

BEFORE THE  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
Board Meeting )  
\_\_\_\_\_ )

CA EPA BUILDING, 2<sup>nd</sup> Floor  
COASTAL HEARING ROOM  
1001 I Street  
Sacramento, California

TUESDAY, MAY 4, 2010

9:00 A.M.

Reported by:  
Peter Petty

## BOARD MEMBERS PRESENT

Charles R. Hoppin, Chairman  
 Frances Spivey-Weber, Vice Chair  
 Arthur G. Baggett, Jr.  
 Tam M. Doduc  
 Walter G. Pettit

Staff Present

Dorothy Rice, Executive Director  
 Michael A.M. Lauffer  
 Jonathan Bishop, Chief Deputy Director  
 Thomas Howard  
 Darren Polhemus  
 Scott Couch  
 Jim Maughan  
 Larry Lindsey  
 Paul Murphy  
 David Rose  
 Dominic Gregorio  
 Marleigh Wood  
 Joanne Jensen  
 Jeanine Townsend

Also Present

Sarah Hanson, Sacramento Redevelopment and Housing Agency  
 Colin Pearce, City of Bakersfield  
 Nick Jacobs, Kern County Water Agency

Public Comment

John Kemmerer, US EPA Region 9  
 Marlon Cuellar, for State Assembly Member Mary Salas  
 Alfred Wanger, California Coastal Commission  
 Dennis Peters, CAISO  
 Andrew Ulmer, CAISO  
 Mike Jaske, CEC  
 Robert Strauss, CPUC  
 Linda Sheehan, California Coast Keeper Alliance (CCKA)  
 Sarah Sikich, Heal the Bay  
 Dr. Michael Hertel, Southern California Edison Co. (SCE)  
 Dr. David Sunding, UC Berkeley  
 Eric Lu, ENVIRON  
 Paul Singarella, Latham Watkins  
 Robert Donlan, Ellison, Schneider & Harris for RRI Energy  
 Eric Pendergraft, AES Southland

Public Comment (continued)

Robert Lucas, California Council for Environmental and  
Economic Balance (CCEFB)  
Chris Ellison, Ellison, Schneider & Harris for Dynegy  
Katherine Rubin, Los Angeles Department of Water and Power  
(LADWP)  
Mark Krausse, Pacific Gas and Electric (PG&E)  
Noah Long, Natural Resources Defense Council (NRDC)  
Jill Wirkowski, San Diego Coast Keeper  
Joe Geever, Surfrider Foundation  
John Steinbeck, Tenera Environmental  
David Nelson, Coastal Alliance on Plant Expansion (CAPE)  
Dr. Shelley Luce, Santa Monica Bay Restoration Commission  
Steve Peace, Self  
Jow Dillon, National Marine Fisheries Service  
Ian Wren, San Francisco Baykeeper  
Robb Kapla, Voices of the Wetlands  
Jim Metropulis, Sierra Club California  
Sean Beatty, Mirant

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## P R O C E E D I N G S

1  
2 MAY 4, 2010

9:25 a.m.

3 CHAIR HOPPIN: Good morning, ladies and gentlemen.  
4 If you would take your seat now, for real? Our second Board  
5 Meeting of the day. Today, Tuesday, May 4<sup>th</sup>, I would like to  
6 call this meeting to order. I will begin by introducing my  
7 staff - my Board, excuse me - to my left - I hope that is  
8 not indicative of the way my day is going to go.

9 MS. SPIVEY-WEBER: Ah, now the truth comes out.

10 CHAIR HOPPIN: To my left, Vice Chair Frances  
11 Spivey-Weber; to her left, member Tam Doduc; to my right,  
12 Board member Baggett; and to Art's right, Mr. Walt Pettit.  
13 Now, Ms. Rice, would you please introduce your staff?

14 MS. RICE: Dorothy Rice, Executive Director. To  
15 my left, Michael Lauffer, Chief Counsel; to my right, John  
16 Bishop, Chief Deputy Director; to his right, Tom Howard,  
17 Chief Deputy Director; assisting us, Jeanine Townsend, Clerk  
18 to the Board; and Darren Polhemus will be assisting with the  
19 once-through cooling item; and staff, seated for a future  
20 Board item.

21 CHAIR HOPPIN: Thank you, Ms. Rice. I know all of  
22 you that are here for today's hearing are veterans of Water  
23 Board meetings and wars, but it is important that you all  
24 note, in the back of the room there are two exit signs. In  
25 the event of a fire alarm, which I may set off at my

1 discretion if things get out of hand later in the day, we  
2 will all evacuate down the stairs and across the street to  
3 Chavez Park.

4 I would also like to let you know that this  
5 meeting is being webcast and recorded, so when you come to  
6 the podium, please identify yourself clearly and whom you  
7 represent. If I inadvertently mispronounce your name, I  
8 apologize, it is not intention. And most importantly,  
9 anything that chirps, tweets, beeps, or otherwise distracts  
10 you, if you would make sure they are turned off, I would  
11 appreciate that and I will do the same. And we may be  
12 approaching capacity of this room during the course of the  
13 day, there is an overflow in the Sierra Hearing Room next  
14 door, so if anyone is outside, cannot get in, there is room  
15 next door.

16 **Item 1. PUBLIC FORUM.**

17 CHAIR HOPPIN: With that, in every Board meeting  
18 we have time for a public forum, any person wishing to speak  
19 to the Board on any matter not pending before the Board, if  
20 you have submitted a blue card, it is your time to come  
21 forward.

22 MS. TOWNSEND: I have no cards.

23 CHAIR HOPPIN: Good. Four minutes, Ms. Townsend,  
24 do you have Board Minutes?

25 MS. TOWNSEND: Yes, I do, sir.

1 CHAIR HOPPIN: I know you do, you always do.

2 **Item 2. MINUTES.**

3 MS. SPIVEY-WEBER: I will move for adoption.

4 MR. BAGGETT: Second.

5 CHAIR HOPPIN: All those in favor?

6 (Ayes.)

7 Do any Board members want to report about anything  
8 other than wanting to leave as soon as they can today?

9 **Item 3. UNCONTESTED ITEMS.**

10 CHAIR HOPPIN: Hearing none, we have one  
11 uncontested item, Item 3, there is no one here to speak on  
12 that. I will entertain a motion -

13 MR. LAUFFER: One item to clarify for the record  
14 before voting on the Consent item, there was the staff  
15 change sheet that had been circulated.

16 MS. SPIVEY-WEBER: I move adoption of Item 3 with  
17 the changed sheet as noted.

18 MR. BAGGETT: I will second that.

19 CHAIR HOPPIN: All those in favor?

20 (Ayes.)

21 Thank you.

22 **Item 4. PROPOSED RESOLUTION TO ALLOCATE FUNDS FROM THE**  
23 **CLEAN-UP AND ABATEMENT ACCOUNT TO FUND A SOIL VAPOR**  
24 **EXTRACTION SYSTEM FOR THE BARSTOW STREET EL MONTE TRIANGLE.**

25 CHAIR HOPPIN: Ms. Rice, would you please



1 introduce this?

2 MS. RICE: Item 6?

3 CHAIR HOPPIN: No, Item 4.

4 MS. RICE: The folks for Item 6 were a little  
5 anxious because they were already seated, but I will move to  
6 Item 4. Item 4, Mr. Chairman and members, is for your  
7 consideration of a proposed resolution to allocate funds  
8 from the Clean-Up and Abatement Account to fund a soil vapor  
9 extraction system for the Barstow Street El Monte Triangle.  
10 Presenting the item are Scott Couch, assisted by Jim Maughan  
11 from our Division of Financial Assistance. Thank you.

12 CHAIR HOPPIN: In the interest of time, Mr.  
13 Maughan, considering that we have a very full agenda today,  
14 rather than have you give a report that I believe you have  
15 given to all of us with the follow-up sheet from Mr. Couch,  
16 unless any of the Board members have any questions about  
17 this, I am going to spare you your presentation. It is my  
18 understanding that someone from the City wanted to speak to  
19 this issue. Is that correct? Are you asking to speak about  
20 the vapor clean-up, or the other portion of this project?

21 MS. HANSON: I was going to speak on both items.  
22 I am Sarah Hanson with the Sacramento Redevelopment Agency.  
23 And at the March meeting, you had asked for more of an  
24 overview as it relates to redevelopment, as well as the SVE  
25 unit and the second piece. And so we are respectfully

1 asking for a few minutes to show you a quick PowerPoint.

2 CHAIR HOPPIN: I believe -- I know I have reviewed  
3 the second portion of this, and I never agreed with it and  
4 still do not. I am in favor of the vapor recovery portion  
5 of it, as proposed. But unless any of my colleagues want to  
6 hear about the soil studies and all, I do not know that it  
7 is the best use of your time. Does anyone -

8 MS. HANSON: I concur with the Chair.

9 MS. SPIVEY-WEBER: I move we adopt the resolution  
10 to allocate the funds from the Clean-Up and Abatement  
11 Account to fund the soil vapor extraction system.

12 CHAIR HOPPIN: And I have a second by Mr. Baggett,  
13 Jeanine?

14 MS. TOWNSEND: Yes, I know.

15 CHAIR HOPPIN: All those in favor, signify by  
16 saying aye.

17 (Ayes.) Any opposed? Thank you.

18 MS. HANSON: Thank you.

19 CHAIR HOPPIN: We will go to Item 6, please, Ms.  
20 Townsend - Ms. Rice - it is going to be a long day. I am  
21 looking forward to being sucked through a giant once-through  
22 cooling facility and turned into fish food here, I just can  
23 hardly wait.

24 **Item 6. PETITION FOR RECONSIDERATION OF A WATER RIGHT ORDER**  
25 **REMOVING THE KERN RIVER IN KERN COUNTY FROM THE DECLARATION**

1 **OF FULLY APPROPRIATED STREAMS.**

2 MS. RICE: Item 6 is for your consideration of a  
3 proposed order to deny the Petition for Reconsideration of a  
4 Water Right Order removing the Kern River in Kern County  
5 from the Declaration of Fully Appropriated Streams. Larry  
6 Lindsey, Chief of the Hearings Unit in the Division of Water  
7 Rights will lead off the presentation.

8 MR. LINDSEY: Good morning. Joining me this  
9 morning are Staff Counsel David Rose, who is the attorney on  
10 the Hearings Team, and Engineering Geologist Paul Murphy,  
11 who is the Hearings Unit Staff Lead for this item. And Paul  
12 will give a brief intro.

13 MR. MURPHY: Good morning, Chair Hoppin and Board  
14 members. The order before you is a response to a Petition  
15 for Reconsideration that was jointly filed by the North Kern  
16 Water Storage District, City and Chapter Buena Vista Water  
17 Storage District, Kern Water Bank Authority, and the Kern  
18 County Water Agency. The Joint Petitioners offer six  
19 reasons why they believe Order 22010-10 which would remove  
20 the Fully Appropriated Stream status for the Kern River is  
21 inappropriate and improper. In the Draft Order before you,  
22 staff responds to these six reasons and recommends denying  
23 the petition for reconsideration. We released the Draft  
24 Order for public review on April 20<sup>th</sup>, and comments were due  
25 last Tuesday, the 27<sup>th</sup>. We received one timely comment that

1 was from the City of Bakersfield. Staff has no changes to  
2 the Draft Order and we recommend that you adopt the Order as  
3 written. David and I are here for any further questions you  
4 may have.

5 CHAIR HOPPIN: Thank you. I have two speakers,  
6 Colin Pearce.

7 MR. PEARCE: Thank you. Good morning, Board  
8 members and staff. Colin Pearce representing Petitioner,  
9 City of Bakersfield. We submitted comments last Tuesday in  
10 support of the Draft Order. I am here today to again urge  
11 you to adopt the Draft Order, and we do appreciate the  
12 additional information and direction that is in the Draft  
13 Order. I think there is some very good clarifications in  
14 there about the next steps and the process of dealing with  
15 the Kern River. In the prior Order, the original Order on  
16 the Kern River, there was an indication that, at this point  
17 in the process, staff would start to process the  
18 applications to appropriate. We look forward to working  
19 with staff in that regard. I do want to point out that, in  
20 response to some of the issues raised in the prior Order on  
21 the Kern River, and also discussed in the Draft Order. We  
22 are working, Petitioner of the City of Bakersfield, is  
23 working on preparing some supplemental information to submit  
24 with their Application to Appropriate which should clarify  
25 two important issues, one is how much water is available and

1 how much water is unappropriated on the Kern River, and  
2 second, what to do with that water with a focus on multiple  
3 reasonable and beneficial uses, primarily water in the Kern  
4 River to restore the natural flow of the Kern River. We  
5 also urge, as we have mentioned several times, we urge staff  
6 and Board members, if possible, to come down to Bakersfield  
7 to tour the Kern River, to meet with City staff as part of  
8 the process of adjudicating the unappropriated water on the  
9 Kern River. Finally, I will ask and urge that the Board not  
10 delay this process any further. We expect this will be a  
11 fairly lengthy process, there are multiple applications to  
12 appropriate, and we expect there will be protests, and for  
13 the hearings we anticipate that there may be a Petition for  
14 Writ of Mandate filed by the North Kern parties against the  
15 Board. We would urge the Board to not delay the processing  
16 of the Applications to Appropriate while the petition is  
17 pending. There has also been some very preliminary  
18 settlement talks among the parties, but we also do not  
19 believe that that should delay the processing further  
20 because, frankly, any settlement would probably put us  
21 exactly where we are now, which is urging the Board to  
22 restore the flow of the Kern River, that is really, I think,  
23 first and foremost the City's goal and policy no matter what  
24 happens on the River. And we thank you again for your  
25 consideration of this matter and we urge you once again to

1 approve the Draft Order. Thank you.

2 CHAIR HOPPIN: Thank you, Mr. Pearce. Nick  
3 Jacobs. I notice how you two did not pass in the aisle  
4 there.

5 MR. JACOBS: Oh. Good morning, my name is Nick  
6 Jacobs. I am with Somach Simmons & Dunn, representing Kern  
7 County Water Agency. I have a cold, excuse me. I am not  
8 going to make further substantive comments on the Draft  
9 Order; we submitted a fairly lengthy brief in that respect.  
10 I do have one procedural request, and that is that the Board  
11 amend the Draft Order on the Petition for Reconsideration to  
12 stay processing of any applications in this matter until  
13 either the 30-day period to file a Petition for Writ has  
14 expired, and no litigation has ensued, or, if there is a  
15 writ, litigation pursued, to wait until that is resolved.  
16 Doing so makes senses for a couple of reasons. Once we get  
17 into the application processing, there will be significant  
18 resources expended by the Board staff and by all the  
19 parties. The issues that will go up, if they do, to a  
20 Superior Court, you know, are absolutely central to the  
21 processing of those applications, the water involved, what  
22 water, where, all those issues that we talked about before.  
23 And so it makes sense to wait until that process plays out  
24 before processing these applications, otherwise we are going  
25 to have parallel processes going on at significant expense.

1 The second reason, as Mr. Pearce mentioned, is that there  
2 are some discussions right now between the parties that  
3 could result in a favorable settlement that would benefit  
4 everyone involved, and substantively, I cannot go into what  
5 is being talked about, but my client holds out promise that  
6 those discussions could reach a good resolution. So thank  
7 you for your consideration.

8 CHAIR HOPPIN: Mr. Baggett, you were the Hearing  
9 Officer on this matter. Would you like to comment on Mr.  
10 Jacobs' requests?

11 MR. BAGGETT: Yeah, I would move the adoption. If  
12 you make progress in settlement, you can bring it back to  
13 the Board and we can delay it. I think if we delay this  
14 now, we have all been involved in settlements, you need a  
15 deadline, and we have a deadline, and I think this Board has  
16 shown over the years that it is very amicable to extending  
17 deadlines if there are true settlement efforts, and some  
18 product is coming back, we have done that more than once  
19 since I have been here, and I think that my colleagues share  
20 that belief in settlements. But I think we should stay firm  
21 at this point and come back once you have got something to  
22 come back with, and we can discuss it. I would be glad to  
23 move the Order.

24 MR. JACOBS: The settlement is one component, but  
25 the potential litigation is another. We could be spending -

1 the Board staff could be spending considerable time working  
2 out complex engineering issues to have a court say something  
3 different.

4 MR. BAGGETT: Well, we are in court right now on  
5 another issue which is before us tomorrow, I mean, I think  
6 that is just the way we live. We are always in court on  
7 issues. I would move that.

8 MS. SPIVEY-WEBER: I second.

9 CHAIR HOPPIN: Thank you, Mr. Jacobs. We have a  
10 motion and a second before us. All those in favor, signify  
11 by saying aye.

12 (Ayes.) Any opposed? Thank you.

13 **Item 5. CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT THE**  
14 **WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND**  
15 **ESTUARINE WATERS FOR POWER PLANT COOLING AND THE ASSOCIATED**  
16 **CERTIFIED REGULATORY PROGRAM ENVIRONMENTAL ANALYSIS.**

17 CHAIR HOPPIN: Mr. Lauffer, I have no cards on  
18 Item 5. Can I move that back to the Consent Calendar?  
19 Would that be all right? No one has any objections to that,  
20 do you? What are you smiling about? Any of you that intend  
21 to speak on the once-through cooling issue, which I am sure  
22 there are many of you, if you would submit your cards if you  
23 can? The sooner the better. That will help us collate. I  
24 know we have some panels that have requested coming forward,  
25 and I assume - am I entertaining you there, or did I say



1 something that was funny that I did not realize?

2 MR. BISHOP: Jeanine has the cards and is  
3 collating them as we speak.

4 CHAIR HOPPIN: So we are not on consent, right?

5 MR. BISHOP: No, I do not think so.

6 CHAIR HOPPIN: I thought maybe you had done such a  
7 good job that -

8 MR. BISHOP: Never.

9 MS. RICE: He has done just a good job that the  
10 cards are being organized. Dominic Gregorio will -

11 CHAIR HOPPIN: If I knew you were going to wear a  
12 tie, I would have thought about doing the same, we would  
13 really be throwing them off base, wouldn't we? By the end  
14 of the day, I am going to need a fresh shirt, I do not know  
15 about the tie. Ms. Rice, would you please introduce this  
16 item.

17 MS. RICE: As you know, Mr. Chairman and members,  
18 Item 5 is for your consideration of a Proposed Resolution to  
19 Adopt the Water Quality Control Policy on the Use of Coastal  
20 and Estuarine Waters for Power Plant Cooling and the  
21 Associated Certified Regulatory Program Environmental  
22 Analysis. Dominic Gregorio with the Division of Water  
23 Quality will lead off the staff presentation for you this  
24 morning.

25 CHAIR HOPPIN: Thank you.

1           MR. GREGORIO: Good morning, Chair Hoppin and  
2 members of the Board. Again, my name is Dominic Gregorio.  
3 I work in the Division of Water Quality. Also here with me  
4 today is Marleigh Wood from Office of Chief Counsel and  
5 Joanna Jensen of the Division of Water Quality. And we are  
6 here to present the Final Draft Policy on Once-Through  
7 Cooling. So what you see on the screen is our goal to  
8 develop a statewide policy to protect marine life from the  
9 adverse impacts of once-through cooling in compliance with  
10 Clean Water Act Section 316(B), while ensuring the  
11 continuity of the State's energy grid.

12           So just as a reminder, you have seen this slide  
13 before, but there are substantial impacts to marine life as  
14 a result of once-through cooling, impingement, and this is  
15 just for fish only, is over 2.6 million annually, and that  
16 is based on data that we have from 2000 through 2005. The  
17 entrainment mortality is over 19 billion fish larvae  
18 annually and, again, I will point out that that is just fish  
19 larvae, that does not include the invertebrates that are  
20 also entrained. For the Delta plants, specifically, there  
21 are two plants in the Delta, it is estimated that they  
22 entrain about 62,000 Delta Smelt, and that is on an annual  
23 basis, along with other things. And in terms of marine  
24 wildlife, about 57 annually are entrapped, and those include  
25 seals, sea lions, and sea turtles.

1           And just to review what the law tells us, the  
2 Clean Water Act, Section 316(B) states that the location,  
3 design, construction, and capacity of cooling water intake  
4 structures reflect the best technology available for  
5 minimizing adverse environmental impact. There is a section  
6 of the California Water Code, as well, that requires newer  
7 expanded coastal power plants to use the best available site  
8 design, technology, and mitigation measures feasible to  
9 minimize the intake and mortality of marine life.

10           So just to review how we got to this point, we  
11 held two public workshops back in 2005, that is how we  
12 kicked off the process, we also had two different scoping  
13 phases, the first scoping phase was under the EPA Phase 2  
14 Rules. Those underwent a court case, the result of that  
15 court case is what we refer to as Riverkeeper II, there were  
16 substantial changes to the EPA rules, most of them were  
17 basically removed for the existing power plants, and so we  
18 kind of had to go back to the drawing board and we had a  
19 second scoping phase that was in 2008. We also impaneled a  
20 group of experts to go over some of the scientific  
21 information that became the basis for our CEQA document. A  
22 draft policy was released last year on June 30<sup>th</sup>, 2009, and  
23 the supporting document for CEQA, the Substitute  
24 Environmental Document, was released shortly afterwards on  
25 July 15<sup>th</sup>. That initiated a public comment period. A public

1 hearing was held on September 16<sup>th</sup>. The deadline for  
2 submitting comments was September 30<sup>th</sup>, we got quite a few  
3 comments from that process. A public workshop was again  
4 held on December 1<sup>st</sup> to present some of the staff proposed,  
5 what we call, "clarifying changes" to the draft policy.  
6 Those were based on a lot of those comments. We then opened  
7 it up again based on those changes that we presented on  
8 December 1<sup>st</sup> for a second comment period which ended on  
9 December 8<sup>th</sup>. We went to work, working on all of those  
10 comments that we received. A final draft policy and the  
11 substitute environmental document were released on March  
12 22<sup>nd</sup>, and the policy included certain changes from the  
13 previous version that were shown in strikeout underline for  
14 public use. The deadline for submitting comments on those  
15 recent changes was April 13<sup>th</sup>; we have received approximately  
16 9,000 comment letters, and 66 comment letters were unique,  
17 so we completed our draft response to comments. We got  
18 those to you, the Board members, and then we shortly  
19 afterwards released those to the public on April 27<sup>th</sup>.

20           So what I would like to do now is very briefly  
21 just go over those changes that you see in the draft policy,  
22 or the Draft Final Policy since December 1<sup>st</sup>. We clarified  
23 and added some findings to the beginning of the policy. We  
24 added a section or a statement in the Track 1 BTA Provisions  
25 that basically said that the dry cooling, air cooling at a

1 power plant would meet the intent of best technology  
2 available under Track 1. For Track 2, we removed the  
3 feasibility test. Previously, there had been a feasibility  
4 test if it was infeasible to do Track 1, then they would go  
5 to Track 2, well, we removed that. The impingement  
6 reductions met by the reductions in velocity, that change  
7 had to do with we added a statement in there that, if you  
8 had impingement reductions, that they had to be comparable  
9 with the other technology in Track 1. And for entrainment,  
10 we included a provision that basically required that there  
11 be a 93 percent reduction in flow measured monthly, or other  
12 control technology that is comparable. For the Track 2  
13 combined cycle plants, we included a section that stated  
14 that there would be reduction of entrainment based on  
15 reduction in intake flows for the entire plant, or for each  
16 combined cycle unit, by reductions in intake velocity and  
17 meeting the interim measures. There were provisions added  
18 for temporary suspension of the final compliance date if  
19 there was an issue with grid reliability. We added some  
20 provisions, and they were fairly minor, to the immediate and  
21 interim measures with regard to whether the Regional Board  
22 or the State Board would approve matters concerning the  
23 interim measures. So we changed it from Regional Board to  
24 State Board. We added a provision that allowed compliance  
25 through funding the Coastal Conservancy and the Ocean

1 Protection Council, the Coastal Conservancy being the fiscal  
2 agent for the Ocean Protection Council. And there was a  
3 preference that was stated toward funding projects  
4 associated with marine protected areas. And we also  
5 included a provision that operator-funded mitigation  
6 projects must be overseen by an expert panel. There were  
7 some clarifying edits to the SACCWIS procedures. There were  
8 also some procedures added with regard to Los Angeles  
9 Department of Water and Power. And there was a requirement  
10 that an annual grid reliability study was to be required.  
11 We added an allowance for suspension of compliance dates due  
12 to permitting delays. There was clarification that the  
13 Regional Board NPDES Permits should include appropriate  
14 provisions to implement suspensions and final compliance  
15 dates without re-opening the permits. With regard to the  
16 nuclear special studies, we provided factors to be  
17 considered, and those included costs of compliance,  
18 engineering space, permitting, and safety constraints, and  
19 potential environmental impacts. There was a section added  
20 that allowed a cost/cost consideration; in other words, for  
21 those nuclear plants, if the cost of compliance was to be  
22 compared to the cost that we considered in the Substitute  
23 Environmental Document, and if alternate requirements are  
24 established by the Board for nuclear plants, then the  
25 difference was to be fully mitigated by funding marine

1 protected areas. There were some changes to the compliance  
2 schedule. A lot of those changes had to do with more  
3 frequent reporting to the Board by the SACCWIS. The Harbor,  
4 Scattergood, and Haynes plants, that were all Los Angeles  
5 DWP plants, the dates were changed for those. And the  
6 Diablo Canyon final compliance date was extended to 2024;  
7 that was to line up with the relicensing period. There were  
8 some changes to the monitoring. Prior entrainment studies  
9 using the 333 micron screen may be allowed for baseline if  
10 the Regional Board determined that those were adequate. If  
11 new baseline entrainment studies were required, sampling  
12 should be for both the 333 micron and the 200 micron  
13 fractions, and sampling must be conducted during different  
14 seasons and periods of peak use. And for post-  
15 implementation, remember, this is just relative to Track 2,  
16 new studies, the sampling should be for both 333 micron and  
17 200 micron fractions. Then, finally, we had some minor  
18 additions and changes to the definitions.

19 CHAIR HOPPIN: Dominic, could you go back to the  
20 previous slide? On the compliance - the changes to the  
21 compliance schedule - would you talk a bit about how the  
22 SACCWIS can influence the proposed dates that we have in our  
23 schedule? How they can potentially modify the dates we have  
24 before us.

25 MR. GREGORIO: So the SACCWIS does not have the

1 authority to modify the dates, that is up to the Board.

2 Only the Board can modify the compliance schedule.

3 CHAIR HOPPIN: They would make recommendations to  
4 this?

5 MR. GREGORIO: They would make recommendations if  
6 it was something that they felt was needed. After meeting  
7 and discussing this with the full SACCWIS, that could be a  
8 recommendation that was made. There also could be a  
9 recommendation by some of the agencies in SACCWIS, and then  
10 you would get maybe an opposing recommendation from other  
11 members. So various things could happen at those annual  
12 reporting sessions and, you know, it is kind of impossible  
13 to speculate on all of them.

14 MR. BISHOP: In addition, Chairman Hoppin, there  
15 was an addition for suspension language based on the grid  
16 reliability, a short-term, less than 90-day suspension shown  
17 by the CAISO, and then for a longer than 90-day suspensions  
18 or amendments after a hearing by this Board.

19 CHAIR HOPPIN: Fran.

20 MS. SPIVEY-WEBER: And when will the SACCWIS next  
21 meet?

22 MR. GREGORIO: We do not have a date. The SACCWIS  
23 has to be officially impaneled. We have an interagency  
24 working group now and my guess is that the same members of  
25 that working group will be on the official SACCWIS, but the



1 SACCWIS does not actually get started until the policy gets  
2 adopted and we get it approved by OAL, and that would be no  
3 later than three months after the effective date of this  
4 policy.

5 MS. DODUC: And, Dominic, the factors that the  
6 SACCWIS will consider in recommending any changes to the  
7 compliance schedule, would those factors include grid  
8 reliability?

9 MR. BISHOP: Yes.

10 MR. GREGORIO: Yes, absolutely. That is a major  
11 issue with the SACCWIS, especially because of the energy  
12 agencies' involvement with SACCWIS.

13 MS. DODUC: And SACCWIS includes not only the  
14 energy agencies but also CAISO?

15 MR. GREGORIO: CAISO, as well as the Coastal  
16 Commission, State Lands Commission, and the Air Resources  
17 Board.

18 MS. DODUC: Thank you.

19 CHAIR HOPPIN: Go ahead.

20 MR. GREGORIO: I am all done - with the  
21 presentation.

22 MR. BISHOP: Chairman Hoppin, if I could just take  
23 a moment to kind of put where we are in context? This has  
24 been a long road that we followed, and along that road we  
25 have learned a lot about how our grid works, our electrical

1 systems operation, and we have also created new and  
2 significant relationships with our sister agencies that will  
3 continue forward through the implementation process. This  
4 proposed policy has gone through many changes over the last  
5 few years and what you are charged today is to balance  
6 between our requirements under the Clean Water Act to  
7 protect the beneficial uses, including the marine  
8 environment, and to maintain the essential services of  
9 electrical reliability for everyone in the state. As you go  
10 forward today, you will hear from a number of applicants  
11 asking you to either make it easier for the power companies  
12 to move forward, making it more protective for the  
13 environment, what staff would ask you is, as you hear each  
14 of these comments, you keep that balance that we are trying  
15 to maintain in mind of both protection of the environment  
16 and maintaining of that electrical system. And now, I would  
17 turn it over to a small number of folks that want to talk to  
18 you.

19 CHAIR HOPPIN: Mr. Bishop, would either you or Mr.  
20 Lauffer please address our procedures as we go forward? We  
21 are going to have, I am sure, recommendations to amend the  
22 Draft Policy as we go forward. Given the magnitude of this,  
23 I do not want some last minute scribbling, and "I thought  
24 you said that," "No, I said that," kind of a situation. So  
25 it is my understanding that the proposal is, when we hear

1 all of the comments for modifications to the draft, staff,  
2 after a brief recess, will compile those, and we will take  
3 essentially a straw vote of some sort on the changes  
4 individually, rather than to lump them into some undefined  
5 clump.

6 MS. DODUC: If I may, actually, before you carry  
7 out the Chair's request, if I may make a quick response to  
8 Mr. Bishop's comment. I appreciate your comment, I  
9 appreciate the work that staff has done, and appreciate that  
10 the Board, I think, individually as members and as a Board,  
11 feel a responsibility for considering the various factors  
12 and balancing needs. But I just want to make it clear,  
13 although I am not sure and I will look to Mr. Lauffer for  
14 this, if there is any specific charge to the Board in Porter  
15 Cologne or in the Clean Water Act for us to ensure grid  
16 reliability.

17 MR. LAUFFER: Ms. Doduc, I mean, obviously the  
18 Board - its name conveys what its primary charge is as the  
19 State Water Resources Control Board; however, there are  
20 umbrella policy elements embedded within Porter Cologne that  
21 allow us to ensure that there is a reasonableness to our  
22 approach to regulation, we have to implement our federal  
23 requirements, but there is a fair bit of flexibility. And I  
24 think what your staff have done over the last three years,  
25 they have really strived to find the balance that Porter

1 Cologne expects us to carry out, recognizing that we do have  
2 a responsibility under the Federal Clean Water Act to ensure  
3 that these specific facilities reflect the best technology  
4 available, and I think your staff have done a tremendous  
5 job, as John indicated, there has been a lot of education  
6 that has gone in, and that has helped that balance, if you  
7 will, the implementation of the Draft Policy that staff  
8 anticipate. With respect to Chair Hoppin's question, I  
9 think our recommendation would be for the Board to hear  
10 public comment, if there are specific questions at that  
11 point that you have of staff, I would encourage you to ask  
12 them, and then I think what would be very helpful is for the  
13 Chair to go through the Board members serially, asking for  
14 issues that they would like to see staff address, and so  
15 that we have a sense of where the Board members are coming  
16 from, a broad sense of the Board, I would not recommend a  
17 vote at that time on any of the specific issues, but it will  
18 at least provide staff direction and, then, perhaps if we  
19 are very fortunate, that will be around the lunch break and  
20 we could take a longer lunch break, staff could come back,  
21 having thoughtfully considered what you have requested  
22 collectively, and then we will present language up to you.  
23 And then, at that point in time, if there are specific items  
24 of that language that there may be some tension or  
25 dissent amongst the Board members that we would consider

1 motions on the individual amendments that staff will have  
2 put together after hearing from the Board, and then, at the  
3 end, the Board collectively vote on the entire package. So,  
4 most importantly, public comment, and then providing  
5 directions to the staff so that the staff can take advantage  
6 of the lunch break or a longer break to actually reflect the  
7 changes that the Board wants.

8           CHAIR HOPPIN: Thank you, Mr. Lauffer. Our first  
9 card of the day, John Kemmerer. As I said, when you come  
10 forward, if you would please state your name for the record  
11 and state whom you represent, it would be very helpful for  
12 the record.

13           MR. KEMMERER: Good morning, Board members. My  
14 name is John Kemmerer. I am the Associate Director of the  
15 EPA Region 9 Water Division and representing EPA Region 9  
16 here today. I appreciate the opportunity to speak to you  
17 about this important policy to minimize the environmental  
18 impacts from cooling water intake structures at California's  
19 coastal power plants. I would first like to commend your  
20 staff for their work addressing this complex and challenging  
21 issue. EPA's difficulties developing a natural role under  
22 Section 316(B) of the Clean Water Act are well known, and we  
23 appreciate the challenge California is taking on here. Your  
24 staff have effectively consulted with involved stakeholders  
25 to take into account the myriad issues at stake, including

1 the vast damage to aquatic life caused by these intake  
2 structures, the significant costs involved in retrofitting  
3 covered facilities, and the potential ramifications for the  
4 State's energy supply network. It is our view that, with a  
5 few revisions to the current draft, this policy can provide  
6 valuable direction to address all of these issues.

7 I am going to focus my testimony on five suggested  
8 revisions to the current Draft Policy. Our first three  
9 recommendations concern the Track 2 Compliance Alternatives.  
10 We understand that under Track 2, the Policy's intent is to  
11 provide an alternative means of compliance under which  
12 facilities may reduce the damaging impacts of cooling water  
13 intakes to a level comparable to the closed circuit cooling  
14 under Track 1. Unfortunately, as the policy is currently  
15 drafted, there are no assurances that Track 2 will, in fact,  
16 be comparable to Track 1. We believe this can be largely  
17 remedied by three revisions: first, in order for Track 2  
18 provisions to be comparable to Track 1, the reduction in  
19 impacts under Track 2 should be calculated on a unit  
20 specific basis, rather than for the facility as a whole.  
21 This would be consistent with Track 1, which calls for  
22 facilities to achieve flow reductions at each unit. Second,  
23 the Track 2 provisions define effectiveness that is [quote]  
24 "comparable to Track 1 as reducing impingement mortality and  
25 entrainment by at least 90 percent of the protection

1 achieved under Track 1.” We suggest deleting this 90  
2 percent allowance and, instead, requiring that the  
3 reductions achieved under Track 2 be equivalent to those  
4 under Track 1, without allowing for a lesser protection of  
5 aquatic life. Third, Track 2 allows for compliance with  
6 respect to entrainment impacts by flow reductions measured  
7 relative to a facility’s design flow. The tables in the  
8 draft substitute environmental document illustrate the often  
9 significant differences between the design flows and the  
10 average flows at these facilities. In order for Track 2 to  
11 truly achieve reduced entrainment impacts comparable to  
12 Track 1, these flow reductions must be based on a comparison  
13 to actual flows, not design flows.

14 In addition to the three recommendations regarding  
15 Track 2 compliance, we have two additional suggestions. The  
16 fact that the policy, as has been mentioned earlier,  
17 contains really valuable provisions for consultation with a  
18 wide range of affected entities, including the California  
19 Energy Commission, Independent System Operator, Coastal  
20 Commission, Air Resources Board, and others, and while we  
21 agree that it is very important to have this consultation,  
22 we disagree with the policy’s provisions in Section 2.B.2  
23 and Section 3.B.5, describing suspending compliance dates at  
24 the recommendations of the California Independent System  
25 Operator and SACCWIS. In our view, as currently drafted,

1 the policy places an unreasonable standard on you at the  
2 State Water Board in requiring that the Board make a  
3 "finding of overriding considerations based on 'compelling  
4 evidence' in order for the Board to choose not to follow a  
5 CAISO or SACCWIS recommendation." We believe that the  
6 provision should be revised to allow the State Board to  
7 evaluate these recommendations from CAISO and SACCWIS on  
8 their merits, and make decisions accordingly, rather than  
9 setting a new standard by which the Board must evaluate  
10 these recommendations and make conclusions. And fifth, and  
11 last, we have concerns with the Draft Policy's provisions  
12 regarding combined cycle units. Specifically, we would  
13 recommend deleting Section 2.A.2.D.2 of the Draft Policy,  
14 which establishes a separate means for compliance for  
15 combined cycle units. This is inconsistent with the rest of  
16 the policy and is not protective, as it allows for  
17 compliance without reducing impacts as required for all  
18 other facilities which do not have combined cycle units.

19 Thank you for the opportunity to speak to you this  
20 morning, and thank you very much for your valuable efforts  
21 to protect the environment from the impacts of cooling water  
22 intakes.

23 CHAIR HOPPIN: Any questions of Mr. Kemmerer?

24 Thank you. Next, we have staff on behalf of Assembly Member  
25 Mary Salas, Marlon Cuellar.



1           MR. CUELLAR: Thank you. I am here on behalf of  
2 Assemblywoman Mary Salas. I am going to read her statement  
3 now. "Assembly member Mary Salas, on behalf of her  
4 constituents in the 79<sup>th</sup> District, strongly opposes the State  
5 Water Board's Once-Through Cooling Policy, as proposed.  
6 This policy will negatively impact the community and the  
7 environment in South San Diego Bay, and threatens to  
8 undermine our system of regulation by taking away the  
9 decision-making power about the plant from the Regional  
10 Boards. The South Bay plant is causing significant damaging  
11 and avoidable impacts to the ecosystem in the South Bay.  
12 Beyond the environmental impacts, the economic blight and  
13 the toll that the power plant has taken on the lives of the  
14 residents of the South Bay cannot be overstated. The City  
15 of Chula Vista, many local, state and federal elected and  
16 elected leaders, and a coalition of interested groups, are  
17 working to shut down the South Bay plant to end, once and  
18 for all, the plant's devastating impacts on the community  
19 and the environment."

20           I would like to submit the most recent letter  
21 opposing the plants, signed by eight elected officials  
22 representing Districts in the South Bay. "The amendments to  
23 the Once-Through Cooling Policy would take away local  
24 control and decision-making about the significant local  
25 impacts the plant has and give it to a non-governmental

1 entity that has no environmental mission or accountability  
2 to the local community. Also, the Regional Board must  
3 retain the ability to shut down existing plants like the  
4 South Bay Power Plant to protect the community and the  
5 environment. I urge that the policy be changed to  
6 explicitly allow the Regional Boards to terminate permits or  
7 deny renewal permits for existing plants when they are  
8 determined that it is the required action to protect water  
9 quality and designated beneficial uses. Again, I reiterate  
10 our request that the compliance deadline for the South Bay  
11 Power Plant be moved to the end of 2010. I also ask that  
12 you remove CAISO's power to extend the plant's compliance  
13 date and restore to the Regional Boards their rightful  
14 control over the permitting process. It is crucial that the  
15 ultimate decision-making power remain at the Regional Board  
16 level where they can best understand and respond to local  
17 concerns, and be held accountable for their decisions. I  
18 have a long history with the South Bay Power Plant. I was  
19 living in the South Bay when the power plant was originally,  
20 and I have seen my community suffer ever since. It has  
21 blighted our community and our Bay for 50 years. As a  
22 community working with our local utility, we have permitted  
23 and constructed adequate energy to replace the power plant.  
24 We have done our part, now we are asking you to do yours and  
25 pass a policy that will allow us to ensure that our

1 community and our environment is protected." Thank you for  
2 your time. I appreciate it.

3 CHAIR HOPPIN: Thanks for your comments. Alfred  
4 Wanger.

5 MR. WANGER: Good morning, Chair Hoppin and Board  
6 members. My name is Alfred Wanger. I am with the  
7 California Coastal Commission. I am the Deputy Director  
8 that oversees the water quality programs at Coastal  
9 Commission. I have been fortunate enough to be involved in  
10 the interagency discussions that was mentioned earlier,  
11 working with State Water Board staff, CAISO, the PUC staff,  
12 Energy Commission, and others, on developing the policy  
13 recommendations that came forward. And I want to especially  
14 recognize the efforts of the energy agencies to come up with  
15 a pathway from the energy and grid reliability perspective  
16 that would allow California to achieve the objectives of the  
17 stated objectives of this policy and still maintain a  
18 reliable grid that meets our needs here, using the  
19 purchasing authorities to contracting processes and others,  
20 laying out a timeframe that takes into account the  
21 complexities that are faced. We think the energy agencies  
22 did an excellent job in coming up with a path that supports  
23 implementation.

24 We previously submitted a letter with some  
25 comments regarding this, and I will just touch briefly on a

1 few key points with this. I want to echo the comments of  
2 John Kemmerer from EPA regarding the Track 1 and Track 2  
3 implementation, I will not repeat those, I will just say  
4 that generally we support the recommendations that he made.  
5 We think that the removal of the feasibility test that was  
6 originally in the November draft policy opens up  
7 complications in achieving the objectives under Track 2. As  
8 John was discussing, we think that it opens up the  
9 opportunity for dispute and disagreement over what achieving  
10 these objectives are, likely leading to rather than money  
11 being spent on best technology available, leading to a lot  
12 of best attorneys available, arguing over whether objectives  
13 were actually achieved or not. We also support the idea of  
14 looking at actual flows, rather than design flows and  
15 calculating reduction, as well, and would also like to see  
16 the mitigation requirements that might be enacted, resulting  
17 in actual mitigation, rather than funding of alternative  
18 means of compliance as proposed under 2C that would allow  
19 funding under support for marine protected areas and others;  
20 while that is a worthy goal, we think that the primary  
21 mission should be to mitigate the damage done by any  
22 particular plant in the local area.

23           We also share the concerns that Mr. Kemmerer  
24 mentioned regarding the combined cycle systems. We think  
25 that represents kind of a carve-out, it does not achieve the

1 objectives of the policy. We would like to see that  
2 removed, as well. And also, finally, the new language in  
3 Section 5 allowing for a two-year suspension of the final  
4 timelines for achieving the compliance dates based on  
5 difficulties in achieving permits. We think that creates an  
6 incentive for the plant operators to drag this process out.  
7 We think the permitting process that all of the agencies  
8 pursue is done in an expeditious manner. And if there are  
9 particular issues that come up, I think the policy and the  
10 work of the agencies is flexible enough to accommodate that.  
11 Granting kind of a blanket two-year exemption to a  
12 compliance date, we do not think, will be helpful in the  
13 long term. So I will leave my comments there and if you  
14 have any questions, I would be happy to answer them. Thank  
15 you.

16 CHAIR HOPPIN: Do you feel that things at the  
17 Coastal Commission are always done in an expeditious manner?

18 MR. WANGER: I think we strive to meet our  
19 objectives and our requirements under the Permit  
20 Streamlining Act to the best of our abilities; however, what  
21 we cannot control is what the project proponents do on their  
22 end in submitting information. We try to work with  
23 applicants as quickly as we can to get the project through  
24 as quickly as we can, but I will not say that there are not  
25 delays. But I would say that the staff works very hard to

1 make sure that we resolve any issues bringing permits  
2 forward as quickly as we can.

3 CHAIR HOPPIN: Thank you, sir. Fran?

4 MS. SPIVEY-WEBER: You do not think that the  
5 interim measures to fund marine protected areas is a  
6 particularly good idea. In my thinking about this, it  
7 seemed like perhaps we need to add some additional language  
8 that it would be marine protected areas in the areas near  
9 the plant because the marine protected areas are supposed to  
10 be actually providing space for restoring fisheries that are  
11 being hurt by the plant, the once-through cooling process.  
12 So I saw a nexus between marine protected areas and the  
13 plants, but maybe we have not made it clear enough as to  
14 that nexus.

15 MR. WANGER: I think there is a nexus, but I think  
16 what we would recommend, at least staff is recommending,  
17 that there be more explicit nexus established for a  
18 particular plant and a particularly protected area, instead  
19 of broadly speaking that the MLPA, or Marine Protected Area  
20 process, which we support also, for a particular plant  
21 should be mitigating for any damage done in its area, and if  
22 that could be done in a Local Marine Protected Area, all the  
23 better.

24 CHAIR HOPPIN: Thank you.

25 MR. WANGER: Thank you very much.

1           CHAIR HOPPIN: Mr. Ulmer and Mr. Peters, do you  
2 want to come together, or do you want to speak separately?  
3 Or what is your plan?

4           MR. PETERS: Good morning, Chair Hoppin and  
5 members of the Board. My name is Dennis Peters. I am the  
6 External Affairs Manager for the California Independent  
7 System Operator Corporation, or ISO. I am joined here by my  
8 colleague, Andrew Ulmer, Senior Counsel at the ISO. We  
9 appreciate the opportunity to provide comments on the  
10 proposed statewide water quality policy for the use of  
11 coastal and estuarine waters for power plant cooling issued  
12 on March 22<sup>nd</sup> of 2010. And, first, let me say that the ISO  
13 is fully committed to working with the State Water Resources  
14 Control Board and your staff to ensure that you accomplish  
15 your obligations concerning use and quality of water  
16 resources, while ensuring the reliability of electric  
17 service for citizens of California. The ISO, along with the  
18 CPUC and CEC, have worked extensively with the Water Board  
19 staff and we acknowledge that revisions to this most recent  
20 draft of the policy provide for greater recognition, that  
21 the ISO's role to ensure electric system reliability by  
22 allowing continued operation of existing plants using once-  
23 through cooling, until replacement infrastructure - and that  
24 could be generation or transmission - obviates the need for  
25 such plants for reliability. And we applaud your

1 willingness to engage this issue. The ISO also appreciates  
2 that the Water Board continues to rely upon an [inaudible]  
3 process developed by the energy agencies to ensure  
4 reliability. Adoption of this policy will create a long  
5 term relationship between the Water Board and the CEC, CPUC,  
6 and ISO, as we identify necessary infrastructure to allow  
7 for implementation of the policy. Implementation of the  
8 policy will require maintaining a close working relationship  
9 through the proposed SACCWIS and other mechanisms, and we  
10 are committed to that relationship to allow the Water Board  
11 to satisfy its objectives, while not jeopardizing the  
12 reliability of California's electricity grid. And I will  
13 turn the mic over to Andrew Ulmer.

14 MR. ULMER: Good morning. My name is Andrew  
15 Ulmer. I am an attorney with the California ISO. Chair  
16 Hoppin, Honorable Board members, I simply want to augment  
17 Mr. Peters' comments with three points. Mr. Peters  
18 mentioned the policy appropriately identifies the need for  
19 replacement energy infrastructure, and we think that is a  
20 bedrock of going forward. The adoption of final compliance  
21 dates associated with the once-through cooling policy, we  
22 have tried to be clear and to emphasize that we see that as  
23 an exercise of this Board's discretion. That discretion  
24 should not override specific Federal requirements for the  
25 ISO to plan and manage the reliable operation of the grid.



1 The commenting parties already have and will invite you to  
2 adjudicate electric reliability determinations, do not  
3 accept that invitation. It is a recipe for potential  
4 rejection at OAL, it is a recipe for potential legal  
5 challenges as this Board applies the policy going forward.  
6 Those commenting parties can participate in the ISO's public  
7 processes that look at electric reliability determinations  
8 and ultimately, if necessary, go before the Federal Energy  
9 Regulatory Commission. The draft policy as written  
10 identifies procedures to address the need for replacement  
11 infrastructure, but do not seek this Board's authority over  
12 water use and quality. Those procedures also appropriately  
13 recognize the division of responsibility among other state  
14 agencies and the ISO, and we urge their adoption in  
15 connection with the once-through cooling policy.

16 I just want to conclude also by certainly  
17 recognizing from the ISO's perspective the huge effort from  
18 Joanne, from Marleigh, from Dominic, from Jonathan, and the  
19 productive relationship that we have developed with them.  
20 And, again, to underscore what Mr. Peters said, the ISO is  
21 committed to embark on this relationship with the Water  
22 Board over the next decade. Thank you.

23 CHAIR HOPPIN: Thank you, gentlemen. Question.

24 MS. SPIVEY-WEBER: To the attorney, do you see the  
25 phrase "a finding of overriding consideration" that was

1 referred to in some of the earlier testimony as setting up a  
2 brand new standard for us to have to meet, whereas, if we  
3 commit to looking at the recommendations from CAISO on the  
4 merits, or on, you know, giving significant deference, I  
5 guess, to your recommendations, that would not be a  
6 significant new standard? And I am questioning whether we  
7 really should be setting up a new standard just for you?

8 MR. ULMER: It is a fair question. The way I  
9 think about it categorically is that this Water Board should  
10 focus on water quality and use issues. It should not open a  
11 hearing into whether or not a specific power plant is needed  
12 for electric reliability purposes. The comments of an  
13 earlier speaker with respect to the South Bay Power Plant  
14 may provide a good example. This year, the ISO has  
15 identified that power plant as necessary to support the  
16 operation of the electricity grid. The last time I checked  
17 the data, and the more recent data, perhaps, but I think  
18 during the months of January and February, that power plant,  
19 I think, was started once. The units there were each  
20 started once. The discharges in that power plant have been  
21 minimal. There is a staff report from the Regional Board  
22 that finds that continued operation of that power plant for  
23 the remainder of 2010 does not threaten the South Bay in any  
24 significant way. Now, the Water Boards look into overriding  
25 considerations; maybe one that looks at how a power plant is

1 affecting a certain water body in terms of its quality or  
2 use, and that should be the inquiry. It should not be, were  
3 the ISO's determinations with respect to how it plans to  
4 operate the electricity system reasonable. They should be,  
5 are the consequential impacts on water such that potentially  
6 the Water Board needs to make a determination that would run  
7 contrary to maintaining that permit.

8 MS. SPIVEY-WEBER: Thank you.

9 MR. ULMER: Thank you very much.

10 CHAIR HOPPIN: One more question, I believe.

11 MS. DODUC: You mentioned about the CAISO's public  
12 processes. Could you describe some of those processes for  
13 me?

14 MR. ULMER: Absolutely.

15 MS. DODUC: In particular - I am sorry - in  
16 particular, in your Environmental Justice policies.

17 MR. ULMER: The ISO's public processes are run -  
18 they are referred to often as stakeholder processes. They  
19 are publicly noticed. They are open to public  
20 participation. They often involve public meetings. They  
21 certainly involve public comments. And they culminate with  
22 respect to these two plant specific determinations, with  
23 presentations before an independent Board of Governors that  
24 are approved. We do not have per se an environmental  
25 justice program. We do have a statutory directive from the

1 California Legislature to consider California's  
2 environmental laws as we proceed to run our business and  
3 operate the electricity grid. So that is a direct charge.  
4 And certainly in the stakeholder processes, those concerns  
5 have been raised and are considered by the ISO's Board of  
6 Governors.

7 MS. DODUC: A follow-up question with respect to  
8 the South Bay Plant. The Environmental Health Coalition  
9 submitted comments, letters, to this Board, in particular  
10 they reference comments that they made with respect to  
11 CAISO's determination whether there is a gap in the peak  
12 demand after the Otay Mesa Plant has been online, and they  
13 have made some argument that, given the Energy Commission's  
14 finalization of its demand estimate, that gap may no longer  
15 exist, and the South Bay Plant can be closed by the end of  
16 this year. In my staff's responses to comment, they simply  
17 defer this item to you because the deadline that is proposed  
18 in the policy is based on recommendations from the Joint  
19 Energy Agency. So given your stakeholder process, I assume  
20 that you have analyzed the detailed report that was  
21 submitted by the Environmental Health Coalition called  
22 "Filling the Reliability Gap," and have responded to that  
23 concern. Could you quickly summarize that response?

24 MR. ULMER: I can try. The reliability  
25 determination made with respect to South Bay for this

1 calendar year 2010 was made last year at a time when the  
2 load forecast numbers for that area were different, they  
3 were higher. They have been reduced. Those new numbers are  
4 going through our process right now with respect to an  
5 assessment for 2011. If that is part of the record, the  
6 report you mentioned, it will be reviewed, it will be  
7 considered. We get into detail very quickly, but the  
8 concept of a gap or a capacity gap, we do not have enough  
9 capacity within the San Diego area, is but one issue.  
10 Certainly, we need enough capacity, but we also need the  
11 right kind of capacity. The electric system, for better or  
12 worse, was built in a certain way and power plants provide  
13 certain attributes to the electric system that other  
14 resources may not. The South Bay Power Plant is one such  
15 resource, it is a big resource. When you turn it on, it has  
16 the impact of being able to balance certain electricity  
17 requirements. There is a lot of power that is brought into  
18 the San Diego area that is imported. In order to continue  
19 those imports, there is a need for in-area local generation.  
20 South Bay Power Plant is one of those units, and in the  
21 event that a major transmission line is lost, or there is an  
22 outage of a unit, and we have a lot of heat in San Diego, or  
23 we have a fire, it may well be that that power plant is  
24 going to need to operate for several days. And that is one  
25 of the considerations that goes into looking at whether or

1 not a power plant is needed. It is not just, to use the  
2 reference to simple math, we just do not add up the load and  
3 the capacity, it is also the characteristics of that  
4 generating capacity.

5 MS. DODUC: I appreciate the complexity. One  
6 final question. In making that determination, how do you  
7 balance, to use the word of the day, how do you balance  
8 between the need for grid reliability across the San Diego  
9 Region, vs. the needs and concerns of the local  
10 environmental justice community?

11 MR. ULMER: Well, we do balance them. I think it  
12 is a very big challenge because our fundamental charge is to  
13 make sure that the electricity supply and load are balanced  
14 and that we have sufficient capacity, but we hear them,  
15 certainly. We have heard the people of San Diego. We have  
16 heard local politicians from San Diego. A similar instance  
17 has occurred in San Francisco where we have engaged in  
18 significant discussions with respect to the Potrero Power  
19 Plant, and we understand those perspectives, and we have  
20 been planning to address them. And hopefully that is going  
21 to end up in a very good outcome. We hope for the same with  
22 the South Bay Power Plant in the relative near term.

23 MS. DODUC: Well, I wish you much success because  
24 the community does seem to - let us just say - doubt your  
25 intention. I think in the letter they sent us, they write,

1 [quote] "What we have learned in our 10 years of experience  
2 with ISO is that their positions are subject to radical  
3 changes and their accounting is not transparent or  
4 objective." I would encourage you to strengthen that  
5 cooperation and coordination with the community, however we  
6 go forth on this policy with respect to the South Bay Plant.

7 MR. ULMER: And thank you for those comments. We  
8 will work to do so, certainly, and we would invite those  
9 interests to participate in our processes.

10 CHAIR HOPPIN: Gentlemen, I have one more question  
11 from my Vice Chair.

12 MS. SPIVEY-WEBER: When is the Board of Governors  
13 going to be considering the South Bay Plant, the new 2011  
14 schedule for the South Bay Plant?

15 MR. UMLER: I believe that item is likely to be  
16 considered in September of this year at an ISO Board of  
17 Governors Meeting.

18 MS. SPIVEY-WEBER: Okay.

19 CHAIR HOPPIN: Thank you, gentlemen.

20 MR. ULMER: Thank you.

21 CHAIR HOPPIN: Mike Jaske.

22 DR. JASKE: Good morning, Mr. Hoppin, members of  
23 the Board. Mike Jaske representing the California Energy  
24 Commission. As you know, the energy agencies submitted a  
25 letter jointly on April 13<sup>th</sup>, along with many other folks.

1 We proposed minor clarifying changes to the text of the  
2 March 22<sup>nd</sup> or 23<sup>rd</sup> version of the policy. I am not going to  
3 go through each of those items, you have them with you. In  
4 addition to the points there, the Energy Commission itself  
5 wants to make a few specific points. The clarifications,  
6 how I think of much of what was involved in the changes  
7 between the late November and March versions, on the whole  
8 are extremely helpful. There were ambiguities in the  
9 November language that we talked with staff about, wrestled  
10 with trying to understand its intent, and that is not a  
11 reasonable basis for policy of this magnitude. So the  
12 clarifications, for good or bad, you know, make it much more  
13 clearer where they were going. The Energy Commission  
14 supports an OTC policy. We are not going to get into many  
15 of the details of the stringency to want to impose upon  
16 individual power plants. We have long supported the  
17 retirement or repowering of these plants, that has been the  
18 official policy of the Energy Commission since the biennial  
19 2005 IEPR report. We were somewhat naive, I would say, in  
20 our espousing of this goal because it did not effectively  
21 have the coordination with all the other agencies. The  
22 effort that has been put forward in developing this policy  
23 has brought together the energy agencies with your Board,  
24 and I think we have the means by which the majority of these  
25 plants are likely to actually be repowered or retired,



1 hence, they will have OTC impacts whatsoever once they are  
2 removed from service, new prime mover installed.

3           A lot of the commenters submitting their views on  
4 April 13<sup>th</sup> do not understand the basic thrust of the proposal  
5 that the energy agencies put forward. Some commenters think  
6 that it is a simple matter of high energy efficiency  
7 renewable and let's go do all those things and in five years  
8 we can shut down all these plants. On the other hand, the  
9 generator community, a number of them, talk about the  
10 impossibility of phasing out their facilities in the year  
11 2020, and it needs to be spread out over more time. None of  
12 those commenters understand the core of what is behind the  
13 energy agency proposal that is included in your document.  
14 We are folding the replacement of these plants into the  
15 entire electricity infrastructure planning and procurement  
16 process. That process is being driven by major  
17 environmental and global warning concerns, we are taking  
18 energy efficiency, distributed generation, renewables, into  
19 account in those planning and procurement processes. What  
20 will come out in the end is a balance between what can be  
21 relied upon from those forces, the residual amount of fossil  
22 power plant, almost surely likely to be some repowering of  
23 some of those affected sites, perhaps the continued use of  
24 these combined cycles that are new and modern, but the  
25 overall reliance upon fossil plants, particularly these old

1 OTC designed units, is going to radically diminish. What  
2 you need to do is to embrace the proposal that your staff  
3 has put together, allow that process to move itself forward.  
4 There are many ambiguities about the specific fates of any  
5 one of these plants, the schedule that was included in the  
6 energy agency joint proposal, and now embodied in compliance  
7 dates in this policy, are best guesstimate as to what can be  
8 accomplished. We are working intensively through our normal  
9 planning processes to evaluate the options, to identify the  
10 ones that are most feasible, most cost-effective, and when  
11 that process works itself through, an iteration or two, we  
12 will have a much clearer idea about the likely fate of many  
13 of these individual facilities.

14 CHAIR HOPPIN: Mr. Jaske, before you go on, do you  
15 feel the policy, the way it is written in the draft, allows  
16 you to go through those iterations and examine the  
17 likelihood of replacement on the dates that are in the  
18 initial schedule?

19 DR. JASKE: Yes, and there are two ways in which  
20 this works. Although we have the general belief that the  
21 majority of these plants will repower or retire, we very  
22 much can benefit from the compliance plans that they are  
23 obligated to turn in six months after the effective date of  
24 this policy. There is nothing like a real live requirement  
25 on these generators, as opposed to the loose talk that they

1 can make in processes like this, about what their plans are.  
2 We may have well learned some things about their intentions  
3 about what they think is feasible for their facility that we  
4 do not know today. Secondly, there are processes that are  
5 just at the beginning stage, the AB 1318 legislation that  
6 requires ARB, with the coordination of these same energy  
7 agencies and your Board staff to develop an Electrical  
8 Reliability Plan for South Coast, and to in effect develop a  
9 new mechanism whereby air credits that new power plants  
10 require can be made available to those plants. We do not  
11 have that today, that entire system of air credits for new  
12 power plants in the South Coast Air Basin is suspended,  
13 nothing is being constructed, nothing is going to be  
14 constructed for a couple years, except for, by legislative  
15 fiat, handing out air credits to specific plants, that is  
16 not the way that we need to bring together all these  
17 regulatory and planning processes. When all of that settles  
18 down, we will have a much clearer idea about what can be  
19 built new, what can be repowered, what does not need to be  
20 relied upon at all because we can reduce load further, we  
21 can rely upon renewables, but to do so may well require that  
22 we upgrade the transmission system, and as you well  
23 understand, all of those things take time. So, as several  
24 of the other speakers have said, we are in a long run  
25 endeavor together. When I was here in December, I think I

1 said it would take 10, 12, 15 years for this to play itself  
2 out fully. I still think that is the case. The marrying  
3 together of the interests of electric reliability and your  
4 interests in water quality will just necessitate that it  
5 take that long, and we need to sort of get on with the job.  
6 Thank you.

7 CHAIR HOPPIN: I have one more question for Mr.  
8 Jaske. From the standpoint of attrition, do you feel in  
9 your conversations with some of these providers that, given  
10 the additional costs and burdens of this regulatory process,  
11 that they may just say, "We're going to close down and not  
12 pursue repowering" at what would be considered a valuable  
13 site at the end of the transmission line, or at the  
14 beginning of a transmission line? Is that a potential play  
15 that will come into the long term effects of this policy?

16 DR. JASKE: I believe that is the case. The  
17 Potrero plants in San Francisco give you the idea that, if  
18 the transmission system can be changed in major ways, such  
19 as building a cable under the Bay, that having particular  
20 local generation to service reliability needs is not  
21 required. So, while I fully agree with what Mr. Ulmer said,  
22 the transmission system, you know, creates significant  
23 impediments, it is not an immutable fixed thing, it can  
24 itself be changed, and it is not necessary that all of the  
25 capacity in the Southern California Coast continue

1 permanently into the future. We can devise options that  
2 will remove some of that capacity from service.

3 CHAIR HOPPIN: Thank you. Any comments? Tam.

4 MS. DODUC: I have a question. Since you brought  
5 up the Potrero plant, my question for you is with respect,  
6 and I do appreciate the complexity and the need for  
7 additional planning and coordination, would you say that the  
8 same level of planning and coordination, the 10-year period  
9 that you spoke about, applies to the Potrero, as well as the  
10 Humboldt Bay Plant? My understanding is that the Humboldt  
11 Bay Plant has already accomplished what it needs to do, and  
12 based on the comment from the Environmental Law and Justice  
13 Clinic at Golden Gate University, they are asserting that,  
14 under the Settlement Agreement, the Potrero Power Plant will  
15 be closed by the end of this year. So given that, what is  
16 your understanding of the need, at least in the policy, to  
17 extend their compliance date to one year after the effective  
18 date of this policy?

19 DR. JASKE: Let me give a two-part response;  
20 first, when we start engaging with your staff about the idea  
21 of marrying the procurement process into the compliance for  
22 these plants, their reaction was, "Aren't some of those  
23 plants further along? Aren't preexisting analyses studies  
24 even commitments such that we can take advantage, and  
25 therefore have differential schedule?" And clearly the June

1 30<sup>th</sup> version buys into that concept. So Potrero has, for  
2 example, been planned to retire for a long time, but it is  
3 conditional. It is conditional upon the successful  
4 operation of the Transbay Cable. Everything is going along,  
5 the Transbay Cable is nearly completed, it is in testing, it  
6 has now encountered problems we do not yet know for sure how  
7 long it will take for the Transbay Cable to be fixed and  
8 deliver the product, so to speak, that it was designed to  
9 deliver, it is contractually obligated to do that, it will  
10 ultimately do that, you know, whether it takes a few more  
11 months than the original schedule, and therefore Potrero has  
12 to operate a few more months. You know, those are the kind  
13 of give and takes about playing around with compliance date  
14 that are likely to happen along the way. We plan for  
15 something to happen, everything is moving along, and to make  
16 that expectation happen, suddenly, you know, something  
17 happens, there is a few months' delay. That is, I think,  
18 going to be the unfortunate reality that will be encountered  
19 from time to time.

20 CHAIR HOPPIN: One more.

21 MS. DODUC: I am sorry. And Humboldt Bay?

22 DR. JASKE: Humboldt is under construction. It  
23 will very quickly supersede the old plant. And what  
24 opportunities should be provided to old plants to clean  
25 themselves up and continue in service without the kind of

1 environmental harm that they have been producing, you know,  
2 that is an opportunity I believe this policy leaves to the  
3 plant owner; they do not have to shut down, if they are not  
4 needed for reliability, they can, they are being given a  
5 little bit of slack to bring themselves into compliance with  
6 the water quality aspects of your rule.

7 CHAIR HOPPIN: Fran.

8 MS. SPIVEY-WEBER: I had one question. In the  
9 policy B.2.A, it says that if the Executive Directors of the  
10 CEC and CPUC do not object in writing within 10 days to  
11 CAISO's written notification, the notification provided  
12 pursuant to this permit shall be suspended, blah, blah,  
13 blah. Instead of it being an affirmative joint decision  
14 between CEC and CPUC with CAISO, this is a "if you don't  
15 object," things move forward. Is that something that you  
16 have given thought to, as to the difference between those  
17 two? Does the way it is written now put up a particular  
18 barrier, do you feel?

19 DR. JASKE: The way we reconcile ourselves to the  
20 difference between this suspension language and the language  
21 that was cited earlier today about planning is that, in the  
22 near term short run operation of the system, ISO is  
23 monitoring the facts on a much closer basis than ourselves  
24 or the PUC. It is sensible to give them the discretion to  
25 move first. And, you know, if for some reason one or the

1 two agencies think that they did something wrong, we have an  
2 opportunity to put our hand up and say no, and then it goes  
3 into a more deliberative process. In the basic compliance  
4 scheduling part of the policy where we come back to you  
5 every year now with a re-visitation of those dates, it gives  
6 deference to the unanimous position of the energy agencies,  
7 while we have the luxury of looking ahead multiple years,  
8 there is no reason why we should not be bringing forward a  
9 unanimous recommendation to you. And so, given the sort of  
10 immediacy on the one hand vs. the deliberative planning,  
11 there is a rationale for different language.

12 CHAIR HOPPIN: Thank you, Mr. Jaske.

13 DR. JASKE: Thank you.

14 CHAIR HOPPIN: Robert Strauss.

15 MR. STRAUSS: Good morning. My name is Robert  
16 Strauss. I represent the Energy Division of the California  
17 Public Utilities Commission. Thank you for allowing me to  
18 speak here today. The Water Board staff has done an  
19 excellent job of balancing the competing concerns in this  
20 case. Clearly, some groups want the plants using OTC closed  
21 immediately; others want the environmental harm to cease,  
22 regardless of the impacts on the electric plants.  
23 Conversely, some plant owners want to continue operations  
24 without any significant changes. Through this process, I  
25 believe the Water Board staff's bias has been to eliminate



1 environmental harm at any cost, but has reached a workable  
2 compromise to prevent the huge economic and environmental  
3 harm that would result from a shortage of electric power.

4           The CPUC's policies are directed toward reducing  
5 the need for natural gas-fueled power plants. The  
6 California Solar Initiative provides \$3.3 billion of  
7 subsidies to build photovoltaics. There is over \$3.1  
8 billion that the Commission is authorized for energy  
9 efficiency measures, this is in addition to the Demand  
10 Response Programs that provide incentives to reduce power at  
11 peak, and other similar programs. The PUC and CEC and ISO  
12 are working hard to increase the amount of renewable energy  
13 resources in the California Power Grid to reduce the need  
14 for fossil fuel plants. Studies are currently underway to  
15 determine the equipment and software needs to integrate up  
16 to 33 percent renewable power. This includes determining  
17 the need for new transmission lines, increased substation  
18 infrastructure, and increasing the amount of resources  
19 capable of filling in when the wind and solar resources are  
20 not available. Replacing coaling systems is expensive.  
21 Replacing older power plants with new power plants can cost  
22 billions of dollars. New transmission lines cost billions  
23 of dollars. But power outages cost tens of billions of  
24 dollars. The PUC is focused on reducing and eliminating the  
25 environmental harm caused by OTC with the least amount of

1 economic and environmental harm to California. We should  
2 not forget that closing power plants without ensuring  
3 adequate reliability can result in black-outs and rotating  
4 outages that have significant environmental consequences.  
5 Environmental effects of a power outage include operation of  
6 diesel generators that result in increased storm water  
7 pollution from fuel spills and exhaust reaching the water  
8 system. These diesel generators also result in increased  
9 air pollution, increased potential for wastewater discharge  
10 without full treatment, increased potential for untreated or  
11 not fully treated industrial water discharge, increased air  
12 pollution from less efficient power plants operating longer  
13 hours, increased solid waste from accelerated food spoilage  
14 from lack of refrigeration, increased solid waste from  
15 interrupted industrial processes, increased air and water  
16 pollution from shipping increased waste to landfill and  
17 recycling centers, and the list goes on.

18           To protect against black-outs, the PUC has  
19 authorized three large investor-owned utilities to enter  
20 into contracts that will finance the construction of new  
21 power plants, both natural gas fueled and renewable. We  
22 cannot in good conscience close the plants using OTC until  
23 reliability has been protected by increased energy  
24 efficiency, demand response, new renewable generation, new  
25 combined heat and power, new efficient natural gas-fueled

1 power plants, and the revision of water cooling systems so  
2 existing plants no longer use OTC.

3           Some of the projects have encountered significant  
4 delays; for example, in the South Coast Air District, three  
5 plants to be built under contract with Southern California  
6 Edison are delayed because of the Air Permit problems tied  
7 to the priority reserve issues, that Mike Jaske just  
8 discussed. These plants, if built, would improve the  
9 reliability that will allow some plants using OTC to close  
10 either permanently, or to replace their cooling systems. I  
11 believe the Draft Policy before the Board recognizes the  
12 costs related to reliability and establishes a flexible and  
13 nuanced policy that ensures the environmental harm from OTC  
14 is eliminated, while protecting California from other harms.  
15 Thank you.

16           CHAIR HOPPIN: Thank you, sir. Any questions?  
17 Dominic, I have two panels of four. Do we have adequate  
18 microphones there in front of you for these panels?

19           MR. GREGORIO: Yeah, I believe we do.

20           CHAIR HOPPIN: Ms. Sheehan, your group, please,  
21 Linda Sheehan, Sarah Sikich, Steve Fleischli, Jacob Russell,  
22 I did not count right, we have got five, and Dr. Gold. You  
23 can come up to the front. Linda, since you like to be in  
24 control, I will let you direct your panel, how is that?

25           MS. SHEEHAN: Good morning, Chair Hoppin and

1 members of the Board.

2 CHAIR HOPPIN: Linda, one second. Darren, would  
3 you set the clock for 45 minutes?

4 MS. SHEEHAN: We will try to go faster.

5 CHAIR HOPPIN: I will let you do that.

6 MS. SHEEHAN: Good morning, Chair Hoppin and Board  
7 members. Thank you very much for allowing us to present our  
8 concerns and suggested modifications in a PowerPoint format.  
9 We are very cognizant of the work that is before you today  
10 to try to develop a policy that complies with your Federal  
11 mandate under 316(B), and we are here to be as helpful as  
12 possible to that process. So, thank you.

13 I am very pleased, actually, to be speaking to you  
14 today because it has been five years that we have been very  
15 actively involved in this issue, our organizations, your  
16 staff, and many of the folks in the room, and so we are very  
17 hopeful that we can come to a resolution that ensures that  
18 your Federal mandates are met. Unfortunately, as you have  
19 read in our comment letters, we have some very grave  
20 concerns about where the policy has gone. We thought we had  
21 a workable document that would help move the State forward  
22 last fall, and we are very surprised and concerned about  
23 some of the amendments that have been made to date, and so  
24 we will go through some of those points in as useful detail  
25 as we possibly can today.

1           Mr. Gregorio did a very nice job going through the  
2 law, and so I will not read, but I will highlight a couple  
3 of points. I want to make sure that we come back to the  
4 mandate and the role before us today. As your staff  
5 repeatedly said in the Responses to Comments, the State  
6 Water Board is not making energy policy, that is not the  
7 Water Board's job. The State Water Board's job is to  
8 implement its Federal mandate under Section 316(B), and this  
9 is with regard to the very significant and often proven with  
10 much scientific peer review impacts of cooling systems  
11 around the country and in California, which is the largest  
12 user of cooling water in the nation. This mandate came into  
13 place in 1972, so it is no surprise that we are here today.  
14 There has been litigation for at least a decade over this  
15 particular provision, ensuring that it is going to come to  
16 fruition. And so we are very grateful that we are here  
17 today talking about it and want to assure you that this is  
18 your mandate, and you have a responsibility to implement it,  
19 not underneath the responsibility of anybody else, but in  
20 balance and concert. And right now, we are very concerned  
21 about the fact that this policy minimizes and basically  
22 eviscerates your power to implement your mandates.

23           Very quickly, Dominic Gregorio went through some  
24 of this earlier, but the Riverkeeper 1 Decision addressed  
25 new plants that were to be constructed, and two of the

1 points that we wanted to highlight is that, 1) restoration  
2 measures in lieu of BTA, Best Technology Available, are  
3 illegal, and the facility needs to aim for the best, 100  
4 percent. In Riverkeeper 2, of course, was with regard to  
5 existing plants and, again, highlighted that restoration  
6 measures are illegal, and that the Clean Water Act is a  
7 technology forcing statute, so it is not a matter of status  
8 quo, or what is okay with people, it is pushing us to do  
9 better all the time. Another point in Riverkeeper 2 is with  
10 regard to, again, second best is not best, we need to be  
11 aiming for the Best Technology Available. These issues  
12 were, of course, litigated at the Supreme Court, but they  
13 only took up the issue of cost benefit analysis, they did  
14 not take up the issue of whether restoration or mitigation  
15 is okay to use in place of Best Technology Available. That  
16 is still clearly illegal. The Court did discuss cost  
17 benefit analysis and that was discussed in your SED document  
18 and your Responses to Comments, and we are pleased that you  
19 did not take that up for the many reasons that were  
20 articulated in your analysis. And I did want to emphasize  
21 that the court, as we have heard in some of the prior  
22 comments, the Court did not say that, you know, if costs are  
23 more than benefits, then that is an issue. When we say  
24 "some cost benefit analysis," the Court was focusing on cost  
25 benefit analysis that showed absurd results, so something

1 that was completely out of the ordinary. And so, just  
2 simply looking at costs greater than benefits is not what  
3 the Supreme Court was thinking about.

4           And then, finally, other states have been moving  
5 forward on this issue. California is a leader, but is not  
6 necessarily the only one out in front, and I think it is  
7 important for us to make sure that, as US EPA was saying  
8 earlier, that we are on a path to meet and comply with the  
9 Phase 2 rules that EPA is drafting right now, or is in the  
10 process of drafting for release hopefully this fall. New  
11 York State just recently, I am sure you read in the news,  
12 denied a 401 certification for Indian Point Power Plant,  
13 which has very significant impacts, certainly not quite so  
14 significant based on our research as the two nuclear  
15 facilities in California, but very significant, and they  
16 went ahead and they moved forward with that water quality  
17 certification denial. And we have very grave concerns with  
18 regard to the Water Board's ability to do the same here in  
19 California, should that be necessary. And the Water Board  
20 here should certainly be in the same position as another  
21 state to implement 316(B) in compliance with the law.

22           Again, you are well familiar and well aware of the  
23 significant impacts and most of these are from your  
24 documents with regard to once-through cooling, the sheer  
25 volume of the water is enormous. And it kills everything

1 that goes through the power plants, so it is not something  
2 to be taken lightly. The amount of fish that we are trying  
3 to protect right now in the Southern California bite under  
4 the Marine Life Protection Act is very significantly  
5 threatened by once-through cooling, as you can see from the  
6 facts on the slide. And, in fact, in your documents, it  
7 talks about the Marine Life Protection Act and the amount of  
8 time and energy the State has put to that very high priority  
9 of the Governor's Office, and that Marine Life Protection  
10 Act Scientific Advisory Panel down in Southern California  
11 found that once-through cooling is the number one threat to  
12 the designation of marine protected areas in the Southern  
13 California bite. So it is something that the scientists  
14 down there are recognizing as extremely important. And, in  
15 fact, it is the reason, these impacts, these types of  
16 impacts and more, especially in local communities, is the  
17 reason that our organizations, and others that you will hear  
18 from today, and the folks that signed on to the comment  
19 letters over the years and worked together to help work on  
20 this process with you and your staff, it is the reason that  
21 we are here, are these impacts, and to make sure that the  
22 Water Board moves forward consistently in exercising its  
23 responsibilities under the Federal Clean Water Act and under  
24 316(B), to end these impacts in a way that is balanced in  
25 consideration of other agencies' Federal responsibilities.



1 The Response to Comments on our April 13<sup>th</sup> letter said that  
2 the changes in the current policy are minor, and we would  
3 respectfully and very strongly disagree with that  
4 characterization, these are major changes that move the  
5 state very far back from where we were and in a path,  
6 actually, that moves us away from compliance with the  
7 Federal Clean Water Act.

8           So we have worked out a system for us to go  
9 through these slides and these proposed suggestions to you,  
10 and highlight some of the concerns that we have. Again, I  
11 want to emphasize that we do not want to lose sight of your  
12 Federal mandate under the Federal Clean Water Act, Section  
13 316(B), you are not making energy policy, you are deciding  
14 on cooling systems and how we can protect the ecosystems  
15 that are very clearly being impacted. And the changes to  
16 the policy do not allow you to do your job, and we are going  
17 to talk about some of these changes. You have handouts in  
18 front of you that outline these, and we will not go through  
19 them and read them to you because I am sure that you can do  
20 that, but we will talk about our thought process and how we  
21 can work together to come up with something that does  
22 implement your mandate successfully.

23           So the main points that we will make in order, and  
24 I will talk first about one or two of these, and then Sarah  
25 Sikich will go next. The main points are that the current

1 policy eliminates this preference for Best Technology  
2 Available, what the Second Circuit said, "Best is best,  
3 second Best is not best." And it replaces it with an  
4 alternative that is not comparable to the Best Technology  
5 Available, and many of these have the same points that US  
6 EPA raised earlier, and we would like to echo their points,  
7 as well. This Track 2 alternative, which is now a voluntary  
8 alternative that can be chosen without a feasibility test is  
9 simply not comparable to Track 1, it is not Best Technology,  
10 it is not even close to Best Technology. And Sarah Sikich  
11 will talk a little bit more about that in detail. The new  
12 policy allows the use of restoration and mitigation in lieu  
13 of Best Technology Available, which is clearly illegal, and  
14 it was not taken up at the Supreme Court level, so it is  
15 still illegal. It lifts any semblance of rigorous  
16 deadlines, and those rigorous deadlines are important for  
17 two reasons, 1) your authority does not mean anything if you  
18 do not have a deadline you can enforce. The way the policy  
19 is worded right now is the deadlines are suspended, not even  
20 amended, simply suspended, and that does not allow you to  
21 have the type of enforcement authority and compliance  
22 authority consistent with your compliance schedule policy  
23 that you need to be able to do in compliance with your Clean  
24 Water Act responsibilities. The second reason deadlines are  
25 important is it allows power plants to plan ahead of time,

1 and if they cannot know what deadlines are, not just for  
2 themselves, but other power plants, they may be caught in a  
3 bind when they need to give some sort of replacement power  
4 for someone who is retrofitting off schedule, etc. Very  
5 important for planning purposes to actually know where  
6 everybody else is going down the line. And then back to  
7 another main issue is back to this balancing issue. The  
8 current policy eviscerates your authority, it puts this  
9 special showing and burden on your part for one particular  
10 entity's Federal mandates when your Federal mandates are  
11 also very important. And it is completely unprecedented in  
12 my opinion, and in my experience, and I think that it is  
13 something that you should take a very careful look at it and  
14 not simply give away your authority, which has been  
15 delegated to you by US EPA, and which you must uphold.

16           So with that, we will just jump right in and just  
17 go through some of the changes that we are recommending.  
18 Again, this is to help move the process along, and our  
19 concerns have been, and I am sure you have reviewed them,  
20 have been articulated in much more detail in our comment  
21 letter, and this is a way to help explain those in further  
22 details to help move this process today. The first point is  
23 with respect to the feasibility, showing in Track 1, again,  
24 Best Technology Available is the 316(B) mandate, and Best  
25 means Best and we need to make sure that, where if we are

1 allowing anything a little bit less than best, or a little  
2 bit off of best, that there is a very clear reason, that the  
3 Supreme Court allowed for that little bit of wiggle room for  
4 the cost benefit analysis, but this goes far beyond that, it  
5 simply allows a facility to just go a different route, and  
6 this different route is much less than Best Technology  
7 Available, which Ms. Sikich will talk about in a moment. So  
8 we have suggested some edits that could be used to bring the  
9 policy back into compliance with the Federal Clean Water  
10 Act, so that you can show in some fashion that feasibility  
11 is an issue that should be considered and can be considered  
12 at the Regional Board level. And as we talked about in our  
13 comments, there are lots of ways that you could define this,  
14 and your Regional Water Boards look at different options all  
15 the time, for example, when they are setting penalties, they  
16 have a wide range of authority to consider many different  
17 factors, and they do that quite frequently. The amount of  
18 effort that they are going to need to determine feasibility  
19 for a very circumscribed number of plants is not something  
20 that they cannot handle, they can do this, especially if you  
21 define feasibility more clearly than what was in the policy.  
22 And rather than defining feasibility, the policy  
23 unfortunately just sort of through the baby out with the  
24 bathwater and to say, "Well, we're not going to define it,  
25 we're just going to assume that it is not there." If Track

1 2 was BTA, that may or may not have been such a big  
2 difference, but Track 2 simply is not, and so it is a very  
3 significant difference. We took a stab and it is underline  
4 here because we just simply rewrote it, redefining Not  
5 Feasible to be more specific, and define more clearly the  
6 circumstances in which an owner or operator could say this  
7 just simply is not feasible, and then allow the Regional  
8 Water Board to request the information needed to make an  
9 accurate decision, again, a decision they do not need to  
10 make very often. There is a very limited number of  
11 feasibility decisions that they need to make. And, again,  
12 there are other ways of doing this, but we felt that this  
13 was a good way to start defining the narrowness and the  
14 clearness that the Regional Water Boards and the  
15 owner/operators, and the public need to move forward and  
16 ensure that the 316(B) mandate is implemented. And I would  
17 like to move on to Track 2, since this feasibility test  
18 moves us there, and continue, and feel free to ask questions  
19 as we go. Thank you.

20 MS. SIKICH: Thank you. My name is Sarah Sikich.  
21 I am the Director of Coastal Resources for Heal The Bay.  
22 And my comments will be based on deficiencies in Track 2 and  
23 basically address the three main issues that were raised in  
24 US EPA's comments earlier today, which we support.

25 While Track 1 applies to each unit of a facility,

1 Track 2 currently allows for measures of entrainment and  
2 impingement reduction to be applied to the plant as a whole.  
3 Not only does this create an inconsistency between  
4 compliance track, but it also creates a scenario where Track  
5 2 may be viewed as the preferred compliance track.  
6 Additionally, it creates a loophole where a facility could  
7 convert some of its units away from once-through cooling,  
8 yet still run on once-through cooling on the remaining units  
9 as long as the entrainment and impingement reductions sum  
10 across all units is in compliance with the policy. This  
11 loophole is significant because peaker plants only run as  
12 needed, and often only certain units within a peaker plant  
13 are used. It is inconsistent with the actual use of these  
14 plants to base Track 2 compliance on the facility as a  
15 whole, as the rare use of a facility at full capacity may  
16 create a scenario where the flow volume calculations can be  
17 fixed to achieve compliance without actually minimizing  
18 marine life mortality. This is especially of concern with  
19 the policy's basis on design instead of actual flow because  
20 there is more room to play with the numbers. Entrainment  
21 and impingement reductions need to be calculated on a unit  
22 by unit basis to truly achieve a reduction in marine life  
23 mortality at a comparable level to that which would be  
24 achieved under Track 1, which is called for in Track 2 of  
25 the policy since the intake flow rate reductions under Track

1 1 are determined on an individual basis. So we have some  
2 suggested language here on Slide 13 to improve the policy  
3 and create that stronger consistency.

4           One of the most disturbing elements of the policy  
5 is the new compliance determination for Track 2 entrainment  
6 reductions in Section 2.A.2.B.1, which base compliance on a  
7 reduction in design flow averaged over the entire plant,  
8 rather than actual or generational flow. Although we  
9 support a flow-based entrainment reduction requirement  
10 because of simplicity for monitoring and compliance,  
11 designating design flow as the baseline is one of the most  
12 serious flaws in the policy and could result in a scenario  
13 where no real reductions in entrainment are achieved under  
14 Track 2. Instead, the policy should be based on monthly  
15 reductions from actual flow, which was supported by EPA and  
16 the Coastal Commission in their comments, as well. Most  
17 facilities operate well below their design flow and none of  
18 the peaker plants are operating according to their design  
19 flow. Some plants that operate regularly, such as Haynes  
20 and Huntington Beach Generating Stations, currently draw  
21 less sea water than their design flow; for example,  
22 according to the 2000 to 2005 five-year average flow volumes  
23 provided in Table 13 of the SED, Haynes operates more than  
24 73 percent below its design flow, while Huntington Beach and  
25 Redondo Beach operate more than 65 percent below their

1 original design flows. As a result, some facilities may  
2 have to take little to no action to actually comply with the  
3 policy on paper, and this is a grave concern to us. The  
4 State Board's choice to base entrainment reduction on design  
5 flow is not justified in the SED, which confirms that once-  
6 through cooling intake is decreasing for more plants and  
7 very few plants operate at design flow. Instead, the policy  
8 may end up rewarding owners and operators for maintaining  
9 inefficient power generating activities well past their  
10 initial design function. Although we prefer the use of  
11 generational flow as the basis of this policy, at a minimum,  
12 the State Board should base the Track 2 flow reduction  
13 requirements on actual flow at facilities over the past five  
14 years, as reflected in the adjusted language on this slide.  
15 It is also critical that the flow reduction calculations be  
16 based on a monthly basis to account for seasonal  
17 variability. In Southern California, peak level periods  
18 also occur during times of peak energy demand.

19           We have reviewed comments from some members of  
20 industry that request Track 2 requirements be based on  
21 average annual flow reductions, however, this could create  
22 another scenario where low flow months from October to May  
23 dilute the high entrainment numbers that occur during the  
24 summer months, leading to false compliance. For example,  
25 calculations based on flow volumes provided in SEC Tables 4



1 and 5 show that Morro Bay Generating Station achieved more  
2 than 97 percent reduction from design flow during the winter  
3 months, October through May, so that would already be a  
4 compliance based on the 2005 monthly median flows, but that  
5 is just for the winter. Redondo Beach and Pittsburgh  
6 Generating Stations also achieve more than the 93 percent  
7 reduction from design flow during the winter months, so it  
8 is critical that the summer and winter months are taken into  
9 account on a monthly basis. To achieve real entrainment  
10 mortality reductions, Section 2A to B1 must continue to be  
11 based on monthly flow, and Sections 2A to B2 must also be  
12 clarified to be based on monthly entrainment mortality  
13 reductions.

14           Furthermore, Track 2 should be improved to lead to  
15 impingement and entrainment reductions consistent with Best  
16 Technology Available. As discussed in our written comments,  
17 the policy suggests in Section 2.A.2 that plants that fall  
18 under Track 2 will have to achieve a 90 percent reduction of  
19 the reduction that would be achieved under Track 1; in other  
20 words, Track 2 requires a 90 percent reduction of Track 1,  
21 which requires a 93 percent reduction of intake flow rate,  
22 therefore, you would only have an overall entrainment and  
23 impingement reduction of 83 percent for each facility, you  
24 can see the little equation up there. The reality is that  
25 the policy not only removes the preference for Track 1, but

1 creates a major preference for Track 2 by creating a 10  
2 percent lower performance standard and providing an  
3 artificially inflated baseline of design flow, rather than  
4 the actual operations of the plant. So we suggest language  
5 here that removes that 90 percent of the reduction in Part 2  
6 of Track 2. Thank you. I will turn it over to Steve  
7 Fleischli now to discuss combined cycle plants.

8 MR. FLEISCHLI: Thank you. Good morning, Chair  
9 Hoppin, members of the Board. My name is Steve Fleischli  
10 and I am here today as an attorney representing Santa Monica  
11 Baykeeper, and I was going to talk about combined cycle  
12 units, and this is a very troubling portion of the policy  
13 where essentially you have given a very broad exception from  
14 both Track 1 and Track 2 for existing combined cycle  
15 generating units. And I would suggest, contrary to the  
16 comments you heard from the PUC representative, that in this  
17 particular section, the bias is clearly in favor of the  
18 energy industry and not in favor of the environment, and we  
19 have significant concerns with this. The first slides  
20 simply lay out what this policy is and, again, you are  
21 essentially creating an exception for combined cycle,  
22 existing combined cycle units. These first slides go to the  
23 issue that we would like to see, again, a consistency for  
24 combined cycle units to be given credit on a unit by unit  
25 basis, as opposed to an across the facility as a whole. I

1 am not going to go through these edits, but you can see them  
2 there on the screen. We are just trying to be consistent  
3 with our other comments.

4           Ostensibly, from what we can tell, this section  
5 was inserted in order to give a credit for past conduct. We  
6 think that that is already captured in the policy under  
7 2.A.2.C, which the environmental community has not opposed,  
8 which is technology-based improvements that are specifically  
9 designed to reduce impingements and entrainment mortality  
10 may be counted as credit and towards meeting the  
11 requirements of Track 2. Instead, this policy now for  
12 combined cycle units goes much much further, and the credit  
13 is completely misplaced. Repowering is not specifically  
14 designed to reduce impingement or entrainment, as you know,  
15 it is designed to make the facilities more energy efficient  
16 from a generational standpoint. In the first part,  
17 2.A.2.D.1, we would request that the last paragraph there be  
18 deleted. We do not think that it has any relevance  
19 whatsoever to rewarding prior conduct, and we do think it is  
20 illegal. Essentially what you are doing there is you are  
21 trying to give them credit towards achieving BTA, Best  
22 Technology Available, by allowing them to count prior  
23 mitigation that was determined in a different BTA context,  
24 and we very strongly feel that mitigation cannot be counted  
25 towards BTA. Now, if you wanted to give them credit towards

1 meeting the interim requirements in the policy, later on in  
2 the policy, I think you could do that because that is  
3 mitigation with mitigation. Here, you are saying we want  
4 mitigation to be counted towards BTA. Now, I know some  
5 folks in industry are going to argue that BTA was determined  
6 at the Regional Board level, we would disagree with that.  
7 Also, I would assert that the Regional Boards did not  
8 determine BTA the same as the State Board has determined BTA  
9 in this Draft Policy. BTA in the Draft Policy is very very  
10 clearly stated as being the equivalent reduction that would  
11 be achieved through wet closed cycle cooling; that has not  
12 been determined at these other facilities, the existing  
13 combined cycle facilities, so why should they be given  
14 credit for BTA when they have never met BTA as being defined  
15 as is defined under this policy, which is the closed cycle  
16 cooling?

17           The second significant issue with regard to this  
18 particular section for combined cycle units is 2.A.2.D.2.  
19 Now, this whole section, I do not understand the basis for  
20 it, it is not explained in the SED, there is no factual  
21 basis for it, and there is no legal basis for it. And I  
22 have enormous respect for your counsel, Mr. Lauffer, I have  
23 known him for a long time, I have been against him on many  
24 occasions, but I have always respected his opinion, and I  
25 cannot for the life of me figure out how you all could

1 determine that this provision is legal, and I would agree  
2 with the comments of EPA that this should be stricken.  
3 There is no basis for it.

4           In addition, with the limited justification that  
5 is given in the SEC, LADWP's Harbor facility does not even  
6 meet those provisions with regard to heat rates or cost  
7 issues that could be considered for this type of exception.  
8 So we ask that it be stricken. For the record,  
9 2.A.2.D.2.2's use of interim mitigation measures for the  
10 life of the combined cycle power generating units is  
11 completely illegal and inconsistent with Riverkeeper 2. So  
12 we would ask that that be stricken. I am now going to turn  
13 it over to Jacob Russell so he can talk specifically about  
14 combined cycle in the context of Moss Landing.

15           MR. RUSSELL: Thanks, Steve. Good morning, Chair  
16 Hoppin and members of the Board. My name is Jacob Russell  
17 and I am with the Stanford Environmental Law Clinic. We  
18 have been involved in the permitting process for a number of  
19 these plants and today I particularly want to focus on some  
20 of our experiences with the Moss Landing Power Plant because  
21 I think it provides a perfect example of what Steve was  
22 referring to with the problems with the apparent exemptions  
23 this policy would give to combined cycle power plants.  
24 These exemptions are not - they would permanently  
25 grandfather in combined cycle power plants, as SBTA, that is

1 not something that the Clean Water Act allows you to do, and  
2 it subverts the entire purpose of the Clean Water Act as a  
3 technology forcing statute. Again, I want to stress that  
4 combined cycle power technology may improve the generating  
5 efficiency of the plant, but it has little or nothing to do  
6 with the cooling system that the plant uses. And the  
7 current policy as it is written, particularly Section  
8 2.A.2.D, seems to almost inflate a power generating  
9 technology with the cooling technology, and it is the latter  
10 that the Board needs to consider in its policy today.

11 Moss Landing provides a pretty good example of why  
12 this is. As you know, Moss Landing is located at the Elk  
13 Horn Slough, it is one of California's last remaining  
14 coastal estuaries, it is the main nursery for Monterey Bay,  
15 and the power plant there, which has combined cycle units,  
16 still cycles in an amazing 28 percent of the water in the  
17 Slough on a continuous basis, that is 1.2 gallons every day,  
18 and that cooling technology is estimated to reduce the  
19 biological productivity of the slough by 40 percent. In  
20 short, Moss Landing's switch to combined cycle may have  
21 improved its generating capacity, but it did little to  
22 improve its effects on marine life. The design flow intake  
23 of the new combined cycle units is 361 million gallons under  
24 the old, non-combined cycle units, it was 380 million  
25 gallons. So, just for a 5 percent drop in the water intake,

1 and that is the key statistic in what determines entrainment  
2 impacts, for just that 5 percent drop in that the policy  
3 would give them a complete pass on the Clean Water Act in  
4 California's State Law's Best Technology Available  
5 requirements. Again, that lower threshold is not just a  
6 violation of the Clean Water Act, it is also bad public  
7 policy. The way the policy is written through Section  
8 2.A.2.D gives an extreme preference to plants that have  
9 already implemented or installed a combined cycle generating  
10 unit prior to this policy, and there is really no good  
11 public policy basis for that kind of preference. Nearly all  
12 of California's aging Coastal power plants at some point  
13 will choose to repower for economic reasons because they  
14 want to take advantage of more efficient generation, this  
15 has nothing to do with cooling water technology, and that  
16 does not constitute Best Technology Available for cooling  
17 water. So, again, combined cycle does not constitute Best  
18 Technology Available for cooling, and yet this policy would  
19 attempt to grandfather that in, that would undermine the  
20 Clean Water Act, and set back years of work on this policy  
21 and violate both federal and state law. So we urge you to  
22 undo those changes. Thanks.

23 MS. SHEEHAN: Thank you. I am going to take you  
24 on a whirlwind tour of the CAISO-LADWP SACCWIS provisions,  
25 as well as the Interim Mitigation Provisions, with an over-

1 arching theme of firm compliance deadlines that we talked  
2 about before, and three concerns that US EPA brought up, 1)  
3 suspension of deadlines vs. amending them to something  
4 clearer, 2) the demonstration or showing the burden on you  
5 to make a showing vs. the demonstration by the other  
6 agencies requesting the deadline extension, and then just  
7 integrity of your own authority. Compliance deadlines  
8 cannot be indefinite, we talked about that earlier, about  
9 the importance of having clear compliance deadlines for both  
10 your purposes and for grid planning purposes. For this  
11 reason, we cannot simply suspend deadlines, we must at least  
12 amend them to something that is relatively firm for planning  
13 purposes. Again, with respect to something less than 90  
14 days, there needs to be some weigh-in by the State Water  
15 Board, right now there is no ability for the State Water  
16 Board to weigh-in at all. You have authority and  
17 responsibilities you need to be able to weigh-in. And there  
18 needs to be some sort of demonstration that this is  
19 necessary. It is bad policy-making to simply assert that  
20 something is so without any demonstration, and there needs  
21 to be some thought behind it that the public can at least  
22 look at. Another thing with respect to the less than 90-day  
23 suspension is that it could be used serially the way that  
24 this is phrased right now, and these proposed edits are to  
25 cure that, that you could have 90-day, 90-day, 90-day, 90-



1 day without any hearing. And so I am sure that was not what  
2 your intent was.

3           Again, this gets to the balance question, and you  
4 know, whose Federal mandate trumps somebody else's, I do not  
5 want to get into that discussion, I am sure nobody here  
6 does, we want to balance our Federal mandates and make sure  
7 that everybody is meeting what they need to meet. Right  
8 now, the policy does not do that, and these suggested edits  
9 require CAISO and then LADWP, as well, to make some  
10 demonstration that could be used in a hearing, and then  
11 allow for the State Water Board to consider that. And,  
12 again, it has to be an amendment, rather than a suspension  
13 of the deadlines. We cannot allow them to continue  
14 indefinitely. Again, the same is true for LADWP, as it is  
15 for CA ISO, in terms of being clear and working with the  
16 State Water Board. There was a lot of approval, general  
17 approval of the policy as it was last fall, with some  
18 modifications by most of the energy agencies, as far as I  
19 read in their comment letters, and it is of great concern  
20 that they are coming today and saying that, "Our mandate  
21 needs to trump yours," and I do not think that is the case  
22 here.

23           Finally, the burden on you, this overriding  
24 consideration, the compelling evidence, is unnecessary and  
25 needs to be revised clearly in order to make sure that you

1 are meeting your 316(B) mandate and also considering with  
2 great seriousness the grid reliability questions that have  
3 been raised, that they are very important issues. But they  
4 cannot trump your 316(B) authority.

5           Again, with respect to mitigation, just touching  
6 on this, if the deadlines continue to be suspended or  
7 unclear, and mitigation is in the interim, at what point  
8 will interim mitigation become mitigation in lieu of Best  
9 Technology Available? We think mitigation needs to start  
10 right away with clear compliance deadlines. And the same is  
11 true, again, for SACCWIS. The SACCWIS cannot just simply  
12 come in and say, "The Water Board needs to do our  
13 recommendations," unless you, the Water Board, can make  
14 overriding considerations and findings based on  
15 demonstrations that we have now provided to you. The policy  
16 is not phrased in a way that the State Water Board can do  
17 its job. And we would also recommend deleting the last two  
18 sentences with respect to this extension which the Coastal  
19 Commission called as sort of an excuse to continue to delay  
20 implementation of the policy for reasons other than grid  
21 reliability. Again, this mandate has been in place since  
22 1972, we have been working on this extensively for five  
23 years, this is no surprise. So, with that, I would like to  
24 turn it over to Mr. Fleischli.

25           MR. FLEISCHLI: The last issue, I am going to

1 address and then I will turn it over to Mark Gold, is the  
2 issue of nuclear facilities. In Section 2D, this section  
3 was changed only slightly, but I think there is an important  
4 change that was made and we should go back to what it had  
5 before, which was that this was based on safety, it was an  
6 exception for nuclear facilities based on safety, and I  
7 think you have heard from the environmental community that  
8 both grid reliability, as well as safety from nuclear  
9 incidents is very important to the environmental community,  
10 but this change was made, and the SED, the Substitute  
11 Environmental Document, does not explain why the change was  
12 made, it still justifies these provisions based on safety  
13 requirements, so we think that this provision should be  
14 clearer, that it is specifically for any safety requirements  
15 for these facilities. We also have requested at the end  
16 there that we make it clear that the other exceptions in 3D  
17 are related to the requirements of implementing the Clean  
18 Water Act and Porter Cologne, a fairly minor change.

19           The other section with regard to nuclear  
20 facilities is in Section 3D, and we do have a number of  
21 suggestions there. Mostly, again, just because nuclear  
22 facilities are inherently dangerous does not mean they  
23 should be exempted from Track 1 and Track 2, and in  
24 particular, in this context, there is really no basis in the  
25 Substitute Environmental Document for why compliance with

1 Track 2 could not be achieved. The Substitute Environmental  
2 Document does talk about issues with regard to Track 1, and  
3 I understand and appreciate what staff is trying to do  
4 there, but with regard to Track 2, there is really no  
5 rational basis in the Substitute Environmental Document for  
6 including exemptions for nuclear facilities from Track 2,  
7 and so we would ask that you strike those from the  
8 exceptions in 3D.

9           And you can see there are a number of places where  
10 Track 2 is included in there. We also would ask that line  
11 D, 7D, be excluded, any other relevant information. The  
12 problem I see with this exception as a whole is, you have  
13 been very clear in your Substitute Environmental Document  
14 that the best professional judgment approach for the last 30  
15 years has not worked, and essentially what you are doing for  
16 the nuclear facilities, and on page 51 of the SED it says  
17 "there is no basis to assume the case-by-case BPJ approach  
18 that has been in effect for 30 years will yield any better  
19 results now than it has in the past." And yet, essentially  
20 what you are doing with nuclear facilities is you are buying  
21 into a Best Professional Judgment approach for these two  
22 facilities, where you have acknowledged that for the last 30  
23 years that approach has not worked, so it is not supported.  
24 These exceptions are not supported in the record.

25           MS. DODUC: Steve, before you move on, I can

1 appreciate your concerns with respect to inclusion of Track  
2 2 as currently proposed in the Draft Policy. Would your  
3 concerns remain if Track 2 were to be amended per your  
4 earlier recommendations?

5 MR. FLEISCHLI: I think it goes a long way to  
6 addressing my concerns. It is hard for me to say that any  
7 facility should be given special treatment under this,  
8 whether or not it is a combined cycle facility or a nuclear  
9 facility. I think that would go a long way toward  
10 addressing our concerns. That is all I can say at this  
11 point.

12 MS. DODUC: Thank you.

13 MR. FLEISCHLI: You will see other places where we  
14 have Track 2 changes, as well. The last change on this  
15 slide, it really, the language that staff had proposed  
16 really does not make any sense. To consider wholly out of  
17 proportion costs and wholly out of proportion other factors  
18 of paragraph 7, it really did not make sense to have both of  
19 those in there. We understand why you are doing the cost-  
20 cost approach, we strongly prefer cost-cost to cost benefit,  
21 we do not think there is a basis for you to do a cost  
22 benefit analysis. Your prior comments to EPA in the Phase 2  
23 Regs demonstrated that you did not feel comfortable with  
24 doing the cost benefit analysis, and so we are more  
25 comfortable with the cost-cost approach if you are going to

1 take economics into consideration.

2           And I think that is the extent of my comments. I  
3 think you might have seen another slide that talks about  
4 mitigation in 3D9, we withdraw that suggestion because we  
5 recognize that it might be internally inconsistent to  
6 condone a practice that we deem illegal, and we do not want  
7 to do that.

8           DR. GOLD: All right, my name is Mark Gold,  
9 representing Heal The Bay. The current policy requires a  
10 baseline impingement and entrainment study of a year.  
11 Scientifically this is a joke. It ignores year to year  
12 variability and ocean conditions and fish populations. For  
13 example, if the study year is an El Niño year, the results  
14 will be substantially different than an average year, or a  
15 La Niña year. We recommend that the study period gets  
16 expanded to at least 36 months, and ideally 60 months from  
17 the standpoint of being scientifically valid.

18           The policy contains no clear requirements for  
19 ongoing impingement and entrainment monitoring after the  
20 critical baseline studies are completed. This is completely  
21 inconsistent with all the rest of your permitting schemes,  
22 so it is quite a surprise. We recommend that basic  
23 impingement and entrainment permit monitoring requirements  
24 are added -- ideally monthly -- but under no circumstances  
25 less than quarterly, and even then, and only then, if the

1 three to five-year baseline impingement and entrainment  
2 studies demonstrate that the between month variability is  
3 not significantly different than quarterly variability, that  
4 is the only time that there should be a reduction of  
5 monitoring requirements; currently, there is no monitoring  
6 requirements.

7           So the first issue is, after almost five years of  
8 significant effort, the latest proposed changes move the  
9 State further from compliance with Section 316(B),  
10 protection of the environment, and a reliable implementation  
11 process that maintains grid integrity, and you have heard  
12 that from everyone so far. The most important change that  
13 you can make today to provide some teeth in the policy is to  
14 develop baselines based on actual monthly flow, rather than  
15 design monthly flow. This change will regulate the real  
16 impacts to coastal resources instead of a design flow  
17 regulatory approach that is not based on science, and is not  
18 protective. It would be best to use the average actual  
19 monthly flow from the last five years of data, but reliance  
20 on the 2000 to 2005 data in the SED would be a vast  
21 improvement over the current policy.

22           For nearly 40 years, Coastal power plants in  
23 California have failed to meet the requirements of 316(B) of  
24 the Clean Water Act. During that time, the industry has  
25 saved billions of dollars in compliance costs. Many of

1 these same companies are some of the most innovative green  
2 power companies in the nation. They are moving forward on  
3 increasing their renewable portfolios in order to comply  
4 with AB 32, by reducing greenhouse gas emissions. But now  
5 the time has come to upgrade our coastal power plants to  
6 move towards energy efficient, modern power plants.  
7 California needs to stop providing power at the expense of  
8 marine life. California must move towards a statewide  
9 network of MPAs, and a strong once-through cooling policy  
10 that protects marine life is the next logical step towards  
11 protecting California's precious coastal resources. Please  
12 modify this policy as stated in order to meet these goals.  
13 Too much time has passed already. Thank you.

14 CHAIR HOPPIN: You kept your word, didn't you.  
15 Are you done? Question from the Board members? Fran.

16 MS. SPIVEY-WEBER: I actually have a question for  
17 Dominic. We heard about the actual monthly flow, a five-  
18 year period, what period do we have data for that could be  
19 used if we did this?

20 MR. GREGORIO: We have data currently for the  
21 five-year period for the first part of this decade, 2000 to  
22 2005, I believe. It was very difficult to get all that data  
23 together, it took us months. We had to gather it ourselves,  
24 and that was also very helpful when we got to the expert  
25 review panel so that we could use that same basic dataset on



1 the flows. So, as far as the time period that we know  
2 about, for sure, it is that period of 2000 to - is it 2004  
3 or 2005? It is 2005. So that is the current period.

4 MS. SPIVEY-WEBER: Okay.

5 MS. DODUC: Following up on that, was there a  
6 particular reason why you recommended the five-year period  
7 prior to the effective date of this policy instead of 2000  
8 to 2005?

9 DR. GOLD: Just the most current data.

10 MS. DODUC: Which apparently we do not have and  
11 would have to collect. According to what Dominic just said,  
12 and he is nodding his head.

13 MS. SIKICH: We were just trying to reflect the  
14 most recent actual operations of the plants, but, as Mark  
15 said in his comments, I think, you know, it would be a vast  
16 improvement to rely on even that 2000 to 2005 actual flow  
17 data on a monthly basis.

18 MS. DODUC: Thank you. Actually, if I could, now  
19 that the flow issue has been addressed, I think I will  
20 direct this question at Ms. Sheehan because you raised the  
21 issue of feasibility determination with respect to Track 2.  
22 I think, well, I know I at least did, raise concern I think  
23 in December or even previously about how do we ensure  
24 consistency interpretation, especially at the Regional Board  
25 level, with respect to feasibility. And I actually am

1 comfortable with removing the feasibility criteria if Track  
2 2 were strengthened a bit more, and so my question to you, I  
3 know that you proposed some language with respect to  
4 feasibility, but did you give any consideration into the  
5 implementation of that and how that consistency in  
6 interpretation and application would be achieved?

7 MS. SHEEHAN: Yes, thank you. Of course, if BTA1  
8 equals BTA2, then it does not really matter. The  
9 determination of feasibility does not really matter. So the  
10 question is whether Track 2 is the same as Track 1, of  
11 course. But in our letter, we did go into a number of other  
12 scenarios in which the Regional Water Boards do evaluate  
13 different variables. And in this case, you do have a  
14 statewide situation where you want the Regional Water Boards  
15 to be relatively consistent and certainly, you know, with  
16 SACCWIS and the interagency groups that have been operating,  
17 there could be a way to make sure that there is that  
18 consistency in decision-making with respect to feasibility.  
19 I guess I am not as worried about that, just because the  
20 sheer number of decisions on feasibility is so low in  
21 comparison to the amount of decision-making that the  
22 Regional Water Boards have to do with that level of  
23 variability. So I think that working together and sitting  
24 down with these definitions, and considering it is only a  
25 few of the Regional Water Boards, not all of them, sitting

1 down with the State Water Board and whoever else wants to be  
2 in the room, to make sure that there is an understanding of  
3 how those would be implemented, I think that is a doable  
4 thing given the number of players involved and the number of  
5 decisions that need to be made. And there is a lot of  
6 precedent for moving forward with something like that. We  
7 have suggested something that we thought was narrow enough  
8 to be implemented relatively consistency, but certainly are  
9 open to other suggestions in terms of ensuring that there is  
10 that level of consistency across the coast.

11 MS. DODUC: And my last question to this panel,  
12 and I will throw it out to anyone, do you have an opinion on  
13 should the State Board consider issuing the NPDES permits  
14 for these power plants at the state level instead of at the  
15 Regional Board level? I see I caught you by surprise with  
16 that question.

17 MS. SHEEHAN: I think, as you heard earlier today,  
18 there is a very significant local interest in these power  
19 plants. A lot of these power plants tend to have  
20 environmental justice issues, and the environmental justice  
21 community is not always as - the State Water Board's  
22 processes are not always as readily accessible to those  
23 types of communities. In addition, some of the local issues  
24 are quite variable. I think that, if there were a process  
25 that allowed for Regional Water Board and State Water Board

1 cooperation on decision-making, that would be best to be  
2 able to have those decisions made at the local level,  
3 especially given the precedent of starting to take away  
4 local decision-making from the Regional Water Boards, and  
5 putting it at the State Water Board level. I would think  
6 there would need to be some type of thought given to how we  
7 would move forward with other permits that do have statewide  
8 impacts, as well. So I think it is just something to  
9 consider. I have some concerns about it, given the fact  
10 that the impacts of these plants tend to be very local. The  
11 statewide considerations can be considered in the context of  
12 all the other safeguards that have been created in the  
13 policy, but at some point, there needs to be a consideration  
14 of local opinions and thoughts and facts.

15 DR. GOLD: I would just add to that, you know, the  
16 importance of what Linda was saying in sharing the expertise  
17 and the directions so that there is consistency to some  
18 extent, and having the State Water Board involved at the  
19 Regional Board level, I think, is absolutely critical, on a  
20 policy this complicated.

21 CHAIR HOPPIN: Mr. Baggett.

22 MR. BAGGETT: Don't we do that with construction  
23 permits? We do that with storm water, Caltrans, linear  
24 trenching, those are all statewide permits, and they are all  
25 incredibly variable. I mean, take Palm Desert and Eureka is

1 quite a different level of working, too.

2 MS. SHEEHAN: No, absolutely, and I have worked on  
3 all those permits, and Mr. Hoppin mentioned the recycled  
4 water permit and policy this morning, I heard on the  
5 intercom, and these are all things that we worked very  
6 heavily on, but these plants are bigger than a local  
7 construction site, or a local storm water drain. These have  
8 very significant impacts, individually, and again, there are  
9 not that many of them, and so I think that we can work out a  
10 system to make sure that we do get the statewide  
11 consistency, the reliability, the grid energy issues that  
12 need to be considered, but also to make sure that the local  
13 issues which are much more significant than the other  
14 issues, that we do work on locally, that those are  
15 considered.

16 MS. DODUC: Actually, I am sorry, a follow-up  
17 question to either Jonathan or Dominic. This policy focuses  
18 on once-through cooling, the intake structure. From my days  
19 writing NPDES permits, those also are considered a discharge  
20 component, which of course is outside of the scope of this  
21 policy, but also is it suffice it to say that these plans  
22 are also covered under different plans? I mean, they are  
23 not under just, you know, the Ocean Plan, they also have  
24 Basin Plan, Thermal Plan, what would be some of the  
25 considerations with respect to local regional impacts for

1 permitting from an NPDES perspective?

2 MR. BISHOP: This policy has dealt with the intake  
3 structures in the cooling water portions of an NPDES Permit.  
4 The permits themselves include much more than that, they  
5 include the discharge facilities, each one of these  
6 facilities has a different level of in-plant waste that goes  
7 into those, so they have very site-specific issues related  
8 to that. Depending on where they discharge, not all of them  
9 discharge into the ocean, so they are not all covered under  
10 the Ocean Plan, some of them are covered under Local  
11 Regional Board plans which then include the requirements for  
12 that plan, all of those issues need to be taken into  
13 account. This policy was designed with the idea that we  
14 would constrain the Regional Boards to timing and  
15 implementation of the cooling technology, not with the idea  
16 that we would supplement their permitting authority, which  
17 they have under our delegation. The other issue that should  
18 be kept in mind is that the regions under the scheme that we  
19 operate now, if there is a dispute over what the regions do,  
20 it can be petitioned to the State Board. If the State Board  
21 steps in, that eliminates that two-step process, and so  
22 there would be no petition authority and it would have to go  
23 directly to court.

24 CHAIR HOPPIN: Jonathan, I have one question and I  
25 am not questioning Linda's intentions there because I do not

1 see her being naïve on any kind of a regular basis, this  
2 idea of having the Regional Boards come in and consult with  
3 us as far as what we think is consistent sounds good, but I  
4 am mindful of the wetland riparian policy we have got going  
5 on in two particular regional boards where they have not  
6 really asked us if it is consistent with anything else, so I  
7 appreciate the nuances, particularly the discharge  
8 authority, but I remain a little bit concerned that we are  
9 able to effectively constrain the structured component of  
10 this, and I realize we have a mechanism of taking it under  
11 our own motion, and I still struggle with whether that -

12 MR. BISHOP: You are stealing my thunder.

13 CHAIR HOPPIN: Go ahead and thunder, I will just  
14 sit here and -

15 MR. BISHOP: We have this dilemma any time the  
16 State Water Board does a policy, on the recycled water  
17 policy constraints, the regions - essentially, any policy  
18 that you make on a statewide basis is made to set bounds on  
19 the activity of a regional board and the ability of them to  
20 use their discretion, that is what you do. And when  
21 regional boards resist that, you have the authority to take  
22 that up on your own motion like you recently did with the  
23 San Francisco Bay Regional Board's wet water discharges from  
24 - of course, that is an uncomfortable position to be in, but  
25 that is part of the structure that we have. The structure

1 is not designed for you, as the State Board, to make all  
2 decisions around the state, it is to provide guidance for  
3 the regions and policy level boundaries for them to make  
4 their decisions within, and then to essentially oversee that  
5 through the petition process, or through taking it up on  
6 your own motion.

7 CHAIR HOPPIN: I heard the thunder, the lightning  
8 bolt has not quite hit me yet, so I am going to speak before  
9 I know it is on its way. Mr. Jaske, if I heard him  
10 correctly remind us in our discussions of South Bay, that  
11 that replacement power could in fact be coming in the future  
12 from out of the area, and we would not need this degree of  
13 local dependency that we have had in the past. And so more  
14 than any other policy that I can envision, we potentially  
15 are dealing with regional boards, although they are  
16 constrained, making decisions that affect areas certainly  
17 outside of their region. And that is still the portion I  
18 struggle with.

19 MR. BISHOP: And I do not - I am not disagreeing.  
20 We did try to develop this policy with that in mind, and so  
21 that all decisions related to the schedule of replacement,  
22 or coming into compliance with the policy rests with you,  
23 and that is the way it is designed.

24 CHAIR HOPPIN: Fran.

25 MS. SPIVEY-WEBER: Can't we just cut to the chase?



1 On Wednesday, no, on Thursday, anyway, soon, there is going  
2 to be a meeting in San Diego where this issue is coming up  
3 before the San Diego Regional Board. If, hypothetically, we  
4 adopt this policy today, and I hope we do, so what should  
5 we, the Board, be saying at that Board meeting? What  
6 constraints is that Board going to be under, if any?

7 MR. LAUFFER: Michael Lauffer, Chief Counsel. As  
8 a legal matter, that board would not be under any  
9 constraints at this point in time, and I think that is part  
10 of the challenge and the issue. Right now, the San Diego  
11 Regional Water Quality Control Board, they can go about  
12 looking at the permit for the South Bay facility, there is  
13 no over-arching framework that guides them. And even if the  
14 Board were to adopt this policy today, of course it is not  
15 effective until it is approved by the Office of  
16 Administrative Law, and that is months away. But, getting  
17 back to the central point of this, I mean, the policy that  
18 is before you today in many respects on the intake structure  
19 issues, and as Jonathan has indicated, this is all about the  
20 intake structures, there is a lot more that goes on in  
21 permitting these facilities. On the intake structures, the  
22 policy in many respects has been designed - and I say this  
23 affectionately as a former Regional Board attorney - to  
24 straightjacket the regions on this issue. I mean, they are  
25 complied by law to adhere to state policy for water quality

1 control, the policy says they shall implement the schedules  
2 that are in the policy that you adopt. So, in terms of  
3 deadlines for them, once this policy is effective, it is  
4 designed to give that assurance. And, yes, there are outs  
5 provided in the policy that the State Board controls for  
6 purposes of grid reliability, but, again, the way that this  
7 is designed to work is proscriptively dictated to the  
8 Regional Boards and allow many of the sort of consistency  
9 issues that Ms. Sheehan has expressed concern about, and  
10 that some of the Board members have expressed concern about,  
11 to be made at the State Board level in terms of reviewing  
12 studies. And a great example of this is with respect to  
13 some of the nuclear facilities. So this is different than  
14 some of the policies that we have looked at, and it is  
15 certainly different than some of the general permits that we  
16 discussed earlier because there, you know, we are attempting  
17 to regulate literally thousands or tens of thousands of  
18 facilities under one permit to streamline the process.  
19 Here, you have all the coastal facilities that truly are  
20 unique and have the unique discharges and different Basin  
21 Plans that may apply to them.

22 CHAIR HOPPIN: Mr. Lauffer, I will remind the  
23 record, I am plagiarizing your verbiage, but can you give me  
24 an example where we, as the State Board, have effectively in  
25 the past straight-jacketed the Regional Boards as a whole?

1 Dr. Gold, I will give you your chance when he gets done.

2 MR. LAUFFER: In certain respects, there are a  
3 couple good examples. I mean, I think Dr. Gold may have  
4 some comments about this one because I know he has been  
5 frustrated with, at times, the state implementation policy  
6 for the California Toxics Rule, but it has a fairly  
7 mechanical process for going about and determining whether  
8 or not a toxics discharge is subject to effluent limitations  
9 under the California Toxics Rule, and then for calculating  
10 and implementing, and where there has been, if you will,  
11 ambiguity within the State Implementation Policy, this Board  
12 has resolved through the petition process that ambiguity. I  
13 do think that, when you look at this policy, that is nothing  
14 like the SIP in terms of how the ambiguity is resolved in  
15 many respects, or most of the key issues, by that table with  
16 the dates, and a requirement that the dates have to be in  
17 the NPDES permits. The other example, and it is one that I  
18 think is much more on point and relevant, has to do with  
19 landfill regulations. Those are incredibly proscriptive  
20 regulations that deal with the types of line requirements,  
21 there are regulations the State Board adopted jointly with  
22 the former California Integrated Waste Management Board, now  
23 CalRecycle, and those regulations are very proscriptive, in  
24 many respects much like this policy. And we have seen very  
25 few petitions on the Regional Boards' implementation of this

1 language. And, again, as Jon indicated, the petition  
2 process is always there in the event that the Regions, if  
3 you will, go astray, but I also think it is very unfortunate  
4 if stakeholders are kind of backing the Board into a  
5 position where they feel already as if the Regional Boards  
6 will not implement the policy. I mean, your regions  
7 struggle mightily to implement and interpret and carry out  
8 your directives, and I think this policy has the benefit of  
9 being much clearer in that respect, with respect to the  
10 intake structures. And, of course, that is what this policy  
11 is about.

12 CHAIR HOPPIN: Thank you. Did that take care of  
13 you, Dr. Gold?

14 DR. GOLD: SIP was what I was going to say, and  
15 just - it is not limited to toxicity, it is literally the  
16 entire SIP, and one of the other great examples on this is  
17 the use of reasonable potential analysis on what numeric  
18 effluent limits should be in NPDES permits. So we are  
19 actually seeing POTWs, you know, that are discharging 30  
20 million gallons a day, that only have four numeric effluent  
21 limits, so that shows you how much that the SIP has been  
22 constraining in that particular circumstance.

23 CHAIR HOPPIN: Thank you. Any other questions?  
24 Thank you for your panel, Linda. Thank you for staying on  
25 time. The next group, I am sure, is just going to concur

1 with what you had to say, but we will give them an  
2 opportunity to come forward anyhow. Dr. Michael Hertel,  
3 Eric Lu, Dr. David Sunding, and Paul Singarella. Dr.  
4 Hertel, I know you can talk for hours about the same thing.  
5 How long do you need?

6 DR. HERTEL: I do not think we will take any more  
7 than 15 minutes, certainly.

8 CHAIR HOPPIN: Thank you.

9 DR. HERTEL: Probably less.

10 CHAIR HOPPIN: Darren, would you set the clock for  
11 15 minutes, please?

12 DR. HERTEL: Good morning. For the record, even  
13 though we are acquainted, I am Michael Hertel, and I am  
14 representing Southern California Edison Company. I want to  
15 begin first with some thanks to the Board members and to the  
16 staff for their diligent efforts on this policy, and for  
17 being open to considering all of the concerns that we have  
18 raised on behalf of our customers. We think it is an  
19 important policy, we still have some obvious concerns with  
20 it, and we want to discuss those with you today. We have  
21 got presenters here. I am going to give a short policy  
22 overview, very short, and then I am going to have David  
23 Sunding, who is the Professor of Natural Resources at U.C.  
24 Berkeley, talk about the uses of cost benefit analysis, the  
25 methodology, and why it makes sense for the Board to embrace

1 that here in the context of the goals that you have in this  
2 policy, not to delete cost-cost, but to add cost benefit in.  
3 We have asked Eric Lu of ENVIRON Corporation to speak on the  
4 issues of the changes to the SEP, and our response to that,  
5 and that will be extremely brief, and then we are going to  
6 close with Paul Singarella from Latham & Watkins, our  
7 outside counsel, to discuss the legal issues which are so  
8 interwoven in most of this. So that is our game plan.

9           First of all, we have supported all along the  
10 Board's intention to come up with a consistent OTC policy  
11 across the State. We think that is a valuable goal, and we  
12 understand that the purpose of it is to protect the marine  
13 environment. In our case, with the roughly \$400 million  
14 that we have spent in furtherance of the mitigation and in-  
15 plant technology requirements that have been imposed on us  
16 by the Coastal Commission for exactly this purpose, namely  
17 entrainment and impingement, we think that we are at least  
18 close to what might be called the poster child of a power  
19 plant that really has done something to deal with the  
20 impacts.

21           We ask the Board to clarify its intent to consider  
22 alternate compliance requirements for the two nuclear  
23 plants, what we call the non-cost factors that you list in  
24 Section 3.D.7 of the policy on page 12, these are the issues  
25 surrounding permitting barriers, space constraints, public

1 safety concerns, and so forth. In our situation, and at San  
2 Onofre, some of those who have visited the plant have seen  
3 we are right next to the major Interstate 5 Freeway,  
4 North/South link of the major rail lines, the towers would  
5 have to be constructed literally on top of those facilities  
6 or adjacent to them, and we are deeply concerned that some  
7 of those non-cost factors, that our friends in the  
8 environmental community have mentioned, need to be taken  
9 into account. We understand that appears to be the intent  
10 of the Board, and we have offered some language to counsel  
11 to try to make that more clear, and involve it in Section  
12 3.D.8, where you actually take the action to make a judgment  
13 whether to give an alternate path or not.

14 We support the Board's careful consideration of  
15 the impact of the policy on reliability. We think you have  
16 done a very good job on that. The Draft Policy, in our  
17 opinion, takes that into account in a very responsible way.  
18 We do believe that the provision to allow after public  
19 hearing a judgment to be made by this Board with the test of  
20 substantial evidence is an important thing for you to  
21 include in the policy. We do not see that abrogating your  
22 responsibility under either the Federal Clean Water Act or  
23 Porter Cologne. We have mentioned to you the Executive  
24 Director's choice of the special studies contractor, we  
25 think that person has to have nuclear power plant

1 engineering and experience. We would ask that you include  
2 some language to that, and we have submitted that. And  
3 finally, we support the draft's provision to grant  
4 mitigation when authoritative state agencies have looked at  
5 this issue of entrainment and impingement imposed and after  
6 consideration in most of the cases I have seen as kind of  
7 weighing of advantages and disadvantages, cost benefits,  
8 some alternate compliance method in the case of, for  
9 example, Moss Landing, there is an instance of that. We  
10 would like to see that extended, obviously, to the very  
11 extensive mitigation that we have undertaken at San Onofre.  
12 So now, with that, let me introduce David Sunding to make  
13 some comments on the cost benefit methodology.

14 MR. SUNDING: Thank you very much. All right,  
15 thank you. I have already submitted written comments, so I  
16 will not go over that ground again; rather, what I would  
17 like to do is use my time here to speak about primarily the  
18 staff's response to comments, which is a new bit of  
19 information. And I have just three basic points I would  
20 like to make about that. First, I was struck when I read  
21 the Response to Comments, that they reveal what I would  
22 characterize as a misunderstanding of environmental benefits  
23 estimation and the capabilities of modern environmental  
24 economics; for example, in the Response to Comment 4.05,  
25 staff equates the monetary benefits of regulating once-



1 through cooling with commercial values of fish, and I will  
2 quote: "The only monetary value associated with impacts to  
3 marine life is based on commercial values of fish, which is  
4 completely inadequate to characterize the ecological effects  
5 of OTC." In the Response to Comment 29.2.9, staff argue  
6 that, again: "Ecologic benefits cannot be quantified  
7 monetarily by normal economic analysis of damage to market  
8 fish stocks." In fact, environmental economists do not  
9 equate ecologic benefits to changes in commercial values of  
10 fish. Over the past several decades, economists have  
11 developed a whole array of tools to monetize non-use  
12 benefits that are associated with the mere existence of an  
13 environmental amenity, and have done so precisely because  
14 use values alone frequently underestimate the true value of  
15 improving environmental quality. Second, and I think this  
16 is the larger issue, the Response to Comments raises, to me,  
17 some sort of alarming questions about the staff's view of  
18 cost benefit cost comparisons. And here I will quote again  
19 in the Response to Comment 4.05, staff argues that: "It is  
20 not appropriate to equate the substantial mortality of  
21 marine life associated with OTC to monetary costs of  
22 compliance." And, again, the argument here is that  
23 comparing two sides of the ledger, comparing changes in  
24 survival of marine life to costs of compliance is like  
25 saying, "Is orange taller than blue?" That is the

1 implication of that statement, that those two things are  
2 simply not comparable by any reasonable metric, and I  
3 disagree with that strongly. By this reasoning, cost  
4 benefit analysis would seldom, if ever, be used to make  
5 environmental regulations. In reality, cost benefit  
6 analysis is used routinely to develop regulations concerning  
7 everything from drinking water standards to consumer product  
8 safety. And, in fact, it is a required element of many  
9 regulatory processes in these areas. A virtual rejection of  
10 the use of cost benefit comparisons in almost any  
11 circumstance, as that quotation implies, would place the  
12 Board, I would argue, far outside the mainstream of  
13 regulation in this country. Third, and this is my last  
14 comment, cost benefit analysis in the case of once-through  
15 cooling is no more complicated or difficult than in dozens  
16 of other applications. Economists routinely estimate the  
17 use and non-use benefits of changes in water quality and  
18 these estimates are deemed reliable enough to be used as the  
19 basis for agency decision-making. Agencies including the US  
20 EPA, Army Corps of Engineers, Bureau of Reclamation, and the  
21 Federal Energy Regulatory Commission, routinely consider  
22 information on use and non-use benefits. Indeed, this very  
23 Board, the State Water Resources Control Board, was  
24 instrumental in putting non-use value estimation on the map  
25 of environmental economics through its consideration of

1 these values in the landmark Mono Lake case. And I will  
2 leave my remarks there.

3 MR. LU: Thank you, Chairman Hoppin and the Board  
4 for listening to our comments today. My name is Eric Lu. I  
5 am a Senior Manager at ENVIRON International Corporation.  
6 We are a technical consultancy with approximately 1,100  
7 employees throughout the United States and around the world,  
8 Europe, Asia, Australia, and South America. We work in a  
9 variety of technical areas, one of which includes conducting  
10 technical analyses to comply with CEQA. We work with a wide  
11 range of clients, as well, that include industrial  
12 commercial entities, as well as local, government and state  
13 agencies in that respect, too.

14 We were asked by Southern California Edison to  
15 take a look at the Draft SED that was released last year, as  
16 well as the revised version and the Response to Comments  
17 that was recently released earlier this year. And the task  
18 placed in front of us was to look at the environmental  
19 analyses to evaluate if the bounds of all the environmental  
20 issues were fairly evaluated and adequately and  
21 appropriately analyzed in the context of CEQA. In that way,  
22 we were hoping to explore and identify to ensure that all of  
23 the environmental analyses were properly represented so that  
24 you, the Board, can make an informed decision, as well as  
25 the public could be informed adequately in understanding

1 what all the environmental issues were related to your  
2 policy. You have been provided the comment letter prepared  
3 by ENVIRON through Southern California Edison, so I am not  
4 going to run through all the specific details, but I would  
5 like to highlight a few issues to ensure that you guys are  
6 aware of the other environmental impacts, and these relate  
7 to potential air quality, climate change, and biological  
8 resources issues. With this policy, while there may be  
9 great benefits in terms of the coastline estuarine areas,  
10 there are potential meaningful and significant air quality  
11 impacts through the process of trying to comply with that  
12 policy. Our comments highlight all those issues as it  
13 relates to PM10, PM2.5 emissions, from the potential closed  
14 cycle cooling towers, as well as the implementation or the  
15 requirements to construct new power plant facilities. In  
16 the context of climate change, there is also potential  
17 effects because of the, again, the power penalty because of  
18 a closed-cycle cooling, which will require additional energy  
19 production to make up for those losses. And, of course, in  
20 terms of biological resources, while there may be marine  
21 life benefits, there also could be terrestrial downsides as  
22 power plants look to comply with their policy.

23 In the context of CEQA, we feel this is important  
24 to highlight so that you can make an informed decision, you  
25 being the State Water Board, you are focusing on water

1 issues, but we think it is also important that all other  
2 environmental impacts are fairly represented. The Response  
3 to Comments at this time have basically not fully responded  
4 to our original comments submitted last year, so at this  
5 point, we would still feel that, in terms of complying with  
6 CEQA, that there are areas where you could do further  
7 analyses in terms of air, climate change, and biological  
8 impacts, so that the full impact in those areas are  
9 represented.

10 CHAIR HOPPIN: Thank you.

11 MR. SINGARELLA: I guess I will have to say good  
12 afternoon. We just crested noon here, but I think we are  
13 making steady progress. My name is Paul Singarella. I am  
14 here on behalf of Edison, as Dr. Hertel said. First, let me  
15 just say how much I and the rest of us truly appreciate the  
16 open and frank and generous with your time dialogue that we  
17 have had with the Board and with staff over the last few  
18 years, truly appreciate that. Today, I make a plea to you  
19 that you add back a cost benefit test to compliment the cost  
20 test. This would bring the policy back within the fabric of  
21 30 years of prior agency practice and, of course, the United  
22 States Supreme Court precedent from last year. Legally, it  
23 is clear that this would make the policy more robust and  
24 more defensible. We think the Responses to Comments issued  
25 last week illustrate a procedural problem caused by the

1 proposed departure from traditional 316(B) analysis. The  
2 responses assert that the policy is based on California  
3 Water Code Section 13140, in addition to the Clean Water  
4 Act, and you see that at page 5 of the Responses, Response  
5 9.22. This is the first time we have seen staff clearly  
6 claim authority outside the Clean Water Act. The problem is  
7 that 13140 is subject to another section of the same  
8 article, 13142.5, which, as a matter of state law, when it  
9 is the Board's authority over power plant intakes to only  
10 two situations, 1) when the power plant is being constructed  
11 in the first instance, and 2) when the power plant is being  
12 expanded. And since the policy applies to existing power  
13 plants, regardless of whether they are being expanded, we  
14 believe the policy cannot be based on Section 13140. So  
15 that takes you back to Chapter 5.5, in Section 13372 to look  
16 for the authority, but we do not believe that a cost-cost  
17 only policy is authorized under 13372. Why? Because 13372  
18 authorizes you to take only those actions required by the  
19 Federal Act. A policy with cost-cost, but not cost benefit,  
20 is not required by the Federal Act, rather, it is more  
21 restrictive than the Federal Act. In what respects? Well,  
22 1) it removes project level consideration; when you remove  
23 an important factor from consideration, you are by  
24 definition being more restrictive; 2) it eliminates a time  
25 honored variance that is more restrictive, too. So the

1 policy is neither authorized by Section 13140, which we saw  
2 for the first time last week, nor required by the Federal  
3 Act. We believe it therefore is without legal basis as it  
4 stands. Staff's new reliance on 13140 also illustrates why  
5 we believe an Environmental Impact Report, EIR, not just an  
6 SED, is required in this instance. The Certified Regulatory  
7 Program that staff asserts is based on 13140. But 13140  
8 does not authorize the issuance of the policy, so the  
9 Certified Regulatory Program applicable to 13140 cannot  
10 apply either. Reintroducing cost benefit is the more  
11 authoritative and safe way for this Board to proceed. It  
12 protects you and is the only way environmental benefit is  
13 going to be analyzed at the project level. One other thing  
14 from the responses that we wanted to bring to your  
15 attention, David mentioned it, it is on page 70, Response  
16 4.05. There, staff announce a "general policy not to  
17 perform cost benefit analysis." We are concerned that such  
18 a general policy may have prejudiced staff's consideration  
19 of a cost benefit option. We also are concerned that this  
20 general policy itself has not been put through any public  
21 process. It strikes us as an underground regulation that  
22 should not have been announced a week before this five-year  
23 process concludes.

24 Now, in closing, I have got two documents for you.  
25 The first is simply our suggested edits to a section of the

1 policy. We are delighted to hear that you are going to  
2 break and ask the Chief Counsel and the staff to perhaps  
3 come back to you after the break with some suggested  
4 language responsive to your priorities, I would like to  
5 submit this to Mr. Lauffer and get this into the queue for  
6 consideration if it rises to the -

7 CHAIR HOPPIN: Mr. Singarella, you realize that --  
8 you have been here before, so you realize that our period  
9 for comments has been closed, so I am not saying you cannot  
10 distribute the letter, but your written comments will be  
11 what goes onto the record, as you well know.

12 MR. SINGARELLA: Sure. This is not a letter, Mr.  
13 Hoppin, this is really something that we actually created  
14 this morning once we understood that the Board might be  
15 considering language changes, and it is simply a minor  
16 change to Section 3.D.8, minor in terms of language changes,  
17 this is surgical suggestion. But substantively, it is very  
18 important to us because what it would do is it would make  
19 the factors in Section 3.D.7, those factors that are so  
20 important to us, it would make it clear in 3.D.8 that those  
21 factors provide an independent basis in addition to cost-  
22 cost, to provide to seek relief. So as far as I am  
23 concerned, this does not even have to go into the record, I  
24 simply would like to submit it to your Chief Counsel and he  
25 can choose whether to take it up with you himself.



1           MR. LAUFFER: Mr. Singarella, for the benefit of  
2 the Board members, because they are the ones that are going  
3 to be providing direction to us, why don't you go ahead and  
4 read what you have so that they know what is being  
5 contemplated?

6           MR. SINGARELLA: Okay, sure. I will be glad to do  
7 that.

8           MR. LAUFFER: Because it appears that the redline  
9 is pretty small.

10          MR. SINGARELLA: Okay. So this is in 3.D.8, and  
11 the change is two-thirds of the way down.

12          CHAIR HOPPIN: Mr. Singarella, could you elevate  
13 your microphone there just a little bit?

14          MR. SINGARELLA: Sure. And that is on page 12 for  
15 the Board members. But the change does not come in for  
16 purposes of listening to it until after the second reference  
17 to Track 1, and so let me read the full 3.D.8, and I will  
18 mark the insertion: "If the Board finds that the cost for  
19 specific nuclear plant to implement Track 1 or 2,  
20 considering all the factors set forth in paragraph 7 are  
21 wholly out of proportion to the costs considered by the  
22 State Board in establishing Track 1," now here is the  
23 insertion, "...or that compliance is wholly unreasonable  
24 considering the factors set forth in paragraph 7," that is  
25 the end of the insertion, "...then the State Board shall

1 establish alternative requirements for that plant." So  
2 thank you for letting me read it into the record. I will  
3 give Mr. Lauffer the page just in case he wants to look at  
4 it himself.

5 MR. BAGGETT: Well, in that same paragraph, since  
6 you are there, I think the NGO representatives propose - it  
7 has been proposed that we eliminate Track 2 from there,  
8 period, to implement Track 1. Do you have an opinion on  
9 that?

10 MR. SINGARELLA: Do I have a comment on that?

11 MR. BAGGETT: Yeah.

12 MR. SINGARELLA: Well, we would oppose that. The  
13 imposition of either Track 1 or Track 2 potentially could be  
14 extremely onerous to us and well beyond the costs that this  
15 Board has considered, and through the Tetra Tech analysis,  
16 so we would hope that you would allow us to make our cost-  
17 cost demonstration, at a minimum.

18 MR. BAGGETT: That is not what I asked. If you  
19 just struck the words Track 2?

20 MR. SINGARELLA: Oh, I struck the word Track 2?

21 MR. BAGGETT: That is what has been proposed.

22 MR. SINGARELLA: I did not mean to do so, Mr.  
23 Baggett.

24 MR. BAGGETT: No. Do you have a comment if we  
25 struck the word Track 2 in that paragraph 8, both - it says

1 to implement Track 1 or Track 2; what if we just compared it  
2 to Track 1 and you did not have the option of "or Track 2?"

3 MR. SINGARELLA: I - well, Mike may have a  
4 comment, too.

5 DR. HERTEL: We have not considered that, Mr.  
6 Baggett, but I think the problem is that the requested  
7 changes, as I understand them, I have not seen them or heard  
8 them before today, from our friends in the environmental  
9 community, do not consistently remove Track 2 from the whole  
10 process. In practical fact, Track 2 for the nuclear plants  
11 will not make any difference. It is, you know, there is no  
12 way to get to 90 percent of the level of Track 1 without  
13 going to cooling towers. So, from a practical standpoint,  
14 it makes no difference. If you were going to strike it, I  
15 would strike it throughout.

16 CHAIR HOPPIN: Tam.

17 MS. DODUC: Since Mr. Singarella has had more  
18 comment on the environmentalists' suggestion for this item,  
19 I would like to hear from one of the NGO representatives who  
20 spoke earlier today on your thoughts, on the recommended  
21 change Mr. Singarella just read to the Board. Were you  
22 paying attention? This is a test.

23 MR. FLEISCHLI: Trust me, we did not fall asleep.  
24 Maybe he can read it one more time, but I do have it as, "or  
25 that -

1 CHAIR HOPPIN: Steve, I do not mean to be a  
2 nitpicker, but would you identify yourself?

3 MR. FLEISCHLI: Oh, I am sorry. Steve Fleischli.

4 CHAIR HOPPIN: And you might get an acting career  
5 out of this or something.

6 MR. FLEISCHLI: Yeah, I am often confused with  
7 Steven Weber. Anyway, we all need some lunch. No, from  
8 what I understand, the suggested language was, "or that  
9 compliance is wholly unreasonable considering the factors of  
10 paragraph 7." Is that correct, Mr. Singarella?

11 MR. SINGARELLA: You have passed the test, yes.

12 MR. FLEISCHLI: You know, for me, we have always  
13 maintained the position that safety is the issue and that  
14 there should not be exceptions other than safety, so I  
15 cannot condone that language by any stretch. I would agree  
16 with, I think, both Edison, as well as PG&E that that  
17 language, with the factors being considered in a wholly  
18 disproportionate cost test, do not make any economic sense  
19 because those factors are not economic factors. So that is  
20 all I can say on that. We are willing to live with cost-  
21 cost. I would disagree with the cost benefit suggestions.  
22 I would ask everyone to look at Justice Breyer's concurrence  
23 in the energy case, I think that is a better position on  
24 cost benefit where he says, "Look, you should not have to go  
25 through this monetization process." It is very complex, it

1 is very cumbersome, and I respect the views of the speaker  
2 with regard to the fact that there are contingent valuation  
3 methodologies in these other sorts of provisions out there.  
4 But we can live with cost-cost. We do not think you should  
5 be considering anything else, other than safety in terms of  
6 the nukes, it just does not make sense to us.

7 DR. HERTEL: If I could comment on that, please?  
8 The problem we have is that we believe, given our 30 years  
9 of experience with the Coastal Commission, our issues with  
10 getting additional land from the U.S. Department of the Navy  
11 and Marine Corps at the San Onofre site, the problems that  
12 exist in just bringing the sea water up 100 feet in  
13 elevation, constructing these massive cooling towers, that  
14 it is highly likely that we would be in a position where we  
15 could not get those permissions. If we are in such a  
16 position, I realize we would have to make a proof to that  
17 effect. I believe that it is only equitable for the Board  
18 to consider in your judgment granting alternative  
19 requirements for compliance in those situations; there is  
20 really no way for us to comply in that instance, and all we  
21 are asking for is that some language be adopted to make that  
22 clarification clearer.

23 MR. SINGARELLA: Mr. Hoppin, may I have a minute  
24 to return to my second document that you commented on, our  
25 letter, I would simply like to explain what it is and ask

1 the Chair and the Board for an opportunity to make an offer  
2 as to why it is, in fact, timely.

3 CHAIR HOPPIN: All right.

4 MR. SINGARELLA: Thank you, sir. The letter is  
5 simply a roadmap of the CEQA and other problems raised by  
6 this proposed non-traditional approach represented by the  
7 policy before you. These problems are largely in response  
8 to the responsiveness document that came out last week. We  
9 request that you accept our letter into the record and, in  
10 terms of the timeliness of it, I would refer you to pretty  
11 clear CEQA authority that says that, under CEQA, you need to  
12 keep the public comment period including written comments  
13 open until the close of the hearing. Of course, this  
14 hearing has not closed, and we actually cite to - I am  
15 making my offer now, Chair - we actually cite to the  
16 Bakersfield case in our short letter, and I would suggest  
17 that you respectfully have your Chief Counsel take a look at  
18 this. But the Bakersfield case is a Court of Appeal  
19 decision that said that, if a public hearing is conducted on  
20 project approval, which is what this is, then new  
21 environmental objections can be made until close of this  
22 hearing if the decision-making body elects to certify the  
23 EIR - in your case, the SED - without considering comments  
24 made at the public hearing, it does so at its own risk. We  
25 think the comment letter is actually informative to you and

1 could be useful in your deliberations today. We also think  
2 that, because 13140 only came in clearly last week, and it  
3 raises significant procedural issues, and it concerns us  
4 from a notice perspective, that you ought to give us the  
5 opportunity to make a record of it, number one, but more  
6 importantly, present it to you in a form that will enable  
7 you to include it in your deliberations. So I would  
8 respectfully request the Board to accept our letter. And I  
9 think, at a minimum, you ought to take the letter, if you  
10 decide not to put it into the record, that is one thing, but  
11 I think you are going to want to have physically the  
12 document so you will not know what I am talking about, and  
13 so that your counsel can look at Roman VII in the letter.  
14 It simply goes to the timeliness of it. We are quite  
15 confident that it is timely under these circumstances that  
16 we have here today.

17 CHAIR HOPPIN: Mr. Singarella, I will defer to  
18 counsel. I do not know that I said we would not accept your  
19 letter, I just said it would not go into the written record.

20 MR. SINGARELLA: Thank you very much.

21 MR. LAUFFER: Chair Hoppin, Board members, both  
22 the CEQA and the Board's regulations expect that you will go  
23 into a decision with eyes wide open on the environmental  
24 impacts of it. I guess the issue and problem that I have is  
25 that our regulations recognize that your staff will have an

1 obligation to respond to environmental issues raised at the  
2 proceeding, and we have just heard a little over 15 minutes  
3 of presentation from SCE where they have not actually, other  
4 than Mr. Lu's presentation, identified the environmental  
5 issues, and now they want to put in a document that none of  
6 us will have the benefit of reading, that you will not have  
7 the benefit of reading, and I think Mr. Singarella and  
8 others familiar with the Board's practice are well aware  
9 that issues can come up at the last minute, and the way that  
10 we handle these is we have a hearing, or, in this case, we  
11 are having a Board meeting where we are taking further  
12 testimony on it. If Mr. Singarella wants to go through the  
13 points quite quickly, and they address the issues in the  
14 letter, we could accept the letter, that is exactly what we  
15 did with the Assembly Member's letter earlier today. But  
16 others have been expected to comply with the written  
17 submission deadline. Certainly, there has been nothing that  
18 has limited SCE from raising the environmental issues that  
19 they say are so important now, and that came out as a result  
20 of the Response to Comments, but, again, the environmental  
21 document has been on the street for a long time. The fact  
22 that the Board is adopting this as State policy for Water  
23 Quality Control only emanates from 13140, that is the  
24 vehicle, the process, the staff has never argued that  
25 substantively it is a matter of State law, that it is State



1 law that is driving this policy; instead, we use 13140 to  
2 establish uniform requirements and expectations for our  
3 Regional Boards. So I am not sure what is really new, but I  
4 would encourage you to at least hear what the significant  
5 points are that Mr. Singarella says that he has, and you  
6 know, if he hits them, and it is what is in the letter, then  
7 we can accept the letter in, but I do not want a blind  
8 letter being accepted into the Board's record. You will  
9 have no idea what is in that letter, otherwise.

10 MR. SINGARELLA: Do you want me to proceed?

11 CHAIR HOPPIN: If you would like to hit your key  
12 points, yes.

13 MR. SINGARELLA: Thank you very much. Well, what  
14 I tried to do is, in my comment time, preview some of this  
15 to begin with, so the letter actually is consistent in many  
16 respects with what I have already said, so I will not have  
17 to repeat a whole lot of it. The first point -

18 CHAIR HOPPIN: Mr. Singarella, for whatever  
19 reason, I am having a difficult time hearing you.

20 MR. SINGARELLA: Really? Okay.

21 CHAIR HOPPIN: Yeah.

22 MR. SINGARELLA: Sorry, Mr. Hoppin. You really  
23 have to get right up close to these mics. The first point  
24 relates to Section 13140 that I described during my comment,  
25 and the fact that 13140 provides the Board with broad

1 discretion to make water quality control policy, but the  
2 language of 13140 in and of itself is limited by the rest of  
3 the sections in Article 3 of Chapter 3, and those sections  
4 contain 13142.15B. I hate to be so technical here, but  
5 13142.15B says you have got authority to do water quality  
6 control policy over the new plants, intakes at new plants,  
7 and when they are being expanded, existing plants, and that  
8 is it. So it is very troubling that there be this claim of  
9 authority under 13170 for this policy, which we think  
10 pertains quite quite generally and specifically to existing  
11 power plants, regardless of whether they are being expanded.  
12 The second point is -

13 MS. SPIVEY-WEBER: Hold on just a second. Are you  
14 arguing that you would like for us to allow the regional  
15 boards to have their individual authority over the policy  
16 that we are going to adopt and not make some attempt to, as  
17 we referred earlier, to have some uniformity? Are you  
18 arguing for not being uniform at the regional level?

19 MR. SINGARELLA: No, no, I am sorry, and that is a  
20 great question. What I am saying is that you certainly have  
21 some significant authority under Section 316B of the Clean  
22 Water Act to create a BTA standard.

23 MS. SPIVEY-WEBER: Right.

24 MR. SINGARELLA: Right? But there is some  
25 question, because of this very significant non-traditional

1 approach that you are taking, this is really precedential  
2 here what is in front of you today, this cost-cost for  
3 existing power plants without cost benefit, no one has gone  
4 there, you know, so that is brand new, so that creates some  
5 significant question as to whether you can put it under a  
6 316B as a BTA standard. And what we thought was happening,  
7 and I appreciate Mr. Lauffer's commentary there, but before  
8 today, and before last week, we thought you were doing all  
9 of this under 316B, that is what we understood you to be  
10 doing. We think your Responses to Comments creates some  
11 real fuzziness on that and, actually, more than fuzziness,  
12 they say right there on page 5, "We are claiming 13170," and  
13 this runs you into the problem that this policy is about  
14 existing power plants that are not being expanded. So it is  
15 a question of authority. And where we would ask you to go  
16 with all that is to avoid all this uncertainty and  
17 procedural concern, and go where you are safe, which is a  
18 policy fashioned after the old Phase 2 rule, EPA rule, that  
19 has not only cost-cost, but compliments it with cost  
20 benefit. Then, I do not think you would have this problem  
21 because you would squarely be under 316B. And you would  
22 squarely be under Chapter 5.5 of your Water Code. And the  
23 13140 assertion creates a second issue for you, and that is  
24 Roman II in the letter, and the second issue is that you  
25 cannot rely on a Certified Regulatory Program if the

1 Certified Regulatory Program springs from a statute that  
2 does not give you the authority for this policy, and the  
3 Certified Regulatory Program that you are claiming here,  
4 that staff is claiming, you know, surrounds this and covers  
5 this policy, is the Certified Regulatory Program that  
6 springs from Section 13140 that I just explained does not  
7 allow policy for existing power plants that are not being  
8 expanded. So where that takes us is, if you want to be  
9 safe, then do not rely on your Certified Regulatory Program,  
10 and do what we have been asking you to do for some months,  
11 which is to do a full blown Environmental Impact Report.  
12 This is in essence a major construction program up and down  
13 the State of California, it would seem to me that this would  
14 be a perfectly appropriate situation to do a full blown EIR.  
15 And then, because we think this - the third ramification is  
16 that you need to go to a full blown EIR and you are not  
17 following a number of the requirements that would be  
18 required here if you were doing the EIR, so it is not a  
19 distinction without a difference, is the point, right? If  
20 you do an SED, that is - I would not call it CEQA-light, and  
21 I would like to think that it is significant, but it is not  
22 the body of law and practice and expectation for a full  
23 blown EIR. And the gravity of this action, an EIR, would  
24 give you a safe harbor. And then, the fourth point deals  
25 with the implementation schedule. It is becoming clear to

1 us that this is, in fact, a compliance date, you know, this  
2 is a hard and fast date, and we heard it again from Mr.  
3 Lauffer this morning that this Board is being proscriptive,  
4 they are saying you have got to do this, right? You have  
5 got to stick with this schedule. The problem with that,  
6 once again, is procedural. You are pointing to another  
7 section of Porter Cologne for this authority, as I  
8 understand it, and once again, it is not the Clean Water  
9 Act, so this is all new stuff to us, and it is section 13242  
10 of the Water Code. In Section 342 - did I say 242? Section  
11 342, yes, I am sorry - Section 242, I have got a lot of  
12 numbers in my head - Section 242 allows you to make  
13 recommendations as to actions. It does not allow you to  
14 specify a time schedule or a compliance date, you know,  
15 those things are really different than what you typically do  
16 in an informal process like this, so that schedule looks  
17 like an adjudication of an issue of fact, and it worries us  
18 that you would be setting a true compliance date, as opposed  
19 to making a recommendation on schedule through this process,  
20 and that is an issue that is really important to Edison  
21 because we are a nuclear plant, and we know that we have got  
22 these studies in front of us, right? So with the studies in  
23 front of us, you know, how can you today set a schedule  
24 when, by your own crafting of the policy, there is an  
25 acknowledgement that you need to get more information before

1 you can set that schedule? I think the cure for that would  
2 be if you set the implementation schedule as provisional,  
3 something of that nature, for the two nuclear plants.

4 MS. DODUC: Or the other cure is to remove the  
5 special studies section, just a thought.

6 MR. SINGARELLA: Thank you, Ms. Doduc. The other  
7 point is this cost benefit assertion that we, once again,  
8 saw for the first time last Wednesday. This was an eye-  
9 opener to us, to see the staff present their economic  
10 theory, and it was not just economic theory, they said, "We  
11 have got a general policy, and a general policy is against  
12 cost benefit analysis." When we read that, we feel like we  
13 have really been banging our heads against the wall for  
14 quite a while here because we did not understand that the  
15 staff, at least, had a preordained policy that they were  
16 operating under, and that greatly concerns us. I do not  
17 think that is where you want to announce a general policy is  
18 in response to comments after a five-year process, the week  
19 before decision-making, and it concerns us that that is, you  
20 know, to use that word "underground," I do not mean to use  
21 that pejoratively, but it is a policy that has not seen the  
22 light of day. You know, if the Board truly wanted to  
23 develop its set of economic regulations, it ought to do so.  
24 It ought to have a hearing on that, itself. And then we  
25 would know what we were getting into when we enter into a

1 Clean Water Act process in which we thought that we had a  
2 fair chance of convincing you of cost benefit. And that is  
3 the gist of it. That is my letter. Now, I would ask you to  
4 accept it and consider these points and deliberate on them,  
5 and make your own decisions.

6 CHAIR HOPPIN: We will consider it. It will not  
7 go into the written record.

8 MR. SINGARELLA: Thank you, Chair Hoppin.

9 DR. HERTEL: That is all we have.

10 CHAIR HOPPIN: Thank you. I have about, on a good  
11 schedule, an hour, an hour and 15 minutes worth of  
12 additional comments. We are going to break until ten after  
13 one, and we will resume at that time. I am sorry, Mr.  
14 Lauffer, we are not going to be able to offer you our  
15 suggested amendments and let you work on them while we are  
16 trying to gag down a salad in the cafeteria, so we will take  
17 a break at some point when we finish the comment cards, and  
18 allow you to huddle up with revisions, if there are any, of  
19 course. Thank you all. We will see you back here at about  
20 ten after one.

21 (Off the record at 12:30 p.m.)

22 (Back on the record at 1:15 p.m.)

23 CHAIR HOPPIN: If you will, we will resume our  
24 meeting. I believe one of my colleagues has a comment she  
25 would like to make before we begin.

1 MS. SPIVEY-WEBER: Yes, in response to at least  
2 one of the elements of the discussion that we had with SCE,  
3 the idea that we have a cost benefit policy, we simply do  
4 not. And there is plenty of evidence to show that we do  
5 not. We have used cost benefit from time to time. We put  
6 in wholly disproportionate cost in one of the earlier  
7 iterations of this policy, and discussed it, and chose to  
8 take it out in favor of a cost-cost approach. So we do not  
9 have a cost benefit policy. And to make it really clear for  
10 the future, when we do our resolution, I will be  
11 recommending that we put something in the policy that  
12 acknowledges that straight away because it is kind of a red  
13 herring. In fact, it is a red herring.

14 CHAIR HOPPIN: With that, Mr. Donlan, do you want  
15 to face the firing squad here? Either that, or you could  
16 pass.

17 MR. DONLAN: Good timing. Is this on? Robert  
18 Donlan, Ellison, Schneider & Harris on behalf of RRI Energy.  
19 My comments will be brief, but I would like to, consistent  
20 with the format of this meeting, to reserve time to comment  
21 on language edits when they are brought back to the Board  
22 later. I assume that that will be provided.

23 MS. DODUC: Could we have that discussion before  
24 the Chair makes a ruling on this issue at some point?  
25 Because I would suggest, with all respect to the Chair, that



1 at some point you close the public comment period for this  
2 hearing so that the Board can go into our open deliberative  
3 process. My concern is that we will recycle through the  
4 list of commenters again this afternoon, quite possibly this  
5 evening. Once the Board has heard all public comment, given  
6 staff our directions, and then staff brings back changes for  
7 us to then deliberate, my recommendation would be that the  
8 Chair close the public comment portion of the hearing prior  
9 to the Board giving staff our directions for any recommended  
10 changes.

11 CHAIR HOPPIN: Mr. Donlan, I will concur with Ms.  
12 Doduc's comments, so it is probably better if you make your  
13 comments now because, she is right, once we start our  
14 deliberative process, we could start all of this all over  
15 again and I do not know that we would come to any new  
16 conclusion.

17 MR. DONLAN: And I understand that. We started  
18 this morning finishing up a hearing that started last week  
19 on a water quality policy, and I would propose that, if  
20 there are material changes made to the language that was  
21 circulated on March 22<sup>nd</sup>, that there be an opportunity to  
22 review and comment. I will leave it at that.

23 I want to thank your staff and you, Board members,  
24 for the hard work that went into this policy effort. In  
25 particular, we appreciate the clarifications that were made

1 to Track 2 in the March 22<sup>nd</sup> Draft Policy in the SED, and the  
2 Response to Comments. We feel that those changes fairly  
3 address the fact that the policy does not include the wholly  
4 disproportionate or cost benefit standard, a low capacity  
5 factor exclusion, or a case-by-case site specific analysis  
6 for most facilities, and in that regard the clarifying  
7 language in the Response to Comments document was very  
8 helpful. We also appreciate that the clarification, the  
9 design flow in Track 2 is the metric for measuring  
10 compliance with Track 2, which makes Track 2 more consistent  
11 with Track 1. Using actual flow or average flow at many low  
12 capacity units like RRI's facilities would actually require  
13 greater flow reductions than are required in your Track 1,  
14 making Track 2 infeasible. And finally, contrary to some of  
15 the comments that were made earlier, we want to note that  
16 the Track 2 standard of a 90 percent reduction to the BTA  
17 Standard, as proposed in the policy, is a standard that was  
18 upheld in Riverkeeper 1, and we feel that it is defensible  
19 under law. These are important changes to the policy, they  
20 make Track 2 feasible for a lot of low capacity units, Track  
21 1 was not feasible in the prior draft in that regard. These  
22 are important changes and we urge you to not make any  
23 material modifications to the design flow capacity standard  
24 or the 90 percent reduction in Track 2.

25 CHAIR HOPPIN: Ms. Spivey-Weber has a question.

1 MS. SPIVEY-WEBER: When you say that the current  
2 draft makes Track 2 feasible, is what you are really saying  
3 is we can do this without going to water cooling with closed  
4 cycle water cooling or dry cooling? Is that what you are  
5 actually saying?

6 MR. DONLAN: With respect to one unit, that is  
7 true. It was not economically feasible to comply with the  
8 BTA Standard, and Track 2 was not feasible prior. With  
9 respect to the other facility, the Mandalay facility, your  
10 own SED found that to be technically unfeasible.

11 CHAIR HOPPIN: Thank you, Mr. Donlan. Eric  
12 Pendergraft.

13 MR. PENDERGRAFT: Good afternoon, Mr. Chairman,  
14 Members of the Board, my name is Eric Pendergraft. I am the  
15 President of AES Southland which owns AES Alamitos, Redondo  
16 Beach, and Huntington Beach, all located in L.A. Basin. In  
17 total, it is about 4,200 megawatts, 14 units, and happy to  
18 be the proud owner of the largest fleet of once-through  
19 cooling units in California. I would like to acknowledge  
20 the Board, the staff, and all the state agencies for the  
21 hard work that went into getting us to this point, there are  
22 many elements of the proposed policy that we support. We  
23 have one significant remaining concern with respect to the  
24 implementation schedule. The proposed policy clearly states  
25 in Section 1J that, due to the number of plants affected,

1 efforts to replace or repower the OTC plants need to be  
2 phased. However, when you break down the proposed  
3 implementation schedule and you look at it by IOU, which I  
4 think is the right way to look at it, it is apparent that  
5 the schedule does not actually allow for the phasing of the  
6 replacement or repowering of the facilities in Southern  
7 California Edison's territory. Our entire 4,200 megawatts  
8 and 14 units and RRI's, four units, and 2,050 megawatts, are  
9 all in Edison's territory and they all have the same target  
10 compliance date. In total, this represents about 90  
11 percent, or more than 90 percent of the once-through cooled  
12 gas-fired capacity in SEC's territory, and 25 percent of  
13 their peak demand. Further, the policy then goes on to  
14 state that this target date was determined based on the  
15 expectation that replacement resources would be identified  
16 and procured through the same 2012 long term procurement  
17 plan. Now, to put this in perspective, this combines 18  
18 units and 6,200 megawatts of capacity into the same Southern  
19 California Edison procurement cycle, if you believe the  
20 assumptions in the Draft Policy. And this is not practical  
21 for several reasons, most significantly, you know, we intend  
22 to comply with the policy by doing exactly what I think most  
23 interested stakeholders want, and that is we intend to  
24 replace our existing portfolio with units that do not use  
25 once-through cooling. However, this is not possible unless

1 the compliance dates for our facilities are staggered over  
2 more than one procurement cycle. We cannot simultaneously  
3 replace or repower all 4,200 megawatts in 14 units,  
4 especially since the plants are concentrated over only three  
5 sites. The schedule is also inconsistent with staff's  
6 assertion that the schedule should be phased due to the  
7 number of plants affected. And then, finally, it really  
8 concentrates a huge amount of risk on Southern California  
9 Edison because it combines such a huge portion of their  
10 supply base into the same procurement cycle. Now, we had  
11 originally planned on requesting a modification to the  
12 implementation schedule at today's hearing, and requesting  
13 that it be extended for our facilities, or spread out from  
14 2020 to 2024, not moved entirely to 2024, but phased so that  
15 it is spread out over those years. After appropriate  
16 consultation, we understand that the Statewide Advisory  
17 Committee is the entity that is best suited to evaluate  
18 implementation plans and make recommended changes to the  
19 schedule.

20 Now, we also want the record to show that we were  
21 advised and, in turn, understand that the implementation  
22 plan that we are required to submit in Section 3A does not  
23 necessarily need to comply with the dates in the  
24 implementation schedule proposed in Table E1. So, in other  
25 words, AES can submit an implementation plan that we believe

1 is feasible to implement, even if the compliance dates do  
2 not meet the proposed dates in the implementation schedule.  
3 Now, the Advisory Committee, as we understand it, would then  
4 have the ability to evaluate the submitted plan, and if it  
5 agrees, could recommend that changes be made to the  
6 implementation schedule. We certainly would prefer that the  
7 implementation schedule be modified prior to approval of the  
8 policy, however, we are sensitive to the Board's concerns  
9 about making unilateral changes to the implementation  
10 schedule without appropriate consultation with the energy  
11 agencies. So, provided we are able to submit an  
12 implementation plan that includes compliance dates that go  
13 beyond the schedule outlined in E1, and the Advisory  
14 Committee has the ability to recommend acceptance of our  
15 proposed schedule, we have no significant remaining  
16 objections to the policy. So thank you for your  
17 consideration of our comments. I am available to answer any  
18 questions, should you have any.

19 CHAIR HOPPIN: Mr. Pendergraft -- Mr. Bishop, I  
20 believe that a conversation that Mr. Pedergraft, yourself,  
21 and I, and I believe Mr. Pettit had clarified the issue that  
22 he is discussing. So from a mechanical standpoint, would  
23 you respond before we get too far down the line because I  
24 think it is a legitimate request.

25 MR. BISHOP: Sure. He relayed the conversation

1 correctly, that the implementation schedules are for what  
2 the plants plan to do and in the timeframe that they feel  
3 they can do it. The piece that I would add that he did not  
4 add is that the SACCWIS interagency group may recommend more  
5 a sooner schedule -

6 CHAIR HOPPIN: More a sooner schedule?

7 MR. BISHOP: Yeah, I am trying to figure how the  
8 best way to say that - it may request that some of the  
9 plants come into compliance sooner than the policy dictates,  
10 and they may request that we extend it for some of the  
11 plants in the policy. We set out a generalized time  
12 schedule for these plants, and we put the dates that we felt  
13 as a group were doable, but we did recognize that there  
14 would be this requirement from all the plants to put in a  
15 schedule, and then we would look at all the schedules  
16 statewide and work with each of the energy agencies, energy  
17 companies, to fit a specific timeframe for those. I also  
18 suggested that if their plan is to repower all of their  
19 units and move away from once-through cooling, then laying  
20 out a schedule that shows that and committing to that will  
21 make a large impression on the SACCWIS and the Board that  
22 they are committed to this. Laying out a schedule that  
23 says, "We will decide what we are going to do in 2024" is  
24 not likely to get a receptive audience with either the  
25 statewide or with the Board. So in short, yes, we said we

1 would like people to try and meet the compliance dates in  
2 this, but we are willing to look at other dates based on the  
3 information. But the information I have today, I cannot  
4 recommend an extension of the time because I have not seen  
5 any of these plans yet.

6 CHAIR HOPPIN: And you realize it will be a some  
7 process, potentially some will be earlier, some of them  
8 could be delayed, but it is not necessarily mechanically a  
9 delay.

10 MR. PENDERGRAFT: Yeah, correct. We just - we are  
11 comfortable taking the risk that some of them may be  
12 accelerated and we are prepared to demonstrate through our  
13 actions our commitment to the repowering plan. So it will  
14 be laid out very specifically in our implementation plan.

15 CHAIR HOPPIN: Thank you. Walt.

16 MR. PETTIT: Mr. Chairman, just to make sure I am  
17 not further confused, I thought I heard Mr. Bishop early in  
18 his comments say that the schedule that was in the draft was  
19 the schedule that he thinks the utilities intend to follow,  
20 and what I heard Mr. Pendergraft say is that they cannot  
21 follow that schedule, and that would not be their intention,  
22 to submit something that way. It may be a minor point with  
23 the explanations you two have given, but was I correct in  
24 hearing that your thought was that this is the schedule they  
25 intend to follow?



1           MR. BISHOP: No. What I meant to say is that we  
2 put this schedule together and grouped these plants in  
3 anticipation of a schedule we thought was doable. We  
4 understand from discussions with plants that there may be  
5 issues with making those timeframes and that the place to  
6 make that argument is with the statewide SACCWIS  
7 organization so that we can look at the schedule of all the  
8 plants in coordination, and then come back to this body with  
9 revisions to the schedule, as needed.

10           MR. PETTIT: Yeah, I understood all that, the only  
11 thing I thought I heard was the two of you saying something  
12 different about their intentions. Thank you.

13           MS. DODUC: If I may?

14           CHAIR HOPPIN: Ms. Doduc, please.

15           MS. DODUC: Having not been privy to this prior  
16 discussion, this has come as a shock to me. I mean, we had  
17 a discussion earlier today about how important it was to  
18 have compliance dates, how important it was to have the  
19 Regional Boards adhere to these compliance dates with  
20 respect to the intake structure, and now I am hearing that  
21 it does not matter, power plants can submit implementation  
22 plans for whatever date they deem is appropriate. I am  
23 uncomfortable with that. I mean, obviously we all recognize  
24 that these dates are our best projections at this time, and  
25 obviously working with the power agencies like I have been

1 told numerous times that the dates are in the compliance  
2 plan or the ones that the energy agencies have recommended  
3 to us. To now hear at least our staff say, "Never mind  
4 these dates, submit your implementation and these dates will  
5 be reconsidered," that is not an option that I am  
6 comfortable with. I think, in fact, the blanket statement  
7 that the Board should not be questioning the current dates  
8 is obviously something that I am not comfortable with,  
9 certainly the questions that I have asked today goes towards  
10 some of the dates in the plan with respect to the Humboldt  
11 Bay, Potrero, South Bay, and for Eric's benefic, I was going  
12 to raise a yes, as well, because, having met, I appreciate  
13 the concerns you raised with respect to not phasing out the  
14 timing of your facility. I do not appreciate being told, I  
15 guess, if that is what you are intending, Jonathan, and that  
16 is the Board is not given the opportunity to make, or at  
17 least suggest some changes to those dates today, but also  
18 that these dates are all subject to whatever implementation  
19 plans that might be submitted by the particular power plants  
20 out there.

21 CHAIR HOPPIN: In Mr. Bishop's defense, to a  
22 degree of what our discussion was, it was not that you were  
23 not privy to it, you just were not in our briefing. Mr.  
24 Pendergraft then offered what appeared to be an accelerated  
25 and very aggressive conversion period, so you are saying you

1 do not want him -

2 MS. DODUC: Actually, no, no -

3 CHAIR HOPPIN: -- to do it on an accelerated  
4 basis? You want him to follow the schedule?

5 MS. DODUC: No, I supported it and I was going to  
6 make the change that we incorporate his suggested dates.

7 MR. BISHOP: If I gave the impression that we do  
8 not care about the dates, that is not what I meant to  
9 convey. What I have always said is that we will be coming  
10 back to the Board on a regular basis to adjust the schedule  
11 on this, and the people to make that adjustment are a  
12 statewide organization of energy agencies and our staff, to  
13 evaluate these not on a site-by-site basis, but uniformly to  
14 ensure that we replace these and take units down in an  
15 appropriate manner to do statewide. We put up dates in the  
16 policy that we think are doable, that we pushed - this is a  
17 push on getting it. I did not want to, and I still do not  
18 want to tell people that you have to turn in an  
19 implementation schedule that you cannot meet, to meet the  
20 requirement here. I want you to turn in your implementation  
21 schedule as fast as you can, and that tells us what you are  
22 going to do. If it is beyond the schedule that we have, we  
23 will evaluate it. But I would be uncomfortable telling  
24 folks that you must turn in an implementation schedule, even  
25 though you know you cannot complete it to meet our

1 timeframe. As it stands, and without the policy today, as  
2 it sits, these are the dates that we expect people to meet,  
3 and we will expect them to meet that until this Board  
4 changes those dates.

5 MS. DODUC: And the way the current policy states  
6 right now, the Board would have to make findings of  
7 overriding concern before we not accept a recommendation  
8 from either CAISO or SACCWIS. Because the draft right now  
9 states a burden on the Board that, when SACCWIS or CAISO  
10 comes back with their recommendation, that we would have to  
11 make some definite finding in order to not implement them.

12 MR. BISHOP: As long as you were clear that, for  
13 the changing of the schedule on an ongoing basis, coming  
14 back to the Board, if there is a unanimous decision of the  
15 CEC, PUC and CAISO, yes, that is correct.

16 MS. DODUC: Well, I think we will have plenty of  
17 discussion on this later on.

18 MR. PENDERGRAFT: Thanks.

19 CHAIR HOPPIN: Thank you, Mr. Pendergraft. Mr.  
20 Lucas. You sure you want to come up here, Bob?

21 MR. LUCAS: Bob Lucas representing the California  
22 Council for Environmental and Economic Balance. And, yes,  
23 it has been a long time, and as others have said, we very  
24 much appreciate the open process that you have shown here at  
25 the Board, and also with the staff working through these

1 issues. And although we do acknowledge that this policy is  
2 much improved from where it was when we started, which I  
3 think should be obvious to everybody, I think there are  
4 still some areas that require some attention. One of those  
5 areas has to do with the consideration of costs and the  
6 conduct of cost studies. We very much appreciate the fact  
7 that the Board is now willing to consider cost, even if it  
8 is for the nuclear plants, even if it is on a cost vs. cost  
9 basis. We still believe that the more appropriate  
10 comparison is the benefit and I think we have pointed out in  
11 some of our member testimony, Edison testimony, that there  
12 are ways of doing that. We also think that it is important  
13 to not restrict consideration of cost just to the nuclear  
14 plants, that that should be available for all plants on a  
15 site specific, case-by-case basis. If, however, the Board  
16 does maintain its preference for a cost-cost comparison for  
17 the nuclear plants, we would urge the Board to clarify what  
18 cost is the comparative cost that is used in your  
19 deliberations. I think that point is still vague and needs  
20 to be clarified. We believe that it is probably the costs  
21 in the Tetra Tech study that was performed for the Ocean  
22 Protection Council in 2007, but we would like to nail that.  
23 We would urge the Board to affirm that the entity chosen to  
24 perform this analysis must have a nuclear power plant energy  
25 experience as requested by Edison, and then, finally, before

1 requiring a new study, we urge the Board to review all the  
2 existing studies that have already been done so that we not  
3 undertake work that may not necessarily be necessary at the  
4 time. With regard to the second point, mitigation credits,  
5 again, we appreciate the recognition of mitigation performed  
6 under order for the combined cycle generating units. We  
7 believe that recognition should be extended to all plants.  
8 Edison, in particular, has expended a very large sum of  
9 money for that purpose, and we think that it was done for  
10 this purpose, and that it should be recognized. The third  
11 point is that limiting the schedule extensions to two years  
12 seems arbitrary to us. I mean, we appreciate the  
13 willingness to extend schedules, but to arbitrarily pick a  
14 time frame of two years, we think, does not fairly recognize  
15 all the different considerations that might go into  
16 permitting problems, and there might be other criteria that  
17 you might want to establish, other than a two-year standard  
18 for the extension of those schedules. Finally, I would like  
19 to adopt by reference the comments of other CCEFB members  
20 that have testified here today, that would include not only  
21 Edison, I imagine PG&E is going to have some comments later  
22 on. RRI has already commented, we would like to endorse  
23 that. And with respect to the discussion you just had with  
24 AES, I would like to suggest that, as you consider potential  
25 changes to the Draft Policy, you consider changes to the

1 language in that section to clarify that point, so that it  
2 is not floating as an interpretive item that is not  
3 specified clearly in the policy itself. And with that, I  
4 say thank you very much, we appreciate your time.

5 CHAIR HOPPIN: Thank you, Mr. Lucas. Any  
6 questions? Chris Ellison.

7 MR. ELLISON: Good afternoon, Chris Ellison.  
8 Ellison, Schneider & Harris on behalf of Dynegy. I want to,  
9 first of all on behalf of Dynegy, thank the Board and the  
10 staff for all the time and effort that has been put into  
11 this proposed policy. It is certainly considerably improved  
12 from its prior version, and Dynegy appreciates that very  
13 much. I also want to second the comments of my colleague,  
14 Mr. Donlan, particularly with respect to both the design  
15 flow issue and also the request that, if there were material  
16 changes made to the policy, that we be given an opportunity  
17 to comment further on such changes. I want to talk to you,  
18 really, about four things. First, I want to talk to you  
19 about the combined cycle provisions, Section 2.A.2.D. and  
20 why they are appropriate. And, secondly, I want to talk to  
21 you about the design flow issue briefly. Thirdly, I want to  
22 talk to you about the implications, the effect that the  
23 policy, as proposed by staff, will have on Dynegy's power  
24 plants, it is certainly not a free ride for Dynegy, and  
25 then, lastly, I want to speak to you very briefly about what

1 I think are some very important governance considerations  
2 that I would urge you to keep in mind in making this  
3 difficult decision with all the conflicting testimony that  
4 you have before you.

5           So, first, with respect to the combined cycle  
6 provisions, these provisions that are not in there to -- the  
7 Board asked that these provisions be added at your December  
8 hearing, and staff has done so, and they are not in there to  
9 create some special treatment for the combined cycle  
10 facilities, they are in there to recognize the fact that, at  
11 least with respect to Dynegy's facilities, and by the way, I  
12 assume you all know that Dynegy is the owner of the Moss  
13 Landing, Morro Bay, and the South Bay facilities, they are  
14 in there to recognize that, with respect certainly to Moss  
15 Landing, that the company has had very extensive hearings,  
16 as extensive as these hearings have been, I would submit to  
17 you, having sat through them, that the hearings on the Moss  
18 Landing plant and the Morro Bay plant were much more  
19 extensive than the hearings that you are conducting here.  
20 They involve very trial-like proceedings with the same sort  
21 of technical experts that you have, in fact, I would say  
22 literally the same technical experts that you have on your  
23 expert panel. They involved cross examination, witnesses  
24 under oath, and all those sorts of things, and that went on  
25 for well over a year. And they involved the local



1 community, they involved the Regional Water Board, they  
2 involved the Coastal Commission, and they involved all the  
3 affected agencies. And a decision was made as a result of  
4 those proceedings that was a BTA decision, and that is  
5 probably the most important point I want to make to you  
6 today, the suggestion that the decision made by the Regional  
7 Board with respect to Moss Landing and, for that matter,  
8 Morro Bay, was based on anything other than the current  
9 316(B), or that it is inconsistent with Riverkeeper 1 or  
10 Riverkeeper 2, or that it did not make a BTA finding, is not  
11 true. Now, you do not have to take my word for that, since  
12 I know you have heard conflicting testimony on that. Two  
13 California Courts have heard this issue and have decided  
14 that what I am telling you is true, that those decisions by  
15 the Regional Board, and by the California Energy Commission,  
16 made specific BTA findings with respect to Moss Landing and  
17 Morro Bay. Dynegy has relied upon those decisions, has  
18 spent hundreds of millions of dollars on modernizing Moss  
19 Landing, has spent many millions of those hundreds of  
20 millions of dollars specifically on making improvements that  
21 affect both impingement and entrainment. And it is that  
22 issue, the reliance on a previous decision, but a relatively  
23 recent decision, that in fact addresses the same issues that  
24 you are looking at now, that is the basis for the combined  
25 cycle exemption, and I want to return to that when I close.

1 But, again, I want you to understand that the Courts have  
2 looked at this issue, and if you have any doubt about that,  
3 I urge you to ask your counsel, Mr. Lauffer, who I know is  
4 very familiar with the record of those proceedings. Again,  
5 I also want to emphasize that these decisions that were made  
6 and that Dynegy has relied upon, were site specific hearings  
7 with tremendous amounts of evidence. I sat through hundreds  
8 of hours of proceedings on these cases and, believe me, the  
9 documents would stand several feet high that are specific to  
10 the impact, for example, on Elk Horn Slough. We heard  
11 earlier today that the Moss Landing Power Plant is reducing  
12 the productivity of Elk Horn Slough by 40 percent. I can  
13 tell you, having been focused on this issue for 15 years, I  
14 had never heard that figure before, I do not know where it  
15 comes from. I can tell you that, in reliance upon the  
16 decisions that we are talking about, the owners of the Moss  
17 Landing Power Plant moved the intake out of Elk Horn Slough  
18 for not just the new units 1 and 2, but for all the units at  
19 the plant, and also made very substantial investments in  
20 restoration and habitat investment at Elk Horn Slough, and  
21 that the Elk Horn Slough Foundation supported that decision  
22 that was made by the Water Board and by the Energy  
23 Commission to approve that modernization. So there are a  
24 number of those kinds of issues which were looked at in  
25 great depth by your Regional Board, by the Energy

1 Commission, by the Coastal Commission, and ultimately by the  
2 Courts. Secondly, I want to discuss, two very briefly, we  
3 have given revised language on the combined cycle exemptions  
4 to staff, although we support the exemption. There was one  
5 relatively minor amendment that we are asking for, which  
6 would recognize that the prior decisions did address  
7 impingement and not just entrainment, and staff has that.  
8 If you are going to keep the combined cycle provisions, and  
9 I strongly urge that you do that out of fairness, it should  
10 recognize that it did not just address entrainment, it also  
11 addressed impingement, and we have given Mr. Lauffer  
12 specific language on that. We have also given him language  
13 to narrow the combined cycle exemption. We have heard  
14 concerns that it applies to too many facilities in the  
15 State. Dynegy has provided language that would narrow it to  
16 those facilities that were fully reviewed by both the Energy  
17 Commission and the Regional Board. Now, I want to address  
18 briefly the use of design flow. I want to emphasize that I  
19 agree with the comments of Mr. Donlan on this issue. But I  
20 also want to let you know that this issue was looked at  
21 again, very specifically, by the Regional Board, by the  
22 Energy Commission, it was raised in those earlier  
23 proceedings discussed at great length, it has also been  
24 reviewed and litigated by Riverkeeper in New York State, and  
25 this very question of design flow, the very same challenges

1 that you are hearing here were brought up through the Courts  
2 in New York State, all the way to the equivalent of their  
3 Supreme Court, and the use of design flow was approved by  
4 the Courts under 316(B) in New York State. It is also  
5 important for you to understand that the use of design flow  
6 is critical to the feasibility of these policies, as far as  
7 Dynegey is concerned. It would make, without -- if you want  
8 to some of the suggestions that were made this morning, the  
9 policy would be entirely infeasible. Next, I want to  
10 address very briefly this idea that somehow the combined  
11 cycle provisions give Dynegey, or companies like Dynegey, some  
12 sort of a free ride under the policy, and I want to tell you  
13 very specifically what we think the effect of the policy, as  
14 proposed by staff, with the combined cycle exemptions in it,  
15 would have on Dynegey. We expect, based on current  
16 technology, while Dynegey is continuing to look at all its  
17 options, that the policy may force the retirement of Moss  
18 Landing Unit 6 by the year 2017, and it will probably  
19 require major structural modifications to the intake for  
20 Unit 7. At Morro Bay, absent again some change in  
21 technology that we currently do not anticipate, we expect  
22 that Morro Bay will have to cease operations by the end of  
23 the year 2015, and with respect to South Bay, we expect -  
24 and by the way, South Bay is not subject to the combined  
25 cycle exemptions, we are not seeking any sort of exemption

1 under that for South Bay, it was not reviewed by the  
2 Regional Board recently in all those fairness issues that I  
3 am talking about, do not apply to South Bay, and we  
4 acknowledge that. With respect to South Bay, we would  
5 expect that the plant will be closed permanently by December  
6 31<sup>st</sup>, 2012, under this policy. So, having said those things,  
7 let me just make a couple of closing observations about  
8 governance, frankly, and about the difficult decision that  
9 you all have to make with all those different interests that  
10 you have before you, and all the different conflicting,  
11 frankly, testimony you had about both law and fact. I would  
12 very strongly urge you to recognize that, with respect to  
13 some of these issues, both the Courts and other agencies  
14 have looked at great depth at some of these questions, you  
15 do not have to believe me, you do not have to believe other  
16 advocates before you, you can look to the Courts for the  
17 question of whether these provisions are legal, you can look  
18 to the decisions that were made by the Energy Commission by  
19 the Regional Board on laws for many of the issues that you  
20 have in front of you. And I would urge you to do that, and  
21 I would urge you to do that for two reasons, 1) to recognize  
22 that these agencies and these Courts have the same public  
23 interests in mind that you do, but secondly, also that they  
24 were focused on very specific proceedings and very specific  
25 power plants, and frankly took a much deeper dive because

1 they were focused on site specific considerations. And then  
2 last, but not least, and most important point that I want to  
3 make to you is this, if you choose not to respect those  
4 decisions of Courts, those decisions of earlier agencies,  
5 you will send a signal not just to the business community,  
6 but I think to everyone that you regulate, that you cannot  
7 rely on California's decisions under 316(B) and under the  
8 Porter Cologne Act, that they are subject to change when,  
9 frankly, politics changes, when new Board members are  
10 appointed, or something of that nature changes. The facts  
11 have not changed, the law has not changed, those earlier  
12 decisions deserve respect not only because of the effort  
13 that was put into them, but in order to send the signal to  
14 the people that you regulate, that when decisions of that  
15 magnitude are made and tested in the Courts, that they will  
16 be respected. Thank you very much.

17 CHAIR HOPPIN: Mr. Ellison, I have one question of  
18 you. As it relates to Morro Bay, your client does not have  
19 a schedule for closing that plant at this time, you  
20 mentioned that if this policy was adopted, it would be  
21 forced to close by 2017. Am I mistaken that there is  
22 already a schedule in place there? Is that not the case?

23 MR. ELLISON: I believe it is 2015. Were you able  
24 to hear that, that 2015 is the schedule for closure?

25 CHAIR HOPPIN: Thank you. Fran.

1 MS. SPIVEY-WEBER: You said that the facts had not  
2 changed, but the Riverkeeper 2 case came after the decision  
3 for Best Technology Available, did it not, in the courts  
4 here in California? The New York case came afterwards,  
5 correct?

6 MR. ELLISON: The courts in California referred  
7 the Moss Landing decision back to the Regional Board for  
8 further findings and further taking of evidence on the  
9 specific question of BTA, and they have subsequently looked  
10 at the Regional Board's decision following that remand with  
11 respect to all the applicable law as it exists now, and most  
12 importantly, they looked specifically at this question of  
13 whether the Regional Board imposed restoration requirements  
14 as a substitute for a BTA finding. And what they found, and  
15 they found it because it is true, is that the Board imposed  
16 restoration requirements in addition to making a BTA  
17 finding. And I could go on at great length about this. I  
18 wish we had a lot of time. I wish we had cross-examination  
19 and all those sorts of things that we had before, but I know  
20 that you do not have that kind of time. But I can assure  
21 you that the restoration and mitigation requirements imposed  
22 at both Moss Landing and Morro Bay were not substituted for  
23 a BTA finding, and the courts have agreed with that.

24 CHAIR HOPPIN: Tam.

25 MS. DODUC: I think, with all due respect, the

1 policy - this policy is before this Board not because the  
2 politics have changed, or that there are new Board members  
3 present, but the fact is that, under Porter Cologne, as well  
4 as the Clean Water Act, this Board and the Regional Water  
5 Boards have tremendous water responsibilities in the State,  
6 and while we would like to think that we can perform our  
7 duties and protect everything at once, that simply is not  
8 the case. And to my knowledge, this Board has never  
9 contemplated a once-through cooling policy, so it is not a  
10 matter of changing politics, or changing Board members, but  
11 our using our limited resources to work our way through the  
12 various water quality problems that we have, and address  
13 them as expeditiously as we can. So I think I would let it  
14 be known for the record that our considering of this policy  
15 is simply the fact that it is a significant policy, it is a  
16 significant water quality marine protection issue clause  
17 that we are charged under our obligations to tackle, and  
18 just not simply a matter of the faces that you see up here.

19 MR. ELLISON: Well, if I implied that the Board  
20 taking up this policy was just the result of a change in  
21 faces, let me clarify myself, I certainly did not mean to  
22 say that, and I agree with everything you just said,  
23 frankly. What I did mean to say, though, was that, although  
24 this Board has not adopted a statewide policy, that the  
25 Regional Board has adopted findings of fact and conclusions



1 of law with respect to 316(B), the Porter Cologne Act, and  
2 all these same issues, once-through cooling, the  
3 availability of closed cycle cooling, and all these  
4 questions, design flow, all these questions specifically to  
5 Morro Bay and to Moss Landing, and they did so at great  
6 length. And it is my hope that, in adopting a statewide  
7 policy, you will respect the decision that was made  
8 specifically to Moss Landing and to Morro Bay, and that is  
9 what the Board, I believe, had in mind when it asked staff  
10 to include the provisions that I have been speaking to.  
11 Thank you.

12 CHAIR HOPPIN: Thank you, Mr. Ellison. Katherine  
13 Rubin.

14 MS. RUBIN: Good afternoon, Chairman Hoppin and  
15 members of the State Water Resources Control Board and  
16 staff. LADWP appreciates the effort that the State Board  
17 has made in developing the current draft statewide 316(B)  
18 policy and its associated Supplemental Environmental  
19 Document, and is thankful for the opportunity to provide the  
20 following testimony at this public hearing. LADWP commends  
21 the State Board on their efforts and appreciates the  
22 revisions made to the current Draft Policy, particularly as  
23 they pertain to the schedule of modifications for its three  
24 coastal power plants, and in providing a pivotal role for  
25 our Board of Water and Power Commissioners in advising the

1 State Board on its reliability status relative to those  
2 compliance dates. LADWP supports the State Board's goals of  
3 minimizing the impacts from once-through cooling and  
4 wherever possible reducing the use of ocean water for  
5 cooling. Today I will be commenting on two areas, one is  
6 the role of the SACCWIS as it pertains to determining  
7 reliability for LADWP, and the other is going to be the  
8 implementation and reevaluation of the policy.

9           Relative to the role of LADWP, Commissioners,  
10 CAISO, and the SACCWIS, it was LADWP's understanding that  
11 the recent revisions to the Draft Policy were intended to  
12 provide the CAISO and the LADWP Board of Water and Power  
13 Commissioners with the important role of assessing  
14 reliability relative to the policy compliance dates, and  
15 providing recommendations to the State Board with the  
16 appropriate checks and balances on whether those states  
17 needed to be altered. Alternatively, the SACCWIS would  
18 continue in its role to coordinate agencies and annually  
19 evaluate whether a recommendation to modify the compliance  
20 dates was necessary for reasons other than reliability.  
21 This intent, namely the Division of Authority on the subject  
22 of reliability determinations, has not been translated well  
23 in the March revision to the policy; instead, the policy has  
24 created many conflicting and inconsistent statements when it  
25 comes to reliability determinations. For example, on page

1 11, C1, I think - I am sorry, it is page 10 - no, it is page  
2 11, sorry, C1 of the current Draft Policy, it states that  
3 the State Board determines a longer compliance schedule  
4 necessary to maintain reliability for the SACCWIS. And we  
5 believe that that should be LADWP with CAISO making that  
6 recommendation. LADWP believes it is critical to clear up  
7 these inconsistencies so that there is no misunderstanding  
8 on how to implement the policy. LADWP's April 13<sup>th</sup> comment  
9 letter on pages 2 and 3 identifies instances of  
10 inconsistency and provides suggested wording to resolve  
11 these problems.

12           The second comment that I would like to share with  
13 you today pertains to the implementation and reevaluation of  
14 the policy within the given timeframe. LADWP is committed  
15 to following the adaptive management process set forth in  
16 the policy, however, as pointed out in LADWP's previous  
17 comments, there are great uncertainties that lie ahead in  
18 implementing the policy within the stated timeframes, most  
19 notably in the timely completion of the CEQA process,  
20 securing permits, and closing any Track 2 compliance gap.  
21 As currently written, this adaptive management process is  
22 not equipped to deal with these uncertainties. The SACCWIS  
23 is given the responsibility to revisit the policy with  
24 regard to the dates and implementation schedule, but not to  
25 make recommendations to the Board on policy revisions for

1 other issues. The language needs to be less constraining to  
2 allow issues that are not date related to be brought to the  
3 SACCWIS, to the State Board for their consideration. For  
4 example, in a perfect world, LADWP could get through the  
5 CEQA process and obtain its permits, and possibly meet the  
6 dates stipulated in the policy. However, there is great  
7 uncertainty with the CEQA and permitting processes and  
8 delays in any or all of these processes will impact the  
9 ability to be able to meet the file compliance date. CEQA  
10 delays can push back schedules for several years. These  
11 delays, combined with permitting delays, can easily push  
12 back a schedule for more than two years currently provided  
13 for in the Policy. For this reason, the SACCWIS needs to be  
14 able to make recommendations to the State Board to revisit  
15 the policy and be able to extend compliance dates beyond the  
16 current two-year cap, or this cap needs to be removed from  
17 the policy.

18 In addition, the SACCWIS and the State Board need  
19 the ability to revisit the policy to address other issues  
20 such as a compliance gap. As noted in LADWP's past  
21 comments, should a discharger have implemented all possible  
22 suites of alternative technologies and operational controls,  
23 and still not be able to attain the Track 2 compliance  
24 standard, the policy does not stipulate what resource a  
25 discharger or the SACCWIS has in recommending policy changes

1 to the State Board. The State Board needs to be able to  
2 evaluate these situations to determine if compliance has  
3 been achieved. Language needs to be inserted into the  
4 policy, allowing for this contingency in the Adaptive  
5 Management Process. In closing, LADWP appreciates the  
6 ability to have worked with the State Board members and  
7 staff, and looks forward to a successful implementation of  
8 the policy. Thank you.

9 CHAIR HOPPIN: Thank you, Ms. Rubin. I have one  
10 question for you, I believe.

11 MS. SPIVEY-WEBER: The policy - no one knows the  
12 future, let's just start there. But we are basing this  
13 initial schedule based on the best available information  
14 that we had at the time. We are going to have a discussion  
15 later about how that schedule does get changed. I  
16 personally am glad that there is a way to adjust the  
17 schedule based on new information, or some challenge, so I  
18 think we are never going to be able to give to DWP the  
19 assurance that we know exactly what is going to happen. But  
20 on the other hand, DWP cannot actually give us the assurance  
21 that they, you know, cannot meet these dates for sure, that  
22 they are going to get tied up in CEQA problems, you know,  
23 there is a lot of unknown here. And I think if we use the  
24 process for establishing the dates in as aggressive a way as  
25 possible, which is the point here, we are pushing - this is

1 a technology pushing effort, and so we do want to see these  
2 changes made. You know, we will be addressing some of the  
3 issues that you have raised, undoubtedly, in the future -  
4 again, assuming that what you are doing is needed for the  
5 Grid, that is going to be a high priority, and that you are  
6 moving aggressively to make the changes that need to be  
7 made. So I do not think we are going to be able to  
8 accommodate all the recommendations that you have made, but  
9 I do think that the process does give you an opportunity to  
10 have this discussion, not on the policy itself, but on the  
11 compliance dates.

12 MS. RUBIN: All right, and Fran, you are right, it  
13 does, except that there is the two-year cap, and it is on  
14 page 10, paragraph 5, and I think we would like to see that  
15 removed because there is a possibility that we would need to  
16 extend it beyond that two-year timeframe, and we want you to  
17 be able to extend that date, if possible.

18 CHAIR HOPPIN: Thank you, Ms. Rubin. Mark  
19 Krausse. Are you up to speed on this yet?

20 MR. KRAUSSE: I hope so, Mr. Chairman. Mark  
21 Krausse on behalf of Pacific Gas & Electric, and I hope I  
22 can do this within five minutes. I have a brief PowerPoint  
23 Presentation because PG&E cannot go anywhere without a  
24 PowerPoint. Let me start off by thanking Board member Doduc  
25 for reminding the folks that we will by the end of this year

1 bring down the Humboldt Bay generating station and repower  
2 that with no water usage at all. So that is a different  
3 technology, neither dry cooling, nor closed cycle wet  
4 cooling.

5           The next slide is really somewhat perfunctory, but  
6 really not, this is the thank you that we have, and I know  
7 everybody in here has said it, but I want to point out that  
8 everybody on this list, Board members, Board staff, the PUC,  
9 environmental advocates, and the CAISO, obviously put a lot  
10 of time into this, but to give you some sense of the time,  
11 there is a five-hour round trip to Diablo Canyon that some  
12 representative from every one of these entities, and several  
13 from some of them, made. So to give some sense of the  
14 commitment that people are willing to spend that kind of  
15 time, spend a day of their lives to go down and see how this  
16 rule would apply, we really do appreciate that.

17           MR. HOPPIN: Mark, you have to realize that most  
18 of us do not have jets, either.

19           MR. KRAUSSE: Well, I understand. And I do not  
20 think any of those went down, at least - well, at any rate.  
21 Many folks drove. I want to say that we have come a long  
22 way, you know that better than anyone, but I will say that  
23 three years ago, we kept hearing that we know the nuclear  
24 plants are different, but nobody - we did not see it in the  
25 policy until about June of last year when we saw the cost

1 benefit language. There is a space here, as Jeanine knows,  
2 in the next slide where we have taken out our last ask for  
3 cost benefit, I am not going to make that pitch, but I want  
4 to focus today on those issues that we think would make this  
5 cost-cost approach more workable from our perspective.

6 So to begin with, I am skipping past the cost  
7 benefit slide, we would like to see the policy clarify which  
8 costs are to be considered, and I think that was mentioned  
9 earlier, maybe Mr. Lucas made the point, we are sort of  
10 leaping from the costs considered by the Board. We would  
11 like to not only see that say the Substitute Environmental  
12 Document, but since the SED only mentions an annualized cost  
13 at each facility, we would like to have it also incorporate  
14 by reference the Tetra Tech study because that does give the  
15 total annualized cost that we think you should be  
16 considering. We would like to see it strike the cost per  
17 megawatt hour amortized over 20 years, we are still not  
18 quite sure where that came from, and since it is difficult  
19 to compare it against any other number, we just do not know  
20 how that would be employed. We think that could be taken  
21 out so that only total costs would be considered.

22 Finally, to clarify how the non-cost factors are  
23 included in this evaluation, and this is where both Edison,  
24 I think Mr. Fleischli, we all have a little confusion. How  
25 do you take one factor of total cost to comply and mix it



1 along with three other factors, really one I will call  
2 "feasibility, permitability, footprint," those kinds of  
3 issues, the second factor being environmental impact from  
4 the retrofit, what we have always argued in terms of the  
5 negative air impacts, PM impacts and GHG, and finally there  
6 was that catchall clause which Mr. Fleischli said we should  
7 take out, we do not have any objection to that. Taking  
8 those non-cost factors, putting them together with cost, and  
9 somehow doing a cost-cost comparison, we never understood  
10 how that could work.

11           So on the next slide, if you flip, you will see  
12 language that we propose to solve each one of these problem.  
13 First, you consider the cost separately, either the costs  
14 developed in Tetra Tech's February 28<sup>th</sup> Feasibility Report,  
15 referenced in the SEC and considered by the Board, or our  
16 wholly out of proportion, that the actual costs would be  
17 wholly out of proportion to that cost, or considering those  
18 non-cost factors, that compliance is not feasible in light  
19 of paragraph 7B, and that is the permitting or footprint  
20 issues, or that the benefits of compliance are outweighed by  
21 the potential environmental impacts. So, I mean, I do not  
22 think this changes what was really in the policy, the intent  
23 of the policy, we could just never quite understand how you  
24 lump those factors together. That is our suggestion. Mr.  
25 Hertel from Edison had some language about reasonable, that

1 is another approach, I just wanted to try to show you what  
2 we thought might have been meant here.

3 And if we flip to the next slide -

4 MR. BAGGETT: Wait, while you are on that one,  
5 Mark, I had a quick question, the same one I asked the  
6 Edison folks, the slide before where it says Track 1 or  
7 Track 2.

8 MR. KRAUSSE: And I covered that on the last  
9 slide, but this will be a better rehash. I will not go over  
10 the last slide. We have no problem with the reference to  
11 Track 2 coming out, as Mr. Fleischli recommended, provided  
12 you take it out so that it is clear that, if you have done  
13 an analysis and said that Diablo Canyon or SONGS does not  
14 have to comply with Track 1, there is not this negative  
15 pregnant that you then still have to run them through Track  
16 2. So if you make clear in the policy, not only by deleting  
17 it here, but by saying Track 2 does not apply to the nuclear  
18 units, something like that. As Mr. Hertel said, the nuclear  
19 units do not have the ability long term to do any kind of  
20 flow reduction, we do it on an emergency basis, but  
21 otherwise we cannot cut flow on any long term basis. We do  
22 not believe there is any Track 2 compliance option. All the  
23 screening currently available is being used. You know our  
24 impingement numbers are next to nothing. Our entrainment is  
25 the issue. So we do not see a Track 2 approach for the

1 nukes, anyway. For that reason, we have no problem with it  
2 taken out here, provided it does not look elsewhere in the  
3 policy as if we have to comply with --

4 MR. BAGGETT: So it is consistent throughout the  
5 policy and this other clarification of what cost is put in,  
6 okay.

7 MR. KRAUSSE: Right.

8 MR. BAGGETT: Okay. Thanks.

9 MR. KRAUSSE: And if we flip to the next, then  
10 these were some of the languages, the technical changes in  
11 the nuclear study language, which I hope, Board member  
12 Doduc, you really do not mean to take out, we believe it  
13 worked quite well, and that is simply -

14 MS. DODUC: I was just offering another option.

15 MR. KRAUSSE: Very open thinking. But that the  
16 expert entity being contracted with the independent third  
17 party have some expertise in nuclear power plant engineering  
18 operations. And then that, in the studies themselves, as  
19 you know, Edison and PG&E have done substantial studies  
20 already, you may not like those, but please at least look at  
21 them, have the Nuclear Review Committee look at those before  
22 they tell us to go pay for new studies, and we think that  
23 will probably save some time and process, as well.

24 And the last slide is simply pointing out that,  
25 with regard to those changes in the Coastkeeper

1 presentation, we have no problem with the deletion of that  
2 any other relevant information, the addition of public  
3 hearing and the comment process, we are absolutely open to  
4 that. And then the issue we do have here was simply the  
5 deletion of the other factors here gives those factors no  
6 meaning. We provided you language earlier, as you saw, that  
7 would give them meaning, and you may have another approach,  
8 but we think they should not just be stricken from here.  
9 And I just explained the Track 2 answer, so unless you have  
10 any questions, that is it for us.

11 CHAIR HOPPIN: You do not want to throw a rock at  
12 him, Tam?

13 MS. DODUC: I like him.

14 CHAIR HOPPIN: You like me, but you throw rocks at  
15 me.

16 MS. DODUC: Only ones covered in soft velvet.

17 CHAIR HOPPIN: I must have a low threshold of  
18 pain. Thank you, Mr. Krausse. Noah Long.

19 MR. LONG: Thank you, Chair Hoppin and Members of  
20 the Board. I would like to just first - I am sorry, first,  
21 my name is Noah Long, I represent the Natural Resources  
22 Defense Council here today, and thank you, Mr. Hoppin and  
23 members of the Board, as well as staff. I would also really  
24 like to thank the members of the other state energy agencies  
25 here that have been working so hard and committed even

1 further today to continuing to work to implement this policy  
2 fully. That said, I would like to just express our regret  
3 and dismay with some of the changes made to the most recent  
4 draft of the policy. We understood, based on the hearing in  
5 December that the Board was likely to make some changes in  
6 order to clarify and make possible amendments to the  
7 schedule, in order to guarantee and ensure grid reliability  
8 as is the responsibility of the ISO and in the case of Los  
9 Angeles, LADWP. We expected some of those amendments and  
10 saw that some narrow amendments would be possible to meet  
11 that requirement, however, it is our view that the  
12 amendments that have been made to this policy, go beyond in  
13 scope, as well as in depth in that area, further than was  
14 necessary to meet those changes.

15           The original schedule was based on the State  
16 agency recommendations, the CEC and ISO made clear that they  
17 wanted a little bit of additional flexibility, and the Board  
18 should allow for changes based on consensus views of the  
19 State agencies and ISO, and when L.A. is implicated, L.A.,  
20 as well. But the current policy effectively defers the  
21 implementation of this policy to those agencies,  
22 particularly to ISO and L.A., and I think the testimony  
23 today from some of the power companies indicates just how  
24 that will make sticky some of the incentives with regard to  
25 the various power companies' intentions to meet the

1 schedule, which was already an extended schedule for that  
2 very purpose of allowing time for the various procedural and  
3 substantive requirements to meet it.

4 I would just like to add a little bit further on  
5 some of the other changes, and I was quite impressed with  
6 both the recommendations of my other environmental  
7 colleagues, but also with the EPA today, and I will not go  
8 back to those in depth, but I would just like to express my  
9 agreement, particularly emphasizing the concise  
10 recommendations made today by EPA. They recommended, and I  
11 will just quickly restate, that Track 2 needs to be improved  
12 so that it makes actual substantive requirements, it needs  
13 to be based on generational or at least monthly average  
14 flows, needs to be based on unit specific requirements,  
15 rather than facility-wide, Track 2 should be based on actual  
16 100 percent reductions, not just 90 percent of those  
17 reductions. And if you do not mind, I will just finish up  
18 for a couple seconds here. And then, furthermore -

19 CHAIR HOPPIN: There is a trap door right  
20 underneath. You will see how it goes here in a second.

21 MR. LONG: Right, I will take my chances. Remove  
22 requirements of overriding considerations, and this is the  
23 same issue that I related earlier, which is to say that the  
24 Board has a responsibility, an independent Federal  
25 responsibility to implement the Clean Water Act, and it

1 should take this just as seriously as the requirements of  
2 the other State agencies. And I think the previous plan, as  
3 demonstrated by the support of the State energy agencies,  
4 indicated that you had a path available to you, and I think  
5 this current draft of the policy undermines that path.

6           And I would just lastly say that I think there has  
7 been a lot of discussion, both today and previously, about  
8 the nuclear plants, and I think the Board has taken  
9 seriously the considerations with the nuclear plants, and to  
10 the extent that they are different, there are different  
11 requirements on implementation. And I think the fact that  
12 the Board allowed such a long implementation schedule for  
13 the nuclear plants, and also allowed for these separate  
14 independent studies, even in the previous policy, really  
15 showed that. And I am just surprised that, even with the  
16 additional modifications to the schedule, we are still  
17 seeing sort of kicking and screaming about what can be done,  
18 and whether or not it can be done under any kind of  
19 reasonable schedule. I mean, we are talking about 14 years  
20 from now. So I would just like to put a little perspective  
21 on that. And I thank you very much for your time.

22           CHAIR HOPPIN: Thank you, Mr. Long. Any questions  
23 of Mr. Long? Thank you, sir. Jill Wirkowski.

24           MS. WIRKOWSKI: Good afternoon. My name is Jill  
25 Wirkowski, I am a staff attorney with San Diego Coast

1 Keeper. I heard a comment at lunch today that said, "What  
2 is the big deal about South Bay? It sounds like they are  
3 closing in 2010." And I want to take my time today to talk  
4 to you about what the big deal is about South Bay and how  
5 this policy really impacts what is going on at South Bay and  
6 in Region 9. As the Vice Chair pointed out, on May 12<sup>th</sup>, the  
7 Regional Board will be having a hearing on South Bay to  
8 determine whether or not South Bay is endangering human  
9 health or the environment, which under federal regulations,  
10 is one way to terminate an NPDES Permit or not renew. The  
11 process of what has been going on at South Bay for the past  
12 year is a good example of the danger of giving CAISO the  
13 reins here to determine the compliance dates, and then  
14 forcing you as the State Board to come up with compelling  
15 evidence as to why not suspend. In Region 9, it has  
16 actually hindered the Regional Board's ability to carry out  
17 its Clean Water Act duties. And also, I wanted to suggest  
18 some language to actually clarify this whole straight jacket  
19 issue about how this policy affects Regional Boards and how  
20 their powers remain, which powers remain.

21 In the Draft Policy, in Section 1N, you added  
22 language that nothing in the policy precludes the authority  
23 of the Regional Water Boards to regulate discharges through  
24 NPDES Permits, consistent with Water Quality Standards. We  
25 would suggest adding, "or to terminate NPDES Permits or deny



1 renewal permits where authorized under Federal law." This  
2 keeps clear that the Regional Boards still have this power  
3 over the entire NPDES Permitting process, which, as  
4 explained earlier, is more than just intake, it is  
5 discharge, it is Basin Plan, it is Thermal Plan.

6           So let me explain to you a little bit the process  
7 of what has been going on with South Bay in the past year.  
8 South Bay's NPDES Permit was due to expire in December of  
9 2009, Dynegy applied in April of 2009 for a renewal permit,  
10 and then in November of 2009, sent letters to Regional Board  
11 saying, "Hey, we've heard from CAISO that it looks like the  
12 plant is going to be able to terminate in 2010 because of  
13 new power coming online. So we don't need a renewal permit,  
14 we only need one year." That was consistent with  
15 conversations that CAISO had had with Environmental Health  
16 Coalition, I actually called Laura Hunter from EHC, who  
17 could not be here today, but I confirmed after hearing  
18 CAISO's testimony today, and she said that, at that point,  
19 in August of 2009, CAISO said, "Hey, this is simple math.  
20 If you get more power online, if the load forecast goes  
21 down, South Bay is offline and we don't have to worry about  
22 this." So what the Regional Board did in reliance on  
23 Dynegy's testimony is change the permit to, instead of  
24 expire in December of 2009, to expire at the earlier of when  
25 CAISO terminates the RMR, or December 31<sup>st</sup>, and that

1 terminates the permit and the discharge, that is the  
2 language that is actually in the permit. And Dynegy in its  
3 comments to you had actually supported this, or interpreted  
4 this language to say [quote], "Given South Bay's limited  
5 remaining operating life, as explicitly set out in and made  
6 enforceable through its current NPDES Permit, an accelerated  
7 date is unwarranted." That was on page 199 of Appendix G,  
8 if you wanted to look at that. On the urging of the  
9 environmental groups and other coalitions that want this  
10 power plant shut down, the Regional Board took up this  
11 process of determining whether there is endangering of human  
12 health or the environment. In the mean time, additional  
13 power is added to Otay Mesa, and as CAISO referred to  
14 earlier, the load forecast has been reduced. And the RMR  
15 Contract now between Dynegy and CAISO basically has a  
16 provision in it that says, "We can terminate your RMR mid-  
17 year if we need to." Even though we brought that to CAISO's  
18 attention, they have not terminated the RMR, so we are going  
19 through this process, we have raised evidence of significant  
20 impacts that we believe lead to endangerment. The Regional  
21 Board has looked at those impacts and said, "Well, if it is  
22 only going until December, we are not sure if that is really  
23 endangerment, so right now we are not making that  
24 endangerment finding." During that process, CAISO has now  
25 changed its tune and said, "Oh, well, it's not simple math

1 anymore, we want to wait until Sunrise Powerlink comes on,  
2 which we think is 2012." 2012, actually, we think is a  
3 really optimistic timeline for Sunrise Powerlink to come on  
4 because that is a complicated project with litigation around  
5 it. So Dynegy has then come back and said, "Oh, you know  
6 how a year ago we said that we only needed until 2010? In  
7 June, we are going to do a renewal permit so we can get a  
8 whole new permit, and there is nothing you can do about it  
9 because our permit will terminate at the end, but not  
10 expire, you cannot terminate our discharge." And so  
11 basically the Regional Board has been put in this position  
12 where it has been strung along by CAISO and Dynegy. And  
13 what concerns us most is that CAISO seems to keep changing  
14 its tune about what is required. As was stated earlier, the  
15 local community has done everything it can to try to  
16 generate power, to make sure that there is reliability. And  
17 so this year is a foreshadowing, we believe, of really what  
18 is going to happen if CAISO takes the reins, and then the  
19 impetus is on you to come back with compelling evidence that  
20 the suspension should not happen. So, again, we would echo  
21 everything that has been said already with the environmental  
22 panel. We urge you to make those changes, and especially  
23 with South Bay, the concern is with this CAISO having the  
24 power.

25 CHAIR HOPPIN: Thank you, Ms. Wirkowski.

1           MR. BAGGETT: One question. But didn't you just  
2 say that it is because they did not permit the alternative,  
3 the other generation capacity that was going to take - is  
4 not likely to be permitted when you -

5           MS. WIRKOWSKI: No, the Otay Mesa did come on  
6 line, and other actual smaller generators have come online,  
7 and the load forecast was reduced, which should eliminate  
8 the need for South Bay. But now CAISO has changed its  
9 opinion of what is actually needed to remove South Bay and  
10 said, "Well, it is not simple math, now we think we need  
11 Sunrise Powerlink transmission line." So it is basically  
12 kind of pulled a bait and switch on us of what it needs, it  
13 is not simple math anymore, you cannot just add more  
14 generation, now we need this transmission, as well. So we  
15 feel like, if you tell us what we need, we can work to have  
16 that done, but if the target keeps moving, how can the  
17 locals respond? And also, in that same vein, we really urge  
18 to keep the permitting process at the Regional Board level.  
19 I was the only one who was able to come up from San Diego  
20 for this process, even though this is very very important to  
21 the local community. It is hard enough getting people from  
22 Chula Vista to Carne Mesa to speak on these power plant  
23 issues or on these permitting issues, and bringing it up  
24 here, I think, would really harm the public participation  
25 aspect of permitting.

1 CHAIR HOPPIN: Thank you.

2 MS. WIRKOWSKI: Thank you.

3 CHAIR HOPPIN: Mr. Geever.

4 MR. GEEVER: Thank you, Mr. Chair, Commissioners.

5 My name is Joe Geever, I am a California Policy Coordinator  
6 for Surfrider Foundation and we were one of the co-  
7 signatories to the group that gave you the presentation this  
8 morning, so I will not repeat that. I do want to highlight  
9 some of the comments from US EPA that were pretty much  
10 consistent with the comments that we submitted in our  
11 letter, and a couple that I want to highlight is this notion  
12 of design flows, or boilerplate flows, vs. actual flows, as  
13 you are a baseline for entrainment reductions. I think it  
14 is important to remember that these performance standards  
15 were kind of set on the operation of closed-cycle cooling,  
16 and that is what reductions from actual flow, if you use  
17 actual flow as a baseline, would operate like. You know,  
18 cooling towers do this on a continuous basis, no matter how  
19 you are operating the power plant. If you do it on a  
20 boilerplate flow and the power plant does not operate on a  
21 boilerplate flow, then you are not regulating it, you are  
22 not regulating your flow like a cooling tower would, you are  
23 regulating it on some assumed volume that does not actually  
24 happen. So we do not think there is any rational basis for  
25 using boilerplate flow or permit flow as your baseline for

1 reductions.

2           We also agree with EPA that requiring the Board to  
3 override CAISO's determinations, even without any findings,  
4 is really delegating your authority under the Clean Water  
5 Act, to an agency that has no authority under the Clean  
6 Water Act. There is no reason to do that. You should  
7 maintain your authority to enforce the Clean Water Act. And  
8 we also think that it is important to note that they did not  
9 find any reasonable basis for the combined cycle exemption,  
10 and I know Dynegy - apparently we find out just now that  
11 they have narrowed the description just so that it only fits  
12 their two plants, but you know, whatever reliance they may  
13 have put on those court decisions, they surely knew that  
14 that case was going to the Supreme Court, and they jumped  
15 the gun. They are responsible for their own decisions to  
16 invest that money prior to that litigation being completely  
17 resolved.

18           About the compliance schedule - I heard two  
19 different things going on here, actually. AES - it is  
20 interesting to me that AES is willing to put together a  
21 schedule for repowering all their facilities, and even  
22 willing to move up their compliance dates, just so that they  
23 can spread out the time it takes to do all that repowering.  
24 That is much different than DWP saying, "Oh, well we need  
25 these extensions indefinitely." There is a problem with

1 DWP's approach, which is that, when you take somebody out of  
2 the compliance schedule and move them to the back, you have  
3 power plants leapfrogging to the back of the line. You  
4 never get to the end of the compliance schedule, everybody  
5 leapfrogs towards the back. That is much different than  
6 what I heard AES propose. And I think it is interesting, I  
7 mean, it would have been more compelling if AES had walked  
8 in with an application to the CEC for a repower permit, or  
9 some kind of good faith showing that they really intended to  
10 do that, but we will take them at their word that that is  
11 their intention? And I think - I am not going to speak for  
12 the environmental community, but from my own personal  
13 perception, that is a much different way of adjusting and a  
14 much different, less offensive way of adjusting the  
15 compliance schedule to meet everybody's needs. The end date  
16 stays in place, you are just moving one plant around with  
17 another. I have got a lot of notes and a lot of direction  
18 from my Scout Leader, but I have run out of time here, so I  
19 will quit there. Thank you very much.

20 CHAIR HOPPIN: Thank you, Joe.

21 MR. GEEVER: If you have got questions...

22 CHAIR HOPPIN: Linda, are you really the scout  
23 leader? Mr. Steinbeck.

24 MR. STEINBECK: Board members, my name is John  
25 Steinbeck, I am Vice President of Tenera Environmental, I

1 also served on the Expert Review Panel that helped Dominic  
2 out on the SEP - or SED. Originally, I was just going to  
3 comment on some of the monitoring requirements, but hearing  
4 some of the statements made today, I just wanted to make the  
5 statement that, despite some of those statements, I do not  
6 really know of any strong evidence that I have seen in all  
7 of the studies we have done that the limitations, the  
8 reductions of impingement and entrainment through the  
9 reduction or elimination of once-through cooling is going to  
10 really benefit the coastal fish populations in the state.  
11 There will be some benefits from the policy definitely that  
12 will come as a result of the interim mitigation measures. I  
13 think Chris Ellison brought up the example of Moss Landing,  
14 and that has been recognized as a very successful mitigation  
15 project not only by me, but also by the other scientists who  
16 were on the Expert Review Panel. With that said, I did  
17 submit comments on the monitoring requirements in the March  
18 22<sup>nd</sup> Draft Policy, but I just wanted to make sure that the  
19 Board members were aware of some of the inconsistencies that  
20 are in the current language, and I have submitted some  
21 suggested changes, but just to get to the point, the  
22 language at Section 282 presents the sampling required to  
23 demonstrate compliance with the entrainment reductions under  
24 the policy. So the organisms that are actually mentioned in  
25 that section will all be sampled with the minimum 335 mesh



1 nets that are mentioned in the monitoring section in 4B,  
2 where details of the monitoring are presented. Section 4B  
3 also presents a requirement that additional samples be  
4 collected using 200 micron mesh nets to provide a broader  
5 characterization of other invertebrate larvae potentially  
6 subject to entrainment. While I question the need for this  
7 additional sampling, since Section 2A makes clear that the  
8 data would not be used for determining compliance, this is,  
9 if you are going to require something like this for  
10 characterization, this is the proper place in the policy for  
11 it because this is kind of looking at establishing a  
12 baseline and figuring out what else is out there in addition  
13 to fish larvae and these larger invertebrate larvae is  
14 appropriate. The problem is, in Section 4.B.2, where the  
15 200 micron mesh net sampling is mentioned again, is being  
16 required to confirm the levels of entrainment reduction. So  
17 this conflicts with the compliance requirement in Section  
18 2A, which is supposedly based on fish and these larger  
19 invertebrates. It also really does not have any value since  
20 there really is not any existing entrainment controls other  
21 than floor reduction that will result in the reduction of  
22 the entrainment of such small organisms. Since the staff  
23 has actually gone into such detail, and I have actually  
24 worked with Dominic on some of this, on the sampling  
25 requirements, it seems that removing this inconsistency

1 would assist the Regional Boards in implementing the policy.  
2 And, like I said, I provided language in my comments that  
3 might help in that regard. Thank you.

4 CHAIR HOPPIN: Thank you, sir. Any questions of  
5 Mr. Steinbeck. David Nelson. I hope you were not planning  
6 on being home by noon today.

7 MR. NELSON: You know, I am driving, so I am not  
8 going to be home until real late. Hi, my name is David  
9 Nelson and I am co-President of the Coastal Alliance on  
10 Plant Expansion, and we are a citizens group out of Morro  
11 Bay, formed in 1999, I was a Board member then and I am a  
12 founding Board member. And I am here to just address a few  
13 things. I am glad that I am up right next to Mr. Steinbeck,  
14 I met him back in '99 when we worked on a Moss Landing case.  
15 And what he just said really shows how we discount the  
16 environment. "Let's not use 200 micron nets because we do  
17 not care about abalone, we do not care about all these other  
18 things, that we are not going to count anyway." That is one  
19 of the big problems here with once-through cooling. When we  
20 figure out mitigation, we figure out 333 microns, which  
21 eliminates huge portions of our environment that feed the  
22 fish stock, you know? We handle invertebrates like they  
23 are, you know, useless organisms. As a matter of fact, we  
24 do not have any studies going on that even tell me what I  
25 have in my estuary that is being sucked through the plant.

1 So that is one point. I would also make the point that we  
2 at CAPE agree with the points that EPA made, and we would  
3 support those wholeheartedly, the points they made today.  
4 We were co-signers on the Coast Keeper letters, we certainly  
5 support that.

6 Another point is with the best professional  
7 judgment. Now, you know, this is a really sticky one, and  
8 Mr. Ellison pointed that out. When he talks about Moss  
9 Landing and Morro Bay, that is what was used there, Best  
10 Professional Judgment. What he is not telling you, though,  
11 and you who remember, in 2000 we had a so-called energy  
12 crisis going on here, and my group was formed at that time  
13 and people thought we were just nuts because why would you  
14 want to stop a power plant? Well, there are a lot of good  
15 reasons, and the reasons are here now. You know, he says  
16 that Moss Landing shows Best Technology, but you know, on  
17 page 62 here, there is a scenario report that shows wet  
18 closed circuit cooling is feasible at Moss Landing, it is  
19 now, and it was then. Our group was a fledgling group and  
20 we were at the Moss Landing hearings, and we submitted, you  
21 know, studies - not only studies, but power plants that were  
22 using dry cooling in the desert, and there was no reason  
23 that the Moss Landing combined cycle plant did not use  
24 combined cycle other than we had an energy crisis and Duke  
25 Energy at the time said, "Well, we're not going to build it

1 with it." So, "Okay, well, we'll make adjustments." That  
2 is your best professional judgment.

3           As far as Regional Boards go, I feel for South Bay  
4 and I sure hope you give me another couple of seconds here,  
5 but we support the idea that the State Board take over here  
6 and let the Regional Boards do the work, but you guys make  
7 the decisions, because Moss Landing and Morro Bay are two  
8 great examples of how your Regional Board was bullied into  
9 doing this stuff, and it was not the right decisions, it is  
10 not the right decision, and Mr. Ellison just stood here and  
11 asked you to approve what happened at Morro Bay because it  
12 has been tried in the courts. Well, what they are asking  
13 you to do at Morro Bay is let them use once-through cooling  
14 in a brand new power plant in Morro Bay. Now, if that is  
15 not out of sight, I do not know what is. Another big point  
16 with Morro Bay is you just heard Dynegy say that, "Nah,  
17 we're gonna close it in 2015," well, the fact is that that  
18 power plant runs very little, 3 percent now. Your figures  
19 in here unfortunately - CAISO calls it a 1,000 megawatt  
20 power plant, two of those things are in mothballs and will  
21 never run again, it is running at 600 megawatts now. They  
22 cannot run - your studies show that 600 megawatts is the  
23 dependable output at that power plant, but in fact if you  
24 add the air into it, the air standards, that power plant  
25 cannot run at 600 megawatts. So none of these figures are

1 taken into consideration here, and that is where this  
2 document is going to go wrong here, so if you do not use the  
3 right numbers in your formulas, you are going to come up  
4 with a wrong answer. It is really basic math. So, you  
5 know, for those points alone, you know, CAPE is kind of  
6 against this document the way it is written, and CAPE has  
7 been represented at most of the workshops back to Laguna. I  
8 have been at almost all of them, myself. So, you know, we  
9 just ask that you, you know, push this because what you are  
10 doing by cutting out this once-through cooling and this  
11 profit that goes to the power plants, is you are pushing  
12 this toward alternative energies. And the last point we  
13 have to make is that I am asking directly that, on your  
14 compliance data, and you just heard Dynegy say they are  
15 going to close the plant in 2015, they have an outfall lease  
16 that expires in 2012 with the City of Morro Bay. I ask you  
17 put this plant out of business in 2012, because it is just  
18 not worth killing. Even if they only run 3 percent, they  
19 are running at the height of our season of productivity of  
20 our estuaries, and that goes to the design flow, again. You  
21 have got to judge these plants on actual flow and not  
22 boilerplate flow. And thank you for the extra time, we  
23 really appreciate it. If you have any questions, I would be  
24 glad to answer them.

25 CHAIR HOPPIN: Thank you, sir. Dr. Luce.

1 DR. LUCE: Good afternoon. I am Dr. Shelley Luce.  
2 I am the Director of the Santa Monica Bay Restoration  
3 Commission, and that is a State Commission and a National  
4 Estuary Program of the US EPA. The Bay Restoration  
5 Commission's 35-member Governing Board includes the Mayor of  
6 the City of Los Angeles, State Senators Pavley and Oropeza,  
7 State Assembly Members Lieu and Brownley, and the Directors  
8 and Representatives from many marine-related state and  
9 federal agencies, including the Department of Fish & Game,  
10 NOAA, and the EPA, among others. This knowledgeable and  
11 diverse Board adopted a Bay Restoration Plan in 2008, and  
12 one of the first goals of that plan is to eliminate the  
13 biological impacts of water intakes and discharges from  
14 coastal power plants. Another goal is to establish a marine  
15 protected area network, and other regulations to protect  
16 fishery resources. And as Board member Spivey-Weber  
17 mentioned earlier, there is a nexus between these two goals.  
18 That is because the key, or one of the keys, to a successful  
19 marine protected network is that these areas are highly  
20 protective areas that seed the rest of our coastline with  
21 larval fish and shellfish, they grow up to be the abalones  
22 and lobsters and sheepshead and kelp bass.

23 The scientific data that were compiled for the  
24 marine protected area process in Southern California are  
25 stunning. They quantify larval transport and other

1 oceanographic processes, and using those data, the MLPA  
2 initiative established that coastal power plant intakes are  
3 having an enormous impact on our fisheries' resources by  
4 killing off large portions of our larval fish and shellfish  
5 populations. So protecting MLPA's from intakes, as you  
6 mentioned, is important, but even plants that are far from  
7 the marine protected area are sucking in the products of  
8 those marine protected areas, the billions of larvae that  
9 have been transported out of the protected area by ocean  
10 currents and that are seeding the rest of the coastline. So  
11 those intakes, wherever they are on the coastline, are  
12 really defeating the purpose of the marine protected area  
13 that has been such an important process in California in the  
14 last few years. This is illustrated by the statistic  
15 presented in the CEC study from 2005, that the three coastal  
16 power plants in the southern half of Santa Monica Bay alone  
17 suck in and sterilize 112 percent of the volume of the  
18 entire Bay every single year. And that includes the  
19 millions of larvae of those fish and shellfish that I  
20 mentioned earlier, that are coming from the most productive  
21 reef areas of the Bay and elsewhere.

22           Based on the goals of the Santa Monica Bay  
23 Restoration Commission, and our mission to restore and  
24 protect the benefits and values of Santa Monica Bay for the  
25 people who depend on them, we do not support the Draft

1 Policy that is before you today because it allows power  
2 plants to opt out of Best Technology Available without  
3 setting any criteria for doing so, and uses design, rather  
4 than operational flows to determine compliance, which in  
5 most cases will result in no substantial improvement in  
6 entrainment or impingement, and I will not elaborate on  
7 those technically because you have heard all about them.

8 I agree with Mr. Kemmerer's statements earlier  
9 from the EPA, that opting out of BTA into Track 2 will not  
10 result in comparable protection of marine resources, and the  
11 SMBRC supports the recommendations Mr. Kemmerer made, that  
12 he made for this policy in his testimony earlier today. And  
13 we hope that you will incorporate them into your final  
14 policy.

15 CHAIR HOPPIN: One question for you, Dr. Luce.

16 MS. SPIVEY-WEBER: In the numbers that you were  
17 citing as the amount of larvae and other species that are  
18 affected by once-through cooling, is that based on actual  
19 flow analyses? Or are you using design flow, you know, and  
20 essentially extrapolating a design flow to get to those  
21 numbers?

22 DR. LUCE: The numbers I am referring to of, when  
23 I say "millions of larvae," I am referring to the same  
24 numbers that were in the slide presentation earlier, which  
25 are from monitoring.



1 MS. SPIVEY-WEBER: So they are actual flows?

2 DR. LUCE: Uh huh. And then when I say  
3 "scientific data compiled for the MLPA," in that case, I am  
4 talking about ocean currents and other oceanographic  
5 processes that we extrapolate from when we use models to  
6 predict where larvae are moving throughout the Southern  
7 California bite.

8 MS. SPIVEY-WEBER: Thank you.

9 DR. LUCE: Thank you.

10 CHAIR HOPPIN: Steve Peace.

11 MR. PEACE: Mr. Chairman, members, Steve Peace of  
12 San Diego. I want to speak specifically to the suggestion  
13 that the Board choose to essentially defer its policy  
14 responsibility to CAISO with respect to certain  
15 characteristic legacy power plants, in particular speak to  
16 the issue of those fossil fueled power plants, which are  
17 largely or wholly in the ownership of independent power  
18 generators. ISO is a creature of over two years of Public  
19 Utilities Commission hearings and then 257 hours of  
20 televised legislative hearings that I chaired. CAISO is not  
21 a state agency. It has no policy responsibilities, it has  
22 no policy authority. But your proposed action here would  
23 actually confer upon ISO a policy responsibility. Now, why  
24 is that a bad thing to do? Well, first, it is your job, not  
25 theirs, but more importantly you have to understand what is

1 ISO, why was it created? The independent energy producers,  
2 or then would-be independent energy producers, insisted that  
3 the two big public utilities, our publicly regulated  
4 utilities in the State, Edison and PG&E, disgorged  
5 themselves of their transmission capacity because they were  
6 concerned that, in an environment in which independent  
7 energy companies owned individual power plants, that in  
8 scheduling transmission, the utilities would act in their  
9 own interest and prevent companies like Dynegy or AES from  
10 being treated fairly in scheduling. The purpose of ISO was  
11 to create an Independent System Operator, not a California  
12 Independent Policy-Maker. It was to operate the grid. And  
13 it has two functions - scheduling, ordering up the power,  
14 and purchasing power when the market does not successfully  
15 produce enough power in a moment of crisis. So on a broad  
16 policy grounds, I think your proposed policy is not only  
17 inappropriate, I am not a lawyer, I do not know how it is  
18 legal for anybody other than a Legislature to confer your  
19 policy-making obligation and authority on, in this case, not  
20 another State agency, but, as you heard in ISO's  
21 presentation, an Independent System Operator Corporation.  
22 It would be no different for you to do that than it would be  
23 for you to give a similar separate track or policy  
24 presumption that you had to overcome to Chevron, or to BP,  
25 or to Edison, or to - as you heard and requested just a

1 moment ago - a publicly operated power operation such as LA  
2 Water and Power. Your responsibility is to confer the  
3 permits as they relate to your area, to assure that these  
4 entities, including publicly operated, or privately operated  
5 entities, operate under your purview. And in the plain  
6 reading of your proposed regulation, you instead appear to  
7 be being asked to simply confer that authority over to ISO.  
8 And Commissioner Baggett made a comment with respect to  
9 South Bay, and I had not planned on commenting to South Bay,  
10 but you asked a question about it, and I think it would help  
11 bring some clarity in terms of how ISO has either been used,  
12 or chosen to be used, by the power companies to confuse  
13 every single public entity that comes in contact with the  
14 power companies. Dynegy comes before you and gives you  
15 their version of events with respect to South Bay. Now, in  
16 addition to overseeing the creation of these entities, I  
17 also not only oversaw the contract which was then between  
18 Duke and the Port District and SDG&E, I wrote personally  
19 with my hands on a yellow pad the language that makes  
20 reference in that contract to RMR, which ISO has grossly  
21 participated with Dynegy to misinterpret, in order to confer  
22 years of additional economic benefit to Dynegy. That  
23 contract allowed Duke, then Duke, to operate for seven  
24 years, and my insistence, the language put into the  
25 contract, to make sure that Duke met its responsibilities to

1 identify a substitute power plant in the event the Otay  
2 plant was not constructed. Now, there is an ironic history  
3 to that because this whole process started with a company  
4 called US Gen, then a subsidiary of PG&E, coming to us and  
5 saying, "We would like to build a power plant at Otay Mesa  
6 and take out the power plant at Chula Vista." "Gee, that is  
7 a great idea, let's go do that." We then went to ISO and  
8 said we have a company, US Gen, a subsidiary of PG&E, that  
9 would like to build a power plant in Otay Mesa, and it will  
10 substitute the power for the power needed in Chula Vista.  
11 SDG&E then said, "Wait a minute, we need some distribution  
12 upgrades along that line," actually small transmission, kind  
13 of in between transmission distribution level, "...in order to  
14 make sure we meet these in-power requirements." You heard  
15 these references to load stabilization and voltage support.  
16 Because at that time, RMR meant only one thing, voltage  
17 support. And it was only after the energy crisis that the  
18 ISO chose to start broadening its use of RMR contracts,  
19 which is where the confusion comes from, where ISO changes  
20 its story every week about, "Well, now we want to do this,  
21 now we want to do that," because suddenly they have a new  
22 definition of what RMR - which may be perfectly legitimate  
23 in the broader context of things, but as it relates to the  
24 contract, it is not legitimate because the terms of that  
25 contract that I wrote, literally, the letters RM&R, it was

1 referencing to voltage support, specifically. So what did  
2 we do? We upgraded the distribution/transmission to make  
3 sure Otay would meet that requirement. So a power plant  
4 that is now operating in Otay, that was conceived at its  
5 very beginnings for one reason and one reason only, to get  
6 rid of this power plant, and was supposed to have been done  
7 after seven years, continues to operate to this day. I do  
8 not believe that the permit in front of the Regional Board  
9 is even legally before the legal Board, but why would that  
10 be? Because now you have a Port Commission that gets to  
11 make money despite the fact that Duke, remember, we backed  
12 into the number - seven years, how long would it take to  
13 recover your costs? Because of the energy crisis, Duke made  
14 seven times the projected economic return in the seven  
15 years. Nobody knows what Dynegy paid to get that power  
16 plant, I would guess about, oh, somewhere around zero,  
17 because Duke just wanted out of the State. And so every day  
18 they continue to keep that RMR contract in place, which  
19 incidentally, whether they run it day or night, they get  
20 paid. This is not about the environment, it is not about  
21 the need for power, that power plant is flat out not needed,  
22 has not been needed for quite some time, it was not even  
23 needed before Otay Mesa came on, it is a bunch of bunk, it  
24 is about making money. And your process has been abused,  
25 distorted, and mis - you have been consistently

1 misrepresented, facts have been misrepresented before you  
2 and your Regional Board, by both the ISO and Dynegy, and I  
3 toggle back and forth between feeling like Alice in  
4 Wonderland and Frankenstein visiting his monster. But at  
5 some juncture, somebody needs to come out of the fog of war,  
6 from behind the energy crisis, and stop being afraid to  
7 being accused of causing a black-out. Nobody is more  
8 sympathetic than I that there are those of you who do not  
9 want to be unjustly accused of being associated with such a  
10 thing. But, look, Dynegy, Sempra, Enron, very simple. They  
11 did not fail to build power plants, they manipulated a  
12 market. Supplies were tight -

13 CHAIR HOPPIN: Mr. Peace, you are starting to  
14 repeat yourself long after your time.

15 MR. PEACE: I appreciate that. So I just ask you  
16 to keep your responsibilities in your shop and do not confer  
17 them on a corporation. Thank you.

18 CHAIR HOPPIN: Thank you. Joe Dillon.

19 MR. DILLON: Good afternoon. My name is Joe  
20 Dillon. I am the Water Quality Coordinator for the National  
21 Marine Fishery Service, Southwest Region, U.S. Department of  
22 Commerce. We sent in a brief comment letter dated April 8<sup>th</sup>,  
23 these comments are meant to supplement that letter.  
24 Everything I had written down to say has pretty much been  
25 said already, so I will try to keep it brief. We also

1 support what EPA said earlier, what the Coastal Commission  
2 said earlier, what the environmental groups said earlier. I  
3 would like to remind the Board, most of you were not here  
4 when this process started five years ago, that you have an  
5 administrative record, and if you go way back into the  
6 administrative record, you will find issues such as  
7 regulating unit by unit, rather than by the whole plant, and  
8 using actual generation flows instead of design flows. You  
9 will find a record of why those choices were made and why  
10 they are scientifically valid, and why they are superior  
11 from a regulatory point of view. I would also support the  
12 contention that there should not be an exemption made for  
13 the combined cycle units, and that is for one reason, the  
14 best technology available standard is not static. Section  
15 316(B) of the Clean Water Act is meant to be a technology  
16 driving standard. So what was granted 10 years ago when it  
17 may have been considered Best Technology Available at that  
18 time by that Board, does not put a burden on you to make  
19 that - to keep with that decision now. Furthermore, US EPA  
20 at the national level is working on their 316(B) rule and it  
21 would not be surprising at all to find that it will not be  
22 the Best Technology Available on the national level,  
23 whenever they finally get around to getting that done. So,  
24 you know, those companies depending upon that regional board  
25 decision a decade ago should be planning to have to do

1 something else in the near future, whether the driver is  
2 here where it should be, or from the national level.

3           We prefer the older version, the November-December  
4 version, for a few simple reasons. There was less variation  
5 in it, it was less confusing, it gave more regulatory  
6 certainty to everybody involved in the process. I find it  
7 hard to fathom a regulatory agency giving away so much of  
8 its leverage, that it does not make a lot of sense to me,  
9 somebody who has been doing regulation for 10 years now.  
10 But that is the road that this version takes your agency  
11 down. I would advise it to restore the language under  
12 Section 2, Track 2, the not-feasible language. With respect  
13 to Board member Doduc, I found the definition under the  
14 older version very understandable. And I think that any  
15 other problem that would have come up would have been  
16 handled by your SACCWIS process, so if there was something  
17 that came up that really was not feasible, that was not  
18 already covered by the language of your policy, it would  
19 come up in the SACCWIS. And, believe me, if the power  
20 companies have a legitimate reason why something is not  
21 reasonable, they will make sure that you are aware of it,  
22 and they will present evidence clearly showing why it is not  
23 feasible. I would hope that restoring that language which  
24 had been in a couple previous versions would be a simple  
25 administrative change that you could make at the conclusion



1 of this process today. We also asked for some clarification  
2 on the interim mitigation requirements, the Response to  
3 Comments document, it was not clear. Board member Spivey-  
4 Weber mentioned this toward the beginning of the day. We  
5 would like it clarified that any monies gathered as part of  
6 the interim mitigation process are actually spent on  
7 projects because the way the language is written right now,  
8 it is very broad and if the money is diverted to the Coastal  
9 Conservancy, which is apparently the preference in these  
10 tough budgetary times, there is language in there that says  
11 they cannot interpret implementing the marine protected  
12 areas as meaning, "Hey, we need some new computers. We need  
13 some more vehicles. I cannot lose Sally to budget cuts,  
14 I've got to pay 50 percent of her time out of this funding."  
15 The money needs to definitely say that it is there for  
16 projects. We also supported in our letter the 200 micron  
17 net size. The reason for that is because you need to go to  
18 a smaller net size to capture larvae from oysters and from  
19 abalone. We have the white abalone now listed under the  
20 Endangered Species Act, it is obviously an ocean species  
21 found in Southern California. The black abalone is  
22 somewhere in the listing process, and I regret to say that I  
23 did not look it up before I came here today, and I am not a  
24 PDA guy, so I cannot sit there and look it up, but the black  
25 abalone's range goes the whole way up past San Francisco, so

1 with Humboldt Bay being upgraded, every coastal plant will  
2 have the ability to entrain black abalone larvae. If we  
3 discover a place, a facility that is entraining a  
4 significant number of abalone larvae, we need to know that,  
5 and then we can schedule studies to try and figure out what  
6 kind of abalone is it, maybe it is just red, who knows? I  
7 could go on for a while, but - it is close to Happy Hour, so  
8 if you have any questions?

9 CHAIR HOPPIN: I did not know there was going to  
10 be a happy hour. Mr. Dillon reminds me of the fact that I  
11 have not been very diligent in our clock keeping, he got up  
12 here and told us everything he had to say had been covered,  
13 then used double his time, and I did not cut him off. But I  
14 did not cut you off.

15 MR. DILLON: I appreciate that.

16 CHAIR HOPPIN: Thank you, Mr. Dillon.

17 MR. DILLON: Thank you.

18 CHAIR HOPPIN: Ian Wren. If you can get away from  
19 your den mother back there, the mother keeper, you can come  
20 on up.

21 MR. WREN: Good afternoon, Chairman and members of  
22 the Board. My name is Ian Wren. I am a Staff Scientist for  
23 the San Francisco Bay Keeper. I would just like to express  
24 our support for the prior comments made by the NGO community  
25 and express our opposition to the current draft of the

1 proposed policy. I would also like to address some of the  
2 public comments made by Mirant Corporation, the owners of  
3 the three OTC facilities currently in operation in the Delta  
4 and San Francisco, as a means of highlighting some of the  
5 Delta issues associated with this policy. In recent  
6 comments, Mirant suggested that because their Delta plant  
7 operated at very low capacity utilization rates, it would be  
8 impracticable and unjustified to comply with the proposed  
9 entrainment performance standards. As a result, they would  
10 like for there to be an exemption for units operating at  
11 less than 15 percent of peak operational capacity. However,  
12 this would not only exempt Mirant operations, but would also  
13 preclude 50 percent of the State's OTC plants from  
14 compliance and policy. Based on recent operation of the  
15 Contra Costa and Pittsburg power plants, the results have  
16 indicated that impingement and entrainment is occurring of  
17 the Delta Smelt at the Pittsburg plant and entrainment is  
18 occurring at Contra Costa. Based on continuing degradation  
19 of the Delta ecosystem, associated declines in the  
20 population of Delta Smelt, Salmon, and other species, a  
21 significant proportion of the State has been asked to make  
22 difficult sacrifices in terms of reduced water allocations,  
23 however, Mirant believes that, despite the fact that their  
24 operations result in direct take of endangered fish, they  
25 should not be asked to make sacrifices in the form of

1 upgrading their facilities, which are over 50-years-old.  
2 Under the current policy which pegs compliance in design  
3 flows, rather than actual flows, there is a strong  
4 possibility that the OTC power plants can operate as usual,  
5 and continue to result in direct take. And we ask that you  
6 reject this Draft Policy in favor of Clean Water Act  
7 compliance standards for all existing OTC plants. It should  
8 be done in consideration of fragile coastal and estuarine  
9 ecosystems, while keeping in mind that OTC policy plays a  
10 significant role in Salmon, Smelt, and water resource  
11 issues. Thanks for your time.

12 CHAIR HOPPIN: Thank you, Mr. Wren. Do you  
13 realize you did not go over your time?

14 MR. WREN: At least one person.

15 CHAIR HOPPIN: You get the teddy bear. Robb  
16 Kapla. That does not mean, because the Teddy Bear is gone,  
17 you need to go on for a half hour, though.

18 MR. KAPLA: If I leave more time on, do I get a  
19 bigger Teddy Bear? Robb Kapla on behalf of Voices of the  
20 Wetlands. I want to first thank the Board and the staff for  
21 this opportunity to provide comments. We signed on and we  
22 actually sent in a letter, Stanford Environmental Law  
23 Clinic, on our behalf, but I also want to join in the  
24 environmental panel's comments that were made earlier.  
25 First, I want to clarify that the issue of BTA compliance at

1 Moss Landing Power Plant is currently before the California  
2 Supreme Court. The Supreme Court accepted the Petition for  
3 Review of the BTA issues at that site, and our comment  
4 letter, filed by Stanford Environmental Law Clinic,  
5 highlights that the mitigation was used in the BTA findings  
6 at that site. But, again, that is an issue before the  
7 California Supreme Court. I also want to clarify that the  
8 40 percent reduction in biologic productivity at Moss  
9 Landing in the Elk Horn Slough comes from the administrative  
10 record in that case, and it is also authored by CEQA in the  
11 final staff assessment report. Finally, I want to comment  
12 on some of the confusion over the Board's authority to  
13 regulate existing power plants, in addition to new and  
14 expanding power plants. This authority clearly lies in  
15 Porter Cologne's general authority over the State's water  
16 resources. The Board is well within this authority and the  
17 Clean Water Act, Section 316(B) in extending these  
18 regulations to existing power plants. That is all I have.

19 CHAIR HOPPIN: Thank you, sir. Any questions?  
20 Mr. Metropulis.

21 MR. METROPULIS: Good afternoon, Chair Hoppin,  
22 Board members. My name is Jim Metropulis. I represent the  
23 Sierra Club statewide on both water and energy issues. We  
24 are here today to express our disappointment with the Draft  
25 Policy that we are here discussing. You have received over

1 close to 10,000 letters in support of a strong OTC policy  
2 which is not before us today. The policy before you is not  
3 strong and, as you heard, does not even follow the  
4 requirements of Federal law. Once-through cooling is  
5 propping up antiquated energy inefficient plants, and now we  
6 are hearing today from the owners and operators that they  
7 are asking for more and more delays, which only extends the  
8 life of these inefficient methods of generation. Sierra  
9 Club is a part of the environmental coalition that presented  
10 presentation here today. Sierra Club also submitted a  
11 separate letter with Pacific Environment, talking about  
12 energy replacement for these once-through cooling plants.  
13 Now, we certainly heard that the Board is not here to set  
14 energy policy, but what the Board does does affect energy  
15 policy and production in the State of California, and we are  
16 operating under the goals of the Administration that wants  
17 to see 33 percent renewables by 2020. So in our letter with  
18 Pacific Environment, we talked about we should replace these  
19 old gas-fired power plants not with new fossil generation  
20 plants and natural gas, but rather look at replacement with  
21 renewables, look at peak reduction and peak demand reduction  
22 programs, and look at energy efficiency. If we are looking  
23 at current trends, the cost of conventional power plants is  
24 increasing while PV, solar, and other renewable power  
25 generation is decreasing in cost. So to replace old gas-

1 fired plants with new ones would not only be very expensive  
2 to the utilities and the ratepayers, but also set the State  
3 back with its 33 percent RPS goal by crowding out renewables  
4 with new natural gas power plants. We feel that the  
5 utilities can plan the timing of retiring and replacing OTC  
6 plants to coincide with implementing energy efficiency,  
7 renewable measures, and through properly planning, this  
8 replacement can be easily implemented and cost-effective.  
9 So we are certainly looking at the fact that the policy now  
10 gives the power generators and owners all the wiggle room  
11 that they could want, and today they are asking for more and  
12 more time and delays. At some point, the Board is going to  
13 have to implement this policy, so let's follow the Clean  
14 Water Act, let's follow the requirements of Porter Cologne,  
15 let's get an implementation schedule here to replace these  
16 inefficient power plants. Thank you.

17 CHAIR HOPPIN: Thank you. Any questions? That is  
18 the last of our speakers cards. I am going to give our  
19 Court Reporter and all of us a break until a quarter after.  
20 I have a feeling we are going to be here for a while when we  
21 come back, and that will give everybody a chance to start  
22 with a fresh cooling tank, and our Court Reporter, without  
23 having lockdown on his fingers. What? You do not like  
24 that?

25 MS. DODUC: I love it. I just want a

1 clarification. Are you therefore closing the public comment  
2 portion of the hearing?

3 CHAIR HOPPIN: Yes, we are closing the public  
4 comment portion. We will see you all here in about ten  
5 minutes.

6 (Off the record at 3:05 p.m.)

7 (Back on the record at 3:16 p.m.)

8 CHAIR HOPPIN: We will resume. Before we get  
9 going with comments, I would like to ask staff, both  
10 Jonathan and Dominic and his crew, if you have any  
11 clarifications, any clean-up items, any comments you would  
12 like to make before we start with our commentary.

13 MR. GREGORIO: Thank you. I just wanted to  
14 respond to one item that we heard about, I believe it was  
15 during the Southern California Edison presentation. It had  
16 to do with a statement that we made in our Response to  
17 Comments that used the term "it is our general policy not  
18 to," you know, "...do cost benefit analysis." And I have to  
19 admit, that was my language from one of the many nights  
20 writing the Response to Comments, and I definitely meant  
21 that to be small "p" policy, not large "P" Policy. And so  
22 we discussed this, and it was not our intent to pretend or  
23 state that there was a formal policy of the Board, and this  
24 was a draft Response to Comments, and we can remove that one  
25 clause of that sentence and it still does not change the



1 meaning of the sentence. So that is the only thing I would  
2 have to add right now.

3 MS. SPIVEY-WEBER: If you remove the whole  
4 sentence, it reads fine without it.

5 MR. BISHOP: And I have one clarification that  
6 staff reminded me, or told me, that I had insinuated that  
7 the Board's ability to make changes to the schedule were  
8 limited to the section under the SACCWIS, and I clarify that  
9 the Board has authority to amend their policy at any time  
10 they see fit, in any way they see fit, and that I did not  
11 mean to insinuate that you only had that option in the  
12 future, so...

13 CHAIR HOPPIN: Mr. Lauffer, a suggestion, or a  
14 question Mr. Baggett just raised that bears consideration,  
15 we are going in a moment to give you any changes or thoughts  
16 we might have, so those are in an order that is helpful to  
17 you. Do you want to go through the sections of the policy  
18 and ask us if we have changes we would like to make? Do you  
19 want individual Board members, starting on one end, and  
20 going through, to talk about any changes they may want to  
21 make? Mechanically, what works the best for you?

22 MR. LAUFFER: Mr. Bishop and I had discussed this  
23 the other day, and I think what will work for us is if we  
24 just go through with the Board members one by one and have a  
25 discussion. It does not necessarily need to be in order.

1 And the staff will take care of synthesizing the different  
2 comments during the break, and then we will present them  
3 back up to the extent the Board may have any changes they  
4 want us to make. We will present those up in an orderly  
5 way, and it will pull together the different comments.  
6 Obviously, if a Board member feels a particular way, one way  
7 or another, on a specific point that is being made by  
8 another Board member, that is an opportunity to engage in  
9 discussion amongst you all.

10 CHAIR HOPPIN: All right. Before I begin, and I  
11 am going to begin with Mr. Pettit, there is a comment that I  
12 need to make, and it has to do with language regarding  
13 CAISO. It is eye-opening to me, a degree of dislike, or  
14 dissatisfaction, or discomfort, however you want to  
15 characterize it, amongst some before us, certainly credible  
16 people that have concerns about CAISO. I will take  
17 responsibility, certainly, without any apology about the  
18 language about overriding consideration based on compelling  
19 evidence, I will just explain to you how we got there. The  
20 last time we all gathered up, we had comments from Mr.  
21 Peters from CAISO, and at that point Mr. Peters essentially  
22 asked us to just defer to their judgment. And, you know, we  
23 do not need to go through the SACCWIS, we do not need to  
24 have an advisory panel, you know, "We will tell you when  
25 these plants are coming offline." Mr. Peters, I may not

1 have paraphrased you, but in essence that is what I heard  
2 you say. And it sent me on my ear. And so I, as a single  
3 Board member, because as you know we cannot do things where  
4 we communicate with each other and go in groups of more than  
5 1.5 and talk to anybody, or have anything other than totally  
6 independent thought, which is scary for somebody like  
7 myself, so I engaged Yakut, and I engaged the folks at CAISO  
8 about this theory, and I wanted to make sure that I had not  
9 misunderstood Mr. Peters, and I in fact had not. I was  
10 reminded of the fact that, although CAISO would not be  
11 considered a state agency, they do, along with LA Water and  
12 Power to a much lesser degree, have the responsibility for  
13 grid reliability. I spent a lot of time with legal counsel,  
14 making sure that the SACCWIS process was as strong as I  
15 hoped it would be, not because I have the innate distain, I  
16 will use the word, that is probably a tough word, but  
17 basically what I heard, for CAISO in its present form, I had  
18 concerns that went much further than that. I had concerns  
19 given the timeframe that we are looking at here, that we  
20 would have different faces on the Board, certainly this  
21 Board could have three different faces come next February,  
22 that is certainly not beyond the realm of possibility, it  
23 might please some folks, I do not know. But just as we have  
24 our personalities, strength and weakness, CAISO does, PUC  
25 does, the Energy Commission does, and I wanted to make sure

1 that, as we went forward, that what might be a strong and  
2 dominant component of all this today might be a weak player  
3 at some time in the future, and that we had the ability to,  
4 you know, judge ourselves, make sure that statements that  
5 were coming out of CAISO were in fact correct, and we were  
6 not going back into this adage that I hear repeated ad  
7 nauseum, that they have never met a megawatt that they did  
8 not love, and they will never give one up. So I am, as  
9 opposed to the comments that were made earlier by one of our  
10 Board members, I do have concern about Grid reliability. I  
11 have concern about other agencies interceding in our  
12 authority under Porter Cologne and the Federal Clean Water  
13 Act; by the same token, I realize that we are working on  
14 issues where we cannot be disregarding the responsibilities  
15 as they come to Grid reliability, I want to make sure we  
16 hold people accountable for their decisions and that we are  
17 not being duped. I think there will be some potential  
18 amendments that are offered in a few moments that, you know,  
19 will help tighten that up. But for all of you that have  
20 concern about that language, you do not need to look at the  
21 Board and say, "Hmm, I wonder which one of them it was,"  
22 because it was me, and it was not because I thought I was  
23 doing, and do not think that I was doing something that was  
24 abdicating our power to anyone; I wanted to make sure that  
25 we had checks and balances. So, with that being said, I am

1 going to start with Mr. Pettit, we will go down the list.  
2 If folks have things they want to change or amend, or if  
3 they want to agree with the existing policy, we will do  
4 that. Staff will compile what they have heard, and huddle  
5 up again in however long it takes us to do this, put them up  
6 on the screen, and it is my understanding we will have a  
7 straw vote on any changes or amendments, so we are not just  
8 trying to decide whether we like three of these and two of  
9 those, I am going to vote for it, or vice versa. We are  
10 going to try and winnow this out as to what goes forward and  
11 what does not. With that, Mr. Pettit.

12 MR. PETTIT: Thank you, Mr. Chairman. Just a  
13 couple of specific items, and then one much more general  
14 one, and I am not going to propose any amendments right now,  
15 and may not. The first specific item has been discussed a  
16 little bit today, but not very much, certainly not as much  
17 as some of the other items. Mr. Steinbeck and several of  
18 the other commenters have repeatedly questioned the - I will  
19 characterize their statements, I will use the word  
20 "usefulness" or "validity" of the additional monitoring with  
21 the 200 mesh screen. And those comments have come from some  
22 pretty technical - credible technical consultants, I  
23 believe. And Mr. Nelson and - who else was it - Mr.  
24 Dillon, both commented on the appropriateness of that, and  
25 the fact that in order to pick up potential white abalone

1 larvae and perhaps other things, that some monitoring with  
2 those screens was useful. All I would ask staff to do  
3 during the break is to comment on where they see this. I am  
4 not particularly asking for any change or anything, I would  
5 just like to hear them respond to those two divergent points  
6 because Mr. Steinbeck and others have raised this concern  
7 repeatedly, and I just would like to go over the response  
8 once more.

9           The second thing has not been discussed at all  
10 today, but, again, it is one that the technical consultants  
11 have brought up several times, and that concerns the habitat  
12 protection foregone method of looking at loss of habitat.  
13 And several parties, in fact, I think a couple of the  
14 environmental interests, too, at one of our past meetings,  
15 have questioned whether that method was appropriate in all  
16 cases, and the technical consultants have also made some  
17 statements along the same lines, and I do not propose to get  
18 into that discussion, nor even to change the fact that that  
19 is the staff recommended alternative for proceeding with  
20 those studies. They have provided an allowance for people  
21 to propose an alternative. The only change I would ask the  
22 Board to make would be that, if somebody proposes an  
23 alternative to the use of that method, that it come back to  
24 the State Board for review, instead of just going to the  
25 Division for review. I think there has been enough

1 discussion about that and at least enough question in my  
2 mind that I would like to see the State Board weigh in on  
3 that issue if an alternative is proposed.

4           And the third and probably much more weighty and  
5 broad concern has been one that has been touched on today.  
6 In the relatively short time that I have been back here, I  
7 have often, or at least occasionally thought that the State  
8 Board has got its hands so deeply into this bucket of tar  
9 here in the last few years, that I am wondering how this  
10 transition of passing on this responsibility to the Regional  
11 Boards and assuming they are going to get any consistency in  
12 results and timely action is going to work. And several  
13 people have raised that same question today. Mr. Jaske  
14 raised the relationship to AB 1318 under which the Air Board  
15 in coordination with the State Board, among others, has to  
16 make some determinations with respect to the South Bay  
17 plants, or the Los Angeles Area plants. We had some real  
18 discussion about what the intent of the compliance schedule  
19 was, whether it is, to use my term, target dates that are  
20 amendable to some further suggestions by the operators, or  
21 whether, as I was given the impression a few months ago,  
22 they were intended to be pretty hard dates. And Mr. Nelson  
23 mentioned something to the effect that I took to be getting  
24 the Regional Boards off the hook on this particular issue.  
25 We talked about the two-year extension and people have

1 questioned whether that is enough time if we get a two-year  
2 extension, will that be sufficient in all cases. And  
3 somebody will have to make a determination on that. So all  
4 of those thoughts, and, again, I am not proposing anything  
5 at the moment, but I would suggest or hope that the other  
6 Board members would think about the implications of this and  
7 see if there is anything we want to do to make the  
8 implementation mechanisms more specific. Unless there are  
9 questions, I will quit there and thank the staff for looking  
10 at those particular - or the one issue. So, thank you.

11 CHAIR HOPPIN: Mr. Baggett.

12 MR. BAGGETT: I guess we could just go through it  
13 by sections, more or less, if you want it that specific. I  
14 think on the Track 1 preference, I support, I guess, the  
15 NGO's comments that it should be a not feasible standard, it  
16 should be on each unit. But I strongly believe after today  
17 that the State Board has got to issue these permits. I know  
18 we have gone round and round with that, but I think that the  
19 buck should stop here. There are not that many of them, and  
20 if need be, the Board could even go to the Region to have  
21 the hearing. We are talking a permit every five years, they  
22 are phasing out over time. They can always be petitioned,  
23 we can always take them up on our motion. It is just more  
24 time, more money for everybody involved. I think the  
25 policies are so significant, we heard from both sides, from



1 some of the NGOs, as well as from the regulated community,  
2 these are complicated issues, they do take some time, but we  
3 do that with other permits, and there are not that many of  
4 them, so I feel that would also, when we get to the ISO  
5 language, which I think is too stringent, I think if the  
6 State Board issued the permits, it would also - with a full-  
7 time Board, you are much more aware of the bigger picture  
8 around the State, and how Grid reliability, or how these  
9 issues affect everything. I was a County Supervisor, I know  
10 the pressure on local governments, local planning  
11 commissions, that is why planning is chaotic in the State,  
12 because of local planning commissions and local boards and  
13 City Councils, because you are so susceptible to changes  
14 based on the locale, which has some advantages, and I  
15 believe in local government, but it also can create some  
16 very inconsistent and chaotic effects. So that is the one  
17 change, along with those changes on the first section.

18           On the combined cycle, you can figure out some way  
19 - I understand the concerns and the litigation, I think,  
20 fairly well from the NGOs' perspective and agree with it, in  
21 general. I still think there has got to be some mechanism  
22 to at least not re-open everything because I also have  
23 empathy for a plant like Moss Landing, which was fairly  
24 recent and a rigorous - I think it was pointed out - a very  
25 rigorous proceeding. It was fairly recent in time, it was

1 not like this was 10 years ago. And it was adapted based on  
2 subsequent court decisions, I think, as Chris pointed out.  
3 I do not know, I will leave that in the hands of our  
4 attorneys, if you can come up with any language that at  
5 least gives some benefit to people of projects that have  
6 actually gone through a process and paid, they should get  
7 some benefit, to say that mitigation automatically gets them  
8 out, I would agree that is a stretch on the combined cycle.  
9 What is next?

10           On the CAISO language and the deference, I guess,  
11 to other agencies, I think the rebuttable assumption  
12 language which is in there is way too strong. I mean, this  
13 Board, and I think especially if this Board issued those  
14 permits, like I said, whatever Boards here, whatever  
15 Governor, whatever party they are, the points to this body  
16 are going to be well versed and have that big picture, I  
17 think, just by the nature of this job we all sit in, and I  
18 think we are quite capable of making those determinations on  
19 a case-by-case basis, in terms of good reliability, and  
20 taking in the CPUC and the CEC and the ISO's testimony, and  
21 evidence, I think the Environs, they changed it to  
22 "demonstrates" continued operation, I like that better than  
23 "determine." I think that is a better standard. I think if  
24 CAISO demonstrates that a plant is essential to maintain  
25 reliability to the electrical system, and they provide us

1 with that demonstration, this Board is going to take some  
2 deference to that, just like we would hope the PUC and other  
3 agencies take some deference to our determinations on the  
4 Clean Water Act in a proceeding before them.

5           The nuclear language, I think, is next, and there  
6 is a lot of that. I agree with the edits the NGOs put  
7 forward with the clarification that PG&E added. I think  
8 that it is beneficial to say what study, and SED, to add the  
9 language which I think Mark had up on his PowerPoint, I  
10 think, clarifies it, as well as the language which, I think  
11 it was Steve, who brought forward from the environmental  
12 community. I think if you put those two together, it makes  
13 sense. In the monitoring provisions, I agree with 36 months  
14 instead of 12 months. I think that is it for now, and I am  
15 sure there will be more later.

16           CHAIR HOPPIN: Okay. Are you ready, Mr. Lauffer?  
17 I do not have big comments here, but as requested, on page  
18 11, Section 3.D.2, I feel it is only a reasonable request to  
19 have an independent third party as it pertains to the  
20 nuclear plants, that does have experience with nuclear power  
21 plants, and I would say engineering experience with nuclear  
22 power plants. So I would propose insert "Special studies  
23 shall be conducted by an independent third party with  
24 engineering experience with nuclear power plants, selected  
25 by the Executive Director." Hopefully that is relatively

1 simple. I do agree or disagree with my colleague, Mr.  
2 Baggett, that we should give some deference to ISO, they do  
3 have the responsibility, as I said earlier, for grid  
4 reliability. I do not think making a rebuttable  
5 presumption, given the magnitude of some of these decisions,  
6 is something that goes too far, so I do disagree there, but  
7 I would say that I think it is important that we do not get  
8 ourselves into a situation where we have requests for serial  
9 90-day extensions. I would think that it certainly is under  
10 some other administration, some other attitude, it would be  
11 potentially possible to abuse the intention of the system by  
12 filing serial extensions for 90 days. So I would like some  
13 language that made it sure that that provision was not, in  
14 fact, abused. But that is the only comments that I have, or  
15 changes. Fran. Well, it will be interesting to see how the  
16 conversation develops with the Regional Boards. I had  
17 somewhat mixed feelings about it after talking with Counsel.  
18 Mr. Baggett brought up an idea that certainly appealed to  
19 me, although one of his ideas did not appeal to me, that  
20 possibly the Board should go to the Regions for the hearings  
21 if we assumed that authority, because that does deal with  
22 the fact that people in a regional area have a much more  
23 difficult time getting to Sacramento than we might have  
24 ourselves getting to San Luis Obispo.

25 MR. BAGGETT: I think this Board, we used to have

1 hearings every once a year we would intentionally go to a  
2 place and have a Board meeting, like the Fish and Game  
3 Commission, a lot of Boards do that. Our former Waste  
4 Board, maybe that is what -

5 CHAIR HOPPIN: Yeah, I think our former Chair did  
6 that, and then when I came here, I wanted to make sure I got  
7 home at night so I could say hello to my dog, Nellie, that I  
8 quit doing it. So I will accept responsibility for that  
9 one, as well. The former Chair was good about that. Ms.  
10 Spivey-Weber.

11 MS. SPIVEY-WEBER: I agree with many of the things  
12 that have been said, but not all. But I will say the things  
13 that I would like for you to spend some time on. One is the  
14 idea of the actual flow over a five-year period, the 2000 to  
15 2005, as part of Track 2, as well as the unit-by-unit  
16 approach. Secondly, I definitely agree with Charlie about  
17 we absolutely do not want to have serial 90-day activities,  
18 so that is important. On the issue of seeding our  
19 authority, I actually have been convinced that we have gone  
20 too far in this wording, and I would eliminate the idea of  
21 having to come up with a finding of overriding  
22 consideration. I think that is pretty strong, and I would  
23 not support that. Let's see, under the nuclear, deleting  
24 the "any other relevant information" in terms of monitoring  
25 moving to three years vs. one. And then, on the issue of

1 the interim mitigation, I think we should put in some  
2 specific language that ties any mitigation funding to actual  
3 fish protection projects in a marine protected area, that  
4 are near the power plant that is contributing. And as I  
5 say, there were other things that had been mentioned  
6 earlier, but I just wanted to underscore those, and I will  
7 keep looking through my notes, and if I find something else,  
8 I will get back to you.

9 CHAIR HOPPIN: Tam.

10 MS. DODUC: I only have a page and a half. Like  
11 Fran, I agree with most, but not all, of what my colleagues  
12 have suggested. Let me just go through my list. I concur  
13 with Fran with respect to Track 2. I would like to see the  
14 change from "whole facility" to "unit-by-unit." I also  
15 would like to see inclusion of average actual flow from 2000  
16 to 2005, instead of design flow. I would add to that  
17 deletion of the 90 percent in reduction, and make that  
18 equivalent to Track 1. Also, in Section 2.A.2.D.1, I think  
19 the accounting for prior reductions should be calculated  
20 based on the affected units that have been replaced with  
21 combined cycle units, instead of the entire power plant. So  
22 the credit should be based on those that actually have been  
23 replaced, if that makes sense. So, for example, where it  
24 reads, "Owner-Operator may count prior reductions in  
25 impingement or mortality entrainment result from the

1 replacement of steam turbine power generating units with  
2 combined cycle power generating units towards meeting Track  
3 2 requirement," then the next part says, "for the entire  
4 power plant where the units are located." I would like that  
5 deleted and have "reductions be based on reductions for the  
6 units replaced with the combined cycle units." I agree with  
7 Mr. Baggett with respect to the combined - well, actually, I  
8 am not sure I understood fully what Mr. Baggett said on this  
9 point, so let me withdraw that and say I agree with the  
10 enviro panel's recommendation that we delete the credit from  
11 the prior entrainment reductions, that would be the last  
12 paragraph in 2.A.2.D.1, as well as the exemption in  
13 2.A.2.D.2.

14           With respect to Section 2B, the compliance dates,  
15 I agree with Mr. Baggett and Ms. Spivey-Weber with respect  
16 to the deference language to CAISO. I think I would like to  
17 see the language of "afford significant weight" being there  
18 in place of "finding of overriding consideration." I also  
19 agree with Mr. Hoppin and Ms. Spivey-Weber about taking care  
20 of the serial 90-day extension. I would like to see - I  
21 believe it was the Enviro Panel who suggested that, to  
22 Section 2.B.2.A, we add language that the CAISO suspension  
23 option may not be used more than one time in any 12 months,  
24 and not more than three times in total for each existing  
25 power plant.

1           With respect to the nuclear fueled power plants, I  
2 would like to see in Section 2D, replacing the word "any"  
3 with "safety" when referring to requirements established by  
4 the Nuclear Regulatory Commission.

5           In the implementation provisions of Section 3,  
6 again, with respect to SACCWIS, Section 3.B.5, I believe, I  
7 prefer to use the term "afford significant weight to,"  
8 instead of the language that is currently in there, in terms  
9 of overriding consideration. And, of particular importance  
10 to me, is deletion of the language in 3.B.5, that would  
11 suspend the compliance date for a period not to exceed two  
12 years if the facility is unable to obtain permits. I think  
13 any question of reliability, any questions of  
14 implementation, can be addressed through the SACCWIS and  
15 through the recommendations, or to this Board for  
16 consideration, and I prefer that we not tie our hands and  
17 limit ourselves with respect to our flexibility on  
18 compliance dates by committing at this point to a cap on  
19 suspension of compliance date.

20           And then, finally, with respect to Table 1 in  
21 Section 3E, we have heard today about how well Humboldt Bay  
22 is operating in terms of their meeting the requirement, I  
23 would like to see their due date be reflected as December  
24 31<sup>st</sup> of 2010, same with Potrero, and for South Bay, December  
25 31<sup>st</sup>, 2011. I was going to recommend changing AES'



1 facilities to a phased compliance between 2020 and 2024, but  
2 since Mr. Pendergraft did not make that suggestion today,  
3 never mind. And with that, that completes my most urgent  
4 changes.

5 CHAIR HOPPIN: Mr. Baggett, I have confused at  
6 least one of my colleagues here with my idea of how we are  
7 going to let you know how we feel about these proposed  
8 changes and amendments. We have all made something. It was  
9 my understanding that you would come back on a section-by-  
10 section basis, and we would go through them individually and  
11 do essentially a straw poll, does that work?

12 MR. LAUFFER: Yeah, at this point in time, Chair  
13 Hoppin, I did not hear anything that was actually  
14 contradictory between the two, so we will do our best to  
15 synthesize all those, and then the Board members will be  
16 able to discuss each one of them altogether.

17 CHAIR HOPPIN: I am not sure when we had our  
18 discussions, the only thing that I was not real clear on was  
19 whether Mr. Baggett was making the proposal to change the  
20 permitting authority to the State Board. Walt had referred  
21 to it. I had commented on a provision that Mr. Baggett had  
22 inserted that appealed to me, you know, if we did do that.  
23 Is that --

24 MR. BAGGETT: Yeah, I would agree. I guess, for  
25 me, it is coupled to the ISO language. If this body does

1 it, I feel we can relax some of the rebuttable presumption  
2 language. If it is this Board that is going to adopt those  
3 permits, I think that is the key. Otherwise, I would agree  
4 with the Chair that that language needs to be stronger. I  
5 think it does not if it is this Board, and secondly, I just  
6 want to clarify, I am still not - I have not been convinced  
7 this design vs. generational flow issue, I think, is going  
8 to be an incredible - I do not know if it is equitable for  
9 the small peakers that only work 8 percent of the time to  
10 say generational flow. Maybe I do not understand it well  
11 enough. So that one, I am not committed to going along with  
12 my two colleagues on the far end down there. On all those  
13 changes, I will, with the other parts on the unit-by-unit,  
14 and so on, but the design power, I think, is pretty  
15 critical. And the last one, just to clarify again on the  
16 nuclear language, I support the NGO draft coupled with the  
17 PG&E language, which I think both of them were very  
18 specific, and I do not think they contradicted at all, they  
19 actually clarify each other's language, the way I read the  
20 two.

21 MS. DODUC: Sorry, could I ask Art to clarify if  
22 he had any recommendations or any suggestions to staff with  
23 respect to the credit for closed cycle units, so that would  
24 be -

25 MR. BAGGETT: I do not. I am struggling with that

1 one, like I said. I do not know if staff has got some  
2 ideas, I know it has been talked about a lot. And you had  
3 some specific language. I was not quite sure, what were you  
4 changing? Something in there, weren't you, Tam, in the  
5 language that was written on page 6? Were you just deleting  
6 that whole paragraph?

7 MS. DODUC: I was suggesting deleting, yes.

8 MR. BAGGETT: You were deleting the whole  
9 paragraph, okay.

10 MS. DODUC: I think that was consistent with the  
11 recommendations, not only from the environmental groups, but  
12 also EPA and the Coastal Commission, as well.

13 MR. LAUFFER: So again, just to clarify for all  
14 the Board members, what we will do is we have heard what all  
15 the Board members have said, we will do our best, we will  
16 take staff away into a room, my guess is probably 30-45  
17 minutes, to work through and come up with the language.  
18 None of this has actually been incorporated yet. What we  
19 will then do is we will present it up and the Board members  
20 will essentially, item by item, be able to have a discussion  
21 amongst yourselves about the pros and the cons of amended  
22 the staff proposal to incorporate that provision. We may  
23 take up one item, the NPDES issue and having the permits  
24 issued by the State Board first, because that happens to cut  
25 across many elements of the policy, including removing

1 provisions that you had us insert back in December, because  
2 this would be the NPDES Permit for the facility, there would  
3 no longer be the Regional Boards regulating the discharge  
4 element, which is language that the Board had requested last  
5 December.

6 MS. DODUC: I am sure we will discuss it further,  
7 but as we mentioned today, this policy only addresses  
8 intake, not discharge, so if we were to assume the task of  
9 issuing discharge NPDES permits, I think it needs to be made  
10 clear that it would comprise more than just the  
11 requirements, as reflected in this policy.

12 MR. LAUFFER: Yes. I mean, absolutely. It is a  
13 national pollutant discharge elimination system permit. I  
14 mean, if we issue the NPDES permit, we will be regulating  
15 and implementing all of the other provisions of the NPDES  
16 program, as well, including the requirements of Clean Water  
17 Act Section 301(B)(1)(c), that requires compliance with  
18 water quality standards, implementing whatever other Basin  
19 Plan provisions there may be, and we will be regulating the  
20 entire discharge through that NPDES permit, as well as  
21 implementing the cooling water intake structures here. This  
22 does not supplant any of the other requirements we have to  
23 establish.

24 MR. BAGGETT: And the Regional Board staff is  
25 still right to permit with the State Board, I mean, we have

1 done that more than once since I have been here.

2 MS. SPIVEY-WEBER: And I do think we will need to  
3 be prepared to have a discussion about doing the flow versus  
4 this design flow - actual flow vs. design flow.

5 CHAIR HOPPIN: Anything else?

6 MS. DODUC: 4:30?

7 CHAIR HOPPIN: Well, it is whenever they come  
8 back. It is like setting a time schedule when you do not  
9 know what the heck is going to happen. Do you want to set a  
10 time schedule of 4:30?

11 MS. DODUC: Yes.

12 MR. LAUFFER: We will do our best to be back by  
13 4:30.

14 CHAIR HOPPIN: We will do our best to have this  
15 plant constructed by 4:30.

16 (Off the record at 3:52 p.m.)

17 (Back on the record at 4:58 p.m.)

18 CHAIR HOPPIN: Thank you all for waiting. Staff,  
19 thank you. Are you ready to proceed, Mr. Lauffer? Or would  
20 you like a few more moments?

21 MR. LAUFFER: We need to pull up a file.

22 MR. BISHOP: Okay, while they are bringing up the  
23 file, we have attempted to put together all of the concerns  
24 and comments. In a couple of instances, we had to weigh  
25 what we heard and come up with what we thought satisfied

1 both Board members when there were multiple Board members.  
2 You will, of course, decide if that was adequate as we go  
3 through those. The first one we were going to talk about is  
4 the NPDES delegation to the Regional Board. Oh, yes, I am  
5 sorry, go ahead. Walt's question on the mesh, first.

6 MR. GREGORIO: So, Board member Pettit, you asked  
7 to just give a brief explanation of the pros and cons of the  
8 200 micron, using that in the monitoring provisions. So  
9 first off, the previous studies have almost uniformly  
10 focused on fish larvae, which are mostly in the size range  
11 that are greater than 333 microns. But most of the  
12 invertebrates, and most of the life stages of invertebrates  
13 are below that size. Two hundred microns would capture  
14 nearly all of the invertebrates. Invertebrates are  
15 important. The previous presentation from Joe Dillon  
16 mentioned the white abalone being endangered, well, actually  
17 the black abalone is endangered, as well. And that is  
18 stated in the SED. Those are examples of endangered  
19 invertebrates that are important in terms of their food  
20 resource value and their ecological value. But a lot of  
21 other invertebrates are important ecologically and, in some  
22 cases, as seafood resources, as well, bivalves, oysters,  
23 clams, and that sort of thing, urchins, sea cucumbers, so  
24 these are just some examples of what we would consider very  
25 important invertebrate species. And we really do not know

1 exactly the status of those species in terms of entrainment.  
2 One other thing to bring out is, I mentioned fish larvae are  
3 larger than 333 microns, but if a fish is swimming and the  
4 net is attempting to catch that fish, if it is swimming and  
5 it goes - it can go through a 333 micron mesh if it goes  
6 through head-first, or tail-first, and we really do not know  
7 how effective the 333 micron mesh size was in every study  
8 because of that escape measure that can happen. And so, if  
9 you had a subsample of the 200 micron, you would be able to  
10 calculate how many fish are actually measuring or not. So  
11 from the staff's standpoint, we believe it is important to  
12 know what the status of the 200 micron fraction is. We  
13 believe we have a responsibility to understand the status of  
14 the marine resources and the impacts of our regulated  
15 facilities on those marine resources. It is more costly to  
16 study the 200 micron fraction, but it does not prohibit the  
17 use of the 333 micron fraction, it would just be an  
18 additional thing that would be required. So, you know, sort  
19 of the negative part about it is it costs more, it is more  
20 difficult to identify some of the invertebrates to species  
21 level, but the positive thing is that it would give us a  
22 better handle on what invertebrates, and for that matter,  
23 what fish were escaping the larger mesh size.

24 MR. PETTIT: So I presume, then, you would not  
25 know how you were going to use that information until you

1 see what you get. Is that correct?

2 MR. GREGORIO: Well, I think in the baseline  
3 scenario, it would be very good to know going in what the  
4 effects are on the invertebrates, so I think in that sense,  
5 we would definitely know what to do. Depending on the kind  
6 of Track 2 control technology that is employed, there could  
7 be possible improvements, or at least a basic understanding  
8 of what the effects of that control technology are. So I  
9 think we are basing this primarily on being able to know and  
10 understand the status of these organisms.

11 MR. PETTIT: Okay, I will let that go. And I  
12 presume if it turns out that there are really feasibility  
13 questions that there is potential for relief, at some point  
14 later. And thank you.

15 MR. GREGORIO: You are welcome.

16 CHAIR HOPPIN: Thank you. A couple housekeeping  
17 issues here. We are closed for public comment. Mr.  
18 Lauffer, how many proposed amendments or changes do you  
19 have? I want to make sure that we go through this straw  
20 poll concept in somewhat of an orderly fashion since -

21 MR. LAUFFER: The amendments are probably captured  
22 in four or five distinct categories, based on the input from  
23 the various Board members, and so Mr. Bishop is prepared to  
24 take the lead on presenting them up, and what we will try to  
25 do is we will to show - we will do it essentially issue by



1 issue, and so when we get to -- the first issue we are going  
2 to see changes on will be the issue of the Regional Boards  
3 issuing the NPDES permits, and Mr. Bishop will present that,  
4 and he will show you the affected parts of the policy, or at  
5 least describe it. Some of that is just more technical in  
6 terms of word replacement. But I would guess there are five  
7 large categories of changes.

8 CHAIR HOPPIN: And do you want us to vote on the  
9 categories of changes, or the increments within them?

10 MR. LAUFFER: I think we would want to go on the  
11 categories, and that would allow the Board to make notes.  
12 For example, there were several different things thrown out  
13 with regard to combined cycle by the various Board members,  
14 and I think it makes sense to discuss all of the combined  
15 cycle issues at once, and then vote on them. But, again,  
16 combined cycle will be separate from the NPDES, will be  
17 separate from the unit-by-unit. So we will walk it through  
18 very systematically.

19 CHAIR HOPPIN: We will give that a try.

20 MR. BISHOP: Okay, the first thing that we wanted  
21 to touch on was the delegation or having the State Board  
22 take on the NPDES permitting for the Regional Boards. We  
23 are going to walk you through in a minute what those changes  
24 would look like to do that, but before we do, I want to  
25 provide you with a little bit of information. First, we

1 have a lot of concerns about taking on that role, and so we  
2 thought you should know that; two, we would see the Regional  
3 Boards actually - their staff - writing the permits because  
4 we do not have the staff to write the permits, and we do not  
5 have the staff to go down there and learn everything about  
6 those facilities. So what you would be doing would be  
7 inserting yourself in the decision-making process, but the  
8 permits themselves are going to look the same. So that  
9 means that, if you have a concern about the permits being  
10 different, it is going to start as a process of you telling  
11 the staff to go back and re-try it again, that is very  
12 similar to the petition and appeal process. So you may or  
13 may not want to go into the practice of writing NPDES  
14 Permits for what I would say is a marginal improvement in  
15 time on this permitting. But, if you do, these are the  
16 kinds of changes that you would need to do to get there.  
17 And so we would modify the finding "N" which previously said  
18 there was nothing in this policy that removed the Regional  
19 Boards' authority to issue NPDES permits. It would now say  
20 something to the effect that, "In order to ensure a high  
21 level of consistency, the State Board will take on this  
22 action." You can read it, I do not need to go through each  
23 piece of that. So then we can go down through everywhere  
24 that there was a Regional Board in this policy now changes  
25 to State Board, so there are a number of issues, so we will

1 start with scrolling through here, and we come to -

2 MR. LAUFFER: And let me be clear, actually if  
3 Darren can go back two pages, there are a couple of places  
4 within the policy where there are still references to the  
5 Regional Water Board, but it is not in a decision-making  
6 capacity, and we thought that it still made sense, that even  
7 if the State Board is issuing the permits for the  
8 notifications to go to the Regional Boards, since that is  
9 where the staff that will be actually doing a lot of the  
10 work on these permits will be. So you will see as we go  
11 through suspension that there are occurrences of Regional  
12 Water Board in here where it is simply a matter of providing  
13 notification to them. Any place that there is a decision-  
14 making step, where presently the Regional Water Board is, we  
15 have amended it to be the State Water Board. And so,  
16 Darren, if you could flip back down, now.

17 MR. BISHOP: Okay, so if you go to page 8, Darren,  
18 there you go, that is the first 2C, no, the next page, keep  
19 going, keep going, the page numbers are wrong, just keep  
20 going, there we go. So in the interim requirements, we  
21 would remove the Regional Board and put State Board. We do  
22 that repeatedly throughout the document. I do not know that  
23 we need to go through each one, do we?

24 MR. LAUFFER: The only place that I want to go, if  
25 Mr. Polhemus could go down one more page, keep going, it is

1 going to be the next C section, there we go. This is the  
2 operative provision of the Draft Policy where the NPDES  
3 permits were to be reissued and modified, and this is where  
4 you see the real substantive change from what we discussed,  
5 or what the Board members discussed before we went out and  
6 took the break. And this now has the State Water Board  
7 reissuing or, as appropriate, modifying the NPDES permits.  
8 And importantly, there was the concept thrown out that the  
9 hearings should be in the affected region. So this  
10 particular paragraph has been modified to reflect that the  
11 State Board would be limiting its discretion and saying that  
12 the State Board is going to reissue these permits, and when  
13 it does so, it is going to do so after a hearing in the  
14 affected region. And, as John said, we do not need to go  
15 through all the other Regional Water Board/State Water  
16 Board, it can pretty clean be encapsulated and wherever  
17 there is a decision-making step, that would now be up to the  
18 State Water Board as opposed to the Regional Water Boards.  
19 The Regional Boards may still receive some notification and,  
20 as John indicated, from a staff perspective, we do have some  
21 concerns about this, it is not a significant change because,  
22 I mean, it really is just mechanically inserting the State  
23 Board in place of the Regional Water Board for the  
24 decisions, you know, operatively, in terms of how people are  
25 regulated, the public participation process, all of that is

1 going to stay the same. Our concerns just flow from the  
2 fact that you are going to end up with some management  
3 difficulties because the regions are going to have the staff  
4 that we would be using in order to prepare these permits,  
5 and the paradigm of Porter Cologne is typically that the  
6 Regional Boards issue these permits, and as you heard me say  
7 earlier, we have tried very hard to kind of straight jacket  
8 the decision-making process on the compliance schedule so  
9 that, really, all those decisions are still occurring up  
10 here at the State Water Board. And I think, with that, we  
11 would turn it over to the State Board for discussion.

12 MR. BISHOP: There is one other option that was  
13 raised in our discussion that you should at least consider,  
14 is that, on this page there at the top, it says that the  
15 State Water Board shall reissue these permits. The option  
16 would be to change that shall to "amend," then it would be  
17 on a case-by-case basis. If you decided that would cause, I  
18 think, a lot of confusion in the regulatory world, but, you  
19 know, we have also heard many times that we do not like to  
20 order ourselves to do something, the State Board does not  
21 like to order a future Board to do something, which is what  
22 you are doing here.

23 MR. BAGGETT: Wait a minute, but we do with  
24 construction, linear construction -

25 MR. BISHOP: No, we do not. Those are not the

1 same, they are statewide general permits that are issued on  
2 a general basis, these are individual permits at a facility,  
3 so it is a different paradigm, it is not that we cannot do  
4 it, it is just a different paradigm.

5 CHAIR HOPPIN: You know, we have the advantage of  
6 the bartender's view, if you will, so it is easier to read  
7 spatial inflections when things are suggested. And I  
8 appreciate what all of you are saying. My concern over this  
9 is that consistency throughout the state is as critical, if  
10 not more so, on this issue than anything else. And if we  
11 can help winnow that down and reinforce that consistency, I  
12 realize that we are talking about something that is a bit,  
13 you know, different, I realized that it will add certain  
14 complications, but I personally am not totally comfortable  
15 with the idea that we have the Regional Boards under this  
16 much control. So that is the only comment that I will  
17 make, but I should have turned it to my colleagues first, so  
18 with respect to the ladies now that I have spoken in front  
19 of them, Ms. Doduc?

20 MS. DODUC: Huh, okay.

21 CHAIR HOPPIN: Well, it is kind of an apology...

22 MS. DODUC: When I was, well, I am speechless on  
23 this item. I have actually written NPDES permits for two  
24 regional water boards, the San Diego and Santa Ana Regional  
25 Water Boards. And it is a very complicated process. I

1 share staff's concern, as expressed through Jonathan, about  
2 the level of resources, not to mention the level of  
3 expertise, the familiarity with the local regional issues,  
4 that would be involved in issuing these permits. And my  
5 concern is, while I definitely - I see the difference  
6 between issuing individual facility permits than a statewide  
7 general permit, such as the one that we have done through  
8 the Strong Bladder [phonetic] Program, as resource sensitive  
9 as that permit was, I think to issue individual NPDES  
10 permits for these plants will be even tremendously more  
11 complicated. And I still go back to the issue that, while I  
12 appreciate the need for consistency with respect to  
13 implementation of this policy, this policy addresses the  
14 intake component of the once-through component, it does not  
15 address in any way, shape, form, the discharge component of  
16 these power plants. And a NPDES permit would have to cover  
17 both. And I certainly share the Chair, as well as Mr.  
18 Baggett's concern about consistency in application of this  
19 policy, but I think to ensure that by assuming the NPDES  
20 permit authority overall, is huge. There must be another  
21 way, like directing staff to work very closely with the  
22 Regional Boards as they are reissuing these permits to  
23 ensure that the provisions of this policy are incorporated.  
24 Perhaps we could go as far as to, you know, whether we wait  
25 for the petition process, make some sort of pre, you know,

1 decision that the policy, that this once-through cooling  
2 policy, the provisions there, must be incorporated or must  
3 be consistent into these individual permits, or it is an  
4 automatic remand. You know, something other than our taking  
5 on the entire NPDES permits for these facilities, which is  
6 different, and I think much more significant than ensuring  
7 the consistency in applying just the intake component for  
8 these facilities.

9 CHAIR HOPPIN: But we are not taking on, as  
10 proposed, the entire responsibility, we have just been told  
11 it will be the same staff doing it, we will just have more  
12 oversight and the opportunity to preclude something being  
13 taken up on our own motion when we do not like it. So, you  
14 know, if this had come back with our staff writing all these  
15 permits in-house, and having the hearing in the affected  
16 regions, I can see why that would not work, but we are  
17 utilizing the staff in the regions under our direct  
18 supervision. So to me, that has tempered what I think the  
19 original thought was, and that was to have - I will ask Mr.  
20 Baggett and Mr. Pettit, but that was originally to have our  
21 in-house staff writing this, the idea of having direct and  
22 more direct oversight of staff in the regions doing it, to  
23 your point.

24 MS. DODUC: I would agree that that does help  
25 things a little bit. That does not ease my entire concern



1 because I think I support the process that is put in place  
2 with respect to deference to the Regional Board, picking to  
3 account local concerns and issuing local permits with the  
4 petition to the State Board. But, yes, I mean, the Chair is  
5 right in that it eases my concern a little.

6 CHAIR HOPPIN: Thank you.

7 MS. DODUC: Was that a soft rock I threw at you?

8 MR. BISHOP: I just have to jump in because you  
9 know that we do not actually have authority to manage the  
10 Regional Board staff. We would assume that they be willing  
11 to do that, but they do not work for you, and they do not  
12 work for me, they work for the Executive Officer, who is  
13 hired by their Board, who could tell them not to write those  
14 permits.

15 CHAIR HOPPIN: And who pays them? Who provides  
16 them with legal service?

17 MR. BAGGETT: You are making my point for me.

18 MR. BISHOP: I am just telling you what it is.

19 CHAIR HOPPIN: Fran. Again, I jokingly cut you  
20 off, but are you done?

21 MS. DODUC: I think I am done.

22 CHAIR HOPPIN: Okay, Fran.

23 MS. SPIVEY-WEBER: I would like to hear from Walt,  
24 in particular, because he has had a long history with this  
25 Board and knows the complexity of writing NPDES permits, I

1 assume, and yet you were one who, I think, first recommended  
2 this with Art. Why - what do you think you are getting by  
3 taking on this what everyone is describing as a big job?  
4 What do we get for it?

5 MR. PETTIT: I guess, first off, this is a big  
6 jump, and I certainly appreciate the staff's concern about  
7 the implications of it. And actually, it goes farther than  
8 what I was hoping to come up with because Ms. Doduc made a  
9 very good point. The only thing I was interested in with  
10 respect to this particular issue is that the State Board  
11 retain control over the implementation of this policy to  
12 make sure things happen consistently in the Regions. I did  
13 not envision taking over the entire NPDES permit process,  
14 although I think both Mr. Baggett and Mr. Hoppin have  
15 explained that that could be done, that is probably a bigger  
16 jump than what I had in mind at the time. I was reluctant  
17 to just rely on the fact that we would tell everybody to  
18 coordinate because my past experience has indicated that  
19 that does not work particularly well. We can insist on  
20 coordination forever and coordination frequently does not  
21 happen. And so I was hoping to get some kind of positive  
22 leverage and I do not know exactly how to word it, but I  
23 will repeat that the part that I was interested in was to  
24 make sure that those Regional Board actions insofar as their  
25 implementing - or the actions, whether they be Regional

1 Board actions or State Board actions - insofar as their  
2 implementing the provisions of this policy, be controlled by  
3 this Board. And the idea of taking over the entire NPDES  
4 Program, I certainly would be willing to hear other comments  
5 out it, that is probably more than I was thinking of biting  
6 off when I first mentioned this. So there are several  
7 options, I do not know if we could come up with wording to  
8 reduce the scope of this, to take care of that initial  
9 concern. We could always put language in there that says we  
10 really mean it. You know, that in my experience never  
11 works. But anyhow, that was the original intent, and I  
12 appreciate Tam's comment about the fact that they are  
13 somewhat separable issues, and I was concerned about the one  
14 and not the other, so...

15 MS. SPIVEY-WEBER: What about the idea that Tam  
16 put forward of an automatic remand, or something in that  
17 vein?

18 MR. LAUFFER: That is certainly a good option, I  
19 think, for the Board to consider, to the extent there is  
20 tension amongst the Board members on this issue. As you  
21 know, whenever an item is petitioned or when the Board is  
22 considering own motion review, you know, there is a standard  
23 that we have established in our regulations that are  
24 substantial issues. And certainly, one possibility to kind  
25 of navigate this is, you can provide direction to the

1 Executive Director, who in turn will provide that direction  
2 to the Division of Water Quality and to the Office of Chief  
3 Counsel, that if we are reviewing any NPDES permits that are  
4 implementing this policy, that we should be reviewing it  
5 with a very fine tooth comb to ensure scrupulous compliance  
6 with the policy. And if there is any deviation, that would  
7 be something that this Board would take up immediately in an  
8 order. And so, essentially it would be this Board conveying  
9 to the Director that any deviation from this policy, even  
10 very minor, should be considered a substantial issue  
11 appropriate for review, and this Board will handle it in  
12 that way.

13 CHAIR HOPPIN: Michael, if that is to even be  
14 considered, though, the directive is not to our Director, it  
15 is a policy and a statement that will endure time, and  
16 different Boards, and different Directors. And without  
17 doubt have no wiggle room, or no latitude for interpretation  
18 by subsequent Executive Directors.

19 MR. BISHOP: So under this section, if we wanted  
20 to go down that direction and make this long-lasting, and  
21 ensure that it is - we could retain the Regional Board, but  
22 right after the Board adoption, we could put in that the  
23 State Board will review these permits for consistency with  
24 this policy. So we would essentially say that the Regional  
25 Board will adopt, and the State Board will review these to

1 determine consistency with this policy, and bring any -

2 CHAIR HOPPIN: You are suggesting that we review  
3 them after they adopt them, not before?

4 MR. BISHOP: We can work with the regions before,  
5 but there is nothing to review before, it is up in draft,  
6 and you could direct us to do that, too, of course we will.

7 MS. SPIVEY-WEBER: And, Michael, you had a little  
8 bit of additional language that it would be substantial,  
9 that any deviation from this policy would be deemed a  
10 substantial deviation.

11 MR. LAUFFER: Yes, and what I am trying to  
12 envision is, I think John is proposing there be essentially  
13 a fifth paragraph under this Paragraph C, John? That would  
14 indicate State Water Board will review all NPDES permits  
15 adopted under this policy to ensure consistency. And then  
16 we would add in, in reviewing such permits, the State Water  
17 Board, the Executive Director, will consider any deviation  
18 from this policy to be a substantial issue, appropriate for  
19 review.

20 CHAIR HOPPIN: I am still more comfortable with  
21 your original version.

22 MR. BISHOP: So my suggestion would be that we  
23 then hold a straw vote on the original proposal and then  
24 determine if we want to look at the alternate, so that we  
25 can keep moving forward.

1           CHAIR HOPPIN: Let's do this with a show of hands.  
2 Art, go ahead.

3           MR. BAGGETT: I feel very strongly about this. We  
4 do it with TMDL - we do it with a lot of things, where  
5 Regional Board staff does a lot of work that comes through  
6 this Board to approve. You can delegate to a Hearing  
7 Officer, the whole Board does not have to go down there, a  
8 Hearing Officer can hold a hearing and bring it back to the  
9 Board for a vote. I think there are a lot of side benefits  
10 that actually gets us to the regions, it is better for the  
11 regions to get to know the State Board a little better. I  
12 think there are a lot of other advantages here that go way  
13 beyond this policy. It will be tough at first, as Jonathan  
14 says, because we do not command and control, but I think  
15 over time it will change so, in the long term, it would make  
16 a stronger working relationship, and truly make it Water  
17 Board(s) plural, instead of still nine regional boards and  
18 the state board. And I think it has other benefits, and I  
19 think the buck ultimately stops here. On a policy of this  
20 magnitude, we have heard all this argument about the CAISO  
21 language and how important this is from both sides, so I  
22 think the buck should stop here.

23           CHAIR HOPPIN: Walt, actually you were asked a  
24 question by Fran, you really did not have a chance to  
25 comment on your own -

1           MR. BAGGETT: I have got one last comment. And I  
2 think we are kidding ourselves if we think that a future  
3 Board is not going to be back here within two or three years  
4 dealing with NPDES for discharges from these plants, and  
5 mainly because of desal. It has already become an issue in  
6 Region 9, it is going to be an issue statewide on discharges  
7 from any ocean discharge because the Ocean Plan Amendments -  
8 this Board is going to be squarely in the middle of dealing  
9 with all discharges to the ocean from these plants, you will  
10 not be able to avoid it, it is going to happen and we are  
11 going to have to have the same policy for discharges. I  
12 just predict it will - it is 316(A), as I recall, and the  
13 Clean Water Act will be back here, doing this whole thing  
14 over again on the other side, on the out-flow side, within  
15 three or four years, somebody will be. So we might as well  
16 start getting familiar with how these things work and bite  
17 the bullet.

18           CHAIR HOPPIN: Walt, do you have additional  
19 comments?

20           MR. PETTIT: Well, you mentioned that Fran may  
21 have had a question for me?

22           CHAIR HOPPIN: We did not really call on you for a  
23 comment, she asked you a direct question and that was -

24           MR. PETTIT: Well, I think I made the point I  
25 would like to have made, and that is that I would like to

1 see a mechanism to make sure that the State Board retains  
2 some control over implementation of the policy. I am a lot  
3 more open as to which option, you know, you all choose.

4 CHAIR HOPPIN: Well, like I said, I think if this  
5 policy had come back with our staff being required to write  
6 the permits, I do not think it would have functioned, and I  
7 had reservations about that. I would agree with Art,  
8 whether the regional boards, to Jonathan's comment, like us  
9 overseeing activities or not, I think in this case it is  
10 important, we are not talking about 25 that are going to 58  
11 in a couple of years, we are talking about 17 or 18 that  
12 potentially could decline in a period of time. So with that  
13 said, I think the way to do it, Mr. Lauffer, if you do not  
14 have any objection, all those that are in favor -

15 MR. PETTIT: Mr. Chair, could I make one more  
16 point, please? With regard to the staff's concern, I think  
17 there is a valid concern there, and one thing I would just  
18 want to point out is, if we take over the issuance of those  
19 permits, then I assume that would mean that we would be  
20 looking at self-monitoring reports and everything else that  
21 goes with the administration of those permits. And that  
22 gets beyond just writing a permit, so -

23 CHAIR HOPPIN: But I think the monitoring, we  
24 could delegate that to the regional boards.

25 MR. LAUFFER: If I can, obviously, as part of



1 reviewing or reissuing and modifying NPDES permits, the  
2 staff at the State Water Board, in terms of making  
3 recommendations and pulling up whatever preliminary work  
4 that is done by the regional board, we will have to look at  
5 those materials. However, the day to day enforcement of the  
6 permits, the policy does not modify that, I mean, the  
7 monitoring reports will still come into the regional water  
8 boards, they will be the ones responsible for ensuring  
9 enforcement of the NPDES permits. The way the language has  
10 been written, it is just the obligation to modify and  
11 reissue, and potentially revoke the permits that lies with  
12 the State Water Board.

13 MR. PETTIT: Thank you.

14 MR. BISHOP: What I would suggest is that we have  
15 two options that have been put out for this, in that we vote  
16 on the first one, which is the one that Art suggested and  
17 that we wrote up, and the second, if that fails, then we  
18 could vote on the option that would have the Executive  
19 Director look at, you know, more consistently look at those,  
20 and we can go through that. But so that we keep moving this  
21 forward.

22 MR. GREGORIO: Chair Hoppin? Could I just add one  
23 quick thing, just something for you all to think about?  
24 There are a lot of these permits, the majority of them that  
25 are past due, or that are just ending their permit cycle,

1 and one of the issues, in fact, one of the driving issues  
2 behind us taking on this policy was to try to solve that  
3 backlog. I just wanted to mention that -

4 CHAIR HOPPIN: The reason I understood we were  
5 doing this, and we delayed issuance, is because it was so  
6 critical to have consistency on this policy, and that is  
7 what we are talking about here. We are not talking about,  
8 "Gee, I have a new hat I want to wear," we are talking about  
9 whatever we can do to ensure consistency, and I think that  
10 is critical. We have been accused of seeding our authority  
11 on other issues today to CAISO and the SACCWIS, and all this  
12 and that, and now all of a sudden we are making sure that we  
13 are doing everything in our power to have consistency, and  
14 that does not seem like a good idea.

15 MR. GREGORIO: Well, no, I just wanted to mention  
16 the backlog situation, that is all.

17 CHAIR HOPPIN: Good. That it?

18 MR. GREGORIO: No, I agree with you about the need  
19 for consistency, it is just that there are many of these  
20 permits that need to be reissued pretty quickly.

21 MR. LAUFFER: Pleasure of the Board at this point.  
22 As Jon indicated, you have language up before you, that was  
23 what the Board had asked us to work on when we broke. And I  
24 would suggest that somebody move that language, and then we  
25 will see how the votes fall.

1 MR. BAGGETT: I would move.

2 CHAIR HOPPIN: Second. We will have a show of  
3 hands or an "aye," I think a show of hands will be clearer  
4 since we could be into a one vote situation here.

5 MR. LAUFFER: Just as long as, for the Reporter's  
6 sake, that it is clear who is voting. It may be just best  
7 to do a roll if we think it is going to be a close vote.

8 [Roll call]

9 CHAIR HOPPIN: All those in favor of the proposal  
10 that has been presented by staff, Mr. Pettit?

11 MR. PETTIT: Yes.

12 CHAIR HOPPIN: Mr. Baggett?

13 MR. BAGGETT: Aye.

14 CHAIR HOPPIN: Aye.

15 MS. SPIVEY-WEBER: No.

16 MS. DODUC: No.

17 MR. BISHOP: Okay, that amendment passes, so we  
18 will put that in the grouping of ones that we are looking  
19 for as we go through the policy.

20 CHAIR HOPPIN: I know we are going to roll through  
21 the rest of them in short order.

22 MR. BISHOP: I am sure we will. Okay, so the next  
23 section is the section on Track 1 and Track 2. And if I can  
24 get myself in there, okay. We had essentially three  
25 amendments suggested on this section. I think that the way

1 to do it is to just do them one-by-one. Michael? Okay, we  
2 had a suggestion to change the facility as a whole to a  
3 unit-by-unit basis. Do I hear anyone that would like to  
4 propose that as an amendment? Is there any discussion on  
5 it?

6 MS. SPIVEY-WEBER: So moved.

7 MS. DODUC: Second.

8 MR. BISHOP: Okay, do we -

9 CHAIR HOPPIN: Does anyone have any comments on  
10 this? All those in favor of the unit-by-unit basis change,  
11 signify by "aye."

12 (Ayes.)

13 Unanimous.

14 MR. BISHOP: Any opposed?

15 CHAIR HOPPIN: No.

16 MR. BISHOP: Okay, so that will be added to the  
17 list. Number 2, we had the removal of the 90 percent in the  
18 comparison between Track 1 and Track 2, that is in two  
19 places, it is here on your screen at 2.B.2, it is also on  
20 the next page. 2.A.2., excuse me, and 2.B.2.

21 CHAIR HOPPIN: Do we have comments on this  
22 proposed change?

23 MS. DODUC: I will move it.

24 CHAIR HOPPIN: Any other comments. Do we have a  
25 second.

1 MS. SPIVEY-WEBER: Well, second.

2 CHAIR HOPPIN: Well, we could not have a vote  
3 going in a second draft.

4 MS. SPIVEY-WEBER: Right. I second it.

5 MR. LAUFFER: For the record, you actually do not  
6 need a second if you want to move straight to a vote, but -

7 CHAIR HOPPIN: Really?

8 MS. SPIVEY-WEBER: You tell us.

9 MR. LAUFFER: I will send the memo back around.

10 CHAIR HOPPIN: I have got that memo somewhere. All  
11 those in favor of the proposed amendment, signify by "aye."

12 (Ayes.)

13 Any opposed?

14 MR. PETTIT: No.

15 MR. BISHOP: So we had, I know, two opposed. How  
16 many ayes, I am sorry?

17 MS. DODUC: Aye.

18 MR. BISHOP: Charlie?

19 CHAIR HOPPIN: I slurred my words on that one. I  
20 am going to vote no.

21 MR. BISHOP: Okay, so that one does not add to the  
22 list.

23 MS. DODUC: Jonathan, I am sorry, you missed one,  
24 I think.

25 MR. BISHOP: No, I have not gotten to it yet.

1 MS. DODUC: In Track 1?

2 MR. BISHOP: Yeah.

3 MS. DODUC: Because Mr. Baggett made the motion  
4 about the feasibility.

5 MR. BISHOP: Where was that?

6 MS. DODUC: Well, it would be at the beginning of  
7 this, right?

8 MR. BAGGETT: Right.

9 MS. DODUC: Art, didn't you - yeah.

10 Mr. BAGGETT: Track 1 does not have to be  
11 feasible, right?

12 MR. BISHOP: We did not get that.

13 MR. LAUFFER: Yeah. I think what was happening,  
14 we had a discussion about this and the way that the  
15 conversations played out. If the 90 percent reduction was  
16 removed, I think that, from staff's perspective, there was  
17 not a need to have the feasibility off-ramp, because they  
18 would have essentially been identical reductions. So given  
19 that the vote just occurred two to three, and it failed to  
20 go to the 90 percent reduction, I think at this point in  
21 time it makes sense to consider whether or not feasibility  
22 should be restored to off-ramp from Track 1, which was what  
23 Mr. Baggett's suggestion was.

24 MR. BAGGETT: Yeah.

25 MR. BISHOP: Okay. I lost the - am I going the

1 wrong way? Okay.

2 MS. DODUC: It would be in 2.A.2.

3 CHAIR HOPPIN: You are going a little faster than  
4 I can read, I can tell you that.

5 MR. LAUFFER: There is not going to be any  
6 language up to reflect it at this point, and that is the  
7 problem.

8 MR. BISHOP: Yes, but I will get the old language.

9 MS. DODUC: And how would we propose ensuring  
10 consistency in this feasibility determination by the  
11 regional boards? Well, would we --

12 MR. BISHOP: It would not be by the regional  
13 board, it would be by the state board.

14 MS. DODUC: Yeah, okay.

15 MR. GREGORIO: So the thing that was removed  
16 originally was on page 4 under Track 2, and while Jon is  
17 looking it up there to potentially insert this, I will just  
18 read it. This was the way it was originally stated in the  
19 previous version: "The owner or operator of an existing  
20 power plant, if the owner or operator of an existing power  
21 plant demonstrates to the," in this case, it was, "...to the  
22 regional board's satisfaction that compliance with Track 1  
23 is not feasible, the owner or operator must reduce..." And  
24 then there was a definition that we had in the definition  
25 section that defined what "not feasible" was. Did you find

1 that, Jon?

2 MR. BISHOP: I am sorry, I do not have that  
3 version.

4 MR. LAUFFER: What Dominic is referring to is, if  
5 the Board members pull out their redline version of the  
6 document, on page 4, and this is for members of the audience  
7 who are following, what corresponds to page 4 on the redline  
8 is now up on the screen. The redline has been accepted,  
9 though, on a clean version up top, and so the redline people  
10 are seeing is the staff changes that were based on the Board  
11 members' comments a moment ago. And what Dominic is  
12 proposing is that, what you see at the top of this page will  
13 go back to the language that was in the November 23<sup>rd</sup>, 2009  
14 draft of the policy, with the revision being that, instead  
15 of it being the regional water board that would make the  
16 satisfaction or the not feasible determination, would now be  
17 the State Water Board. And so what you would see on the  
18 screen up there where it says Track 2, it would now read,  
19 "If an," and then you would strike the word "the," "...owner  
20 or operator of an existing power plant," and then inserts,  
21 and again, this is just restoring language from the November  
22 23<sup>rd</sup> draft, "...demonstrates to the State Water Board's  
23 satisfaction that compliance with Track 1 is not feasible,  
24 the owner or operator," and then you would pick up with what  
25 is on the screen, "...must reduce impingement mortality,



1 entrainment to marine life of the facility, on a unit-by-  
2 unit basis, to a comparable level of that which would be  
3 achieved under Track 1." And then, what Dominic is  
4 indicating is that you would restore the definition of "not  
5 feasible" from the November 29 draft. And that definition,  
6 which would appear for the Board members, if you flip to  
7 page 18 of your redline, it would read, "Not Feasible.  
8 Cannot be accomplished because of space constraints or the  
9 inability to obtain necessary permits due to public safety  
10 considerations, unacceptable environmental impacts, local  
11 ordinances, regulations, etc. Cost is not a factor to be  
12 considered when determining feasibility under Track 1." So  
13 that was original staff proposal back on November 29<sup>th</sup> -  
14 pardon me, November 23<sup>rd</sup>, 2009.

15 CHAIR HOPPIN: Mr. Baggett.

16 MR. BAGGETT: That is fine.

17 MS. SPIVEY-WEBER: I second.

18 CHAIR HOPPIN: We do not need to second.

19 MS. SPIVEY-WEBER: Oh, that is right.

20 CHAIR HOPPIN: All those in favor, signify by  
21 "aye."

22 (Ayes.)

23 Any opposed:

24 MR. BISHOP: Okay, so that is added to the -

25 MS. TOWNSEND: Excuse me, member Baggett, did you

1 motion that?

2 MR. BAGGETT: Yes.

3 MS. TOWNSEND: Thank you.

4 MR. BISHOP: Okay, the next item in this section  
5 is the proposal to change in terms of design flow to as  
6 compared to average actual flow for the corresponding months  
7 from 2000 to 2005.

8 MR. GREGORIO: During the section of this meeting  
9 before the break, we were asked to explain the difference  
10 between actual and design. Do you want us to do that now?

11 MS. SPIVEY-WEBER: Yes, I do.

12 MR. GREGORIO: Okay. So we, as staff, had  
13 originally favored using the actual, and by "actual" to  
14 "average," depending on whatever that period is determined  
15 to be, instead of "design." And the reason is because it is  
16 stricter, it is more protective. And so I would be the  
17 first one to admit that. But, as we were going through the  
18 process, it became clear to us that, if we were to make  
19 Track 1 and Track 2 comparable, which was our general  
20 instructions, to try to make that comparable, but the only  
21 way to really do that was to use "design flow." Now, by  
22 going back to "actual," it will make it stricter. On a  
23 fleet-wide basis, in other words, all the power plants  
24 combined, it is only marginally more protective. And I  
25 think I have a graph that we threw together, that maybe

1 Jeanine could bring that up as I am talking here, we do not  
2 have to wait, but when she brings it up, I will talk about  
3 it.

4 CHAIR HOPPIN: Dominic, you know, "threw together"  
5 is kind of like skiing and some of those other phrases we  
6 use around here, that we need something that sounds a little  
7 bit more substantial than "threw together," okay? It  
8 affects people's lives here and things in the ocean's lives.

9 MR. GREGORIO: Right, so maybe it was a bad choice  
10 of words. But, anyway, "we put this together on the fly,"  
11 and what it shows you - sorry about that, it is late - we  
12 did it as best we could - and so what is shown here on  
13 number 1, you see this is a column chart, and number 1 shows  
14 the comparison between the design flow and the 7 percent of  
15 design flow, so under Track 1, design cut down to 7 percent,  
16 the little red section down there, that little red column  
17 represents 7 percent, ignore number 2 for now, go to number  
18 3. Number 3 represents the actual flow, and then cutting  
19 that down to 7 percent. And this would be in the scenario  
20 where a plant decides to have compliance based strictly on  
21 flow reduction, so this is basically the way we are showing  
22 it here. Now, the one in the middle, number 2, all it does  
23 is it takes the red column from number 1, and the red column  
24 from number 3, and it puts it next to each other. And so  
25 this is just to illustrate that there is a marginal

1 reduction, but it is not a really huge difference when you  
2 consider it on a plant basis. But there is one caveat, and  
3 that is that, on an individual plant basis, it could make a  
4 big difference. There are some power plants where changing  
5 it from "design" to "actual" could make it a big difference.  
6 And I think Ms. Sikich mentioned those power plants during  
7 her presentation. So that is just a really quick  
8 explanation of the comparison.

9 CHAIR HOPPIN: I think Art has a question for you.

10 MR. BAGGETT: I am trying to - I think I  
11 understand this now. So if you have a plant that is only  
12 peaking 7 percent of the year, so under design flow, on  
13 number 1, you have got enough water, right? Because you are  
14 running at 93 percent, you ignore it, so over a year you  
15 have enough water running at 7 percent of total yearly  
16 design flow, but if it is a peaker plant, it is running at  
17 100 percent capacity for two days in August. It cannot do  
18 it because it can only get the proportional percent of that  
19 7 percent for two days a year, and that is the problem, it  
20 cannot run at full capacity for two days, it can only run at  
21 7 percent of full capacity for two days, which makes it like  
22 - why would you turn it on? I think that is the problem  
23 with these small peakers, it is not the yearly entrainment,  
24 but the way this is set up, if you do that averaging, you  
25 basically might as well - they cannot run because they are

1 running at such a small amount for two days a year, and so  
2 you have got a black-out coming, and you have got 110 degree  
3 temperatures in L.A. and they need this full peaker on for  
4 two days only. But because we now have changed it to actual  
5 flow, they can only run it at 7 percent capacity for two  
6 days, not at 100 percent capacity for two days, and maybe  
7 there are brighter minds here, but there has got to be a  
8 way, because I do not think there is an argument between -  
9 maybe there is with the NGOs - but I do not think that is  
10 the intent. The intent would be to run it for those two  
11 days full blast, maybe, and then not run it for the rest of  
12 the year. But the way this is written now, that could not  
13 happen. That is the way -

14 MR. BISHOP: I think you are correct, member  
15 Baggett. The point, when you change it to actual flow, what  
16 you are saying is that you cannot run that on a once-through  
17 cooling basis.

18 MR. BAGGETT: Right.

19 MR. BISHOP: But that is the point of the policy,  
20 that is what you will be saying with this policy is you do  
21 not want to run it on a once-through cooling basis.

22 MR. BAGGETT: But yet you could run it all year at  
23 7 percent capacity for 365 days, and take the same volume of  
24 water over the year, and then, so you can shred everything  
25 by 7 percent a day all year round, instead of the same

1 amount of water for two days.

2 MS. JENSEN: Our policy specifies -

3 MR. BAGGETT: So it is the same effect as the  
4 ocean, potentially -

5 MS. JENSEN: They do not get to average over a  
6 year, they only get to average over a month, so they cannot  
7 - during the winter time when they are not running, they  
8 cannot use that as a credit for the summer time. Because we  
9 did want them to cut back.

10 MR. BAGGETT: Yeah, go it.

11 CHAIR HOPPIN: Fran.

12 MS. SPIVEY-WEBER: In terms of design capacity, is  
13 it design capacity as a baseload plant? Or design capacity  
14 as a peaker plant? What is - when we say "design capacity,"  
15 what do we mean?

16 MR. GREGORIO: Well, it is essentially what the  
17 plant was originally designed to do, and many of the  
18 permits, existing regional board permits, actually have the  
19 permitted flows that are identical to the design flows.  
20 Even though some of those plants are being used as peakers  
21 now, you know, they are not anywhere near their design  
22 capacity, many of them are still permitted for that higher  
23 level. And so the design just refers to what it was  
24 originally designed to do, regardless of what its current  
25 use is.

1 MS. JENSEN: It is pretty much the most it can  
2 pump. The pump has a certain capacity and that is the  
3 maximum they are able to pump physically.

4 CHAIR HOPPIN: Tam.

5 MS. DODUC: In the interest of moving this along,  
6 I will make a motion to -

7 CHAIR HOPPIN: Walt has got a comment.

8 MR. PETTIT: Yeah, I was trying to think through  
9 this thing on an operational basis and I think Mr. Gregorio  
10 and Art have both hit it, if there is a reason to keep these  
11 plants on standby and ready to go, in any case, well, then  
12 that reason is probably going to be that we are going to  
13 want them turned on full time for short periods of time, so  
14 if we go to actual flows, I think that defeats the whole  
15 purpose, and so I would not favor this amendment.

16 MR. BAGGETT: Comment. And they would still have  
17 to do the screens and all the other requirements of this  
18 policy, right? I mean, all the other requirements in this  
19 policy still apply, this is limited only to flows.

20 MR. GREGORIO: That is right. This is just the  
21 way to calculate the compliance.

22 MS. DODUC: I can see where this is heading, but I  
23 will go ahead and make the motion to approve the change from  
24 "design flow" to "average actual flow" from 2000 to 2005.

25 MS. SPIVEY-WEBER: I guess I still have another

1 question, and that is, in terms of this policy being a  
2 technology forcing policy, so that is one reason for going -  
3 you know, getting the numbers down quite low, so that there  
4 is an incentive to switch, or do something that gets you out  
5 of the once-through cooling approach. Now, the issue that  
6 Walt raised was that some of these facilities are going to  
7 be needed for grid reliability. And it is my understanding  
8 that we are using the schedule to figure out when they are  
9 going to evolve into something else that fits this design  
10 flow. Is that - am I getting the two things mixed up? I  
11 wanted to get a sense, if you -

12 MR. BISHOP: If the plant is needed for grid  
13 reliability and they cannot meet the compliance date, and  
14 went through this monthly average from 2000 to 2005, and  
15 that would mean they could not come into compliance, but  
16 they were needed for grid reliability, the policy has a  
17 number of places in it that would allow them to get a  
18 continuation, to continue operating, while they were needed  
19 for grid reliability. The difference is that, if we went to  
20 - say we went to design flow and they could meet design  
21 flow, but they could not meet annual average, it would not  
22 matter if they were needed for grid reliability, they would  
23 be able to operate for that period of time. So you would be  
24 changing the emphasis. One emphasis in this is you only  
25 keep those old power plants on as long as they are needed



1 for grid reliability, the other is that you would be saying  
2 that, as long as on an annual average you are not causing  
3 more of an impact, then they could stay on. So they are  
4 both policy calls, they are just a different emphasis.

5 MR. BAGGETT: I understand that, and I think there  
6 is probably a way to work this out, but we are not going to  
7 do it at ten until six today with all this before us. I  
8 think there has got to be something - we have to timeline it  
9 into the policy so we know when plants are going to be  
10 retired, unless there is some extraordinary measure and some  
11 energy crisis, which could modify those. But if you put  
12 these numbers in an NPDES Permit -

13 MR. BISHOP: They would only go into place at the  
14 timeline that is at the end of the policy, they do not go  
15 into place before that. This would mean when that date in  
16 the policy of 2015, or 2017, or 2020, they would have to  
17 meet this. It does not mean it between now and then. I  
18 would suggest that you take a vote on this.

19 MR. BAGGETT: I think there has got to be a way to  
20 fix it, but I do not see it.

21 MR. GREGORIO: If I may, just one quick  
22 explanation. Before you vote, just, again, it is worth  
23 knowing about, the period that we use, which as I said  
24 earlier today, was very difficult to get that information,  
25 we managed to get it, the 2000 to 2005 period, there are

1 some, including some of the folks in the energy agency, the  
2 Energy Commission, for example, that do not feel that is  
3 necessarily a representative period. I just wanted to  
4 mention that because it is just something to consider. And  
5 using a different period is problematic also because of  
6 having to collect all that information - which would be  
7 basically the responsibility of the power companies, but  
8 still it would be an effort.

9 MR. BISHOP: So, Board member Doduc has -

10 MS. DODUC: Has tried to move this item.

11 MR. BISHOP: -- has moved it. Is there a second?

12 MS. DODUC: We do not need a second.

13 MR. BISHOP: All in favor?

14 MS. DODUC: Aye.

15 CHAIR HOPPIN: Aye. All those opposed?

16 MR. BAGGETT: I oppose.

17 MR. PETTIT: No.

18 MR. BISHOP: Fran, I am sorry, I did not get -

19 MS. SPIVEY-WEBER: Aye. I am sorry.

20 MR. BISHOP: So, now I think we are on to the  
21 combined cycle. There were a number of issues related to  
22 combined cycle and so what we tried to do is figure out a  
23 path and provided some credit for the past changes that the  
24 combined cycle plant put in place, but did not provide for a  
25 variance or a direct compliance for all combined cycle, and

1 we did not propose to put in credit in there from past  
2 mitigation. So what we propose here to try and address the  
3 numerous concerns was to, under D here, was to essentially  
4 remove the "choose one of the following compliance options,"  
5 and then delete those two sections that follow that. What  
6 that does is give, in the sections above, the credit for  
7 past changes in flow for the combined cycle, but does not  
8 give it for the mitigation, and does not find them deemed in  
9 compliance. That is not exactly what anyone asked for, but  
10 it was what we could work towards, I think.

11 MR. BAGGETT: Wait, so you are on page 5. I have  
12 got my old marked up copy, which has all kinds of notes, so  
13 you are looking at D, leaving the first part of D on there,  
14 and then erasing everything below it? D(i) where it goes,  
15 "The owner or operator may count prior reductions?" You are  
16 keeping that sentence?

17 MR. BISHOP: Yes.

18 MR. BAGGETT: With the asterisks behind it, but  
19 not the end of that sentence?

20 MR. BISHOP: Wait one second - no, all we are  
21 keeping is above that, where it is the whole section about  
22 the owner or operator may count prior reductions in  
23 impingement," that section, and then it explains how it is  
24 done with the maximum permitted discharge.

25 MR. BAGGETT: Got it.

1           MR. BISHOP: And then both those sections on that  
2 maximum permitted discharge, and then deletes everything  
3 following.

4           MR. LAUFFER: And I would just add, to make it  
5 crystal clear for all the Board members, there is a lot  
6 being balanced in here, one of the changes is that you will  
7 see that there is a sentence in the middle of what was (i)  
8 that is eliminated so that it is now basically - you are not  
9 looking to the entire plant, you are looking at the units.

10          MR. BAGGETT: We already did that.

11          MR. LAUFFER: And we did that below. And then, in  
12 addition, there was a change that Dynegy had requested, that  
13 the reductions should be broad-based, not just the  
14 reductions in entrainment, and so we have accepted that  
15 change of Dynegy's on Dynegy's suggestion, and that is based  
16 on the record we had from the Moss Landing facility.

17          CHAIR HOPPIN: Any questions of staff? MR.  
18 BAGGETT. Is that a motion?

19          MR. BAGGETT: Yes.

20          CHAIR HOPPIN: We have a motion from Mr. Baggett  
21 to accept the language as amended. All those in favor,  
22 signify by "aye."

23                 (Ayes.) Any opposed? It carries.

24          MR. BISHOP: Okay, the next section is dealing  
25 with the suspension language in the SACCWIS. There are a

1 couple of changes here. I will jump through this one first  
2 because it deals with the idea of serial 90-day suspensions  
3 or consecutive 90-day suspensions. We looked at a number of  
4 options for this and we think that, by just adding a  
5 sentence that says, in B, this is for the longer than 90-day  
6 suspension, or for consecutive less than 90-day suspensions,  
7 would not require coming to a hearing of the Board. We did  
8 not choose the option that the environmental folks put  
9 forward that Member Doduc asked us to look at because the  
10 logic, at least that we had, is that if you ask for less  
11 than a 90-day suspension, and we eliminate the ability for  
12 them to be consensual, the end of that 90 days is they are  
13 in compliance, and so they could not have another one in  
14 that year, they would never have another one for that  
15 facility because they would either be in a longer than 90-  
16 day suspension, or they would be in compliance. And both of  
17 those would come to the Board for a hearing, so that is why  
18 we chose this. This, I think, closes that gap.

19 MS. DODUC: The other part of that language was  
20 that suspension would not be allowed more than three times  
21 per facility. I think under this language -

22 MR. BISHOP: You only get one suspension before  
23 you come to the Board for a hearing, and then the hearing  
24 would set the timeframe. You would not keep coming back for  
25 90-day suspensions if you had one -

1 MS. DODUC: Okay.

2 MR. BISHOP: -- and then you come back.

3 CHAIR HOPPIN: Jonathan, what if they had three  
4 consecutive 30-day under the less than 90-day suspensions?

5 MR. BISHOP: We would allow three consecutive 30  
6 days as long as it was less than the 90 days.

7 MS. DODUC: I am fine with this and move for  
8 approval.

9 CHAIR HOPPIN: Any other discussion. Those in  
10 favor signify by saying "aye."

11 (Ayes.) Any opposed? It carries.

12 MR. BISHOP: Okay, the next issue is the issue of  
13 your authority and the authority of the SACCWIS and the  
14 CAISO, and this idea of making it an overriding  
15 consideration. I am not going to be as elegant as Michael  
16 is on this, but what we thought about is that, instead of  
17 requiring you to make some finding of overriding  
18 consideration, and not asking CAISO to make some sort of  
19 demonstration, but that you would listen to what they say  
20 and give them grave significant weight, afford significant  
21 weight to them, is a balance between the idea of requiring  
22 them to make a demonstration to you, or you make a  
23 demonstration of overriding consideration. This is what we  
24 thought was in the middle. And did you want to mention  
25 anything else? Okay, so that is the proposed language to

1 deal with that issue.

2 CHAIR HOPPIN: I can tell you are just dying to  
3 move the motion there, Francis.

4 MS. SPIVEY-WEBER: I am. Well, no, I think  
5 because - it was my understanding that because we now are  
6 taking over NPDES responsibilities, that are enormous, this  
7 is - it makes it more palatable for some to reduce the, you  
8 know, to not have this overriding consideration language  
9 because -

10 CHAIR HOPPIN: If you were not so much younger  
11 than I am, you could have been my wife with a statement like  
12 that.

13 MS. SPIVEY-WEBER: I am sorry, so I do move.

14 CHAIR HOPPIN: All those in favor of the  
15 amendment, that does help temper the original language  
16 proposed that I was horribly uncomfortable with -

17 (Ayes.)

18 MR. BISHOP: Okay.

19 MS. DODUC: Yes, that was an aye.

20 CHAIR HOPPIN: It was somewhere below my tonsil.

21 MR. BISHOP: Okay, the next deals with the interim  
22 mitigation measures and there were two issues related to  
23 that. The first is that we had - we have got it on two  
24 pages, so I am really going to have a difficult time here -  
25 that we had delegated or proposed delegating to the Division

1 of Water Quality the authority to evaluate alternate methods  
2 for the habitat mitigation. This would delegate that back  
3 to the State Board.

4 MR. BAGGETT: But we gave that to a Division  
5 Chief.

6 MR. BISHOP: Any time you want it, but right now,  
7 the request was to have that come back to the State Board,  
8 and so that is the change.

9 MR. BAGGETT: Okay, that is fine.

10 MR. BISHOP: Anyone like to make a motion on that?

11 MS. SPIVEY-WEBER: Move.

12 MR. BAGGETT: Second.

13 CHAIR HOPPIN: All those in favor, signify by  
14 "aye."

15 (Ayes.) Any opposed? Thank you.

16 MR. BISHOP: Okay, the second issue has to do with  
17 making sure that any mitigation projects are actually  
18 addressing increasing some marine life, and that they are in  
19 the geographic region of the facility. This one is here and  
20 it is also in another place, which is under the nuclear  
21 facilities. It mirrors the same language, I can show you  
22 that in a second, but I will get lost because I am not good  
23 at this.

24 MR. BAGGETT: I move.

25 MS. SPIVEY-WEBER: Yes, I move - no, actually, Art



1 did.

2 CHAIR HOPPIN: All those in favor, signify by  
3 "aye."

4 (Ayes.) Any opposed?

5 MR. BISHOP: Okay, then we have a small change in  
6 the nuclear-fueled power plant section, which was to  
7 reinsert the word "safety" into this. In the past, we  
8 originally had "safety," we removed it in this last version,  
9 and there was a request to consider inserting it back in.

10 MS. DODUC: I would move it, but I would also add  
11 "safety" to the third line up from the bottom, so it reads,  
12 "results in a conflict with the Commission's safety  
13 requirements." So I would add "safety" there, as well.

14 MR. BISHOP: Okay. So there is a proposal to add  
15 "safety" in two places.

16 MS. DODUC: Thank you.

17 MR. BISHOP: Any discussion on this?

18 MR. PETTIT: I guess I am comfortable with the  
19 change because my guess is, well, more than a guess, that  
20 probably anything that the NRC touches with respect to those  
21 plants, they consider a safety issue, so I think that is a  
22 pretty broad term.

23 CHAIR HOPPIN: With that being said, all those in  
24 favor signify by "aye."

25 (Ayes.) Any opposed?

1           MR. BISHOP: Okay, thank you. Under the issue of  
2 SACCWIS, we have the two items here under Item 5, the first  
3 is the overriding concerns and replacing that with "affords  
4 significant weight." I would say that, since we already did  
5 that earlier, that it would make sense in this instance to  
6 do the same thing, but that is up to you.

7           MR. LAUFFER: And just for purposes of clarity,  
8 what Jon is suggesting is that there are multiple changes  
9 that the Board may see up on the screen, and members of the  
10 public may see, Jon is solely dealing with the first issue,  
11 which is to add "affords significant weight" to the  
12 recommendation, and the striking of the rest of that  
13 sentence, unless the State Water Board finds that there is  
14 completing evidence not to make the recommended  
15 modifications, and makes the finding of overriding  
16 considerations, we will address the next issue separately.

17           MR. BISHOP: Yeah, I am sorry, I should have been  
18 clearer.

19           MS. DODUC: So moved.

20           CHAIR HOPPIN: Any discussion? All those in  
21 favor, signify by "aye."

22           (Ayes.) Any opposed?

23           MR. BISHOP: Okay, the next issue here is the issue  
24 of providing a two-year period of suspension or extension  
25 based on the ability of a facility to get a permit. The

1 recommendation is to just strike this section. It does not  
2 constrain you in any way to have this removed, you can  
3 provide extensions. What it means is that you are not  
4 limited under that specific item, but when it is a permit  
5 that you have to give a two-year extension.

6 MR. BAGGETT: So moved. That is what we do in  
7 water rights all the time.

8 CHAIR HOPPIN: Any discussion? All those in  
9 favor, signify by saying "aye."

10 (Ayes.) Any opposed?

11 MR. BISHOP: Okay, we get to the special studies  
12 for the nuclear power plant. There is a proposal to insert  
13 into it "that special studies will be conducted by an  
14 independent third party" and add in "with engineering  
15 experience with nuclear power plants." We would have done  
16 that anyway, but -

17 MR. BAGGETT: This is Steve Fleischli memorial  
18 language.

19 CHAIR HOPPIN: All those in favor of the  
20 amendment, signify by saying "aye."

21 (Ayes.) Any opposed? Thank you.

22 MR. LAUFFER: Quickly, to run through -

23 MS. SPIVEY-WEBER: No, no -

24 MR. LAUFFER: Yeah, I am going to describe these  
25 because these were actually -

1 MS. SPIVEY-WEBER: Are you going to A or to B?

2 MR. LAUFFER: I am going to actually present both  
3 of these together because Board member Baggett had raised  
4 this as an issue that he saw them sort of inextricably  
5 intertwined. These are issues that both the environmental  
6 groups objected to D, and the nuclear facilities, as well,  
7 to a certain extent the environmental groups, expressed  
8 reservations about the mixing of the various factors that  
9 are under Paragraph 7, that included both economic cost  
10 considerations, as well as consideration under Paragraph 7B  
11 and C that concerned both feasibility and other  
12 environmental impacts. And considering the direction from  
13 Mr. Baggett, and also the requests from both the nuclear  
14 facilities to specifically identify where the costs were  
15 identified, we have one consolidated staff recommendation,  
16 which is to staff any other relevant information under  
17 Paragraph 7 and then revised Paragraph 8, it is actually an  
18 amalgam of the proposal from SCE and PG&E, and it would now  
19 read as you see it up on the screen, "The wholly  
20 disproportion, or wholly out of proportion costs, we will  
21 look at the costs identified in the Tetra Tech *California's*  
22 *Coastal Power Plants Alternative Cooling Systems Analysis,*  
23 *February 2008 Report,*" so there is crystal clarity on that.  
24 And then the other alternative that could potentially result  
25 in the nuclear facilities having alternative requirements is

1 that compliance is wholly unreasonable based on the factors  
2 in Paragraphs 7B and 7C.

3 MS. DODUC: Michael, I noticed you eliminated  
4 Track 2 from this section. There was a lot of discussion, I  
5 think Mr. Baggett, in particular, asked several parties  
6 about the enviros' suggestion to delete Track 2 from 7B and  
7 7C, as well.

8 MR. LAUFFER: Yeah, and I actually think that is  
9 probably an error on our part. Jon may be able to correct  
10 me. I think in paragraph 7B and 7C, you should also see  
11 Track 2 stricken there.

12 MS. DODUC: Okay.

13 MR. LAUFFER: So the Track 2 will be gone from the  
14 whole discussion of the alternative requirements, the  
15 variance option that is available for nuclear facilities.  
16 And I want to underscore that they are still going to have  
17 to go through the process of proving this up.

18 MR. BAGGETT: I would move it with those two  
19 additions.

20 CHAIR HOPPIN: All those in favor of the  
21 modification, signify by "aye."

22 (Ayes.) Any opposed? Thank you.

23 MR. BISHOP: We are getting close.

24 MR. LAUFFER: Very.

25 MR. BISHOP: Okay, this is that second item, I do

1 believe we dealt with this already, I am just showing it to  
2 you as we go through on the geographic regions. We had  
3 three changes that I would go through, just individually  
4 because it is easier to deal with it that way. Humboldt Bay  
5 Power Plant, changing from one year after the effective date  
6 of the policy to 12/31/2010, you should realize that when we  
7 drafted the policy and put it out in December, we thought we  
8 were going to adopt it in December, and so this would have  
9 been the one year after the effective date.

10 CHAIR HOPPIN: You said the wrong December.

11 MR. BISHOP: Yeah.

12 MS. DODUC: I will move it.

13 MR. BAGGETT: Jonathan, on the Potrero Plant -

14 MR. BISHOP: I am just doing the Humboldt first.

15 MR. BAGGETT: Okay.

16 (Ayes.)

17 MR. BISHOP: Okay, the next one is the Potrero  
18 Plant, Chair Hoppin.

19 CHAIR HOPPIN: I can see that the next one is the  
20 Potrero Plant, but thank you for that explanation. There  
21 was a comment made earlier in the day that they had  
22 unresolved alternative transmission issues in the Bay. What  
23 happens if we put this date on here and they are still  
24 throwing sparks underneath the Golden Gate Bridge a year  
25 from now?

1           MR. BAGGETT: What happens is that, if this comes  
2 up, and they still need this plant for grid reliability, you  
3 will get a 90-day suspension from the CAISO, and if it is  
4 needed for longer than that, you will get a request for an  
5 amendment to this policy. So we have a procedure if it is  
6 still -

7           CHAIR HOPPIN: I assumed that is what you were  
8 going to say, but I mean, clearly in this case we have  
9 parties that are doing their due diligence, but they have an  
10 unexplained mechanical wardrobe malfunction of sorts.

11           MS. DODUC: If I may, Mr. Chair, my objective in  
12 suggesting some of these dates be moved forward is, I guess,  
13 the hope that we would set these dates obviously with the  
14 expectation that, should any unexpected, unforeseen problems  
15 come up, it would be addressed through SACCWIS and, you  
16 know, a request of suspensions to us, but that we should, I  
17 guess, send the signal to the power plants and others  
18 interested in this item that the Board is committed to the  
19 addressing the BTA issue and doing so as quickly as  
20 possible. And for these plants, you know, there is enough  
21 information, at least for me, anyway, to recommend moving  
22 the dates up, understanding, of course, that we have also  
23 put in place a process which would then revise the dates, if  
24 necessary.

25           CHAIR HOPPIN: Fran, did you have a comment?

1 MS. SPIVEY-WEBER: I wanted to ask about the  
2 process because this is troubling from my perspective. We  
3 have set up a process that assures the State that we will be  
4 taking advice from the power companies and from the people  
5 that will eventually be the SACCWIS. And we will take that  
6 advise. Right now, I do not know if, for Potrero, for  
7 example, that is the advice that we are getting from our  
8 group. And, you know, I do not oppose this, but once we  
9 start making these decisions about dates on our own, we have  
10 essentially veered from the process, at least that is how it  
11 feels to me, because I am kind of worried about that.

12 MR. BISHOP: Well, I understand that, and that is  
13 why I just ran over to get the copy of the proposed schedule  
14 from the three power agencies that they gave us, which  
15 indicated that this would be completed by the first quarter  
16 of 2010.

17 MS. DODUC: So it is within -

18 MR. BAGGETT: Yeah. PG&E is here, I mean, they  
19 should know.

20 MS. DODUC: And I would also add, I appreciate  
21 Fran's comment. I think one of the reasons we made the  
22 changes that we did recently is that, yes, we obviously will  
23 give great weight to the recommendation from the energy  
24 agencies, but we also need to take under consideration other  
25 issues, as well, in particular with Potrero and South Bay,



1 there is a significant environmental justice issue for those  
2 two communities, in particular, and they have raised  
3 significant concerns that I think, at least from my  
4 perspective, that I would support these earlier dates, given  
5 those concerns, and given the fact that we have been  
6 providing some assurance that they could be met, and allow  
7 for the caveat of changes later on through the appropriate  
8 process.

9 CHAIR HOPPIN: You can add clarifying information.

10 MR. BEATTY: It is clarifying information, I  
11 think. Sean Beatty with Mirant. And you know, we have an  
12 agreement with the City and County of San Francisco to get  
13 this thing closed as soon as possible. There is new  
14 information that comes to light that contradicts the  
15 information Mr. Bishop just had, which is the Transbay Cable  
16 is not online and that was supposed to happen in the first  
17 quarter of 2010. My concern is, if you look at the timeline  
18 of the compliance framework you guys are considering, that  
19 to get the regulation or policy approved and invalid or  
20 effective, could take several months. There are three  
21 months for the SACCWIS to get formed, and I am concerned as  
22 a plant operator that, with the 2010 deadline, that the  
23 process really will not be in place if we need an extension,  
24 and I am hopeful that by 12/31/2010, Unit 3 will be offline,  
25 but based on the fact that the Transbay Cable is not

1 operative at this point, there is a possibility, and it is  
2 being discussed with the ISO, that this plant may have to  
3 run over into 2011. It is possible, it is not the preferred  
4 outcome, certainly, for our employees who have a tremendous  
5 amount of uncertainty as to what is happening at this plant.  
6 We would like to have some certainty. But the reality is it  
7 looks to us like it is a possibility this will go beyond  
8 2010.

9 MS. DODUC: So are you ruling out the possibility  
10 that it will not go beyond 2010?

11 MR. BEATTY: I am sorry, I did not understand the  
12 question.

13 MS. DODUC: Are you telling the Board that you  
14 will not be able to accomplish it in 2010?

15 MR. BEATTY: No, I do not know the answer to that  
16 question.

17 MS. DODUC: Exactly, so -

18 MR. BEATTY: The only point I was making, and I do  
19 not mean to extend beyond my rights here as the record being  
20 closed, is just from a procedural perspective, if we  
21 determine, say in November, even October, that it is not  
22 going to be possible to turn off, there is no process in  
23 place -

24 MR. BISHOP: No, our understanding is that, if you  
25 needed a short term extension, there is the CAISO would be

1 for grid reliability, they could automatically get the 90-  
2 day extension.

3 MR. BEATTY: Okay, well, I guess I am advising the  
4 Board that it does not look to me exactly like we know for  
5 sure that the end of 2010, if the representation is that we  
6 might be able to get an extension of the policy before it is  
7 even effective, then you know, I guess based on that  
8 representation, so be it. But given the uncertainty  
9 surrounding this plant, and the fact that this is the first  
10 time we have heard of the change in the policy, where  
11 previously it was going to be one year from the effective  
12 date of the policy, we really have not been engaged on the  
13 issue, so there is a tremendous amount of uncertainty that  
14 causes some consternation here.

15 MS. DODUC: I appreciate that, but I will still go  
16 ahead and move for approval of this change.

17 CHAIR HOPPIN: Mr. Bishop, are you comfortable  
18 that we have the extension mechanism, I mean, this is  
19 somewhat of an unusual situation that has been laid out in  
20 real life in front of us. And they could always turn the  
21 damn thing on and kill everything within two square miles of  
22 this cable that would be shorting out, I guess, and show us.

23 MR. BISHOP: Since you are asking for my opinion,  
24 I will lay it out for you. I am uncomfortable with the idea  
25 that we set compliance dates that are within six to seven

1 months of the time that we adopt a policy. If we do not get  
2 this policy through OAL, Office of Administrative Law, by  
3 December 31<sup>st</sup>, they will kick it back, because this date is  
4 not feasible. You asked, I tell you, I would prefer to keep  
5 it as one year, but I do not think in reality - I think we  
6 have the mechanisms in place that allow us to provide the  
7 extensions, too.

8 CHAIR HOPPIN: That being said, we have a motion  
9 in front of us to adopt Ms. Doduc's proposal. All those in  
10 favor, signify by saying "aye."

11 MS. DODUC: I guess I better vote for it.

12 CHAIR HOPPIN: There might be one.

13 MS. DODUC: I know.

14 CHAIR HOPPIN: All those opposed?

15 (Ayes.)

16 MR. DODUC: That nay was an "aye."

17 MR. BISHOP: I understand. It took me a minute,  
18 but... And then there was the last date issue was for the  
19 South Bay Power Plant, the change would be from 2012 to  
20 2011, the end of the year.

21 MS. DODUC: And I suggested 2011 and not 2010 as  
22 Assembly member Salas and others had recommended, because we  
23 heard, I believe, from the CAISO representative, both in  
24 December and today, that they are meeting to consider  
25 whether or not this plant will be needed for 2011. So I

1 presume that it will be, and so give them until the end of  
2 2011. So I will move this change.

3 CHAIR HOPPIN: Any comments on this particular  
4 issue? All those in favor of the motion, signify by "aye."

5 (Ayes.) Any opposed. Carried.

6 MR. BISHOP: Okay, I do believe there is one more  
7 issue, the 12-month to 36-month timeframe for monitoring,  
8 there are two places where that is being proposed. I  
9 skipped by the first one, I think. There it is.

10 MS. DODUC: So moved.

11 CHAIR HOPPIN: Discussion? All those in favor,  
12 signify by saying "aye."

13 (Ayes.) Any opposed? Are you done, Jonathan?

14 MR. BISHOP: I think that covers all of the  
15 changes. There was one issue that I think you ought to at  
16 least see, is every place that we changed State Board to  
17 Regional Board. Do we need to go through that, Michael?

18 MR. LAUFFER: For the record, I think it was  
19 adequately described. Everywhere where there is a decision,  
20 is a decision point at this time, it now is the State Water  
21 Board as opposed to the Regional Water Board, and that was  
22 pretty clear when the motion was made.

23 MR. BISHOP: Okay. Okay, so now what we need to  
24 do, Michael, right, is to read through the changes and vote  
25 on the package. Is that correct?

1           MR. LAUFFER: For clarity sake, you know, I would  
2 feel more comfortable just quickly running through it. By  
3 my count, there were 17 motions that carried, you know, I  
4 want to be clear that everything that you all have heard so  
5 far is clearly within the scope of all of the discussions  
6 earlier today. I think all the parties did a very good job  
7 laying out markers different ways on the various issues, and  
8 it is certainly within the scope of the consideration that  
9 your staff had already done with respect to preparing the  
10 Substitute Environmental Document. I mean, all of these  
11 issues are analyzed. In many respects, these are fine  
12 tuning policy calls that the Board is making in terms of how  
13 the implementation would carry out. So I think it I has  
14 been pretty clear what the Board has voted on so far, and I  
15 would feel comfortable if the Board wanted to go forward  
16 adopting it today. I do want to be clear, you always do  
17 have the option to either continue the proceeding, or go on,  
18 but everything I have heard, we did not hear any new  
19 environmental issues today, in fact, the only issue that we  
20 heard from an environmental perspective in terms of the  
21 Substitute Environmental Document was just somebody  
22 reiterating that they did not feel the Response to Comments  
23 were adequate, but they did not articulate how they thought  
24 they were deficient. The changes that I have, and they are  
25 all reflected up on the board here are, first of all, that

1 the State Water Board would be issuing the NPDES Permits.

2 MR. BAGGETT: So you are going to go through what  
3 the consensus was?

4 MR. LAUFFER: Yeah, well, I am going to go through  
5 what I counted as the 17 motions that carried, just so that  
6 it is clear what the Board would be voting on.

7 MR. BAGGETT: I appreciate that.

8 MR. LAUFFER: The first would be that the State  
9 Water Board issues the permits, the NPDES permits for these  
10 facilities; the second is that we now would be taking it to  
11 unit-by-unit, and that carried, as well; the third amendment  
12 was for Track 2, that there would have to be a not feasible  
13 determination made by the State Water Board before somebody  
14 could avail themselves of Track 2; the fourth was to go to  
15 average monthly flow; fifth was the package of changes  
16 associated with the combined cycle facilities.

17 MS. DODUC: I am sorry, Michael, could you go back  
18 and clarify that was average monthly flow from 2000 to 2005?

19 MR. LAUFFER: Right. In this case, I am trying to  
20 encapsulate what the motion was, but it was the language  
21 that was up for the Board's consideration.

22 MR. BAGGETT: So it was not the language proposed  
23 by the NGO's?

24 MR. LAUFFER: There was a slight variation, I  
25 believe, from their language.

1           MR. BAGGETT: It was actual flows, which we have  
2 in the record, not the most current flows.

3           MR. LAUFFER: Right, it is from 2000 and 2005.  
4 When I describe the average monthly, I am just trying to  
5 encapsulate what the motion was. The language was the  
6 language that was presented up for the Board at the time and  
7 approved the motion. As I said, the fifth change was the  
8 package of changes associated with combined cycle  
9 facilities; the sixth change was the consecutive 90-day  
10 suspensions, and foreclosing the option for consecutive 90-  
11 day suspensions without getting a hearing from the State  
12 Water Board; the seventh change was with respect to the  
13 State Board giving significant weight to the recommendations  
14 of CAISO; the eighth change was that it was going to be the  
15 State Water Board's determination, not the Division of Water  
16 Quality's Determination, obviously at a future date you  
17 could delegate that if you so chose; the ninth change was  
18 the package of changes to reflect the geographic proximity  
19 to the facilities and the fact that the mitigation had to be  
20 for enhancements to marine life; the 10<sup>th</sup> change was the  
21 addition of the two nuclear safety requirements from the  
22 Nuclear Regulatory Commission, so, in other words, "safety"  
23 became the modifier for the both the requirements; the 11<sup>th</sup>  
24 change had to do with using the significant weight test to  
25 the joint recommendations of the energy agencies, from the



1 SACCWIS, when making proposals to modify the policy for grid  
2 reliability purposes; the 12<sup>th</sup> change was to eliminate the  
3 two-year extension provision for an ability to obtain  
4 permits; the 13<sup>th</sup> change was the requirement that the  
5 independent third party selected by the Executive Director  
6 be somebody with engineering experience in nuclear  
7 facilities; the 14<sup>th</sup> change had to do with the package of  
8 changes to clarify, to remove Track 2 from the Special  
9 Studies for the nuclear facilities and to clarify how the  
10 nuclear facilities could avail themselves of the variance;  
11 the 15<sup>th</sup> change was the date modification for the Humboldt  
12 facility; the 16<sup>th</sup> change was the date clarification or  
13 modification for the South Bay facility; and the last two  
14 changes, the 17<sup>th</sup> change, had to do with getting 36 months  
15 worth of monitoring data. And those were all the motions  
16 that had been carried by a majority of the Board. And so,  
17 at this time, a motion to move that entire package of  
18 changes to the staff proposal would be in order.

19 MS. DODUC: So moved.

20 MS. SPIVEY-WEBER: Second.

21 CHAIR HOPPIN: Any further discussion?

22 All those in favor, signify by "aye."

23 (Ayes.) Any opposed?

24 MR. BISHOP: Thank you very much.

25 MS. DODUC: Thank you, staff.

1 MS. SPIVEY-WEBER: Thank you.

2 CHAIR HOPPIN: Thank you.

3 MR. BISHOP: I think it would be appropriate to  
4 close the meeting.

5 (Whereupon, at 6:31 p.m., the meeting was adjourned.)

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