## CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

## SAN DIEGO REGION

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In the Matter of the Public Hearing

RE: All items on the agenda, including, but not limited to, Poseidon Resources Corporation, Proposed Desalination Project.

PARTIAL TRANSCRIPT OF PROCEEDINGS

San Diego, California

Wednesday, April 9, 2008

Reported by:

GIDGETTE NIEVES

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> PARTIAL TRANSCRIPT OF PROCEEDINGS, taken at 9174 Sky Park Court, San Diego, California, commencing on Wednesday, April 9, 2008, heard before THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, reported by GIDGETTE NIEVES, CSR No. 10142, a Certified Shorthand Reporter in and for the State of California.

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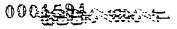
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APPEARANCES:

LEGAL COUNSEL:

CHAIRPERSON: Richard Wright VICE CHAIRPERSON: David King BOARD MEMBERS: Susan Ritschel Eric Anderson Elizabeth Pearson Schneider Wayne Weber EXECUTIVE OFFICER: John Robertus

Catherine George



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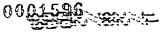
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San Diego, California, Wednesday, April 9, 2008 1 (Partial transcript) 2 3 I would also say the same thing for MR. WRIGHT: 4 the other organized presentations. And I know you'll do 5 6 everything in organized presentations to keep comments 7 brief and lacking representations. So at this point, let's hear staff presentation. And approximately how much 8 9 time? MR. KELLEY: Probably 15 minutes. 10 MR. WRIGHT: No more than 15 minutes. 11 12 MR. KELLEY: Mr. Chairman, members of the board, my name is Brian Kelley. I'm a senior water resource 13 control engineer in charge of the new core regulatory 14 unit. And the purpose of this item is to consider 15 16 approval of a revised flow entrainment and impingement 17 minimization plan dated March 6, 2008 as required by Order Number R9-2006-0065; MPDS number CA0109223 for the 18 19 Poseidon Resources Corporation Carlsbad desalination or desal project. Because of the voluminous amount of 20 information regarding this matter, I would first like to 21 22 provide a brief list of items that are included in your 23 agenda materials. 24 You have in your first agenda packet for this item the executive officer summary report project location 25

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map and the flow schematic. Copy of order number R9-2006-0065; copy of a regional board comment letter dated February 19, 2008 regarding the original flow entrainment and impingement minimization plan. A copy of Poseidon's revised flow entrainment and impingement minimization plan dated March 6, 2008; including attachments, which is the plan that you will be considering for adoption today. And also copies of the four comment letters that we received through March 28, which was the first mail out of agenda material to the Regional Board.

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Then in the second agenda mailing sent on April four, you have a supplemental executive officer summary report. A tentative resolution number R9-2008-0039; a regional board technical report dated April 4, 2008, and copies of additional comments received since the date of the first agenda mailing up until the deadline for written comments, which was the close of business on Wednesday, April 2, 2008. Two letters, one from the San Diego County Farm Bureau and one from the Santa Fe Irrigation District, who inadvertently left out both agenda mailings. Copies of these have been handed out to you today.

I would now like to provide a brief description
of the proposed Carlsbad Desalination Project and the
background of the Regional Board's regulation of water

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quality aspects of the project.

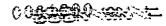
The proposed project would need approximately 304 million gallons per day for MGD of seawater on the Encina Power Station once through cooling water system affluent. The Encina Power Station intake is located in the southwest corner of the Agua Hedionda Lagoon. Can you see it's right in here. The powerplant is here. This is the opening to the lagoon. And then here's the discharge The Carlsbad desalination facility would produce channel. up to 50 MGD of potable water, up to 57 MGD of combined concentrated saline waste water and filter backwash waste water from the facility of with commingle of at least 200 MGD of pass through cooling water from the powerplant, and the combined flow would be discharged to the Pacific Ocean via the current Encina Power Station discharge channel across the beach. So you can see the intake structure here coming back down through the desalination plant. The 50 MGD will go into the potable water and the remaining backwash and filter will come up this way and come back into here. Commingle with the remaining discharge through the powerplant and then be discharged to the ocean.

As originally proposed, the Encina Power Station seawater intake cooling flows needs would have far exceeded that of the Carlsbad Desal Facility, the 304 MGD. More recently however it appears that the flow needed for

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power generation has been less than the 304 MGD needed for the desal facility. Last year, based on flow data from the power station, the cooling water intake flow volume dropped below the 304 MGD approximately 40 percent at a time. Regarding regional board regulation of the Carlsbad desal project, on August 16, 2006, the Regional Board adopted order Number R9-2006-0065 for the discharge of waste water from the Poseidon Carlsbad Desal Facility with the effective date of October 1st, 2006 and an expiration date of October 1st, 2011, a five year permit.

Section 6C2E of the order required Poseidon to submit for approval by the Regional Board a flow entrainment and impingement minimization plan within 180 days of adoption of the order. This plan was required in order to comply with California Water Code Section 13142.5, which mandates that new or expanded industrial installations used best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality: in other words, entrainment and impingement of all forms of marine life. Approval of this specific plan, however, is currently not a condition in the permit for commencement of the discharge from the Carlsbad Desal Facility. I would also like to point out that the permit does not provide for the situation when the desal project is operating in absence of the



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powerplant operations. The current permit would need to be modified or a new permit would need to be issued to incorporate requirements for stand-alone operation of the desal project.

For reference, the Encina Power Station intake and discharge are regulated under order number R9-2006-0043, and PDES number CA 0001350, which was adopted on the same day as the Carlsbad desal permit on August 16, 2006. And both permits have the same expiration date of October 1st, 2011. The order contains a flow rate limitation of 864 MGD. Since the powerplant has a thermal discharge, it is subject to the requirements of Section 316B of the Clean Water Act. This requires that the location design, construction, and capacity of cooling water intake structures reflect the best available technology for minimizing adverse environmental impact.

Unlike the Water Code Section 13142.5B, the Clean Water Act Section does not include mitigation as a measure to minimize impacts.

On February 13, 2007, Poseidon submitted the first version of the flow entrainment and impingement minimization plan. Following regional board and other interested parties comments on the first plan, Poseidon submitted a revised plan dated June 29, 2007. To supplement this plan, Poseidon also submitted a coastal

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habitat restoration and enhancement plan dated November 2007 as required by the California Coastal Commission.

The reason the board sent a letter to Poseidon dated February 19, 2008 identifying seven general comments and ten specific comments on the plans submitted up to that date.

On March 7, 2008 Poseidon, submitted a revised minimization plan dated March 6, 2008. As I mentioned, this is the plan that's being considered for approval today. Page six, dash, three of the revised plan contains a table showing an implementation approach and schedule. Following regional board approval of the plan the proposed schedule includes elements for contacting the California Department of Fish and Game. Contacts with other resource agencies, convening meetings with all agencies, distribution of mitigation program details, modification and finalization of the mitigation program, and final consideration and approval of the mitigation project or projects by the coastal provision in July 2008.

Furthermore, as stated on Page six, dash, 18, the State Land's Commission refers the right to terminate the lease if Poseidon is not using best available design, technology of mitigation measures at all times as determined by the regional board or any other federal, state, or local entity.

Based on regional board staff review of the 1 revised plan and as described in the technical report from 2 Kiara Clemente, senior environmental scientist for the 3 central water unit John Robertus dated 2008 resolve 4 concerning the data and calculations used to determine the 5 impacts to marine life. The conclusions derived and the 6 process for agency approval of impact assessment and final 7 litigation alternative or alternatives. Written comments 8 have been received from several interested parties, and 9 10 copies of these comments are included in your agenda packet as previously mentioned. The comments from the 11 12California Assembly Member Martin Garrett, the City of Coronado, and the California State Land's Commission were 13 received after the written comment deadline. And I have 14 15 copies of those letters, if the board would like to accept 16 them for consideration. Two of the letters are one page 17 in length mostly promoting--urging the board to move 18 forward with this project. The other one is four pages 19 and has some specific issues regarding the revised plan. 20 I can hand those out if you would like to 21 receive them. 22 I'd like to see them. MR. RAY: 23 MR. WRIGHT: If you would. Would you also 24 provide a copy of that table. Is it in here. 25 MR. KELLEY: That is not in here. We prepared

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that after the materials. And we can provide that to you too.

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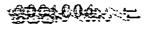
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Finally, a copy of tentative resolution R9-2008-0039 has been prepared for your consideration of adoption. And as currently worded, the resolution would approve the revised flow entrainment and impingement minimization plan dated March 6, 2008 with conditions.

The first condition is that Poseidon would be required to submit an amendment to the plan subject to the approval of the Regional Board Executive Officer. That includes a specific proposal for mitigation of the impacts on marine organisms resulting from the intake of seawater from Agua Hedionda Lagoon, and resolves the concerns identified by the Regional Board to date.

And the second condition would be that the plan and any amendments approved by the executive officer are of limited duration until such time as the Encina Power Station ceases operations, and the Carlsbad Desal Facility becomes a stand-alone project. At that time minimization measures including mitigation need to be re-evaluated for appropriateness.

That concludes my formal presentation. If you have any questions regarding the plan, I can refer those to the appropriate regional board staff person, if I can't answer them myself. Otherwise, I'm available to answer



any questions the board may have for me at this time. 1 MR. WRIGHT: Board members, do you have any 2 questions of Mr. Kelley at this time? Thank you. 3 Let's move to the presentation first by Poseidon ۵ Mr. MacLaggan, Mr. Jenkins, Mr. Mayer, Mr. Nordby, and 5 6 Mr. Garrett. Before you begin your presentation, 7 Mr. MacLaggan, Mr. King had a couple of questions staff. 8 9 MR. KING: I had a question, Ms. George, in terms of the condition that's imposed upon us whether or 10 not there would be work done by Mr. Robertus to see 11 12 whether the subsequent submissions resolve the concerns identified in the February 19th letter. If the subsequent 13 14 acts by John Robertus are going to be ministerial, and we've got a duty that's defined as resolving concerns, do 15 we need to do that with a little more specificity? And if 16 17 we need to start working on an amendment so more specific 18 language right now that sets forth exactly what he is 19 going to checklist off rather than leaving something that 20 sounds discretionary and vague, I would rather refine 21 that. And if we need to make an amendment, go ahead and 22 have that language prepared as we're talking through all 23 this.

MS. GEORGE: Well, I think that you can allow the executive officer. He has delegated authority from

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the Regional Board to undertake variety of action. But it would certainly be appropriate to have more specificity in terms of what he would be -- what the criteria would be that he would use to evaluate whether the condition has been met. So we could work on some language to that effect.

Is this something we can be working MR. KING: 8 on right now that we can get some language with more specificity, cause that is the concern that I'd rather Ģ raise now than raise later in the show. 10

MR. KELLEY: I think we could work on some language, maybe some bullet items, that would be a little bit more specific than the generalities start that.

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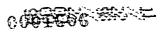
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MR. KING: Thank you.

MR. WRIGHT: The assumption is we would go along with this language provides by the executive officer may very well be or another alternative would be that we would decide we don't want that to happen. That the board itself would then take on that role--final approval.

20 MR. ROBERTUS: Is that a possibility? 21 MS. GEORGE: Yes. The permit conditions 22 specifies the plan should be submitted for regional board 23 approval so that's what the permit says. The executive 24 officer can carry out that function. If you want to 25 reserve that specifically for the board, that's certainly



your prerogative.

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MR. KING: In order to define this as a ministerial duty as clear -- we want that as an option to be able to leave it in the hands of the executive officer. My preference would be to have more specificity within that particular condition. We can go any number of ways in regarding to making our final decisions on resolution before us here. But in terms of where we're going, I would rather have some language ready to be able to kick that around.

MS. SCHNEIDER: I agree with that. But I do think for the sake of being efficient that if we could get the language and we could approvE the conditions that he signs off on after our approval that would be more efficient probably. So I agree with your approach.

MR. WRIGHT: Mr. Robertus.

MR. ROBERTUS: Yes, I would like to point out that what I envision that if you delegate to me the work to continue on the plan after this date, the board will approve the plan. The plan is essentially a process by which the mitigation -- the mitigation determination resulted from that process. And as it's been presented to us by Poseidon, in order to initiate the plan, the board has to take an approval action. It's not clear in the order that the approval of the plan to initiate

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implementation of the plan enclosed the approval by the board of the actual mitigation. I can oversee that process and do that on your behalf, or I can oversee that process and when the determination is made with the decision on the mitigation bring it to you for the part of the approval along with the other agency.

The question there would be to what extent would the approval of the board by your decision today be a condition of the approval of the mitigation itself. I could -- whether you want to delegate that to me or bring that back to you.

MR. WRIGHT: Just for sake of efficiency, if you can follow Mr. King's suggestion.

All right. Now Mr. MacLaggan.

MR. MACLAGGAN: Good afternoon, Mr. Chairman, members of the board. Peter MacLaggan, Poseidon Resources.

It's a pleasure to be back before you with respect to the Carlsbad desalination project eight years in the making. It's a critically needed supply element for the region, and this is one project that we all can be proud of.

Let me just say right up-front with respect to the discussion you just had, Mr. Chairman, board members, is our understanding with the respect to the proposed

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tentative resolution that it does require the final plan to come back before you for approval. You're in support of that position. And if there's interest in adding additional specificity as a board member King had suggested to clarify exactly what it is that needs to be done now, and then we also are in favor of that recommendation.

And, Mr. Chairman, with respect to your request that we contain our presentation to 15 minutes, I will do everything humanly possible to do so. I'm going to skip over some matters. I've asked some of our speakers on the speaker slips before you also to waive their time. So that stack of cards will diminish as a result.

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Let me jump right into --

MR. WRIGHT: Thank you.

MR. MACLAGGAN: There are eight matters that we're going to discuss. And I'm going to skip over Item one project summary in an effort to move this along. We'll discuss why the matter is before the board. What the plan entails. Why it is a conservative approach. Why the plan is responsive to the permit requirements. And the water code requirements. What are the environmental benefits. And the next steps, our recommendation.

So I'd like to take you to Page seven of your handout, if you will. And we will start there with the

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question of why this matter is before the board. And your staff has correctly indicated that the plan is not required as a precondition of Poseidon's ability to commence the discharge. It's absolutely right. However, what's important to us is that the permit does require that the Regional Water Quality Control Board approve the plan as a pre-condition of the signs and building to access seawater when the powerplant is not operating. And in particular as mentioned by staff due to the intermittent operation of the powerplant. Action by the Regional Water Quality Control Board is necessary at this time to specify the conditions under which Poseidon will be able to access seawater under the permit.

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Additionally, State Land's Commission has delayed its approval of Poseidon's lease for use of the existing intake and outfall until the Regional Water Quality Control Board approves the plan.

Both the City of Carlsbad and the Coastal Commission have evaluated the impacts of the project without the operation of the Encina Power Station and approved conditions for this mode of operation. An approval of the plan that's before you, conceptual approval, that it's being considered at this afternoon will facilitate ongoing coordination of uninterested state agencies and ensure that the Regional Water Quality

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Control Board's requirements are being addressed.

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Purpose of the plan. An anticipation that the powerplant might not always satisfy the desalination facility source water needs. Regional board required to sign and prepare a flow entrainment and impingement minimization plan to assess the feasibility of site specific plans and procedures, practices, implementations and/or mitigation measures taken together to minimize the impacts to marine organism when the project requirements exceed the volume of water being discharged by the Encina Power Station. This is the question that's before you. The adequacy of this plan and whether or not it meets the objective--the permit requirements. Again, it's a feasibility study of basic investigation of key elements of the water code, site design, technology, and mitigation to minimize the impacts to marine organisms.

With respect to development, this plan has been under development now for 13 months. We've been through three drafts and 13 months of public review and comment period. There was initial 45 day of comment period followed by a nine month comment period and the most recent draft has been out for 30 days. The point here is that there's been a lot of activity over the extended period of time, and we think that the plan has addressed the basic requirements of the water code, which is to

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identify the best available site, design, technology to estimate the unavoidable impacts after taking into consideration those measures confirmed that mitigation is feasible, which we have established a state agency coordinated process for that identification of a preferred mitigation plan. In terms of the best available site requirement, this site has been given extensive scrutiny by both the City of Carlsbad and the Coastal Commission is the one site that has compatible zoning and land use; the least environmental impact; the least disruption to the community. And both the Coastal Commission and the. Carlsbad EIR concluded that there are no feasible less environmentally damaging sites available for the proposed project.

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With respect to design features, there are several that have been included. But the first and foremost is that we will use the discharge of the powerplant as the source water to the extent it is available, which eliminates the impacts altogether. In 2007, 61 percent of our water would have come from the powerplant leaving the desalination plant needing to pump the remaining 39 percent. For its purposes under which case we would initiate the efforts to minimize through design features the mortality of marine life related to reduction of flow, temperature of the seawater, slowing

down the velocity of that water moving through the plant. All of those minimize the mortality of the marine organisms, who will be eliminated to keep treatment processes associated with the powerplant operations.

With respect to technology, we have included a variety of technology measures to provide a broad means of minimizing the impacts. And rather than going to the specific details, let me point out for you the conclusion that the Coastal Commission reached last November on our Coastal Development Permit; wherein they found that Poseidon is using all feasible methods to minimize the reduces impact to marine organisms. With respect to impingement, the Coastal Commission found that the impacts were diminimus and insignificant. And then we considered a number of opportunities to modify the intake to the powerplant and look at alternative intakes such as subsurface wells. We've considered four types of wells. And we looked at these systems from every possible angle. And here again the alternative intake systems were determined by the City of Carlsbad as well as the Coastal Commission not to be the environmentally preferred alternative. And in the interest of brevity here, I'm going to leave it at that point. We have more details to share with you if there's any questions as to how we reach that conclusion. The point here is that these systems

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will not work for a facility this size or anything close, and they have been given careful scrutiny and that conclusion has been reached by two separate regulatory bodies.

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In terms of the plant itself, we think it's an extremely conservative look at how to address this In that we have overestimated the entrainment problem. and impingement impact associated with the project and accounting for how much mitigation we would require. And the reason why we did that is we decided it will take all of the use of the powerplant water. Assume it didn't happen. Assume that the technology features and the design features to slow down the water to lessen the impacts are not providing any benefit. And we assume that all of the water needed to be moved by the desalination facility, and that there will be 100 percent mortality to all the organisms in that water. This is a two, three, four-fold overestimate of the actual impacts of the project. And the significance here is for the purposes of establishing the mitigation requirement, we estimated the level of impact is considerably greater than anything that would actually occur. It's very conservative. It piles a worse case, upon worse case, upon worse case.

Moving on to the mitigation approach itself, we view this as a two-step process. The first step is to

take that conservative estimate of the impact we just 1 described and consider where we might be able to do the mitigation. Both in Agua Hedionda Lagoon and offsite mitigation were considered. This is what I refer to as 4 the feasibility step that is in the plan before you. The purpose of that plan again being to conduct a feasibility assessment. We last August issued a request for proposals 7 for weapons restoration opportunities, and we canvassed the entire San Diego County community of interested folks and organizations and professionals and regulators, city 10 governments, and so on to help us shape this plan. 11 And they came back with eight proposals. We had a stated 12 preference that Aqua Hedionda Lagoon was our preferred 13. sites since that's the side of the project where we'd like 14 15 to do the restoration. Unfortunately, none of the projects that came back related to Agua Hedionda Lagoon. 16 17 We're looking at (inaudible) high tide line. And our obligation to restore wetlands is to create a marine 18 organisms comparable to those that we impact the operation 19 of the intake. And so we concluded that at this juncture 20 21 there was no feasible opportunities in Aqua Hedionda Lagoon and begin looking offsite. 22

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But we are about to embark with your staff and with the Coastal Commission, State Land's Commission staff, Fish and Game, other resource agencies on step two

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of the process, which will lead to selection of the actual mitigation project and implementation. And here we will convene a coordinated meeting where we'll identify additional opportunities on Agua Hedionda Lagoon and elsewhere to the extent they're available. Jointly we will work through a consensus based process with the state agencies to reach a conclusion on the select preferred mitigation site and finalize the mitigation plan and bring it back per the resolution before you to your board for approval within six months.

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Agua Hedionda Lagoon is a rather unique water In that it is a man-made resource 388 acres of body. perstene (sic) wetlands. And it has the greatest number of beneficial uses of any lagoon in San Diego County. And it's the only one that's a working lagoon as well as a recreational lagoon as well as a natural resource. It has fish hatcheries, fish farms. It has recreation and boating, that's not allowed in any other lagoons. And it has all the natural attributes of a marine wetland in its entirety exchange. And it's kept that way through The powerplant shuts down if dredging by the powerplant. the desalination plant does not step in as a stewart of this lagoon moving forward. The lagoon will revert back to its natural state which is closed off from the ocean and not supporting much of any of those existing

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beneficial uses that have been there for the last 55 years.

We are not waiting for the plant to step into our role as a stewart. We are already in the process of working with the Agua Hedionda Lagoon Foundation. Created an educational program for the third and fourth graders. It's called the Aqua Hedionda Lagoon Foundation and Academy for Environmental Science, and we're educating school kids year round on how to protect a watershed. And absent ongoing stewardship that we committed to after the powerplant shuts down we think that this lagoon will revert back to something far less than it is in its current state. So this is, in our view, part of the overall mitigation plan that's before you. A commitment to preserve this resource regardless of whether or not we do any restoration at this site or whether we do it elsewhere.

We firmly believe that the plan is responsive to your permit. I've asked our experts to share with you briefly why that's the case. Address some of the questions in the staff report. We have first Dr. Scott Jenkins from Scripps Institute of Oceanography. Just so you understand his expertise and involvement on this project, Dr. Jenkins has been with Scripps Institute of Oceanography since 1967. Shortly after receiving his Ph.D

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in 1980, he began conducting studies on Agua Hedionda Lagoon. He's conducted numerous studies since then right up to the present. He's been working with Poseidon on analyzing our project related impacts and management of the resource since 2000.

Following Scott will be David Mayer. David Mayer is the foremost expert on the west coast on entrainment and impingement studies. He basically wrote the book on how to conduct these studies. Has been involved in virtually every entrainment and impingement studies that's been conducted up and down the west coast since 1979.

David will be followed by Chris Nordby. Chris is environmental wetlands restoration specialist. For many years he was the manager of the Gasteren (sic) Research Lab at San Diego State University. He's been actively involved in the restoration projects down in the Tijuana River Valley and the Biona (sic) wetlands. And he's been brought on board here with us at Poseidon to help us identify our weapons restoration program in how we would implement such a project.

I'm going to turn it over to them and then just a few brief closing remarks when they get done, Mr. Chairman.

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MR. MACLAGGAN: Mr. Jenkins.

MR. WRIGHT: He already used up 15 minutes, so next speakers please keep your comments brief.

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MR JENKINS: I'm going to address a concern in the staff report regarding the entrainment study, which started in '04 and went to '05. And a large portion of that study was conducted in water year 2005. And the staff report expressly concerns that 2005 was a year of abnormally high rainfall. And the implied worry in that comment was that the high rainfall produced in at a normal lagoon environment that was unsuitable to sustain the salt water organisms the entrainment study was targeting. Ι want to explain why that's not the case in this particular. There's two fundamental reasons for it. Number lagoon. one it's a very small water shed. Number two, the Agua Hedionda Lagoon holds a very large volume of seawater. Now, in the upper portion of this figure, this table three of Page nine of the Tetra (sic) Tech study recently completed on the Agua Hedionda water shed. And the numbers for 2005 appear across the top. I'm going to take the maximum daily discharge measured in 2005 from the Aqua Hedionda creek, and I'm going to apply that maximum daily discharge against the delusion capacity of this lagoon and show you that the resulting change of the salinity of the lagoon is very small. So then taking the 144 cubic feet per seconds maximum flow rate of the creek and applying it

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over a day that would be an influx of 285 acre feet of storm water into the lagoon. Now, it's a very deep There's over 1700 acre feet below tide of lagoon. seawater in this lagoon. In addition, there's an additional 1750 feet of high (inaudibly) exchange. That would be additional water between low tide and high tide. So the total salt water volume of the lagoon is over 3,450 acre feet. So even the worse case scenario in 2005 the maximum daily discharge will only result in eight percent of lagoon water being comprised of storm water. That would depress the salinity only down to about 30.75 parts That's about a 2.7 part per thousand per thousand. depression in salinity. Now, the fluctuation of salinity in the ocean reaches those levels many times as well in the coastal ocean around the lagoon.

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So in conclusion, the lagoon was not transformed into a fresh water lagoon during the 2005 rainy period. It still remained a predominantly seawater body.

I'm now going to pass the presentation off to Dr. David Mayer, who's going to explain whether these kinds of salinity depressions during the 2005 peek runoff were significant, and he will also show you how his analysis method of the entrainment losses is independent of the fluctuations of the population of these seawater organisms.

MR. MAYER: Thank you, Dr. Jenkins.

David Mayer. And board members and Chairman Wright. My background is marine biology and fishery science trained at the University of Washington.

Some decade ago I was doing work at the Yellow River and where I was using a model there to help assess entrainment affects of a powerplant that were being proposed. And the model was called Empirical Transport Model. It occurred to me at that time that it might be useful on the Pacific Coast we're looking at entrainment affects from our coastal powerplants, which are ongoing rivers, but the Pacific Ocean being regarded in some places as river flowing past these large intakes. So I imported this model into the Regional Water Quality Control Board and later the CC comprehension mission process of looking at assessing entrainment affects. And that model over these past ten years has been developed by a number of renowned university professors in mathematics and statistics at University of Washington and Santa Barbara. Most currently Dr. Amundi (sic), that I've worked with over there a long period of time at U.C. Santa Cruz, continues to work on this model. There's just some background to the kind of work that ended up to generate a number that will later be discussed by Mr. Nordby on how this mitigation fits together with offsetting the

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entrainment losses.

Scott Jenkins told you our study again in 2004, and continued for a year on a monthly basis. We collected samples that are wide number of locations in both the upper and middle and lower lagoons and the open ocean. When we sample, we sample over 24 hour basis so we're able to capture the kinds of larval fish that we're focusing on a very long-term and very intensive basis.

Our findings basically lead us--and you probably 9 heard this before. The nine percent of all the larval 10 fish that are entrained at the existing seawater intake 11 for the powerplant are made up by three species. And the 12 most of one is a very small species of fish called a gobie 13 that lives in various tiny mud burrows. The adult gobie 14 15 never gets any bigger than about an inch long. It's not 16 surprising to think that the enormous number of mud flats 17 in the upper lagoon that those products of their reproduction are carried down into the lower lagoon where 18 the intakes located. None of the entrained species are a 19 20 major threatened that we found in none of them. Less than 21 one percent catalase are supported commercial interest 22 from importance. And the project has no impact on the 23 species' ability to maintain populations but the loss of 24 these larvaes going through the powerplant we recognize as 25 something that could be mitigated, and that's what's being

proposed, is to create a body or an acreage of wetlands or habitat that the fish in those areas of new production will create larvaes to offset the losses through the project and partly. Question.

MR. ANDERSON: What were the other two species? MR. MAYER: A blenie, which is again a very small fish. Probably get's no bigger than about two We believe that 90 percent of its population inches long. is found in the aquaculture pet set up in front of the intake where they're growing muscles and oysters. And these are fish that live in those little crevices.

And the third one is the garaboley (sic), which is the large fish you see bright yellow on reefs. They apparently have learned to live in large numbers on the rocky reef of the breakwater right in front of the intake. There's a very, very large population there. So those two species are actually there sort of an artificial habitat setting.

So we look at the entrainment side what's going through a very small to the powerplant and the proposed desal project. We use the result of those to scale up to 22. the proposed volume of the desal project. We use that in a modeling to come to our conclusions. We also looked at fish and other ordinances that are actually screened out by these existing screens and the screens that we use

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during the Poseidon operation, and that's known as impingement. We came to very similar conclusions at the Coastal Commission. We are finding that the losses due to this are diminimus and insignificant.

In general, we believe our results from this model I described to you, the ETM, its result is used as a portion to find an estimate of how many acres of habitat need to be replaced in order to offset the entrainment losses.

As I mentioned earlier, Dr. Amundi, who has worked with us throughout this decade in Santa Cruz . continues to do so. He conceived of an idea of taking our result from this model and using the estimated acreages of habitat -- and I'll be heading on as an example where we did this. And we've done this in many other places along the coast now--to come up with a number of acres. And this is .16 17 referred to a perry (phonetic) production foregone. It's not that habitat is being destroyed out there. Is that if 18 we were to try to create habitat to create enough larval 19 20 fish that are being entrained that we're assuming 100 percent of them are lost. They're not all lost, but we 21 22 assume that for conservatism. How many acres would we do? 23 So we came up with a result of using this method of 37 24 acres. This would completely offset 100 percent of all 25 the entrained larval fish.

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What I want to leave this spot with you before I 1 turn it over to Mr. Nordby is that we are focused on 2 larval fish. We assume 100 percent of those are lost 3 going through the intake. Along with every 100 gallons of 4 water going in there's one larval fish for every 100 5 gallons of water. But along with those larval fish there 6 7 are thousand -- tenths of thousand frankly of zoea planktons, which are crustaceans. And there's nearly 8 millions of phytoplankton that go through essentially 9 untouched because they are a hard body, have very hard 10 shells. Unlike larval fish, they are kind of naked going 11 12 through. So in that sense all of that goes through 13 unharming yet this new marsh or restoration acres will produce more zoea plankton and phytoplankton. And I'm not 14 sure what amounts but in very large quantities, so you 15 have kind of a doubling of that affect. We're offsetting 16 something that isn't really being affected. As well as 17 many other animals that will be described that utilize 18 19 these weapons that aren't even affected by any of the project intakes, seawater intake. 20 21 Any questions? 22 MR. WRIGHT: I appreciate all the expertise 23 that's coming before us. But I just want to remind all 24 the speakers that a mitigation plan is not before us. 25 That's something that is supposed to be produced at a

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later time.

Chris.

MR. GARRETT: I was here to talk about the environmental benefits of the restoration plan, and I'll skip right to it since it's not supposed to be before you today.

We have come up as Peter said Poseidon did look extensively for restoration potential at Agua Hedionda. We're unable to come up with any viable alternatives. Looking offsite we saw an opportunity to compliment the ongoing restoration of San Dieguito Lagoon currently being constructed by Southern California Edison. And one of the places we've identified as potentially creating this 37 or 38 acres of weapons is this magenta line that you see. I want to stress that this is a conceptual level here. mitigation. We'll bring it back before you if you endorse our attempts to take it forward. And here is our conceptual restoration. Again, I want to stress that this is conceptual. It has been modeled hydraulically. It's shown to be feasible and complimentary with the Southern California Edison project, and I hope you support it for further development.

And with that I'll turn it over to Chris Garrett to discuss some legal implications.

I want to go through this quickly. I think this

fits in the framework of why this is in front of you. As we have consistently said to all the agencies that have voted on this project, this board is the agency that the State and the Water Code and the Coastal Act give primary jurisdiction to deal with the issues of entrainment and impingement. It's under Water Code 13142.5B. So we agree with the number of the opposition letters you received. This is the statute that you should look to. And in your consideration today, you should make sure that the plan is being presented responsive to the condition and the permit approval we got in 2006 to develop a feasibility discussion of the plan that would meet Water Code 13142.5B.

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So you have primary jurisdiction. Mr. MacLaggan mentioned a number of other agencies which have taken action on this. But I want to stress it's your board not the Coastal Commission, and not the City of Carlsbad, not State Land's Commission, which has given the authority under state law to implement and enforce 13142.5B under the Coastal Act. The Coastal Commission under 3412B, the Coastal Act is told to defer to the Regional Board and the State board on this issue.

The other thing I would say is when you hear from the opponents today, you received a number of letters, they simply disagree with the plan, but they have

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not presented any evidence of their own or feasible sites, designs, or mitigation measures. And it is within the purview of your board to consider those issues. They have been considered by other agencies as well, and we hope you reach the same conclusion that we have the best available site, design, technology, and mitigation measures provided for in the plan that's in front of you today.

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The other thing I want to say is that this is -- approval of this plan provides a framework for coordination with other agencies. We agree with the executive officer's recommendation today. It does allow you to coordinate with the other agencies, but it is this board which has the final decision-making authority under this issue under state law, and you will exercise that through the subsequent approval of the final mitigation plan that the executive officer provided for in the tentative offer -- order in front of you.

I'm going to skip over. Very briefly I think our speakers today have addressed the issues that were raised by your staff in the central water shed unit technical report. The data that we used is not atypical even though there was a higher rainfall when the data was collected. I think Dr. Jenkins addressed that. We do provide for final recalculation of the ATF, which was another question that your staff had in some of the

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comments.

Another comment from your central water shed unit was what was the agency approval mechanism for final selection of specific mitigation alternative. And I believe it's been answered by your executive officer. The agency approval mechanism will be the approval of the final mitigation plan consistent with the plan you're approving today that will be back in front of you when we submit it within the next six months. We believe the plan that we put in front of you does provide for full evaluation mitigation alternatives.

In conclusion, your decision today is not a re-vote on whether the project should receive approval from the Regional Board. We received that in 2006. That decision by the way was appealed by all the number of the opponents in the room today. That appeal was rejected by the State Board. Their lawsuit against the City of Carlsbad for approving the project was also rejected by the courts. They still have pending a lawsuit against the Coastal Commission. But there's nothing in any of that litigation that precludes you from moving forward today.

The other thing I want to stress is we agree with the executive officer that the approval of this framework plan today is not a final vote on the mitigation plan. Perhaps in an ideal world it would make sense to

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try to have a set of ministerial conditions that only the executive officer would need to check off and comply would not have to come back to the board. But I think given all the facts and issues that are in front of you, the comments of your staff, and the primary jurisdiction that the Board has on this issue, we endorse executive officer's tentative order, which would provide for the final plan to come back to this board.

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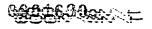
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MR. KING: Mr. Garrett, I think I misread the condition here in terms of describing in as the subsequent ministerial duty. But do you agree that it would still be helpful in terms of, you know, right now we've got a dispute over a domaining of the San (inaudible) feasibility analysis. Wouldn't it still be more helpful to go through the February 19th letter and identify exactly which concerns we want you to come back and address?

MR. GARRETT: It certainly wouldn't hurt. More clarification would be better. But we would say we feel first of all that we're in accordance with the staff recommendation. And secondly, the February 19th letter is fairly specific. And we do feel that we have addressed all those specific items or will be able to where the staff has any lingering questions. For example, this question about the reciprocality of the data 2005 that was



one of the specific questions that was raised in their 1 February letter, and we feel we'll be able to address that 2 as we have today. 3 MR. WRIGHT: Thank you. 4 Mr. MacLaggan, somehow you squeezed out your 30 5 minutes and more I might add. 6 I think we have several speakers MR. MACLAGGAN: 7 who will not be addressing this so hopefully we'll make up 8 for lost time. 9 Mr. Chairman, let me just jump to what's going. 10 to happen after today. 11 We will be working -- we've decided we will be 12 13 working with the Regional Board Staff, Coastal Commission 14 Staff, and other resource agencies to meet and reach 15 consensus on the mitigation goals and objectives 16 identifying that may have been overlooked in Agua Hedionda 17 and other opportunities. This will lead to selection of a preferred mitigation site plan finalize project scope 18 locations implementation. Bring all of that back to you 19 20 in the next six months; set up future meeting date, and 21 we'll also be going back to the Coastal Commission. 22 So with that let me just conclude and state that 23 you asked us to go out and prepare a feasibility state, 24 look at site specific plans procedures, methodologies to 25 be implemented and/or mitigation opportunities the 40

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feasibility thereof minimizing (inaudible) organisms. We believe we addressed that requirement per the permit conditions, and we respectfully request that the Board adopt the resolution that's before you. We thank you.

MR. WRIGHT: Can you go back to the previous illustration. In Item 1A through E, it seems like what you're saying is very different than what Mr. Garrett says when he indicated that the plan finds for full evaluation of mitigation alternatives. And you have -- here it's not what you're saying. It sounds like there's a lot more that needs to be done before you have a full evaluation of the mitigation alternatives.

MR. MACLAGGAN: We are not aware of any other opportunities. But we have heard from your staff; we've heard from the staff of other entities that they want to make sure we take a hard look at Agua Hedionda to ensure we haven't overlooked an opportunity. That's the purpose of the meeting that will be taking place next month with all of the state agencies together in one room. We're actually going to meet at the lagoon there in Agua Hedionda to see if there isn't something that had been overlooked as part of the solution.

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MR. WRIGHT: Thanks.

And in all the alternatives -- and I think it came up before and you told me the answer and I still want

to make sure it's still not a possibility that I think in 1 the analysis that they ask you to use reclaim waters as 2 superior alternative to seawater. There's no way to get 3 reclaimed water to your --4 MR. MACLAGGAN: To our facility? 5 This project -- you might be aware of this being 6 a grower in Carlsbad. Carlsbad is piped throughout with 7 recycled water. Carlsbad is actually the most aggressive 8 user of recycled water in this county. Where 20 percent 9 of their water supply comes from that system. This 10 project is intended to provide potable drinking water as 11 supplement to that program. So it's part of the solution. 12 Conservation, recycling, and the desalination project are 13 intended to ensure that the full compliment of water uses 14 of Carlsbad are commute from reliable locally generated 15 16 sources. 17 Thank you, Mr. Chairman. MR. WRIGHT: We have a number of elected 18 19 officials who have been very patient waiting their turn. 20 We'll start out with Mayor Lewis. Mr. Lewis is the mayor 21 of the City of Carlsbad. Welcome. 22 MR. LEWIS: Thank you, Mr. Chairman, I 23 appreciate being here this afternoon. My name is Bud 24 Lewis. I'm a member of the City of Carlsbad. I'm here to 25 speak on behalf of my 100,000 plus residence of our city. Kennedy Court Reporters, Inc.

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As a current vice chair of the City Water Authority and a former member of the Metropolitan Water Board of Directors, I've spent 14 years working on this regional. water issue, and tentative has been on desalination.

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I notice when you gentlemen mentioned that you're concerned about loss of your hair. I've already lost mine. I think my eyebrows might be short as we keep going into this.

The water delivery system is unreliable. I'm sure you're all aware of that. I want to supply (inaudible) drought; above all restrictions global climate change, and intense competition for water resources. Seawater desalination offers San Diego County the most viable opportunity to create a local supply of water. This local supply is more dependable than the water we currently receive from the Delta or the Colorado River. And I'm sure you're well aware of what's happened to the Colorado River, and what's happened to the Delta next to the federal judge up there. We intentionally located the desalination project next to the powerplant at Aqua Hedionda Lagoon because it is the most available and environmentally preferred location. Carlsbad is the only city in the state that had really good (inaudible) within its boundaries. We recognize that our lagoon is environmentally and recreational treasures and that the



long time stageability is crucial to our citizen's quality of life. And Poseidon is also (inaudible) safe as ourselves. This plan that we have before you today is comprehensively addressed to the needs to protect the Pacific Ocean and Agua Hedionda Lagoon and ecological system. And once again, we rely totally upon our staff and the reports they have as far as getting this information to you.

I personally take you, too, with the repeated opposition to the project from the staff of the California Coast Commission and certain representatives of the Environmental Community.

Three years ago I was at a conference with Peter Douglas in Santa Barbara on desalination. I've known Peter for a long time, and after the presentation, which was very negative, we had a discussion. And his basic thought pattern was this. Number one, we want no more migration in California. Number two, we want no more jobs because jobs create migration. So the real issue is not so much to me what is being discussed here to a degree, but it's more or less a personal attitude that's taken place. And Peter was very open about this. If you ask him about it, he'll tell you. But my family is second, and third, fourth generation Californians, and we need jobs for my children, my grandchildren, and those coming

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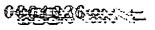
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after.

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2	So if we bound to all these regulatory agencies
3	without looking at the prospects because I've been in
4	government for 38 years as a local official, and I know
5	what if a staff takes a very strong position with the
6	few the board members one way or the other the thing
7	is dead. I've seen it in the city government all the way
8	through. I've seen it on the county level all the way
9	through. So to me you do the best for the most. And this
10	is what this project is all about. Because I, as a policy
11	maker, am partially responsible for bringing new jobs,
12	number one; maintaining the jobs that we have, number two;
13	and number three, being able to rise above these areas to
14	keep our folks here in California. Water is the name of
15	the game. You folks pay a major reason. Some of you are
16	elected officials on City Council. You know the
17	importance of water. And so the idea that a small group
18	can hamper the mast majority, I think that it is something
19	you have to look at very, very closely.
20 -	MR. WRIGHT: Mr. Lewis, if you can summarize.
21	Thank you very much.
22	MR. LEWIS: Thank you very much.
23	MR. WRIGHT: Councilwoman Ann Kulchin from the
24	City of Carlsbad.
25	MS. KULCHIN: Mr. Chairman and members of the

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board, hello, my name is Ann Kulchin. I've had the privilege of serving on the Carlsbad City Council for 28 years. I'm not as old as the mayor. He refers to me as a kid and I really like it.

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During my tenure on the city council, I've worked diligently to assure that the Carlsbad desalination project before you today would provide a dependable local source of water to our region while meeting all applicable environmental regulations.

For its beginning the 1998 to today the desalination project has had ten years of study and public debate.

Today I'm here before you speaking in support of the proposed minimization plan for the Poseidon desalination project. As your staff report says, this has been a controversial project. And that controversy has created an environment where strong emotions rather than good science have often become the center attention. We are all stewards of the Public Trust, Council Members, Regional Board Members, State Land's commissioners, and Coastal Commissioners. We cannot let our feelings or emotions guide the public debate or the decisions that we as representatives of the public must make. We public officials find that emotions is brought into the equation from many sources; including ourselves, our staff, and

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even our consultants. Sorting through what is fact and what is opinion is a complex and time consuming process; particularly when you are dealing with something as complex as this project. And although this is a complex project, the plan before you was submitted in February of 2007.

Your staff has done much analysis in providing many comments on the plan. The public has reviewed the plan and provided many comments. And the opponents of the project have reviewed the plan and provided many comments. And the plan has been amended to reflect these comments.

After more than a year review and comment, it is time for this board to take action based on the facts. The plan before you comprehensively addresses the feasibility of the best available site, the best design, the best technology, and the necessary mitigation for protection of the Pacific Ocean and the Agua Hedionda Lagoon.

It is time for action. I urge you to support the plan. Thank you for hearing me.

MR. WRIGHT: Thank you for focusing your comments.

Councilwoman Julie Nygaard also from the City of
 Carlsbad.

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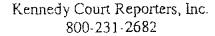
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MS. NYGAARD: Thank you, chairman and members of





the board.

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I'm Julie Nygaard, and I've been a member of the Carlsbad City Council for over 13 years. I've also served as a member of the Water Quality Control Board so it's kind of nice to be home with all of you. And I do understand what you're being asked to do and with regard to this project.

My comments to you today are perhaps from a slightly different perspective than most of the speakers that you'll hear.

I want to address success that Carlsbad and the powerplant operator have had over the past 60 years in being stewards of the Agua Hedionda Lagoon.

Long before the Regional Water Quality Control Board existed, San Diego Gas & Electric built a powerplant on the coast in Carlsbad. Agua Hedionda Lagoon did not exist in its current form. Its natural state is a mud flat that was filled with stinking water, and because of that it's called stinking water Agua Hedionda. Agua Hedionda is manmade, and it's been maintained by a private power company that's part of the operation for almost 60 years. The healthy echo system you see in the lagoon today is a result of good stewardship by a private power company and a local government; not the result of mandates by state boards and commissions. Carlsbad has been

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approved -- has a proven track record as a stewardship with regard to the Agua Hedionda. As an example of this when the Agua Hedionda was threatened with caulerpa taxifolia, it was Carlsbad and the power company that stepped forward to protect the environment and heal the lagoon.

The annual dredging of the outer lagoon, which is essential to the health of the whole lagoon system, has been provided by the power company all these years.

Two lagoons are proposed to be managed by the state agency--Buena Vista and Batiguitos has suffered from neglect and have received little or no maintenance effort on the part of state agencies responsible for their health. And we see no hope of change in that attitude in the near future.

Before you today is a project that can help continue the health and vitality of the Agua Hedionda Lagoon echo system. The once through cooling of Encina Power Station will eventually cease. The need for dredging is part of an operation of the powerplant will cease, and the responsibility for maintenance of the lagoon will fall upon the state. With a less and stella record, state agencies have the stewardship of the lagoon. This prospect is very disturbing to all of us on the council and in our community as well.

I understand the importance of the minimization plan. I also understand the eliminating one through cooling and replacing the existing system with reduced impact of the desalination plant will only improve the quality of the lagoon echo system. And the desalination plant will provide the necessary stewardship of the lagoon that has historically been provided by the powerplant operator.

You have an opportunity to take a leadership position to protect the long-term health of the Agua Hedionda Lagoon by approving this plan. I urge you to take heart and move forward with it, and thank you for your consideration.

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MR. WRIGHT: Thank you.

Mr. Jerome Kern and council member from the City of Oceanside.

MR. KERN: Good afternoon. Thank you for your time. My name is Jerry Kern. I'm council member of the City of Oceanside. As an elected official of the third largest city in San Diego County, I have the obligation to provide water to 175,000 people. And to fulfill this obligation, the City of Oceanside has become the newest partner in the desal partner project.

Last month I toured Colorado and witnessed the tremendous stress that Colorado is undergoing. And as you

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all aware the quantifications limited agreement will limit the water that we get from the Colorado River, and it will cap the amount of water we receive.

The state water project is also under enormous strain both environmentally and through regulation. Casting a doubt over how much water we can consistently expect from the Delta. All of these challenges make the Carlsbad desalination project crucial in diversifying our water supply. In fact, it's probably the most important water infrastructure power tech in San Diego in recent (inaudible). The project will produce about 56,000 acre feet of water of reliable high quality water at a cost that is assured. This is enough for 300,000 San Diegians, about ten percent of the current population. The Carlsbad desalination project is a positive step in the right direction in our region for future water supply. Poseidon Resources has demonstrated that their project will be environmentally responsible and proactive in minimizing any potential impacts. The longer this project is delayed the further we go down the road of endangering all our, water supply in California. We need this immediately.

On behalf of the City of Oceanside, I urge you to approve the resolution before you this afternoon. Thank you.

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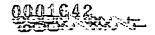
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MR. WRIGHT: Thank you for your brevity.

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Mitch Beauchum chairman of the Sweetwater Authority. And where is your hip helmet?

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MR. BEAUCHUM: I left it back there. Thank you, members of the board. My name is Mitch Beauchum. I'm the chairman of the Sweetwater Authority Board of Directors.

Sweetwater currently provides water service approximately to 180,000 people in National City and the western part of Chula Vista. Sweetwater has recently been named the most reliable waterage in San Diego County because of the diversity of our water supply. While we have instituted many conservation measures with our customer, we believe that seawater desalination is an important part of the solution in the region long-term water reliability need.

As a member of the San Diego desal partners, 1 15 16 nine of us now in Oceanside, our agreement to purchase 17 water from the Carlsbad project will increase Sweetwater's Authority drought tolerance supply to 36 percent by 2010. 18 19 You may ask why a water agency 50 miles from this plant is 20 involved. We see benefit to the region that we're 21 participating in that it also benefits us as an agency, so 22 we're stepping forward as the other partners have done so. 23 This new water supply will replace for a one point basis 24 the water we currently import through the San Diego County 25 Water Authority over the hill from catastrophes or from

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Poseidon Resources desalination project can gain enthusiastic support from the water agencies, cities, businesses, residence, and elected officials including our entire, our entire state and federal delegation. Had you been at the Coastal Commission hearing, you couldn't believe it. I couldn't believe that that consensus was there. But the entire organization is behind us.

We appreciate the due diligence that regulatory agencies have taken to ensure that this is the most environmentally benign project possible. We believe that it has been thoroughly vented, as you saw from the technicians that presented their story here, and utilizes every possible avenue for reducing impact to the marine environment. Every step of the way some within the regulatory community have attempted to delay the project, that's been mentioned today already. If they had been successful, we would be many years, not months, away from the completion of this project. Thankfully they have been largely unsuccessful because their arguments do not hold water.

The Sweetwater Authority Board of Directors ask you to make the right decision -- sorry -- the correct decision and approve the tentative resolution for the flow entrainment and impingement minimization plan for the

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Carlsbad desal plant. Thank you for your time.

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MR. WRIGHT: Mr. Beauchum, thanks for your brevity.

Again, I'd just like to urge or let the speakers know that all members of this board are very sensitive to the needs for augmenting our local water supplies through reclamation, desalination, conservation, and so on. So we don't need to focus on that as much as you would like to perhaps. But I don't think you need to sell -- I guess what I'm saying is I don't think you need to sell the Regional Board on the importance of increasing our local water supplies.

With that I'd like to hear from Gail Newton. MS. NEWTON: Good afternoon, Chairman Wright and board members. I'm Gail Newton. I'm the chief of the division of environmental planning and management for the State Land's Commission. And I came down today to make sure that our letter was in your record, and I heard it just got admitted, so I will be brief. I will not read it. I also want to start off with I'm neither in support of opposition. I filled out a green card. You didn't have a beige neutral card.

My commission has not taken the final action on this issue yet. My staff is still reviewing materials provided by Poseidon and others. And more importantly

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we're still involved in the inter agency cooperation with the commission, your staff, and the resource agencies. So some of the high points in the letter, we're still looking at minimization efforts to make sure that all minimizations efforts have been taken. And that's item number one of our letter.

And breezing through this. We're very concerned about the adequacy of mitigation and that it truly mitigate once they get there for the impacts. Those impacts are adequately quantified. We're working with the Coastal Commission Staff, and they have hired an expert to review the calculations and look more deeply into detail of this.

We're concerned about the speed with which we've gone to offsite mitigation as opposed to on site within the local lagoon, and adopt the mitigation ratios. So we're concerned that usually typically a two to one is usually used and we're down already to one to one basically.

And probably lastly is to reiterate that all the agencies are meeting on May first and second down here in San Diego to go through all the information and to come to a consensus on exactly what should be happening with minimization and with all the litigation on site.

So with that also I will make sure that my staff

includes the recommendation or action you take today in 1 2 our staff's report to our commission, and that would be heard fairly soon within the next couple months. 3 Thanks. 4 MR. WRIGHT: Thank you for your letter and your 5 6 presentation. And I would like to especially thank the State 7 Land's Commission for being engaged in the quality of 8 9 water down in San Diego. I was trying to figure out what side of the fence you were on. I couldn't figure out from 10 11 your letter. 12 MS. NEWTON: We are concerned about our public trust responsibilities. 13 MR. WRIGHT: I understand. 14 Just raising the issues many of which have been 15 16 brought out in other letters as well. 17 Mr. Eric Dietz representing Assemblyman George Plusher. 18 19 Rachel Solorzano. Field representative for 20 assembly member Mary Salice. 21 MS. SOLORZANO: Good afternoon. Thank you for 22 the opportunity to be here. I'm representing assembly 23 member Mary Salice. And I'll read a very condensed 24 version of the letter of support that she has. 25 MR. WRIGHT: Would you correct your name for me.

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MS. SOLORZANO: Solorzano.

MR. WRIGHT: Solorzano. Thank you.

MS. SOLORZANO: This letter is to inform you of my support for the Carlsbad desalination plan, and request that you finalize the discharge permit by approving the key permit conditionS that requires the project to minimize marine impacts.

I am pleased to support Sweetwater Authority who provides water to thousands of my constituents and their bid to increase their drop tolerance supplies of 36 percent by 2010 and be less depended on imported water.

In 2006, Sweetwater Authority contracted Poseidon Resources to purchase 2400 acre feet of water annually. It will be produced at the Carlsbad desalination plant. This water will account for approximately ten percent of Sweetwater's annual gain almost by enough water for about 4800 families each year. The water produced will give the highest quality meeting or exceeding all drinking water regulatory standards under the law. It is also guaranteed never to cost more than the rate set by the San Diego County Water Authority. Ensuring that Sweetwater will pass up exceedingly high water rates to their customers. And this is from the vigorous passing of public scrutiny to ensure that the plant will be environmentally friendly and efficiently

operated. The project developers made every effort by the state and federal environmental regulations and has long since approved their project will not harm the Agua Hedionda or ocean. In fact, their proposal proposed the mitigation measures or resources of 37 acers of wetlands habitat, and will provide for the annual maintenance of the lagoon.

I am proud to support the successful public private partnership between Poseidon Resources with the City of Carlsbad, and I urge you to approve this project. Thank you.

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MR. WRIGHT: Thank you.

Cameron Durckel Director of the San Diego office of the governor.

MR. DURCKEL: Good afternoon. It's a pleasure to be here and thank you for your service. My name is Cameron Durckel. I'm with the governor's office here in San Diego. I'll be very brief.

19 The governor supports desal as a critical 20 component of the state's water plan. Specifically the 21 public private partnership in Carlsbad here. And I will 22 stave off my comments on public private partnerships and 23 jobs. But please keep this in context. A very important 24 project to move forward with in an environmentally 25 sensitive manner.

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And again, thank you for your time in addressing 1 2 this matter. MR. WRIGHT: Thank you for your time. And thank 3 you to the governor. 4 Mr. Jonathan Hardy. Where is Mr. Hardy? 5 He's a district representative in the office of 6 Senator Dick Chaney. We have a letter from the senator. 7 Ken Wiseberg or Weinberg. Couldn't read your 8 writing. 9 10 MR. WEINBERG: Oh, it's very poor. The kids do a better job than I do. 11 Thank you, Chairman Wright. I will be brief. 12 13 I'm Ken Weinberg. I'm the director of Water. Resources for the San Diego County Water Authority. And I 14 15 was going to remark on some of the supply issues before you, but Chairman Wright really hit on the first three 16 things that are really on the top of our list for local 17 supply development; conservation, recycling, and seawater 18 desalination. 19 I'd like to thank your board for your past 20 21 support of local supply development. It's very important 22 to this region. And I think what I will stress is that we 23 are doing all three of those things. We are doing them 24 all aggressively, but there is a sense of urgency. I 25 mean, some of the previous speakers spoke about the

federal decision that limits pumping through the Delta. 1 These next several years are going to be 2 extremely precarious for us in terms of supply 3 reliability. And we were counting on this project to be 4 online by 2011 or so. So there is a sense of urgency 5 It's going to take years for the state to work 6 here. 7 through the issues in the Delta and fix the Delta. Through the course of my career, last almost 20 years, the 8 state's been working on that issue. 9 10 So, yes, we need this for supply reliability, but there is a pressing need, and our board would really 11 urge the Regional Board to continue to support this 12 project and to move it forward through the process. Thank 13 14 you. MR. WRIGHT: Thanks very much. 15 Marcela Escobar. President of Atlantis Group. 16 MS. ESCOBAR: Thank you, Chairman Wright. 17 And I 18 will keep my comments brief. I also have a letter. 19 I'm here today before you requesting that you 20 support the plan as presented by your staff. As a former 21 planning director for the City of Carlsbad and as a 22 Carlsbad resident, I have over 21 years experience as a 23 regulator enforcing wetland use matters. 24 When I worked for the City of Carlsbad, I 25 experienced firsthand how important this project would be,

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not just for our city but for all of the region in order 1 to be able to meet our daily water supplies. We examined 2 all of the alternatives very closely, and we feel that the 3 project before you is an environmentally responsible 4 solution to meet the needs for the region. That's why we 5 can be comfortable that the plan that is before you that б is being recommended by your staff with those conditions is one that will be able to be approved consistent with 8 all of the regulations. 9 And there are other comments in my letter, but I 10 wanted to try to keep it brief. Thank you. 11 12 MR. ANDERSON: Excuse me. Could you identify 13 vourself. MS. ESCOBAR: Marcela Escobar. 14 MR. WRIGHT: We have a number of speakers 15 16 representing water districts. We've already heard from elected officials. We have a number of -- can't tell for 17 1.8 sure whether Mr. Munoz is from the Aqua Hedionda Lagoon Foundation. I'll hold off on that one. 19 20 Oh, I'm sorry. You're already there so go 21 ahead. I was trying to lump like groups together here and 22 make this more organized. Go ahead, though. 23 MR. MUNOZ: Thank you very much for allowing me 24 to jump up at that half opportunity there. 25 I'm president of the Agua Hedionda Lagoon

Foundation. We've been around since 1989, 1990. But in the past couple years we've really expanded our growth about three or four times over, and we've gotten a lot of visibility in the community. We are very supportive of the desalination project, and specifically with what's before you this afternoon, the plan.

This plan required for Poseidon to look at feasibility mitigation, and they've done that. This is a milestone. We think this milestone should be approved at this point. While they did look offsite, believe me no one would like the mitigation to occur in our lagoon more than our group. And sometimes on these complexed situations we need to look at things two or three times. Well, by approving this plan, we'll get that second chance because we're going to have a major meeting, as was noted to you earlier, to look again and exhaust any possibilities for mitigation in our lagoon or closer to home, if you will. And this is something that we're all very excited about. We're going to participate very aggressively in this.

The last call or solicitation to look at this mitigation plan last August, you know, it had some limited success. But we think with this new round there's going to be some new things that could be uncovered. There's been some opportunities at the regional level with RP's

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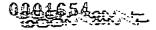
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that have just gone out in the last handful of weeks that we add new components and new opportunities for us to mitigate within public urinals and closer to the site of the desalination project.

Having said that, I do want to point out for those who have been around the county and the area for more than 15 years or so offsite mitigation is not a total failure. Batiquitos Lagoon would not be restored as it is today if it were not for the impacts at the Port of Los Angeles, and that's 90 miles away. Here we're talking about nine miles away. So I think you have enough to show that they met the feasibility for the mitigation plan and allow us to take a second look and make sure there's nothing closer to home that we can find out as far as the mitigation plan that can then come to you later as well. If you need a progress report before then or something, that might be fine. But we think it's important to take advantage of the balance point right now as other speakers have mentioned, elected officials, times passing, and that's creating issues. The time that has past me allow more mitigation options to surface, and then if not you can go forward with what's been laid out.

So we think you're at a balance point and the Lagoon Foundation is very much in support as our council members have spoken were being supportive in a parallel



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manner and urge you to approve what's before you today so 1 that the mitigations can go from feasibility to a final 2 3 plan. MR. WRIGHT: Will you identify yourself for the 4 court reporter and spell your last name. 5 MR. MUNOZ: Eric Munoz, M-u-n-o-z. President of 6 the Aqua Hedionda Lagoon Foundation. 7 MR. WRIGHT: Thank you. 8 Mr. Michael Barden. While Mr. Barden is coming 9 I don't see him. forward. 10 I know Dennis is here. Dennis Bostad. While 11 12 Dennis is coming forward, Rua Petty, Gary Arant, and William Rucker if you'd be ready. 13 MR. BOSTAD: Dennis Bostad, general manager of 14 15 Sweetwater Authority. I have nothing further to add other than to urge you to pass the resolution. Thank you. 16 MR. WRIGHT: Wow, thank you. 17 Hard to follow. 18 Rua Petty. I'm president of the MR. PETTY: 19 rainfall Municipal Water District and also on the board of 20 21 directors of the San Diego County Water Authority. I'll 22 abbreviate my comments to the fact that my agency is part of the agencies that are under contract with Poseidon. 23 24 Seventy percent of our water is agricultural. And right 25 now you're looking at an individual that is living the

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problem of our water supply here in California. If you're
 not aware of it, the agricultural community has cut back
 30 percent here in San Diego.

And my comment is that time is of the essence. Jobs are five billion dollar industry here in San Diego is at risk, and part of that is because of our lack of water. So I'm here to urge you to support moving forward post taste because providing water here in San Diego is not an easy task. Thank you.

Thank you.

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Mr. Arant.

MR. WRIGHT:

Gary Arant, Valley Center Municipal MR. ARANT: Water District. I'm the general manager of that agency. I'm also a director from the San Diego County Water Authority Board of Directors. And I'm formerly a member of this body. I served from 1983 to 1997. I don't want to discourage you when I tell you that in the 14 years I've served on this board and the 11 years since then the Tijuana River pollution, the Regional Board restructuring, and under funding the Regional Board programs, and the San Diego Bay cleanup, and how we are going to get the Port Authority involved were issues that we dealt with my entire time on the board. You do have some new things, and I'm kind of jealous. And that is you're not dealing with expandable diapers and bird waste removal from

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beaches, so that's interesting.

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But you're also dealing with this desal project, and as a rural points out Valley Center is an agricultural agency. And knowing what I know about water and the sound of the chainsaws moving the avocado trees and citrus trees, we have a serious water problem right now. Not two years from now or three years from now, but we have a water problem right now.

As one of the nine agencies under contract with the desal water, I can't emphasize how important this is. You all know that it's been explained that your adoption of this resolution today is not a parallel effort, but it's in the critical path of moving this project forward.

So with that I will urge you to adopt resolution R9-2006-0065. Thank you very much.

MR. WRIGHT: Thanks very much.

William Rucker.

MR. RUCKER: Yes, I am William Rucker. The general manager with Vallecitos Water District with about 30 years service at Vallecitos. And we serve a little over 81,000 people. We're one of the nine member agencies that have entered into long-term contract to meet 44 percent of our demand.

We would urge you to adopt this minimization plan and keep this thing moving forward. Thank you.

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MR. WRIGHT: Thank you.

Mr. Robert Simmons.

MR. SIMMONS: Mr. Chairman and members of the board, will somebody give me a verbal cue when I'm about 30 seconds away from running out of time.

MR. WRIGHT: I'll do that, sir.

MR. SIMMONS: Thank you very much.

My name is Robert Simmons. I'm former chief trial lawyer for the Sierra Club in a number of federal court litigation matters over the years that concerns water supply and the protection of coastal marine recovery agencies on issues that are very similar to those before you now. In addition to that over the last 20 years, I've emphasized environmental and water issues both as professor of law as well as environmental attorney.

I feel incompetent to stand here and express my strong support for the Poseidon plan. I think it responds soundly and directly to the request you've made, the conditions that you've expressed after your last hearing. It complies with all applicable laws. It's a good plan, and I urge you to endorse it today.

I know that there are a number of opponents. Colleagues of mine or at least former colleagues of mine in the environmental community who will soon come up before you and argue that you shouldn't take action today.

You should postpone consideration by some future date. I just want to remind you that these are the same people who have been actively opposing the entire project for the past five years in and out of court every step of the way until today, and they failed each step because they have not had any good sound legal as well as factual arguments. I know that they're not in the mainstream of the environmental community. I know where that community is. I know that the majority of environmentalists in this economy as well as the overwhelming majority of the public in this area agree with me, and that is that reasonable impacts to coastal geniuses is not inconsistent. Doesn't conflict with the production of new water supply to serve this water starving area.

I know, Mr. Chairman, you don't want me to talk about water supply, but let me approach it briefly from this perspective.

And that is this. The Poseidon plant will produce water that will serve 110,000 families in this region, and we need it as soon as possible.

MR. WRIGHT: Mr. Simmons, you have 30 seconds. MR. SIMMONS: Beyond that there's a critical long-term need to divorce ourselves from the near total dependance upon imported water. Water conservation alone nor with water recycling; they won't accomplish this goal.

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But add desalination to the other two strategies and we 1 can achieve this dream of goal of water self sufficiency. 2 Gentlemen and ladies, maybe not in bylaw tact, 3 but certainly yours in the lifetimes of our children. Ιf 4 we move fast, we need to do that. And I appeal you to 5 endorse this plan today and move that certainty along so 6 that we can rely upon it. Thank you. 7 MR. WRIGHT: Next we have Steve Cedie followed 8 by Douglas Metz, Bill Clavenger, Bill Smith. 9 Is Mr. Cedie here? Mr. Metz. 10 11 MR. METZ: Thank you, Chairman Wright and 12 members of the board. My name is Douglas Metz, M-e-t-z. I appear in my capacity as a member of the 13 14 infrastructure committee of the San Diego Regional Chamber 15 of Commerce. I urge that the board without further delay 16 17 approve Poseidon's proposed flow entrainment and 18 impingement plan. This decision will be amply supported 19 by several findings. I'll summarize only three in my one 20 page as submission. 21 First of all, the project sponsors and local 22 governments have exercised due diligence in undertaking 23 environmental studies evidencing minimal adverse impact. 24 In particular the plan has been under review for 12 months and was extensively revised on two occasions in response 25

to the comments received from the board staff and the public. The plan assures, utilizes rather, best available site design, technology, and mitigation measures.

Second, the plan assures maintenance of the water quality of a well functioning lagoon and of the surrounding marine habitat, and is augmented by mitigation measures to be implemented subsequently.

Last and very important of equal by preceding speaker, time is of the essence. And I urge that the project after over eight years in the making not be further delayed by being burdened with conditions requiring experimentation with untested water intake and discharge technologies. Thank you very much.

MR. METZ: Thank you Mr. Metz. Bill Clavenger.

MR. KING: If I can disclose for the record Doug King Law Group. This is completely individual capacity that he is here. We're not representing any individual clients on this matter.

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MR. WRIGHT: Mr. Schmidt.

MR. SCHMIDT: Chairman and members, Jim Schmidt, retired banker attorney. I've served in three positions in the state government, and I now serve on four public boards all without pay by the way.

Anyway, an overriding issue I think is that we

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must have more sources of water you've heard that. The opponents -- one thing about growth, which I know the opponents oppose growth. The reason we're growing is besides foreign immigration people are living too long, that's one of the reasons. There's births over deaths. So are they going to oppose the use of prescription drugs. I'm worried about that. Because my cholesterol is way down 100 points because of prescription drug, if you want to cut down drug.

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Anyway, we face a water shortage. It's not just Carlsbad; as indicated it's Sweetwater and other areas.

In my article I gave you, which I wrote last year before I testified, I talked about the horror stories of Monterey, and Santa Barbara the horror stories. I'll never will forget in Monterey and Carmel--I left there about 30 years--ago every place you went to a men's room and above the urinal it said do not flush. You can't forget things like that.

Now the Coastal Commission and the same opponents you'll have today, the same people, but labor business were there, Chamber of Commerce, local government all in favor. The night of three voting included both members of the San Diego City area. Both members of San Diego were in favor. This will be the 11th plant in California. Not the first one, the 11th plant. The

governor is pushing it, and again all the assembly members, all the state senators, all the members of congress support this.

So I would just urge you very strongly to support this. Make it happen.

We have to have water. I want to be able to water my lawn. That is one of the things I saw up in Santa Barbara. My friends told me they couldn't water their lawns. The company that sprays lawns green made a lot of money. That's unfortunate. Thank you very much. MR. WRIGHT: Thank you.

Chuck Badger followed by Mike Madigan, Gary Knight and an Angelika Villagrana.

MR. BADGER: Good afternoon, Chairman Wright and other board members. My name is Chuck Badger, B-a-d-g-e-r. I'm a third generation citrus farmer from the North County.

My grandfather first came here in 1922, and he came here to farm. He soon realized that water was going to be his most important challenge. He also started the Santa Fe irrigation district. He also served on the Metropolitan Water Board.

My father continued to farm and be involved in water. In fact, he served on this board a few years ago and the seat is now being occupied by Mr. Anderson.

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Eric Larson our executive director sent you a letter. In that he details the drought in the Colorado River you already know about. The couple of the regulatory drought at the Delta, and of course the 30 percent cut back that you've already heard about.

One thing I haven't heard discussed a lot about today is the failure of our state legislators to put any water bonds on ballots this year that will help bring us need of water. But really that's why it's very important for local government agencies and regulatory agencies to help us with water here in San Diego. You know that we need the water.

I was making decisions today on which lemon groves not to water and which ones should get water because of the drought. It's been very difficult for a lot of us.

All I want to do is conclude by saying if we want agriculture in San Diego to continue to provide abundant local products for San Diegans as well as providing viable open space we need reliable water. My father and grandfather worked hard to secure water for my future, and I'm working hard to secure water for my children's future. So I hope that you can help by approving this resolution. Thank you.

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MR. WRIGHT: Congratulations on your position as

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president of the Farm Bureau.

MR. ANDERSON: I need to disclose that I'm a member of the Farm Bureau Board.

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MR. WRIGHT: Mr. Madigan.

MR. MADIGAN: Thank you, Mr. Chairman. My name is Mike Madigan. I'm a past chair of the San Diego County Water Authority Board. I'm a past chair of the California Water Commission, and for seven years chairman of the Bay Delta advisory council to the CalFed process.

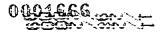
I'm here to do two things. First, I have letters in support from Senator Mark Whiland, Assembly Member Shirley Martin, Assembly Member George Plusher, and Assembly Member Martin Garrett whose staff members were here earlier and not able to stay. I'd like to deliver these to your staff, if that's acceptable. Thank you.

Secondly, to urge you to approve this plan in support of which I will offer you the following four reasons. One, obviously you have asked for this plan, and it is now submitted to you as requested, and it identifies that multiple mitigation plans are feasible.

Two, your action on this item today will bring you into alignment with the current status of the desalination project of both the Coastal Commission and the City of Carlsbad, and will allow you to both exercise your statutory role on entrainment mitigation and work

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jointly with those other agencies on the selection for the 1 final mitigation plan. 2 Three, a continuance, a delay will only serve 3 the cause of delay. 4 And four, for all the reasons which you well 5 understand this project is even more important today than 6 it was when it was first brought to you. 7 Thank you for listening. 8 MR. WRIGHT: Thank you. Q, Mr. Garv Knight. 10 MR. KNIGHT: Chairman Wright and all board 11 members, cut my comments about why we need water you know 12 why. The point I want to make this day is there will be 13 no project that we can put forward to you that will have 14 15 zero impacts. We know desalination projects running and operating throughout the world. I presented Monday to a 16 17 trade delegation from Sweden. When I told them about these meetings and other meetings occurring on this, they 18 19 looked at me and asked why can't you get it done. The 20 rest of the world has been able to. 21 So we look at this project as being submitted to 22 you for the impacts. They have minimized it by using best 23 practices, and they provide the mitigation as requested. 24 We would urge you that you approve this resolution and 25 help us get the water that we already know we need. Thank



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MR. WRIGHT: Angelika Villagrana.

MS. VILLAGRANA: Thank you, Mr. Chairman and members of the board, Mr. Robertus. My name is Angelica Villagrana representing the San Diego Regional Chamber of Commerce; our 3,000 member companies and their 400,000 employees.

Water reliability for our region has always been one of our most important goals. And therefore, we're very interested in any alternative that minimizes our dependence of imported water and diversifies our water supply portfolio. We believe desalination is one such alternatives and a good one. In our opinion, Poseidon Resources has designed a project with minimal environmental impacts. We believe by preparing the flow entrainment and impingement minimization plan Poseidon Resources has provided a road map as to how the project can move forward using the best available site, design, technology, and mitigation feasible to minimize impacts on marine life. Reliable new water needed and the development of local supply makes sense.

Additional infrastructure for importing more water could cost lots and lots of money with limited assurance of water supply reliability. At the time when the entire state in south were suffering from drought in

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environmental water supply issues, we have the opportunity to bring online an environmentally responsible source of drinking water right here in our backyard. Let's not waste that opportunity. It is in all of our interest to move this important water supply alternative forward, (inaudible) water supply in your support.

And our letter of support is in your agenda package. And if I may, Mr. Chairman, (inaudible) wanted to be here in support, but they are in Sacramento at a legislative meeting. Mr. Joe (inaudible) President and chairman, and he has asked me to supply you with a letter of their support, if that's permissible. And for your information by Derrick 550 life sciences companies here in the San Diego region, I have copies of the letter for you. Thank you very much.

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MR. WRIGHT: Thank you.

Lanie Lutar, Kevin Sharrar, Evelyn Peterson, and Gina McBride.

MS. LUTAR: Good afternoon. My name is Lani Lutar. I represent the San Diego County Taxpayer's Association.

The Board of the Taxpayer's Association stands strongly in support of the Carlsbad desalination project. What is most appealing to our organization is the fact that this project is being billed as a public/private

partnership between the Poseidon and the nine San Diego County Public Water agencies. The private sector's involvement has ensured that the region to taxpayers have been insulated from postulated cost increases and the risk associated with permitting a mutifaceted infrastructure project.

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Additionally, the 30 year contract signed by the public water agencies guaranteed a price of water accounts and will never exceed what the rate pairs with otherwise paid for imported water. This is a significant protection and will guarantee rate pairs are not subject to price fluctuation, and it's very important to the Taxpayer's Association.

After ten years in the process, we believe it's time to approve Carlsbad desalination plan and would urge you for your support. Thank you very much.

MR. WRIGHT: Ted Owen followed by Kevin Sharrar.

MS. MCBRIDE: Good afternoon, Mr. Chairman and members, I'm not Ted Owen. Ted apologizes he had to leave. I am Gina McBride. I am chair elect of the Carlsbad Chamber of Commerce. Ted is the president and CEO.

I'm here to speak for our chamber in support of the Carlsbad desalination project. We represent more than

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75,000 workers in our 1700 member organizations across the area.

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The plan to minimize environmental impacts that is before you today meets all of the requirements of the permit this board issued nearly two years ago. The chamber believes that developing an environmentally responsible solution to the region's water need is a key component to achieving our goal of water reliability. This is why we support the City of Carlsbad public private partnership with Poseidon Resources to build an operated desalination plant at no risk to the city or its taxpayers.

For the City of Carlsbad, the desalination project is a water supply, water storage environment, and enhancement project. The Agua Hedionda Lagoon is a vital resource for our city. Many companies and individuals depend on the Lagoon and nearby beaches including a thriving agricultural farm, help SeaWorld Research Institute, and several water recreational facilities. In fact, the entire business community has a stake in preserving the natural habitat and the coastal environment that make north county a great place to visit or do business.

The business community along with the state and congressional delegation, public water agencies,

environmental group, and everyday rate payers including 1 according to a public opinion poll 81 percent of the 2 San Diego County registered voters standing united in 3 support of moving forward on the Carlsbad desalination 4 project. 5 Finally, the Chamber recently awarded their 6 7 first ever Environmental and Spirit Award to Poseidon Resources because of the projects demonstrated commitment 8 9 to the environment; especially to the Agua Hedionda 10 Lagoon. We need to move forward on this project now, and 11 we urge your approval today. Thank you for your 12 consideration. 13 MR. WRIGHT: Kevin Sharrar. 14 MR. SHARRAR: Thanks for the opportunity to .15 speak to you today. My name is Kevin Sharrar, and this is 16 17 my eleven year old daughter Savannah. MR. WRIGHT: Welcome Savannah. 18 MR. SHARRAR: Savannah and her brother and 19 mother and I are very fortunate enough to live in which I 20 21 believe is the greatest community in the country and 22 that's in Carlsbad. We have beaches and lagoons and we 23 can all see today the flower fields, and so many other 24 places to enjoy our national environment. My family 25 really loves it here. My wife and I hope that when

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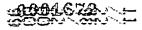
Savannah and her brother Braden go off to college and find themselves families that they come home and call Carlsbad their home as well. Quite honestly I worry about San Diego County and some of the challenges we face in the future that holds for my daughter and my son. The devastating wildfires last year reminded all of us that we certainly have our fair share of challenges.

I don't believe that enough attention is paid to our water supply. Something too many of us I think take for granted. Our water supply depends on outside sources and that the Colorado River and Northern California. We don't have enough water supply to call our own. To be candid, we just can't continue to keep our heads in the sand collectively. I acknowledge that this board's commitment to that. That being said, we can't just go on hoping everything will be okay. It's up to all of us now to fix these problems so that future generations like Savannah's will be afforded to live in the San Diego that we all come to enjoy. We need a water supply that's dependable and environmentally sensitive. The longer we wait the worse the situation will get.

I believe Savannah has something to ask of you today.

MS. SAVANNAH SHARRAR. I respectfully ask you to please approve the Carlsbad water project today. Thank

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MR. WRIGHT: Savannah, I thank you for your presentation.

Evelyn Peterson.

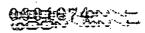
MS. PETERSON: Good afternoon, members of the board. I'm Evelyn Peterson. I'm here representing the Industrial Environmental Association, the IEA, which endorsed the Carlsbad desalination project in 2005.

The IEA promotes environmentally responsibility through effective communication and interaction with our members, government regulatory agencies, business, and the community. Our members endeavor to achieve a balanced relationship between environmental protection, public health, and economically sustainable growth. We believe that an affordable and reliable supply of water is imperative to the future of San Diego's industrial community, which provides jobs for thousands of San Diegans.

In October 2006, your board issued a discharge permit for this project but required a flow entrainment and impingement minimization plan be submitted to provide additional regulatory safeguard. We believe that the plan before you today prepared by Poseidon clearly meets the requirements under the permit you issued. Approval from your board is necessary to move the project forward to the

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State Land's Commission and the California Coastal 1 Commission for the final project approval. San Diego 2 water supply conditions continue to worsen and time is not 3 on our side. We cannot afford further delays. ۵ The IEA strongly urges you to approve the 5 tentative resolution and allow this project to move 6 forward. Thank you. 7 Gina McBride. 8 MR. WRIGHT: At this time I'd like to take a ten 9 minute break. And we need to give our court reporter some 10 I think all of us need to stretch. 11 rest. 1.2 (Brief Recess.) 13 MR. WRIGHT: Meeting to order. We have an organized presentation whereby 14 Gabriel Solmer, Joe Geever, and Livia Borak. I don't know 1.5 if Ed Kimura is a part of that. He's not. 16 But seating time the organized presentation, and 17 18 I assume Ed Kimura, Lori Porter, Sara Craisha, Bruce Resnick, Connor Revrick, Dan Hortell, Jerod Griswald, Lana 19 20 McGuire, Jill Hickman, Julie Truhn, Ben McCue, Christin 21 Mendosa, Angelina Callahan, Rachel Dorfman, Ellen Chuhn, 22 and Marty Benson. 23 Okay. Ms. Solmer, we're ready for you. How 24 much time do you need? 25 MS. SOLMER: We just request 15 minutes for the 83



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MR. WRIGHT: Fifteen minutes is fine.

MS. SOLMER: Thank you so much. I thank you for your patience today. It's been a long day. Thank you for granting this ordinance presentation. I think is the best way to get information across to you. As you've heard, we've had 20 people exceed their time to this presentation; groups like Wild Coast Desal Response Group, Residence for Responsible Desalination, and all the individuals that you've heard. We've all joined San Diego Coastkeeper and Surfrider today.

I will start off this organized presentation, and I'll give it over to Joe Geever from the Surfrider Foundation to tell you a little bit more about our concerns with the plan. We're not going to go into the project today. I think you've had more than enough information on that issue.

Then we'll go to Livia Borak to talk about some of the legal ramifications of today's decision, and then I'll come back up to wrap up.

So I think in the fever to get to the new sources of water we've gotten ahead of ourselves. And so let's just go through some facts that are before you.

You have a mandate of Section 13225 of Port of Cologne to coordinate with other agencies, and we think

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that that's very important for that reference to be provided in the presentation as well. There's an agency coordination meeting. You've heard this again scheduled for May first and May second where these issues are going That's why it's a little perplexing to to be discussed. us why you are poised to make a decision two weeks -- two and a half weeks before that meeting occurs. You need to coordinate not just because of the mandate of Port of Cologne but to take advantage of the agency resources and expertise on this issue. We certainly don't support the overly restrictive proposal within the plan itself of how you should move forward. We think that how you move forward should be decided in consultation with the other agencies. And again that plan and any proposals within it are not before you. They certainly weren't noticed for this agenda, so we don't need to get into that. And with all due respect, that proposed schedule would only take affect if you approve to the plan sort of closing the barn doors after the cow has already been out.

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You've heard arguments a lot today about prejudice to citizens, to the applicant if you wait on this issue. Let me make it clear, you don't have a valid plan that has been adequately noticed before you to vote on. Even if, as we all do, we would want to move ahead on a legally noticed plan, that's not before you today. So

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there's nothing that you can do today to slow or speed up the process in anyway, so those comments really shouldn't come into your decision-making. Again, you're not slowing down the process by not moving through today no matter how other people would like to spin that.

Just on a practical matter, I think most of you have heard that the Coastal Commission has canceled its June meeting where they were to decide some of these issues, so again you have plenty of time to bring this issue back before you, if you did want to legally notice the plan for your approval before we get to the Coastal Commission and before any of this gets held up.

And indeed it does make sense to wait to that time since there is a lot of new information. I don't know how many of you have seen the state board scoping document and its policy for intake on powerplants. That certainly goes to the heart of the matter of these intake issues. There's a lot of useful information. Those workshops are taking place this and next month; certainly direct your attention to that process.

Again, before turning it over to Joe Geever, I just want to talk a little bit about the public review of this process. This plan, and I think we should all be clear about what we are talking about, the flow impingement and entrainment minimization plan has not been

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available to you for a year. It's been available to you for just about a month in its revised form.

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And the technical report that is on the agenda today that is before you, although we certainly agree with its conclusion that says the plan is lacking in a number of areas, it was only written on Friday, five days ago, and wasn't available to the public until after the public comment period had closed.

So given the emphasis that you gave on the last issue, if you can remember back to issue six on your agenda, that you wanted to make sure that all responses to comments were before this board before it acted. We're perplexed that you consider an issue where not only do we not have responses from the staff to our comments; we weren't even able to comment on what's before you today.

So I'll turn it over to Joe Geever for more detail on our underlying concerns and be back up for a wrap up. Thank you.

MR. GEEVER: Chairman Wright and board members, thank you very much. My name is Joe Geever I'm a California policy coordinator for Surfrider Foundation. I hope you've had a chance to read our comment letter of April first that outlined our concerns about the substance of the draft revised plan. I just note that we have not yet received a response to those comments.

I think the race to get this item on the agenda has resulted in a confusing set of documents what's conflicting language in the staff's document entitled technical report and the tentative resolution. Language in the agenda didn't help because it said you will be considering only the technical report. The technical report dated April fourth recommends against approving the plan, if the resolution recommends approving the draft plan and delegating final approval for the executive director.

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As you've heard State Land's Commission Staff, Coastal Commission Staff, and your staff recommend against prematurely approving this draft plan. We are also very concerned about the board prematurely voting to approve this draft plan. By its own admission, the plan as a regard to compensatory restoration project is still a draft proposal not ready for approval. It also seems as if the vote today would approve other aspects of the plan that may be considered final. For example, the plan seems final in its conclusions about technologies to reduce the intake and mortality of marine life. However, the technologies discussed in the plan have not been subject to review and are unproven. More disturbing, this draft plan seems to be final in its conclusion that after the fact restoration is both legally sufficient and the only

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feasible alternative. We disagree. In fact, the draft plan identified alternative intake systems that eliminate the intake and mortality of marine life. They just refuse to pay for them.

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Given the staff's conclusion that the plan is insufficient, we're left wondering what it is that you're voting to approve. What is gained by your action today? Again, today is the first we've heard that this is not a vote on the technical report as stated in the agenda.

So is this a final vote on the conclusions about the best available design and technology to minimize intake and mortality of marine life. Is it a vote that assumption studies and conclusion in the draft plan are final. We want to remind you that any decision today cannot be possibly be a final decision that after the fact restoration is legal. That would be patently incongruent with Port of Cologne. Set of timeless process of the not. We recommend that you grant Poseidon an extension of the deadline prescribed in the MPDES permit, that seems prudent. We wouldn't oppose an extension of time to complete a coordinated multi agency review in fact we believe an extension will likely result in a quicker process towards final approval of the project by the several agencies.

Therefore, once again we employ you to postpone

any decision on the revised plan until the several agencies have coordinated their actions. We are only talking about a couple of months delay. Thank you very much.

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MS. BORAK: Good afternoon. I'm Livia Borak with San Diego Coastkeeper. And to build upon what Joe said there has been a lot of confusion today. To be clear, I'm going to be referencing the plan, the impingement and entrainment flow minimization plan. It's not clear if this plan is an assessment of impact or what it's assessing or what's being approved today. But we should be clear about what the permit, MPS (sic) permit, that's been granted to Poseidon actually says. And that permit requires to assess the feasibility of sites, specific plans, procedures, practices to implement or mitigation members to minimize impact marine organisms.

Now, this is different from Port of Cologne. Port of Cologne requires minimization of entrainment and impingement. This is different. We need to be clear about the difference between mitigation and minimization. Port of Cologne requires minimization and mitigation as well as best technology, best design, and best site are all ways to minimize impacts.

As you've heard, the State Water Board has acknowledged the difference between 316B and Port of

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Cologne. And we acknowledge that they are different. bnA one thing we are all in agreement staff, the state board, and Poseidon is that Port of Cologne applies to this project. And this has to be assessed. The state board -this board has the duty to assess whether or not Poseidon has minimized intake mortality, not minimize impacts, not minimize mitigation. As Poseidon states and as staff states in the letter to Poseidon from Regional Board Staff, it's not clear that this plan has even addressed Port of Cologne and addressed minimization. And it's clear from Poseidon's response that they feel they don't need to do that. That they've addressed best available site, design, technology to minimize project related impacts. That's not the dictate -- that's not what's dictated by Port of Cologne. And just to reiterate, mitigation is not the same as minimization. One is before the fact and one is after the fact. Minimization happens before. Mitigation is supposed to be something that takes care of all the impacts after the fact, after all minimization has been done that is feasible. There is no analysis like this that is contained in this plan. So that's a separate requirement from what Poseidon is telling you. And as far as what analysis is required, it's not supposed to be fragmented and sequential as it is in Poseidon's letter states that they sequentially

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analyzed the steps that have been taken by Poseidon to address the provision that they feel they need to address. They've fragmented the whole process. Port of Cologne requires a holistic approach to inviting impact. Not putting a horse before the cart or a cart before the horse. The plan basically says this is our site. We need to produce this much water we require 300 for MGD, so this is what we can afford and this is what we're going to do to mitigate not mandate the Port of Cologne. And that basically takes the mandate of Port of Cologne and turns it on its head allowing a project proponent to choose what exactly they what to mitigate and say for us this is not the best, that's not what best available means. Legally defensible plan will not only meet the requirement that you've imposed on Poseidon and the MPS permit for this plan, but also meet the mandate for Port of Cologne, which has not been done. As the Regional Board, you require this information, you deserve all this information, not only because it's required but also you need to analyze impact of the project. You need to analyze what is possible for the project to minimize impact before you can decide what mitigation actually is.

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One other speaker said we can't put our head in the sand. I think that's true. And what we would like to say is nobody should put their head in the sand about what

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impacts or what minimization is required by this project. Everything needs to be analyzed before anything can be approved. And I would like to now turn over the rest of the presentation for conclusion by Ms. Gabriel Solmer. Thank you.

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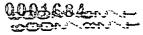
MS. SOLMER: Thanks so much Livia.

Just to wrap up and just to make sure that it's absolutely clear, I think I didn't realize Coastkeeper was a mainstream environmental organization. And certainly that hasn't been my experience. But, you know, I think that the environmental groups have been a little more aligned in this process.

We don't have an objection to a legally sufficient plan moving forward. If that was sufficient today, you know you wouldn't hear any objection from us except for maybe on the noticing issue, which we do think is a problem. But let's just be clear. The future and the timetable is in Poseidon's hands. They were directed to give you a legal sufficient plan that hadn't happened yet. When that happens, we have no reservations with you correctly noticing that, giving adequate time to comment on it, and then voting on it. We certainly will stand by those points.

Just to wrap up quickly, again the revised plan is still incomplete. I think you've heard that from a

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number of people. Even in Poseidon's own words it is not right for final approval. They want you to approve this intermediary process. Which they're calling a plan, proponents call it a plan, but it's not the same as this plan called for in your permit.

And again, contrary to the argument that this delay today will reduce delays with the final project, we think it's only going to create more delay. It's going to create more confusion on this project.

Just again to finally correct some apprehensions made. I won't go through all of them. But an important one is you heard a lot of people say this project has been approved by a number of different agencies. Any time that you've heard the words that the Coastal Commission has found anything. That's not accurate. The Coastal Commission is voting on revised findings next month. So until they do that, unless anyone can see the future, it's not correct to say that the Coastal Commission made those findings.

In conclusion, we would urge your very careful and consideration on all these issues. Again, we very specifically did not get into the permits of desal and the project, the underlying project. But please consider how and when to act for the best use of all of us. Thanks.

MR. WRIGHT: Questions of Ms. Solmer.

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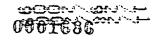
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MR. ANDERSON: Yes, I do. 1 I was kind of curious about the Riverkeeper 2 case, and I think I understand the context as the focus 3 should be on minimization of impacts. But do you mind 4 providing the board with the actual judgment or ruling so 5 we can kind of analyze it and make sure it's in context. 6 7 MS. SOLMER: Did you want a summary of it now or actual --8 MR. ANDERSON: Either one. Maybe executive 9 summary with the rulings. 10 MS. SOLMER: We can certainly give you the 11 If you'd like the summary, I'll have Livia Borak, ruling, 12 who's our president give you a 30 second review if you'd 13 like on how that impacts your decision today. But I can 14 15 certainly get you the rule itself. MR. ANDERSON: I'll leave the other part to the 16 17 chair's discretion. 18 MR. WRIGHT: Do you have a question of Ms. Solmer and Ms. Borak? 19 MR. RAYFIELD: In your written comments, I 20 21 believe you mention Coastkeeper was planning on 22 contracting with an outside expert to review the plan. Is 23 that still the idea or are you still -- is Coastkeeper 24 still going to go ahead and do that? 25 MS. SOLMER: Yeah, that's a joint project



between Coastkeeper and Feder (inaudible) Foundation. We 1 have a contract with that contractor in Colorado. 2 That was my next question. MR. RAYFIELD: 3 MS. SOLMER: And Joe Geever can provide you 4 specific information about that contractor. But 5 specifically we were concerned that they didn't have the 6 time to look at the revised plan, the one that was 7 submitted just a month ago. 8 MR. RAYFIELD: Do you have a completion date 9 10 since you've already contracted with whatever organizations? 11 MS. SOLMER: Yeah, I think we're in the weeks to 12 months range. Not any longer than that. But Joe can give 13 you something more specific. 14 ; 15 MR. RAYFIELD: I'd appreciate a more definitive time frame. Thank you. 16MR. WRIGHT: Mr. Geever. 17 18 MR. GEEVER: Yeah, we've been talking with --I'll try to answer both of your questions, if that's okay. 19 20 We've been talking with the consulting firm that worked 21 with USCPA on the 316B rule. They are going to be 22 reviewing the documents and the plan and the mitigation 23 proposal. And that's why they haven't gotten engaged in 24 reviewing the mitigation proposal because there is none. 25 There is nothing to review. And so giving a date on when

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that review would be final is just kind of hard. T think it's almost the same thing as approving this plan right There is no plan to approve and there is no plan for now. us to review. But I can tell you that they're awaiting They are going to turn around as guickly as that. possible. We want that for -- you know, cause these other agencies are going to be coming right behind you so we need that in preparation for everyone's decision. But until we have a mitigation proposal in front of us it's impossible to review.

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Briefly about the Riverkeeper case. We agree with Poseidon that Riverkeeper applies only to cooling 13 water intakes. And that's because the federal law only 14 deals with cooling water intakes. But the state law deals 15 with cooling, heating, any industrial use of ocean water. But it does include cooling. So the decision in the 16 17 Riverkeeper case the rule that EPA had promulgated 18 included exclusions from what they call their performance standards, which was to reduce entrainment by 90 percent. 19 20 reduce these standards that they were using for minimizing 21 entrainment and impingement. A lot of that rule got remanded back to USCPA to rewrite it. But a couple of the 22 23provisions in there were strictly prohibited from the 24 remand. So using a cost benefit analysis was thrown out. 25 And they can't put that back in the rule according to

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Riverkeeper two. And using after the fact restoration was also thrown out. And a lot of what this plan kind of relies on is using after the fact restoration and then using a cost benefit analysis to show that any of the other alternative intakes are infeasible or whatever. Port of Cologne doesn't distinguish between cooling, heating, or any other industrial process. So if you take the ruling from Riverkeeper two, apply it to cooling water in Port of Cologne or anything else, there's no distinction between cooling, heating, and industrial processes for Port of Cologne. So arguably that ruling in Riverkeeper two applies for Port of Cologne as well. Which would prohibit them from using cost benefit analysis or after-the-fact restoration.

Does that get it what you're --

MR. WRIGHT: Ms. Borak, you have 30 seconds worth of clarity for us.

MS. BORAK: Yeah, just to add to what Joe said, I would just add Riverkeeper two though it does apply to Clean Water Act 316B. The facts that they -- Clean Water Act also is a technology enforcing statue of 316B and it requires best available technology. And in the decision the court basically said that EPA was defined a beacon, as you will, of what the technology is. And in doing that costs benefit analysis was not appropriate. And in

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finding that whatever the best technology is, that is cost 1 effectiveness can be utilized after that in finding out 2 what kind of rages for technology that EPA can have as a 3 substitute for this best technology. The best performing 4 technology is it. So the best available technology is 5 what is the best technology that can be reasonably born by 6 the industry. And that would lend courts for interpreting 7 Port or Cologne kind of an analysis to go by. 8 MR. WRIGHT: Mr. MacLagan, you have three 9 10 minutes. MS. SOLMER: I'm sorry. I believe you have one 11 more speaker. He'd still like to speak. 12 MR. WRIGHT: I'm sorry, I didn't realized he was 13 14 here. I raised my hand. My name is Ed 15 MR. KIMURA: Kimura with the Sierra Club San Diego Chapter. 16 17 Chairman Wright and members of the board, we reviewed the Poseidon Resource flow minimization and 18 pension plan and we find totally inadequate, and I can 19 20 explain the reason. 21 First as I explained in my letter nor in their fish management Group, as well as the State of California 22 23 . Marine Life Management Act now requires a holistic 24 approach to evaluate the impacts on the marine life. And 25 in order to ensure the protection of the health of the

marine resources. The equal systems approach evaluates the many interaction in the like various marine organisms when subjected to stresses human or natural. This holistic approach is the departure from the past, which is directed to the evaluation of stress on individual species. This time it's taken the whole group of impacts.

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Now, here are some of the objections. First the plan fails to follow this equal system approach. The impingement and entrainment plan not only focuses primarily on the fish and fish larval, it fails to integrate the interactions among all the marine organisms from the bottom of the food chain all the way up to the top. And when they are subjected to losses from impingement and entrainment, the plant concludes that the impingement and losses are, quote, diminimus in deciding that this amounts to 2.1 pounds of fish per day. However, it fails to point out that in the yearly basis there are over 19,000 fishes and over 96 species that were killed by impingement. The plan provides very little information on other important marine organisms besides fish larval and entrain.

Second, the plan fails to provide a comprehensive monitoring program that evaluates the current health of the marine equal systems within the impacted area, as well as a reference area not impacted by

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the seawater intakes.

Third, the plant proposes they micro screen to minimize entrainment losses, but it has no plan on how they're going to evaluate this or when they were going to implement it.

And fourth, the proposed mitigation plan not only focuses on fish but fails to off set the losses of the rest of the marine organisms. The powerplant diverts seawater from Agua Hedionda which contains both residence species of marine organisms as well as non residence that come in from the coastal areas. The plan provides no information on these marine organisms such as the species and abundance. Without this information, we doubt whether any mitigation plan can succeed. So we ask you not to approve of this plan, and we have some real concerns about the proposed alternative condition requirements resolution. Thank you.

MR. WRIGHT: Thank you Mr. Kimura.

Mr. McLaggan, do you have some brief comments? MR. GARRETT: Within Mr. McLaggans time, I just want to take 30 seconds to address two points that we just heard. One is the notice question and the second is a river key Port of Cologne what legal standards are you looking at question.

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On the notice question, I'm looking at the board

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I think it's very clear the plan in front of you agenda. is the plan that was dated March 6, 2008, that's what the agenda says. Which your staff report said was submitted to the staff on March seventh, that's the plan you are approving, that's what was agendized. It seems like many other people who spoke on the project had no trouble understanding what plan was in front of the board for your approval today. Again, this is a plan that has been available that we revised in response to staff questions, and it has been available for several months if not years. And since the board established the condition which required the plan, I think the opponents have been on notice that this type of plan was going to be in front of 13. the board. And they've had two years since 2006 to hire whatever experts they wanted on whatever alternative plan they wanted to have the board adopt.

17 On the Riverkeeper question, I agree with Joe I'm not sure Joe Geever agrees with everybody 18 Geever. else that presented. Riverkeeper doesn't apply here. One 19 20 of the issues in 2006 was the whole question about rules 21 for powerplants, the 316B rules, and Riverkeeper, which is 22 a federal court case interpreting federal rules for 23 powerplant intakes. Do those apply to a desalination 24 plan? The answer from your board at that time was no they 25 Instead Port of Cologne Section 13142.5 does do not.

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apply. Your staff had a very nice chart showing the two different regulatory regiments in pointing out the differences between Riverkeeper and the federal statutes and 316B and the Port of Cologne Act 13142.5. That section of the water code, which again gives you primary jurisdiction over all other agencies to decide issues on impingement and entrainment does provide for balancing. You are to be looking at the framework which is put forth in our plan as to best available technology and a feasible mitigation. Those are the standards that are at Port of Cologne. They're not necessarily in Riverkeeper or 316B.

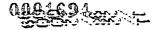
MR. WRIGHT: Mr. MacLaggan, he used part of your time.

MR. MACLAGGAN: Very briefly, Mr. Chairman, I thank you for your patient this afternoon.

Just by way of rebuttal to the Surfrider Coastkeeper presentation. A few points.

First of all, Mr. Geever stated that Poseidon ruled out service intake solely due to cost reason and that's absolutely incorrect. There are three reasons. Cost being one of the three but the other two being more important. First of all, we don't have adequate sediment cover offshore to put sub-service intakes in the area that Carlsbad plant. Consequently, we would have to dig up hundreds of acres of sea floor; basically, kelp bed, hard

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bottom, habitat land to the sea floor plumbing system that looks like a reverse leech field, cover that with sand and pump water on that and process marine destroying several hundred acres of offshore habitat, valuable habitat, as well as putting pump stations on the beach--several; either ten or 20 pump stations. All of which were concluded at the Coastal Commission as well as the City of Carlsbad. Not to be the most environmentally responsible alternative. The existing intake or use of the existing intake both entities found to be most environmentally responsible preferred alternative.

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Second point, the comment was made that the Surfrider Coastkeepers only had 30 days to review the draft plan. I will remind you that the second draft plan was not on the Regional Board's website for nine months. We received no comments whatsoever except from your staff. And the third draft was responsive to those comments in the fashion we simply added more information, more details. So the plan itself has not changed for almost a year now. There was ample opportunity for comment, and all we did was boast on what was there. So if it was fine before adding more information, not changing the substance of the recommendation shouldn't change the acceptability of that plan. We see no reason for delay. The plan before you is not contrary to your permit requirements as

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suggested. We met the feasibility requirement of our charge under the permit. We have an opportunity to prepare now a final mitigation plan that will be back before you in the months ahead. If we wait for a perfect solution, we will never see the benefits of this water supply project. This is precisely why the Port of Cologne Act is referred to as a balancing statute. Your charge as a board is to look at the environmental impacts and the need to support the economy and housing and all the other beneficial uses of water supply and balance those two and come to a reasonable decision that protects both. You need to support human life in the area along with the need to protect environment. We think we struck a balance in that regard if the plan moves in that direction.

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Consistent with Port of Cologne 13142.5B has a feasibility component, and it provides for mitigation after you've exhausted your feasible technology measures. Our plan has exhausted the feasible technology measures. City of Carlsbad EIR, the Coastal Commission decision agree with that. They said there are no additional feasible measures be taken. We are now all focused on mitigation. So what you do by your action today by approving the draft resolution, you bring your staff to the same point with the other two entities are as we move forward with this joint statewide coordination. You say

to your staff by conceptionally approving this plan we're 1 pass the mitigation design components. We're focusing our 2 attention now on how we mitigate, and make sure we have 3 enough mitigation. We've got the right site. 4 The implementation scheduled the planning consistent with --5 MR: WRIGHT: Will you wrap up, Mr. MacLaggan. 6 MR. MACLAGGAN: Yes, Mr. Chairman, we 7 respectfully request that the board approve resolution. 8 ģ The resolution is before you. Thank you very much. MR. WRIGHT: Mr. King has a question. 10 MR. KING: A question for Mr. Garrett. 11 Did vou have a black line comparison to the second and third draft 12 of the plan? 13 MR. GARRETT: No, I don't. 14 MR. MACLAGGAN: Mr. MacLaggan. Just a comment ,15 on the black line. Black line will not be helpful because 16 17 one of the comments we got from your staff was to provide greater clarity as to how we addressed each of the 18 19 elements on statute. We did a wholesale reorganization on the plan breaking it down into new chapter format. 20 So if I did a black line it would look like it's an entirely 21 different report. It's just we took information and 22 23 reorganized it in its presentation. Well, there isn't a 24 tremendous amount of new information. I can highlight 25 what's new between the two drafts if that would be

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helpful. If you did a side by side black line, it would 1 look like we did a wholesale rework of the report. It's 2 just reorganization is what that amounted to. 3 MR. ANDERSON: Just a real quick question. 4 On your analysis you analyzed an awful lot of 5 minimization technologies and some of those are new. As б 7 this process moves forward, you may discover some actually more feasible at a later date. I would encourage you to 8 consider using them as they become feasible. 9 My second thing, some analysis of the reclaim 10 water option would make me feel.a lot happier, but 11 everything else it generally supports. 12 MR. MACLAGGAN: May I just make one quick point 13 14 regarding Dr. Anderson's comment about future 15 technologies? MR. WRIGHT: You're pushing limits here. 16 17 MR. MACLAGGAN: I understand. I just want to make sure the board understands. 18 19 What your staff is working on is an interim solution on the powerplant continues to operate. 20 We are 21 inherently limited under those conditions. The powerplant 22 ceases altogether all the new technologies are back before 23 you, and your staff has full authority to require of us. 24 MR. WRIGHT: Another question, Mr. MacLaggan. 25 MR. RAYFIELD: Yeah, I'm sorry. 107 That's the way I understood the report. And I learned today that you're Guaranteeing the price or someone is guaranteeing the price of the water produced by the plant to be the same as imported water cost. And I find those two statements that, you know, that we are back to ground zero and technology and the like when the powerplant shuts down, but yet you have a financial cap, if you will, on the cost of the produced water. How do you do that?

MR. MACLAGGAN: That's our inherent risk as a developer of this project to make sure we continue to produce water at an affordable price. If the technology is required of us ten years from now is deemed available and feasible, presumably it has a reasonable cost to implement as well and we won't be able to afford to do it. Recognizing again that this statute has feasibility component. Part of that is cost. Part of it is that does the technology work? Is it environmental --

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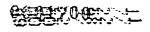
MR. RAYFIELD: Sure. Lots of issues there.

MR. MACLAGGAN: We think that that's part of the question that will be before you when you require us of that. Is it affordable in a reasonable sense. That doesn't mean our enterprise has to continue to be one that is profitable from your perspective.

MR. RAYFIELD: As I understand the conditions.

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MR. MACLAGGAN: There is an upper limit as to 1 what the cost would be we consider feasible. 2 MR. RAYFIELD: As part of that guarantee, if you 3 will, competitive price for your water versus the imported 4 water? Is there a substantiation in there from your group 5 that helps with that? 6 There is. And just so you MR. MACLAGGAN: 7 understand. What we have committed to do is never charge 8 more for the water. The price of the awarded purchase of 9 imported water plus an increment of \$250 per acre foot 1.0that is available to our customers from the Metropolitan 11 Water District to offset a demand on the imported water 12 systems and substantiate to encourage things just like we 13 14 are trying to do. MR. RAYFIELD: So the matter is substantive into 15 the \$250 per feet. 16 17 MR. MACLAGGAN: For the first 25 years of 18 operation. MR. RAYFIELD: So when we are talking about caps 19 too, I heard someone say that there is a cap on the 20 21 mitigation measure costs. 22 MR. MACLAGGAN: No, sir, that was a misinterpretation 23 of our report. We recognize that we have an obligation to 24 mitigate to the extent feasible. We've identified via --25 MR. RAYFIELD: In that case feasibility being



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technical and not financial?

MR. MACLAGGAN: Feasibility being the information that Mr. Mayer walked you through showed you how we arrived at the 37 acres of restoration required of the project. Now it's our challenge to go find a site where we can do that in a affordable fashion. I don't have any expectation that that number is going to go down. If anything, it's going to go up. We did not set -- we suggested in the State Land's letter we set a \$3 million cap on mitigation. I can assure you we are going to pay a lot more than \$3 million dollars mitigation for we have not set any financial. For limits, we just said our commitment is to provide at least 37 acers to what was restoration. And the location to be determined, we identified feasible sites we think that can occur.

MR. RAYFIELD: I understand that. But somewhere during this session today I did hear the statement that there was a cap on mitigation.

MR. MACLAGGAN: It was suggested by the State Land's Commission staff, and that was incorrect interpretation of our proposal.

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MR. RAYFIELD: Thank you.

MR. WRIGHT: Mr. Kelley.

MR. KELLEY: Just to clarify the agenda notice language, the words "technical report" refer to the March

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1	sixth revised flow entrainment/impingement minimization	
2	plan. They do not refer to the staff technical report	
3	dated April fourth, that's a different document.	
4	And I would just refer the staff's	
5	recommendation over to Mr. Robertus.	
6	MR. RAYFIELD: Are you saying we made an error	
7	on the notice and called the document by the wrong name;	
8	is that what you're fundamentally saying?	
9	MR. KELLEY: I guess we consider it a technical	
10	report. You could call it different things.	
11	MR. RAYFIELD: Yeah, but there was something	
12	called a technical report out there or they came out? I'm	
13	just trying to get this	
14	MR. KELLEY: Yeah, later a staff technical	
15	report did come out.	
16	MR. RAYFIELD: But that's not what it meant by	
17	the words	
18	MR. KELLEY: We also refer to the plan as a	
19	technical report. Maybe that was a misnomer.	
20	MR. RAYFIELD: Okay, one other question. We had	
21	a February 19th letter that raised issues in question and	
22	so forth. Was every one of those issues addressed to your	
23	satisfaction?	
24	MR. KELLEY: Not at this time. And I will say	
25	one additional comment on that. And that although	
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Poseidon provided all the additional attachments and specific data based on our review over the last 30 days, since that has come in, it has raised a couple of additional questions that we didn't include in that February letter as well. Because really now we can see the actual data, but then it raises questions on how they use that data to come up with the actual number. So that's still a question for us. We'd like clarification for that.

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MR. RAYFIELD: Thank you. One last question. Are you convinced that what we have in front of us in fact represents the best available technology?

MR. KELLEY: I would say for the cooperation where the Poseidon project is in conjunction with the cooling water discharge and the powerplant has its own requirements for the best available technology and they're using the same ones, then I would say yes. But once that ends and ceases, then I would say we'd have to reevaluate it.

MR. RAYFIELD: Mayer question mark after that.

So you're okay with the best available technology, but there's still outstanding issues that need clarification analysis or whatever?

MR. KELLEY: That's my understanding.

MR. RAYFIELD: Thank you.

MR. WRIGHT: Mr. King.

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MR. KING: You stated earlier that 40 percent of the time the intake water from the power station is below what would be the 300 million gallons per day. How far below.

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MR. KELLEY: Gosh, I didn't get a number on the minimum and maximum. I'd have to look that up and see if I could get that. Sometimes with the plant it goes down fairly low, so it could be, you know, maybe 90 percent they would need to makeup, so it does fluctuate throughout the day and depending on the power needs of the regions. Maybe Mr. MacLaggan has some details on here.

So there are times when the actual flow goes to almost zero. I think those are times when maybe they have to do some work on the plan or they have to shut it down for heat treatment and things like that, so with those do occur.

MR. KING: What it means zero is correlated with 40 percent of the time or zero is one day out of the year?

MR. KELLEY: It's just a short period of time.

MR. KING: Cause 40 percent of the time is quite a bit of a time. And I'm wondering how far below is the typical level when it's below the 300 MGD.

MR. KELLEY: It looks like somewhere between 100 and 200 MGD would be the majority of the time when a coastal level, as looking at the graphs.

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MR. WRIGHT: Mr. Geever, did you have a table to share some light on that. Why don't you give it to Mr. Kelley.

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MR. KING: Couple other questions quickly. This is part of what we were covering today. But is it true that the powerplant shuts down and the desal plant doesn't happen, does the lagoon just lies fallow and turns back into its natural state which is not a lagoon?

MR. KELLEY: Most likely if there is no other agency or project that would keep it open then it would just revert back to its natural state or original state.

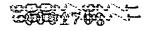
MR. KING: Can we kind of back to the issue of the notice. More the substantive issue of the notice here. The changes between the second and third draft; a lot of restructuring or would you say that degree of substantive changes between those two drafts can --

MR. KELLEY: Yeah. I would say as mentioned earlier that the majority of it was providing detailed data to support what was in the first draft and the second draft. So it gives us the data so that we can go look and see if the amount of the mitigation is comparable to what impacts they're actually having. And we're still really evaluating that. It is difficult to do in 30 days.

MR. WRIGHT: I think we're ready to turn this over to Catherine.

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MS. GEORGE: I may want to respond briefly to 1 some of the legal points raised. 2 Would you like that before you hear from 3 Mr. Robertus. 4 MR. WRIGHT: Yes. 5 Just on the legal notice issue MS. GEORGE: 6 raised by Coastkeeper. I do think that there's been 7 adequate legal notice for this proceeding. And I realize 8 that the technical report by staff was not circulated 9 until the fourth. There is certainly an opportunity for 10 11 oral comments and also late comments. Written comments are routinely received when there's a good reason for 12 that. So I think that's been adequately addressed: 13 I don't think that -- if you go forward and 14 approve the tentative resolution with some changes that 15 you requested earlier today, I don't think that you are 16 precluding the kind of joint agency coordination process 17 referred to in Water Code Section 13225. I think you're 18 19 allowing that to go forward in meeting that requirement. 20 With regard to the Riverkeeper case, I agree for the most part with Coastkeeper and with a Poseidon 21 22 representative that the Riverkeeper two case does not 23 apply directly to the desalination facility. I do agree 24 that you're required to comply with Water Code Section 25 13142.5 in making a final approval of the plan that you



receive from Poseidon. And you're not making that final approval today.

Let's see. I wanted to point out that I disagree with Coastkeeper in the context of Section 13142.5 that all mitigation is considered after the fact restoration. That was the subject of the Riverkeeper case. The mitigation can constitute minimization and meet that requirement in Section 13142.5. At least at this point, there was a recent court of appeals -- state court decision whereas the wetlands that exclusively recognize that. Came after Riverkeeper two. Although that case has been with the Supreme Court. The California Supreme Court has granted petition for review. So we'll see we may have more clarity in the future.

And I did want to just remind you that the permit provides that you can direct Poseidon to modify their plan in the future, so you retain that right. And also that there will be a need to comply anew with Section 13142.5 at the Point Encina Power Station completely ceases operation.

And then lastly, it looks like one of the representatives, I think, Mr. Garrett mentioned that the Regional Board has primary jurisdiction over all issues regarding impingement and entrainment. I can't confirm that that statement is completely accurate. Although I do

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agree that the Regional Board has the authority to 1 implement and comply with Section 13142.5. 2 If there are any questions, I'd be happy to 3 4 answer them. MR. ANDERSON: I think you did address, I didn't 5 quite catch it, the feasibility versus whether it's 6 economically feasible. There was some decision about that 7 or just flat out feasible. And your opinion was? 8 MS. GEORGE: I didn't express an opinion on 9 that. I probably don't have one. 10 11 MR. ANDERSON: Okay. MR. WRIGHT: The economic feasibility is not 12 before us at any rate. I mean, we haven't gone into any 13 14 kind of discussion on that aspect of it looking at subsidies and so on and so on. 15 Mr. Robertus. 16 17 MR. ROBERTUS: I recommend action today to 18 approve the plan. And I know that the technical report 19 was misconstrude. I think that the plan may be better 20 expressed as a process. I'm concerned that if the board 21 doesn't take action today it will exacerbate any attempts 22 to get the right parties together and to take action to 23 drive this to a conclusion. There are about 40 months 24 left on the permit that this board has already adopted. There is virtually no action that you take to approve or 25 117

disapprove this fully opposition study that pertains to the ability to the discharge for the next 40 months. Às you've heard, it will make a difference when they start the period subsequent to that when the Poseidon -- when it comes to pass, if it comes to pass, is operating in a stand-alone mode. Then the question of minimization and mitigation will be brought fully to bear on the Poseidon facility. And the other consideration of 316B wants to (inaudible) entrainment that's taking place in the facility at this time. That complicates the issue while they're co-operating an electrical powerplant with one MPDS permit and then the perspective -- and the Poseidon facility operating with another MPDS permit. That's the subject of the flow minimization issue today.

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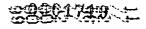
So my practical recommendation is to adopt this so that the process will move forward. I am not convinced that the parties will come to the table as highlighted in the schedule that Poseidon had. We have a tentative resolution with an errata sheet.

MR. WRIGHT: Do you have a copy of that? MR. ROBERTUS: Yes, I have a copy. I will pass that at this time and request that you review it. My recommendation is you adopt it with the errata.

24 MS. SCHNEIDER: We will be approaching if we go 25 that route.

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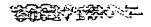
Members of the board, have you had MR. WRIGHT: 1 a chance to digest the errata sheet in the light of 2 extensive testimony we heard today and as well as the 3 reading of the voluminous materials? Δ MR. GARRETT: Mr. Chairman, would there be an 5 opportunity for the applicant to respond to one of the 6 items in errata that we haven't seen before? 7 MR. WRIGHT: Yes. But make it brief please. 8 We'LL also hear from Ms. Solmer. 9 MR. GARRETT: My name is Chris Garrett, a lawyer 10 that works for Poseidon. I wanted to just address Item C 11 in the errata. You may vaguely recall my statement that 12 the board has primary jurisdiction on these issues. 13 That 14 both the Water Code and the Coastal Act give the Water Code -- give the Water Board responsibility. And my 15 16 concern is that this might be misinterpreted as requiring 17 approval from other agencies and/or their staff before the 18 Regional Board could take action. 19 -So I would suggest that deletion of Item C or to 20have that rephrased so that it's considering of the input 21 from participating agencies. Perhaps make it clear with 22 the agencies or their staff as well. But as phrased here, 23 my concern is that this would require before the Regional 24 Board could act that you would have to have the other 25 agencies approve it, and we would not want to get stuck in



that loop. Nor do we think it's consistent with the 1 primary jurisdiction of the board. 2 MR. WRIGHT: We need to run it by our 3 4 attorney. I'm not familiar with the Coastal MS. GEORGE: 5 Act provision that Mr. Garrett -- the specific provision. 6 I can't review it to determine what it says. I think the 7 wording there may be some way to modify it so it addresses 8 . 9 his concern and still allows you to achieve the kind of joint coordination that you're looking for. So I'm trying 10 . 11 to think while I'm talking about some alternative language. Although, I don't think consensus necessarily 12 implies approval by other agencies. 13 14 MR. ROBERTUS: Would coordination as required by the supported code and section? 115 MS. GEORGE: That would be terrific, yes. 16 17 MR. WRIGHT: Consensus has changed to 18 coordination. 19 MR. RAYFIELD: And as required by the Port of 20 Cologne. It's siting that specific section. 21 MS. GEORGE: So C would read: Coordination 22 among participating agencies for the amendment of the plan 23 as required by Section 13225 of the California Water 24 Code. 25 MR. WRIGHT: What's the section again.

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1	MS. GEORGE: 13225.	
2	Ms. Solmer.	
3	MR. GARRETT: You're catching us off guard with	
4	these last minutes. I guess the one thing I want a little	
5	bit of clarification. The other parts of the revised plan	
6	that do seem final, you know, their conclusions, studies	
7	all that other stuff. That is a final act?	
8	MR. WRIGHT: I don't say it's final at all.	
9	This is a process.	
10	MR. KING: You still have the extensive range of	
11	comments on the February 11th letter. We haven't signed	
12	off on any of those.	
13	MR. GEEVER: What are we approving. I'm not	
14	sure how this advances anything, and why you're approving	
15	anything.	
16	I guess I'd like to make one comment about	
17	without identifying what the best design of the facility	
18	is and what the best available technology to meet that	
19	design are prior to, you know, in contemplation of the	
20	cooling water intake not being available, you're allowing	
21	a design that would preclude the use of the best available	
22 <sup>.</sup>	technology for actually, just eliminating the intake	
23	and mortality of marine life. So I mean, I think it	
24	requires looking a little bit ahead into the future, and	
25	ensuring that the design of the facility, especially a	
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\$300 million facility, is designed in a way that allows 1 the use of the best available technology when that becomes 2 required. And I guess I take a little bit of --3 MR. KING: Could you limit this to the errata. 4 Look at what's blacked line. 5 MR. GARRETT: Okay. 6 MS. SOLMER: I think we can resolve this. 7 The concern is under the number two of the via resolved the 8 San Diego Board hereby conditionally approves the plan. 9 Ι 10 think that that's confusing. Because after that you said that you're going to require in six months an amendment to 11 this plan. So, if we can change number two to say that 12 we -- that the board hereby approves this process that's 13 14 been described. What we don't want what happened today , 15 where different people are referring to different documents of the same thing. And, again, you know, please 16 17 don't insult our intelligence that you provide a document 18 called a technical report and then you say actually this 19 plan that we provided is called a technical report and we 20 didn't mean to submit this. So I think that if we can 21 change that number two to say that we're conditionally 22 approving this process with the errata, that would make 23 sense and, you know, put everyone on the same page and 24 would not delay anything. Then we have the same six month 25 period that we're going to come back and we're certainly

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okay with the consensus in the errata.

MS. GEORGE: What about the San Diego Water Board hereby conditionally approve the plan subject to the following conditions being satisfied.

MS. SOLMER: I think the concern there is you're approving a plan that has a lot of information; 300 pages of information. And I don't think that you can condition out all of those different things. I think rather than conditioning out what you don't want to approve, just in plain language just say what you are approving which is this process which I think is otherwise understood by the other resolution, and then you're going to come back with the information that hasn't been provided in that six month period.

MR. KING: Just get a last round what we are doing here. Let's look at one errata at a time. We propose specific changes to this particular section here. And we've proposed changes to Section C. Otherwise nobody has commented on there's a change in line one of paragraph three. Shall submit to the Regional Board executive officer for the approval by the Regional Board. And nobody's commented on that change?

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MS. SCHNEIDER: That's correct.

MR. KING: And the additional changes and the following additional concerns that are listed in A through

1 Ε. And then paragraph four we've stricken through executive officer so that the subsequent changes will come 2 back to the board instead of the executive officer. So if 3 question can hammer out any changes --4 MS. SCHNEIDER: I don't have any changes on 5 6 that. 7 MR. KING: We are talking about different things 8 at a time. 9 MR. WRIGHT: If we can zero in on the Errata 10 sheet. 11 MR. RAYFIELD: I do have one concern on the 12 errata sheet. Not the Regional Board part, but the last sentence. In paragraph three that says shall resolve the 13 concerns identified in the Regional Board's February 19 14 15 letter. And we heard from Brian earlier that there are 16 17 additional concerns that they've uncovered. And I don't know that there's items listed as A, B, C, D, and E. 18 Ι 19 think -- are they, Brian? 20 MR. KELLEY: Yes, that was the intent. 21 MR. RAYFIELD: And is that the full set? 22 MR. KELLEY: I believe so. 23 MR. RAYFIELD: I guess that's okay. 24 Also Item D, appropriateness of mitigation 25 sounds really open to interpretation and rather vague to

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me. I'm not sure what we mean by that. And if we could 1 remember what we meant by that six months from now. 2 Can you elaborate what we're measuring here. Ι 3 mean, this is kind of -- we're setting a standard or 4 measurement. We're going to measure for appropriateness, 5 but what are we really going to look at. 6 MR. WRIGHT: Mr. King, do you have a --7 MR. KING: I do. The more legal term of art is 8 9 adequacy of mitigation. Appropriateness. I agree with the adequacy is it sufficient. 10 MR. RAYFIELD: Is it sufficient. 11 That was the word I was looking at too. So that would work for me. 12 And actually that's to the extent of my --13 14 MR. WRIGHT: Sufficiency. MR. RAYFIELD: My comments are sufficiency. 15 MR. KING: No, adequacy. 16 MR. WRIGHT: 17 Is George adequacy? 18 MS. GEORGE: Okay. 19 Any other comments about the errata MR. WRIGHT: 20 sheet? 21 Do we need to -- I guess we need to take some 22 action on -- well, before we do that I really think that 23 we ought to deal with that as part of the larger motion 24 and take a look at the resolved section of the board, the 25 order. 125

I agree with the concern that's been raised about Item two under the resolve section. That's preceded by a statement that says the plan dated da-da-da does not include specific implementation provisions as required in section so on, so on. And does not as yet resolve the concerns noted in the Regional Board's February 19, 2008 letter. Poseidon Resources.

And then in the next sentence Item two it says the San Diego Water Board hereby conditionally approves So I have a hard time resolving those two the plan. paragraphs, and that's why I think that we're really talking more about a process. And even then I have some questions about the process. But it's a little -- to call it a plan, when it's not a plan. I guess it's a plan to plan a plan.

MR. KING: If I could jump. We should read the whole resolution section together and try to read it harmoniously here.

If -- it says specifically why in paragraph one that the word "conditional" is in paragraph number two. And in paragraph three and four we say how the conditions were to play out. Three gives exactly what the condition is. And four is not related to the conditional section of it. But there's no such thing right now as a define term of a process. I don't want to throw another word in there

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as something new, even though we are trying to split the baby here and make everybody happy. But it's adding vagaries into an operative document here. Three paragraphs together say something clear, if you read it together for harmony. There's a reason why we're attaching conditions to an approval. This is what the condition is. And it's a conditional approval and this is what the condition is.

MR. WRIGHT: I hear what you're saying. I'm just still uneasy about how we're throwing around the use of the word "plan." Even if I'm reading all of these items I wonder if --

MS. SCHNEIDER: But title of the resolution. That means we need to change the title of the resolution if we don't. It says it's conditional -- the title is a tentative resolution in a number of conditional approval of revised flow entrainment and impingement minimization plan. So we would need to change the title if we're not going to approve the plan, the minimization plan.

MS. RITSCHEL: I'd like to jump in and just agree with Mr. King. I don't think at this point no one knows what the process means and what it's referring to, so you can't just say we approved the process. We haven't defined what that is. I think if there is going to be an approval, it is appropriate to approve what has been put

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before us. The latest version of the document -- approve this plan except for this, this, and this. Or subject to this condition and this condition. And that's I believe what is before us. Is it written the best possible way? I mean, maybe there could be some slight words missing. I think Ms. George suggested slight words were missing from Item number two.

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I agree with Mr. King you can not simply approve something that we have no definition of.

MR. KING: On that note, I'd like to make a motion to adopt the errata sheet as written with the exceptions that the word "consensus" in Paragraph three Subsection C change to coordination.

MS. RITSCHEL: Coordination among.

MR. KING: The word "consensus" is stricken through and substitution the word "coordination" is written. Inserted at the word plan as required under Section --

MS. SCHNEIDER: 13225.

MR. KING: Is it 1322.5?

MS. GEORGE: No, 13225.

MR. KING: 13225 of the California Water Code. The word appropriateness stricken from Subsection D and change to adequacy, and otherwise adopted as written.

MS. RITSCHEL: Second.

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1	MS. GEORGE: Third. You're voting on the
2	errata?
3	MR. KING: The errata.
4	MS. GEORGE: That would be incorporated into a
5	motion eventually?
6	MR. KING: Correct.
7	MS. SCHNEIDER: I second to that.
8	MR. WRIGHT: Is there a motion made by Mr. King
9	in the section made by Elizabeth Schneider.
10	I'm getting groggy here.
11	Is there a discussion to the motion? All those
12	in favor of the motion All say aye.
13.	MR. ANDERSON: Aye.
14	MR. KING: Aye.
15	MR. WEBER: Aye.
16	MR. RAYFIELD: Aye.
17	MS. RITSCHEL: Aye.
18	MS. SCHNEIDER: Aye.
19	MR. WRIGHT: The motion is approved
20	unanimously.
21	Now, we're ready for vote on the tentative
22	resolution as modified with the errata sheet. So is there
23	a motion to approve the tentative resolution number
24	R9-2008-0039?
25	MS. SCHNEIDER: I move to conditionally approve
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1	the Resolution Number R9-2008-0039 as amended.	
2	MR. RAYFIELD: Second.	
3	MS. GEORGE: Can I make a clarification. I	
4	believe you said conditionally approve the resolution.	
5	And it should be that you approve resolution	
6	MR. KING: Adopt.	
7	MS. GEORGE: Adopt the resolution.	
8	MS. SCHNEIDER: Accepted.	
9	MR. ANDERSON: Second.	
10	MR. WRIGHT: Are you speaking to the motion?	
11	MR. RAYFIELD: Well, I'm speaking to the motion,	
12	yeah. Actually, I share your concern about approves the	
13	plan. And a concern that was mentioned by some of our	
.14	comments. What we're really doing is accepting this plan	
15	to forward it on to a joint agency meeting and so forth.	
16	And I'm wondering if the person that made the motion	-
17	would if we could change approve, because we're really	
18	not we are expecting some additional stuff, to accept the	
19	plan. A little different twist. And I don't mean to	
20	MS. SCHNEIDER: Do you need approval on the	
21	resolution, John? That was my motion to approve the	
22	resolution.	
23	MR. RAYFIELD: I was just talking about a	
24	wording change in the resolution that we're approving.	
25	MR. KING: Is there a vote on this motion?	
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MR. WRIGHT: That is the motion. 1 MS, SCHNEIDER: No, it's discussion. I'm asking 2 a question before I --3 John, did you ask us to approve the resolution 4 today? 5 MR. ROBERTUS: Yeah, the word -- operative word 6 I believe is "approve." That's in the language of the MPS 7 The word "approve." 8 permit. MR. WRIGHT: And you're simply offering an 9 editorial change. 10 MR. RAYFIELD: Well; actually I think it's more 11 than an editorial. 12 MS. SCHNEIDER: We either approve or deny the 13 resolution. So I motion to approve, and he second it, 14 15 MR. KING: A motion to call the question. MR. WRIGHT: The question has been called for. 16 17 My inclination is not to support the resolution. I am continued to be concerned about the word "plan." And I'm 18 19 also concerned that it may appear that we are approving 20 the plan that presumably is going to be considered by a 21 number of other agencies, and it makes us look as though 22 we're very supportive of the plan, and I don't think 23 that's the case at least. At least I don't feel the plan 24 is ripe enough, let's put it that way, to receive our 25 approval. 131

. 1	Any other comments?	
2	MR. KING: I call the question.	
3.	MR. WRIGHT: The question has been called for	
4	all those in favor say aye.	
5, ; ;	MR. ANDERSON: Aye.	
6	MR. KING: Aye.	
7	MS. RITSCHEL: Aye.	
8	MR. WEBER: Aye.	
. 9	MS. SCHNEIDER: Aye.	
10	MR. WRIGHT: Those against say no.	
11 {	MR. RAYFIELD: No.	
12	MR. WRIGHT: Motion carries five to two.	
13.	MS. RITSCHEL: And there were no extensions?	
14	MR. WRIGHT: No extensions, no.	
15	Well, there being no other matters motion to	-
16	adjourn. We have a motion to adjourn. We are adjourned.	·
17	(End of partial transcript)	
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#### **REPORTER'S CERTIFICATE**

I, GIDGETTE NIEVES, CSR NO. 10142, A CERTIFIED SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

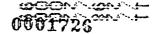
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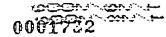
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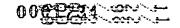
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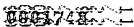
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