions associated with
23 importing water from the State Water Project.

24 Second, staff's proposal removes the contingency
25 plan that will protect the site from periods of market

1 disruption and replaces it with conflicting requirements.

2 Third, Poseidon has proposed a release of 50
3 percent of the mitigation bond once your executive officer
4 has included in the lease -- has concluded that the
5 wetlands mitigation construction is complete. But staff's
6 proposal contains no such release.

7 And finally, Poseidon's approved marine life
8 mitigation plan allows The Coastal Commission the
9 discretion to decide if in the future Poseidon is entitled
10 to mitigation credit for lagoon dredging. But your
11 staff's proposal would prohibit any such credit.

12 Because of this, we believe that staff's proposal
13 artificially constrains Poseidon's ability to mitigate its
14 impacts and imposes obligations on Poseidon that are
15 inconsistent with the Coastal Commission approvals. And
16 we therefore respectfully ask that you approve the version
17 of the lease that is in yellow that was attached to our
18 letter.

19 Thank you very much. If we have any remaining
20 time, we'd like to reserve it for possible comment after,
21 and answer questions on the marine life mitigation plan.

22 Thank you very much.

23 CHAIRPERSON CHIANG: Thank you.

24 EXECUTIVE OFFICER THAYER: Mr. Chair, referring
25 to -- just to ease the discussion here. Referring to the

1 sheet that describes the differences, if I could go over
2 that in light of what Poseidon just said.

3 With respect to the first one regarding the
4 greenhouse gases on the State Water Project offsets, I
5 would put a big N next to that. Poseidon disagrees with
6 the staff approach. The greenhouse gas reduction
7 contingency is also a no.

8 In discussions yesterday and just now with
9 representatives regarding the direct impacts, I think that
10 my understanding is that Poseidon is going to mitigate the
11 construction impacts of 1,324, I believe, is the number.

12 MR. ZBUR: Twenty-seven.

13 EXECUTIVE OFFICER THAYER: Twenty-seven carbon
14 tons, but still disagrees with staff with respect to the
15 daily tonnage. So half of the direct impacts they're
16 willing to address.

17 CHAIRPERSON CHIANG: Peter -- actually let me ask
18 Poseidon. Rick, I thought you said there were no direct
19 impacts in your comment.

20 MR. ZBUR: There are -- basically there's direct
21 impacts from 2 fleet vehicles on the operational impacts.
22 There are construction emissions which I think the number
23 that the executive officer has indicated is, you know,
24 roughly the right number. That's about a \$13,000 issue.
25 So I mean we're comfortable with that.

1 So basically the direct impacts related to the
2 process under the CCAR protocols, because they are so
3 small, you don't even count them. They really are in the
4 de minimis levels.

5 CHAIRPERSON CHIANG: And why is that? This is
6 where I have a fundamental disagreement, Rick, with your
7 position. I made comments, John strongly made comments,
8 is that we wanted it to be net neutral. If it's de
9 minimis, frankly, where you can ask us not to recognize,
10 it's de minimis. But if it's so de minimis, why don't you
11 guys cover that?

12 MR. ZBUR: No. Well, I guess under -- I mean,
13 you asked us to sort of look at CCAR protocols. And the
14 CCAR protocols in looking at the entire project basically
15 look at a project when it's operating. And essentially
16 the direct impacts are so small -- literally they are
17 impacts from 2 fleet vehicles that they are viewed as de
18 minimis, because to count that level is just so small in
19 the context of the larger -- you know, the larger amount
20 of indirect emissions.

21 So I mean that under the CCAR protocol, it would
22 not require counting. I mean if you look at the way they
23 use the protocols, I mean, it's only 2 fleet vehicles. So
24 I mean I think the main difference is the construction
25 emissions. And I think those wouldn't necessarily be

1 attributed to this project, but we're happy to mitigate
2 the 1,300 tons of construction emissions as well.

3 COMMISSIONER GARAMENDI: Add 2 vehicles to it and
4 this issue goes away.

5 CHAIRPERSON CHIANG: I'll raise this issue. You
6 might want to think about, because staff has --

7 MR. ZBUR: We'd agree on the 2 vehicles. I mean,
8 if the executive director can make it -- we can make a
9 determination on what that number is so that we're not
10 quantifying different makes and models, that we can come
11 up with something.

12 COMMISSIONER GARAMENDI: Buying staff a hybrid.

13 (Laughter.)

14 MR. ZBUR: Whatever the 2 vehicles are, we're
15 agreeable to that.

16 CHAIRPERSON CHIANG: Okay. Thank you.

17 EXECUTIVE OFFICER THAYER: And then to continue
18 working through the score sheet here -- and let me just
19 say that when staff was looking at the direct impacts on
20 daily operation, we were also considering the community
21 trips. And, of course, when you add that, it's more than
22 just 2 vehicles. It's a question of how you want to
23 define direct impacts and that's up to the Commission to
24 decide.

25 So with respect to --

1 COMMISSIONER GARAMENDI: Excuse me. We know
2 there's 2 vehicles on site that are going to be used for
3 something. And you were suggesting that we add what to
4 it?

5 EXECUTIVE OFFICER THAYER: The commute trips from
6 the workers coming, that wouldn't occur but for this
7 project.

8 COMMISSIONER GARAMENDI: So if a McDonald's is
9 added in the area, you'd want that mitigated -- that
10 commute mitigated?

11 EXECUTIVE OFFICER THAYER: Staff is responding to
12 the Commission's charge to make sure that it's --

13 COMMISSIONER GARAMENDI: This Commissioner is not
14 interested in the commute piece of this, but I do think a
15 hybrid for the executive officer may cover it.

16 (Laughter.)

17 EXECUTIVE OFFICER THAYER: Sounds good to me.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: Continuing with the
20 score sheet then. With respect to the wetlands mitigation
21 then, Poseidon's presentation indicated they did not want
22 to go along with staff's proposal with respect to not
23 counting dredging. They did not want to do the
24 performance standards. They suggested some changes with
25 respect to the wetland mitigation bond. And that's

1 acceptable to staff. So I think we can cross that one
2 off.

3 The exact language in paragraph 16 though still
4 includes language with respect to the performance
5 standards. If the Commission wants to continue to have
6 staff review or look at performance standards, then 16
7 wouldn't be changed with respect to that. If the
8 Commission decides it does not want to get into the
9 performance standards, then the rest of the Poseidon
10 language with respect to 16 would also be adopted. But
11 with respect to the wetlands mitigation bond itself, the
12 proposed changes are acceptable.

13 And I believe the 10-year review of environmental
14 impacts, which we've shown on our sheet, it's not an issue
15 for Poseidon, so we can take that one off as well.

16 CHAIRPERSON CHIANG: Yeah. I have 2
17 fundamental -- not to draw us -- I just wanted to raise
18 this with the applicant when we go back and have these
19 discussions.

20 The first was with the issue that I raised
21 regarding the daily impact on the emissions. And so tell
22 me if there's some number there.

23 The second was the performance standards. Rick,
24 in your comments you also alluded to the fact that they
25 are inconsistent, right? I think Peter made a comment

1 that the standards with the SLC are not inconsistent. I
2 understand having to try to satisfy multiple agencies'
3 standards, right. But to the extent that Peter hasn't
4 seen that conflict, I don't see the --

5 MR. ZBUR: Yes. I think our concern is that
6 there are very specific performance standards that are
7 adopted. I mean, these aren't going to be developed later
8 that would apply to all of the 8 or 11 sites that we're
9 required to look at site selection. And so the process is
10 that we have to take those performance standards and
11 demonstrate that the site that is selected meets them. So
12 if the State lands staff is applying different performance
13 standards -- and, of course, you know, the main reviewing
14 agency is going to be the Coastal Commission because they
15 have to -- we need a coastal development permit for the
16 restoration project itself.

17 So our concern is, you know, if the State Lands
18 Commissions imposes different standards that are
19 inconsistent with those, then I mean what do we do? We
20 can't, you know --

21 CHAIRPERSON CHIANG: Yeah. Well, I don't think
22 we would do that where you would fall into noncompliance
23 with the Coastal Commission because of the set of
24 standards that we adopted.

25 However, I have -- part of this I think enhances

1 your project if you establish standards that show, you
2 know, that you are in compliance. I think it's just a
3 public trust. Peter, you were grabbing your mic.

4 EXECUTIVE OFFICER THAYER: Just to indicate that
5 the text of the lease provision that we're proposing
6 requires the executive officer to consult with the staff
7 of both the Coastal Commission and the water board, the 2
8 other agencies that would be reviewing the wetlands
9 performance standards and whether or not they're being
10 met.

11 And again the text of the provision requires
12 Poseidon to develop those standards initially. So there
13 are all sorts of mechanisms to try and avoid the conflict
14 that Poseidon is concerned about.

15 Our intent is not to develop different standards
16 but to make sure that again the Commission's concerns
17 expressed last October that these mitigations work and
18 address the once-through cooling like impacts, which have
19 been of concern for this Commission over several years.

20 COMMISSIONER GARAMENDI: Excuse me, Mr. Chairman,
21 if I can.

22 I think the concern here is that there is a
23 dual -- that there are 2 judges and it's possible that
24 there's a disagreement between the 2 judges, that is the
25 executive officer of the Coastal Commission and the

1 executive officer of this Commission.

2 Why do we need 2 judges?

3 EXECUTIVE OFFICER THAYER: I think there's a
4 strong argument, as you suggested, that we don't need 2
5 judges. But again, it depends upon the role that this
6 Commission wants to play, whether it sees an independent
7 public trust concern that requires us to become involved
8 in that or whether it wants to defer to the other 2
9 commissions.

10 COMMISSIONER GARAMENDI: So if we decide to lay
11 down a set of criteria that is similar or the same as the
12 Coastal Commission, then we would rely upon the Coastal
13 Commission as to the sufficiency of the mitigation --
14 construction of the mitigation? Is that one way that we
15 could do it?

16 EXECUTIVE OFFICER THAYER: We could do it that
17 way. I think when staff drafted up this provision, I
18 think the idea was similar to what we're doing right now,
19 which is that the Coastal Commission has reviewed for both
20 of the issues we're dealing with today. And staff --
21 State Lands Commission staff agrees with just about all of
22 that. And the enhancements we're generally asking for
23 here are not to denigrate what the Coastal Commission has
24 done. It's just to add some additional assurances to make
25 sure that this Commission's concerns are being met.

1 And so if there were any disagreement over the
2 standards, it would not be, oh, you should do 16 acres
3 here or 16 acres there. It would be more like, okay, you
4 need to make sure that at least 60 percent of the plants
5 survive or should it be 65 percent. It would be that kind
6 of enhancement that we'd be looking at.

7 COMMISSIONER GARAMENDI: Do we have any expertise
8 on this?

9 EXECUTIVE OFFICER THAYER: We have one biologist
10 on staff, but generally we do not. In most of our other
11 permits, we haven't gotten involved in this.

12 COMMISSIONER GARAMENDI: When we dealt the Edison
13 issue, which is referenced here, did this Commission
14 assert its independent judgment as to the sufficiency of
15 the mitigation that Edison was required to do?

16 EXECUTIVE OFFICER THAYER: I'm not sure, but I
17 imagine not. We have not traditionally gotten involved
18 with those issues. But again the Commission last October
19 was very concerned because of the once-through cooling
20 impacts that public trust resources are not being
21 affected. And so we're looking to make sure that that
22 happens.

23 COMMISSIONER GARAMENDI: So the language, as
24 proposed by Poseidon, removes the independent judgment of
25 this Commission as to the sufficiency of the mitigation;

1 is that correct?

2 EXECUTIVE OFFICER THAYER: That's my
3 interpretation of it, yes.

4 COMMISSIONER GARAMENDI: Is that the intent that
5 Poseidon has?

6 MR. ZBUR: No. I think that the lease provision
7 would allow the executive director to make an independent
8 judgment about whether or not Poseidon has complied with
9 the plan that was approved by the Coastal Commission
10 including all the performance standards that were adopted
11 by the Coastal Commission.

12 So there's independent judgment in the compliance
13 mechanism, but what the measure is that is the Coastal
14 Commission approved plan, which has very specific
15 performance standards. What we're worried about is if
16 there will be different ones.

17 COMMISSIONER GARAMENDI: Mr. Thayer, can you have
18 your lawyers check this issue. There's apparently a
19 disagreement as to the effect of the proposed changes that
20 Poseidon has put forth to the proposed changes that this
21 Commission has put forth. So can we get a check on that
22 from your lawyers in a big hurry.

23 EXECUTIVE OFFICER THAYER: Certainly.

24 CHAIRPERSON CHIANG: Very good. Welcome.

25 MR. REZNIK: Procedurally, I was under the

1 impression we had a 15-minute organized presentation.

2 I would request that, if possible.

3 CHAIRPERSON CHIANG: Yes.

4 Thank you very much.

5 (Thereupon an overhead presentation was

6 Presented as follows.)

7 MR. REZNIK: My name is Bruce Reznik. I am the
8 executive director of San Diego Coastkeeper.

9 CHAIRPERSON CHIANG: If you could actually let me
10 interject. They melded the 2 issues originally. So, you
11 know, we will accommodate you to the extent that you're
12 not repeating yourself.

13 MR. REZNIK: I will do my best not to repeat
14 myself and to keep us all entertained.

15 (Laughter.)

16 MR. REZNIK: I'm here on behalf of Coastkeeper
17 and the Surfrider Foundation presenting the environmental
18 position. I apologize in our efforts to go paperless and
19 it may not be quite as organized a presentation. You are
20 going to have to look over your shoulder at the
21 presentation. Although, we have submitted numerous
22 letters and more technical documents.

23 Much of my presentation today is frankly going to
24 focus on policy. Although, I am going to go through some
25 of the technical conditions. I think a lot of the letters

1 have covered that already. And to my point, this actually
2 boils down very much to a policy consideration.

3 Next slide.

4 --o0o--

5 MR. REZNIK: And this is really frankly what it
6 boils down to. This was a quote from President Kennedy
7 talking about civil rights shortly before his
8 assassination. "We therefore face a moral crisis as a
9 country of people, which cannot be quieted by token moves
10 or talk. It is a time to act. Those who do nothing are
11 inviting shame. Those who act boldly are recognizing
12 right as well as reality."

13 That is my theme today. I want this agency to
14 not have token moves and to recognize right as well as
15 reality, because I think we are facing one of the great
16 moral crises of our time, when we talk about climate
17 change. It is not just an environmental issue. It is a
18 moral issue.

19 Next slide.

20 --o0o--

21 MR. REZNIK: You know, I don't think I need to go
22 into, you know, how big a crisis this is that we face. I
23 think most of you guys know it. It certainly came out at
24 the last Coastal Commission hearings.

25 All you needed to do was pick up today's paper,

1 like the paper almost every single day of the year and you
2 see another environmental catastrophe with the historic
3 floods in Florida.

4 Next slide.

5 --o0o--

6 MR. REZNIK: Those of us in California, of
7 course, are well aware of the fires over the last 5 years
8 that have burnt over 15 percent of San Diego county and
9 burned much of California. We know those fires are
10 exacerbated by climate change.

11 Next slide.

12 --o0o--

13 MR. REZNIK: Now, here is the key issue. This
14 was -- Dr. James Hansen was one of the first people who
15 warned against climate change 20 years ago. This was his
16 testimony on the anniversary of that.

17 We've used up all the slack, like in the schedule
18 for actions needed. We are closing in on a tipping point
19 that would lead to disastrous climate changes that spiral
20 dynamically out of humanity's control.

21 Next slide.

22 --o0o--

23 MR. REZNIK: So the question is what are we going
24 to do about it?

25 Next slide.

1 --o0o--

2 MR. REZNIK: So this is what the Carlsbad desal
3 facility proposes. Building the largest desalination
4 facility in the western hemisphere; taking in 300 million
5 gallons a day; continuing ocean impacts; creating the most
6 energy intensive -- the most energy intensive methods of
7 enhanced local water supplies; becoming immediately one of
8 San Diego Gas and Electric's biggest single facility
9 consumers, if not the largest -- we're trying to figure
10 that out -- and contributing over 100,000 metric tons of
11 carbon to the atmosphere, at a time when we know we need
12 to do everything in our power not only to stop increasing
13 our emissions but to reduce our emissions.

14 --o0o--

15 MR. REZNIK: This was, I thought, maybe the most
16 poignant quote from the Coastal Commission report, that
17 this facility would be a new large significant electricity
18 consumer at a time when a statewide effort is underway to
19 decrease the source of emissions.

20 Next.

21 --o0o--

22 MR. REZNIK: Now, what will this decision mean by
23 this agency. Is this just one facility? Not if you
24 believe the San Diego Union Tribune, which says this is a
25 win not only for Poseidon but the score of desal plants

1 along the coast now in some stage of planning.

2 Next.

3 --o0o--

4 MR. REZNIK: So what is this agency going to do
5 about it?

6 Next.

7 --o0o--

8 MR. REZNIK: Well, here's our proposal. Our
9 proposal is to follow the original staff recommendation,
10 the cross-out version. And we actually have copies of
11 what we're proposing, which we'll hand out and I'll run
12 through in the slides more or less what we're going to go
13 through.

14 The first is to demonstrate how specifically
15 water from the desal plant will offset rather than divert
16 current water imports. Now this is key. We're all
17 talking net. When Poseidon gets up they say Coastal
18 talks -- State Lands is talking gross. We're all talking
19 net. The question is what is net?

20 Next slide.

21 --o0o--

22 MR. REZNIK: I think it's a very simple question.
23 It's the but-for test. But for this facility, would we
24 have 100,000 metric tons of carbon going in the
25 atmosphere? No. But for this facility, would these new

1 developments that are going to use this diverted water,
2 which we all know is going to happen. We all know. This
3 is one of the smartest agencies I've ever testified in
4 front of. You all know the water is going to come down to
5 San Diego and we're going to have new developments. It's
6 just who's going to bear the burden for that.

7 Would those developments be as possible but for
8 this project? No.

9 Will the reductions from the State Water Project
10 and Colorado River happen anyway because of drought,
11 because of the Delta Smelt? Yes. They should not get the
12 credit for those. That is the additional part of AB 32.

13 If you pass the buck to future projects and say,
14 okay, that's going to be pushing out, when the new
15 projects get developed, solely because this facility gets
16 built, they can worry about it then. Can you enforce
17 that? Can you guaranty that? No. What you can do is
18 enforce and guaranty now.

19 So until Poseidon can actually say how they are
20 going to offset and reduce State Water Project impacts,
21 the burden should be on them to show that. And until they
22 can show that net impact, we have to assume that that
23 water is new.

24 Next slide.

25 --o0o--

1 MR. REZNIK: Condition 2 that we're asking,
2 third-party verification. This is something that was
3 initially in State Lands Commission staff report. It is
4 not anymore. We support it.

5 Next slide.

6 --o0o--

7 MR. REZNIK: Requires CDP to increase to offset
8 to 56,000 metrics tons. Now, you know, this was a tricky
9 one for me because frankly I think they should have to
10 show every bit of offset. But even if you are going to
11 assume that there are offsets coming to San Diego, and
12 this is going to somehow be replacement water, there are a
13 lot of different ways -- next slide.

14 --o0o--

15 MR. REZNIK: There are a lot of different ways To
16 calculate what that net is. Now, Poseidon takes away it's
17 friendliest event. Then assume all 56,000 acre feet stays
18 in Sacramento, stays in the Delta, doesn't get transported
19 anywhere. That's the most energy intensive water that we
20 have currently until this plant gets filled -- if this
21 plant gets built. So that's the highest level. So that
22 means their delta of increase is the smallest.

23 That's the friendliest for them. As my mom used
24 to say, "Figures don't lie, but liars figure." But there
25 are many other ways to do it. There's the way staff

1 recommended and seeing what would leave -- what metro
2 leaves in the Delta less than what their obligation -- or
3 what their contract says.

4 You could say hey, we're going to assume that
5 this water still is going to stay metro water district and
6 not credit all the electricity it takes, because it's
7 still going to be used somewhere in that region and you're
8 only to get credit for the water to bring it from metro
9 down to the county water authority.

10 You can base it on our current and future
11 portfolios. As even Poseidon acknowledged in the
12 portfolio in the county water authority, there's a certain
13 amount of growth and there's a certain amount of offsets.
14 We know that water is going to increase in San Diego. We
15 know that we're going to try to reduce our imports. You
16 could attribute it that way. And we've had some experts
17 look at it that way.

18 Or, and one of the most simple ways is, you can
19 just look at per ratio and say we get 60 percent of our
20 water, more or less, from the Colorado, 40 percent from
21 the State Water. Colorado is less energy intensive.
22 We're going to use that as the offset.

23 Now, I know Poseidon is going to say well, you
24 know, these are contracts that are under way that are
25 going to reduce from the State Water Project. We know

1 water isn't going to be reduced. This is going to be
2 water -- the water is going to be used in San Diego. It's
3 going to be used in southern California.

4 So if you're going to believe the fiction that
5 it's going to be reduced, at least believe a more
6 realistic fiction that it's going to be reduced based on
7 our current water portfolio, 60 Colorado, 40 State Water
8 Project.

9 Next slide.

10 --o0o--

11 MR. REZNIK: And if you do that -- and this just
12 runs through the calculations, instead of getting a 60,000
13 metric ton credit, they only get a 30,000 metric ton
14 credit, because that's the energy differential from
15 Colorado water. So they would have to increase their
16 offsets to 56,000 metrics tons.

17 Next slide.

18 --o0o--

19 MR. REZNIK: Require a one-time offset of the
20 impacts of construction activities.

21 Next slide.

22 --o0o--

23 MR. REZNIK: We had experts look and we came up
24 with a higher total. Again, it's in one of your letters.
25 It's 7,509 metric tons, as opposed to the one thousand

1 some odd that are being proposed.

2 --o0o--

3 MR. REZNIK: Create a lease condition. I think
4 State Lands again has tried to do that. Does not allow
5 opt outs, escrow accounts, special committee verification.

6 Next slide.

7 --o0o--

8 MR. REZNIK: In Poseidon's greenhouse gas plan,
9 there are a lot of opt outs and caveats. Coastal did away
10 with some of them. I think State Lands will do away with
11 any others.

12 This needs to be an actual plan. If we're going
13 to move forward with the most energy intensive, carbon
14 emitting project, we need a real plan of how we're going
15 to offset those emissions, not opt outs, not caveats.

16 --o0o--

17 MR. REZNIK: We expect that -- we hope for
18 Condition 6 that requires Poseidon to use the
19 CARB-approved protocols.

20 Next slide.

21 --o0o--

22 MR. REZNIK: AB 32 not as much is made here about
23 the applicability. We recognize that under AB 32 this is
24 a voluntary commitment. They're not on line yet. We do
25 think the State Lands has the legal authority to require

1 that as Coastal Commission did under the Coastal Act. So
2 I keep getting a little peeved when I keep hearing
3 voluntary, because you actually mandated it as did
4 Coastal.

5 And if you look at the AB 32 protocols, frankly,
6 I don't think this greenhouse meets any of them. I don't
7 think they're real, because water is coming in. I don't
8 think they're quantifiable. They're certainly not
9 additional, because we know we're losing water from the
10 Delta and Colorado anyway.

11 We are asking for verification, but I don't think
12 it's there yet, enforceability, and certainly not
13 permanent.

14 Next slide.

15 --o0o--

16 MR. REZNIK: Require annual reports for the EO to
17 review that show the results.

18 Next slide.

19 --o0o--

20 MR. REZNIK: We also think that a new EIR must be
21 prepared to fully examine the climate change impacts of
22 this CDP, including cumulative impacts of how these
23 100,000 metric tons are going to combine with all the
24 other greenhouse gas emissions in the state.

25 --o0o--

1 MR. REZNIK: The politics of failure. This is
2 one of my most frustrating parts of this whole process.

3 Next slide.

4 --o0o--

5 MR. REZNIK: One thing we've seen, you know --
6 it's often been made that this is enviros against the
7 business community. This is enviros against labor --
8 unfortunately, my brothers and sisters in labor. This is
9 enviros against other folks. This is actually staff
10 against agency. This is experts against policy.

11 The reality is you can sit here and say all you
12 want. All these agencies have moved forward. The Coastal
13 Commission staff thought this was a dumb project. They
14 recommended opposing it. They were overruled by the
15 Commissioners 4 different times.

16 The regional board staff didn't really like this
17 project. They scheduled a hearing when the staff person
18 was on vacation on the marine life mitigation plan and
19 then removed the staff person.

20 CEC wrote a letter saying this should be -- you
21 know, they should have to verify true water reductions.
22 Eleven days later that letter was rescinded.

23 If you talk to ARB staff and APCD staff, they
24 don't like this project. They've been silenced by --
25 well, let's just say they've been silenced.

1 Even State Lands Commission, we think their new
2 report is a weakening and a capitulation of their original
3 staff recommendation.

4 If you go and talk to any of the technical
5 experts, they think this is the dumbest project ever. And
6 just the most expensive, costly, environmentally damaging,
7 energy intensive, carbon emitting toilet water we are ever
8 going to see in California. And yet at every step, these
9 staff people have been overruled by political appointees,
10 who are facing pressure -- understandably a great deal of
11 pressure -- from powerful constituents, people who donated
12 maximum amounts of money to these campaigns, people who
13 have a lot of influence in the electorate.

14 Believe the technical experts. You know,
15 everybody was offended when we said, oh my God, Bush's
16 policy people overwrote the EPA regulations, the technical
17 expertise. We were all aghast and offended. That has
18 happened at every step along the way in this process.

19 Next slide.

20 --o0o--

21 COMMISSIONER GARAMENDI: Excuse me. Your point
22 that the 3 decision makers here lack knowledge,
23 understanding and commitment is incorrect. What you just
24 said is highly offensive and does not help your argument
25 at all.

1 MR. REZNIK: I apologize. I did not mean to
2 imply that at all.

3 (Laughter.)

4 MR. REZNIK: I did not mean to imply that. I
5 think there is expertise. But there is a lot of staff
6 expertise, marine biologists and others. Climatologists
7 have looked at this --

8 COMMISSIONER GARAMENDI: Many of us have worked
9 on these issues for more than 30 years, okay. And there
10 are others of us that have a deep understanding of all of
11 these issues, okay.

12 MR. REZNIK: Point taken.

13 COMMISSIONER GARAMENDI: If you want to continue
14 to be offensive, go ahead, and see where it gets you.

15 MR. REZNIK: I apologize if any offense was
16 offered.

17 To good to be true. Next.

18 --o0o--

19 MR. REZNIK: For every complex problem there's a
20 solution that is simple, neat and wrong. And I think that
21 is the case that we're facing here.

22 Next slide.

23 --o0o--

24 MR. REZNIK: To me, this is another crux of the
25 policy issue. This project is not an answer. It is a

1 distraction from things that we truly need to be doing in
2 San Diego. Water recycling where we've been fighting
3 every step of the way; better desalination projects that
4 truly offset their impacts and minimize those impacts; and
5 real conservation.

6 Next slide.

7 --o0o--

8 MR. REZNIK: We have been the group leading the
9 fight on water recycling in San Diego.

10 Next.

11 --o0o--

12 MR. REZNIK: We think there are ways to create
13 better desal including full minimization mitigation. And
14 I don't think an argument that if you truly require
15 minimization mitigation that this project would be
16 economically viable is relevant. If this is a free-market
17 system, if they can't internalize those costs, then so be
18 it. It's not ready for the market yet.

19 Next slide.

20 --o0o--

21 MR. REZNIK: This is just a quote from the last
22 hearing. I know I'm running short of time. But this is
23 what the fight is about in San Diego. People don't want
24 to -- this is a quote about how we need to create more and
25 more water so we can water our lawns. Are we truly going

1 to burden future generations with a carbon footprint that
2 we are putting forward so that we don't have to take real
3 steps in a desert to actually conserve water?

4 Next slide.

5 --o0o--

6 MR. REZNIK: Next.

7 --o0o--

8 MR. REZNIK: You can run through this. This is
9 just -- today's problems are yesterday's solutions. We
10 need to think about the long-term implications of our
11 decisions. You can run through the next quickly.

12 --o0o--

13 MR. REZNIK: We know that every step of the
14 way -- you can just run through them -- that this agency,
15 the folks here, Poseidon themselves have promised
16 unconditional commitment to carbon neutrality, at the --
17 you can just run through. At each hearing this
18 Commission -- and we applaud it. It stood up and said
19 this will be a truly carbon neutral facility.

20 And that was from everyone here including the
21 Governor of the State.

22 As a matter of fact, I wanted to point this is at
23 least a carbon neutral situation. We know how important
24 this is.

25 Next slide.

1 --o0o--

2 MR. REZNIK: You can just leave it there. So to
3 me this is truly a legacy decision. What will our
4 children and their children and their children after that
5 look back at this agency decision today? Will they look
6 back and say what was this agency doing at a time when we
7 knew the dangers, the threats, the tipping point was at
8 hand at climate change and approved a facility we know is
9 going to add 100,000 metric tons of carbon to the
10 atmosphere? Or are they going to look at this time when
11 this agency shows the bold leadership that you've shown in
12 many other instances and takes a real step, the first step
13 in implementing AB 32 and addressing the climate change?

14 Thank you very much for your time.

15 CHAIRPERSON CHIANG: Thank you, Bruce.

16 Okay. We will go to those who requested to
17 speak.

18 ACTING COMMISSIONER SHEEHAN: May I ask a
19 question.

20 CHAIRPERSON CHIANG: Oh, I'm sorry, Anne.

21 ACTING COMMISSIONER SHEEHAN: I guess one
22 question I have is the disparity on the construction
23 numbers. Staff has calculated 1,327 tons and you, Bruce,
24 said 7,000.

25 MR. REZNIK: Yeah. That was our experts. We can

1 provide that detail. Some of it is in our letter.

2 There's a more detailed report that we had submitted at
3 Coastal. And I think we've boiled it down, because it was
4 so detailed. And I am not an expert. We hired --

5 ACTING COMMISSIONER SHEEHAN: So it's in this
6 stack?

7 MR. REZNIK: There is some level of detail in the
8 letter, yeah.

9 ACTING COMMISSIONER SHEEHAN: Because it just
10 strikes me that that is a large disparity in terms of
11 those. I mean on the daily operation, I can understand
12 some of the, you know, what should be included. But that
13 seems like quite a bit, okay.

14 EXECUTIVE OFFICER THAYER: If you'd like, we
15 could ask staff to explain how they reached the number.
16 Again, we're not experts in greenhouse gases, but I think
17 we did our best to go out there and look at the literature
18 and figure out what would be a reasonable amount.

19 ACTING COMMISSIONER SHEEHAN: Okay. And that's
20 where staff came up with their figure 1,327?

21 EXECUTIVE OFFICER THAYER: Yes.

22 ACTING COMMISSIONER SHEEHAN: Yeah, if you could
23 just briefly go through what you did to come up with that
24 theory, because as I say, that just sort of struck me and
25 it really jumped out at me.

1 STAFF ENVIRONMENTAL SCIENTIST MINDT: My name is
2 Steve Mindt. I am the staff scientist that looked into
3 the numbers. We had requested numbers from Poseidon and
4 they failed to provide anything. There were a number of
5 agencies that I talked to, and a number of agencies that
6 worked with this, and unfortunately this is a new field.
7 So no one was willing to put forth any recommendations
8 because some impacts look at the carbon footprint of the
9 manufacturing of the material. They look at the
10 construction, the transportation. They look at so many
11 different variables.

12 And what I did was I took a very conservative
13 estimation that estimated a lot. It basically gets you
14 within a factor of 10 for the construction. I didn't want
15 to go cradle to grave. And like I said, even between the
16 agencies themselves, there's about 100 to 200 percent
17 disparity. So what I did is to be very conservative, I
18 took a low amount knowing that if we put it in for an
19 offset at least we would meet the minimum that everybody
20 can agree on that's at least this amount. And so that's
21 what I did.

22 Everybody says it's at least this amount and
23 everybody had ranges up to 10,000 or more. So I said,
24 okay, everybody agrees on this amount. That's a good
25 number at least for these purposes.

1 And one other thing, if I may clarify, on the
2 daily emissions that Poseidon was arguing. Those were the
3 numbers that they gave us, that it was 7 tons for the
4 daily offsets per year. I put it there as under 7 tons
5 daily, but that chart was an annual emissions, right, that
6 was the number that they provided to us, so that's where I
7 got that.

8 Thank you.

9 CHAIRPERSON CHIANG: Very good. I will call 3 at
10 a time, so please lineup. As I indicated earlier, you
11 will have 3 minutes. I may shorten that. We have some
12 additional issues that we have to determine, so we're on a
13 time schedule.

14 Peter and Rick signed up. You've already spoke.
15 I'm hoping you'll waive.

16 Bud Lewis, Julie Nygaard and Deanna Spehn. I
17 apologize if I pronounced your name incorrectly.

18 Bud, welcome. Please introduce yourself for the
19 record.

20 CARLSBAD MAYOR LEWIS: Thank you, Mr. Chairman.
21 I'm Mayor Bud Lewis of the City of Carlsbad and also Vice
22 Chairman of the county water authority.

23 I've been involved in this project for over 10
24 years. Nine months ago you folks said that you'd like to
25 wait for the Coastal Commission to come with their

1 findings, and they have. And Poseidon and they have come
2 up to working agreement.

3 And the State economy -- and being a mayor I'm
4 very concerned about what's going on. But the State
5 economy, as you know, has gone south on us to a shortfall
6 between \$15 to \$20 billion, if we can hold that figure.
7 Carlsbad and all the other areas in the state of
8 California has a huge water problem due to the drought and
9 problems in the Delta and they're serious problems.

10 As an example, the Colorado River we're only
11 getting 40 percent of the water there. We expect to get
12 between 10 to 15 percent of the water from the Delta. So
13 there are just enormous problems that we're facing.

14 Lost compensation. In my city on my desk this
15 last week, one of our major golf companies they just
16 signed off -- 165 people were laid off. We have many of
17 our companies that are cutting back. And when you're laid
18 off, no income. That makes a tremendous impact upon the
19 community.

20 And in all honesty it seems like a conspiracy of
21 your staff and Coastal Commission staff to holdup this
22 project, in addition to the demands that they're making on
23 the project as such. It would seem that one agency -- I
24 think it's always been brought out and all the
25 clarifications that they've gone through that would hold

1 up. But to have 2 agencies put forth different project
2 demands I think is really extremely unusual.

3 As a local elected official for the last 38
4 years, I've never encountered State agency staff that
5 seems bent on harming the economic growth that is so
6 needed in California. And I base this on many of the
7 things in the coastal community. We deal with Peter
8 Douglas and those folks a great deal. In fact, I was in
9 Santa Barbara about 3 and a half years ago on desalination
10 and Peter was there with one of the Commissioners and he
11 made some very derogatory remarks about desalination.

12 And so I met -- I've known Peter for a number of
13 years. And I met him after the meeting and asked him why
14 he was so intent. And he said 2 things that I oppose
15 about desalinating. Number one, it creates jobs and
16 number 2 it creates growth. And I said Peter, "That's
17 infringing on areas that really don't belong to you." He
18 said, "Well, that is my position." And you might want to
19 ask Peter that some time because he's very open about
20 that.

21 Now folks this is a must as far as the region is
22 concerned. This plan will provide 10 percent of all water
23 that would go into this area. And that is extremely
24 important to all the citizens within this region and to
25 the State of California.

1 Thank you.

2 CHAIRPERSON CHIANG: Thank you.

3 Julie.

4 CARLSBAD CITY COUNCILMEMBER NYGAARD: Thank you.

5 Good morning, Commissioners. I'm Julie Nygaard. And I've
6 been a member of the Carlsbad City Council for 14 years.
7 I've also served on the regional water quality control
8 board.

9 As you might expect my comments today are in
10 support of approving this lease between the State Lands
11 Commission and Poseidon Resources and allowing the desal
12 project to move forward through planning and permitting
13 and on to construction.

14 About a year ago the Commission considered the
15 proposed lease with the State Lands Commission to
16 Poseidon. At that time, the Commission expressed its
17 general support for the project, expressed the
18 Commission's understanding of the need to create a
19 dependable local water supply for southern California.

20 The Commission has also explained its obligation
21 to protect the marine environment and to support the
22 Governor's efforts in reducing greenhouse gas emissions.

23 The Commission then directed the Poseidon staff
24 to develop and offset increase gas emissions and to
25 develop a marine life mitigation plan that would offset

1 the impacts. Poseidon has done that and more. Both the
2 greenhouse gases and the marine life mitigation plans were
3 approved by Coastal Commission earlier this month.

4 In addition, Poseidon has agreed to continue the
5 annual dredging of the outer portion of the Agua Hedionda
6 Lagoon, which is essential to the health of the entire
7 lagoon ecosystem. Without the dredging of that lagoon,
8 that lagoon will simply dry up and die. We've had that
9 experience before.

10 The dredging process has historically been
11 performed by the powerplant owner. But with the eventual
12 reduction and eventual elimination of the once-through
13 cooling, lagoon stewardship would ultimately be the
14 responsibility of the State who is its owner.

15 The State's current and probable future financial
16 problems would make the lagoon stewardship a low priority.
17 And we have experienced that with the Batiquitos Lagoon.
18 Since Poseidon Resources have indicated a willingness to
19 assume responsibility for dredging and the continuing
20 health of the lagoon, the ecosystem is assured for many
21 years. They should receive credit for this. This is a
22 very important issue for the City of Carlsbad and for the
23 state.

24 We applaud this move by Poseidon, and believe the
25 State Lands Commission as well as the State of California

1 will benefit from this arrangement.

2 So I respectfully request that you take a
3 leadership position in providing a much needed local
4 source of water to San Diego county and in protecting the
5 Agua Hedionda Lagoon and approving this lease with
6 Poseidon.

7 Thank you.

8 CHAIRPERSON CHIANG: Great.

9 We have Deanna next followed by Tom Lemmon. Tom,
10 you signed up twice, you get to speak once. Lorena
11 Gonzales same thing.

12 Andrew Sienkiewich.

13 MS. SPEHN: Good morning. I'm Deanna Spehn. I'm
14 policy director for State Senator Christine Kehoe who
15 would be here today if the Senate weren't in session. And
16 she sends her regards.

17 I'd like to read her statement into the record.

18 "Last October I testified before the
19 State Lands Commission and urged your
20 approval of the Carlsbad desalination
21 project. At the hearing, Poseidon
22 Resources presented its voluntary
23 commitment to account for and bring to 0
24 the incremental, indirect greenhouse gas
25 emissions from the proposed Carlsbad

1 desalination project. Their commitment
2 assures that this objective is achieved
3 over the 30 year life of the project.

4 "Earlier this month the Coastal
5 Commission finalized approval of the
6 project's coastal development permit,
7 which included authorization of
8 Poseidon's energy minimization and
9 greenhouse gas reduction plan and marine
10 life mitigation plan.

11 "Poseidon's greenhouse gas plan is
12 properly predicated on the fact that it
13 will replace 56,000 acre feet per year
14 of water that would otherwise be
15 imported from the State Water Project to
16 the project's customers in the San Diego
17 region. Poseidon's proposed marine life
18 mitigation plan addresses any effects to
19 the coastal environment.

20 "On August 22nd, the State Lands
21 Commission has the opportunity to
22 finalize its project approvals so that
23 the desalination plant can proceed
24 towards construction.

25 "I am committed to assisting the

1 State in diversifying its water
2 resources, including identifying
3 reliable water supply solutions,
4 especially during this period of
5 extended drought. This is especially
6 important to meet the potable water
7 needs of the San Diego region.

8 "The Carlsbad desalination project
9 offers a local solution to our long-term
10 water supply needs, along with an
11 enhanced conservation effort and other
12 local efforts to build local water
13 supplies and reduce the region's
14 dependence on imported water.

15 "I urge your support.

16 "Sincerely, Christine Kehoe."

17 Thank you very much.

18 CHAIRPERSON CHIANG: Thank you very kindly.

19 Tom.

20 Tom, last time when you spoke I asked you to
21 check to make sure if you had the PLA. Do you have the
22 PLA in place?

23 MR. LEMMON: We do.

24 CHAIRPERSON CHIANG: Okay.

25 MR. LEMMON: Good morning. My name is Tom

1 Lemmon. I'm the business manager for the San Diego County
2 Building and Construction Trades Council, representing
3 over 30,000 construction workers in San Diego county.

4 The economy is slowing and construction jobs
5 continue to be impacted. The Carlsbad desalination plant
6 would create nearly 1,000 union construction jobs and have
7 a tremendous positive impact on thousands of San Diego
8 county workers and their families.

9 Right now the quality of life for San Diego
10 working families is being threatened by many things, the
11 lack of affordable housing, soaring gas prices, rising
12 cost for groceries and everyday goods. Add to that rising
13 water rates.

14 The State Lands Commission has the power to help
15 clear the way for new jobs, address San Diego's water and
16 supply crisis by finalizing its approval of the Carlsbad
17 desalination facility. I urge you to issue your final
18 approval of the Carlsbad desalination plant today and let
19 us get to work.

20 Thank you.

21 CHAIRPERSON CHIANG: Thank you.

22 MS. GONZALES: Good morning, Commissioners. My
23 name is Lorena Gonzales. And I'm the secretary-treasurer
24 of the San Diego Imperial Counties Labor Council
25 representing over 120,000 union families in the San Diego

1 region.

2 I want to start by thanking your staff and our
3 environmental allies. We're really pushing in making this
4 project a better project, because we do often work with
5 them and commend them on their efforts. But we're here in
6 proud sport of the Poseidon desalination plant. It's a
7 priority for the San Diego region and for our workforce to
8 create a more sustainable water supply in San Diego, so
9 not to hinder further growth and development.

10 We feel fortunate that our building and
11 construction trade unions have agreed with the developer
12 to build this important piece of infrastructure with a
13 Project Labor Agreement. Thereby guarantying local fair
14 wage construction jobs that are generated at a time when
15 development has slowed due to recession.

16 Please approve this project today in order to
17 allow our region to move one step closer to becoming
18 drought proof and to ensure the projects that include good
19 jobs become the standard for infrastructure development in
20 San Diego.

21 Thank you.

22 CHAIRPERSON CHIANG: Thank you.

23 We have Andrew next, followed by Andrea Cook,
24 Eric Larson, Gary Arant.

25 MS. SIENKIEWICH: Andrew Sienkiewich,

1 metropolitan water district. Thank you, Mr. Chairman and
2 Commissioners.

3 The metropolitan water district believes it's
4 appropriate for the project's greenhouse gas mitigation
5 plan to be based on offsetting net carbon emissions,
6 because the San Diego County Water Authority and the
7 metropolitan water district will use 56,000 acre feet less
8 of imported water upon project start-up.

9 and by net emissions we mean the difference
10 between the energy-related emissions required for moving
11 water through the State Water Project compared to the
12 operating requirements for the seawater desalination.

13 Metropolitan's water operations are complex, but
14 I'd like to try, in this limited time, to provide a basic
15 picture, because it seems so central to your decision
16 making today.

17 First, we have the Colorado River Aqueduct. I'd
18 like to point out that we always use that water first in
19 meeting our service area demands. And we would not be
20 cutting Colorado River operations because of the Poseidon
21 project.

22 Let me point out that the Colorado uses about
23 two-thirds of the energy to move an acre foot of water
24 compared to the State Water Project. So it's always our
25 preference to maximize Colorado River water.

1 Then our additional needs are met through the
2 State Water Project and storage. The important point here
3 is we use the State Water Project infrastructure to convey
4 a number of sources of water that are in addition to our
5 contract supplies with the State.

6 And maybe by example I can help amplify this.
7 For this year, our contract with the State is going to
8 provide us a little less than 700,000 acre feet of water.
9 We're actually going to move through the project about
10 11 -- well, about 1.1 million acre feet of water. So it's
11 about 400,000 that's coming from other sources. And it's
12 this other water that principally is going to be offset in
13 these times of limited water supply transfers in
14 particular.

15 So for instance this year, in addition to our
16 contract water, we're moving water out of storage assets.
17 This is groundwater and other storage assets along the
18 aqueduct, about 250,000 acre feet. We also have
19 exchanges. These are Ag to urban exchanges, and exchanges
20 with other water users that will provide us about 140,000
21 acre feet.

22 And I will point out that supply conditions
23 continue to be tight. We're expecting next year to have
24 other water supplies available from the State Water Bank.
25 And again that, depending on cost, would be one place that

1 we could be offsetting importation into the area.

2 Now, long before this greenhouse gas issue came
3 before the State Lands Commission, metropolitan has made
4 commitments to invest in local resources -- development of
5 local resources that offset requirements for imported
6 water.

7 And part of the reason we do this is because it
8 makes good business sense. Investing in these offsets
9 provides us a way of deferring capital expenditures and
10 expanding our system, and of course avoids the actual
11 operating cost of moving water.

12 So when we look at the big picture, it's apparent
13 to us that the Poseidon project will offset transfers of
14 water or support storage of water that will, in subsequent
15 years, provide those offsets.

16 And for these reasons, we encourage you to make
17 the decision now. We think this is a policy decision to
18 be made on the net now. We don't think it would be
19 practical and we don't think it would be satisfactory to
20 any of the parties to have some sort of annual water
21 accounting process.

22 Thank you very much.

23 CHAIRPERSON CHIANG: Thank you.

24 COMMISSIONER GARAMENDI: If I might. The
25 testimony from met is central to this issue of gross

1 versus net. So if I might have a couple questions.

2 CHAIRPERSON CHIANG: Please.

3 COMMISSIONER GARAMENDI: Your basic point seems
4 to be that the appropriate way for this Commission to look
5 at the greenhouse gases, to work with the net rather than
6 the gross greenhouse gas emissions; is that correct?

7 MR. SIENKIEWICH: That it is.

8 COMMISSIONER GARAMENDI: And the reason for that
9 is that either immediately or over time, depending on the
10 available water conditions throughout the State, including
11 the Colorado, that those conditions over at -- as those
12 conditions vary, there is a net reduction of imported
13 water.

14 MR. SIENKIEWICH: Yes, sir.

15 COMMISSIONER GARAMENDI: Now, another set of
16 questions. Does the Met have programs under way and
17 additional programs planned in the future to utilize water
18 that's already in the southern California basins, for
19 example recycling and further use of the underground
20 aquifers?

21 MR. SIENKIEWICH: Yes. Starting in 1982, we
22 instituted a program to provide financial incentives for
23 local agencies to develop recycled water, and then about
24 10 years later to develop degraded groundwater resources
25 to make them potable for treatment. And then most

1 recently we've had the seawater.

2 Our suite of contracts involve about 80 different
3 projects, in the order of 450,000 acre foot that would be
4 developed locally. And as a matter of fact, on Tuesday of
5 this week our board adopted support for 63,000 acre feet
6 of new recycling in the service area that will be starting
7 up. Actually, some of it later this year.

8 COMMISSIONER GARAMENDI: Are you dependent upon
9 State bond money for any of these projects?

10 MR. SIENKIEWICH: Our support --

11 COMMISSIONER GARAMENDI: Existing State bond
12 money.

13 MR. SIENKIEWICH: Our support for these projects
14 is metropolitan money, but we're not the owners of the
15 projects. Those are local agencies. And indeed those
16 agencies will avail themselves of State bond money and in
17 some cases federal money. It's a nice combination. Let
18 me point out that our financial support is for actual
19 water produced. So they produce the water and they get
20 the money. If they build a risky project and don't
21 produce the water, we're not helping them.

22 So they get the bonding from the State and then
23 they get the annual money from us. It's a very good
24 combination for the local agencies.

25 COMMISSIONER GARAMENDI: I believe that was

1 discussed earlier in the presentation made by Poseidon; is
2 that correct?

3 MR. SIENKIEWICH: Regarding their project, yes.

4 COMMISSIONER GARAMENDI: It was.

5 Thank you very much.

6 MR. SIENKIEWICH: You're welcome.

7 CHAIRPERSON CHIANG: Thank you.

8 Andrea.

9 DR. COOK: My name is Andrew Cook. I'm a Ph.D
10 climate scientist, and my specialty is in carbon and
11 tracking carbon molecules around the earth, where do they
12 stay and where do they live, et cetera.

13 Right now, I am working for the California Center
14 for Sustainable Energy, that has 12 years of experience in
15 putting in solar programs and administering solar water
16 heating and car -- we work in energy efficiency and we
17 work in sustainable living.

18 We came into this project after Poseidon had
19 received its initial permit to go forward. As a
20 sustainable energy place, we're not taking a stance on
21 whether desal is the way to go in terms of our water
22 situation. We are coming in talking about the greenhouse
23 gas mitigation plan.

24 And I have reviewed it. Our energy experts have
25 reviewed it. The plan is solid. It's got many, many,

1 many of the components that are possible in its footprint
2 of where it is. It's really doing a lot. And it actually
3 sets a precedent that's way ahead of where our state is,
4 and certainly from where our nation is, and certainly in
5 front of where our state is in terms of mitigating
6 greenhouse gas.

7 Right now in the process here with AB 32, the
8 plan is at the point where it's going to go to the CARB
9 Commission to be approved as a plan about which measures
10 are going to go forward. Then over the next 2 years,
11 they're going to mitigate on each and every one of those
12 measures and how they're going to regulate that through
13 that specific mechanism to get the reductions. And
14 they're starting with the big hitters first, so the direct
15 emitters.

16 Poseidon's turn in that when it comes down to be
17 regulated if it -- if it does ever, is way off. So
18 them doing -- is way off meaning 10 years at least. So
19 it's offsetting its carbon now, not under the regulation
20 of AB 32 yet because it's still developing. I mean
21 there's not even a cap and trade system. We're talking
22 about selling offsets of what we're going to buy. And
23 it's not even there yet. But we're committed to doing it.
24 It's way ahead in terms of precedent. And I'm very
25 pleased with the plan as it was adopted by the Coastal

1 Commission as steps in the right direction for climate
2 change and for greenhouse gas mitigations.

3 And I guess that's the base. We can talk about
4 other things and how do you calculate these emissions,
5 where you're talking about the differences between this
6 number and that number. I think they've been settled.
7 But if you have questions about that and how you get to
8 them, I'd be happy to answer them.

9 Thank you.

10 CHAIRPERSON CHIANG: Thank you. Next.

11 MR. LARSON: My name is Eric Larson, executive
12 director of the San Diego County Farm Bureau. I don't
13 have to tell you how important water is to agriculture.
14 You all certainly know that. But you might not know how
15 bad the situation is in San Diego county right now.

16 We have a lot of -- we have more small family
17 farms in San Diego county than any other county in the
18 United States. And we have the 12th largest farm economy
19 of all counties in the United States. And we rank the 5th
20 largest industry in San Diego county. We bring over \$5
21 billion to the local economy each year.

22 But farmers throughout San Diego County are
23 facing a predicament that could change forever the
24 prominent contribution that farmers play to our region's
25 economy.

1 The county's farmers right now have been hit by a
2 mandated 30 percent cut back in water usage, because of
3 the State's dire water situation. As with previous
4 threats, many, not all, of our farmers will survive this.
5 But this will no longer be the case if San Diego doesn't
6 diversify its water supply and develop local supplies.
7 This is why we support the desalination project.

8 Unless we secure reliable water supply, San
9 Diego's rich agricultural heritage could change forever.
10 Farmers unable to overcome the unreliability of imported
11 water supplies will look to sell their land.

12 Since carbon is the subject of the day, I need to
13 tell you that we now have over 8,000 acres of farm land
14 idle in San Diego county because of that mandated 30
15 percent cut. That means that 2,600 pounds of sequestered
16 carbon each year over there will be 20 million fewer
17 pounds of carbon dioxide sequestered in San Diego county
18 this year alone.

19 What the means, if those farm lands are replaced
20 by rooftops and cars, we'll have gone the exact opposite
21 direction. From sequestering carbon, we'll be creating
22 it, if we don't have these local supplies.

23 This is the last stop for this project. And
24 after 10 years it's time for this Carlsbad facility to be
25 approved. Our farming heritage and San Diego county's

1 agricultural industry depend on it. We urge your support
2 for the lease agreement proposed by Poseidon.

3 Thank you.

4 CHAIRPERSON CHIANG: Thank you, Eric.

5 Following Gary, we have Jack Minan, Ted Owen,
6 Robert Simmons.

7 MR. ARANT: Good morning, Commissioners. My name
8 is Gary Arant. I'm general manager of the Valley Center
9 Municipal Water District located in north San Diego
10 county. But I'm also here today speaking on behalf of the
11 Association of California Water Agencies representing 450
12 water agencies statewide, and also the San Diego County
13 Water Authority, of which I'm member of the board of
14 directors.

15 We were here in October supporting this project.
16 Since that time, the flows out of the State Water Project
17 have been dramatically reduced, and our Governor has
18 declared a statewide drought. We very much appreciate
19 being here today to continue our support for this project,
20 that has become even more critical, in our view, for our
21 State's future.

22 And as in October, time and circumstances are not
23 on our side. Our State today finds itself in a similar
24 situation that I experienced in the early 1990s, as we all
25 did. But the lessons we learned from the drought of the

1 early nineties still ring true today. And as stated in
2 the State's most recent water plan, diversification is a
3 must and local supply development is critical to supply
4 reliability.

5 Since the 1990s, the water authority and its
6 member agencies and agencies statewide have made great
7 strides in diversifying supply. The Carlsbad project,
8 along with the aggressive conservation, water recycling
9 and other local supply development is a key component to
10 protect our region, San Diego, against drought conditions
11 and disruptions in the region's imported water.

12 But our job is not done, specifically between now
13 and 2020, the San Diego region anticipates doubling its
14 conservation efforts, tripling the region's use of
15 groundwater and more than doubling the region's water
16 recycling. In addition, and as verified by the urban
17 water management plans that we supplied this Commission,
18 the San Diego portfolio counts on 56,000 acre feet
19 annually of desalted seawater from the Carlsbad project by
20 2011 to replace on a one-for-one basis imported water
21 supply for the 9 water agencies contracting for this
22 supply.

23 As such, we're here today again to support this
24 project and support the approach for greenhouse gas
25 emissions as was adopted by the Coastal Commission on

1 August 6th, whereby indirect carbon emissions associated
2 with the importation of water offset by the project are
3 netted out.

4 However, we do have concerns with your condition
5 D. And the concern is we don't really understand how it
6 might impair or impact access to critical imported water
7 supplies for the future.

8 As has been stated both the greenhouse gas issue
9 and the marine life impacts have been addressed by
10 mitigation plans approved by the Coastal Commission and
11 the San Diego Water Quality Control Board.

12 Again, we encourage your timely approval of this
13 lease amendment so that this important new water supply
14 can move forward. Thank you for your time and attention
15 for this most critical project.

16 CHAIRPERSON CHIANG: Thank you, Gary.

17 Next.

18 MR. MINAN: Good morning. My name is Jack Minan.
19 I'm here to speak as a member of the public. I hope I
20 bring considerable experience to this discussion this
21 morning. I chaired the San Diego Regional Water Quality
22 Control Board for 6 consecutive years and served on it for
23 8. I currently serve on the American Bar Association's
24 State and Local Government Council and have chaired their
25 Environmental Law Committee for a number of years. I've

1 also taught land-use planning, property and environmental
2 law at the University of San Diego for a number of years.

3 The Carlsbad desalination project has gone
4 through a 5-year intensive regulatory process. I think
5 there are strong environmental protections in the proposal
6 that Poseidon advances today. But I want to speak to 2
7 specific issues on the lease amendment.

8 The first is the provision that Poseidon shall
9 receive no mitigation credits for their dredging
10 activities. The real danger with that provision being
11 included in the lease is the fact of interagency
12 inconsistency. That is not what the California Coastal
13 Commission has required. And I think you need to really
14 intend to make sure that there is not an interagency
15 inconsistency.

16 The second point that I want to make also has to
17 do with the lease provision, with regards to the executive
18 officer having the permit submitted to him for his review
19 and approval with regards to the performance standards.
20 As I understand the argument that staff has advanced, this
21 is based on the lack of specificity that currently exists.

22 I would encourage you to reject that line of
23 reasoning. I've examined in considerable detail exhibit 2
24 of the marine life mitigation plan. And I think that the
25 plan certainly contains a great deal of specificity with

1 regards to the long-term physical standards, biological
2 performance standards, habitat area provisions and so
3 forth.

4 Moreover, and I think this is really the
5 compelling point with regards to the testimony I could
6 share with you today, is that the marine life mitigation
7 plan was based on the Southern California Edison SONGS'
8 proposal. So there is the specificity that was requested
9 by the California Coastal Commission.

10 In the end, I don't think that the lease is the
11 appropriate place to be second guessing other agency
12 decisions. And therefore, I would encourage you to adopt
13 Poseidon's provision that you delete clauses 11(B) and (C)
14 of the proposed lease.

15 And with that, I'll conclude my testimony, unless
16 there are some questions.

17 CHAIRPERSON CHIANG: Thank you very much.

18 Ted.

19 MR. OWEN: Good morning, Mr. Chairman and
20 Commissioners. My name is Ted Owen. I'm the president
21 and CEO of the Carlsbad Chamber of Commerce. And I am
22 here on behalf of our 1,700 business members and their
23 75,000 and reducing number of employees, I guess.

24 I'm here supporting this project obviously.
25 California is in the midst of a crippling drought. And

1 San Diego's imported water supplies have been hit hard, as
2 you've already heard from Eric. The future of San Diego's
3 imported water is not bright. But because we want to
4 protect our economy and public health, the many people
5 coming before you today and thousands more across the
6 county of San Diego support this project and have been
7 following its progress, as you've heard by most, for 10
8 years.

9 Ten years is a long time to wait for a project
10 everyone agrees we need. Ten years is a long time to wait
11 for a project that scientific studies have proven can be
12 built and operated without negative impacts to the
13 environment.

14 This project has numerous and unanimous
15 bipartisan support from San Diego's state and
16 congressional delegations as well as broad-based support
17 from groups ranging from organized labor to chambers of
18 commerce.

19 Poseidon, in working with your staff and a myriad
20 of State agencies, has developed tough mitigation plans
21 that are reflected in the lease agreement before you
22 today. This project has gone through enormous scrutiny,
23 and everyone on the Commission can rest assured that the
24 Coastal Commission and regional board have approved
25 comprehensive and enforceable permits.

1 There is no justifiable reason to pile on what
2 are conflicting requirements now. Toward this end, we
3 urge your leadership in approving a lease agreement that
4 does not add unnecessary burden and erase 10 years of
5 collaboration and hard work.

6 Thank you very much for listening to my comments.

7 CHAIRPERSON CHIANG: Very good.

8 Thank you.

9 I'm sorry.

10 Did we have a third person?

11 Okay, Robert Simmons, Kim Thorner, Susan Varty.

12 And then I also have John Minan. Is that the
13 same as the Jack Minan who testified.

14 MR. MINAN: It is.

15 CHAIRPERSON CHIANG: Okay. Thank you.

16 MS. THORNER: Good morning and thank you for the
17 opportunity to address you this morning. My name is
18 Kimberly Thorner. I'm the general manager of Olivenhain
19 Municipal Water District.

20 In an effort to be sensitive to your time here
21 today, I'm speaking on behalf of 9 San Diego county retail
22 water agencies that have signed 30 year agreements with
23 Carlsbad -- with Poseidon on the Carlsbad desal project.
24 Collectively we call ourselves the San Diego Desal
25 Partners.

1 Our message for you today is that time is not on
2 our side. Since the last time you had a hearing on this
3 matter, the Governor has declared a statewide drought. As
4 you heard from Mr. Larson, our agriculture is suffering in
5 San Diego county from 30 percent cut on its imported water
6 supply, and many jobs have also been lost.

7 The longer that it takes to bring this Carlsbad
8 desal project on line, the more perilous our water
9 situation becomes. We're asking you to act swiftly today
10 and approve a lease agreement that does not unfairly
11 burden the project.

12 To this end, it's important to remember that
13 Poseidon's greenhouse gas plan, which was approved earlier
14 this month by the Coastal Commission, is voluntary. This
15 project is not regulated under AB 32.

16 The Coastal Commission also determines that water
17 from this desal plant will replace on a 1-for-1 basis,
18 water that we import from the State Water Project. This
19 is a determination that's shared by CARB, CEC,
20 metropolitan, and all of the 9 desal agency partners that
21 have contracted for this water. We also hope this is a
22 determination shared by the members of this Commission.

23 We're also very disappointed that the Commission
24 staff appears to be ignoring the determination made by the
25 Coastal Commission that the greenhouse gas plan and the

1 mitigation plans -- the marine life mitigation plans are
2 fully protective of the environment. We don't believe
3 that this Commission wants to see this project falter
4 under the excessive lease requirements or burdens that
5 would be placed on this.

6 As the customers who will be receiving this water
7 supply, if the Commission's lease agreement results in
8 delays to the plant start-up or needlessly increases the
9 project's costs, those ramifications are going to be felt
10 by our ratepayers.

11 Such costs will also undermine metropolitan's
12 financial incentive to reduce our imported water supply.
13 I can't emphasize enough the urgency of this project for
14 San Diego county.

15 I respectfully ask that you act today and approve
16 Poseidon's proposed amendments to the Commission's lease
17 agreement.

18 Thank you for the opportunity to be heard.

19 CHAIRPERSON CHIANG: Thank you.

20 MS. VARTY: Good morning. My name is Sue Varty.
21 I'm president of the Olivenhain Municipal Water District.
22 I'm here today on behalf of VOCAL, Voice of Consumers At
23 the Local Level. VOCAL is an organization of retail
24 agencies -- retail water agencies from San Diego county.
25 VOCAL was organized to give water ratepayers a voice in

1 Sacramento. Unlike the Department of Water Resources, the
2 Metropolitan Water District or the San Diego County Water
3 Authority, we are retail water agencies.

4 As such, we're the ones who interact with
5 ratepayers every day. And we're the ones who are directly
6 held accountable for the delivery of reliable and
7 affordable water.

8 Like you, we are elected and appointed public
9 officials, and we know what it means to be directly
10 accountable to voters and ratepayers. San Diego must
11 become water self-sufficient. We can no longer depend on
12 water from environmentally damaged areas, like the
13 Bay-Delta and the Colorado River.

14 The Bay-Delta Conservation plan, if implemented,
15 will not provide additional water to southern California
16 for another 5 to 7 years at least. We cannot wait for
17 this to happen and must focus our attention on
18 desalination, recycled water and conservation.

19 We are here today to ask the Commission to
20 approve Poseidon's proposed lease agreement for its
21 Carlsbad desalination project. It was 9 months ago that
22 this Commission directed Poseidon to work with the State's
23 permitting agencies to finalize its greenhouse gas and
24 wetlands mitigation plans. These plans have been
25 completed. They are comprehensive and have an enormous

1 amount of specificity to ensure performance.

2 As a result, the mitigation plans were approved
3 by the California Coastal Commission 2 weeks ago. The
4 lease requirements placed on this project must be
5 justifiable.

6 While we appreciate staff's due diligence, the
7 proposed lease they are asking you to approve undermines 9
8 months of interagency collaboration that ultimately led
9 the Coastal Commission to approve the project and its
10 greenhouse gas and wetlands mitigation plans.

11 Specifically, staff's proposed lease requires
12 Poseidon to offset its gross indirect greenhouse gas
13 emissions, despite the fact that the Coastal Commission,
14 California Energy Commission and California Air Resources
15 Board have all determined this level of mitigation is
16 neither legally required nor sound public policy.

17 In this regard, I want to commend Commissioners
18 Garamendi and Sheehan for writing letters to the Coastal
19 Commission concurring with CEC and CARB on the issues of
20 gross versus net offsets.

21 CHAIRPERSON CHIANG: Ms. Varty, your time has
22 elapsed. Please take a sentence or two to conclude
23 please.

24 MS. VARTY: Yes.

25 In closing, the staff proposed lease before you

1 today significantly deviates from the lease your staff
2 prepared, signed and recommended that you approve last
3 October. We appreciate the Commission's action today, and
4 your support for the fair and justifiable lease agreement
5 proposed by Poseidon.

6 Thank you.

7 CHAIRPERSON CHIANG: Thank you for your
8 participation.

9 It is 11 a.m. on the dot. We'll take a recess
10 for 10 minutes and reconvene at 11:10.

11 (Thereupon a recess was taken.)

12 CHAIRPERSON CHIANG: We'll reconvene.

13 The first 3, start off with Joe Geever, Bruce --
14 Bruce you already spoke. Bob Smith.

15 So Joe Geever, Bob Smith, Brett Wertz.

16 MR. GEEVER: Mr. Chair, I was going to give the
17 presentation on the marine life mitigation plan for the
18 environmental group.

19 CHAIRPERSON CHIANG: I'm sorry?

20 MR. GEEVER: I was going to give the organized
21 presentation for the marine life mitigation plan.

22 CHAIRPERSON CHIANG: Okay, very good.

23 MR. SMITH: Good morning. My name is Bob Smith,
24 and I'm a member of the Residents For Responsible
25 Desalination. And I'm here basically to suggest you

1 adopt, please, the staff report. I encourage the staff to
2 look further into the ways in which the recommendations
3 and the conditions and the uncertainties can be dealt with
4 explicitly to the benefit of the state residents.

5 I thank you.

6 CHAIRPERSON CHIANG: Thank you.

7 Following Brett, we have Rachel Davis, Nancy
8 Donovan and Charlotte Stevenson.

9 MR. WERTS: Good morning, Mr. Chairman and
10 Commissioners. I'm going to keep my comments brief. My
11 name is Brett Wertz. I'm a graduate researcher working on
12 water issues in California.

13 This proposed plant plays into an issue that
14 throws off discussions we need to have about California's
15 water supply and development. Approving this desalination
16 plant will open the door for more similar developments
17 along the California coast that will be built in contempt
18 of global climate issues and water supply issues in
19 California.

20 Desalination plants do not answer questions about
21 water or creating a sustainable water supply in
22 California. They only avoid them. Further more, this
23 plant will drastically increase greenhouse gas emissions
24 when mitigation should be a top priority for policy makers
25 and in all policy discussions.

1 I agree with the staff report that no less water
2 will be taken from the State Water Project, thus this
3 plant should have to mitigate fully for greenhouse gas
4 emissions.

5 This facility will add 100,000 tons of greenhouse
6 gases to the atmosphere at a time when we are at a crucial
7 tipping point. We need to think about that.

8 The plan offered by Poseidon will mitigate for
9 only one-third of greenhouse gas emissions and is based on
10 flawed calculations.

11 Further more, there are problems with the
12 technology used in the plant. Once-through cooling is a
13 process that several State agencies have already phased
14 out and is demonstrated to have devastating effects on
15 marine ecosystems. Poseidon's marine life mitigation plan
16 only barely addresses the impacts that this facility will
17 have on marine life. And their plans also lack concrete
18 language to have action on any mitigation measures.

19 Again, this facility avoids the real questions
20 about creating a sustainable water supply in California.
21 It does not have a proper greenhouse gas mitigation plan
22 and does not sufficiently address its impact on marine
23 ecosystems.

24 For these reasons, I recommend your opposition.
25 This is a chance to get things right.

1 So thank you.

2 CHAIRPERSON CHIANG: Thank you, Brett.

3 Next.

4 MS. DONOVEN: Good morning, Commissioners and
5 Commission staff and others present. My name is Nancy
6 Donovan. I'm a board member of Residents For Responsible
7 Desalination, and I'm from Huntington Beach.

8 It seems to me that trying to compare the State
9 Water Project and the Poseidon Resources Corporation
10 project just won't work. There is no connection between
11 them. Poseidon is a stand-alone company desirous of
12 making a profit with a local project in Carlsbad. For
13 greenhouse gas emissions, they need to be judged on that
14 project alone.

15 The State Water Project is a public entity and as
16 such will be subject to AB 32 at some point. It does not
17 seem sensible to try to turn ourselves inside out trying
18 to get Poseidon some leeway on their greenhouse
19 gas emissions.

20 Our responsibility as citizens and yours as a
21 Commission is to tell Poseidon what they have to do to
22 justify their project and to make it carbon neutral as
23 they have stated their aim to be. Are we really trying to
24 combat an actual real threat or are we just playing games?

25 If so, let me let you in on a dirty little

1 secret, time for games is up. Carbon neutral is carbon
2 neutral, period.

3 Thank you.

4 CHAIRPERSON CHIANG: Thank you.

5 MS. DAVIS: Good morning, Commissioners and
6 Commission staff. My name is Rachel Davis and I'm with
7 The Desal Response Group.

8 I would like to first agree with the Commission
9 staff that this project will not result in any less water
10 being withdrawn from the State Water Project for the
11 reasons that they have explicitly listed.

12 I would like to point out something that's been a
13 little bit troubling this morning. We've heard on one
14 hand the metropolitan water district representatives say
15 that in fact this will not, you know, result in anymore --
16 that they will stop providing water to that area.

17 On the other hand, you heard Mayor Lewis say that
18 Mr. MacLaggan is very passionate about desalination. And
19 one of the reasons he is so passionate is because it
20 enables growth. To me those 2 things don't match up. And
21 that's an issue that I'm very concerned about.

22 Additionally, Poseidon should not receive any
23 mitigation credit for dredging up the Agua Hedionda Lagoon
24 because this is part of business as usual for the
25 operation of the plant as outlined in the impingement and

1 entrainment report supplied by Poseidon.

2 Calling this mitigation plan voluntary, as the
3 applicant has done many times, sets a dangerous precedent
4 for future projects. I don't believe that this project is
5 voluntary in the eyes of this -- it is my understanding
6 that, you know, you have regulated this as such. So I
7 encourage you to remove any language that lists this as
8 voluntary.

9 I'd like to say that this project is also in
10 conflict with the Ocean Action Plan signed by our Governor
11 and the other Pacific coast governors.

12 I think that I'm in a unique position as far as
13 my involvement with this project, because I am indeed not
14 as experienced as those of you sitting before me and that
15 is in part due to my age. However, I am in a unique
16 position because my generation is the generation that will
17 be faced with the potential aftermath of this project and
18 projects like it. And on that basis, I would urge you to
19 listen to your staff's recommendations.

20 Thank you very much.

21 CHAIRPERSON CHIANG: Thank you very much, Rachel.

22 We have Charlotte next, followed by Larry Porter,
23 Eileen Murphy, Conner Everts.

24 MS. STEVENSON: My comments are specifically on
25 the marine life mitigation plan. I don't know if you'd

1 like me to go now or wait until we get to that.

2 CHAIRPERSON CHIANG: You're on. Go ahead.

3 MS. STEVENSON: Okay. Hello, Commissioners. My
4 name is Charlotte Stevenson. I'm a staff scientist with
5 the Heal the Bay.

6 Heal the Bay is a nonprofit organization
7 representing over 12,000 members and 25,000 volunteers in
8 southern California.

9 Heal the Bay has serious concerns with the
10 overall precedent of using mitigation to make up for less
11 than adequate siting, design and technology. However, we
12 do have some specific comments on the marine life
13 mitigation plan.

14 Firstly, the Commission should require Poseidon
15 to have a fully documented detailed mitigation plan,
16 including a location with all the necessary permits before
17 construction begins.

18 Secondly, the best available restoration scaling
19 methodology needs to be used, which would yield closer to
20 138 acres.

21 Thirdly, Poseidon should not receive restoration
22 credit for dredging the lagoon, which is an essential part
23 of their operation.

24 When you take a step back from this project, it
25 is very hard to take the section of Porter-Cologne, which

1 calls for the best available siting, design and technology
2 and reconcile that section with what we have here today.

3 This facility is going to remove 300 million
4 gallons per day of seawater from one of the few remaining
5 coastal estuaries left in southern California.

6 It is going to continue the use of the
7 technology, which has been deemed extremely harmful to
8 marine life by multiple agencies in this State and which
9 is beginning to be phased out up and down the coast. And
10 it is going to demand substantial amounts of energy.

11 Is this the precedent we want to set for our
12 State? When I think of best siting, I certainly do not
13 think of rare coastal estuary. When I think of best
14 design and technology, I think of open ocean intake with
15 some filtration technology to prevent the impingement and
16 entrainment of 35 million organisms a year.

17 Any scientist looking at the feasibility studies
18 for these alternative intakes can see that cost won out
19 over science. But speaking of cost makes me think of the
20 City of Los Angeles, which is committed to water
21 conservation, reclamation and dealing with stormwater and
22 urban runoff before turning to desal, in order to maximize
23 environmental benefit and minimize the cost of water for
24 its citizens.

25 I know you have to make a decision on this

1 mitigation plan and there are ways to make it better. But
2 Heal the Bay asks you to be the environmental leaders that
3 you've been in the past and take a step back and see that
4 this project does not meet the requirements of the law to
5 minimize the intake of marine life. That there are more
6 responsible ways to do desal and that this precedent will
7 set California backwards as an environmental leader.

8 Thank you.

9 CHAIRPERSON CHIANG: Thank you.

10 MR. PORTER: Hello. My name is Larry Porter, and
11 I've been involved with Poseidon -- I can't say the words
12 that are in my heart how I'd want to describe these
13 people. Since 2002 in Huntington Beach, when almost
14 everything they've said is smoke and mirrors and it's like
15 a shell game. I'm surprised they haven't given you guys a
16 bunch of walnuts with a pea underneath and they can play
17 games with you to really complete the picture.

18 And this picture here is exactly what is
19 happening. Their proposal by this private corporation, I
20 believe it was a child of the Warburg Pincus Investment
21 Bank is the hummer and the bummer of desal. You couldn't
22 have a more destructive, expensive way to have an extra
23 source of water.

24 How many people have come up here, the
25 metropolitan water district man, the people from Poseidon,

1 and they talk about replacement. I asked Mr. Thayer this
2 morning, I talked to the metropolitan water district man
3 outside, show me the letter. Please just show me the
4 letter and let's bury this hatchet that if Poseidon
5 produces X amount of water, that X amount of water will
6 then be foregone to be pumped over into the coastal
7 plains.

8 That letter and that intention does not exist.
9 So therefore, their nice little drafts of showing the net
10 is looney tunes. It's bogus. It's fraudulent. It's been
11 10 years you guys and still at the 11th hour and still
12 today there are strike-throughs that are on your desk to
13 try and get this project to fly. The mitigation. "Oh,
14 sometime in the future. We'll deal with it. We're not
15 really sure. We'll decide later." It's nuts.

16 There's a better way to supply an incremental
17 amount of water. And definitely it's not dealing with the
18 Poseidon Resources Corporation.

19 Have they been up-front with you once or has it
20 all been mostly just smoke and mirrors and stuff at the
21 11th hour and strike-throughs and lawyers telling you this
22 and telling you that?

23 Please, don't approve this lease and send
24 California down this road, for the benefit of all of the
25 people of California, not just the chosen few in the San

1 Diego area.

2 Thank you.

3 CHAIRPERSON CHIANG: Thank you, Larry.

4 Following Eileen, we're going to have Conner
5 Everts, Jonas Minton and Merle Moshiri.

6 MS. MURPHY: Good morning, Chairman Chiang and
7 Commissioners. My name is Eileen Murphy and I live in
8 Huntington Beach. I'm speaking this morning in opposition
9 to the Poseidon thing. I'll be brief and only mention 3
10 things.

11 First, after-the-fact restorative measures are
12 illegal under the Porter-Cologne. The question should be
13 answered today.

14 Second, if you okay after-the-fact restorative
15 measures, you should demand the use of the best available
16 restorative scaling methodology. This method estimates
17 138 acres of restoration to replace the loss of marine
18 life, not 37 acres with 18 acres at a later date.

19 Third, that Poseidon should be required to
20 guaranty through some sort of construction performance
21 bond that funds are secured and available for the expense
22 of purchasing lands, constructing the restoration project,
23 and thoroughly monitoring the success or failure with this
24 project.

25 Please deny this project.

1 Thank you for allowing me to speak.

2 CHAIRPERSON CHIANG: Thank you very much.

3 MR. EVERTS: Yes. My name is Conner Everts and I
4 represent the State Desal Response Group and the Southern
5 California Watershed Alliance.

6 I want to thank you very much for this
7 opportunity. I think State Lands Commission and staff
8 have the opportunity to get it right. I appreciate that
9 we can come back after attending your meeting last
10 October. And I don't think we're there yet. I want to
11 make a few points.

12 I do want to say that I wasn't an ocean water
13 person. I worked on fresh water and water conservation
14 for 30 years. I was kind of sucked in by the intakes of
15 the powerplants around this issue. But I have been
16 elected to a water district in southern California
17 representing the Ojai area and a groundwater agency as
18 well. And I'm chair of POWER, Public Officials for Water
19 Environmental Reform, who have discussed these issues
20 openly. And I sat on the taskforce working on desal
21 review grants.

22 So it's not lightly that I look at these
23 proposals and say that there's been a lot of confusion
24 between the agencies. And we unfortunately have agencies
25 such as the metropolitan water district with a rebate of

1 250 and acre foot while conservation only gets 194 an acre
2 foot.

3 Promoting desalination without knowing what the
4 marine impacts are. You have a coastal agency, which
5 really is supposed to deal with marine impacts, promoting
6 water supply. Now, we have the State Lands Commission,
7 which is in charge of public trust. Now, the public trust
8 doctrine as it was applied to Mono Lake decision took 20
9 years of litigation to approve that water was offset and
10 returned from Mono Lake and the streams that fed it to Los
11 Angeles. And that was done with serious conservation
12 through community groups, which we are then restoring
13 again. The 20-year plan that has been mentioned in Los
14 Angeles includes no desal, and they're proud of it, after
15 turning down a grant and having an opportunity to do it.

16 However, in San Diego, the city still dumps
17 primary sewage offshore and we're not doing reclaimed
18 water to the point that we can. There is some being done
19 in north county, but the conservation level isn't at the
20 point it should be. And I can say that having been chair
21 of the California Urban Water Conservation Council. We
22 have a long ways to go.

23 And when we talk about climate change, it's time
24 for you and the other agencies to step up. Our baseline
25 goes back into water supply and not to proposed forward

1 future potential for water. I have never quite heard
2 anything like an offset of 56,000. And I've been told
3 different things by board members that met and by staff.
4 But in the water world no one gives up water. Blood would
5 be let on the floors before anyone gave up 56,000 acre
6 feet, even less than that.

7 So let us be real, the biggest use of energy in
8 the State is pumping water over the Tehachapis. That will
9 still happen. We have to take this opportunity to say the
10 world has changed in terms of water supply and you have
11 the opportunity to do it.

12 Thank you very much.

13 CHAIRPERSON CHIANG: Thank you, Conner.

14 Next speaker, please.

15 MR. MINTON: Good morning. I'm Jonas Minton, a
16 30 year water professional, including service as Deputy
17 Director of the California Department of Water Resources.
18 I chaired the State Desalination Taskforce.

19 I'm providing for your record 3 documents
20 demonstrating that this offset is not going to occur. The
21 first is from DWR's most recent EIR. Their EIR. And they
22 say and I'm quoting, "Typically, the Department pumps all
23 the water it can at the Banks Pumping Plant as limited by
24 supply availability and regulatory and system
25 constraints." They pump as much as they can.

1 The second document is from DWR's Bulletin 13205.
2 And they report that already, already 9 years out of 10,
3 they cannot pump all the water that they are contractually
4 obligated to provide. That's their report. Nine years
5 out of 10. Let's remember that just for a moment.

6 And then the third document is what happens if
7 metropolitan does not take the water. And it is a
8 provision from the State Water Project contracts, this is
9 the same in all the contracts. It says that the
10 Department of Water Resources is legally required to
11 provide the water if it is available to its contractors.

12 So if metropolitan does not take that water, San
13 Bernardino has the right to take that water, Castaic Lake
14 has a right to take that water, Mojave Water Agency has
15 the right to take that water. Those areas will take the
16 water.

17 Your staff have tried to deal with this net
18 versus gross issue by saying that -- they're suggesting
19 that if metropolitan is not taking all the water to which
20 it is entitled, then you could get an offset.

21 Let's go back and remember, the Department of
22 Water Resources already says 9 years out of 10 they cannot
23 provide all the water that's under contract, 9 years out
24 of 10. So 9 years out of 10, they'd get a pass. It would
25 not be a real reduction in greenhouse gas. It would be

1 sort of Arthur Andersen accounting.

2 We are concerned about this project for its own
3 impacts, but we are also concerned about it as a
4 nationwide precedent. You heard Poseidon cite the Edison
5 project. Well, others will cite this project when they
6 get to implementing AB 32, cap and trade mechanisms. This
7 is important for our country.

8 Let me touch on one last point, which is the cost
9 of doing the right thing. Let's just assume that you all
10 require Poseidon to mitigate fully, in our view fully.
11 How much would that be?

12 Anybody ask?

13 Let assume it's about 65,000 tons a year. Let's
14 assume that it's \$15 a ton for mitigation. That's a
15 million dollars a year. Spread the million dollars over
16 the 50,000 acre feet in the project, how much is that?
17 It's 20 bucks an acre foot. Now that's not insignificant.
18 That's enough for about 3 families for a year, \$20, 3
19 families for a year.

20 CHAIRPERSON CHIANG: Please conclude.

21 MR. MINTON: Thank you.

22 It's about 2 percent of the cost of the water.
23 This day 2 percent solution to do the right thing.

24 Thank you very much.

25 CHAIRPERSON CHIANG: Thank you.

1 MS. MOSHIRI: Good morning, Commissioners and
2 staff. My name is Merle Moshiri. I'm president of
3 Residents For Responsible Desalination, Huntington Beach,
4 California.

5 Poseidon has used every conceivable and
6 imaginable means to reduce the energy demand and carbon
7 emission of the project, as well as increasing the avoided
8 emissions. As a result of these contrivances, the net
9 emissions has been reduced substantially. The report
10 states that once the facility has reached fully
11 operational conditions, and their quote is, "We will
12 determine the net emissions associated with the project."

13 What has not been addressed is how long will it
14 take from startup to fully operational conditions. Given
15 Poseidon's past record in Tampa Bay, years overdue, \$28
16 million in cost overruns and finally having to sell that
17 project back to the original water district in Tampa Bay,
18 the startup mode may take many, many years than planned
19 and full operational conditions may never be achieved.

20 Keep in mind, by their own admission, they do not
21 have a plan anywhere near the capacity that is planned for
22 Carlsbad. The Tampa Bay facility is 25 million -- 25 MGD,
23 half of what it would be for Carlsbad and has only been
24 commercially operational since January of 2008.

25 I have a couple of questions. How will the

1 emission offsets be accounted for during startup and until
2 the ill-defined fully operational conditions have been
3 achieved?

4 Two, if the facility does not reach the design
5 capacity, as was the case in Tampa Bay, the emissions per
6 acre foot of water would be far greater and avoided
7 emissions would be accordingly less. Under these
8 scenarios, where is the source of money to provide for the
9 offsets? Will funds be put aside to guarantee these
10 conditions?

11 The project report looks to the most optimum,
12 optimistic, highest functioning set of conditions to
13 forecast its predictions and assumptions. If the
14 optimistic conditions are not achieved, what are
15 Poseidon's responsibilities? How will these
16 responsibilities be guaranteed?

17 We hope that the Commission will find its way
18 clear to fulfilling its obligation to preserve and protect
19 land and environment for the people of the State of
20 California.

21 Lastly, let me say, I am so glad that this rests
22 in the hands of elected officials, not political
23 appointees. And we look to you for your independence and
24 it is applauded.

25 Thank you.

1 CHAIRPERSON CHIANG: Thank you.

2 Livia Borak followed by Joy Shih and Renée Maas.

3 MS. BORAK: I'm sorry. I'm actually speaking in
4 the presentation for the marine life.

5 Thank you.

6 CHAIRPERSON CHIANG: Okay, very good, Livia.

7 MS. SHIH: Good morning, Commissioners. My name
8 Joy Shih. And I'm a graduate student in Marine
9 Biodiversity and Conservation. And I also have a
10 background in physics. And I come to speak today as a
11 member of the public.

12 I urge you to make further considerations before
13 you approve the Carlsbad desalination plant. The reasons
14 for this are many and fall across the entire spectrum.
15 First and foremost, I believe that many improvements can
16 be made to the project that will benefit everyone. There
17 are technologies that are already available. And the ones
18 that are being developed, will be far less detrimental to
19 the environment. That open emission intake is an example.
20 It is one example. It's something that Encina has already
21 bowed to phase out. The desalination plant is going to be
22 taking in almost 3 times, over twice that, of the
23 powerplant and will cause more marine mortality than that.

24 Also, you know this, but climate change is a real
25 problem that we have. And the mitigation plan that is

1 designed right now is flawed and is based on inaccurate
2 calculations. As a marine scientist, I study coral, and
3 ocean acidic adhesion is a real problem as a result of
4 carbon in the atmosphere. And it's killing the coral.
5 You can actually visually see the coral bleached. It is a
6 very real problem that is happening today, and it's only
7 going to continue to get worse. So I urge you not to
8 approve this plan based on flawed calculations.

9 Further more, in adjusting the marine life
10 impacts, the Scripps Pier only takes in 1 million gallons
11 of water a day. This will take in 300 million gallons and
12 it will include hundreds of millions of larvae. Along the
13 pier we have a trough that catches the larvae and allows
14 it to grow. And this thing is just teeming with life,
15 abalone and starfish. You can actually visually see the
16 life that would be impacted by this 300 times every single
17 day.

18 So also the marine mitigation plan for this is
19 flawed. It's inconsistent with what the intake will do.
20 And when I listen to people who are in favor of the
21 plan -- and let me say now, I'm not against desalination.
22 I'm only against how it is today and I urge you to find
23 ways to improve the design before you approve it, to
24 approve a truly environmentally friendly plant.

25 But when I listen to people speak in favor of the

1 plant, they're talking about how to cut corners, how to
2 mitigate as little as they can, how to get less acreage,
3 how to not be responsible for water that's being
4 transported from northern California or Colorado, which
5 is, as people have pointed out, will be going to LA or
6 other southern counties. Instead of cutting corners, I
7 think we should make a plan that everybody can be proud
8 of.

9 Thank you for allowing me to speak today.

10 CHAIRPERSON CHIANG: Thank you.

11 MS. MAAS: Good morning, Commissioners. My name
12 is Renée Maas and I'm from Food and Water Watch. Food and
13 Water Watch is a consumer advocacy group that represents
14 thousands of people across the nation. We strongly oppose
15 this particular project for the environmental reasons
16 already mentioned before you today, including the
17 green -- the impact of the greenhouse gas emissions on the
18 atmosphere, as well as the intake of 300 million gallons
19 of water per day on sea life and on the marine
20 environment. Additionally, we see this as the corporate
21 control of our natural resources.

22 However, if this project moves forward, there
23 must be in place an environmental mitigation plan that
24 mitigates 100 percent of the environmental impacts of this
25 project. The only way to ensure 100 percent environmental

1 mitigation is for the State Lands Commission to require a
2 comprehensive mitigation plan before the lease is even
3 approved.

4 This is because Poseidon cannot be trusted to
5 mitigate the environmental impacts of this project on
6 their own, as shown earlier today when the Commission's
7 own staff revealed Poseidon failed to give them the
8 appropriate requested material to accurately calculate the
9 greenhouse gas emissions from this project. Poseidon
10 lacks transparency and cooperation.

11 Is this a preview of what is to come for the
12 future when the Coastal Commission and the State Lands
13 Commission ask for data on the impact of this project on
14 the environment?

15 If it is, the public and the environment are in
16 real trouble. If this lease is approved today without a
17 more comprehensive environmental mitigation plan, like the
18 plan set forth by the staff, we are fearful that Poseidon
19 will be even less transparent and cooperative once the
20 project is approved, which will result in even more damage
21 to our environment and to the public.

22 The decision here today sets a precedent for the
23 future of other desalination plants. The State Lands
24 Commission has the opportunity to get it right and protect
25 the future of the public resources by ensuring that there

1 is a strong mitigation plan as set forth by the Commission
2 staff.

3 CHAIRPERSON CHIANG: Thank you very much.

4 That concludes all public comment.

5 I had some questions for the applicant.

6 Rick, can you -- I have questions about the
7 escrow. Why an escrow? Have you thought about pursuing
8 carbon credits on the options or futures market, like so
9 you don't have to worry about it?

10 MR. ZBUR: We actually understand -- we've been
11 thinking a little bit more about the concern that the
12 staff raised about the offset. But just so you understand
13 the way that it works at the Coastal Commission, the
14 Commission needs to make the determination that there's
15 market disruption and we can't find, you know, the
16 standard that you see in the language.

17 Once that happens, we then -- we had to pay based
18 on something, so we basically are required to pay into an
19 escrow account at \$10 per ton and it's adjusted over time.
20 And then come in with a plan determining how that would be
21 spent.

22 One of the problems we had, I think, with the
23 staff's suggestion was that it just eliminates that from
24 the plan, which we don't have the ability to do now. But
25 I think one of the things we would be prepared to do is,

1 at the end of the period, if there was a -- if the \$10 per
2 ton resulted in a deficiency over the calculation during
3 the period that that was in effect, it wouldn't be able
4 to --

5 CHAIRPERSON CHIANG: Isn't that a little low
6 here?

7 MR. ZBUR: Say you'd have a period where we're
8 paying to the escrow account, where obviously there's
9 carbon impacts that are occurring because of our energy
10 purchases. During that period of time, we're paying into
11 the escrow account. When that -- and we have to come out
12 with a plan that says how we're going to pay that -- how
13 we're going to use the \$10 per ton to buy carbon offsets.
14 What we're basically saying is if there's a deficiency
15 between, you know -- say when we come out of that the
16 prices is \$20 per ton, so we've only bought half of what
17 we needed during that period of time, we would be prepared
18 to make up the deficiency within a 3-year period of time.

19 And I think we have some language -- actually, I
20 do have some language that we had actually worked out last
21 night trying to -- sort of understanding that this might
22 be a concern, which we're happy to share with the
23 Commission.

24 CHAIRPERSON CHIANG: I appreciate that.

25 MR. ZBUR: So that would -- I think what that

1 would do is it would require us to be making payments into
2 the escrow account during the market disruption, so we
3 know that money is being set aside. When we come out of
4 the market disruption, we have to use that to buy offsets.
5 If that's not enough money to buy, you know, offsets for
6 all the carbon that occurred, we would make up the
7 deficiency within 3 years.

8 CHAIRPERSON CHIANG: Like I said, I appreciate
9 that, but I was trying to give everybody a better option,
10 you know, consideration of options and futures, right. I
11 mean, the airlines they did better when they hedged
12 against future increases in fuel prices.

13 MR. ZBUR: You're sort of beyond my pay grade on
14 that. I'm not a financial guy, but I don't know if
15 someone here from Poseidon can answer that.

16 The thing that we like about this is that it is
17 actually consistent with the provisions that are in the
18 existing plan that we have put in there. I mean we do
19 have to put money in an escrow account under the Coastal
20 Commission. So this would, I think, address the staff's
21 concern, which is what if the \$10 per ton was not enough
22 to offset all the emissions that occurred? But it's
23 consistent with the plan requirements.

24 CHAIRPERSON CHIANG: Does staff have a response?

25 EXECUTIVE OFFICER THAYER: Our attorneys are

1 looking at it, but the initial response is it appears to
2 address the concerns.

3 CHAIRPERSON CHIANG: Very good.

4 ACTING COMMISSIONER SHEEHAN: This one?

5 EXECUTIVE OFFICER THAYER: Yes.

6 CHAIRPERSON CHIANG: Charlie, did you have a
7 comment.

8 MR. STRINGER: I did, sir. Thank you.

9 Charlie Stringer, consultant for Poseidon on
10 their greenhouse gas plan.

11 Your suggestion is actually a very good one and
12 one that we've considered. But we also, you know, want to
13 make it really clear to the Commission that Poseidon needs
14 maximum flexibility to achieve the mandates of the plan,
15 and so that may indeed be an approach that they decide to
16 take. But depending on what the markets look like, at the
17 time they make the purchases, they may opt for another
18 alternative. So flexibility is key here.

19 CHAIRPERSON CHIANG: Well, flexibility is there.
20 I'm just -- like if you hedged against it for 2010, I
21 mean, the cost should be pretty low right now.

22 MR. STRINGER: It depends. The market is in a
23 state of flux.

24 CHAIRPERSON CHIANG: I understand. We checked
25 for you. You know, I'm a finance guy.

1 (Laughter.)

2 MR. STRINGER: Where did you check?

3 CHAIRPERSON CHIANG: Okay.

4 Questions or comments?

5 Then let's go to the second half of the
6 presentation by the opposition on the wetlands
7 restoration.

8 EXECUTIVE OFFICER THAYER: Mr. Chair, I'm sorry.
9 I was looking at the language here. Are we moving now on
10 to the greenhouse gas wetlands?

11 CHAIRPERSON CHIANG: Wetlands restoration.

12 EXECUTIVE OFFICER THAYER: I think staff had a
13 presentation.

14 CHAIRPERSON CHIANG: Oh, I'm sorry. I apologize.

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

17 STAFF ENVIRONMENTAL SCIENTIST MINDT: Good
18 afternoon, Commissioners.

19 Commission asked staff to review Poseidon's
20 marine life mitigation plan to determine if the plan
21 provides adequate mitigation.

22 There is little specificity in the plan. The
23 plan provides a description of a process by which Poseidon
24 will ultimately complete a plan. Therefore, it is
25 difficult to make an adequacy determination at this time.

1 Information provided by Poseidon shows that the
2 total weight of organisms entrained by this project is .98
3 kilograms per day or approximately 2.11 pounds per day.
4 However, this represents about 96,000 individual
5 organisms. This translates to a yearly impact of 770
6 pounds or 35 million organisms.

7 Over the expected 30-year life of the project,
8 this correlates to over 23,000 pounds or over 1 billion
9 organisms.

10 COMMISSIONER GARAMENDI: Excuse me, what's an
11 organism?

12 STAFF ENVIRONMENTAL SCIENTIST MINDT: That would
13 be larvae, eggs, algae, aquatic organisms.

14 COMMISSIONER GARAMENDI: Thank you.

15 STAFF ENVIRONMENTAL SCIENTIST MINDT: So living
16 plants and animals.

17 COMMISSIONER GARAMENDI: Not whales.

18 (Laughter.)

19 STAFF ENVIRONMENTAL SCIENTIST MINDT: I'm sorry,
20 not plants. Animals. I'm sorry. Caught me off guard
21 there.

22 (Laughter.)

23 STAFF ENVIRONMENTAL SCIENTIST MINDT: Okay. So
24 basically we have the projected cumulative capacity of the
25 desalination in the State of California. From the 11

1 existing facilities and the 19 currently proposed
2 facilities -- and there is a table attached for the
3 Commissioners -- is 290 million gallons per day. If these
4 facilities are required to dilute the processed water in
5 the same ratio as the Poseidon facility, which is 3 to 1,
6 then the total processed water would be over 1.7 billion
7 gallons per day or over 62 billion gallons annually.

8 In light of the potential cumulative effects of
9 the desalination on the resources of the State,
10 performance standards should be required to ensure that
11 the mitigation measures produces the desired results.
12 Currently, Poseidon has not found nor secured a location,
13 an appropriate location, for wetland restoration. And
14 therefore, it is difficult to write quantitative
15 performance standards for an unknown type of wetland in an
16 unknown location.

17 Staff recommends that as part of the plan
18 ultimately submitted according to the timelines in the
19 lease, that performance standards be developed by Poseidon
20 approved by our executive officer. And that a performance
21 bond for wetland mitigation be tied to these standards.

22 The Coastal Commission on August 6th, 2008
23 adopted a marine life mitigation that provided for
24 mitigation in 2 phases. Phase 1 would provide at least 37
25 acres of wetland restoration. Poseidon is to submit a

1 complete coastal development plan application for a
2 proposed wetland restoration project. And phase 2 will
3 provide for an additional 18.4 acres of wetland
4 restoration.

5 Staff recommends that the Commission adopt the
6 marine life mitigation plan as adopted by the Coastal
7 Commission on August 6th, 2008 with the following changes:

8 One, no credit be given for dredging of the Agua
9 Hedionda Lagoon.

10 And, 2, the marine wetlands restoration shall be
11 a similar habitat.

12 Three, the wetlands mitigation bond of \$3.7
13 million shall be required.

14 And 4, undertake a review of the environmental
15 impacts in 10 years.

16 Thank you

17 CHAIRPERSON CHIANG: Very good.

18 COMMISSIONER GARAMENDI: Excuse me. Just a
19 question. The first part of your presentation was
20 concerns about the mitigation. And the second part, if I
21 understood it correctly, is that you accept the Coastal
22 Commission mitigation with changes.

23 STAFF ENVIRONMENTAL SCIENTIST MINDT: That is
24 correct.

25 COMMISSIONER GARAMENDI: But you're not happy

1 with their requirements.

2 EXECUTIVE OFFICER THAYER: I think the intent is
3 to start with the Coastal program, which has a lot more
4 specificity and a lot of improvements over what Poseidon
5 had originally proposed, increased acreage of wetlands and
6 that sort of thing, but to provide several enhancements to
7 correct the issues that he raised.

8 COMMISSIONER GARAMENDI: I'm still confused,
9 because your statement goes into great detail about the
10 inadequacies of the plan and then you support the plan.

11 Am I missing something?

12 EXECUTIVE OFFICER THAYER: With these changes.

13 COMMISSIONER GARAMENDI: And the changes are?

14 EXECUTIVE OFFICER THAYER: The concerns that he
15 expressed were that the plan wasn't sufficiently detailed.
16 And so the solution for that is to go to the performance
17 standards to require Poseidon to submit performance
18 standards which then we can have a chance to review and
19 approve to make sure that the ultimate wetlands will meet
20 the public trust concerns.

21 COMMISSIONER GARAMENDI: And the regional water
22 quality control board that developed the mitigation plan
23 that we don't think is sufficient?

24 EXECUTIVE OFFICER THAYER: The most detailed plan
25 out there right now is the Coastal Commission plan. The

1 regional water quality control board approved this flow
2 plan, but deferred to its staff the details of that. And
3 staff has not done that yet.

4 COMMISSIONER GARAMENDI: It was argued by
5 Poseidon that this would place us -- potentially place
6 this Commission in conflict with the Coastal Commission,
7 is that possible?

8 EXECUTIVE OFFICER THAYER: It is possible, but
9 the intent is to avoid that. And so the lease provisions
10 specifically requires the executive officer to coordinate
11 the review of the performance standards submitted by
12 Poseidon. Again, it's Poseidon that starts with the
13 performance standards. We're trying to avoid the
14 confusion by instead of us drafting them, Poseidon will be
15 drafting up the wetlands restoration plan. Plans, which
16 have to be approved by the Coastal Commission for a
17 permit, and consecutively or concurrently with the
18 submission of those plans to the Coastal Commission for
19 the permit, which will have the specificity in it.

20 We're saying come to us and tell us what are the
21 performance standards that you intend to meet with that
22 plan you're submitting to the Coastal Commission.

23 COMMISSIONER GARAMENDI: Is Poseidon then
24 required to submit performance standards to the Coastal
25 Commission?

1 EXECUTIVE OFFICER THAYER: To the Coastal
2 Commission they will submit their plan for the actual
3 restoration. And the Coastal Commission will look at that
4 and say is this adequate. Undoubtedly, they'll have their
5 own performance standards, some of which are spelled out
6 in what they -- the action they took last week. But that
7 will be between Poseidon and the Coastal Commission. This
8 gets back to your question earlier --

9 COMMISSIONER GARAMENDI: Would there be 2 judges?

10 EXECUTIVE OFFICER THAYER: Right. It gets back
11 to that question. We have an answer to that at this
12 point. You asked the attorneys. I think it's the right
13 time to get back to them.

14 COMMISSIONER GARAMENDI: And the answer is?

15 EXECUTIVE OFFICER THAYER: Both what we said and
16 Poseidon says is correct. So basically under the Poseidon
17 proposal, the Coastal Commission plan has made a
18 condition -- compliance with that plan by Poseidon is made
19 a condition of our lease -- a provision of our lease, so
20 that we have independent authority to enforce the Coastal
21 Commission's plan.

22 However, there's a couple different issues here.
23 The first one is the language Poseidon has suggested adds
24 the language as amended from time to time. So the
25 Commission, at this stage, is approving a lease based on a

1 plan that now exists, but which according to the language
2 provided by Poseidon could be changed without further
3 review by this Commission.

4 So if the Coastal Commission says oh, well we
5 want to -- a future Coastal Commission says we want to
6 change the plan to do this or that, we would have no
7 discretion, independent review over whether or not we
8 would accept that.

9 The second issue, and the more fundamental one,
10 which I think we were getting at earlier, is again the
11 role that this Commission wants to play in this wetland
12 restoration. And if it's satisfied generally with the
13 existing plan at the Coastal Commission, we could strike
14 the language that says, "as amended" and just go with that
15 plan, and we'd be done.

16 But if this Commission wants to exercise its
17 independent authority over the standards that these
18 wetlands will meet and whether or not therefore it meets
19 the public trust resource impact mitigations that we're
20 concerned about, then that's the purpose of the staff
21 recommendation to add the performance standards. We have
22 therefore more discretion under the staff's proposal than
23 we would otherwise.

24 But certainly this Commission is exercising its
25 authority when it's adopting the Coastal Commission's plan

1 and making it enforceable under our own enforcement
2 abilities.

3 Is that response --

4 COMMISSIONER GARAMENDI: Let's continue on with
5 the discussion. I think there's going to be an additional
6 point made there.

7 LAND MANAGEMENT DIVISION CHIEF DUGAL: I was
8 just going to make one quick point. And you should have a
9 copy of --

10 THE REPORTER: Can you identify, please.

11 LAND MANAGEMENT DIVISION CHIEF DUGAL: Oh, I'm
12 sorry. My name is Barbara Dugal. I'm Chief of the Land
13 Management Division.

14 And we received a letter yesterday from Peter
15 Douglas making a statement that the conditions that the
16 staff is recommending were not -- was not found to be
17 inconsistent with what the Coastal Commission had adopted.

18 COMMISSIONER GARAMENDI: Peter is not here to
19 explain what he means.

20 (Laughter.)

21 COMMISSIONER GARAMENDI: I'm not sure that was
22 helpful.

23 EXECUTIVE OFFICER THAYER: I would say 2 things.
24 I have the letter here and I'm glad to share it. But the
25 relevant -- and it's actually referred to in some of the

1 Poseidon submittals.

2 So it goes on and it says, "There appear to be no
3 conflicts between what the Coastal Commission approved and
4 what is proposed in the lease amendment. That is approval
5 by the State Lands Commission of the lease amendment, as
6 proposed, would not conflict with and would not require
7 modification to the Coastal Commission's approval."

8 Having said that, I don't think Peter Douglas had
9 the final changes that we were making to our lease
10 provisions. So I would not want to rely on this in terms
11 of an expression of the Coastal Commission.

12 COMMISSIONER GARAMENDI: Nor would I.

13 CHAIRPERSON CHIANG: Have you concluded?

14 STAFF ENVIRONMENTAL SCIENTIST MINDT: Anymore
15 questions?

16 CHAIRPERSON CHIANG: Anne, you had a question.

17 ACTING COMMISSIONER SHEEHAN: Yeah, the question
18 that I have, is all right, the Coastal Commission develops
19 the standards.

20 STAFF ENVIRONMENTAL SCIENTIST MINDT: Yes.

21 ACTING COMMISSIONER SHEEHAN: And I can
22 understand Poseidon not wanting 2 sets of standards and
23 they're inconsistent. It's like okay who do we comply
24 with? And, you know, if they're different, how do we get
25 that resolved? And perhaps Peter can answer this

1 question.

2 What about us working with the Coastal Commission
3 to, you know, review their performance standards to make
4 sure they're consistent with our public trust obligations?

5 EXECUTIVE OFFICER THAYER: I think that works as
6 well. And again I think the Poseidon performance
7 standards that they submit to us could be worked out with
8 the Coastal Commission's proposal as well.

9 ACTING COMMISSIONER SHEEHAN: So it's the same
10 set of standards. I can understand, you know, hey, just
11 tell us what the rules are.

12 EXECUTIVE OFFICER THAYER: I would say one
13 example of an enhancement that we might look at or that
14 we're looking at right now, and would be an example of how
15 we could do something more than the Coastal Commission,
16 but is not in conflict, is the performance bond. The
17 performance bond that we're recommending does not
18 interfere in the slightest with what the Coastal
19 Commission is requiring. It's not inconsistent with their
20 plans, but it's an enhancement, because we don't have any
21 permitting authority over -- or we may not, over the
22 wetlands restoration plan, whereas the Coastal Commission
23 does. So they have an additional ability to do further
24 review. We don't have that. And so instead we have the
25 performance bond. So that's an example of an enhancement

1 that might be in the performance standards that's not in
2 conflict with what the Coastal Commission is doing.

3 COMMISSIONER GARAMENDI: When you say performance
4 standard, that really is to perform to some standard,
5 which is not a performance standard in what we've -- at
6 least the discussion as I understand it to this point.

7 EXECUTIVE OFFICER THAYER: Um-hmm.

8 COMMISSIONER GARAMENDI: It's something
9 different. What do you envision when you say we will have
10 our own performance standards?

11 EXECUTIVE OFFICER THAYER: Again, we would have
12 our own -- as I said, we'd start with what Poseidon has
13 proposed and we would look at it independently. So do I
14 know what changes now we would put in? No, but it does --
15 again, it's up to the Commission. If we want to retain an
16 independent ability to decide whether these wetlands are
17 sufficient, this is a mechanism for doing that. If we're
18 willing to go along generally with what the Coastal
19 Commission is doing, and allow them to make the
20 fundamental decisions on this, then we don't need it.

21 COMMISSIONER GARAMENDI: Therein lies the heart
22 of the matter.

23 EXECUTIVE OFFICER THAYER: Exactly.

24 COMMISSIONER GARAMENDI: So what is our history
25 on this? Have we set our own standards or have we relied

1 on the Coastal Commission in previous leases that we've
2 approved?

3 EXECUTIVE OFFICER THAYER: We've generally relied
4 on the Coastal Commission or the water board to deal with
5 wetlands issues.

6 COMMISSIONER GARAMENDI: You use the word
7 "generally".

8 EXECUTIVE OFFICER THAYER: Yes.

9 COMMISSIONER GARAMENDI: Could you be more
10 specific?

11 (Laughter.)

12 EXECUTIVE OFFICER THAYER: Well, we have been
13 involved periodically with wetlands in a variety of
14 circumstances. We're restoring Bolsa Chica. We were
15 involved in Agua Hedionda or one of the other -- not that
16 wetland -- one of the other wetlands in terms of assuring
17 that port mitigation was going to be sufficiently
18 addressed there.

19 It was Batiquitos.

20 So we've been involved in wetlands throughout the
21 years. It's something that we have some experience in.
22 But in terms of imposing conditions, I do not know of
23 other leases where we have imposed specific wetland
24 conditions. I guess, I'm looking at Barbara to see --

25 COMMISSIONER GARAMENDI: The one condition we're

1 speaking of, specifically number 2, is the performance
2 bond, which I think we've discussed and had some general
3 resolution of the performance bond issue.

4 But what we're looking at here are the
5 performance standards, which are the criteria by which
6 this Commission and the Coastal Commission will judge the
7 adequacy of the mitigation, correct?

8 EXECUTIVE OFFICER THAYER: Correct.

9 COMMISSIONER GARAMENDI: And the concern of
10 Poseidon, as I understand it, is that they're going to get
11 caught between 2 agencies of government that cannot agree.
12 And they don't know how to make us both happy. Is that
13 essentially the problem here?

14 MR. ZBUR: Rick Zbur with Watkins.

15 That is essentially the problem. I mean, we
16 actually -- in Section 5.4 of the LMP adopted by the
17 Coastal Commission, we actually have specific performance
18 requirements that are adopted. I mean, that means that
19 when we select a site, we have to go through and
20 demonstrate how that site will meet the performance
21 criteria that have been adopted already and imposed on us
22 in Section 5.4. The concern we have is if the State
23 Lands' staff agrees and imposes exactly the same thing in
24 5.4, there's no conflict. If there's something different,
25 there may be.

1 You know, we are just very worried that given
2 that the Coastal Commission is going to be, in my view,
3 the lead entity on wetlands restoration, they impose
4 wetlands restoration all the time. They do it in many,
5 many cases. The way that they do it is pretty
6 predictable. They are going to -- we're going to do that
7 through the CDP issue.

8 COMMISSIONER GARAMENDI: Now, has staff reviewed
9 those specific performance standards that are in the
10 mitigation plan?

11 EXECUTIVE OFFICER THAYER: We have. And we think
12 at the next stage of the approval from the Coastal
13 Commission, they'll be looking at things like, you know,
14 survival rates of vegetation, what sort of vegetation will
15 be in there. And that's not yet in the performance
16 standards for the Coastal Commission and that that's the
17 next step.

18 Staff has also corrected me that we have gotten
19 involved in wetland restoration in inland areas because of
20 our CEQA responsibilities, where we're the lead agency
21 under CEQA, that wetland restoration is often necessary,
22 and we've gotten involved with that.

23 COMMISSIONER GARAMENDI: With regard to what is
24 presently in the plan, are we satisfied?

25 EXECUTIVE OFFICER THAYER: I don't think we have

1 an objection to what's in the plan now.

2 COMMISSIONER GARAMENDI: In other words, we're
3 satisfied.

4 EXECUTIVE OFFICER THAYER: Yes. And that's why
5 we're not requesting any changes to the plan right now.

6 COMMISSIONER GARAMENDI: And your concern and
7 staff's concern is that there's a secondary set of
8 criteria that may be made at some time in the future?

9 EXECUTIVE OFFICER THAYER: That's correct.

10 COMMISSIONER GARAMENDI: And then I use the word
11 "may be made", but we don't know whether it will or will
12 not be made?

13 EXECUTIVE OFFICER THAYER: That's correct. We
14 hope it will be made, but we don't know that it will be.

15 COMMISSIONER GARAMENDI: Why do we hope it would
16 be made?

17 EXECUTIVE OFFICER THAYER: Well, because we'd
18 like to see some more specificity down the road when a
19 site is selected and the particular kinds of wetlands that
20 will be recreated there. The plans come in and they'll
21 show the grading and that kind of thing. That's not
22 available.

23 COMMISSIONER GARAMENDI: A refinement of what --

24 ACTING COMMISSIONER SHEEHAN: More specific
25 versus a change.

1 EXECUTIVE OFFICER THAYER: Yes, that's right.

2 But the plans haven't reached that stage yet. I
3 mean, part of the problem as you'll recall that the
4 Commission was concerned last fall that we didn't have a
5 site identified. And so we couldn't go in and say okay
6 what are your plans for restoring that site. This is so
7 much easier to do if we have a specific restoration
8 project in front of us. We didn't have that then and we
9 still don't have that now. So we're dealing --

10 COMMISSIONER GARAMENDI: But there will be
11 different sites that they'll be choosing from, correct?

12 EXECUTIVE OFFICER THAYER: That's correct.

13 COMMISSIONER GARAMENDI: I'd like to hear from
14 Poseidon on this to see if there's some way to solve this.

15 MR. MacLAGGAN: Mr. Chairman and Commissioners,
16 Peter MacLaggan, Poseidon Resources.

17 I have 2 thoughts for you on this discussion.
18 First of all, with respect to the performance standards,
19 what we've been asked to do or required to do in the plan
20 adopted by the Coastal Commission is there will be
21 identified 4 reference sites undisturbed wetlands that
22 exist today. We're required to match those reference
23 sites with a 95 percent level of confidence on a whole
24 myriad of environmental factors, that range from habitat
25 productivity and types of habitat, quantities of habitat,

1 bird foraging, bird nesting, fish counts, the grading
2 plans and all of that will be preapproved.

3 So what I expect to come back in the future is
4 not additional performance standards, as much as we will
5 be coming back with a specific site project that will be
6 approved by the Commission. And we will have to
7 demonstrate over the construction and operation of that
8 project that it meets all of those existing criteria to
9 the 95 percent confidence level of the existing
10 undisturbed wetlands.

11 What we are prepared to offer to help resolve the
12 discussion you're having right now is when and if the
13 Coastal Commission amends or proposes -- or Poseidon for
14 that matter proposes modification of those standards, we
15 see no problem with them coming back to your executive
16 officer for his concurrence. And so I think that will
17 address the problems that are before you now.

18 And I have an expert here today, our wetlands
19 biologist, if you'd like us to elaborate in more detail
20 about specifically what's being asked of us. I've
21 exhausted my ability to describe that to you, but we can
22 get into more detail if you're interested.

23 COMMISSIONER GARAMENDI: Before we get to the
24 detail, the performance standard then is to meet with a 95
25 percent confidence the ecology of an existing undisturbed

1 wetland in the southern California region?

2 MR. MacLAGGAN: Multiple existing undisturbed
3 wetlands. And in the case of SONGS, there was the Tijuana
4 estuary, there were 2 north of San Diego county and I
5 don't know where the 4th was.

6 COMMISSIONER GARAMENDI: So the performance
7 standard then is based upon what actually exists, not upon
8 some scientist about what they may want to see, but rather
9 what exactly exists there?

10 MR. MacLAGGAN: That's right. That's why they
11 call them reference wetlands. And additionally, we are
12 required to fund 2 staff scientists and an administrator
13 at the Coastal Commission to provide the verification.
14 And then they've adopted a Marine Wetlands Advisory Group,
15 which is a panel of academics and experts in the field
16 that meets on a regular basis for the SONGS project to go
17 out in the field and observe the constructed wetlands and
18 the reference wetlands and make this determination whether
19 or not we met this performance criteria.

20 And we are being held to that same standard as
21 well, which is there will be this scientific panel that
22 will review our constructed wetlands, once they're up and
23 operating and annually assess whether or not we've met our
24 performance standards.

25 COMMISSIONER GARAMENDI: Now, with that, what is

1 the problem that we perceive?

2 EXECUTIVE OFFICER THAYER: It's only that at this
3 stage of the game, we don't know what the specific
4 restoration program is and --

5 COMMISSIONER GARAMENDI: Don't we -- excuse me.
6 It appears as though the specific project is a certain
7 acreage that is at least 95 percent of what exists in 4
8 undisturbed wetlands; is that correct?

9 MR. MacLAGGAN: Yes, sir.

10 COMMISSIONER GARAMENDI: Is that correct?

11 EXECUTIVE OFFICER THAYER: I'm not familiar with
12 that language. If it is correct, that's great.

13 COMMISSIONER GARAMENDI: Well, presumably the
14 staff has spent some time reviewing this; is that correct?
15 Staff, anybody else?

16 STAFF ENVIRONMENTAL SCIENTIST MINDT: If I may
17 comment on that. Steve Mindt with the staff Lands
18 Commission.

19 We have not received any performance criteria.
20 All we have received is that the performance criteria will
21 be similar to that of SONGS, but we have not received any
22 written information.

23 COMMISSIONER GARAMENDI: That's not my question.

24 STAFF ENVIRONMENTAL SCIENTIST MINDT: Well, what
25 I'm saying --

1 COMMISSIONER GARAMENDI: Is it the case in the
2 wetlands mitigation plan that they are required to -- in
3 37 acres and perhaps 54 acres, depending on the
4 subsequent -- are they required to have a 95 percent
5 success rate?

6 STAFF ENVIRONMENTAL SCIENTIST MINDT: Nothing
7 that I've received in writing indicates that.

8 COMMISSIONER GARAMENDI: And you've not looked at
9 the mitigation plan or we don't have the mitigation plan?

10 STAFF ENVIRONMENTAL SCIENTIST MINDT: I have
11 received everything that they've sent me. I have not
12 received --

13 COMMISSIONER GARAMENDI: Have you talked to the
14 Coastal Commission about what they did?

15 STAFF ENVIRONMENTAL SCIENTIST MINDT: I've been
16 in contact with the Coastal Commission staff. They have
17 not forwarded us the SONGS mitigation or what Poseidon had
18 proposed to them. They have not given us that report yet.
19 So we have not reviewed those statements.

20 COMMISSIONER GARAMENDI: Poseidon, question.

21 What is the foundation for telling us that this
22 plan exists?

23 MR. ZBUR: The Coastal Commission attached as an
24 exhibit to their staff recommendation a plan that they
25 recommended approval. That plan had performance

1 standards. There were some modifications --

2 COMMISSIONER GARAMENDI: As described a moment
3 ago?

4 MR. ZBUR: The ones that Mr. MacLaggan just said,
5 95 percent and all of that. They have that. Those
6 performance standards were in that plan that was approved.
7 There were some other minor modifications made that don't
8 relate to the performance standards, just as you're doing
9 today on the lease, so it's not completed yet. But the
10 motion was that that plan be adopted with some minor
11 modifications. And all those performance standards were
12 in that exhibit.

13 COMMISSIONER GARAMENDI: Okay. Has staff looked
14 at the record from the Coastal Commission?

15 STAFF ENVIRONMENTAL SCIENTIST MINDT: We have
16 looked at what they provided us.

17 We have looked at what they provided us. I can
18 grab what I have in my -- I brought them with me. It's
19 just basically a similar packet to what they presented to
20 the --

21 COMMISSIONER GARAMENDI: No. No. I'm talking
22 about what this guy is doing here, which is recording it.

23 STAFF ENVIRONMENTAL SCIENTIST MINDT: I have not
24 seen it.

25 COMMISSIONER GARAMENDI: Have you asked for it?

1 STAFF ENVIRONMENTAL SCIENTIST MINDT: We have
2 asked the Coastal Commission to give us what they came up
3 with. And to date, they have not provided us with
4 anything. Both Mr. Luster and Ms. Townsend were on
5 vacation for a week between the 6th and the 14th, so we
6 have not received anything new from the Coastal
7 Commission.

8 COMMISSIONER GARAMENDI: Do you have any reason
9 to doubt the veracity of the statement made by the
10 previous witness?

11 EXECUTIVE OFFICER THAYER: No. Yeah, we have no
12 reason -- we're not accusing them of --

13 COMMISSIONER GARAMENDI: I mean this is really a
14 lot of foolishness here.

15 Listen, if, in fact -- if it is a fact that the
16 Coastal Commission has said that the standard is 4
17 pristine sites and the mitigation has to be at least 95
18 percent of what exists at the those sites, what's the
19 problem here?

20 EXECUTIVE OFFICER THAYER: Those are strong
21 standards. It's still a question of whether the
22 Commission wants any independent authority over the
23 project.

24 COMMISSIONER GARAMENDI: In setting additional
25 standards?

1 EXECUTIVE OFFICER THAYER: Right.

2 COMMISSIONER GARAMENDI: Okay, I've got the
3 answer. No, for this Commissioner.

4 CHAIRPERSON CHIANG: Yes, Anne.

5 ACTING COMMISSIONER SHEEHAN: Can I go back to
6 the language that you had offered. The Coastal Commission
7 will approve their performance standards under the
8 agreement that you have with them. And then you offered,
9 if I understood you correctly, some language that that
10 would be reviewed and approved by our executive director
11 under our authority; is that correct?

12 MR. MacLAGGAN: That's correct. Peter MacLaggan,
13 Poseidon Resources.

14 What I suggested is if there is an amendment to
15 these standards, as we move forward with the selection and
16 implementation of the wetlands program, we have no problem
17 with them coming back to your executive officer for his
18 concurrence in whatever modifications are made to the plan
19 approved by the Coastal Commission.

20 ACTING COMMISSIONER SHEEHAN: What about as you
21 develop more specificity on the plan itself with them?

22 MR. MacLAGGAN: I would consider that a
23 modification as well.

24 ACTING COMMISSIONER SHEEHAN: Oh, you -- okay, so
25 any change that's made from what was sort of the, what I

1 understand, is like an outline now, sort of the concept,
2 would also come back to our executive director for review
3 and approval?

4 MR. MacLAGGAN: Yes.

5 ACTING COMMISSIONER SHEEHAN: Is that --

6 EXECUTIVE OFFICER THAYER: It's --

7 ACTING COMMISSIONER SHEEHAN: So that's the chief
8 suggestion that you're making. Okay.

9 COMMISSIONER GARAMENDI: I have a question on
10 that. This issue of the mitigation plan and its adequacy,
11 has occupied this Commission for a substantial amount of
12 time and is a central issue in the discussion. And my
13 vote is based upon the Commission determining the adequacy
14 of the existing plan as presented here and as described by
15 Poseidon, and apparently in ignorance of our staff as to
16 what was done by the Coastal Commission.

17 And therefore, this issue should, if there be a
18 modification, should come back to the Commission and not
19 be in the hands of the executive officer only. That's my
20 view.

21 MR. MacLAGGAN: You're looking to me for a
22 response?

23 CHAIRPERSON CHIANG: Actually, we can just --
24 Paul, we can do that any time we want, right?

25 EXECUTIVE OFFICER THAYER: I think if the

1 Commission -- if it's the will of the Commission is that
2 they want to hear the changes themselves, then we can
3 write that into the lease that way.

4 CHAIRPERSON CHIANG: We're entitled to. We're
5 the members.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: But we have, upon
8 occasion, brought things to the Commission where otherwise
9 the executive officer is entitled to hear it. But I think
10 again, if the tendency of the Commission is that it wants
11 to hear the changes, that should be written into the lease
12 and we'll bring it back.

13 CHAIRPERSON CHIANG: But do we have to write it
14 into the lease?

15 EXECUTIVE OFFICER THAYER: Well, it's just a
16 question of whether or not the --

17 CHAIRPERSON CHIANG: His authority is that that
18 we grant to him.

19 COMMISSIONER GARAMENDI: That's exactly right.
20 And in this case --

21 CHAIRPERSON CHIANG: So I mean I don't think we
22 have to put in every single lease that we're granting
23 authority to our executive officer. We just exercise the
24 authority.

25 COMMISSIONER GARAMENDI: Well, here's the

1 specific language that's being recommended by the staff is
2 that, "The executive officer have the approval authority
3 of any modifications."

4 I'm saying this is a central issue. We've
5 certainly spent a lot of time on it. And it's one that
6 I'm going to vote on here shortly. If there's a
7 modification between Poseidon and the Coastal Commission
8 on these standards, then I want to know about it, and I
9 want to be able to approve those modifications up or down.
10 So right now my position is that given those 4 sites out
11 there that become the standard to which any mitigation
12 must meet to a 95 percent reliance, that's important and
13 I'm willing to go with that.

14 But if somebody wants to decrease it, then I want
15 to know about it. And I want to be able to say yes or no.

16 CHAIRPERSON CHIANG: Anne has a suggestion.

17 ACTING COMMISSIONER SHEEHAN: I guess on Section
18 11 where it says, "Poseidon will provide copies of all
19 reports that are required to be provided to the Coastal
20 Commission...", and any of the changes, like you've talked
21 about the modifications, "...shall be provided to the
22 lessor at any..." -- instead of the lessor is the
23 executive officer, because the Lands Commission is the
24 lessor, -- "...for review and approval."

25 MR. ZBUR: Maybe I can suggest something that

1 would be in order to make a suggestion especially given
2 the comments of the Lieutenant Governor. I think if you
3 basically took out the requested language, "as amended
4 from time to time", it would require the changes to the
5 plans, both of them, come back to this Commission.

6 We preferred that not be the case, that we
7 thought there might be some tinkering that you would
8 not -- you know, that wouldn't rise to a level. But if
9 it's -- you know, if that's a concern of the Commission
10 that we took out the, "as amended from time to time," on
11 both of those without any additional language, it would
12 require any change in either the greenhouse gas plan, that
13 is not operative within the plan, or the marine life plan
14 to come back to this Commission.

15 COMMISSIONER GARAMENDI: I think that does it.

16 But I want to make one thing very clear and that
17 is that there seems to be a certain level of ignorance on
18 the part of this Commission as to exactly what the Coastal
19 Commission is requiring. My vote is clearly based upon
20 those 4, and those 4 sites and the standards that are set
21 there.

22 Now, if before this lease is complete, that's
23 found not to be the case, then I don't want this lease
24 signed. All right.

25 EXECUTIVE OFFICER THAYER: I understand.

1 CHAIRPERSON CHIANG: And I have a slightly
2 different perspective. We have an obligation to exercise
3 our responsibilities. I have extraordinary respect to the
4 Coastal Commission, but I don't defer my authority to
5 somebody else.

6 EXECUTIVE OFFICER THAYER: Okay. I think we
7 understand the resolution of this particular issue and
8 we'll work with Poseidon to develop language that would
9 meet the Commission's suggestion.

10 ACTING COMMISSIONER SHEEHAN: Perfect.

11 CHAIRPERSON CHIANG: Okay. Do we have the
12 opposition? It is your time on this issue.

13 MR. GEEVER: Thank you, Mr. Chairman Chiang and
14 Commissioners. I don't know that there's much point in
15 going through the presentation that I put together.
16 You've done a lot of deliberations now.

17 What I hear going back and forth --

18 THE REPORTER: Can you identify, please.

19 MR. GEEVER: Oh, I'm sorry. My name is Joe
20 Geever. I'm the California policy coordinator with
21 Surfrider Foundation.

22 I think what I hear here is somewhat confusing
23 about maybe it's partly semantics. You know, I think
24 you're staff is right, they didn't give you a plan, but
25 what they gave -- what they're calling the marine life

1 mitigation plan is actually what your staff characterized
2 as kind of a process for developing a discrete plan. And
3 in that outline for how you would put a discrete plan
4 together, there are some conditions that guide you on
5 drafting performance standards.

6 So those directions in this outline for how you
7 put together a restoration project are very discrete. And
8 when people say, you know, there's a lot of specificity,
9 there is a lot of specificity in what would be required in
10 restoration or in -- or I'm sorry in the performance
11 standards, but they're not performance standards. You
12 still have to write the performance standards.

13 As with any other, you know, portion of a
14 restoration project, you can say what would be in it, but
15 you still have to write it. I mean, one of the obvious
16 ones is where is it going to be? What wetland are you
17 going to do this in?

18 You can say well, it has to be in the southern
19 California bite. That's, you know, somewhat of a guidance
20 on how you pick a site, but it's not picking a site.
21 Until you pick one, you don't have that, right. The same
22 thing is true for performance standards. So that's, I
23 think, just kind of the words we're throwing around are
24 confusing it a little bit.

25 What were some of the other things that I heard

1 that I think are just unnecessarily confusing? This is --
2 you know, we hear a lot of complaints about, you know,
3 this accusation that the Coastal Commission staff is
4 intentionally stalling this project and now the State
5 Lands Commission staff is conspiring with them to stall
6 this project.

7 Look, I think this is a really good example of
8 what's been going on from the beginning is that the
9 applicant comes in -- the application is actually not
10 complete. They don't really have a restoration project.
11 They don't even have a site. You know, there's some -- it
12 raises red flags for professionals in this area, right.
13 How can we approve -- you know, even call it a marine life
14 mitigation plan when it's actually not a restoration plan.
15 There's no specifics in here. It raises red flags.

16 I don't think there's any conspiracy to stall
17 this project. The applicant just hasn't given enough
18 information to take the next step. This stuff takes time.
19 It's taking time. But if they don't give you a detailed
20 plan, what are you approving? You know, it's not a
21 conspiracy to stall the thing. The thing just isn't
22 ready.

23 I just don't know how you get around that. And
24 accusations of the staff conspiring to stall this thing
25 are really -- I mean, that's just unnecessarily offensive.

1 And another point about restoration projects,
2 it's a little bit getting the cart before the horse to put
3 a cap on acreage when -- you know, acreage is one of those
4 variables in a restoration project, when you look at the
5 habitat type and the habitat quality, then you can define
6 how many acres you need on a given site. To cap the
7 acreage prior to determining what the site is, is really
8 getting the cart before the horse.

9 There's another problem with capping the acreage
10 at 55 acres. What scientists do, and the reason that you
11 have these performance standards is that you can track the
12 success of this restoration project. And if it isn't
13 meeting the goal of full replacement of the marine life,
14 that will be recognized, that will be identified by
15 tracking your performance standards and monitoring it to
16 see if they're achieving those things.

17 If not, there's a chance that you will have to
18 increase the amount of acres. You may be able to adjust
19 the restoration project to meet the objectives, but if
20 not, you may have to increase it. If you put a cap of 55
21 when we come back later and find out, oh, you know, we
22 missed it by 20 acres, you've already capped it. You
23 can't use adaptive management to make sure that we're
24 meeting the goals. Don't do that. Don't handcuff
25 yourself with that. That's not the way these things work.

1 And all that to say that, you know, we're getting
2 a little bit down in the weeds here, in our opinion,
3 after-the-fact-restoration isn't legal in the first place.
4 We've gone through these federal cases for the last decade
5 to get to the point where the federal courts have finally
6 said, no, no, the law requires you to minimize entrainment
7 and impingement in the first place. It's not about coming
8 back and compensating for it later. That's very clear in
9 California's law. You read it, there's just no way to
10 read the Porter-Cologne Act and interpret it in any other
11 way, that this requires minimizing entrainment in the
12 first place.

13 After-the-fact compensation is not on the table.
14 So we're spending a lot of time talking about how to get
15 compensation right, when you're legally not allowed to use
16 compensation in the first place. And we've asked and
17 asked for 6 years, we need an answer to that. They refuse
18 to give it. The agencies refuse to give it. It stalls
19 the project forever. And then they accuse your staff of
20 conspiring to stall the project. Look, it can't go
21 forward until you do these things. This is just the way
22 it happens.

23 I don't know. I'm sorry, if my tone is maybe a
24 little -- I'm really frustrated with the way this whole
25 thing has -- this process has not moved forward, you know.

1 And it's really offensive to hear the applicant blame
2 their tactics or their inability to complete the
3 application, blame that on, you know, well-meaning staff
4 of our State agencies who have the duty to protect our
5 environment. That's a wild and offensive accusation.

6 Anyway, I'd be glad to answer any questions. I'm
7 sorry I didn't get to go through a presentation.

8 CHAIRPERSON CHIANG: Thank you, Joe.

9 Livia -- I don't know if I pronounced that right.
10 Are you part of this presentation?

11 MS. BORAK: Yes.

12 CHAIRPERSON CHIANG: Okay, very good.

13 MS. BORAK: My name is Livia Borak and I'm with
14 San Diego Coastkeeper. And I would just, as a preliminary
15 matter, like to stand up for your staff. It's not
16 necessarily their ignorance of what was passed at Coastal
17 Commission. I think everybody is still slightly confused
18 at what actually happened at the Coastal Commission.

19 (Laughter.)

20 MS. BORAK: And, in fact, the staff report came
21 out a few days before this hearing because there was such
22 a rush to get everything together. We had a hard time
23 figuring out what was passed, because there was so many
24 amendments at the last minute, similar to what's happening
25 right now. There's so many, you know, different

1 conditions. Everybody is proposing something new at the
2 very last second.

3 And it's slightly a mischaracterization for
4 Poseidon to say that they have performance criteria,
5 because the exhibit attached to the motion that was passed
6 at Coastal Commission was simply that, an exhibit, of
7 performance criteria that are applicable at SONGS.

8 Now, when, as Joe said, a site is actually picked
9 for restoration, performance criteria modeled after the
10 SONGS mitigation will be used. And SONGS does have a 95
11 percent criteria, but that means that whatever site is
12 chosen must look 95 percent like that reference site.

13 What was actually passed at Coastal Commission,
14 the competence level that any restoration measures
15 Poseidon does will be compensated at an 80 percent
16 confidence level. So no matter what you do, if you cap at
17 55 acres, you will only have an 80 percent confidence
18 level that you're actually mitigating for any impacts from
19 this project.

20 And that brings me to my second point, which is
21 nobody really knows what this project will do, because
22 everything has been studied at the last minute. And there
23 was an EIR passed for this project. And the EIR found no
24 significant impacts. Now, the Coastal Commission is
25 making Poseidon mitigate for 37 acres of impacts. That

1 came out of subsequent documents, subsequent conditional
2 plans after the project was approved.

3 So we have no way of knowing what actually is
4 being mitigated, where the mitigation will occur. The EIR
5 was therefore insufficient. It was -- it obviously didn't
6 direct or assess all the possible impacts from this
7 project, because why else would the Coastal Commission ask
8 for 37 acres to be mitigated. Those impacts came from
9 somewhere. And this Commission, as a responsible agency
10 under CEQA, has an obligation to look at that EIR.

11 And if you are going to accept what the Coastal
12 Commission did, you're in essence saying we agree, there's
13 37 acres of impact that wasn't addressed in this EIR, and
14 you're relying on Coastal Commission, separate from CEQA,
15 Coastal Act process in order to mitigate this. And that's
16 outside of CEQA.

17 So, in essence, this project is evading CEQA
18 review under your responsible agency authority. And we
19 have a letter submitted on this in October addressing the
20 stand-alone impacts. And we have a new letter that was
21 submitted this week from Coast Law Group also addressing
22 the fact that a subsequent EIR we feel is legally required
23 because of these new impacts that were uncovered at
24 Coastal Commission.

25 And I think that the staff report, the executive

1 officer, the confusion in general is a testament to the
2 fact that these impacts have not adequately been looked at
3 and you do have expertise. You do have knowledge. Nobody
4 is questioning the Commission's authority, and we ask that
5 you exercise it, and use it as a responsible agency and
6 demand that you get all the information before going
7 forward today.

8 And we stand firm, we do believe that a
9 subsequent EIR is required. But at the very least, we
10 wanted to participate today. And we've given you our
11 proposed conditional enhancements that do not conflict
12 with what Coastal did. But at the very least, we ask that
13 you look at our language, which has been given to you
14 hopefully from Bruce Reznik. And we feel that that is an
15 enhancement to what staff -- and is in line with what
16 staff proposed at the very least.

17 Because we do feel that unless you have a
18 subsequent EIR, we will not -- we won't have the whole
19 story. We won't have the full picture.

20 CHAIRPERSON CHIANG: Thank you very much.

21 We have Paul O'Neal signed up for public comment.

22 MR. O'NEAL: Thank you, Mr. Chairman and Members
23 of the Commission. My name is Paul O'Neal. I'm the
24 chairman of the San Diego North Economic Development
25 Council. In a past life, I was responsible for the Agua

1 Hedionda Lagoon's maintenance and upkeep and restoration
2 projects. You don't walk away from that responsibility.
3 You remain a stakeholder forever if it's something that
4 you loved. And I did, and I still love the lagoon.

5 And I can tell you without question that every
6 one of the fellow stakeholders on that lagoon, the users
7 of the lagoon, welcome Poseidon into that lagoon for a
8 long time. Because without them becoming the shepherds of
9 that lagoon, it's going to go away. That means no more
10 ocean research by Hubbs-Sea World Research Institute. So
11 that's from my past life.

12 Currently, as chairman of my organization, I
13 agree with one of our former speakers that we're kind of
14 in the weeds and things are a little bit complicated.
15 Well, what I would ask is that we throw the complication
16 away, address this in practical terms.

17 My membership of the San Diego north goes from
18 the coast all the way down to the desert. And it says San
19 Diego North, but we also get down to the south bay as
20 well. Our companies are technical companies. They
21 require water. Our companies are hospitals. Our
22 companies are farmers, the largest farmers -- grouping of
23 farmers in the state.

24 My farmers, my agricultural community, lost
25 perhaps 10 percent of their crop, 10 percent of their

1 trees and growing stock because of the freeze. That was
2 followed by the fires that took another 20 or so percent.
3 And now they're being cut back 30 percent on water.

4 I invite you to come down I-15 right through the
5 middle of our district and look at the hillsides. They're
6 either burnt out or the trees are cut down. There are
7 very few left standing. And this is a terrible economic
8 impact on our region. We need this water. From a
9 practical standpoint, we are here in support of the
10 Poseidon project.

11 Thank you very, very much.

12 CHAIRPERSON CHIANG: Thank you very much. That
13 concludes all those who signed up for public comments.

14 Paul.

15 EXECUTIVE OFFICER THAYER: At this point, of
16 course, the Commission can deliberate. I think, if you'd
17 like, we can go through the score card again and see where
18 we're at on this and you can make some decisions.

19 Well, I think some progress has been made. The
20 first issue with respect to the substitute or the
21 replacement water versus the additive waters is still
22 open.

23 We agree with the proposal by Poseidon to address
24 the market disruption, which is the second issue, so
25 that's done.

1 On the third issue, we're in agreement with
2 respect to the operational impacts -- excuse me, the
3 construction impacts, the direct impacts, the greenhouse
4 gas impacts from Poseidon. But left unresolved is whether
5 or not there should be some mitigation for the day-to-day
6 operational emissions.

7 CHAIRPERSON CHIANG: Paul, can you share your
8 latest understanding. You said, okay, you got agreement
9 on construction. I was given an updated number that would
10 include everything. Rick, did you want to share that.

11 EXECUTIVE OFFICER THAYER: Poseidon has submitted
12 a proposal to, in effect, let me distribute what -- if you
13 can pass this over -- which would raise that to 1,582 for
14 the life to deal with the 2 trucks. The emissions from
15 the 2 trucks which -- and by doing that they would raise
16 the 1,582, the total amount of carbon offsets that it
17 would acquire for both day-to-day operations and for
18 construction. This would not address commuter emissions,
19 which would be the significant variance from staff.

20 CHAIRPERSON CHIANG: Okay. Then my understanding
21 is daily emissions, there's a difference between the
22 various parties. Poseidon has indicated 50 tons a year,
23 is that right?

24 MR. ZBUR: Yeah. And I'll go through it. I
25 think we've done a quantification, and I think we're

1 prepared to do this full amount. Let me just sort of
2 explain this, because we've been consulting since this
3 issue has come up.

4 We would be prepared to offset, a one-time
5 offset, of 2,932, that includes the 1,327 for construction
6 emissions --

7 CHAIRPERSON CHIANG: I'm sorry.

8 MR. ZBUR: -- which was the 1,327 that your staff
9 agreed for construction emissions; 255, which is 30 years
10 of emissions for the fleet vehicles. And just one minor
11 clarification, that's actually 1 hybrid vehicle and one
12 truck, so there's 2 fleet vehicles.

13 And then 1,350, which would be 30 years of the
14 employee trips for 18 vehicles. And that's using, in our
15 view, CCAR protocol. So that would have us offsetting
16 some indirect emissions, because of the employee trips,
17 but it would be the fleet vehicles, the emissions related
18 to our employee traffic for 18 people, and then all the
19 construction emissions. And that would be 2,932 total.

20 CHAIRPERSON CHIANG: Okay. Thank you.

21 MR. ZBUR: We can go into detail if you have any
22 questions on the calculations for any of those. Well, the
23 staff hasn't heard the, I think, the 1,350 -- I mean,
24 employee vehicles, so we could go through that.

25 EXECUTIVE OFFICER THAYER: This is the first I've

1 heard that. So just to make sure I understand it, is it
2 then something like 40 something tons a year for employee
3 vehicles, is what you're looking at?

4 MR. ZBUR: Yes, 45 tons a year for employee
5 vehicles. And that's -- basically, what we did is we --
6 18 employees, we assume the CCAR protocol of 12,000 miles
7 per year. We conservatively assumed that, since these are
8 employee vehicles, that half of those were going to be
9 employee -- have employment related trips, so 50 percent
10 of the VMT. That's 2 and a half tons per year per
11 vehicle. So 18 vehicles times 2 and a half tons per year
12 is 45 tons per year. Then we took 45 tons times 30 years.
13 So we do that all up-front so we would be offsetting
14 everything up -- in the first year of operations.

15 EXECUTIVE OFFICER THAYER: And the assumption of
16 half the trips being employee driven, the other half
17 wouldn't be mitigated then?

18 MR. ZBUR: Well, I mean everyone has a car and so
19 they are driving to work and they have personal stuff. So
20 I think that's a fairly conservative assumption that half
21 of the mileage would be related to their going --
22 commuting to and from work.

23 EXECUTIVE OFFICER THAYER: Again, this is the
24 first we've heard of this. And I'm not sure how it all
25 works out.

1 CHAIRPERSON CHIANG: All right.

2 EXECUTIVE OFFICER THAYER: It sounds like it's in
3 the right direction.

4 CHAIRPERSON CHIANG: Did we have commentary back
5 here?

6 MS. BORAK: Hi. Livia Borak. We actually had a
7 spreadsheet that we showed staff, and we had in our
8 comment letter. For operations -- for yearly operations,
9 we had a few more calculations that Poseidon doesn't
10 account for at all. We have disagreement as to the miles
11 and the trips for employee trips and visitor trips. Our
12 number for the trips was that we included employees and
13 visitors at 108 and they were accounting only for 18
14 employees.

15 And we used a different method of calculation.
16 We calculated about 39,000 trips and 10 miles per trip and
17 18 miles per gallon. And we came out with about 188 tons
18 per year as compared to their 45 tons per year.

19 But there were also 4 other -- and we're willing
20 to compromise on that, because our numbers include
21 visitors and that --

22 COMMISSIONER GARAMENDI: Do you have the CAFE
23 standards.

24 MS. BORAK: I'm sorry?

25 COMMISSIONER GARAMENDI: What are the new CAFE

1 standards?

2 MS. BORAK: I'm sorry, I'm not an expert.

3 COMMISSIONER GARAMENDI: I don't think they're
4 18.

5 MS. BORAK: It's a conservative number. But
6 either way, we have a different number than them. But we
7 also -- I just wanted to address that we have 4
8 different -- also other areas that they didn't account
9 for, which was water treatment chemical transportation for
10 the trucks bringing in their water treatment chemicals,
11 trucks bringing in their equipment and parts, their
12 disposal for solids to waste plants and solid residual
13 disposal. And those were -- those amount to about 1,000
14 tons of CO2 per year. So you would multiply that by 30 to
15 get 30,000, and we're willing to compromise on the
16 employee trips.

17 Thank you.

18 EXECUTIVE OFFICER THAYER: So your total is 1,211
19 a year?

20 MS. BORAK: Yes, total. You can go with 1,000 if
21 you want a round number.

22 (Laughter.)

23 CHAIRPERSON CHIANG: Okay. Anybody have any
24 comments or questions?

25 Anne, did you want to say something?

1 ACTING COMMISSIONER SHEEHAN: I'm sorry. So
2 their total --

3 EXECUTIVE OFFICER THAYER: The speaker who just
4 spoke was 1,200 a year. And the Poseidon was 45 per year
5 plus the amount for the 2 trucks, which I think was 8 and
6 a half tons a year. So their comparable a year would be
7 53 and a half, is that right?

8 CHAIRPERSON CHIANG: Charlie, did you want to say
9 something?

10 MR. STRINGER: Yeah, I just wanted to -- we
11 actually had a little side-bar conversation with the folks
12 that just presented some of the numbers and just wanted to
13 clarify. My understanding is that for the chemical
14 deliveries they were basing their calculations on a half a
15 million miles a year to deliver those chemicals, which we
16 obviously haven't made those same calculations, that I
17 find rather incredible. That it would be 400 miles -- I
18 believe it was 400 miles per day or per delivery of
19 chemicals, which has a lot of assumptions built into it
20 that I don't really understand. Including, the obvious
21 assumption that the trucks coming to Poseidon's plant to
22 drop off chemicals would only be going to Poseidon's plant
23 to drop off chemicals, and driving 400 miles per delivery
24 to do that. So the bases for their numbers are
25 inconsistent with, I think, what is credible for these

1 particular operations.

2 Not only that, if you look at CCAR protocols, the
3 direct emissions that we're talking about for operations
4 really involve the kinds of things that Poseidon has
5 control over. The vendors, many vendors these days are
6 doing their own calculations for greenhouse gases and
7 would be responsible for offsetting their own emissions.

8 So it's really important when you're defining
9 footprints to draw the line around the kinds of things
10 that Poseidon clearly has control over.

11 CHAIRPERSON CHIANG: Thank you.

12 MS. SOLMER: Thank you. Gabriel Solmer for San
13 Diego Coastkeeper.

14 And I just wanted to address what Charlie just
15 said. Most importantly, you don't have any calculations
16 from Poseidon for the 4 areas that Livia Borak mentioned.
17 So you only have our calculations -- our expert's
18 calculations on that, and you can certainly disagree with
19 the methodology that we used.

20 But if you don't include a number for that, then
21 you will not be mitigating fully for that impact. The
22 protocol that we used is the idea that, but for this
23 project, you would not have those impacts. You would not
24 have trucks coming. You would not have waste disposal.
25 You would not have employees coming to the facility.

1 And our numbers are based on an expert review
2 that was done for the Coastal Commission, as I understand,
3 we literally -- for Poseidon to back-up the piece of paper
4 calculations that they're doing on the spot. And I think
5 you can see the concern is that you may not agree with
6 either number, but we don't have a set number in this
7 case. It just hasn't been done. And, you know, you're
8 dealing with that uncertainty because of that.

9 CHAIRPERSON CHIANG: No, I understand that. I
10 don't agree with either number. Clearly, there has to be
11 some number, and I just think 400 is excessive.

12 Any other questions?

13 Okay, please.

14 MS. COOK: Okay. Andrea Cook climate change
15 scientist.

16 This whole thing that we're dealing with --
17 emissions get divided into 3 categories. There's scope 1,
18 there's scope 2 and there's scope 3. And what we're
19 talking about now is that scope 3 thing, which isn't
20 directly regulated and won't be under AB 32. These
21 calculations often end up in that de minimis category,
22 because they're less than 5 percent of the total
23 emissions. And the time and the energy and everything
24 spent to figure out what the emission is for your toilet
25 paper, for your uniforms and cleaning of the uniforms,

1 when does that start out, at what point? Does it go back
2 to the farmer and then the worker that carries -- it gets
3 to be really complicated, so it's scope 3.

4 COMMISSIONER GARAMENDI: May I ask a question.

5 CHAIRPERSON CHIANG: Yes. Excuse me, Andrea.

6 COMMISSIONER GARAMENDI: What is the extent of
7 what we're debating here? Are we debating a number
8 that's --

9 MS. COOK: Well, that's -- sorry.

10 COMMISSIONER GARAMENDI: These are questions for
11 all of us. Are we debating a number between 1 and a
12 billion or are we debating a number between 2,932 and
13 3,932? What's the --

14 MS. COOK: The baseline emission for them right
15 now is 13,000 per year from the net from their utility
16 bill.

17 CHAIRPERSON CHIANG: That's not what I'm
18 deliberating.

19 MR. STRINGER: Excuse me. Charlie Stringer.

20 What we're really talking about here is a
21 difference between 2,932 tons, one time over the life of
22 the project and approximately 1,000 tons per year over the
23 life of the project, so it's 30,000. So we're talking a
24 difference between roughly 3,000 tons and 30,000 tons over
25 the life of the project.

1 COMMISSIONER GARAMENDI: That's helpful.

2 MR. STRINGER: Is that fair?

3 MS. COOK: Yeah, that's fair.

4 CHAIRPERSON CHIANG: I was just thinking about
5 that.

6 Okay, next issue.

7 (Laughter.)

8 EXECUTIVE OFFICER THAYER: Those are the
9 issues -- we've discussed the issues about greenhouse
10 gases. With respect to wetlands --

11 COMMISSIONER GARAMENDI: Excuse me, let me get on
12 with this.

13 If we take the maximum, which was, what, 30,000,
14 okay, and we take where we are basically say 3,000, we've
15 got about a 27,000 ton difference at \$10 a ton.

16 EXECUTIVE OFFICER THAYER: Over the life of the
17 project, not just one year. So it's only 270,000 over the
18 life of the project. So it's less than --

19 COMMISSIONER GARAMENDI: So if it's \$10 a ton,
20 multiplied by 27,000, we're talking about \$270,000 here?

21 EXECUTIVE OFFICER THAYER: Over the life of the
22 project, right.

23 COMMISSIONER GARAMENDI: Over the life of the
24 project. Give me a break.

25 (Laughter.)

1 COMMISSIONER GARAMENDI: That's what this is
2 -- that's what we spent a half an hour on, \$270,000?

3 (Laughter.)

4 MS. COOK: That's why it's de minimis.

5 COMMISSIONER GARAMENDI: Does Poseidon have a
6 problem with \$270,000 over the life of this project?

7 If so, what's the problem?

8 MR. MacLAGGAN: What we have a problem with,
9 Commissioner, is the fact that that number is based on an
10 estimate where we're going to drive a half a million miles
11 a year to deliver chemicals to this plant. And I don't
12 know what the number is, but I can tell you it's off by at
13 least an order of magnitude.

14 COMMISSIONER GARAMENDI: What would you like --

15 MR. MacLAGGAN: Herein lies the problem. We have
16 no problem addressing --

17 COMMISSIONER GARAMENDI: You don't have \$270,000
18 in this project that can be spent for this mitigation?

19 Come on. Come on.

20 What's the total cost of the project?

21 MR. MacLAGGAN: \$300 million.

22 (Laughter.)

23 COMMISSIONER GARAMENDI: Can we get on with it?

24 MR. MacLAGGAN: Yes, sir.

25 COMMISSIONER GARAMENDI: Can we accept \$250,000

1 and move on?

2 MR. MacLAGGAN: Yes, sir.

3 COMMISSIONER GARAMENDI: All right. Let's do
4 that.

5 Thank you.

6 EXECUTIVE OFFICER THAYER: Next. Thank you
7 actually. We can take care of that.

8 (Laughter.)

9 EXECUTIVE OFFICER THAYER: Next has to do with
10 the dredging, whether or not Poseidon -- whether or not
11 the lease should specify that there would not be credits
12 for dredging the entrance to the lagoon for wetland
13 restoration. The Coastal Commission has left this in the
14 shape where Poseidon would have to come back and request
15 approval for use of those 81 acres. We're saying it's not
16 allowed in our lease -- pursuant to our lease. So if they
17 got approval from the Coastal Commission, they would then
18 come back to us and ask for an amendment to allow them to
19 use it.

20 CHAIRPERSON CHIANG: It's not a problem if they
21 get approval from the Coastal Commission, so we're just
22 waiting for the Coastal Commission to give it.

23 EXECUTIVE OFFICER THAYER: That's right. And I
24 think the Coastal Commission basically said we're not
25 going to review this until the 18 acres, in essence -- so

1 it's 8 or 9 years down the road. And so all we're saying
2 in our lease is we're not allowing it now. And if they
3 want to come back and get an amendment later, we'd
4 certainly entertain that.

5 CHAIRPERSON CHIANG: Rick, you don't have a
6 problem with that. If you get Coastal Commission
7 approval, you just come back and our staff has indicated
8 if the Coastal Commission says yes, that's fine.

9 MR. ZBUR: As long as it's on the record that at
10 the time that we come back in and seek -- we just want the
11 option to be able to seek the dredging credits.

12 EXECUTIVE OFFICER THAYER: We would be glad to
13 put language in the lease that would say they have the
14 option of coming back and seeking an amendment to get
15 that.

16 MR. ZBUR: I mean if we could add something where
17 they said that we would come back for a lease amendment if
18 we sought dredging credit, that would be fine.

19 CHAIRPERSON CHIANG: Okay.

20 Next item.

21 EXECUTIVE OFFICER THAYER: The Performance
22 standards.

23 (Laughter.)

24 CHAIRPERSON CHIANG: Okay. Next.

25 EXECUTIVE OFFICER THAYER: That's it.

1 CHAIRPERSON CHIANG: Did we have resolution -- I
2 thought we had agreement -- we've agreed on the
3 environmental impacts and your review on the environmental
4 impacts?

5 EXECUTIVE OFFICER THAYER: I don't think that's
6 an issue at this point.

7 CHAIRPERSON CHIANG: Okay. So then we'll just go
8 item by item with votes.

9 Are you ready?

10 COMMISSIONER GARAMENDI: Sorry. I'm just on the
11 water bonds.

12 (Laughter.)

13 CHAIRPERSON CHIANG: Okay. We'll go back to
14 that.

15 Paul, do you want to take the first item.

16 EXECUTIVE OFFICER THAYER: The first item is
17 basically the question about whether or not in all cases
18 they should be able to get offsets for the State Water
19 Project water, whether or not that's been foregone or not.
20 Staff has tried to devise a mechanism wherein those years
21 in which they leave water behind up north, they don't take
22 everything, that, in essence, Poseidon has displaced some
23 water in that circumstance and we'd give them the credit
24 then.

25 COMMISSIONER GARAMENDI: This is the net and

1 gross issue?

2 EXECUTIVE OFFICER THAYER: Yes, it is.

3 COMMISSIONER GARAMENDI: My position is net.
4 I've stated it clearly.

5 CHAIRPERSON CHIANG: Yeah. I don't think either
6 side has it perfectly, but it's just so complicated, I'm
7 not sure how you get to a better resolution. So that's my
8 position.

9 ACTING COMMISSIONER SHEEHAN: Mine on this one is
10 I would agree to go with the net. The concern that I have
11 is they are paying -- they have to do something over which
12 they have no control if metropolitan decides to take it or
13 not. That's what I'm struggling with. And so it's this
14 group that has to pay for someone else's decision. And so
15 that's where I have a problem on that one.

16 CHAIRPERSON CHIANG: Okay. Is there a motion?

17 COMMISSIONER GARAMENDI: For the overall project
18 now?

19 CHAIRPERSON CHIANG: No, just item by item.

20 COMMISSIONER GARAMENDI: Okay. On this one I
21 move that it is a net calculation.

22 ACTING COMMISSIONER SHEEHAN: I will second that.

23 CHAIRPERSON CHIANG: Motion by Garamendi,
24 seconded by Sheehan. Without objection, motion passes.

25 Next item. We've got the greenhouse gas

1 reduction contingency.

2 EXECUTIVE OFFICER THAYER: I think we've resolved
3 that.

4 CHAIRPERSON CHIANG: Do you need a motion?

5 EXECUTIVE OFFICER THAYER: No. I mean we're
6 willing to incorporate the proposal by Poseidon into our
7 lease proposal and that's what's supported by the
8 Commission on the final vote, unless there's some
9 objection.

10 CHAIRPERSON CHIANG: No. I have no objection. I
11 just didn't know if formal action was required.

12 EXECUTIVE OFFICER THAYER: No, I don't think so.

13 CHAIRPERSON CHIANG: Okay, the next item.

14 EXECUTIVE OFFICER THAYER: I think we're down to
15 dredging.

16 CHAIRPERSON CHIANG: Did we have --

17 ACTING COMMISSIONER SHEEHAN: I think that they
18 agreed to \$250,000.

19 CHAIRPERSON CHIANG: They agreed to the 250,000.

20 COMMISSIONER GARAMENDI: 750.

21 (Laughter.)

22 CHAIRPERSON CHIANG: You said 250.

23 EXECUTIVE OFFICER THAYER: Our attorney has a
24 question.

25 ACTING CHIEF COUNSEL FOSSUM: Is it 25,000 of --

1 COMMISSIONER GARAMENDI: Additional tons

2 ACTING CHIEF COUNSEL FOSSUM: Pardon?

3 COMMISSIONER GARAMENDI: Additional tons.

4 ACTING CHIEF COUNSEL FOSSUM: Right. It's 25,000
5 total over the 30 years.

6 EXECUTIVE OFFICER THAYER: No, 250,000.

7 ACTING CHIEF COUNSEL FOSSUM: 250,000 would be
8 the dollar amount.

9 COMMISSIONER GARAMENDI: It's not 2,932. It's
10 not 30,000. It's 27,000.

11 ACTING CHIEF COUNSEL FOSSUM: Do we have a
12 closing number?

13 (Laughter.)

14 CHAIRPERSON CHIANG: You said 250. His 250 was
15 250,000.

16 COMMISSIONER GARAMENDI: You're bidding me down
17 here.

18 (Laughter.)

19 ACTING CHIEF COUNSEL FOSSUM: Not tons.

20 CHAIRPERSON CHIANG: His calculation was 25,000
21 at \$10. This assumption was the --

22 EXECUTIVE OFFICER THAYER: So it's 25,00 tons.
23 And presumably that would be spread over the project, that
24 wouldn't be done up-front?

25 ACTING COMMISSIONER SHEEHAN: The direct

1 impact --

2 MR. ZBUR: I'm assuming that what you're talking
3 about is 25,000 tons, which would be approximately, at
4 today's market prices, \$250,000.

5 CHAIRPERSON CHIANG: That's correct. That was
6 the assumption.

7 MR. ZBUR: So the question would be that we have
8 a -- that we would make a payment over some period of
9 time, an early period, to cover that early. I'm assuming.

10 COMMISSIONER GARAMENDI: As long as we have
11 \$250,000 and get this issue off the table.

12 MR. ZBUR: We will retire that amount before we
13 operate.

14 COMMISSIONER GARAMENDI: Done.

15 MR. ZBUR: Within the first year of operations,
16 first annual report.

17 EXECUTIVE OFFICER THAYER: So is it money or they
18 go out and buy 25,000 credits?

19 CHAIRPERSON CHIANG: 250 plus the others all
20 together?

21 COMMISSIONER GARAMENDI: I want these characters
22 to pay \$250,000 and get this thing done. Okay.

23 MR. ZBUR: We'll buy \$250,000 of offsets and in
24 addition to -- we will buy \$250,000 worth of offsets, in
25 addition to the requirements that were imposed under the

1 Coastal Commission plan and provide verification in our
2 first annual report that that has been done.

3 EXECUTIVE OFFICER THAYER: Is it the money or the
4 credits? He phrased it in terms of money.

5 COMMISSIONER GARAMENDI: We want the credits.
6 We're assuming the price is 10. If you can buy them at 8,
7 go for it.

8 EXECUTIVE OFFICER THAYER: So 25,000 before the
9 operations starts.

10 COMMISSIONER GARAMENDI: I don't want to mess
11 with the price.

12 MR. ZBUR: So we will agree to buy credits in the
13 amount of \$250,000 at what the market price is.

14 COMMISSIONER GARAMENDI: Okay. Hang on. You're
15 going to buy 25,000 tons of credit.

16 MR. ZBUR: We're fine with that, 25,000 tons.

17 COMMISSIONER GARAMENDI: Go bargain as well as
18 you can.

19 MR. ZBUR: Demonstrated in the first annual
20 report. Twenty-five thousand tons demonstrated in the
21 first annual report. And that would offset all direct
22 emissions from operations.

23 CHAIRPERSON CHIANG: Before operations.

24 COMMISSIONER GARAMENDI: I'm sorry. Is this so
25 complex that we can't figure this out.

1 ACTING CHIEF COUNSEL FOSSUM: We want the timing.

2 When do you want the payments to be made by?

3 EXECUTIVE OFFICER THAYER: Not the payment, but
4 credits purchased by.

5 COMMISSIONER GARAMENDI: Credits purchased before
6 operation.

7 MR. ZBUR: I think that's fine.

8 CHAIRPERSON CHIANG: Very good.

9 Next item.

10 (Laughter.)

11 EXECUTIVE OFFICER THAYER: I think we were done
12 with dredging.

13 Performance standards.

14 CHAIRPERSON CHIANG: Okay.

15 ACTING COMMISSIONER SHEEHAN: Well, this went
16 back to coming back to the Commission with some more
17 specifics about it, right?

18 EXECUTIVE OFFICER THAYER: Okay. So the
19 arrangement is that we won't have new performance
20 standards. We'll rely on what the Coastal Commission is
21 doing. However, if there are any changes at all, that has
22 to be brought back to the Commission for -- this
23 Commission for its approval.

24 CHAIRPERSON CHIANG: Perfect.

25 EXECUTIVE OFFICER THAYER: Got it.

1 CHAIRPERSON CHIANG: Okay.

2 EXECUTIVE OFFICER THAYER: And I think that's it.

3 CHAIRPERSON CHIANG: So can we have a motion on
4 the entire project?

5 ACTING COMMISSIONER SHEEHAN: I'll move approval.

6 COMMISSIONER GARAMENDI: Second.

7 CHAIRPERSON CHIANG: Motion by Sheehan, second by
8 Garamendi. Without objection, motion passes.

9 CHAIRPERSON CHIANG: Okay.

10 EXECUTIVE OFFICER THAYER: All right.

11 CHAIRPERSON CHIANG: Okay. Next item.

12 EXECUTIVE OFFICER THAYER: We have 2 resolutions
13 before the Commission.

14 THE REPORTER: I'm having a hard time hearing.

15 CHAIRPERSON CHIANG: If I could have everybody's
16 courtesy, please. The court reporter is having
17 difficulty, so if you choose to leave, please do so as
18 quietly as possible.

19 Thank you.

20 Next item, please.

21 EXECUTIVE OFFICER THAYER: We have 2 resolutions
22 that are proposed for adoption by the Commission. One
23 proposed by the Department of Finance regarding off-shore
24 oil development. And the other one proposed by the
25 Controller, which would support Barbara Boxer's bill

1 dealing with ocean legislation. Mario, would you give the
2 presentation?

3 MR. DeBERNARDO: Yes.

4 COMMISSIONER GARAMENDI: Move the resolution.

5 CHAIRPERSON CHIANG: Okay, we have a motion.

6 ACTING COMMISSIONER SHEEHAN: Second.

7 CHAIRPERSON CHIANG: Motion by the Lieutenant
8 Governor, second by Anne.

9 ACTING COMMISSIONER SHEEHAN: Good presentation.

10 CHAIRPERSON CHIANG: I'm sorry, guys. I've got
11 public comment from either Robin or Rubin or something
12 Villa on the resolution. Is Robin or Rubin Villa
13 available?

14 Are you hear?

15 No.

16 Okay, we've got a motion by Garamendi, seconded
17 by Sheehan.

18 EXECUTIVE OFFICER THAYER: I think this is the
19 gentleman that wanted to speak.

20 MR. VILLA: I'm Robin Villa.

21 CHAIRPERSON CHIANG: What was that again?

22 MR. VILLA: I just wanted to speak if it was
23 withdrawn.

24 CHAIRPERSON CHIANG: Oh, no, it's not withdrawn.

25 Lorena, did you want to speak on the resolutions?

1 MS. GONZALES: No, I have no comment.

2 CHAIRPERSON CHIANG: We have a motion and a
3 second. Without objection, motion passes.

4 Next item, please.

5 EXECUTIVE OFFICER THAYER: That completes the
6 regular calendar items.

7 CHAIRPERSON CHIANG: Is there anybody wishing to
8 make public comment?

9 Yes, please join us up front.

10 MR. ERGAS: Mr. Chairman and Commissioners and
11 members of the staff. Thank you for the opportunity to
12 address you today. My name is Ray Ergas. I'm the
13 director of the Dana Point Boaters Association, an
14 organization supporting recreational boating in Dana Point
15 Harbor. I'm appearing before you today to bring an issue
16 to your attention that falls within the Commission's
17 jurisdiction.

18 As you know, our harbor is located on tidelands
19 granted to Orange County by the Legislature as a trust in
20 1961. Dana Point Harbor has been in operation for nearly
21 40 years and a major renovation called the revitalization
22 project is being planned. This project if approved would
23 cost hundreds of millions of dollars, take many years, and
24 as currently planned, would result in a significant
25 expansion of non-maritime commercial activity.

1 The County of Orange is required to submit an
2 annual report of its revenues and expenditures from the
3 trust lands to this Commission. This report is required
4 by Public Resources Code section 6306 to be detailed, and
5 prepared in accordance with generally accepted accounting
6 principles.

7 Recently the Dana Point Boaters Association made
8 a public information request to Orange County for the
9 reports that they must file with the Commission. What
10 they provided us was quite surprising. As you will see in
11 the handout, which hopefully was just given to you, the
12 report for the year ending June 2007 is only 2 pages long.
13 We requested reports going back to 1986 as Section 6306
14 requires. We have only received 9 years of reports and
15 none are more than 2 pages.

16 You will also notice that the majority of both
17 the revenues and expenditures fall into a single category,
18 rents and concessions for revenue, and professional
19 services for expenditures.

20 Our interest at Dana Point Boaters Association is
21 to understand how much of both income and expense are due
22 to recreational boating, particularly slip fees. Expenses
23 associated with recreational boating or any other
24 activities, such as restaurants and shops, cannot be
25 determined from this data. Before undertaking a major

1 reconstruction project, we believe it is important to
2 understand the harbor's economics.

3 This brings us to a request we have of the
4 Commission. We would like to understand whether the
5 Commission considers these 2-page reports to meet the
6 statutory requirements for detail and accounting
7 procedure. We would also like to ask if the Commission
8 can obtain any more detail on the categories of revenue
9 and expense, so that boaters, citizens and taxpayers can
10 comment knowledgeably on the revitalization.

11 To be clear, we don't want to suggest any
12 impropriety by the County, only a lack of transparency.
13 We'd be happy to work with the Commission and the staff in
14 any way that would be helpful, and thank you very much for
15 your time today.

16 CHAIRPERSON CHIANG: Thank you, Ray.

17 Paul.

18 EXECUTIVE OFFICER THAYER: We'd be glad to meet
19 with this gentleman. I also was approached at the Coastal
20 Commission meeting by somebody else on this same
21 organization. And I think in addition to their concerns
22 about whether the statements are sufficient, their
23 concern, as boaters, as to whether or not Dana Point is
24 moving in a direction that is more tourist oriented. And
25 so I think it's fair to say that's an underlying concern.

1 They're afraid that they're not facilities -- or the
2 facilities for boaters are going to give way to these
3 other restaurants and things like this. We'll sit down
4 and talk with them, as well as with Dana Point officials
5 and report back to the Commission on what we find out.

6 CHAIRPERSON CHIANG: So you'll assign somebody to
7 follow-up with him?

8 EXECUTIVE OFFICER THAYER: Yes.

9 MR. ERGAS: Thank you very much.

10 CHAIRPERSON CHIANG: Lorena.

11 MS. GONZALES: And I'll try to be quick. I know
12 you guys want to get out of here. I'm here, and you've
13 got to hear this, on behalf of a coalition that includes
14 the San Diego Regional Chamber of Commerce, the
15 Environmental Health Coalition, the Labor Council, the San
16 Diego County Taxpayers Association, the entire Port
17 Tenants Association, San Diego and San Diego Military
18 Advisory Council. It's not often you can get us all in
19 the same room, let alone to agree upon something.

20 But we are being faced in San Diego with an
21 initiative that was placed on the ballot by a developer
22 who basically is trying to force the Port to get rid of
23 the maritime uses in San Diego, which of course affects
24 our good-paying longshoreman jobs as well as our
25 Teamsters. And our mission is jobs there on the water

1 front.

2 We're working together to defeat this initiative,
3 but the Port has also filed suit and asked for injunctive
4 relief. That court case will be heard September the 4th.
5 And what we're asking is that the State Lands Commission,
6 as a party of interest basically, given that you have
7 responsibility over those tidelands and you have entrusted
8 it to the Port, intervene by way of an amicus brief, and
9 possibly at least follow it through and see if there's
10 some other intervention that could happen in the future.
11 But for now at least an amicus brief, and that's what
12 we're asking for today and hope that you'll follow this
13 closely. And along with us realize that this is not only
14 what we think is illegal but a terrible precedent for our
15 ports to face a local initiative on statewide land.

16 Thank you.

17 CHAIRPERSON CHIANG: Thank you.

18 I think that concludes public comment. We can go
19 into closed session.

20 EXECUTIVE OFFICER THAYER: Exactly. Yes. If the
21 people who are not employees of the State Lands Commission
22 or the Attorney General's office could please clear the
23 room.

24 (Thereupon the State Lands Commission
25 meeting adjourned at 1:11 p.m.)

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Lands Commission meeting was
7 reported in shorthand by me, James F. Peters, a Certified
8 Shorthand Reporter of the State of California, and
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 3rd day of September, 2008.

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JAMES F. PETERS, CSR, RPR

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