APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Doreene D'Adamo

Mr. Ronald O. Loveridge

Mrs. Barbara Riordan

Mr. Ron Roberts

Dr. John Telles

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Ms. La Ronda Bowen, Ombudsman

Mr. Tom Cackette, Chief Deputy Executive Officer

Mr. Bob Fletcher, Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Ms. Lynn Terry, Deputy Executive Officer

Ms. Lori Andreoni, Board Clerk

Ms. Breanne Aguila, Staff, Program Operation Section, Office of Climate Change, OCC

Ms. Sarah Carter, Staff Air Pollution Specialist, Low-Emission Vehicle Implementation Section, Mobile Sources Control Division, MSCD
APPEARANCES CONTINUED

STAFF

Mr. Harold Holmes, Manager, Engineering Evaluation Section, Stationary Sources Division

Mr. Dave Mehl, Manager, Energy Section, Stationary Source Division, SSD

Mr. Brian Turner, Assistant Executive Officer (Washington, D.C.)

ALSO PRESENT

Ms. Anna Arridla

Ms. Barbara Baird, SCAQMD

Mr. Mike Barr, Association of American Railroads

Mr. Will Barrett, American Lung Association

Ms. Kate Beardsley, PG&E

Ms. Julie Becker, Alliance of Automobile Manufacturers

Mr. Luke Breit, Forests Forever

Ms. Susie Berlin, McCarthy & Berlin, LLP; Northern California Power Agency

Ms. Sylvia Betancourt, CCAEJ

Ms. Maria Birrueta, CCAEJ

Mr. John Cabaniss, Association of International Automobile Manufacturers

Mr. Steve Carlson, CTI

Ms. Sofia Carrillo, Coalition for a Safe Environment

Mr. Matthew Copa, Southwall Technologies
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Tom D'Augustino, Solatia
Mr. Steven Douglas, Alliance of Automobile Manufacturers
Mr. Don Duffy, Placer County APCD
Mr. Michael Endicott, Sierra Club
Mr. Jim Feichtl, Sierra Club
Mr. Tony Francois, Exatec, LLC
Mr. Rudi Flores, CCAEJ
Mr. James Gallagher, Transportation Corridor Agencies
Ms. Josei Gaytan, CCAEJ
Ms. Megs Gendreauv, CCAEJ
Mr. Gary Gero, Climate Action Reserve
Mr. Peter Greenwald, SCAQMD
Mr. Joe Gregorich, Tech America
Ms. Barbara Haya, University of California
Ms. Bonnie Holmes-Gen, American Lung Association
Ms. Jamie Knapp, Clean Cars Coalition
Ms. Marisela Knott
Mr. Gideon Kracov
Ms. Graciela Larios, CCAEJ
Mr. Jeff Leecox, American Medical Response
Ms. Carol Livingston, CSSA
Mr. Angelo Logan, East Yard Communities for Environmental Justice
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bob Lucas, Lucas Advocates
Mr. Bill Magavern, Sierra Club CA
Mr. Kirk Marckwald, California Railroad Industry
Mr. Paul Mason, Pacific Forest Trust
Mr. Daniel Mata, East Yard Communities for Environmental Justice
Mr. Nathan Mata, East Yard Communities for Environmental Justice
Mr. Duncan McFetridge, MTC
Mr. Gavin McHugh, Crime Victims United
Mr. Bruce McLaughlin, Offsets Working Group
Mr. Guillermo Merin, East Yard Communities for Environmental Justice
Ms. Lily Mitchell, SCPPA
Ms. Wendy Mitchell, Pacific Gas & Electric
Mr. Ralph Moran, BP America
Mr. Brian Nowicki, Center for Biological Diversity
Mr. Timothy O'Connor, EDF
Ms. Payal Parekh, International Rivers
Ms. Vivian Parker, Center for Sierra Nevada Conservation
Ms. Cindy Parsons, LADWP
Ms. Michelle Passero, The Nature Conservancy
Mr. Fred Paul, Eaton
Mr. Shankar Prasad, Coalition for Clean Air
APPEARANCES CONTINUED

ALSO PRESENT

Ms. Isella Ramirez, East Yard Communities for Environmental Justice

Ms. Tamara Rasberry, Sempra Energy

Ms. Betsy Reifsnider, Catholic Charities

Ms. Maria Reyes, L Baca

Ms. Susan Robinson, Ebbetts Pass Forest Watch

Ms. Erin Rogers, Union of Concerned Scientists

Mr. Mike Rogge, CMTA

Ms. Kristina Santana, East Yard Communities for Environmental Justice

Mr. Dick Schnacke, Transcore

Mr. Mark Stehly, BNSF Railway Co.

Ms. Shelly Sullivan, AB 32 Implementation Group

Mr. Dan Taylor, Audubon California

Mr. James Tribble, Sekisui S-Lec America

Mr. Tim Tutt, SMUD

Ms. Lupe Valdez, Union Pacific RR

Mr. Nico Van Aelstyn, Carbon Offsets Providers Coalition

Ms. Jocelyn Vivar, East Yard Communities for Environmental Justice

Mr. Barry Wallerstein, South Coast AQMD

Mr. Michael Wang, WSPA

Ms. Peggy Willett, 3M Company

Ms. Marilyn Woodhouse, Sierra Club

Mr. Victor Yamada, SCE
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 10-2-1</td>
<td>4</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>4</td>
</tr>
<tr>
<td>Motion</td>
<td>4</td>
</tr>
<tr>
<td>Vote</td>
<td>4</td>
</tr>
<tr>
<td>Item 10-2-10</td>
<td>5</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>5</td>
</tr>
<tr>
<td>Motion</td>
<td>5</td>
</tr>
<tr>
<td>Vote</td>
<td>5</td>
</tr>
<tr>
<td>Item 10-2-7</td>
<td>5</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>5</td>
</tr>
<tr>
<td>Ombudsman Bowen</td>
<td>5</td>
</tr>
<tr>
<td>Item 10-2-8</td>
<td>17</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>17</td>
</tr>
<tr>
<td>Executive Officer Goldstene</td>
<td>19</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>20</td>
</tr>
<tr>
<td>Board Discussion</td>
<td>43</td>
</tr>
<tr>
<td>Mr. Friedman</td>
<td>50</td>
</tr>
<tr>
<td>Item 10-2-2</td>
<td>51</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>51</td>
</tr>
<tr>
<td>Executive Officer Goldstene</td>
<td>52</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>53</td>
</tr>
<tr>
<td>Ms. Berlin</td>
<td>59</td>
</tr>
<tr>
<td>Mr. Yamada</td>
<td>62</td>
</tr>
<tr>
<td>Ms. Mitchell</td>
<td>64</td>
</tr>
<tr>
<td>Ms. Parsons</td>
<td>67</td>
</tr>
<tr>
<td>Ms. Mitchell</td>
<td>70</td>
</tr>
<tr>
<td>Mr. Tutt</td>
<td>71</td>
</tr>
<tr>
<td>Mr. Paul</td>
<td>73</td>
</tr>
<tr>
<td>Q&amp;A</td>
<td>75</td>
</tr>
<tr>
<td>Motion</td>
<td>78</td>
</tr>
<tr>
<td>Vote</td>
<td>78</td>
</tr>
<tr>
<td>Item 10-2-3</td>
<td>79</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>79</td>
</tr>
<tr>
<td>Executive Officer Goldstene</td>
<td>79</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>81</td>
</tr>
<tr>
<td>Mr. Cabaniss</td>
<td>87</td>
</tr>
<tr>
<td>Ms. Becker</td>
<td>89</td>
</tr>
<tr>
<td>Ms. Knapp</td>
<td>91</td>
</tr>
<tr>
<td>Mr. Barrett</td>
<td>93</td>
</tr>
</tbody>
</table>
## INDEX CONTINUED

<table>
<thead>
<tr>
<th>Item 10-2-3 (cont'd)</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Magavern</td>
<td>95</td>
</tr>
<tr>
<td>Motion</td>
<td>98</td>
</tr>
<tr>
<td>Vote</td>
<td>99</td>
</tr>
</tbody>
</table>

### Public Comment

- Chairperson Nichols 98
- Staff 107
- Ms. Willett 110
- Mr. Tutt 112
- Mr. Douglas 114
- Mr. Copa 115
- Mr. Gallagher 117
- Mr. Tribble 119
- Ms. Livingston 122
- Mr. Schnacke 124
- Mr. Rogge 126
- Mr. Leecox 129
- Mr. McFetridge 130
- Mr. Gregorich 131
- Mr. Carlson 132
- Mr. D'Agostino 134
- Ms. Holmes-Gen 136
- Ms. Knapp 137
- Mr. Francois 138
- Mr. McHugh 140
- Q&A 141

### Item 10-2-4 & Item 10-2-9

- Chairperson Nichols 152
- Executive Officer Goldstene 154
- Staff Presentation 156
- Ms. Mitchell 177
- Mr. McLaughlin 180
- Mr. Yamada 181
- Ms. Sullivan 182
- Ms. Berlin 183
- Mr. Wang 185
- Ms. Beardsley 187
- Mr. Moran 189
- Ms. Reifsnider 191
- Ms. Passero 193
- Mr. Wallerstein 194
- Mr. Tutt 196
- Mr. Taylor 199
- Ms. Parker 200
<table>
<thead>
<tr>
<th>Item 10-2-4 &amp; Item 10-2-9 (cont'd)</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Haya</td>
<td>202</td>
</tr>
<tr>
<td>Ms. Parekh</td>
<td>206</td>
</tr>
<tr>
<td>Mr. Mason</td>
<td>208</td>
</tr>
<tr>
<td>Ms. Rasberry</td>
<td>210</td>
</tr>
<tr>
<td>Mr. Van Aelstyn</td>
<td>211</td>
</tr>
<tr>
<td>Mr. Gero</td>
<td>218</td>
</tr>
<tr>
<td>Mr. Friedman</td>
<td>220</td>
</tr>
<tr>
<td>Mr. Feichtl</td>
<td>222</td>
</tr>
<tr>
<td>Mr. O'Connor</td>
<td>223</td>
</tr>
<tr>
<td>Mr. Lucas</td>
<td>226</td>
</tr>
<tr>
<td>Ms. Woodhouse</td>
<td>228</td>
</tr>
<tr>
<td>Mr. Magavern</td>
<td>231</td>
</tr>
<tr>
<td>Mr. Breit</td>
<td>233</td>
</tr>
<tr>
<td>Mr. Nowicki</td>
<td>234</td>
</tr>
<tr>
<td>Ms. Holmes-Gen</td>
<td>237</td>
</tr>
<tr>
<td>Mr. Endicott</td>
<td>239</td>
</tr>
<tr>
<td>Ms. Robinson</td>
<td>242</td>
</tr>
<tr>
<td>Ms. Rogers</td>
<td>243</td>
</tr>
<tr>
<td>Motion</td>
<td>246</td>
</tr>
<tr>
<td>Vote</td>
<td>246</td>
</tr>
<tr>
<td>Board Discussion</td>
<td>246</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 10-2-6</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson Nichols</td>
<td>255</td>
</tr>
<tr>
<td>Executive Officer Goldstene</td>
<td>256</td>
</tr>
<tr>
<td>Dr. Sawyer</td>
<td>258</td>
</tr>
<tr>
<td>Dr. Johnson</td>
<td>260</td>
</tr>
<tr>
<td>Dr. Lloyd</td>
<td>261</td>
</tr>
<tr>
<td>Ms. Oge</td>
<td>264</td>
</tr>
<tr>
<td>Ms. Holmes-Gen</td>
<td>265</td>
</tr>
<tr>
<td>Chairperson Nichols</td>
<td>269</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 10-2-5</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson Nichols</td>
<td>271</td>
</tr>
<tr>
<td>Executive Officer Goldstene</td>
<td>271</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>273</td>
</tr>
<tr>
<td>Ms. Birrueta</td>
<td>287</td>
</tr>
<tr>
<td>Ms. Larios</td>
<td>288</td>
</tr>
<tr>
<td>Ms. Gendreav</td>
<td>289</td>
</tr>
<tr>
<td>Ms. Bentancourt</td>
<td>290</td>
</tr>
<tr>
<td>Ms. Gaytan</td>
<td>292</td>
</tr>
<tr>
<td>Mr. Flores</td>
<td>293</td>
</tr>
<tr>
<td>Ms. Knott</td>
<td>294</td>
</tr>
<tr>
<td>Mr. Merin</td>
<td>295</td>
</tr>
<tr>
<td>Mr. Kracov</td>
<td>296</td>
</tr>
</tbody>
</table>
## INDEX CONTINUED

<table>
<thead>
<tr>
<th>Item 10-2-5 (cont'd)</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Ramirez</td>
<td>299</td>
</tr>
<tr>
<td>Ms. Santana</td>
<td>302</td>
</tr>
<tr>
<td>Mr. Mata</td>
<td>303</td>
</tr>
<tr>
<td>Ms. Reyes</td>
<td>304</td>
</tr>
<tr>
<td>Ms. Arridla</td>
<td>305</td>
</tr>
<tr>
<td>Ms. Vivar</td>
<td>307</td>
</tr>
<tr>
<td>Ms. Carrillo</td>
<td>311</td>
</tr>
<tr>
<td>Mr. Prasad</td>
<td>314</td>
</tr>
<tr>
<td>Mr. Logan</td>
<td>315</td>
</tr>
<tr>
<td>Mr. Mata</td>
<td>316</td>
</tr>
<tr>
<td>Mr. Wheelis</td>
<td>317</td>
</tr>
<tr>
<td>Ms. Valdez</td>
<td>318</td>
</tr>
<tr>
<td>Mr. Barr</td>
<td>320</td>
</tr>
<tr>
<td>Mr. Marckwald</td>
<td>324</td>
</tr>
<tr>
<td>Board Discussion</td>
<td>336</td>
</tr>
</tbody>
</table>

| Adjournment           | 357  |

| Reporter's Certificate| 358  |
CHAIRPERSON NICHOLS: Welcome, everyone.

Before we begin our formal meeting and take the role, we usually start our day with the Pledge of Allegiance to the flag. So if everyone would please stand and face the U.S. flag.

(Thereupon the Pledge of Allegiance was Recited in unison.)

CHAIRPERSON NICHOLS: Thank you.

The clerk will please call the roll.

BOARD CLERK ANDREONI: Dr. Balmes?

BOARD MEMBER BALMES: Here.

BOARD CLERK ANDREONI: Ms. Berg?

BOARD MEMBER BERG: Here.

BOARD CLERK ANDREONI: Ms. D'Adamo?

BOARD MEMBER D'ADAMO: Here.

BOARD CLERK ANDREONI: Mr. Kennard?

Mayor Loveridge?

Mrs. Riordan?

BOARD MEMBER RIORDAN: Here.

BOARD CLERK ANDREONI: Supervisor Roberts?

BOARD MEMBER ROBERTS: Here.

BOARD CLERK ANDREONI: Professor Sperling?

Dr. Telles?

BOARD MEMBER TELLES: Present.
BOARD CLERK ANDREONI: Supervisor Yeager?
BOARD MEMBER YEAGER: Here.
BOARD CLERK ANDREONI: And Chairman Nichols?
CHAIRPERSON NICHOLS: Here.
BOARD CLERK ANDREONI: Madam Chair, we have a quorum.
CHAIRPERSON NICHOLS: Thank you.
A couple of announcements before we get started.
I understand that there may be some people who wish to speak later today who would like to use translation services. We do have translators available in Spanish for anyone who needs it. There are headsets outside the hearing room at the attendant sign-up table.
Is the translator here to just make that statement in Spanish?
(Thereupon the announcement was translated into Spanish.)
CHAIRPERSON NICHOLS: Thank you very much.
Anyone who wishes to testify on agenda items other than those that are on the consent calendar should sign up with the staff outside this auditorium. The listing of your name is optional, but it helps us to organize the speakers obviously if we know who to call on.
The Board will be imposing a three-minute time limit on all speakers. We appreciate it if you would
state your name, first and last, when you come up to the
podium, but then put your testimony in your own words
rather than reading it. If you have written testimony,
it's much easier for the Board to follow if you go
straight to your main points. And if you do have written
testimony, it will be entered into the record.

I'd like to point out the emergency exits at the
rear of the room. In the event of a fire alarm, we're
required to evacuate this room immediately and go down the
stairs and outside the building until there is an
all-clear signal sounded, and then we come back into the
room.

I have one other item I wanted to announce this
morning in terms of the agenda. And that is that we do
have listed on today's agenda on open comment period for
anyone who wishes to come address the Board on any topic
not on the agenda. And we will be taking that item today,
but not at the end of the meeting, because at the end of
the meeting we intend to break and immediately go to a
reception for our Haagen-Schmidt awardees. So if there is
anyone who is listening or watching this on their
computer, please be aware that we will take up the public
comment period at about 11:30 this morning.

And I think that's it as far as opening announcements are
concerned.
So, Mr. Goldstene, I'll turn to you for any announcement.

EXECUTIVE OFFICER GOLDSTENE: I think the first item is the consent item.

CHAIRPERSON NICHOLS: Okay. So our practice is to put research items on a consent calendar which can be moved at all once, unless any member of the Board wishes to take any item off of the consent calendar and have it discussed.

Are there any Board members who wish to discuss any of the items here?

BOARD MEMBER RIORDAN: Madam Chairman, I don't have a wish for discussion, but I'd be happy to move the resolutions that go with those research proposals.

CHAIRPERSON NICHOLS: Thank you. We can move them as a group then.

BOARD MEMBER BALMES: Second.

CHAIRPERSON NICHOLS: Seconded.

All in favor please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposed? Thank you.

The second item, which was also here for consent, was the approval of the Coachella Valley PM10 redesignation request and maintenance plan. This has been apparently thoroughly vetted at the local level, and I
believe there was no one who indicated a desire to come in and testify on this item.

If I'm wrong about that, please let me know. If not, then I think we can just have a motion on that one as well.

BOARD MEMBER BERG: Madam Chair, I'll go ahead and move this item and also would like to say congratulations as we are moving a district into attainment.

BOARD MEMBER RIORDAN: I'll second the motion.

CHAIRPERSON NICHOLS: All right. All in favor please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposed?

Great.

Now we move into regs that do require or invite some discussion, and we'll start with our Ombudsman, La Ronda Bowen, who wants to give us a report of what's going on with her office.

(Thereupon an overhead presentation was presented as follows.)

OMBUDSMAN BOWEN: Thank you, Madam Chair and Board members.

I want to give you a quick update with what's happening with the Office of Ombudsman. And thank you for
the opportunity to share an overview.

Before we start, I'd like to introduce a few of our staff members who are in the front row, if you'd stand up. That's Zena Aguilera and Diana Simeroth. We have other staff -- thank you. We have other staff members who are in the lobby assisting our customers. And at the very end of this presentation, there's actually a list of the staff of the Ombudsman office.

So our office has three key functions.

---o0o---

OMBUDSMAN BOWEN: They are to meet the legal mandates. We have federal and State mandates. The 1990 Clean Air Act amendments established this office and others like it across the country. And the purpose was to help small businesses understand and comply with air regulations. And over the years, these programs have matured to include small business participation and regulatory development, because it's easier for them to comply with rules they helped to establish.

This presentation will focus on stakeholder engagement. Future presentations will cover other aspects of the Ombudsman's office.

We also have State requirements that the Government Code 1148 also requires the Ombudsman to perform similar functions, such as responding to
complaints, providing technical advice and assistance, and along with outreach and various other reporting functions. There's also a requirement for procurement that the small business liaison would ensure that the California Air Resources Board and other agencies spend 25 percent of their contract dollars with small businesses. And in 2008 and 2009, CARB exceeded this goal, spending 26 percent of its contract dollars with small businesses. And there's also a requirement for three percent with disabled veteran enterprise businesses, and we reached 1.8 percent of that on $14 million last year. But in 2007 and 2008, CARB exceeded both goals on $20 million in spending.

--o0o--

OMBUDSMAN BOWEN: So our mission is intended to implement these requirements. We want to implement these requirements in ways that support the California Air Resources Board's other programs in obtaining its clean air objectives. And we want to ensure that the perspectives of small business owners and other stakeholders are integrated into policy.

--o0o--

OMBUDSMAN BOWEN: We believe that to achieve air that is healthy to breathe and to embrace the cleaner energy economy ahead a strong relationship and enhanced communication between Air Resources Board and its
stakeholders. And so you can see that we've been finding ways to listen to small business owners better. We're introducing ourselves to them. We're doing more proactive outreach. We reached out to over 300 business associations, chambers of commerce. And we believe that key to ensuring the integration of small business perspectives with CARB policies is this communication part.

--o0o--

OMBUDSMAN BOWEN: As we continue with the stakeholder engagement and outreach part, we're doing more face-to-face meetings. One of the things that our staff did was in support of the Cool California small business toolkit get out and actually visit small businesses, knock on their door, meet them, ask them, "Does this tool work for you," and what's working and what's not working? We know that in addition to our businesses, others around the world are interested in what this agency is doing. And so we have facilitated foreign delegations, 22 from 10 countries. And further, we support the education. California teachers are very interested in what we do. They like having environmental programs for their classes. And so we have been supporting the K through 16 teachers by providing air pollution information in classes.
OMBUDSMAN BOWEN: We also continue with the traditional Ombudsman services: The Board meetings, that's why staff is out there helping; we answer complaints and hotlines and e-mails. We have about 15,000 calls. For example, we're starting a tracking program. We had about 15,000 calls that came in recently over the past six months.

---

OMBUDSMAN BOWEN: We think that all this work should be integrated into the policies that the Air Resources Board does. And so we are being very proactive as a conduit for bringing the information from our external customers to our internal customers by sharing the insights that we gain from our outreach, our compliance assistance, and our stakeholder engagement activities.

The response from the staff have been very positive. In the past six months, they've helped with regulatory adjustments aimed at reducing the burdens on sources. And we have participated in coordinated statewide efforts to help provide funds to businesses both to exceed and meet regulatory requirements.

We have seen an increased interest from business organizations, people, and other agencies. People calling
us saying, "We want to work with you. How can we work collaboratively?" We think that bodes well for California. And we have people calling for consultation. We would like to figure out how we can make the regulatory process more effective and how we can actually make the economic opportunities more visible.

--o0o--

OMBUDSMAN BOWEN: So as we think about the next steps that we want to take in this office, we are looking to identify a group of small business leaders who will help us as we identify new ways to enhance stakeholder engagement, as we identify new ways to support compliance assistance, and as we enhance the communication of this office with all of our stakeholders.

We want to increase coordination and collaboration with others. And we want to identify and recognize the economic opportunities in our policies and regulations.

--o0o--

OMBUDSMAN BOWEN: So just want to conclude by saying to you that we will continue to work to improve the communication and the service that we provide to all stakeholders, but we're focused on small business right now. And those are the staff members that are available to work in this program.
We have reorganized ourselves so that we're divided by topic areas as well as geography so that we can get to know the actual neighborhoods, if you will, that this agency serves throughout California.

That concludes my presentation.

CHAIRPERSON NICHOLS: Thank you very much.

I let La Ronda just jump into doing her presentation this morning, because I thought it might be better if she did just the facts presentation before I said much more about her.

But I know I introduced her when she arrived a little bit ago, but I just want to reiterate that bringing in a new Ombudsman -- and this is a politically appointed position she occupies -- is something that was done with a lot of thought, both on my part and the agency and the Governor's office that strengthening our relationships and our outreach, particularly to small business stakeholders, but to all stakeholders as well is something that the Air Resources Board very much needed to do, particularly with all of the controversy that swirls around our activities.

The fact is that, you know, as a powerful regulatory agency, we are often in people's way. And we may be doing things that the public values. We'd like to think that the net result of our actions is something that the public values very much, which is better health and a
better environment. But in the mean time, oftentimes we are bringing and demanding things of people that can be difficult.

And it's really important that we find better ways to communicate both outwardly in terms of what we're doing, but also inwardly to really listen and try to adjust our programs in ways that will not compromise their effectiveness but in fact make them more sustainable over the long term.

La Ronda is a renowned -- I would say world-renowned expert in this particular area, having created the control at the South Coast Air Quality Management District and led nationally on these issues. So I was delighted she was willing to drop her own small business and come to work for me here at ARB.

And she will be here at future Board meetings. And I wanted to make sure that you all knew both a little more detail about what she's doing and also really feel like you have the opportunity to take advantage of her. I have never found her unwilling to go out and speak to any group, no matter who. And I always get good reviews back.

So with that, I'll open it up to any Board members who might have any questions or comments about this. Anybody?

Yes, Supervisor Roberts.
BOARD MEMBER ROBERTS: First of all, I want to compliment La Ronda on the overall problem. For me, reaching out to small businesses is particularly important. And I think it's 80 chamber of commerces that you're going to be linking up with. I think we're better served if there's a lot of information that's given out so people have an idea what we're doing and have a chance to be part of that. I know in spite of our best efforts, we'll always hear somebody come in, "Well, I never heard about this," but we can minimize that number with a genuine effort.

The one area I guess I had a concern as I looked at this program was it seemed like disproportionately our effort was northern California and that we have far more small businesses in southern California. Far more. I know in Sacramento you may not believe that, but that's in fact the case. And if you were to look at the tax rolls and everything else, I think you would find that in an instant. And it seemed to me that in one way, shape, or form that we probably need to strengthen the effort a little bit in southern California.

While I'm concerned about San Diego in particular, I think all of southern California -- I think it sort of -- you've got a small crew there that's going to be asked to do an awful lot. And if we're really going
to be active in the region and connect with the many
groups that have to be connected, I think we might
consider a little different approach and perhaps a little
more assistance.

I think this is important enough to warrant that
kind of attention. And I would hope that maybe through
the Chair we could work on some ideas to broaden the
program in southern California. And I'm not saying shift
resources, because I think it's equally important in
northern California. But there's a lot of ground to cover
if we're going to make an impact.

OMBUDSMAN BOWEN: Thank you, Supervisor.

We do have two student workers that actually
answer the hotlines that come in in southern California.
I'm down there about half of my time: Monday, Tuesday,
Wednesday here; Thursday, non-furlough Fridays there as a
rule. But we will take that, and next time I come to you,
we will have solved that problem.

BOARD MEMBER ROBERTS: All right.

CHAIRPERSON NICHOLS: Thank you.

Barbara.

BOARD MEMBER RIORDAN: I just wanted to say that
you serve a very valuable resource to those who are in
business, but may not even be considered a small business.
They are so small that they're probably not small
business; an individual owner of a truck, for instance. And you become their first opportunity to provide help in just helping them locate the right person to speak to on whether or not they would qualify for any financial assistance, to understand the rule. These people are so small they can't even join a chamber of commerce. They don't have time to join a chamber of commerce.

And I think it's just so important for us to have an office that is their first contact that can then be a resource for them probably over several months as they try to comply with some of our rules.

So I'm particularly hopeful that you can communicate that to the balance of your staff to say you're the first one. We often say that to those who are -- if we're professionals, to our secretaries. Our secretary's our most important person in our office many times, because they're the first contact, and that's the same with this.

So I look forward to working with you and referring clients to you. So thank you for the briefing.

OMBUDSMAN BOWEN: Thank you for your support. We will receive those clients, and we will handle them carefully.

I am in the process of training our staff members. And we hope to, once we perfect our own
training, reach out to other front line people. I think of our staff as definitely being the foot shoulders and also the enforcement staff and rule development staff, those teams that are the first touch the customers. We're sensitive to that.

CHAIRPERSON NICHOLS: Ms. Berg.

BOARD MEMBER BERG: I would like to thank you very much. I know firsthand. I've been working with La Ronda on the TRAC Committee and we have started a small business subgroup. And she so graciously is personally attending that subcommittee. And it's very challenging. And yet she is a great listener, is coming up to speed with all of the issues, and we really appreciate that. So what we're seeing is how vital it is to integrate the various departments. And La Ronda is playing a key role I think between the departments as well as an ear to all business. But the small business people we know really need our help. So I thank you for that and look forward to working with you. Great presentation.

CHAIRPERSON NICHOLS: Thanks.

And I just wanted to add that one of the things that La Ronda reminds me of whenever we talk is whether she says it directly or simply by example, but this is very personal hands-on work. This is not about websites
or brochures, although those can enhance our effectiveness greatly. But at least in the early stages when we're trying to build relationships with people and communities that we haven't always had relationships with, there's an awful lot of personal work.

And many of our staff in the program areas do a lot of this, of course, as well as part of the regulatory development and just dealing with the public. And we have quite a few people who are really quite skilled at it. But it's also something that Board members can be helpful in assisting in as well.

So I hope that in addition to feeding information or concerns to her that we can also call on Board members from time to time to go out and do some of these meetings as well. And I know we can. So thank you.

All right. If not, then I think there's no record that needs to be closed. We can just move on to the next report.

And this time I'll say a couple words and ask the Executive Officer to introduce the item.

The next item, which is an update on federal climate activities, is on the agenda I think at the request of several Board members who wanted to get a more real time update and more personal update on what's going on with respect to climate legislation, climate activities
at U.S. EPA, so we can have a better context for the work we're doing here under AB 32.

U.S. EPA has been very busy ever since the Obama administration came into office, including the finalization of a finding of endangerment with respect to greenhouse gases. And so we're now seeing the beginnings of a really strong federal presence in regulating global warming even before we see action on a bill in Congress. And California's fingerprints have been very much on these actions.

I've personally been back to Washington a number of times ever since I was first appointed trying to help stir things up to get a bill passed. And, of course, the Governor personally has been very active on this front as well, including raising the issue directly with the President. But also whenever he is meeting with members of the Congress, this is on his list.

There has been a bit of a hiatus here in Congress while the focus has been on health care. And so it sometimes seems as if climate has slipped in its importance, at least as far as the members of Congress are concerned.

But I think it is worth pointing out there is a bill that's passed the House of Representatives, the Waxman-Markey bill, waiting for action in the Senate.
It's a strong bill. It's a very long bill. And there are pieces of it that we definitely think could be improved, but at least there's something waiting there for further action.

The Senate now has several different bills in process, but nothing that has been able to get enough votes to bring it to a conference. However, the issue is not, in fact, really on the backburner. In fact, there's a lot of activity, but it's just not quite getting the attention at this point that the health care is getting, understandably so.

So our input in this is being sought on a regular basis. And the person who represents us in all of this is here today to give us a more detailed presentation. Brian Turner is sitting back at the staff table there behind a sign that says "staff," which is helpful.

And I think Mr. Goldstene wanted to say a few more words about his role and then we'll move on.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

The purpose of the item is to brief the Board on federal level climate change, regulatory, and legislative activities; to facilitate the coordination of ARB climate change activities with those occurring in the federal government. Staff has been tracking and, when
appropriate, providing input to the federal legislators
and others in the administration. We're fortunate to have
Brian on our team leading these efforts on behalf of ARB
and California.

Mr. Turner is based in Washington, D.C., in the
Governor's office back there. He's an Assistant Executive
Officer for Federal Climate Policy with ARB, and he's also
the Deputy Director in Governor Schwarzenegger's office
back there. He works closely with Congress and federal
agencies to promote federal action on climate change and
clean energy that builds on and influences California's
leadership in these areas.

I'd now like to ask Brian to present an update on
his activities.

(Thereupon an overhead presentation was
presented as follows.)

CHAIRPERSON NICHOLS: We're getting an unusual
amount of static. Someone has their cell phone close to
their mike. We're not naming names. Okay.

MR. TURNER: Thank you, Mr. Goldstene. And good
morning, Chairman Nichols and Board members. It's a
pleasure and an honor to be here today.

I've been working for the Air Resources Board in
Washington for close to two years now. And this is the
first opportunity I've had to share my perspective on the
very important role that the Air Resources Board plays in
the national clean energy and climate change effort.

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MR. TURNER: In my presentation, I'd like to give
you a flavor for the type of activities I engage in on
behalf of the Governor's office and Air Resources Board.
I'll also dive into some of the most important
policy priorities for Governor Schwarzenegger in federal
legislation and agency rulemaking.

And I'd like to describe some of the success
we've had and we hope to continue to have in bringing
federal support in both policy and funding back to
California for these clean energy and low-carbon
priorities.

And, finally, I can't pass up the opportunity
when describing California's role in Washington to
recognize the critical and powerful role of California's
leadership, your leadership, in moving the national
discourse and the cutting edge of environmental policy.

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MR. TURNER: So as Executive Officer Goldstene
mentioned, I work in Governor's Schwarzenegger Washington,
D.C., office. The picture on the slide there is taken
from outside my office. So the proximity to Capitol Hill
is geographic as well as policy-wise.
Like most states, California maintains an office in Washington to advocate our interest. California, being the largest state, has a relatively large office with half a dozen policy experts in the full range of federal issues. I focus on climate and energy both for Governor Schwarzenegger and the Air Resources Board.

Regardless of title, I work with Congressional offices to advise and advocate for the affect of federal legislation on California's energy and climate activities. I work with the federal agencies, connecting them with California staff and working to ensure that federal initiatives/regulations respect and build off the work we've done in California, and that they provide maximum benefit to California residents and industry.

I do a lot of work with other states in both formal associations and ad hoc coalitions to advocate for common state interests, to move the federal legislative debate, and advocate for legislation. And on occasion, I'm called upon to put a public face and to represent either the Governor or the Air Resources Board to various interest groups or the general public.

MR. TURNER: I was appointed to my position in April of 2008. As you probably know, there's been quite a bit of activity in Washington since then.
I do a lot of work, as the Chair mentioned, on both House and Senate climate legislation. We've been fairly successful in advocating our interests there and moving legislation that has been very respective of California's interests and, in fact, builds off of a lot of the work we've done. And I'll talk about some of those priorities shortly.

That also applies to energy legislation. The federal government is discussing its own renewable energy standards, energy efficiency standards for appliances and buildings, new clean energy financing mechanisms, transmission authority, a whole range of energy priorities that we are active and watching and advocating on.

And certainly not least, I do a lot of work for federal spending to support California's energy and climate priorities.

I'll talk quite a bit about the Recovery Act, forthcoming jobs bills, ongoing appropriations, and tax provisions that are very helpful and I think over the next couple of years especially will be very helpful in helping us reach, in fact, the goals of AB 32.

Next slide.

MR. TURNER: As you know, ARB has always worked closely with the U.S. Environmental Protection Agency, and
that's more true now than ever as both agencies' responsibilities expand to include addressing global warming pollution.

Three programs of particular note: The development of federal greenhouse gas standards for vehicles, which is soon to become a nationwide program based on California's; the development of our collaboration on the best science and life cycle emission assessment for biofuels and other fuels under our low-carbon fuel standard and federal renewable fuel standard; and the current ongoing development of greenhouse gas standards for major stationary sources, as the Clean Air Act is further engaged on climate change.

On the energy, I do a lot of coordination between our California Energy Agency and U.S. Department of Energy on such activities as the energy efficiency assignment, smart grid deployment, and clean transportation research and development with U.S. Department of Interior, Department of Agriculture, Department of Commerce through the National Oceanic and Atmospheric Administration. We work on the permitting of new renewable development, transmission lines, also quite a bit of work on planning for adaptation to climate change.

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MR. TURNER: And, finally, we work with the White
House, which serves a coordinating function between all federal agencies to connect them with California leadership and ensure that both within and between California and federal agencies we are breaking down the silos and building new cooperation to address the unique challenges of climate.

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MR. TURNER: Lastly, I do a lot of work in coalitions with other states. The National Governors Association, which represents all Governors nationwide, has a lot of influence, when they can agree around specific policy positions. And we've been fairly successful in moving the association to recognize and support state-based efforts to build a clean energy economy in each state.

The Western Governors Association, association of all the Governors in the west, is engaged in several specific initiatives around clean energy and climate: One very promising initiative currently on state-based climate adaptation; another on planning for the large-scale transmission that will be necessary to move large-scale renewable power generation throughout the west.

The Governor's Energy and Climate Coalition I'd like to mention. That's a coalition of 31 governors nationwide bipartisan that have signed onto a short set of
principles that support federal climate legislation and
the importance of states in building up the response to
climate and the building of clean energy economies and
serves as a clearinghouse and advocacy for federal
legislation.

And lastly, the state voice, which is state voice
group which is more of an ad hoc coalition of State
Environmental Agency Commissioners that has been effective
in diving into the details of federal legislation and
working for climate legislation that harnesses but does
not quash the state initiative.

MR. TURNER: So I know you are interested in my
own handicapping of the federal legislative prospects. I
listed here the most major legislation in order of
development.

As you know, the Markey-Waxman bill passed last
year in June in a bipartisan but narrow vote, 219 to 212.
This bill is comprehensive in that it includes both
climate measures of Cap and Trade Program and
complimentary greenhouse gas standards, as well as a
number of energy provisions, renewable energy standards,
efficiency standards, et cetera.

At the same time as Waxman-Markey was being
passed, the Senate was working on its own energy bill that
in many ways mirrors the energy provisions of the
Waxman-Markey bill, including renewable energy standard,
energy efficiency standards, et cetera. And that's
expected to form the basis of whatever comprehensive
climate and energy bill comes out of the Senate, hopefully
as soon as possible.

Last fall, things became a bit more complicated
when Senators Kerry and Boxer introduced their climate
legislation, the Clean Energy Jobs and American Power Act.
This faced a more partisan environment in the Senate
Environment Committee. When it was passed out of
Committee, it did so over a Republican boycott, which is
generally seen as having tainted that particular piece of
legislation. So it is not likely to move forward,
although the provisions within it still established a
precedent and we'll likely see future action.

So the action now is with a tri-partisan group of
Senators Kerry, Liberman, independent of Connecticut, and
Graham, Republican of South Carolina, that are working
with their colleagues to form a comprehensive climate and
energy package that can attract the 60 votes that's likely
to be necessary in the Senate.

The details of this legislation are not yet
public. We expect them to publish hopefully a draft bill
in the coming weeks in March.
Hints are emerging. We expect that they are looking at a hybrid approach to putting a price on carbon. There are some suggestions that this may include a Cap and Trade Program for the electricity and other major stationary source sectors and perhaps a fee-based approach or perhaps a low carbon fuels approach for the transportation sector. Again, we need to wait to find out the details exactly and what they're looking at.

The energy part of this package will be very important in moving it to the attaining 60 votes in the Senate. So they are looking at perhaps a clean energy standard as opposed to a renewable energy standard that would include nuclear energy, clean coal with carbon capture and sequestration, as well as further incentives for nuclear energy development, some liberalizing of oil and gas drilling provisions, again, in an effort to attract the 60 votes necessary.

They've suggested they'll release this legislation in March, and Senator Reed continues to profess that he will bring the bill to the floor in April. But as you know, things are looking difficult in Washington right now. And I know enough to know that it's very difficult to predict -- almost impossible to predict what will happen in Congress. We all know it's a very partisan environment in Washington right now and there are
many other priorities on the schedule. So it's not looking great for climate legislation this year.

I would say there is still a chance. Things can change very rapidly and a policy window can open in the next few months. So I do give it some percentage, but it's not terribly hopeful.

However, after the November elections, things may change dramatically. And there may be another significant opportunity in the first half of 2011 to move the bill. So it is very important what they put out in the near term and what kind of work we do on it over the coming months to be prepared when that window opens.

I also wanted to touch on action around the U.S. EPA authority on the Clean Air Act. As you know, the endangerment finding was finalized in December starting a series of rulemakings from U.S. EPA. They will be issuing, we expect, their vehicle greenhouse gas regulations at the end of March. And they've also proposed a tailoring rule to ensure that permitting requirements for major sources only apply to the largest stationary emitters.

California has been very supportive of U.S. EPA exercising Clean Air Act authority. After all, the Clean Air Act has been one of the most successful environmental laws in the country. And we have worked closely with U.S.
EPA and we're appreciative of the deliberate sense they're taking to promulgating rules. Unfortunately, not everyone is so sanguine, and there are multiple challenges to EPA authority over greenhouse gases, including many lawsuits, which, not being a lawyer, I'm not qualified to comment on.

I will mention the Lekowski resolution in the Senate to basically invalidate the endangerment finding. This is under a particular Congressional process, the Congressional Review Act, that allows a majority vote within the Senate to -- when passage, it goes over to the house and then it proceeds by a regular legislative process at that point.

We are working actively along with a coalition of other states to impose the Lekowski resolution. We expect it to be brought to a vote to the Senate in March. I'm not totally sure what way that vote will go at that time. As I say, we're currently in the midst of the battle. I don't expect it to pass out of the Senate. But it is an ongoing issue currently.

Assuming that EPA is not undercut by Congressional action, it will remain extremely important to follow EPA rulemaking over the coming years. We do have confidence that they're proceeding in a deliberate series of rulemakings that will focus on the most feasible
rules first and put off the more problematic aspects of applying Clean Air Act authority with the greenhouse gases for the near future certainly. EPA has already indicated that they will begin work on greenhouse gas regulations for heavy-duty vehicles in the near future, perhaps draft rules to be released in June. This may be coordinated with the first ever federal fuel economy regulations on heavy-duty vehicles. And the agency is facing outstanding petitions to regulate non-road engines, including aircrafts, boats, farm, and construction equipment. So that may be soon on their agenda.

Also potentially on tap are new source performance standards for specific industry stationary sources, such as cement, electricity, or oil refineries. We don't have any insider information about when these rules will be coming out, but there are indications that the agency is working on them.

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MR. TURNER: Next I'd like to talk about some of the priorities we are working on in federal policy. Speaking broadly, our main interest in working with Congress and the administration is to craft a state/federal partnership on clean energy and climate change. Such a partnership would embody the successful
federal structure in which the federal government sets minimum standards and states are free to add on further policies according to their needs.

One overriding goal is that we retain traditional authority of California and other states to protect the health and welfare of our residents. So I work continually along with other states to ensure that we retain our authority to:

A. Set overall binding emission targets for the state and;

B. To pursue a variety of the programs to realize those targets.

Now, we know there is a push at the federal level that would make federal greenhouse gas regulations the "sole controlling authority" for greenhouse gas regulations in the country. This broad preemption would have tremendous negative impacts as it could implicate a range of programs, including our energy efficiency programs, renewable energy incentives, adaptation, and greenhouse gas reporting, let alone emission standards for vehicles and electricity that saves consumers money.

So we fully oppose this broad preemption, and that kind of outcome is not likely. However, there is more targeted preemption efforts, and one of the best known and most obvious is that which would preempt state
Cap and Trade Programs that overlap with the federal Cap and Trade Program.

And it's important to be very specific. By Cap and Trade Program, I mean the issuing of a limited number of commission allowance permits. Otherwise, if we use phrases like cap and trade broadly, it can be used to implicate of our setting of an overall state target or the other programs that we use to pursue that overall state cap.

So Cap and Trade Program, we expect that neither California nor other states have any interest in running a Cap and Trade Program that is redundant to a federal program. A redundant program would have no environmental benefit. The allowances would cost basically zero. It would be redundant.

However, we have imposed drastic measures that would remove this tool from state's repertoire. Because as has been proved time and again in environmental and other policy areas, keeping state authority presents a hedge and a backstop against federal inaction.

For instance, if we were to face a federal administration intent on actually preventing something on climate change, something not unfamiliar to anyone that's been paying attention for the past decade, we would need once again to rely on state action. So we argue
strenuously for the necessity of empowering states to
preserve the certainty of climate policy.

So besides retaining that authority, I work to
preserve the incentive for states to continue to lead.

For instance, when and if state Cap and Trade Programs
transition into a federal program, we work to ensure that
the investments private individuals and companies have
made and state allowances and offsets are recognized in
giving full faith and credit under a federal system.

So we've made great progress and wide support for
a dollar for dollar exchange for state allowances that
have been issued under a state Cap and Trade Program to be
recognized on a federal program on a dollar for dollar
basis.

The transition of offset credits is a more
difficult issue. And while we argue for recognition of
state recognized offsets, we also want to make sure that
the value of high integrity offsets would not be undercut
by having low integrity offsets from other systems
recognized at the same value level. That's an ongoing
issue we're following.

Lastly, I want to mention the performance-based
funding programs that we've been arguing for. And there's
a lot of interest in this across a range of policy issues
in Washington where states that are doing more are being
more successful in reducing their engine use and greenhouse gas emissions would receive greater funding to continue those programs.

So, for instance, there's wide agreement -- we've been successful in getting into federal climate programs funding for states to continue the energy efficiency and renewable programs so we, for instance, in California have been investing a lot in already.

Next slide.

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MR. TURNER: So this is a quote that I should probably skip now. This is from the Governor's Energy and Climate Coalition, but kind of describes that partnership we're seeking. But in the interest of time --

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MR. TURNER: I'd like to highlight some of the ways we're working for federal support for the states in both policy and funding support.

In policy support, we're finding that the federal recognition of California's leadership by the adoption of our policy is actually proving the reverse of an often heard but I think misplaced critique that California environmental policy puts us at a disadvantage to other states.

To the contrary, because we've already adopted
many of the policies, that federal policy is increasing asking of all states, California, and California businesses, and residents, is solidifying it's first move or advantages in the state's race to the top.

So, for instance, in energy legislation, federal policy is building off of California efficiency standards, nationalizing the market for efficient technologies and bringing down the cost for California consumers.

Federal policy to streamline electricity transmission for renewables is funding and pushing interstate cooperation that California has been seeking for years.

And in draft federal renewable energy standards legislation, states that have their own RPSs in place, as long as they comply with the minimum federal standards, are encouraged to maintain the lead authority in implementing those programs and achieving the legislative goals.

And in draft cap and trade legislation, I mentioned some of the funding that flows to the states, energy efficiency and renewables, but it's important to know those states that have Cap and Trade Programs up and running, such as the northeast RGGI states, are making the argument and achieving a lot of traction with the argument that states should be funded for energy efficiency and
renewables to make up for the allowance value they're already receiving through those programs and spending energy efficiency and renewables in their state. So they've definitely achieved a first mover advantage there by having the cap and trade programs up and running and making the investments in energy efficiency and renewables, so the federal program will backfill that investment.

I think the Recovery Act is a very impressive story that will only begin to really be told over the coming months. Already, 1.6 billion has been awarded to California for clean energy programs that is just starting to hit the streets now and will continue to over the next six months and then throughout 2010 and 2011.

About half of that is going to private companies, another half to public governments that decides investing in their own buildings and activities will be sending out most of that money to California consumers to buy new energy-efficient appliances, to weatherize their homes, deploy renewable energy systems, and a whole host of clean energy programs that save consumers money and reduce greenhouse gas emissions.

315 million flow into the California Energy Commission for a whole host of programs. I'll mention one suite. They are financing consumers' and business' demand
for clean energy systems, energy efficiency and
renewables. They are setting up a low-interest loan
program to bring and keep the manufacturing of these clean
energy systems in California and setting up the largest
workforce training initiative in the country to train the
workers that will build, install, and maintain these clean
energy systems.

Similarly, the $267 million is flowing to 300
California cities, counties, and tribes through the Energy
Efficiency Block Grant Program for investments in energy
efficiency and renewables, from LED street lights, to
methane capture on wastewater treatment plants.

And, finally, companies are racing to claim
billions of dollars in tax credits and loan guarantees for
new utility scale renewable energy programs. Just Monday,
a $1.4 billion loan guarantee was announced for a
400-megawatt concentrated solar development in California.
And in aggregate, these projects have the potential to
bring many thousands of megawatts of clean renewable power
online in California over the next several years.

On industry incubation, these are programs under
the Recovery Act, under forthcoming jobs bills, and
ongoing appropriations to establish geographically
concentrated industry sectors throughout the
United States. But California is making some very good
claims for those dollars, such as in clean vehicle manufacturing, in bioenergy, especially advanced biofuels production, and workforce training. And energy-efficient building systems is a new one that was just announced, a program to create a DOE innovation hub that California's making a very strong bid to host that innovation hub.

And the last part of federal support I wanted to mention was in clean transportation, an area I know is of particular concern to the Air Resources Board. Besides things like the Diesel Emissions Reduction Act Programs that we've been successful in bringing to California, the federal adoption of our Clean Car Program actually nationalizes the demand for more efficient vehicles and bringing down the cost for California consumers.

They also directly support our clean vehicles program, such as DOE participation in zero emission vehicle implementation, the California Fuel Cell Partnership, hydrogen technology validation programs, the Clean Cities Program, which gives grants to cities and regional associations of governments for clean vehicles and clean vehicle fueling infrastructure.

And I have to mention SB 375 and sustainable communities efforts. There's intense interest at the federal level for more performance-based funding programs for transportation. And the groundwork we're laying
through the SB 375 program is being looked at very strongly as a model type of encouraging that kind of performance-based funding for communities.

Both the federal transportation reauthorization bill that is still at a proposal stage, but also the climate legislation as a proposal, both included measures that would encourage states and regional planning organizations nationwide to do the kind of planning that we're already getting started under SB 375.

We're hopeful in the short term the Department of Transportation will be investing in the kind of planning tools that we need for the integrated land use transportation planning as part of 375. And the U.S. Environmental Protection Agency and Housing and Transportation and Urban Development Agencies have formed a sustainable communities partnership that is spreading the model that we're investigating with SB 375.

MR. TURNER: So in closing, one message I want to be sure to bring you, in case you don't know, is that what you do here resonates literally around the world. The Air Resources Board has a global reputation for both the technical quality of its regulations as well as the ambition of its vision.

The policies that you're pioneering to
cost-effectively and feasibly reduce pollution are being copied around the world. And this gives our state and businesses a leg up nationally and internationally. Of course, you know the clean car vehicle standards were adopted by state, around the country, and are law of the land, not only because of the leadership and commitment of our Governor, but also because of the technical quality of the analysis and thorough process that the Air Resources Board staff carried out and that you oversaw.

Mandatory greenhouse gas reporting will soon be going live at the federal level, and the majority of the federal protocol is clearly based on the California standard. The investment of California firms in helping to draft the California reporting protocols is paying off in early compliance with the federal standards.

Our low-carbon fuel standard is being copied in the northeast states, in the European Union, and repeatedly proposed and continues to be under active discussion at the federal level.

We're working closely with EPA staff, other states, and Europeans and Canadians to share the latest science on life cycle assessment. So we're pioneering policy framework for a truly level playing field for the best biofuels that prosper.
And your preliminary Cap and Trade rule and its future iterations are being closely watched, not just by our regulated entities and investors in third parties, but by regulators at the federal and international level for the precedent of your decisions.

And I want to mention one example here. California has been leading a working group, the market enforcement agencies, including our ARB enforcement and legal personnel, but also the California Department of Justice with federal agencies, including the Securities and Exchange Commission, Commodities Futures and Trade Commission to pool our expertise on what will be required to ensure a new carbon emission allowance to market is stable and safe, free from fraud, manipulation, or excess volatility.

So the insights gained from this group are informing the California process, which will in turn be more likely to be consistent with, if not form the basis for, the federal program.

So I hope you heard enough, but let me ensure you that from my perspective California is looked to and in fact is relied upon for its fearless leadership in setting the cutting edge in environmental policy. Clean energy policy and climate policy is as true as it's ever been. As goes California, so goes the nation.
Thank you for the opportunity to present to you today, and I'd be happy to answer any questions.

CHAIRPERSON NICHOLS: Thank you, Brian.

I think you've covered an awful lot of territory, and I hope you're going to leave your slides behind, so if people have any specific questions about any of the items that were raised.

But I think it is fair to say if you think that Brian covers a lot of territory for a single person in one office, you would be correct about that. He really is getting California's needs and California's programs out there to an amazing degree and very, very well networked with a lot of other people, because obviously this can't be done alone.

But for those of you who get back to Washington in connection with other organizations that you belong to, local government groups, for example, the Washington, D.C., office is also a good host. They are in the Hall of States Building, which is right next to the Capitol. And I know they welcome visitors and provide accommodations for all kinds of people who are in town. So I, on his behalf, will invite you to stop in if you happen to be in Washington.

Are there any questions or comments people would like to make now?
We'll start with the far end with Supervisor Yeager.

BOARD MEMBER YEAGER: Yes, thank you.

And thank you, Brian, for that. I was one of the Board members who encouraged you to come and talk to us just to see what's happening in Washington. I know you said it didn't look great for major climate change legislation this year, but after the November election things might change and improve. That's perhaps being very optimistic. And I think any pessimist would say things might drastically get worse depending on if a new party comes in.

I think maybe my caution to you is to also think in terms of worst-case scenario. I'm concerned that we will spend a lot of time and energy and staff time on some very important initiatives, only perhaps to have Washington come in and say -- and you sort of alluded to this -- well, states, this is not your purview, and we're going to make sure that there is a national program rather than state by state. And a lot of the work we will have done will be for not.

And again it's just a caution. I suppose if you aren't someone who thinks trouble lurks in the fog, maybe you don't spend a lot of time on it.

I just worry maybe it was a more optimistic
report to us than perhaps is warranted. And I don't know if there is a way for you to continue your communication with us so we can get a pulse of what's happening in Washington in terms of what we are working on just so we see the full perspective. It's so easy for us to look at what we're doing here in California and not always seeing the impact it might have. You certainly stressed the positive impact, but there might also be some pushback at some point. I just think we need to be aware of it.

CHAIRPERSON NICHOLS: Thank you.

Sorry. Dr. Telles.

BOARD MEMBER TELLES: Thank you for your presentation.

In the climate legislation, you omitted one thing that's being discussed in D.C. I read an article in the Economist that raved about the piece of legislation that's being produced by a Senator from Maine and a Senator from Washington. It's called cap and dividend. Can you just kind of elaborate on that for a few minutes?

MR. TURNER: Sure. The Cantwell-Collins CLEAR Act, I believe it is -- I don't know what CLEAR stands for -- but it is referred to as cap and dividend. And it is getting a lot of attention right now.

I didn't include it, because it's not a very substantive bill. It's relatively short, which is a
benefit, but it's drastically underspecified. Setting up a carbon Cap and Trade Program is very complicated. And the bill leaves out many provisions that would be necessary, such as the market oversight piece that I mentioned that we're active in helping to develop.

So the some of the principles from that bill I think will carry forward, such as the idea of returning most of the value from the system. About 75 percent under the Cantwell-Collins bill is set aside to be returned to every consumer -- every resident in the country in per capita checks, is how it's suggested now. Now the bill is underspecified how exactly that would occur, through what mechanism. But the idea of returning the majority of value to consumers is quite attractive to a lot of folks. So I think that's one of the reasons it gets a lot of attention.

Another provision of it is its limited trading component. The initial carbon market is restricted solely to regulated entities. And there is a secondary market and there is a sharp firewall between regulated entities and the secondary market. If you're a regulated entity, you can't play in the secondary market directly. And secondary market participants can't play in the initial carbon market directly. So that is an interesting structure.
Again, there's a lot of questions about how exactly that would function.

CHAIRPERSON NICHOLS: But the concept of returning value of the allowances directly to the people is one that was taken up by our own Economic and Allocations Advisory Committee. And it is definitely one that the Governor has expressed interest in as well.

So I think while there has been criticism of the bill for being, as you say, short on specifics that you need. It has attracted a lot of positive attention as well. So I think at least those ideas are going to have to be dealt with as part of any final package that goes through.

Do you have a question?

Yes, Mayor Loveridge.

BOARD MEMBER LOVERIDGE: Very quick comment, question, and then request.

Just the comment is I strongly support a green economy. You identified all kind of pieces of that that are moving around. But somehow we almost need a green economic strategic plan so we can see how the pieces connect and monitor progress and know where we're going.

The question is on the energy block grants, which are not in the President's budget proposed. The National League of Cities and the U.S. Conference of Mayors
strongly support another round of energy block grants. I think they have a transformative affect on cities in terms of conservation and new technology. Where is I guess the Governor and the state in supporting those second round of those grants? That's the question.

And then the request is I think you quite rightly emphasized the importance of SB 375. I think a major key to success is funding. And I know the Obama administration's emphasizing regional incentives. It seems to me one thing that the state of California should try to figure out is how to take some of those incentives that are being talked about in D.C., and we are I think leading the parade in looking at urban forum and so forth. But funding is a key to really success of SB 735.

MR. TURNER: So in answer to your question on energy efficiency and conservation block grant programs, yes, it's not in the President's budget. It does have a lot of support within California within the Governor's office and on Capitol Hill. It seems to be a very effective program. And certainly cities and the kind of programs they can do with their businesses and residents are going to be one of the most positive ways to get clean energy implemented.

I think one of the reasons it's not in the budget
is because it is more a mechanism for delivering of the
large pulses of money, such as the Stimulus Act, and
actually, such as climate legislation would provide. One
of the most positive uses of the block grant program was
in the Waxman-Markey and Kerry-Boxer bills where that was
a significant avenue for channeling funds for clean
energy.

So we've been strongly supportive of that. We'll
continue to be, and I think we would be. I don't think
the Governor's office has taken a position on continuing
appropriations for that program.

CHAIRPERSON NICHOLS: So as far as the
transportation issue is concerned, Brian alluded to it
briefly. But the state is actively participating in
efforts to extend and reauthorize transportation funding
legislation that would specifically include incentives for
SB 375 like programs. And the lead on that is coming from
Caltrans, but Caltrans has fully embraced the concept and
is I think doing a really good job of appearing in various
forums and trying to galvanize behind that.

This is one where I think Senator Boxer is going
to be very active. She's staged a really interesting
forum in L.A. last week trying to round up support from
all the various constituency groups and seems like she's
certainly got a lot from the labor and local government
and all of those constituencies going. So I'm at least hopeful that we might get somewhere.

We did have one request to speak on this item. Although it's not an action item, we should take testimony briefly. Randall Friedman from the United States Navy representing the Navy, which is opposed to climate change.

MR. FRIEDMAN: Madam Chairman, Board members, Randal Friedman. As the Navy's representative here, I'd be remiss in not commenting on this agenda topic and to take the opportunity to again stress the military's strong commitment to the full spectrum of activities involved in minimizing climate change. Whether it be our commitment to funding next generation biofuel research, some of which is showing very promising results here in California, our commitment to in general alternative energy projects, the strong commitment of our installations over the last 15 years to substantially reduce our energy and carbon footprint, and this has been reinforced recently by President Obama's executive order to reduce even greater.

Our new Secretary of the Navy has issued some very aggressive objectives for renewable energy use, including our weapons systems. In fact, he's called for a green fleet to sail around the world, reminiscent of President Roosevelt's Great White Fleet.

Perhaps one of the greatest symbols of this new
effort is actually setting in San Diego right now, the Navy's newest ship, the USS Makin Island, which is nicknamed the Prius of the Navy because of its revolutionary hybrid electric drive that results in substantial energy savings while meeting its mission objectives.

Again, as the largest federal agency, I think we're very proud of what we have done over the last 15 years and what our future plans are to be a leader in this field and would certainly welcome the opportunity to provide the Board a greater presentation of our efforts.

And certainly, Supervisor Roberts, if you would ever want to host some of our fellow Board members on one of our installations in San Diego and see firsthand, let us know, and we'd be happy to do that.

CHAIRPERSON NICHOLS: Thank you very much. And you do have a lot to be proud of in this regard. And it shows what the military can do when they put their minds to a problem. Really impressive.

All right. Thank you very much, Brian.

We will now take up an item directly related to California's climate program. It's the proposed regulation to reduce sulfur hexafluoride emissions from gas insulated switchgear, which is primarily used in electricity transmission and distribution systems.
Sulfur hexafluoride is not necessarily the best known gas that we deal with, but it is the most potent of all the greenhouse gases that are addressed by California's Global Warming Solutions Act. And about 80 percent of the state's emissions originate from this one type of source, the insulated switchgear. So this measure will have a very important impact on our state's efforts to reduce greenhouse gases.

I'd like to turn this over to Mr. Goldstene.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

Today, we are proposing for your consideration that would reduce sulfur hexafluoride, or SF6 emissions, from equipment used by the electricity sector.

As you recall in the Scoping Plan, this was one of the strategies that was incorporated.

Several emissions reductions measures contained within the Scoping Plan targeted the reduction of high global warming potential gases like SF6. And Dave Mehl from the Stationary Source Division will be making the presentation.

Also I'd like to introduce -- is Rich Corey here? Okay. I wanted to let the Board know that Richard Corey has been promoted to be the Division Chief for the Stationary Source Division. He is Bob Fletcher's
replacement. So we just want to fill the Board in on that as well.

So, Dave, go ahead.

(Thereupon an overhead presentation was presented as follows.)

ENERGY SECTION MANAGER MEHL: Thank you, Mr. Goldstene.

Good morning, Madam Chairman and members of the Board.

Today, I will present our proposed regulation for reducing sulfur hexafluoride emissions from gas insulated switchgear.

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ENERGY SECTION MANAGER MEHL: This slide outlines today's presentation.

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ENERGY SECTION MANAGER MEHL: First, some background information on sulfur hexafluoride, its uses, and its global warming impacts.

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ENERGY SECTION MANAGER MEHL: Sulfur hexafluoride is a colorless, odorless, and non-toxic gas with a global warming potential of nearly 24,000 times that of carbon dioxide. In other words, releasing a single pound of sulfur hexafluoride has the same effect as emitting ten
Because of its high global warming potential, the Board's approved Scoping Plan includes three sulfur hexafluoride emission reduction measures. The first two measures regulating non-electric and semiconductor industries became effective last month. These sectors account for approximately 20 percent of the sulfur hexafluoride emissions in California. Today's proposal addresses emissions from electrical transmission and distribution equipment, which is responsible for almost 80 percent of California's sulfur hexafluoride emissions.

ENERGY SECTION MANAGER MEHL: Since the 1980s, sulfur hexafluoride has been used as an effective electrical insulator to ensure the safe and reliable performance of medium and high-voltage electrical switchgear.

There are many advantages of using sulfur hexafluoride: Gas is non-flammable, non-corrosive to internal switchgear components, and can quickly and safely suppress electrical arcs. Even when it breaks down during arcing, it's able to return to its original state. Furthermore, because of these properties, less space is needed for this type of switchgear. While
currently there is no substitute as effective as sulfur
hexafluoride for high voltage switchgear, the proposed
regulation will help ensure good gas management practices
and result in reduced emissions.

ENERGY SECTION MANAGER MEHL: I will now discuss
how we developed the proposed regulation.

ENERGY SECTION MANAGER MEHL: The proposed
regulation will affect about 75 entities, including
electrical utilities and other public and private entities
that own gas insulated switchgear. Only one State agency
is expected to be impacted. The Department of Water
Resources uses sulfur hexafluoride in its electrical
transmission and distribution equipment.

ENERGY SECTION MANAGER MEHL: In developing the
measure, we began with a survey of the affected
industries. We provided initial concepts and updates
through a list serve and on a web page established for the
measure.

During the past year, we held three technical
working group meetings, toured several utility
substations, and discussed our draft proposal at two U.S.
EPA sulfur hexafluoride volunteer program conferences. We
also held a public workshop and had numerous informal
discussions to develop today's proposal.

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ENERGY SECTION MANAGER MEHL: Throughout the
development process, a core group of technical industry
representatives provide valuable guidance that helped us
draft the proposed requirements.

As shown on this slide, the proposed regulation
sets annually declining emission rates and allows affected
to determine how best to meet them using
currently available technology and gas management
techniques.

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ENERGY SECTION MANAGER MEHL: Current gas
management techniques range in cost from those that create
a savings, such as leak detention and repair and gas
recycling, to those which cost much more but have a
greater emission reduction potential. These include
equipment refurbishment and replacement.

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ENERGY SECTION MANAGER MEHL: The annual reports
required under the proposed regulation expand on but do
not duplicate current ARB reporting rules.

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ENERGY SECTION MANAGER MEHL: Although
California's sulfur hexafluoride emissions represent a small percentage of the state's greenhouse gases, this proposal will become the first enforceable standard in the nation. This measure is designed both to achieve substantial emission reductions in California, 70 percent over a ten-year period, and to be a model emission reduction measure for other states and the U.S. EPA.

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ENERGY SECTION MANAGER MEHL: Initial cost to achieve the projected emission reductions are expected to be low and may even create cost savings for some affected parties.

Costs are expected to rise during latter years of the regulatory period as the emission rate declines and the higher cost options of equipment replacement and refurbishment are needed to meet the lower emission rates. The total average cost including recordkeeping and reporting are expected to range from $18 to $28 per metric ton of carbon dioxide equivalent emissions reduced.

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ENERGY SECTION MANAGER MEHL: The cost savings occurring in the early years of the proposed regulation would likely be absorbed by the regulated entities. Those costs which cannot be absorbed may be passed on to consumers as increased electricity costs. Staff estimates
that the cost passed onto residential consumers would increase an average bill by about one to two cents per year.

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ENERGY SECTION MANAGER MEHL: The proposed measure will be enforced by ARB inspectors based on current Health and Safety Code enforcement and daily penalty assessment provisions. These statutes provide penalty factors to be considered in order to assess fair and appropriate penalties for non-compliance. The enforcement provisions proposed for this regulation are consistent with those established for other ARB regulations adopted under AB 32.

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ENERGY SECTION MANAGER MEHL: Over the last few weeks, we've been working with affected entities to refine the proposed language. As a result of these meetings, we are proposing several amendments, including revising the submission date of the first annual report and the definitions of active equipment and emergency event. These changes are highlighted in the document entitled, "Proposed Modifications to the Staff's Original Regulations," available in your folders and on the table outside the hearing room.

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ENERGY SECTION MANAGER MEHL: This measure achieves a very cost-effective 70 percent reduction in a highly potent greenhouse gas. Therefore, staff recommends that the Board approve to adopt the proposed regulation with our proposed changes.

This concludes my presentation. I would be happy to answer any questions.

CHAIRPERSON NICHOLS: Thank you.

We can proceed directly to public comment, unless there are any questions. Let's do that.

May I have the list of witnesses, please?

We have seven people that have signed up to testify. I'll call the first three: Lily Mitchell, Victor Yamada, and Cindy Parsons.

So Ms. Mitchell.

MS. MITCHELL: Good morning. I'm Lily Mitchell. I'd just like to --

CHAIRPERSON NICHOLS: And there is a three-minute timer when you start speaking.

MS. MITCHELL: Thank you.

I'm Lily Mitchell. I'd just like to defer the first speaker to Susie Berlin.

MS. BERLIN: Good morning. My name is Susie Berlin. I represent the Northern California Power Agency.
NCPA is a joint powers agency comprised of publicly-owned utilities. And we're speaking today on behalf of NCPA, but also like to introduce the joint utility comment. NCPA has been working collectively with a number of joint other utilities across the state, including Southern California Edison, Pacific Gas and Electric Company, San Diego Gas and Electric, the Sacramento Municipal Utility District, and the Southern California Public Power Authority. Together with NCPA, these entities submitted some joint comments proposing various revisions to the draft regulation that we submitted this morning.

We've also been working over the last nine months collectively with staff and appreciate the time and effort and openness staff has had in working with us to craft a regulation that reduces SF6 emissions and also that goes towards avoiding being overly prescriptive, avoids creating unnecessary work and recordkeeping burdens for compliance entities, but also minimizes additional cost burdens for consumers, and importantly, maintains reliable operation of the state's electricity infrastructure.

The staff appreciates the 15-day language that -- excuse me -- the joint utilities appreciate the 15-day language that has been proposed by staff and as will be discussed in more detail by some of my colleagues. I
think there is still additional changes that need to be
addressed with regard to some of the recordkeeping and
reporting obligations. NCPA would like to focus our comments on the
provisions of Section 95358 regarding enforcement. While we agree that the enforcement provisions are consistent
with other AB 32 regulations that have been adopted to
date, simply put, the current enforcement mechanism
contemplated in the proposed regulation is irreconcilable
with an annual compliance obligation, which is what is set
forth in the proposed obligation.

While AB 32 provides in Section 38580(b)(3) that CARB may develop daily penalties, it expressly notes it may be done where appropriate. In instances where the compliance obligation is a total maximum annual emissions rate as in the case of the FS6 regulation, a daily penalty provision is simply inappropriate.

Additionally, the enforcement provisions do not include any guidelines or directions to compliant entities regarding the penalty determination factors, notice, or appeal provisions. The penalty -- there is no provisions regarding notice for insufficiency of reports, yet there is contemplated daily penalty provisions for insufficient reports in addition to daily exceedances. NCPA urges the Board to direct the enforcement provisions be reviewed.
Thank you.

CHAIRPERSON NICHOLS: Thank you.

Ms. Berlin. Your name is also on the list. Were you also planning to get up again to testify?

MS. BERLIN: No. We were just mixing up the order a little. Unless you want to give me another three minutes.

CHAIRPERSON NICHOLS: No, thank you. You did fine with your three minutes. Thanks for your written testimony as well.


MR. YAMADA: Good morning. My name is Victor Yamada representing Southern California Edison.

First point, also to echo, we really appreciate the openness and the discussion formats that we had with the ARB staff. That's been very valuable as we proceeded ahead.

The second point, again to reiterate, Southern California Edison was a part of the joint comments letter that was submitted to you folks. So just wanted to acknowledge that. We support the principles that are in there related to emergency breakdowns, enforcement, as well as recordkeeping, and some of the other provisions.

Third, what I'll spend my minute or two on is
focusing on the inventory measurement, the recordkeeping, and the reporting aspects just to reemphasize points that have been made in the joint letter, as well as Southern California Edison's separate letter, which we delivered to you folks, to you on the Board.

On the inventory measurement procedures, the proposed rule initially included a provision that each gas container be weighed before and after each of its use. And we thought that that was overly burdensome and was not necessary for the calculation of the annual emission rate, which is what the compliance is set up on. We felt -- and we've shared this information with the staff -- that that would be adding to the labor and to the computerized data management system that we and others would have to put in place to accomplish that.

And that those estimates of labor and system costs would be considerably more than what was included in the staff report. The staff report indicated something in the range of 500 to $2,000 in a typical year for compliance. We estimated that just putting in the data management system would be about over $200,000 plus labor to operate that.

The end point on this discussion is that with the staff's recent proposal we're supporting that particular change in the last few weeks, which talks about an annual
requirement versus the per-use kind of an approach.

My second detailed point is on the proposed regulation where it speaks toward a system nameplate capacity. The proposed regulation right now requires that the average system nameplate capacity be calculated on the number of days each of those equipment are in use during the year. We feel tracking the number of days on which each of the pieces of equipment that are in active service during the year is not necessary and is beyond the current industry practice. So we proposed a simpler approach that follows the EPA approach on this.

CHAIRPERSON NICHOLS: Thank you. Your time is up. We do have your letter though. Thank you.

Cindy Parsons.

MS. MITCHELL: Lily Mitchell again. I just wanted to put it my comment now rather than -- just wanted to let Susie Berlin give the first --

CHAIRPERSON NICHOLS: We can't hear you. Sorry. You need to speak directly into the mike I guess.

MS. MITCHELL: Good morning. Lily Mitchell for the Southern California Public Power Authority. Thanks for the opportunity to speak today.

Many of the issues raised in the SCPPA submissions on SF6 have been addressed by the changes proposed by the staff -- thank you -- or will be covered
by other speakers today.

SCPPA supports the other comments made today.

I'll concentrate on the joint ownership of SF6 equipment and equipment that is operated by an entity other than the owner.

Firstly, transmission and distribution facilities and SF6 equipment may be jointly owned. However, the proposed SF6 regulation does not address how to account for jointly-owned facilities in the annual report. It is not appropriate for each owner to report the full emissions from equipment in which it has only a part share. The regulation should specify how emissions from jointly-owned equipment should be divided by and reported by the individual owners.

The simplest approach is for each owner to report the portion of emissions and nameplate capacity of the jointly-owned equipment equal to that owner's equity share in the equipment.

We recommend adding a paragraph to the proposed regulation to that effect. And we have included suggested drafting in our submission.

Secondly, equipment may be jointly owned but is operated by one entity, which may or may not be one of the owners or the obligations in this regulation are on the owners of the equipment. In most cases, this doesn't
cause any concern. However, the calculations for the
annual emissions in the proposed regulation do not reflect
some circumstances which may arise when the owner and the
operator are separate.

For example, Company 1 may maintain and own its
own SF6 equipment as well as maintain and operate SF6
equipment on behalf of Company 2. So Company 1 may use
the same SF6 gas containers to service both its own
equipment and the equipment belonging to Company 2. And
Company 1 may remove SF6 gas from Company 2's equipment
and return it to Company 1's own storage facility.

Both companies will need to report their own SF6
emissions. The regulations should ensure that the SF6
used by each company can be distinguished.

To address these situations, we propose certain
amendments to the equations in the proposed regulation.
These are set out in our written amendments of February
16th.

Thanks very much.

CHAIRPERSON NICHOLS: Okay. Thank you.

BOARD MEMBER RIORDAN: Madam Chairman, may I just
ask if staff has those suggested amendments and have you
had time to review them?

ENERGY SECTION MANAGER MEHL: We just received
those comments and have not had time to receive them
completely yet.

BOARD MEMBER RIORDAN: Thanks.

CHAIRPERSON NICHOLS: It's disappointing with all these detailed comments that they would just come in on the day of the hearing when I gather people have been aware of what the staff proposal is for a considerable length of time.

Yes? You are Cindy Parsons?

MS. PARSONS: Correct.

CHAIRPERSON NICHOLS: Go ahead.

MS. PARSONS: Good morning, Chairman Nichols and members of the Board.

My name is Cindy Parsons. I'm with the Los Angeles Department of Water and Power.

I'd also like to say a thank you to the staff who have worked on this regulation for their open door policy and the many hours spent discussing issues and concerns with stakeholders and also for the staff-recommended changes that they presented this morning.

LADWP along with the other utilities have done an in-depth review of this proposed regulation from both an implementation and operational perspective. We encourage ARB to review and consider the detailed written comments that have been submitted by SCAPPA and the joint utilities.
In addition, I'd like to draw your attention to three items in particular.

Number one, consistency with the U.S. EPA mandatory reporting rule for SF6. ARB should strive to make this regulation consistent with the SF6 subpart of the U.S. EPA mandatory reporting rule in order to streamline recordkeeping and reporting for California utilities that will be subject to ARB and EPA rules.

It is expected that EPA will finalize their SF6 rule sometime this year. Once EPA's rule is finalized, we ask that ARB revisit this rule to ensure that it is as consistent as possible with EPA's rule.

Number two: Resource impacts. The recordkeeping and reporting requirements of this proposed regulation will create significant additional demands on our staff resources. We ask that ARB take a close look at the administrative burden imposed by this regulation and consider possible ways to reduce the burden.

For example, the proposed regulation requires utilities to calculate an annual average nameplate capacity by multiplying the nameplate capacity of each piece of equipment by the number of days in service. For large utilities that may have from hundreds to thousands of pieces of equipment, this is a very data-intensive calculation that will be prone to errors.
On the other hand, EPA takes a much simpler
approach to determining annual nameplate capacity, which
is total nameplate capacity at the beginning of the year,
plus nameplate capacity added during the year, minus
equipment removed during the year. It's a much simpler
approach, and we recommend that ARB consider simplifying
that.

Number three: Regulations should create an
incentive to reduce emissions early. AB 32 states that
regulations to reduce greenhouse gas emissions should be
designed in a manner that is equitable, minimizes costs,
maximizes benefits, and encourages early action to reduce
emissions.

Other AB 32 regulations, such as the low carbon
fuel standard and proposed renewable energy standard,
include a mechanism to create compliance credits that can
be carried forward and used towards compliance in future
years. Adding such a mechanism to the SF6 regulation --

CHAIRPERSON NICHOLS: Sorry, your time is up.

You have written testimony, do you?

MS. PARSONS: No, I don't.

CHAIRPERSON NICHOLS: You do not. Okay. Well,
sorry.

MS. PARSONS: Okay. Thank you.

CHAIRPERSON NICHOLS: Thank you.
Wendy Mitchell and then Tim Tutt.

MS. MITCHELL: Good morning, Madam Chair and members.

My name is Wendy Mitchell. I'm here on behalf of my client, Pacific Gas and Electric.

PG&E strongly supports the Air Resources Board's effort to significantly reduce sulfur hexafluoride emissions. And, in fact, PG&E over the last decade has reduced our SF6 emissions by ten percent with a very aggressive program. We will continue to do so under this regulation.

We also support the proposed staff revisions and the joint utility letters. We are a signatory.

There was only one point in this proposed amendment that I wanted to address. It says under the 95354 SF6 inventory measurement, it says that gas canisters are to be weighed at the beginning and the end of each calendar year. That would be weighing like December 31st and weighing January 1st.

We weigh annually and when a container goes in and out of service. But weighing twice, at the beginning and the end of the year, the language says "and the end of the year."

And we do want to thank Michelle Garcia and Dave Mehl, because they worked very tirelessly with us on this
regulation and never lost sight of the objectives of reducing SF6.

So thank you very much.

CHAIRPERSON NICHOLS: Thank you for that.

It's not clear to me whether Fred Paul wants to testify or not. He does. He will be our last witness.

MR. TUTT: Madam Chair, Board members, thank you very much for the opportunity to speak this morning.

SMUD supports a reasonable SF6 regulation and supports in the general goal of AB 32 of reducing greenhouse gas emissions. SMUD's locally elected board has adopted a guiding policy to reduce our own greenhouse gas emissions to ten percent of our 1990 levels by 2050.

The regulation in front of you is substantially better than the initial draft of the regulation last summer. ARB staff and the affected utilities I believe have a very good working relationship. And we have made several substantial points to staff over the months. They've always listened politely and professionally. We appreciate the way they have had that professional activity.

I'd like to thank them for considering all of our points and for making changes to the draft regulations when they agreed with us and for their attention and lack of rancor even when they disagreed and said no to us. We
really appreciate that.

MR. TUTT: We support the joint utility comments that are in front of you today. Many of these comments have already been addressed by the changes that staff has proposed today. We thank staff for those changes.

I'd like just to bring up two aspects of those comments to emphasize for you today.

First, as you know, the main structure of the SF6 regulations is an annual emissions limit. And yet, the SF6 regulations propose a daily penalty where every day of a year in which that limit is violated, 365 days could be a separate penalty. We don't think this makes sense. We think that ARB has the flexibility of establishing an annual penalty structure for an annual limit and should do so.

We believe that a daily penalty for an annual limit is similar to imposing an hourly penalty. For example, for a daily limit, that's never been done in the past I believe by ARB or the districts. And we think that as we move to these annual limit structures, we should think about and establish a reasonable penalty structure for the regulations.

Second, the emergency event provision that's in the regulations we very much appreciate being in there.
We think it's essential. We do think that it should be broadened to include instances of impending electrical outages. There will be times when utilities will be faced with the choice of keeping equipment that is leaking SF6 online and temporarily in order to keep the lights on for your customers or shutting this equipment down. And it's a public safety issue for us. Shutting down loads can be a bit dangerous to our customers. We appreciate the consideration of including that broadening of that provision.

Thank you very much.

CHAIRPERSON NICHOLS: Thanks. That's helpful.

Mr. Paul.

MR. PAUL: Thank you, Madam Chair and Board.

As a native Californian and also as a representative of a major electrical equipment manufacturer, thank you for the opportunity.

In no way would I as an individual or as a corporate representative want to encourage further government regulation. However, when we see economic necessity that is either corporate greed or balance sheets may be put the welfare of the majority at the side, I feel compelled to speak up.

The Eaton Corporation is happy this is finally being addressed by a government entity at this scale.
Having said that, one issue that doesn't really stick out in this proposal is the private entity. I know we list those that are affected, but there is a lot of SF6 gas in the private sector that's being used and continually being consumed in a sense those products are still being allowed to be sold in California.

And so it's somewhat like the proposal -- and I applaud it -- is we found the leaky tires. Let's go measure them, monitor them, and try to stop the leaks and hopefully change that tire, if you will. But why not initiate in the proposal an immediate ban on any type of product with SF6 gas for electrical installation at 38,000 volts and down since air gap and vacuum bottle technology is proven, it's cost effective, and there's really no reason to use SF6 at that voltage.

Additionally, a step program up to 72,000 volts because vacuum technology, vacuum bottle technology once again is readily available. It's economical. There's multiple players in it. So up to 72,000 volts, there really is no reason to import into California and a lot of times from off-shore products that contain SF6 gas. It's like letting them dump their garbage in our backyard.

So as well as it is to regulate and reduce by restrictions in the future, it would seem there would be an immediate necessity to ban the leaky tires and let's
start specifying the tires that are the proper parameters
that would enhance our environment and really show we're
taking the lead on SF6 gas.

Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

That concludes the list of witnesses.

Was there anybody else who was here for that item? If not, then I think we will go ahead and close the record.

Mr. Goldstene, do you have any or staff have any comments at this time and/or responses to the comments?

EXECUTIVE OFFICER GOLDSTENE: Well, we'd certainly like to take the time to look at the new comments that came in that we were not aware of. I think we generally agree with the second Ms. Mitchell's comment, Wendy Mitchell, about the December 31st/January 1st annual thing. But we'd like to take some time and work with the stakeholders who brought those letters to us.

CHAIRPERSON NICHOLS: So would you do that prior to putting out the 15-day notice? Is it your intention that you think that the comments are sufficiently technical and capable of being incorporated into a 15 day?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes.

And I'd like staff to just comment on a few areas, particularly the enforcement provision.
But I did want to clarify on the first Ms. Mitchell's comments that we did have those letters and we have had some discussion with them. This was the issue related to the upcoming jointly-owned equipment issues. So we got a couple letters at the same time, but we did have hers. And we have had some discussion, and we do think we can fix that.

CHAIRPERSON NICHOLS: I withdraw my criticism.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: I would like Dave Mehl to respond to the endorsement provision and a few of the other ones to clarify where we're at.

ENERGY SECTION MANAGER MEHL: We worked very closely with the regulated parties in developing the annual emissions standard. We think this approach gives the most flexibility possible to reduce the emissions, while still allowing them to reduce their emissions in a system that best fits their operational needs.

If a violation of an annual limit were considered a violation, it could be cheaper for parties to violate than to comply. To give you some idea of what this means in actual practice, if violating an annual standard was considered a single violation, a likely fine would be somewhere between maybe a thousand to $10,000 maximum. We would expect that in most instances, however, it would be
on the lower end of that scale. And, therefore, it would
be quite often possible that it would be far cheaper to
violate the standard than spend the money to comply.
Also for the recordkeeping and reporting, the
joint ownership, we definitely think we can work with the
regulated parties to clarify the language in a 15-day
notice. For the mandatory reporting via the EPA, we
definitely want to coordinate with what the EPA will
eventually do and we can work with EPA and potentially
bring that issue forward.

CHAIRPERSON NICHOLS: Okay. Thanks.

ENERGY SECTION MANAGER MEHL: And for the banning
SF6, we'd like to say in the early stages of the
regulation and development, we actually evaluated the
impact of doing a ban for lower voltage GIS equipment and
the cost and the impacts to the utilities and determined
that the emission rate method would actually get us good
emission reductions without the cost that would have been
associated with the outright ban of equipment.

CHAIRPERSON NICHOLS: Thank you for addressing
that comment. I was going to ask you. Okay.

Are there -- oh, I guess before we proceed we
need to remind Board members that we need to disclose any
ex parte communication.

Does any member have any ex partes communications
on this item? I see none. Okay.

Well, I think in that case we need to consider a resolution on this item.

BOARD MEMBER D'ADAMO: I'd like to move adoption of the Resolution.

BOARD MEMBER RIORDAN: Second.

CHAIRPERSON NICHOLS: I'll just ask for a voice vote then. All in favor, please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposed?

I'm sorry. You have a question? I apologize.

BOARD MEMBER BERG: Thank you. No problem.

On the enforcement issue, I agree that 1,000 to 10,000 on an annual would not work at all.

I think I would just like to ask that we would look at the reverse, however, of 360,000 versus 3.6 million for -- I just think we need to weigh.

And what I hear from industry is they would like some guideline that we know that we're not going to take either extreme. So I would like to encourage that.

And also I think the request for recordkeeping consistency with the U.S. EPA requirements to the best of our ability is very important. And I didn't understand whether we really took care of the recordkeeping weighing issue they were talking about. Some people were saying
thank you for taking care of that.

So again if we can be very mindful as a staff

that whatever recordkeeping we're requesting or requiring

that we really make sure that it is critical to the

implementation of the rule and not burdensome.

Thank you, Madam Chair.

CHAIRPERSON NICHOLS: Thank you. I apologize for

taking the vote before you had a chance to express your

comments. But I trust it's --

BOARD MEMBER BERG: I vote aye.

CHAIRPERSON NICHOLS: - a technical error.

Thanks.

So the Board has unanimously adopted it, but with

the understanding there will be a new proposal with

changes that will be issued and further opportunity for

the public to comment on those changes during the period

after the 15-day notice.

Okay. Thank you very much. I know the staff is

appreciative of your comments, especially on that

recordkeeping issue.

All right. We have I think time to take up the

amendment to the greenhouse gas regulations for passenger

vehicles. And I would like very much to get through that

item before we take a break.

I guess I can begin with the introduction. This
is an important decision that we're making today, although
I think it will not be difficult or controversial, but it
is the last and key step in implementing the agreement
that we reached with the Obama Administration and the auto
industry to turn California's Pavley emissions standards
into a national program with the national compliance to
constitute compliance in California.

So rather than go through the whole history on
this, I think we can turn to the staff presentation and
take it from there.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
Nichols.

After the Board approved the Pavley regulations
in 2004, California spent many years in court defending
our authority to adopt and implement them.

Then in May 2009, the Obama Administration
announced the national program that would provide uniform
federal standards for fuel economy and greenhouse gas
emissions while preserving California's legal authority to
require its own greenhouse gas standards.

In order to facilitate the national program,
however, the automobile manufacturers and the State of
California committed to a series of actions designed to
end these legal challenges. California's first two
commitments designed to provide manufacturers with more
compliance flexibility and lower cost were approved by the Board in September 2009 and will be briefly described in the staff presentation. Staff's proposal today implements our third and final commitment.

The third commitment will allow compliance with national greenhouse gas standards for model years 2012 through 2016 to serve as compliance with the Pavley regulation.

It is important to mention that California made this commitment based on our understanding that U.S. EPA and the Department of Transportation will adopt a final rule that preserves the greenhouse gas benefits of the Pavley regulations. If U.S. EPA's final rule, which is due out in March, is significantly delayed or does not preserve these benefits, the staff proposal before you today would direct staff to not finalize the adoption of today's amendments. Instead, staff would return to the Board to request direction on how west to proceed.

Ms. Sarah Carter of the Mobile Source Control Division will now give the staff's presentation.

(Thereupon an overhead presentation was presented as follows.)

STAFF AIR POLLUTION SPECIALIST CARTER: Thank you, James.

Good morning, Chairman Nichols and members of the
Today, I will be presenting staff's proposal to amend the regulations to control greenhouse gas emissions from new passenger vehicles.

STAFF AIR POLLUTION SPECIALIST CARTER: In 2004, the Air Resources Board approved landmark regulations, known as the Pavley regulations, to significantly reduce greenhouse gas emissions from new passenger vehicles sold in California. These regulations, developed in accordance with AB 1493, were designed to achieve the maximum feasible and cost effective reduction of greenhouse gas emissions beginning with the 2009 model year. U.S. EPA granted a waiver of preemption for the Pavley regulations on July 8th, 2009, which California needed to enforce the regulations.

STAFF AIR POLLUTION SPECIALIST CARTER: The Pavley regulations are based on a combined value of four greenhouse gas emissions from motor vehicles: Carbon dioxide, methane, and nitrous oxide from the tailpipe, and refrigerants from vehicle air conditioning systems. The standards are expressed in CO2 equivalent terms so that each greenhouse gas is weighed according to its global warming potential when determining compliance.
with the emissions standards.

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STAFF AIR POLLUTION SPECIALIST CARTER: As the Board is aware, its adoption of the Pavley regulations was followed by years of legal wrangling between ARB and industry, which challenged these regulations both in court and during the waiver process.

Finally, in May of last year, the challenging parties, auto manufacturers, California, and the federal government committed to a series of actions that should resolve current and potential future disputes over the standards through model year 2016.

President Obama announced the parties' mutual commitments in a Rose Garden ceremony on May 19th, 2009.

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STAFF AIR POLLUTION SPECIALIST CARTER: The next few slides will briefly describe the commitments made by each party.

The automobile manufacturers and their affiliates committed to dropping their current lawsuits against California regulations and forgo future similar legal challenges to the program as it currently applies to the 2016 model year. Manufacturers also agreed to drop their opposition to California's waiver request.

The U.S. EPA committed to develop national
greenhouse gas regulations for passenger vehicles, applicable for the 2012 through 2016 model years, which would achieve equivalent emission reductions to the California regulations. This effort is being done in concert with the U.S. Department of Transportation, which is developing new corporate average fuel economy regulations for these same model years that are compatible with the national passenger vehicle greenhouse gas program.

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STAFF AIR POLLUTION SPECIALIST CARTER: On May 22nd, the U.S. EPA and the National Highway Traffic Safety Administration, or NHTSA, initiated their part of the commitment when they issued a federal notice of intent for joint rulemaking. The notice of proposed rulemaking, or NPRM, which describes the proposed for a national greenhouse gas program, was published in the Federal Register on September 28th, 2009. A public comment period was initiated with the release of NPRM which ran through November 27th. U.S. EPA and NHTSA also held public hearings on this rulemaking in Detroit, New York City, and Los Angeles.

I'd like to mention at this point that ARB staff have been active participants in this process.
Currently, U.S. EPA and NHTSA are reviewing all comments received during the public comment period, and we expect the final rule to be released in late March 2010.

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STAFF AIR POLLUTION SPECIALIST CARTER: For our part, California committed to three things. It is important to note that California did not either give up or accept any limit to our authority to control greenhouse gas emissions from motor vehicles by agreeing to these regulatory flexibilities.

The first two parts of our commitment were implemented last September when the Board approved changes to the Pavley regulations that were designed to provide manufacturers with more compliance flexibility. These changes allow a manufacturer to demonstrate compliance with the fleet average greenhouse gas requirement based on the combined sales of vehicles produced and delivered for sale in California, the District of Columbia, and those states that have adopted California’s greenhouse gas program in accordance with Section 177 of the Clean Air Act.

They also allow manufacturers to use emission test data from the federal corporate average fuel economy program to demonstrate compliance with California’s regulations.
These regulatory changes were filed with California's Office of Administrative Law on February 22nd, and we expect to receive final approval by April 6th.

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STAFF AIR POLLUTION SPECIALIST CARTER: Today's proposal implements the third part of California's commitment, which will allow a manufacturer to demonstrate compliance with the Pavley regulations by showing compliance with the National Greenhouse Gas Program in the 2012 through 2016 model years. Although U.S. EPA is not expected to release the final rule for the National Greenhouse Gas Program until late March, staff has been working with U.S. EPA throughout their rulemaking process. Consequently, today's proposal is based on staff's understanding of the NPRM and the assumptions that the final national rule will achieve equivalent or better greenhouse gas emission benefits as the original Pavley regulations for model years 2012 through 2016.

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STAFF AIR POLLUTION SPECIALIST CARTER: This graph shows the cumulative 2016 nationwide greenhouse gas benefits for the Pavley program and those proposed for the national program by the U.S. EPA and its NPRM.

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STAFF AIR POLLUTION SPECIALIST CARTER: To summarize: Staff's proposal will implement the third and final commitment made by California as part of the agreement we signed in May with the federal government and the auto manufacturers. There are no significant environmental or economic impacts of this proposal. Therefore, staff recommends that the Board adopt this proposal.

CHAIRPERSON NICHOLS: Thank you, Ms. Carter. We do have four witnesses that have signed up to speak. If we have no questions for the Board, we'll proceed directly to the witnesses, beginning with John Cabaniss and Julie Becker and Jamie Knapp.

MR. CABANISS: Good morning. My name is John Cabaniss. I'm Director of Environmental Energy for the Association of International Automobile Manufacturers. As you know, AIM fully supports the Rose Garden agreement which has been mentioned by the staff.

CHAIRPERSON NICHOLS: I'm so happy our name for it has taken over.

MR. CABANISS: We like that. It's catchy. Very nice.

So, like you, we fully support that program, the harmonized national program, and we greatly appreciate the
commitments that California has made to align your program with the national program. And we support the proposal today which provides the option of compliance with the federal program as an option in California.

We understand that the federal program is on track to be released by the end of March. So we look forward to seeing that as well.

Like you, we provided comments to the agencies and we've been working with them. We're looking forward to seeing how they deal with all of the interesting issues that were brought up.

In this particular rule of where you're aligning your second phase amendments, we did submit a few questions to the staff where we believe some clarifications are in order in the regulations. And we'll be working with staff on clarifying those in the 15-day process. Nothing is major; just little edits here and there we think would improve the readability and understandability of the regulation.

And finally, we believe, as we've said before, we believe it is very imperative for all of us to work together. This program is an important first step. But as we all recognize with the challenges we face for climate change going forward, we need to work closely together and for the next long period of time to hit our
2050 goals and even beyond that eventually. It's imperative we all work together collaboratively on this process. So we look forward to being part of that effort, and hopefully we'll have another Rose Garden event soon. So thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Julie Becker, then Jamie Knapp, and Will Barrett.

MS. BECKER: Thank you, Madam Chair and Board.

My name is Julie Becker. I'm Vice President for Environment at the Alliance of Automobile Manufacturers. The Alliance and its members are committed to developing and implementing policies that enable us to introduce new technologies needed to support sustainable mobility and help address climate change.

The best way to achieve this is to initiate and achieve consensus-oriented dialogue among industry, federal and state governments, and other stakeholders to address our shared objectives.

Last year's negotiations and the resulting White House announcement of the national program demonstrate how a collaborative approach can produce environmental and energy security benefits while preserving jobs.

I want to thank the Board for the opportunity to comment today to thank CARB staff for the dedication and coordination with auto makers and the federal government
that it took to put this proposal rulemaking together.

The proposal honors California's commitment to the national program and provides manufacturers with a roadmap for increasing average fuel economy in new vehicles by 40 percent and reducing greenhouse gas emissions by 30 percent by model year 2016.

The national program provides a certainty and flexibility necessary for achieving emissions reductions in greenhouse gases and significant savings in oil consumption that would result from the proposed rules. Further, by reconciling California and the national programs, the current proposal would provide manufacturers with the certainty and lead time necessary to plan for the future and cost effective addition of new technology. While the national program only covers model years 2012 through 2016, we are already looking to 2017 and beyond.

And going forward, a key to reducing the impact of greenhouse gases from the light-duty fleet is a continuation of the joint coordinated national program. A long-term cost-effective nationwide plan is necessary for the future well-being of our industry.

To the extent they are effective and feasible, additional approaches to reducing light-duty vehicle greenhouse gases that are not embodied in the current
national program should be evaluated as we develop a holistic second generation program.

As the U.S. moves forward to achieve significant long-term greenhouse gas reductions, those involved should seek the most cost effective means of achieving these reductions on a economy-wide basis, utilizing a wide range of options involving all sectors of the economy.

For transportation, we think this means you think outside the powertrain, including fuels and measures to reduce vehicle miles travel. This challenging goal is a key reason why the alliance has supported California's low-carbon fuel standard and other efforts to increase the use of renewable fuels.

In closing, I want to thank the staff and the Board for making this historic national program possible and for the opportunity to testify today.

We look forward to a robust discussion leading to a comprehensive second generation national program.

Thank you.

CHAIRPERSON NICHOLS: Thank you, Ms. Becker.

Appreciate that.

Jamie Knapp, followed by Will Barrett and Bill Magavern.

MS. KNAPP: Good morning, Chairman Nichols and members of the Board. I'm Jamie Knapp. I represent the
Clean Cars Coalition, which is a coalition of environmental organizations, public interest and public health groups, both national and state-based organizations.

We submitted yesterday a letter signed by eight California and national organizations in strong support of staff's proposed amendment to the California Clean Cars program.

As the staff has told you, your action today is really the third and final step in this regulatory action that you've committed to as part of the historic Rose Garden agreement. And we believe and you are, in fact, acting in good faith to implement the national program. And that's per the letter of agreement that was signed last May.

We do strongly support the Board approval. At the same time, we recommend that ARB staff immediately return to you, the Board, if, in fact, the final U.S. EPA rule doesn't adequately address some of the concerns that were outlined in the staff report to you.

We do share those concerns. The most important of course, as staff has indicated in the resolution today, the preserving emissions benefits. California accepted the agreement with the understanding the federal rule would in fact provide equivalent or greater emission
reductions. We don't know what the final federal rule is
going to look like. So it really is important that staff
retain that ability to come back and take another look at
what you are adopting today in case that federal rule does
not provide the degree of emissions benefits that we're
expecting.

We also support staff's request for an emissions
backstop in case the federal program doesn't deliver on
the forecasted benefits. And we shared the same concerns
that staff recognized in the staff report regarding the
electric vehicle credits and upstream scoring.

We do support the proposal. We agree with the
plan to return to you for direction.

And I want to close by saying you are holding up
your end of the bargain here. The national program, the
Rose Garden agreement, validate California's leadership in
vehicle regulations, in air quality. It's playing a
constructive role as a model for other states. And I
think you heard Brian Turner this morning tell you what
you do resonates around the world. And we agree. It's
true. Thank you very much.
I'd just like to make some brief comments. The American Lung Association of California and the broader public health community was strongly supportive of AB 1493 and the development of the program now that we're discussing today, the clean car regulations.

Among the other supporters in the public health community are the American Heart Association, California Medical Association, the California Nurse Association, American Academy of Pediatrics, and many other state and local associations. We feel strongly these regulations offer critical clean air, climate change and health benefits. And we're very enthusiastic that the leadership of the Board is bringing a program that broadcasts these benefits across the country.

So we applaud CARB staff for acting in good faith to harmonize our rules with the national rules so we can finalize next month.

We also signed onto the group letter that Jamie Knapp referenced and share CARB's concerns that equivalent emission reductions must be achieved in the final rule and staff should be monitoring that to make sure you come back and ensure that all the reductions are guaranteed in the final project.
So in closing, we encourage the Board to approve the amendments to the rule, for staff to carefully monitor the development of the national standards to ensure your concerns are met, and that the public health air quality and climate change goals are achieved in the final rulemaking. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Bill Magavern.

MR. MAGAVERN: Good morning. I'm Bill Magavern with Sierra Club California.

And we strongly agree with the Chair's comments about the importance of the action you're taking today, because it marks a key milestone in what has become actually now a nine-year effort -- it's about nine years since the bill was first introduced -- to clean up our air and atmosphere, save consumers money at the pump, and reduce our dependence on oil. These are all important goals. So this represents a shining achievement by this Board, by the California Legislature, and by two Governors who strongly supported this effort.

We also, of course, support the national agreement. We share the concerns that staff have addressed in terms of wanting to make sure that we preserve all of the greenhouse gas benefits of that agreement; that we not have any backsliding.
And of course, we should address advanced technologies like electric vehicles and hydrogen vehicles on a life cycle emissions basis. This Board has taken that approach in other areas and I think we made some good comments, both those of us in the NGO community and the ARB staff made good comments to U.S. EPA about making sure that we do account for upstream emissions from those technologies.

Want to note that Sierra Club California did submit 4,206 comments by Sierra Club members and supporters in California in support of the action that you're taking today. So we think that shows that Californians really want cleaner cars.

I also want to agree with the manufacturers on the fact that we need to address not just the technologies that can decrease emissions from our vehicles, but also the fuels and reducing the vehicle miles traveled. And we appreciate the fact that this Board is now moving forward on all three of those. And that's not an easy thing to do, but it's important.

And, finally, others have commented about the role of the state, and we agree with the Chair's comments that it's important for California to retain our authority to set emission standards from mobile sources. We've shown time and time again the importance of doing that
both for protecting California's own air and for also
setting a leadership standard for the rest of the country.

Lately, we're hearing critics who frankly are
people who never supported taking meaningful action
against global warming. One of the arguments they're
using is, well, when California gets out ahead, then we
disadvantage ourselves compared to the rest of the
country. What we are seeing today I think proves the
opposite. California has gone out in the lead and the
rest of the nation now is following, and it's very much to
our advantage.

So thank you very much.

CHAIRPERSON NICHOLS: Thank you, Mr. Magavern.

That was a great way to close off the public testimony on
this item I think.

I see no other witnesses or cards, so at this
point we can close the hearing and then mention to those
who aren't familiar with our process that there will be a
reopening of the record when a 15-day notice of public
availability is issued. And at that point, further
comments could be accepted. We're not anticipating any
changes however in that process in terms of the staff
position on these issues.

So we have before us Resolution Number 10-15,
unless staff has any additional comments they wish to
SENIOR STAFF COUNSEL LIVINGSTON: Madam Chair,

you mentioned there are potential 15-day changes. The
resolution doesn't specifically mention that, so I would
advise when you bring it to a vote you say with the 15-day
changes -- technical changes as discussed in testimony.

CHAIRPERSON NICHOLS: Yes, thank you. All right.

Thanks for that.

So do I have a motion?

BOARD MEMBER D'ADAMO: So moved.

BOARD MEMBER RIORDAN: Seconded.

CHAIRPERSON NICHOLS: So we're moving the
resolution with any proposed 15-day changes.

May I ask all in favor to please say aye?

(Ayes)

CHAIRPERSON NICHOLS: And there is no opposition.

So this is great. Thank you so much.

I had indicated we would take public comment
before the lunch break. I don't think we should take up
another item at this point, unless we have anything that's
quick, and I don't think we have anything that's quick.

We have a briefing on offsets and the locomotive item.

We have a tradition which pre-dates my coming to
the Board of allowing an open comment period when anybody
can come in and talk about anything they feel like talking
about. This is carried over I believe from a number of local governments where it is required that there be some form of open comment period. It is not required of us, but we have done it in any event. And I think traditionally we would get one or two comments at the end of a meeting from people who had sat through the meeting and felt like they needed to get up and say something.

In recent months, we have learned that one of our former -- actually, a former occupant of my chair has discovered the usefulness of this procedure as a way to do organized presentations on topics that were not part of the Board agenda, presumably to bring them to the attention of the Board members, but perhaps as a way to get media or other kinds of public attention. And I think it's frankly an abuse of the process. On the other hand, we've made this available and so we have no choice but to entertain it at least for today's purposes.

And I don't mean to be critical of any of the individuals who have come here to speak in good faith. But I do think that it should be duly noted that the topic they are all here to testify about is one that is within the scope of changes that the staff is working on proposing at this time. Mr. Dunlap, who is the person responsible for this little presentation we're about to get here today, is fully aware of the fact that these
changes are, in fact, going to be proposed.

The Board is very available both as individuals and at Board meetings when we have an item to hear from members of the public on whatever is of concern to them. I know every member of this Board receives phones calls and letters from members of the public and is open to hearing from them and is interested in hearing from them.

So I'm going to say I think the Board has a choice here how they want to handle this. We have I believe it is 16 people who have signed up to testify, all of them about the cool cars issue, the cool cars regulation this Board heard a number of months ago. We could give them each three minutes. We could take the first three. We could give them each one minute. We could hear from some and then take a break. We can do whatever the Board members would like in terms of process.

BOARD MEMBER RIORDAN: Madam Chairman, sometimes groups, if they all have a particular same cause, will designate a speaker that perhaps is given a little extra time to represent all of them. And I don't know if that is possible with this group, but it might be. And that's something you, Madam Chairman, might ask of someone who is representing the organization. I don't have a speaker slip in front of me, so I don't know. But I've seen that be very effective, and you give that individual the
opportunity to speak on behalf of those who are here.

CHAIRPERSON NICHOLS: That might be workable.

Anybody else --

BOARD MEMBER ROBERTS: I think that might be okay. I'm not sure it's all one group.

CHAIRPERSON NICHOLS: They each have different listings here: 3M Company, SMUD, Alliance of Auto Manufacturers, Southwall Technologies, that's a glass manufacturer, VMTA, American Medical Response.

I know the issues they want to cover. It cell phone access. It's medical emergencies. It's monitoring of felons with ankle bracelets. I think those are the major topics.

And then, of course, the manufacturers of different types of glass technologies who will either be advantaged or think they won't be advantaged as a result of this regulation going forward.

These are substantial and serious issues. I'm not in any way trying to downplay the importance of the concerns that these folks are raising. It's the process that I'm concerned about here.

So, you know, it's really up to the Board. I understood that -- I just saw Mr. Dunlap busily scribbling away at a comment card. Maybe the best thing would be to take a ten-minute break and we can talk to him and see.
I'm sorry. Oh, dear. I apologize. I've been informed that Mr. Dunlap is not the organizer of this item and I simply saw him maneuvering around in the back.

John, I give you credit for every client in the world, but I sincerely apologize to you for that. Maybe you should. Maybe you should do it anyway.

BOARD MEMBER RIORDAN: I think John once did that.

CHAIRPERSON NICHOLS: I'm embarrassed. I truly apologize for that. I think the fact you were here at the same time made me simply assume this was your issue.

So whoever the organizer -- is there anybody who is willing to stand up and say that they're responsible for having put together this group that's appearing before us this morning? And if so, perhaps we can talk to you.

If you want to come up to the microphone, that would be great. Thanks.

MS. LIVINGSTON: There are people who have traveled great distances to do this. And I don't know that we were aware it was unprecedented. I think it is precedent. And actually at least one of the Board members suggested it.

I think everybody has a different point of view and would like to be heard.

I guess the question is, Madam Chairman, would
we -- most of them brought written testimony. Would we be
allowed to submit that without --

CHAIRPERSON NICHOLS: Yes, of course. And
believe me -- I will say this one more time. I appreciate
the fact that you've come here in good faith to make us
aware of concerns you have. I don't dispute that in any
way, shape, or form. It's just we're a regulatory Board.

So we tend to approach things in an orderly way. And to
take testimony when we're actually dealing with a
particular regulation, not just kind of because we happen
to all be here.

MS. LIVINGSTON: I understand. I think all of
the people that signed up to speak on this issue on the
cool cars issue have been in contact with Board staff and
had multiple contacts with Board staff, all the way from
Mr. Cackette to the staff in El Monte. And we believe
that our issues were --

CHAIRPERSON NICHOLS: Not being addressed.

MS. LIVINGSTON: That we needed to reach out to
the Board in order to make sure that the Board
understood --

CHAIRPERSON NICHOLS: Sure. And I know --

MS. LIVINGSTON: -- the extent of our concern.

CHAIRPERSON NICHOLS: And there have been several
contacts with Board members that have made me aware of the
I guess what was a little frustrating to me was -- and maybe this is just a communications problem -- is that I was under the impression that your group had been informed -- I don't know about you specifically -- but some people within your broader group, whether you're organized or not, that the staff was planning on making proposed changes.

MS. LIVINGSTON: I'm unaware of that. You know, you never know a difference between a rumor and a fact. This is a large group. And when I spoke with Charlyn, who was immensely helpful, I told her we had a group and got some instruction about how to handle it and so forth. So we certainly thought we were operating within -- and there are people here, for example, the Crime Victims United, California Peace Officers Association, people like that, who have not been in contact -- I believe. I wasn't prepared for this -- but who may not have made their concerns known. I'm not even sure they're all here, because they were told the comment period would be at the end.

But we're looking for -- and I don't know that all of the Board members have been reached so --

CHAIRPERSON NICHOLS: I think we might as well just go ahead and hear from you.
Let me just say that for those of you who have written testimony, if you are willing to either just submit the written testimony and not speak or to limit your testimony, that would be extremely helpful to all of us I think.

Any additional thoughts or comments?

BOARD MEMBER BALMES: I was going to fess up. I may be the guilty Board member that suggested they come to the public --

CHAIRPERSON NICHOLS: Send you to the closet.

MS. LIVINGSTON: I wasn't going to out you, Dr. Balmes.

BOARD MEMBER BALMES: The reason I suggested that is -- at least as long as I have been on the Board, there have been some organized efforts to present during that period. And the rule has already been adopted by us. And there was significant concern from multiple parties that the staff was proceeding in a way that was ignoring their concerns. I don't know that to be the fact, but that was expressed to me. So I actually would like to hear at least some of the testimony that they're prepared to give.

MS. LIVINGSTON: I would like to say I don't -- I would like to say staff ignored our concerns. Staff has been gracious in listening to every concern that has been raised, but we didn't appear to be changing their minds.

That happens sometimes.

BOARD MEMBER D'ADAMO: I hear a lot of valid points being made. We probably need to hear from folks and then maybe in the future make some adjustments.

What I would say to the witnesses -- and I agree with the Chair that usually we're a regulatory Board and usually we receive things in the context of a greater package. So it might be helpful for staff to set the tone. I know I received a phone call; I contacted staff and was informed of further work that staff is doing. So perhaps if staff could make a few brief comments to put in this context, that may alleviate some of the concerns the witnesses have so we could move more rapidly.

BOARD MEMBER BERG: And also before staff starts, I would encourage industry, because I have met with several, if you could be very precise to what the issue is that you have so we could limit the testimony to a couple minutes.

BOARD MEMBER RIORDAN: And, Madam Chair, as before, I'm going to have to recuse myself, because I have an economic conflict of interest with this particular item.

(Thereupon Ms. Riordan exited the proceedings.)

CHAIRPERSON NICHOLS: Let's go.
EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
do you want us to give a brief overview of where we are on
this, or do you want to hear the comments first?

CHAIRPERSON NICHOLS: Well, sure. Why not?

EXECUTIVE OFFICER GOLDSTENE: Okay.

CHAIRPERSON NICHOLS: I think the Board would
probably appreciate it.

Please don't feel on the defensive about this,
despite my comments, which I do sort of feel that we are
being used in a sense here for a different agenda. But I
also feel we are responsible for this rule. We passed it,
and we're going to have to fix it. So it's definitely our
responsibility to listen.

EXECUTIVE OFFICER GOLDSTENE: Mr. Cackette will
frame the issue very briefly.

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: The
Board adopted the cool cars rule last year, and there was
a 15-day comment period, and we have received a lot of
input, a lot of meetings, some new issues from the
stakeholders since then, and the 15-day proposal to amend
the rule has not yet gone out. But we are getting within
a week or so of having to do that. If we wait very much
longer, the process will lead us to the point where the
rule will exceed its one-year period and we'd have to
start all over. There's the timing issue.
As you may remember in this rule, it's a cool glass rule. It sets a performance standard for glass. It affects two different phases. One is the 2012 through 2015 model year in which the windshields have to reflect more and more -- reflect more sunlight to keep the car cooler and use the air conditioner less. That's phased in over that four-year period, 25 percent of the models and then 50, 75, and 100. And in 2016, there is a tighter standard that has to be met and has to met on all the glass all the way around the car.

There's other issues like sunroofs and things like that, but that's sort of a snapshot of the rule.

At the time the Board heard this, there was testimony that cell phones would not work or not work as well in a car that uses specific technologies that is able to meet this standard which is the metal reflective coating on windows. It's like the low e-glass that many people have in their homes if you replace your home windows.

People who were concerned about that wanted a change which would allow a less effective absorbing type window to be used. And it would eliminate most of the electronic interference issues. So that's at least part of what some of the manufacturers and suppliers are looking for.
There were other issues at that time. But since the Board meeting, there have been issues brought up about RFDI items like Fastpass on the Bay Area toll bridge, for example, which have to go on the windshield and send out a signal. And that needs to be able to get through the windshield.

Before the Board meeting, there was concerns raised about GPS units and whether they would take longer to secure a signal inside of a car. After the Board meeting, the issue was raised that offenders released from prison sometimes have to wear anklets and the anklets including GPS as well as cell phone connection. And it was alleged that we would lose track of where those people are. And so there's been some studies to address that.

There's been some studies to look at the cell phone interference issue. And while it was generally presented to the Board that we're going to lose calls in general, I think it's now boiled down to a question of whether or not the E911 calls in rural areas will always go through or not. The interference that -- at least from our viewpoint, the interference that was alleged in the city or urban areas is not as serious an issue as initially thought.

And as far as the manufacturers of the windows go, those who make the higher performing glass with the
reflective metal technology on it I'm sure will testify
they have invested the money, that they are signing
contracts with people today, and those people that have
the other kind of less effective glass that are arguing
for a slightly less stringent standard will say that their
technologies are good enough for now and why don't we
defer all this until 2016 when the standard takes a
quantum jump that goes from like 50 to 40 performance
standard and deal with it in that time frame.
So that's sort of the broad range of issues that
have been raised. There's some other ones, but I won't
prolong it. I'm sure the testifiers will bring it out.

CHAIRPERSON NICHOLS: Okay. Now we actually get
to hear from the witnesses. So let's quickly move through
this if we can.
        Peggy Willett, Tim Tutt, Steven Douglas, and
let's just line up and do this if we can so that we can
take you all quickly.
        If there's anybody not here on the cool glass
issue, you should probably say so.
        MS. WILLITT: Good morning, Chairman Nichols and
Board members. My name is Peggy Willitt representing 3M
Company. We've submitted written testimony, and I'd like
to present the key points.
        We support the ARB's goals to reduce greenhouse
gases emissions through the cool car regulation. We know that the goal for 2012 is to reduce TTS to 50 percent for windshield without interfering with electronic signals, such as cell phones, GPS censors, et cetera.

But discussion of this subject has often been framed as a choice between two alternative technologies that compromise that goal. Metal coated glass or film that meet the requirement but cause electromagnetic interference in the deletion zone and absorbing technology, such as enhanced infrared absorbing PPV, which freely pass the electronic signals but do not meet the TTS requirement.

Our film, 3M solar reflecting film, is a means to bridge that gap. It's a non-metallic film that can be used as an inner layer in automotive glazing to enhance solar performance without interfering with electronic signals.

It's a clear plastic film that is engineered to pass visible light but reflect heat. It doesn't meet the TTS performance by itself. Instead, it's been shown to work in combination with enhanced infrared absorbing PPV technology to deliver the required level of solar performance with no electromagnetic interference.

The point is that technology will be made available for ARB solar requirement and to satisfy the
concerns of the industry regarding electromagnetic
interference.

We're in communication with ARB staff on our
technology, and I'd be happy to answer any questions from
the Board. Thank you for your time.

CHAIRPERSON NICHOLS: Let's go. Let's keep
going. Tim Tutt, Steven Douglas, Matthew Coda.

MR. TUTT: Madam Chair, Board, like Mr. Dunlap, I
was not an organizer of any cool car comments, nor do I
wish to speak about the cool car item. I wish to provide
public comment about a different item. I'm happy to wait
until the end of the meeting or do it now if you wish.

CHAIRPERSON NICHOLS: Go ahead. Why not. It's
free for all. Go ahead, whatever it is you want to talk
about. Hi.

MR. TUTT: Hi.

At your last Board meeting, you received an
update on the preliminary draft regulation for the cap and
trade, including a segment on the forthcoming Economic and
Allocation Advisory Committee recommendations on allowance
allocation and use of that allowance value.

Subject came up this morning in relation to the
federal cap and dividend bill that Senator Cantwell has
introduced. And it will come to you again when the
Economic and Allocation Advisory Committee presents their
I just wanted to make you aware that the state's electric utilities are universally interested in a different structure than is being recommended by the Economic and Allocation Advisory Committee. We believe that with the disproportionate amount of emissions reductions that are expected from the electric sector and the costs of those emission reductions from investments in renewable energy and energy efficiency and solar distributed generation, other costs that our rate payers will have to bear that it would be reasonable for the ARB to decide that allocations should be administratively allocated -- allowances should be administratively allocated to the LDCs. This does not mean we're opposed to auctioning those. We feel auctioning those will provide a value to the allowances and make for a competitive electricity sector market. We just believe that it would be good for the state to allow the LDCs to use the revenue from those allowance auctions to fund and support the programs that are going to be used for a significant amount of the AB 32 reductions that are expected.

That's the main thing I wanted to say. I'm sure I will have a chance to say it again at the next Board meeting, but I wanted to give you a preliminary review of
that. Thank you.

BOARD MEMBER LOVERIDGE: Could I just ask, is that in writing?

MR. TUTT: We have provided comments in writing to the Economic and Allocation Advisory Committee meeting. And we are preparing a letter in writing to you.

BOARD MEMBER LOVERIDGE: Okay. I'd like to see such letter.

MR. TUTT: Okay. Thank you.

CHAIRPERSON NICHOLS: Thanks.

Steven Douglas, Matthew Coda, James Gallagher.

MR. DOUGLAS: Thank you, Chairman Nichols, members of the Board. I'm Steven Douglas with the Alliance of Automobile Manufacturers. I thought it might be helpful for me to just give you a scope of this regulation and tell you what manufacturers are planning to do in light of understanding the regulation.

In terms of scope, this regulation applies to two million vehicles and about eleven million pieces of glass. Production of those vehicles begins in less than a year. That means rolling down the assembly lines and arriving at dealerships. So we do have some sense of urgency, as Tom Cackette mentioned.

As far as the current plans, the regulations as
we understand them and as the staff interpreted them will
require reflective metal glazing. And we intend to
install those in the windshield and have a very large
deletion area as well.

We proposed a number of alternatives. Some of
those would require Board action. But one of those is an
alternative which Tom Cackette had mentioned, which is an
equivalency. It's equivalency with solar-absorbing glass.
This technology is available. It's equivalent. And it
has no wireless issues. It's a lower cost, so it's likely
manufacturers would apply this to all vehicles nationwide.
So, in fact, the benefits of this would exceed the
benefits of the original proposal.

So, again, those are the issues that we raised.
I thought it would just be helpful to have an update and
again tell you there are alternatives.

CHAIRPERSON NICHOLS: Thank you.

Matthew Coda, James Gallagher, James Tribble.

MR. CODA: Chairman Nichols, members of the
Board, thank you for hearing from me.

My name is Matthew Coda. I'm representing
Southwall Technologies. Southwall Technologies is a small
California-based company. We have been involved in energy
efficiency for the entire 30-year history of the company
and specifically in high performance automotive glazing
for the last 15 years.

We have fielded about 20 million vehicles in Europe with this specific technology in the windshield. That's from a total fleet of somewhere around 100, 120 million vehicles overall.

In the 15 years that those vehicles have been on the road in Europe, we have never heard a substantial concern or complaint from any industry user or regulatory agency on cell phone attenuation or GPS signal attenuation. We believe that the actual attenuation caused by that technology in windshields is minimal at best.

We also believe that the staff has built into the regulation certain provisions that allow for what we call deletion windows that further enhance or mitigate the potential attenuation of any RF signal traveling through the windshield.

We also have done independent testing on absorbing technologies and have found absorbing technologies do attenuate RF. Whether they attenuate on the same level as reflective technologies I'm not able to speak to. But we think that is something that the staff and the Board need to consider before making any substantial changes to the regulation.

So basically, in summary, we support the
regulation as has most recently been released by the staff. We support it wholeheartedly. We've been working for the last year and a half to bring our company in alignment to be able to supply a substantial amount of material for the California market and for the U.S. market more broadly to be able to service the regulation. That's it. If you have any questions, I'm happy to entertain them.

CHAIRPERSON NICHOLS: Thank you.

James Gallagher, James Tribble, Carol Livingston.

Mr. GALLAGHER: Good morning, I believe still.

James Gallagher, Chief Toll Operations Officer for the Transportation Corridor Agencies in Irvine, California. We've submitted a letter. I'll summarize it as briefly as I can.

The TCAs are a joint power authority in the state of California. We operate 51 miles of tollways in Orange County. These tollways were provided at no cost to the taxpayers or the State. And we do have legal obligations to repay the bond holding investors who provided us the money to do this.

We're a leader in environmental consciousness. We have a number of award-winning programs at the TCA. We operate our tolling system with a RFID transponder FasTrak, and we are the licensing agency for
all transponders in the state of California. Currently, there are 12 agencies which have a license to use this technology in California; six actually operate tollways or bridges, and six are working on various programs for congestion management in the state.

Our concern is that the proper operation of the tags and the financial burden that changing those tags would bring on us if the RFID technology is proven not to work.

There is a requirement for this metal reflective screen. We think it's unnecessary. There is an alternative to this in absorptive film. It's optimal and represents a win-win for all we believe.

Certainly, we support the overall objectives of the Air Resources Board, but we do support the achievement of those goals without destroying the accuracy and reliability of our electronic tolling systems and those systems around the rest of California. And we support achieving those without an undue financial burden on our customers and citizens of the state.

Thank you.

CHAIRPERSON NICHOLS: Do you have information specifically about the impact?

MR. GALLAGHER: I'm going to leave -- if I may, I'll leave the technical discussions to other individuals
and manufacturers of this equipment.

CHAIRPERSON NICHOLS: I do think since you all are raising these issues, it would be really important for the Board members to see any data that anybody is using here.

MR. GALLAGHER: I'm sure I can speak for others and say we'll provide you anything that you think you want.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER BERG: Mr. Gallagher, I just want to confirm specifically Transportation Corridor Agency doesn't have any firsthand knowledge, nor has done any specific testing on this. You're relying on information from your suppliers?

MR. GALLAGHER: We rely on that information and --

BOARD MEMBER BERG: Thank you. Go ahead. I didn't --

MR. GALLAGHER: That's okay.

BOARD MEMBER BERG: Go ahead.

MR. GALLAGHER: Nothing further.

BOARD MEMBER BERG: Okay. Great. Thanks.

CHAIRPERSON NICHOLS: Mr. Tribble, Carol Livingston, Dick Schnacke.

MR. TRIBBLE: Good day. My name is James
Tribble, and I'm representing Sekisui S-Lec America, who is a manufacturer of that solar absorbing PVB, which I'd like to clarify when we're talking about the electromagnetic wave spectrum, it's quite large. And the issue here is regarding radio frequency waves. And just to clarify the comment that the Southwall representative made a moment ago, our PVB does not attenuate the radio frequency.

I'm pleased to have the opportunity to address you and the honorable Board once again regarding some issues regarding to the cool car regulation 15-day draft. There seems to have been some liberties taken by a conjecture to surmise a methodology which resulted in perhaps an unintentional retroactive interpretation of some of the performance equivalency guidelines set forth at the first Board meeting resulting in somewhat of seemingly unfair conditions having been laid down giving way to somewhat of a biased unlevel playing field. Now after we, Sekisui, had successfully met the demands and developed our existing product and enhanced that to meet the 53 percent TTS industry-agreed 53 percent TTS equivalency metric, the goalpost was suddenly moved to reflect a more stringent 51 percent TTS equivalency metric based on what obscure models with little benefit to the cause allowing one type of technology to benefit over
And if you go to that second slide, the second one, you can see here that deletion type non-EM passing -- and I should specify non-RF passing is 53.1 percent. That's what's being allowed to create more GHG through a deletion window of ten percent, which was not on the other hand given to the non-deletion type, the solar absorbingly type. Because you can see 51 percent was given to us as the equivalency metric. We're not sure what that's based on. The AAM director just said the industry plans to use the ten percent. I don't know what other evidence that you would need, because there it is right there. They plan to use ten percent, which means 53.1 percent. So the equivalency should be 53 percent at least that, if not 54.

I would like to add that the justifications I've heard up until now do not seem to reflect equivalency at all. And it appears somewhat arbitrary.

But to be fair, staff has been willing to work with us, just as Madam Chair had indicated, on some of these issues and iron out some of the inconsistencies.

If you please go to the first slide. And I just wanted to say our company, Sekisui, we have products in 13 car makers, 39 models, three hybrid vehicles, with approximately one million vehicles already contributing to GHG reduction. Thank you.
CHAIRPERSON NICHOLS: Thank you. Time is up.
Carol Livingston, Dick Schnacke, Mike Rogge.

If you could be prepared so we don't have to wait. Since I first began this discussion, more people have decided they wanted to sign up.

MS. LIVINGSTON: Thank you. I'm here representing Garmin.

Garmin is in total support of the environmental goals of AB 32 and commends CARB for its hard work and dedication and implementation of the Act.

You need to know, however, that Garmin, TransCore, and other companies in the same business have had experience in Asia and Europe with failed electronic equipment from metallicized windows and automobiles.

We have stated this. I don't know how much information we have given staff, but I will certainly see that they're supplied. It's somewhat anecdotal, but I think it's a misstatement to say they've had no trouble, because Garmin has had GPS systems in the field in Europe for years. And it's one of the reasons that it got involved in this issue, because it knows there are problems. And I think you have had adequate testimony before the rule was adopted from Toyota and Honda about the problems they had in Asia.

There is no question that a functioning GPS has
more benefit in reducing greenhouse gas emissions than
does the difference in savings between metallic and solar
absorbent windows, which is under one gallon of gas per
year. And there is no dispute from CARB or staff that
metallized materials interferes with RF signals necessary
for electronic equipment to operate. Deletion areas are
CARB's solution to that problem. But all of the testing
that was done by Garmin, by CTIA, by TransCore that you'll
hear about were done with deletion areas.

In order for the deletion window to serve any
purpose for the RF signal dependant devices, the devices
have to be placed inside the deletion window and have the
receivers pointing directly out the deletion window. And
when you talk about all of the electronic equipment that
relies on that space, you see the logistical challenges
are staggering, which is why the deletion window has to be
ten percent.

And Garmin has had many calls from car companies
asking where the deletion window will fit best for them.
And it's different for them than it is for other equipment
and so forth. It's a huge logistical problem.

The thing that is puzzling is that the
metallicized window that meets the 50 TTS requirement on
90 percent of the window and is clean and ten percent
deletion area only meets 53 and a half or 54 percent
overall. So that sort of absorptive has an equivalent
solar performance to a metallized window with a ten
percent deletion area. So it's -- we strongly support the
54 percent.

I'm also submitting letters for California State
Sherrifs Association and California Chapter of Emergency
Number Association, because they were unable to make the
schedule adjustment.

CHAIRPERSON NICHOLS: Your time is up. Thank
you.

Dick Schnacke, Mike Rogge, Jason Sorrick.

MR. SCHNACKE: Thank you to the Board.

I'm Dick Schnacke. I'm with TransCore. We're
one of the two companies that supplied transponders into
the toll systems in California.

I should say that Tonya Clark representing Cerit
(phonetic) is also in audience here today. That's the
other company supplying the transponders. So between us,
we've supplied all of the transponders used today in
California.

You asked who has the data. I'm the guy with the
data. And I did provide a package for the Board. It's a
leave-behind package that has some of our latest test
information. I think it's self-explanatory.

There are more than two and a half million
transponders circulating in toll usage in California today. They have many benefits, not the least of which has been a reduction in emissions at the tolling points. But these devices unfortunately are very susceptible, the transponders, to the presence of metal nearby, which is precisely why we mount them on a glass windshield.

There is a great concern in our industry that the regulation as it's currently drafted may require the addition of a metallic layer to the windshield. This is our safe haven area, and we cannot stand the thought that might go away.

You should keep in mind of course these are financial transactions. Money is changing hands when tolls are collected. So people are very concerned these systems may not be as precise with metal in the windshield as they are today.

Our tests have verified that the absorptive films you've heard here today have essentially no effect on the transponder systems. We've also found that the reflective films as expected completely block the transmissions. The use of deletion areas is an acceptable way to mitigate that if the deletion area is large enough and placed in the proper place.

The problem with this is that there are limits imposed by other federal regulations and auto
regulations -- auto industry regulations about what parts of the windshield you can tint or essentially have any effect upon. And the area that we require to stay clear, in other words, the deletion area, often imposes in that, especially in smaller vehicles where the visibility line would intersect with conflict with the boundary of a deletion area.

Some people have spoken about the use of external transponders as an alternative. Such devices do exist. They're used on a very small number of vehicles today, but it's a poor alternative. It has all kinds of problems, not the least of which is they are very susceptible to damage, being mounted on the front license plate location, susceptible to theft. And to be honest, they're just not very pretty.

CHAIRPERSON NICHOLS: Thank you.

MR. SCHNACKE: So we certainly think that --

CHAIRPERSON NICHOLS: Your time is up, sir. This is not a public hearing. Appreciate it if you'll leave whatever data you submitted. Thank you.

MR. SCHNACKE: Thank you.

CHAIRPERSON NICHOLS: We'll hear from Mike Rogge, Jason Sorrick, Duncan McFetridge.

MR. ROGGE: Mike Rogge with the California Manufacturers and Technology Association.
I'd just like to preface my comments. I did speak to James Goldstene this morning, and I'm hopeful that we're going to be able to resolve the differences. I think we may be able to move that way. So with that in mind, I've cut my remarks down significantly.

I'd like to point out that we have among our membership auto makers, windshield manufacturers, manufacturers of both metallic and solar absorbent technologies, GPS companies, wireless companies, and electronics companies. So we really have a stake in coming up with something that works. And I think that there are methods that work.

I'd like to point out that in June when this came up in June, a lot of us didn't find out until a week before. Probably half of these people didn't even hear about it at that point. So we really didn't get an opportunity to talk then or to -- and what we asked for was more time so we could run tests.

Testing has been done, a great deal of testing. Since the June Board meeting, scientific testing by CTIA and Garmin, TransCore, Toyota, and Honda engineers show that equipment like cell phones, E911 calls, GPS devices, bridge and toll road transponders and even ankle bracelets, plus a multitude of high detection systems just coming on the market will be negatively affected even with
a ten percent deletion window.

The auto manufacturers are ordering windshields for the 2012 models now. Without urgent action, they will soon be committed to produce vehicles that will render all RF devices less functional. Requiring RF all the way around a car by 2016 is pointing us directly toward a train wreck.

There is a solution. Solar absorbing technology currently available can achieve a 54 TTS standard, the same as metallic reflective with a ten percent deletion window. Solar reflective has none of the negative shortcomings. It does not need deletion windows. It does not block RF signals. GPS, cell phones, transponders, and E911 will work with this technology. It costs one-tenth as much. The fuel savings even by CARB staff calculations is 85 percent, or less than three-quarters of a gallon difference between the metallic and the absorptive materials. We believe there needs to be flexibility built into the regulation to incorporate all the other technologies that can achieve comparable fuel savings by whatever means.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Jason Sorrick, Duncan McFetridge, and Joe Gregorich.
MR. LEECOX: Good afternoon, Madam Chair and members.

My name is Jeffrey Leecox. Jason Sorrick couldn't be here at this time for this hearing and asked me to just read their comments to you. With your consent, I'll proceed to do that.

American Medical Response is the nation's largest provider of 911 emergency ambulance services with operations in 40 states, including California. Reliable communications are critical to the success of high-performance EMS systems operated by AMR. Thus, any interruption or delay in communication can have a significant impact on the ability to reach and treat a patient.

Recent studies show that the coating proposed by CARB can cause disruption to equipment installed in AMR vehicles and utilized by emergency crews. The most notable disruption would occur during a major disaster response in which strike teams consisting of non-resident ambulance providers are given GPS satellite phones and handheld radios that are not connected to external antennas.

We're aware that the California Vehicle Code provides an exemption for ambulances operated by private companies under contract with public agencies. However,
it's not clear that the exemption would extend to all of our vehicles.

In addition, cool car standards could force large motor manufacturers to install coated windows on all vehicles, including the vans and trucks that AMR modifies into ambulances. This could lead to higher costs when purchasing new vehicles, because they would have to pay for coated windows to be removed and uncoated windows to be installed.

As a secondary 911 PSAP -- I'm sorry I can't tell you what that means -- our emergency medical dispatchers not only obtain location and symptom information from callers, but also provide life-saving medical instruction. Many 911 calls we receive come from callers using cell phones from inside their vehicles, and often these calls are initiated in rural areas that already suffer from poor cell phone reception. Thus, we have serious concerns that the coating required could detrimentally impact 911 dispatching capabilities.

For the reasons stated, above we urge the Board to reconsider the cool car regulations and modify the standard so that no windows will be required to have metallic reflective materials on them. Thank you.

MR. MC FETRIDGE: Madam Chair and members, Duncan McFetridge representing the Bay Area Toll Authority.
My client is responsible for collecting all the
tolls in the Bay Area that pay for seismic improvements on
the bridges, bridge operations, and transit improvements
throughout the Bay Area region.

I want to associate my comments with TransCore
and with the TCA, identical concerns. Our concern is we
utilize transponders in 55 percent of our toll
collections. If there is a problem with collecting these
financial transactions, it becomes a serious impediment to
the bridge program in the Bay Area.

So as a result, we urge you to reconsider the
regulation and improve the utilization of the technology
so that the transponders can be utilized. Thank you.

MR. GREGORICH: Madam Chair and Board members,
I'm Joe Gregorich with Tech America, which is the nation's
largest high tech trade association. We represent 1500
high tech companies nationwide.

I'm here today to urge the Board to reconsider
the requirements on metal oxide and look towards coatings
on windshields that would not have impact on RF
technologies when using cars such as for cellular, GPS,
and FasTrak purposes.

Tech American does support the goals of the cool
car regulations to reduce greenhouse gas emissions in
California. However, we do believe the current standard
as studies have shown does have impact on RF technology.
And we urge the Board to take a step back, work with the
technology community and our stakeholders to find a
solution that does not have this impact on the technology
community.

Thank you.

BOARD MEMBER LOVERIDGE: Thank you.

Next, Steve Carlton and then Tom D'Agostino.

MR. CARLSON: Thank you. My name is Steve Carlson. I'm with the California Government Affairs Council for CTIA, the wireless association. We are the trade association for cell phone carriers, handsets, and other equipment providers.

Wanted to stress that we strongly support the goals of AB 32 and certainly the intent of the cool cars regulation. We'll renew our offer to work collaboratively toward an agreeable outcome. I'd like to shout out to staff. We've met several times with Mr. Cross and his folks down in El Monte, and they have shown themselves to be very patient in listening to our issues and our concerns. And we very much appreciate that.

When we learned of the reg last June, we felt it might be a problem, but the cell phone industry felt the need to do our own testing before making any comments in that regard. We communicated to staff that we hoped there
would not be a problem.

The details of our testing is contained in the letter that we've supplied in January and a copy of which is sent to you. You have there. We used equipment and methodologies virtually identical to carriers that test their networks 24/7. That's what they do. They want to make sure their networks work and their customers get what they're paying for.

Unfortunately, our testing did indeed indicate that metal oxides glaze on windshields caused an unacceptable level of interference with our signals in a number of circumstances. As a follow-up to that letter, we did arrange the meetings I just mentioned with Mr. Cross and his staff in El Monte, bringing in network and E911 engineering specialists from the two largest wireless carriers to meet with staff in El Monte.

The purpose was to educate and respond to questions from staff on design and operational issues with wireless networks, why we believe it is a problem, and seek alternatives that would not interfere with our customer experience and wireless networks.

The greatest issue we found and concern was when we tested E911 in rural areas. That is defined as a scarcity of cell sites, not necessarily a scarcity of people, although oftentimes it's one and the same.
In those circumstances, signal loss negatively affected 911 call completion, maintenance, and particularly call back, which is when the dispatcher needs to call the 911 caller back if the call is dropped where effected.

Also, we have an obligation under federal law to locate E911 callers information on the displays to an increasing degree of accuracy, which is also effected by the metal oxide glaze.

We are very encouraged by comments of the chair and comments with Mr. Goldstene and other staff of the willingness of staff to work toward a solution that offers alternatives that do not contain metal oxide. We very, very appreciate working with you and look forward to doing the same to reach a mutually agreeable outcome.

Thank you very much.

BOARD MEMBER LOVERIDGE: After Tom, Bonnie Holmes-Gen, and Jamie Knapp.

MR. D'AGOSTINO: Good morning. I think I'll forgo that in the essence of time. There is a hard copy being delivered.

Good morning. My name is Tom D'Agostino with Aaron Reed and Associates representing Solatia.

The implementation of AB 32 has provided some extraordinary opportunities but also some very serious
concerns and challenges. I will go briefly through this.

There will be written testimony delivered to you.

Those of us in the marketplace want to be reasonable. And we want to review alternatives. And we want to work with the Board and staff.

Today, I want to focus on one particular issue.

We propose that using an advanced solar absorbing wind screen is equivalent in solar performance with metal coated wind screen utilizing ten percent deletion.

Solatia firmly believes that full ten percent deletion allowance should be used to calculate the equivalency of non-deletion wind screen for the manufacturers' compliance 54 percent TTS.

CARB has approved a full ten percent deletion to be used with the cool car program. Automotive manufacturers have said they need ten percent in the zone.

But staff insists on using a four percent deletion window for the calculations, allowing for ten percent deletion, but using four percent deletions is really a problem to follow logically.

The results that we would like to assist with the 54 percent TTS are very forward, and these alternatives would include providing functional equivalence in solar performance to a 50 percent TTS metal coating; wind screen with ten percent deletion; alleviating electronic
interference issues; significantly reducing costs to the automotive manufacturers by at least $100 million for 2012 through 2015. And it meets to be GHG reduction goals for CARB.

Our message is very simple and direct. We urge you to allow the 54 TTS for the manufacturers compliant option on non-deletion wind screens. Solar performance, you will find it's the same and is equivalent. Our experts would love to be available and work with staff going forward at your discretion.

Appreciate your time.

CHAIRPERSON NICHOLS: American Lung Association, Bonnie Holmes-Gen and then Tony Francois and Gavin McHugh.

MS. HOLMES-GEN: Good afternoon, Chairman Nichols. Bonnie Holmes-Gen of the American Lung Association of California and Jamie Knapp with Clean Car Coalition. We're trying to be very brief and together take three minutes.

Just want to remind you that the American Lung Association, Natural Resources Defense Council, the Sierra Club, and a broad range of groups under the Clean Cars Coalition organization have strongly supported your action to enact the cool cars regulation as a key part of our AB 32 strategy. And from our perspective, these regulations have tremendous public health and air quality benefits
reducing the petroleum use, reducing harmful pollution emissions, and making sure that California is getting the full benefit of our efforts to clean up vehicle technologies and fuels.

You know, many, if not all, really of these concerns were heard during the regulatory process. You had a very full and open public process. And I know your staff is continuing to look into issues that are being raised. And our basic message is that these regulations make sense. They're based on significant research and real world experience. And we strongly urge you to move forward with implementation.

MS. KNAPP: This is Jamie Knapp.

I will simply add that as you have heard, staff is working to resolve some of these issues. And the environmental community pledges to work with staff and industry to try to also address some of these issues and to continue the discussions that have occurred.

But ultimately what we're trying to do is meet your AB 32 goals and reduce greenhouse gas emissions, reduce the air conditioning load in vehicles on hot days in order to reduce greenhouse gas emissions, and frankly make cars more comfortable for all of us.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
Tony Francois and then Gavin McHugh.

MR. FRANCOIS: Good afternoon, Chairman Nichols and members of the Board.

I've given the clerk a couple of just one-page handouts. I don't know if you've received those or not. One just has a schematic of a car that shows the weight reductions that can be achieved through the use of polycarbonate window material, which is a product manufactured by my client, Exatec, LLC. This is an actual sample of the part they are responsible for. It's used in a European Volkswagen model.

What we wanted to clearly communicate to the Board is our support for the Board's automotive greenhouse gas reduction programs. The basic difficulty we're facing in trying to resolve a lot of discussions with the staff is the incompatibility of the technologies that are available to accomplish the TTS standards in the cool cars rule with the material that you make polycarbonate glazing out of. There are physics and chemistry problems, and we've supplied the Board and staff with significant information on that.

What we do want to also emphasize is what we hope the Board would agree with that in its overall view of the automotive platform that something like a significant weight reduction in the windows that can be achieved with
polycarbonate is a goal that the Board would wholeheartedly embrace. And we are continuing to work with the staff to try to find a way so that the cool cars rule doesn't interfere with the adoption of technologies like this under the Pavley and Pavley II programs.

We do have a significant research and development effort underway to improve the TTS performance of polycarbonate glazing, but there are significant timing challenges of that. Anything we can amend today would still require two years of weathering before we can get it back out into the field. We have no technical line of sight to being able to accomplish the 40 TTS goal or requirement that's in the regulation now for 2016.

Now what we're finding is that because OEMs agree they don't see a polycarbonate product that can meet that 2016 standard, they are discontinuing projects they have currently underway. And we're seeing a significant decline in interest in polycarbonate as a glazing material because a vehicle model is going to be produced over a series of years. And even if we could find a way to get something in the market that meets the interim 60 TTS guidelines -- right now we don't have that -- the auto makers know by 2016 they have to hit 40 TTS. We cannot supply them with that.

So we've seen a total of four -- that we're aware
of -- projects that have been canceled in the last several months because of this.

The second sheet I've given you just supplies some general ideas for how to I think within the 15-day process improve the alternate performance standard that may help bridge these problems.

Thank you for your time.

CHAIRPERSON NICHOLS: Gavin McHugh. And this is the last.

MR. MC HUGH: Thank you, Madam Chair and members,
Gavin McHugh on behalf of Crime Victims United of California.

We are concerned about the ARB cool car regulation as it relates to the use of GPS electronic monitoring devices for offenders and the potential implications for urgency 911 call completion.

With California facing a prison over-crowding crisis, state and local law enforcement has had to take measures to reduce prison and jail overcrowding, one of which is to place prisoners on GPS or electronic monitoring. While CVUC understands local law enforcement's need for alternative custody options, we are concerned about the potential impacts of the specific technology in the proposed regulation that resulted in a doubling of dropped GPS signals according to ARB's own
analysis.

While this alone is enough to cause concern, we are also concerned that the testing was only conducted on an urban and suburban route without consideration for the differences in rural landscape and cell tower options as a backup to satellite monitoring and devices.

CVUC is also concerned about the public safety risks associated with this proposed regulation that may result in up to 30 percent lower chance of successful emergency 911 calls, particularly in rural areas where no testing has been done.

CVUC is and will continue -- I want to emphasize this -- to work with staff as we go forward and the other law enforcement entities to ensure our own safety concerns related to this regulation are addressed.

Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

All right. That concludes our open public comment period. There is no action before us at the moment. No item before us. But I think the Board members have all listened attentively. I've seen them.

Supervisor Roberts is not going to tell us, "I told you so."

BOARD MEMBER ROBERTS: No. No. No.

CHAIRPERSON NICHOLS: But he could.
BOARD MEMBER ROBERTS: So help me, I wasn't going to do that.

The one thing in my mind that's an issue is we've got something we have to deal with here. And we have a timing issue based on a previously adopted rule. And I am wondering if the staff could suggest what's the path to maybe correct this unfortunate situation.

CHAIRPERSON NICHOLS: Yes.

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Well, I think you've probably ascertained that of all the things that were said that it's not stubbornness that's causing us to not address them. We just disagree with many of the people.

For example, on the crime bracelets. We went and got them from Corrections. And we went and put them in cars, and we went and drove them around and they never lost the signal.

And you talk about there is a GPS unit there which we know the GPS may go down, but they have a backup cell phone.

BOARD MEMBER ROBERTS: Tom, I'm not --

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: I understand what you're saying.

BOARD MEMBER ROBERTS: You are sounding stubborn now.
CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: So we disagree with some of the concern here.

On the timing, as I indicated, we've taken a couple of things that we're going to address in the 15-day. For example, on the polycarbonate windows, we took your direction to do the equivalency things and let them average all the windows. The window you saw there was a fixed window. There's where polycarbonate is being used now and that can be averaged with better performing up and down and side windows and back lights. And that would give more flexibility to that technology to be used in the interim.

The key issue I think is whether or not reflective glass versus absorbing glass is used. And this is an equivalency issue that the Board asked us to look at. And people are arguing that because you can use ten percent deletion on a reflective window, that means that only 90 percent of it's reflective. So it's going to have a 53 or 54 equivalent performance.

The problem is in trying to look at the facts is that the cars running in Europe do not have ten percent deletion. They have three or four percent deletion. We've talked to glass manufacturers, and some of the orders that are coming in do not have ten percent deletion. So what we tried to do is figure out what
deletion is likely to occur and then just do the
equivalency with that. That turned out to be 51, not 53.

BOARD MEMBER ROBERTS: We also heard testimony
some of those aren't working in Europe for systems.

So, you know, I guess I don't want to argue this
with you, because it sounds like you're just intent on
going down the same path again and that we're going to
have a standard that's prescriptive rather than
performance driven. And that's bothering me. It bothered
me last time, and it continues to bother me. And there is
a manipulation of the numbers that bothers me greatly.

Your standard is ten percent. Okay. You seem to
be manipulating this to fit a prearranged conclusion. And
the conclusion -- we've had testimony and testimony there
is a major problem here.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:

Supervisor, did you hear the witnesses at the beginning
that said that said they could provide 51?

CHAIRPERSON NICHOLS: I think --

BOARD MEMBER ROBERTS: They're saying they can
have equivalency based on the fact you've got a ten
percent allowance.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:

They said they can provide 51.

EXECUTIVE OFFICER GOLDSTENE: Supervisor
CHAIRPERSON NICHOLS: I really do not wish to let this conversation go forward. I'm sorry. But the question was timing. So could we just address the timing?

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: On the timing, to complete the rulemaking within the one-year period and given that we have a 15-day package that still has to go out and get public comment and then post the final requirements, we're within a couple of weeks at the most of having to put that 15-day package out. So we have to make decisions on which trade-offs, if any. I listed one of them that we've already worked on. There's other things too that are in that 15-day package. And that's roughly the time frame we have to do that.

If we don't do it roughly by then, then the rule will not be finalized within the one-year period and it goes away. That's what's driving the timing on all of this right now.

CHAIRPERSON NICHOLS: And there might be people that think that would be fine, if the rule just went away.

But just to go back to sort of the beginning of all of this, what got us into all of this ironically was the idea that this could be an early action item under AB 32. The idea was that there was low-hanging fruit that could be realized that did not have to go through the more
arduous lengthy rulemakings involved in most of our work, particularly with automobiles.

I wasn't around for the early stages of that, but I do remember when we came up with our list of early action measures and this was one of the ones that was on the list.

And clearly there are people, not only the manufacturers of these products, that would stand to benefit under the rule, but also people in our sister agencies and former members of this Board who were very, very committed to the idea that we should be pushing for a new, better generation of materials, which is going to be one of the solutions ultimately towards reducing greenhouse gas emissions.

So we understand the motivation here -- I'm willing to assert that the motivation is not to come up with a specific type of rule, but to try to get some quick reductions.

The problem obviously is that in moving in this direction we ended up not only stepping on the toes of a number of stakeholders who weren't involved in the process and don't feel that they were heard when the rule was developed.

And also I think because of the fact that it is limited to this one area of the vehicle, the amount of the
reductions are very small. They're significant. They're important. But relative to other things that we are working on, the amount of greenhouse gas reductions we are getting from this rule are not huge.

So I think it's frustrating to all of us that, you know, in the course of doing something that seemed to be relatively simple and straightforward it's turned out to be more complicated.

And we respect the fact that some of the arguments that are being made, some of the points that are being made may well be exaggerated. They may well be incorrect. But I think that people feel that these are serious and legitimate issues and they're not going to take the word of ARB that we know better on subjects like 911 calls. It's just not going to be -- we're not going to be the ones to be the determinants of whether there is an issue or not at the end of the day.

So I think the staff in addition to technical kinds of changes is going to need to think about some additional process if this rule or anything like it is going to be capable of succeeding in the marketplace of public opinion, if you will, or else it's going to continue to get the kind of undue attention that we've received from it, regardless of the motivation.

I understand that there are people who are
fighting for market share for a particular view of their
industry and all of that, but we're used to that. That
happens all the time. Whenever you get into a regulatory
arena, you're going to arouse those kinds of issues.

It's just I think on this one the feeling is that
we don't enjoy the kind of broad support for the specific
rule that we've generally been able to achieve in our
other rulemakings and we are used to getting the not
everybody but the kind of middle of the community kind of
going along and saying, yeah, this is pretty much the
right way to do it. And we're not quite there yet with
this rule.

So I think there is going to need to be some
additional work done. I don't think we're in a position
to say what it is right now. But I hope we can have some
further discussions about this before it's completed.

EXECUTIVE OFFICER GOLDSTENE: We are planning on
doing that and making sure that all the stakeholders that
spoke today and others are contacted as we look at other
ways to approach this.

CHAIRPERSON NICHOLS: Okay. Thank you very much.

BOARD MEMBER ROBERTS: Madam Chair, I just want
to be clear. I want the rule. And my comments are not
because I don't want the rule. And I would like to see it
have the flexibility so we are not driven by one
technology that seems to have associated problems with it. So I think there is a way to get what we would like and in fact with the reductions in weight might even do better with other technologies.

CHAIRPERSON NICHOLS: Okay. I think we don't have any further -- oh, one more comment.

BOARD MEMBER TELLES: It's a question. What's the difference between this equivalency, the 54 percent and the 51 percent, from just a greenhouse gas emissions point of view? I mean, what are we talking about here? To have a rule that's going to cause so much inconvenience and potentially public health problems and crossing bridge problems, is this really worth it?

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: I don't know that I know the exact number. But the rule without the side windows, which was a change the Board made. As proposed, I think it was about a one million metric ton per year rule. And I'm guessing that for these four years where we're dealing with 54 versus 51, it's probably worth a tenth or two.

The bigger issue I have is this standard goes to 40 in 2016 and beyond, and that produces a significant amount of the reduction. And if these are show stopper problems with reflective glass technology, they're probably show stopper problems in 2016 as well. So that
part of the rule would -- the benefits of that part of the
rule arguably could go away if we don't make progress
toward to. So short-term difference in the interim years
is not that great, but it does have implications for the
outer years.

BOARD MEMBER TELLES: That's what I was wondering
too, if this is even viable in the future when you have to
get even more stringent. And it seems to me that the 54
percent is a reasonable alternative right now.

And I don't know too much about this technology,
but maybe that absorptive technology is the technology
that should be developed rather than this reflective
technology in the future, because it sounds like if you
did the same thing four years from now, you're going to
have the same testimony that it's not going to work in
certain situations.

EXECUTIVE OFFICER GOLDSTENE: We hope that the
rule, like many of our rules, will drive innovation and
new developments and different technologies. And I think
that's a stated goal we have to keep in mind as we move
forward.

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: And we
are doing the development of the procedures, which is
necessary to do the broader sort of hot box approach,
whole envelope approach that Supervisor Roberts suggested
last time. Because that's procedurally driven, you have
to have procedures to do all the measurements. That is
not available for the 2012 model year. It's going to be
more towards 2016 model year.

CHAIRPERSON NICHOLS: Okay. It is now 12:30. I
hope we can be back here by 1:30 after a lunch break.

Thanks, everybody.

(Thereupon a lunch recess was taken
at 12:30 p.m.)
CHAIRPERSON NICHOLS: We're going to get started, because we do have a quorum. We'll begin the presentation now. Thanks.

The next agenda item is actually two items, 10-2-4 and 10-2-9. And we're going to deal with them together. This is not an action item, but I think it's important information for the Board, the status of developing an offsets program as part of California's Greenhouse Gas Cap and Trade Program.

There will be one request for action relating to existing voluntary protocols that the Board has approved.

We're also going to hear an overview of the preliminary draft regulation of the Cap and Trade Program that was released last November, a description of the staff's evolving thinking on that.

The provisions for a high quality offset program as part of a cap and trade proposal are critically important, not just for the success of a California program, but really for the thinking that it's helped to spark regionally and nationally. Our staff has been working on these issues with their counterparts at U.S. EPA, who have been very supportive of the type of program that we've been developing here for offsets as well as the
Western Climate Initiative, which when it's fully operational will involve linking our state's program with other states as well. So it's important that we all remain committed to very high quality of offsets in these programs.

We were participants on the international discussions this past year, the conference of parties in Copenhagen, as well as through an organization called the International Carbon Action Partnership, which includes states and countries from around the world that are sharing information and best practices about how to run effective market-based programs for controlling carbon dioxide.

I think it's important to recognize that even with a federal climate policy, it's going to continue to be important for California to continue making progress. We are really the place where a lot of the implementation is going to happen under a federal system. And by developing some of these thoughts into regulatory language, including the Cap and Trade Program, the leadership that we're providing is not only going to benefit the country or the world, but it's really going to benefit us as well, because we hope our ideas will then be adopted by others. And so far, the evidence on that is pretty good, that when California does do the work to
develop a proposal, we can influence others to want to follow in our footsteps.

So with that, I'm just going to ask Mr. Goldstene to introduce this item and we'll get to it.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

This is the second in a series of updates we're presenting to the Board to keep you briefed as we move towards the Cap and Trade Program regulation that we're bringing to you for consideration later this year.

In addition to offsets, we're also planning to brief the Board from now until next October on several other aspects of the Cap and Trade Program. At our March Board meeting, staff will present its report on the economic analysis update for the Scoping Plan. Your March public meeting will also include a presentation by members of the Economic and Allocation Advisory Committee, who will report their recommendations for allocating allowances and distributing allowance value from the Cap and Trade Program.

At future meetings, we will present additional related topics that are timed to the release of the final proposed cap and trade rule that we'll be bringing to you later this year.

As adopted in the Scoping Plan, the Cap and Trade
Program would establish a cap covering about 85 percent of the state's greenhouse gas emissions and allow trading to ensure cost-effective emissions reductions.

As part of cap and trade, staff is proposing to allow a limited amount of offsets to be used by covered entities to help meet their compliance obligations. The cap and trade regulation would set up the framework and requirements for covered entities and offset providers to participate in the offset program.

On November 24th of last year, we released a preliminary draft of the cap and trade rule. This preliminary draft proposal marks the beginning of the next phase of the cap and trade rulemaking culminating in the Board's consideration later this year. If adopted as currently envisioned, the rule would go into effect January 1st, 2012.

Within the preliminary draft regulation, there are extensive offsets positions and discussions of key concepts related to the offsets program that ARB staff is specifically inviting public comment on. It's part of the regulatory development process. We will also finalize GHG offset protocols proposed for consideration.

For this reason, staff will ask the Board to consider a resolution to withdraw Board adoption of the previously adopted voluntary greenhouse gas accounting
Ms. Brieanne Aguila has been the primary staff
developing the Offsets Program, and she'll present an
update and an overview. Brieanne.

(Thereupon an overhead presentation was
presented as follows.)

MS. AGUILA: Thank you, Mr. Goldstene.

Good afternoon, Chairman Nichols and members of
the Board.

Today, I'll be presenting two items related to
the greenhouse gas offsets for the use in Cap and Trade
Program.

First, I will describe the role of offsets in the
Cap and Trade Program by giving you an overview of the
offset provisions and concepts in the preliminary draft
regulation. This is part of a series of updates to you on
the California cap and trade proposal that will culminate
in a proposed regulation we will ask you to consider in
October.

We are also proposing an action item for your
consideration to withdraw the Board's adoption of
voluntary greenhouse gas accounting protocols as part of
our transition to compliance based offset protocols for
use in the California Cap and Trade system.

MS. AGUILA: As we covered last month, the next couple slides provide a general overview of what a Cap and Trade Program is.

Cap and trade is a regulatory mechanism that establishes a cap, or upper limit, on an amount of greenhouse gas emissions allowed to be released into the environment. The cap, also called an allowance cap or allowance budget, is the total number of California greenhouse gas allowances that ARB would issue over a given period of time. Allowances are finite, tradable permits that give one-time permission to emit a ton of greenhouse gases.

Every year, California will issue allowances in the amount equal to that year's cap. At defined periods, for example, every year or every three years, ARB would require covered entities to turn in allowances equal to their greenhouse gas emissions. Covered entities would also be permitted to use a limited number of high quality offset credits for a small part of this obligation. We will go more in-depth about offsets shortly.

Under a regional Cap and Trade Program, or the Western Climate Initiative, allowances issued by regional partners would also be tradable among all sources covered
under the regional link, including covered entities in California.

While the WCI is the most likely opportunity for linking to other jurisdictions, California is also engaged in preliminary discussions with northeastern states who have an active regional Cap and Trade Program in place called the Regional Greenhouse Gas Initiative or states in the midwest who are seriously contemplating such a move through the Midwestern Regional Greenhouse Gas Reduction Accord.

MS. AGUILA: Not only can a covered entity hold and surrender an allowance for compliance, it can also use what is referred to as an offset. Together, these are referred to as compliance instruments. A covered entity may also trade these two instruments to other entities in the system. Through a process called linkage, allowances and offsets issued in other jurisdictions would also be usable for compliance. We will discuss the concept of linkage a bit later in the presentation.

MS. AGUILA: As I just mentioned, under a Cap and Trade Program, covered entities would be required to hold and surrender a combination of allowances and offsets to equal their emissions during each compliance period.
What is an offset in this context? An offset is a credit that represents a reduction of greenhouse gases resulting from an activity that can be measured, quantified, and verified. This credit can then be sold and used by a covered entity to meet a portion of its compliance obligation under the Cap and Trade Program. Like an allowance, each offset credit authorizes its owner to emit one ton of carbon dioxide equivalent. Each offset would represent a specific quantity of emission reductions from a source not directly covered by the Cap and Trade Program.

Although the source is not itself covered by the program, it can generate reductions for use by entities who must comply with the cap. External emission reductions from offsets allow a covered entity to forgo reductions on site by offsetting these emissions elsewhere. Therefore, the integrity of the offsets program is crucial to achieving the AB 32 goal.

From the point of view of a covered entity, purchasing an offset is attractive if the cost of the offset is lower than the cost of an allowance or reducing emissions on site.

MS. AGUILA: What role would offsets play in a Cap and Trade Program? The primary attraction for offsets
is that they can help contain costs. Offsets allow
greater flexibility for entities to cover their emissions
by offering an additional supply of compliance instruments
that cost less than allowances.

Such flexibility can create a demand for
lower-cost emission reductions and reduce the overall cost
of achieving the emission reduction goals.

Another purpose for offsets is to expand demand
for additional emission reductions globally by linking a
California program to other accrediting programs of
similar quality and rigor. This concept of linkage
involves integrating one trading program with one or more
trading programs around the world.

In addition to increasing the cost effectiveness
of the program, a California offsets system can benefit
program goals by stimulating emission reduction
opportunities and technology innovation in sectors outside
of the capped sectors; encouraging early emission
reduction activities while providing a transition period
for industry to develop and deploy low-carbon
technologies; promoting technology and knowledge transfer
between developed and developing countries, such as
helping to preserve rain forests in danger of
deforestation, and providing environmental, social, and
economic benefits, such as reduced air or water pollution
through improved land management practices and wildlife
habitat.

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MS. AGUILA: The Scoping Plan adopted in December
2008 by this Board gave staff significant direction on the
key goals of a Cap and Trade Offsets Program.

First, offsets must meet rigorous criteria that
demonstrate the emission reductions meet these six
criteria. They must be real, additional, permanent,
verifiable, enforceable, and quantifiable. If any of
these conditions is not met, a reduction would not qualify
as an offset.

The Scoping Plan established a policy that a
majority of reductions from cap and trade should come from
facilities covered by the program in order to encourage
investment in emission reductions at facilities in
California. This will also help our transition to a
low-carbon energy future and meet our long-term climate
goals. For this reason, the Scoping Plan put a limit on
the amount of offsets that could be used in the program.

The Scoping Plan also emphasized the importance
of not limiting offset creation based on where projects
are located. High quality offset projects located outside
the state, for example, in our WCI partner jurisdictions,
can help lower the compliance costs for covered entities
in California. Allowing international projects can encourage greenhouse gas emission reductions in areas that would otherwise lack the resources to do so.

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MS. AGUILA: The public has been an integral part of rule development since day one, and we will continue to consult with all affected stakeholders, including: Industry, business, environmental groups, and project developers through the process.

In 2009 alone, staff held 21 public meetings and received hundreds of comments on program concepts and proposed design elements. Of these 21 meetings, five meetings were devoted to offset-related topics. ARB carefully considered both written and verbal comments as we developed our initial proposal, in which we sought to strike the right balance between environmental effectiveness and economic efficiency.

Staff also worked with WCI partner jurisdictions to coordinate our work with regional efforts on offset program design. As part of the WCI process, staff has helped to develop and publicly release multiple issue and recommendation papers on offsets and played an integral part in the WCI public process.

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MS. AGUILA: As you know, staff released our
preliminary draft regulation, or PDR, in November of 2009. This was nearly a full year before we ask you to consider a proposed rule later this year. We did this to maximize the opportunity for public comment and to advance the public dialogue on the proposed structure and content of the Cap and Trade Program.

The PDR includes preliminary regulatory language, which details administrative process and regulatory structure of the program, as well as narrative text that describes concepts for discussion for regulatory provisions that staff are still considering.

Staff included extensive offset provisions in order to receive sufficient public comment to advance staff's thinking on the issuance, approval, and use of offsets in the Cap and Trade Program. We are working to develop the next draft of the regulation, which we expect to release in April.

While this next draft will include regulatory language for all parts of the program, we will, of course, continue to work with stakeholders leading up to that release and through the summer to make sure that the regulation we bring to you this fall is one that helps achieve the environmental goals of AB 32, but is also sensitive to the need for a smooth transition into the program given the current state of California's economy.
MS. AGUILA: In order to provide a balance between the need to achieve meaningful emission reductions from capped sources with the need to provide covered entities more cost effective reductions, the Scoping Plan called for offsets to be limited to no more than 49 percent of program reductions.

However, as we mentioned at the beginning of the presentation, the cap imposes a statewide level for allowable emissions. This means that each individual facility does not have a specific reduction requirement that they must meet under cap and trade.

In a Cap and Trade Program, it is actually each source's emissions as opposed to their emission reductions that are monitored for ensuring compliance. To comply with the program, a covered entity must submit a combination of allowances and offsets to cover their emissions that they reported for the compliance period.

At the end of the compliance period, the cap ensures that the emissions from each facility when added together do not exceed the allowable levels of statewide emissions. Since the program is designed to monitor individual facility emissions, it is necessary that the limit on offsets be expressed as a percentage of emissions and not emission reductions, in order to make the Cap and
Trade Program enforceable for each covered entity.

In the preliminary draft regulations, staffs translated the limit of 49 percent of the program reductions into something that could be applied to each covered entity in the program. This translated into an individual limit of four percent of a facility's emissions.

We have heard that there is some confusion on this point, so I'll try to be more clear about this. We did not reduce the limit on offsets from 49 percent to four percent. Rather, we translated the policy goal of no more than 49 percent of reductions coming from offsets, to a proposal that no more than four percent of a covered entity's emissions could be covered through the use of offsets.

While staff believes at this point that this four percent limit strikes the appropriate balance between the overall stringency of the Cap and Trade Program and need to contain costs, we will continue to analyze and work with stakeholders to evaluate other options, such as increasing the amount of offsets allowed in the program if the price of allowances rises above certain levels.

MS. AGUILA: The amount of offsets allowed in the program is directly tied to where the program's cap will
be set. This chart allows us to visualize how many
allowances and offsets could be allowed in the system each
year based on our preliminary Cap and Trade Program
design.

In this chart, we assume that all sectors are
included in the cap starting in 2012. Although it is only
illustrative, this chart allows us to more clearly see
that only about four percent of the total emissions
measured from the 2012 starting point can come from
offsets.

Just as a reminder, the Cap and Trade Program is
also layered over other emission reduction measures
adopted through the Scoping Plan process. These measures
will achieve the bulk of reductions anticipated from
covered entities in the cap.

In the draft regulation, we have proposed to
apply the four percent limit on offsets equally across
each compliance period. Because fewer reductions are
required in the early years of the program, applying the
limit uniformly over time allows room for limited
emissions growth in the initial years of the program,
providing additional flexibility for companies concerned
about how to comply as the program starts in 2012.

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MS. AGUILA: Because offsets are expected to cost
less than allowances, they are considered by many to be the most important cost containment tool in cap and trade. Offsets also provide an additional supply of compliance instruments in the market.

As part of the updated economic analysis of the AB 32 Scoping Plan, which will be presented to you next month, staff analyzed various options for limiting the use of offsets. From the preliminary results that we've seen so far internally, it appears that, even when limited to four percent, offsets can help contain costs of the program.

As I mentioned before, we will continue to look at how to strike the appropriate balance between the overall stringency of the Cap and Trade Program and the need to contain costs and will include this in the additional economic analysis we do to support the cap and trade rulemaking.

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MS. AGUILA: A fundamental question regarding offsets is how are they created. Since offsets represent a real and additional reduction of greenhouse gas emissions, they must be quantified, verified, and recorded by a credit-issuing organization or body. A credit-issuing organization ensures that emission reductions credited as offsets are correctly quantified,
monitored, verified, and meet the six criteria I mentioned earlier.

Once the credit-issuing organization determines that the reduction occurred, they create or issue an offset credit. The credit represents a ton of greenhouse gas reduction and is assigned a unique serial number for that specific ton.

As described in the preliminary draft regulation, in the California cap and trade offset system, the Board could approve the use of offsets created by many different credit-issuing organizations. We will discuss these organizations in more detail in the next few slides.

MS. AGUILA: One of the biggest procedural aspects of the offset program is who issues offsets. As the administrator of the offsets program, ARB could play several roles. In determining how to design and implement the offsets program, staff considered whether ARB should become a credit-issuing organization for offsets, approve offsets issued by external programs, or some combination of the two.

In the PDR, staff established different rules for two types of offset credits: Those issued by ARB and those issued by an external program and accepted or approved by ARB.
Some examples of these external programs could include: The Climate Action Reserve, or CAR; the Clean Development Mechanism, or CDM; or another WCI partner jurisdiction.

For those offsets ARB issues, the Board would approve project protocols through a public process. The Board would also need to approve external offset programs in order to except any offset credits issued by those programs for compliance purposes.

So far, we have received a lot of stakeholder feedback on this issue. Some stakeholders, mostly environmental groups, believe that ARB should retain tight control over all aspects of the cap and trade market, including the issuance of offset credits. Other stakeholders, including some utilities, favor a dual ARB role: ARB should both approve offset credits issued by external programs in order to create a ready supply of offsets at program startup and act as an offset credit-issuing organization as the program moves forward.

Other stakeholders including marketers and other covered entities believe this approach is resource intensive and could result in the potential for ARB to become a bottleneck in the offset generation process. These stakeholders favor focusing ARB efforts solely on the review and approval of credits from external
programs or using an independent entity that issues credits pursuant to the ARB rules and then reports to ARB.

Staff will continue to evaluate what role ARB should play in the offset market as it further develops the regulation.

MS. AGUILA: It is essential to ensure that offsets comply with program requirements to maintain the environmental integrity of the overall Cap and Trade Program. Staff is developing rule provisions to specify requirements for third-party verifiers, offset project developers, and users of offset credits, as well as penalties for noncompliance.

Since offset projects can be located across the globe, staff will propose that all offsets, whether they are located within or outside of California, be verified by an ARB accredited third-party verifier, and that ARB have the ability to audit all accredited verifiers.

For projects located outside of California, staff is proposing to enter into reciprocal agreements between ARB and the jurisdiction in which the offset project is located to ensure compliance, and in the case of noncompliance, take appropriate legal recourse.
MS. AGUILA: We are now moving into the second item, which is an action item.

I would like to now turn your attention to the quantification methods for voluntary offsets that the Board has previously approved and that are the focus of the second offsets item on your agenda today.

As you know, the Climate Action Reserve and its predecessor, the California Climate Action Registry, developed and adopted protocols for use in the voluntary offsets market.

Beginning in 2007, the Board adopted four of these voluntary offset protocols and, in doing so, recognized the rigor of the voluntary accounting procedures contained in those protocols.

The Board took this action to encourage voluntary early action to reduce greenhouse gas emissions. Since Board adoption of the voluntary protocols, CAR has continued to update them over time and has used them for issuance of offset credits for the voluntary market. The CAR process has been extremely successful in encouraging early actors to make voluntary reductions, and staff supports this effort. The proposed action today does not in any way change ARB's continued support for early action.
MS. AGUILA: Now ARB is moving towards the adoption of a regulatory Cap and Trade Program. Because our focus going forward is to bring protocols to the Board for compliance purposes, we do not intend to bring any additional voluntary protocols to the Board for adoption. As we develop compliance protocols, we will perform an environmental assessment of those protocols and establish regulatory requirements for verification and enforcement as required by AB 32.

We wish to emphasize that this proposed action will have no effect on CAR's protocols, which will continue to operate and supply offsets to the voluntary market. Staff will continue to work with the Climate Action Reserve and other stakeholders as we move through the development of this Cap and Trade Program in the coming months and into the implementation phase beyond that.

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MS. AGUILA: Staff will develop a public process in order to get us to our goal of approving compliance protocols for use in the regulatory Cap and Trade Program. Though we did not do an environmental analysis of the voluntary protocols before bringing them to the Board, we intend to do an environmental analysis on any protocols that we bring forward for compliance use with the AB 32
In April, staff will hold a public workshop to kick off the process for evaluating protocols for compliance purposes prior to proposing Board adoption of these protocols as part of adopting the cap and trade regulation.

MS. AGUILA: As I mentioned earlier, CAR has approved projects and issued voluntary offsets, some, but not all, under the ARB approved voluntary protocols. As part of the cap and trade rule development, ARB will determine verification and enforcement requirements that may be necessary for compliance purposes for existing voluntary offsets.

MS. AGUILA: We recommend that the Board withdraw adoption of the voluntary greenhouse gas accounting protocols and approve the process outlined by staff to develop requirements for compliance-based offsets under cap and trade.

We also recommend the Board direct staff to identify any verification and enforcement requirements needed for ARB to accept for compliance purposes voluntary offset credits generated using the formerly-approved voluntary protocols.
Thank you very much for your time and consideration today.

CHAIRPERSON NICHOLS: I suspect we have a number of people that want to talk to us, both about the general offsets concept and about the voluntary offsets program. Oh, my. Yes, indeed. We'll jump right into it.

I think the discussion will probably be clarified as we hear from the witnesses. So why don't we just begin with that.

I'll just call the next three, and I hope people will be ready to come up promptly so we can listen to you all and give you your three minutes. Lily Mitchell, Bruce McLaughlin, Victor Yamada.

BOARD MEMBER TELLES: Can I ask a question?

CHAIRPERSON NICHOLS: I'm sorry. Of course.

BOARD MEMBER TELLES: This resolution that's with us today, this is the first time I've seen this. And we weren't sent any information by staff to look at -- there's three protocols that we're going to eliminate here. These are not familiar to me. I would have a difficult time in voting for this. I've said this before in these meetings, if there is a resolution coming up, I would like information about it before I vote on it.

CHAIRPERSON NICHOLS: I'm not sure what was -- I understand what you're saying.
BOARD MEMBER TELLES: Do you get what I'm saying?

This was obviously prepared. Why weren't we given information on this?

EXECUTIVE OFFICER GOLDSTENE: Well, some of the Board members were briefed, as we always do. The resolution was being written --

BOARD MEMBER TELLES: I'm going to vote no on this, just because I know don't even know what it's about.

EXECUTIVE OFFICER GOLDSTENE: Okay.

CHAIRPERSON NICHOLS: We'll continue, and I'm assuming you will learn as much as you want to know but understand your objection on policy grounds.

I would just say that the process that we have I believe is that staff is only allowed to brief a limited subset of the Board in advance. And on each issue they try to identify those members that want to be briefed.

But in terms of resolutions, oftentimes the resolution itself -- the agenda item is noticed, but the actual language of the resolution oftentimes is produced rather late in the process for the simple reason the thing is evolving.

EXECUTIVE OFFICER GOLDSTENE: We're often working with stakeholders and other Board members and people who are involved trying to make sure that we -- language is correct.
CHAIRPERSON NICHOLS: But the substance of the fact --

EXECUTIVE OFFICER GOLDSTENE: It's all out there.

CHAIRPERSON NICHOLS: -- was a proposal -- the substance of the proposal was in tact.

BOARD MEMBER TELLES: My point is a simple point. It was on the agenda, and there is no information sent out to us. And I'm just not prepared to vote on anything. I don't have anything information sent out to us. There was nothing in my packet that I received. And it's not in the Board book.

EXECUTIVE OFFICER GOLDSTENE: Most this was informational.

BOARD MEMBER TELLES: There's something to vote on, and it's to eliminate three protocols that I don't know anything about the protocols, so I can't vote on it.

CHAIRPERSON NICHOLS: Actually, if I may, just to make it clear, they are not being eliminated. They will continue to exist and be used, and we're encouraging them to be used. The issue is what the Board does with these protocols.

I think the complexity here -- might as well say it right now. We as a Board got into the habit into an attempt to be helpful to the voluntary offset development process of blessing protocols, which, as it turned out,
was a little bit of a misnomer, because the protocols kept on evolving and changing. And so the action that we had taken was, in effect, moot.

So I would argue -- and you could argue, in fact, that we don't have to take any action at all here today because it's moot. But it seemed like it was more -- it would be more informative to the public and particularly those who are interested in using these protocols one way or the other to let them know that the Board's formal action no longer stands, because the protocols that we approved aren't in effect at this point. So you could argue that we shouldn't have brought it before the Board at all perhaps, but it seemed like a formality.

But I think it's a fair point that Board members need to understand what exactly it is they're being asked to do. So we'll take that comment to heart.

Okay. Let's proceed with the witnesses.

Go ahead.

MS. MITCHELL: Thank you. Good afternoon, Chair Nichols and members of the Board.

My name is Lily Mitchell. I represent the Southern California Public Power Authority.

I'd like to comment on just a few issues relating to the role of offset within the California Cap and Trade Program generally rather than on the specific issue of the
Firstly, offsets can be good. The ARB requirements that Brieanne discussed that offsets be real, permanent, verifiable, enforceable, quantifiable, additional. These requirements are stringent, and they are important. SCPPA certainly supports these requirements.

But once an offset has satisfied these criteria, they must necessarily be real emission reductions and make the same contribution to climate reduction by compliance entities within California.

The best way to address any concerns about the validity of offsets is not by limiting the quantity of offsets allowed but by paying careful attention to the quality of offsets using these criteria. And not all offset programs will meet these criteria. The clean development mechanism, which was one of the two that Brieanne mentioned, does meet these criteria.

Aside from variations on the CMD such as gold standard projects, there is no offset system that is more stringent than the CDM in terms of requirements for additionality, monitoring, verification, and validation. This is reflected in the fact that offsets from CDM projects are accepted in cap and trade programs around the
world.

High quality offsets have valuable co-benefits, such as sustainable local employment and reductions in local pollutants in addition to being cost-effective emission reductions. These side benefits may actually be stronger in developing countries when there aren't as many environmental and safety protection laws as there are in developed countries. And these benefits should be recognized.

Secondly, there should be no limit on California offsets. Some of the arguments put forward for limiting the use of offsets include the desire for emission reductions to occur within California to spur the clean tech sector and to take advantage of co-benefits, such as reduced pollution. These arguments do not support imposing any limit on the use of offsets from projects within California.

California offsets will reduce emissions here, provide an incentive to develop low-emission technologies for uncapped sectors, provide co-benefits within California, and can be enforced directly by the ARB.

Finally and briefly, if the transport sector is brought into the Cap and Trade Program in 2015 rather than 2012, we request that the Board consider setting different
sub-limits on the offset used for entities early as opposed to in 2015.

CHAIRPERSON NICHOLS: Thank you.

Bruce McLaughlin and Victor Yamada and Shelly Sullivan.

MR. MC LAUGHLIN: Good afternoon, Chair Nichols and Board.

I have a couple comments here from the Offsets Working Group. We are a collaborative of five public and electricity utilities. We get about one-third of the load in the state of California in municipal services.

Four quick points.

We do support the adoption of these three protocols for compliance purposes. We request an expeditious process of the covered entities and offset project developers have the requisites of the certainty to promote investment in these emission reduction projects.

In relation to resolving paragraph two, we request that any environmental review would thoroughly evaluate and acknowledge of the ecosystem services provided by projects informing of the protocols. Particularly, the environmental review should identify the beneficial improvements to water quality and air quality that are in addition to the GHG reduction benefits.

In relation to paragraph four, we fully support
the Board's direction such that many or most existing
offsets projects and credits would be certifiable.

Two ad hoc comments, since I have two minutes.

On the last point, I was counsel for the American
Forest Organization. We put together the Cuyamaca Rancho
State Project, the State Park Project. That's a fantastic
project, and it was fully our intent that those carrots
coming out of that would be eventually good for a
compliance grade. So I hope that we do go forward with
the forestry protocols and reforestation projects.

And pretty much ditto to staff on the whole
offsets concept. They've done a very good job evaluating
everything. And besides the four percent limitation and a
mention in the presentation that emissions are offsets,
offsets are emissions, that's exactly the opposite; they
are emission reductions. We fully support the staff in
these efforts. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Mr. Yamada.

MR. YAMADA: Good afternoon. Victor Yamada from
Southern California Edison.

Brief comments compatible with what we've heard
before.

Overall, support the approach that the staff has
taken in terms of looking at all the considerations for
offsets.

The one point I would emphasize again is you want to consider expansion of the quantitative limits on the offsets. We look at this as a valuable compliance instrument that should be given its broadest opportunity. We look at it as a way to moderate costs for the overall program to the regulated entities.

And the last comment is, as was said before, we appreciate the protocols being rolled out early and being inserted so we can all agree on valid offsets for the program.

And my last comment goes back to the SF6, since I was not pacing myself very well. Overall, Southern California Edison supports the emissions reduction goals of the State, including SF6. And we overall support SF6 reductions. What I was talking about was some minor improvements and technical aspects to the regulation.

Thanks for you time.

CHAIRPERSON NICHOLS: Okay. Thanks.


MS. SULLIVAN: Good afternoon, Madam Chair and Board members.

I'm Shelly Sullivan with the AB 32 Implementation Group. And my comments are going to be brief.
We have submitted comments regarding the importance of a broad use of offsets in the cap and trade regulation. The current cap and trade PDR regarding offsets severely restricts their use. This limitation will significantly increase the cost to the Cap and Trade Program. So it's critical that in order to implement such a program, a sound economic analysis guides the decision making about the program elements. So at that point, we're kind of wondering since the economic analysis is due at the end of the month, if maybe staff can tell us if there is a revised time line for that or --

CHAIRPERSON NICHOLS: Just continue.

MS. SULLIVAN: That's it. We're just wondering if there is a new guideline or time line for the economic analysis.

CHAIRPERSON NICHOLS: I'm not aware of any new time line for the economic analysis.

Susie Berlin and Michael Wang.

MS. BERLIN: Good afternoon, Madam Chair and Board.

My name is Susie Berlin. I represent the Northern California Power Agency. NCPA is a joint powers agency that's comprised of publicly-owned utilities located throughout northern California. NCPA and its member agencies have been very proactive in embracing the
goals of AB 32 and have taken steps to affect early
reductions and support a robust California offset program.

One thing that we believe offsets can be very
useful for is a cost containment mechanism in the context
of a Cap and Trade Program. And, however, we believe that
the four percent limit that's imposed per facility does
not provide a sufficient amount of offsets to allow for
the use of this tool as an effective cost containment
measure. And we are encouraged by Brieanne's presentation
to hear that staff continues to analyze this issue,
especially in the context of allowance prices.

We're also looking forward to the updated
economic analysis and review of the stringency of the Cap
and Trade Program and the need for further cost
containment measures and the role that offsets will play
in that context.

It is also important to know about the
availability of offsets up front, not just in the context
of where the price of allowances goes down the road. This
is because offset programs are necessarily new and
innovative programs to meet the six stringent criteria set
forth in AB 32, and some of these programs may have long
lead times. In order for offset programs to be an
effective and viable cost containment tool, high quality
offsets must be readily available and they must be
developed in advance of when they're needed to be used.

So NCPA is encouraged by staff's continued review of the use of offsets and encourages both staff and the Board to look at further measures to expand the four percent use of offsets in order to ensure that they are a viable tool both for emission reduction measures and for cost containment in order to protect rate payers across the state.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Michael Wang, Kate Beardsley, and Ralph Moran.

MR. WANG: Good afternoon. I'm Mike Wang with the Western States Petroleum Association.

As many of you know, we've had many speakers at various times on various issues speak before you and that reflects not only the importance of the issues that you are dealing with, but also the importance that we've placed in continuing a dialogue with you and the staff.

I would like to compliment staff's presentation this afternoon. I think it's comprehensive. It says exactly where we are in terms of an overview of the issues and raises some of the questions that remain to be resolved as we go forward.

You are no doubt aware that we've sent a series of letters almost monthly since the beginning of this
process in 2007, '08, and '09 with respect to the implementation of AB 32. We've supported and strongly re-emphasized the need for a market-based program as the most cost effective way to achieve the goals of AB 32. And we think that a market-based program with elements such as a Cap and Trade Programs can help minimize the cost of meeting the emissions caps associated with AB 32. It reduces also the adverse economic impacts to the overall economy.

We site, for example, and -- we sent this in a letter so I'm not going to re-issue it to you -- that a study that we submitted two years ago now suggests that a high quality tradable offsets program could save California more than $20 billion in gross state product by 2020 and could reduce compliance costs by up to 80 percent in some cases. That's an important lever in trying to achieve both the emission reductions that you're looking for and maintaining the health of the economy.

It's important to stress also that a cost-effective Cap and Trade Program is predicated on robust trading elements that links with other schemes throughout the western U.S. and throughout the world. And that means we need a robust -- and robust in that sense means real, quantifiable, but unlimited trading.

Finally, we'd like to re-emphasize the fact we'd
1 like to continue to work with staff as we continue to work
2 through the issues as we develop a means to really develop
3 an accurate and effective trend.

4    Thank you.
5
6 CHAIRPERSON NICHOLS: Thank you.
7 Kate Beardsley, Ralph Moran, Betsy Reifsnider.
8 MS. BEARDSLEY: Hi. My name is Kate Beardsley.
9 I'm from Pacific Gas and Electric. Thanks for the
10 opportunity to speak today.
11
12 We really appreciate staff's update on the role
13 of offsets in the greenhouse gas Cap and Trade Program and
14 believe high quality offsets are an essential part of any
15 Cap and Trade Program. Offsets reward the deployment of
16 technologies and facilitate investments in emission
17 reduction practices that would not have occurred
18 otherwise. We strongly believe that the use of
19 high-quality offsets will help California to achieve the
20 objectives of AB 32 while containing the cost of the
21 California economy.

22 The cost containment benefits of offsets to
23 California businesses and consumers are especially
24 important in these challenging times. Limiting
25 high-quality offsets by imposing either quantity or
26 geographic limits could leave the state with insufficient
27 options for avoiding unexpected high emission reduction
costs and for achieving AB 32 goals in the more cost-effective manner.

As you've heard earlier, some advocate that offset limits are necessary to ensure the cap sectors implement direct emission reduction measures. However, ARB has addressed this concern by emphasizing programmatic measures in the Scoping Plan, which require actions from the capped sectors.

Regardless of the quantitative limit placed on offsets for compliance, PG&E recommends ARB ensures there is sufficient number of appropriate protocols and project types that can yield sufficient supply of offsets. PG&E strongly recommends that ARB allow the use of offsets from a number of external programs, such as the Climate Action Reserve and CDM. Also prevent delays in approval of offsets and be cautious about including restrictions that could greatly impair the volume and liquidity of the offset market.

PG&E believes any offset policies both related to limits or the types of offsets that will be allowed for use should encourage a robust supply of high quality offsets in the early years of a Cap and Trade Program when low carbon technologies are achieving economies of scale and commercial maturity. Access to offsets in these early years is a way to manage prices and price volatility,
which will help ease our state's transition to a low
carbon economy.

Thank you again for the opportunity to speak, and
we look forward to working with you over the next year.

CHAIRPERSON NICHOLS: Thank you.
Ralph Moran and then Betsy Reifsnider and
Michelle Passero.

MR. MORAN: Madam Chair, Board members, I'm Ralph
Moran with BP America.

CARB's approach to the use of offsets is one of
the most important decisions to be made in implementing a
program that both meets the environmental goal of AB 32
and is cost effective. There are persistent concerns
about the economic impact of AB 32, and these concerns are
a reminder that we owe it to the public to design a
program that achieves the environmental goal but that does
so at the lowest cost. Broad use of offsets is an
important tool that will help us meet both these
objectives.

I'd like to address what I believe are a couple
misperceptions about offsets in the California program.
The first one Brieanne covered nicely, and that is that
the 49 percent limit or the so-called 49 percent limit was
really a four percent limit. Regulated parties are able
to use offsets to satisfy four percent of their compliance
obligation versus a requirement to reduce emissions by 28 percent versus business as usual.

Second is a misunderstanding that but for the proposed limit on offsets, most emission reductions could or will occur out of state. This is simply not true. In fact, even with no limit on offsets, a minimum of 80 percent of emission reductions will occur in the state due to the direct measures that are prescribed on sources. So it's not necessary to use offset limits to ensure the vast majority of emission reductions occur within the state.

What have others said about the use of offsets? CARB's own Market Advisory Committee concluded that California should reject geographic or quantitative limits on offsets so as to maximize the opportunity to reduce GHG emissions at lowest cost. U.S. cap recommends generous limits on the use of offsets to help moderate compliance costs. A four percent limit is not a generous limit. For example, the Waxman-Markey bill that passed the U.S. House allowed almost ten times that amount. The European Union trading system allows two to three times more.

And it's very likely a factor that limits California's ability to meet the AB 32 targets and longer term goals will not be technology limits, but rather limits on the cost that the public is willing to bear.

Cost matters.
For all these reasons, we strongly recommend that the Board ask staff to reconsider the current unnecessarily restricted limit on the use of offsets in AB 32.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Betsy Reifsnider, Michelle Passero, Barry Wallerstein.

MS. REIFSNIDER: Thank you.

My name is Betsy Reifsnider, and I represent Catholic Charities and the Diocese of Stockton.

I would urge you to strengthen the offset limits.

The Stockton Diocese was an early advocate of AB 32, and we continue to support its implementation.

And I'd just like to note that the National Catholic Healthcare Association of America just published "Climate Change and Catholic Health Care" in which the association calls on catholic health facilities to advocate for policies that reduce greenhouse gas emissions and that specifically dedicate resources to help low-income communities combat climate change.

By allowing fewer carbon offsets, there will also be fewer co-pollutants. And this will lead to cleaner air in places like the central valley and the sierra foothills.
In the State of the Air Report that the American Lung Association puts out, they have once again given a grade of F to four counties in the Stockton Diocese: San Joaquin, Stanislaus, Calaveras, and Tuolumne Counties. I would also like to say that any offsets that you do allow should target air quality benefits for communities that are already suffering from disproportionate levels of air pollution, such as in the central valley. A purchaser of any offsets should be required to keep the air quality benefits in the air basin in which the polluting industry is located.

And then on the second agenda item, the offset protocol, I'd just like to say that some of the greatest strengths of the Air Resources Board, even in these times of mandatory furloughs and slashing of state budgets, are the expertise, the experience, and the dedication of ARB staff and the open deliberative process of this Board. So I would urge you, please, do not outsource your offset responsibilities. Please maintain a public regulatory process for developing and improving those protocols. And please do not accept protocols developed for a voluntary market or for a watered down national standard. We've come so far with AB 32, and I would ask you not to falter now. Thank you.

CHAIRPERSON NICHOLS: Thank you.
Michelle Passero, Barry Wallerstein, and Tim Tutt.

MS. PASSERO: Thank you.

Michelle Passero with the Nature Conservancy.

We'd first like to thank ARB and California for its continued leadership and hard work to address global warming.

The development of the preliminary draft cap and trade regulation is an important milestone in this effort and part of a great overall package to reduce greenhouse gas emissions.

Among its many elements, the Nature Conservancy supports the PDR inclusion of offsets as a complementary mechanism to reduce greenhouse gas emissions. Their inclusion provides an opportunity, as others have said, to reduce costs of reductions and cost to consumers. They also provide a key opportunity to include forests and natural systems to reduce emissions through beneficial actions like re-forestation, improved forest management, and avoided deforestation.

It's critical to maintain our forests for the climate benefits as well as many other benefits that they provide across communities. These benefits include: Protection of air quality, protection of water quality and quantity, habitat for fish and wildlife, and jobs for
We look forward to the transition of the voluntary protocols, including the CARB forest protocols, to regulatory compliance program. Certainly, California has been a leader in this effort. And we urge California to maintain this leadership and we believe we will.

And this is the part I was going to echo the comment of my colleagues, but they haven't gone yet. We would endorse ARB's public process to adopt compliance-grade protocols to ensure, among other things, that they meet the requirements of AB 32. And there is a certain amount of standardization across protocols that are used for compliance purposes. We encourage the continued development of in-house expertise on all these different subjects. We've submitted comments, and we look forward to working with the ARB and staff as the process moves forward.
him some language in an e-mail a couple of nights ago.

Specifically, the local air districts are in the process of having developed some protocols, and we have submitted some to CARB staff for technical review. As you can imagine, many who might use the protocols -- or if we use them ourselves -- we would like to be assured that we will receive technical comment on the protocols before we put them into use. So our request is really a matter of coordination, cooperation, and partnership.

And we would ask that a provision be added into the resolution where the Board directs upon the request of a local air district the Executive Officer to provide customary and routine technical input on voluntary greenhouse gas emission reduction protocols being developed by local air districts and to provide such input within 90 days.

This has real world implications. And in our case, we actually have a million and a half dollars our Board will be investing probably in the next 60 days. And as we go to do that sort of investment, we would like to know that as we dot the i's and cross the t's that the CARB technical staff is in agreement with the calculation methodology.

I'd also like -- and I should mention that this language was vetted with the CAPCOA Board. And my
colleagues from San Joaquin had to go to a meeting at the Capitol and asked me to express -- and this is a first, me speaking for them before this Board.

The second thing that I want to note that James has been working on is the issue of verification. The air districts have sent staff through the verification process, and our final approval of verifiers has been hung up, as we understand it, on an issue of conflict of interest that we as regulators, we as your partners who are enforcing some of your regulations, have some sort of conflict of interest or it would be out of sync with international protocols. And we would hope that issue could be resolved in the near term. And I'll provide the clerk with copies of the e-mail that I sent James.

Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

Tim Tutt, Dan Taylor, Vivian Parker.

MR. TUTT: Good afternoon. Thanks for the opportunity to speak.

I represent your local public owned utility, the Sacramento Utility District here in Sacramento.

And I'd just like to say that SMUD supports offsets as a viable portion of the compliance instruments that can be used in California's cap and trade system.
last year. As was mentioned by staff, there were many workshops on offsets.

We understand and do not oppose a limit on the use of offsets to ensure that their emissions reductions occur locally in state and covered industries.

We do note, however, that for electric utilities, in particular, the AB 32 complementary measures will ensure substantial emission reductions in our industry through energy efficiency renewable procurement and distributed solar and CHP investments. So you can be assured there will be those reductions in the electric sector.

We believe, of course, that offsets should meet rigorous criteria associated with emission reductions that are real, additional, quantifiable, verifiable. And we believe there should be no geographic limitation on the use of offsets in California, because emission reductions and the infrastructure for and attention to these emission reductions should be supported globally for this global challenge.

With that said, SMUD would urge that the ARB consider establishing no limit on offsets from uncapped sources within California, as these offset sources do provide local emission reductions that are intended through a proposed limit on offsets more generally.
And to consider a broad interpretation of what is meant by the term "reductions" here, which factors into the calculation of the proposed offset limit and to include, for example, any early reductions that are undertaken prior to the 2012 effective date of the cap and trade system. These are reductions that are also part of the AB 32 structure. And to include the estimated reductions from business as usual projections so as to expand the amount of offsets available for cap and trade compliance within the 49 percent of the factor in this Scoping Plan.

This actually doesn't even count. The concept that as an industry we are likely to be expected to have additional reductions stemming from our investment as a state and electric transportation infrastructure, we will not be able under the current structure as I understand it to consider offsets for those additional reductions above and beyond what we call business as usual.

Finally, we would encourage expeditious regulatory adoption of protocols for offsets so entities in the marketplace can consider purchases as quickly as possible.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Dan Taylor, Vivian Parker, and Barbara Haya.
MR. TAYLOR: Chair Nichols, and members of the Board, I'm Dan Taylor, Policy Director for Audubon, California.

As an organization dedicated to wildlife protection and conservation of birds in particular, we've appeared before you on occasion through your Scoping Plan and other venues to argue for the aggressive implementation of AB 32. And that's what brings us here today. We just really want to commend the staff for their presentation on offsets. And we'd like to add our organization's support for an effective and vigorous effort to develop and implement an offset program. We believe you're on the right track. We're impressed with the rigor and comprehensiveness of your presentation today and look forward to working with staff as you go forward.

As you've heard from some of the other speakers, there are several reasons to go this way. But I think the reason that is most compelling to us is that offsets represent a very efficient and rapidly available way to remove CO2 from the atmosphere; and that's we're on this track to reduce greenhouse gases. And we are compelled and ascribed to the belief that offsets are a clear and available way to do that effectively and efficiently.

We also support the concept of the important co-benefits that offsets can create. And we look forward
to working with your Board and staff to develop those in
more detail. But those co-benefits are important for
wildlife, water quality, and protection of quality of life
here in California.

Thank you for your effort, and we look forward to
working with you. We believe you're certainly on the
right track.

CHAIRPERSON NICHOLS: Thank you.

Vivian Parker and Barbara Haya and Payal Parekh.

MS. PARKER: My name is Vivian Parker. I'm a
biologist. And I've worked in the field of forestry
ecology for over 20 years.

I submitted written comments to the Board and
those are more detailed, but I wanted to highlight a
couple of points.

First of all, I believe the focus on cap and
trade in the development of regulations for implementing
AB 32 relative to the role which forests can play in
storing carbon is leading the ARB down a path which
threatens to derail this important process and potentially
weakens the significant contribution which the forestry
sector can contribute to reducing global warming. I'm
sure you're all aware of that great contribution our
forest has.

The Climate Action Registry forestry protocols
for cap and trade adopted by this Board are so fraught
with errors that they are, at best, ineffective to achieve
the objectives for AB 32 and, at worst, they may
incentivize an increase in the rate and intensity of a
particular form of timber harvest, which is clearcutting,
which now threatens California's rich native forest
biodiversity of plants and animals.

The forests of our state are the last remaining
real refuge for the great biological diversity that
California is famous for. California has more endemic
plants than any other state in California.

By the way, I'm here representing the California
Native Plant Society, the Center for Sierra Nevada
Conservation, the Motherlode Chapter of the Sierra Club,
and Sierra Forest Legacy.

The remedy to this error lies in switching the
emphasis on cap and trade to one of incentivizing
preservation and conservation of our forests. The way to
do this, first of all, is to eliminate the acceptance of
clearcutting of any type as an acceptable tool as a forest
offset. And currently under the voluntary protocols --
which by the way we really support the withdrawal of all
those voluntary protocols. Thank you very much.

But the use of clearcutting and the conversion of
native forests to plantation tree farms is referred to by
the forestry industry as being an acceptable tool to combat global warming. But we have to look at what we're losing every time we convert what industry calls so-called marginal lands. These are forest lands that may not have commercially viable timber on them, but they're fabulous refugia for plants and animals which may be endemic to particular type of soil or rock formations. This is totally unacceptable.

The forest lands that are going to be traded as offsets must be subject to legally binding conservation easements.

CHAIRPERSON NICHOLS: Thank you. Your time is up.

Barbara Haya.

MS. HAYA: I'm Barbara Haya, and I'm finishing up my Ph.D. at the University of California Berkeley on the CDM, particularly how the CDM is working in practice in the power sector.

And the main point of my statement today is to caution you about how poorly the CDM is working. We keep discussing or mentioning high quality offsets, and that's much easier to say than to actually carry out.

I found evidence that the majority of CDM projects worldwide are business as usual projects that we are going ahead anyway with or without the carbon credits.
So these are projects that don't actually reduce emissions. In addition, because of the uncertainties involved in the over a year-long process of applying for the CDM, the CDM is actually having very little effect on enabling projects to go forward that otherwise wouldn't have gone forward. Developers can't count on those revenue at the time the decisions go forward with a project.

And these projects won't be fixed by tightening up the rules of the CDM or simply putting a filter on CDM projects. But a more fundamental change is needed. Particularly, there's no objective accurate indicator of the motivation of the developer that would enable us to accurately filter out business as usual or non-traditional projects.

So there is clear evidence that the majority of CDM projects are business all usual. Three quarters of all registered CDM projects were up and running at the time they were successfully registered under the CDM. In India, it's a widely held belief among people working on the CDM and renewable energy that many, if not most, CDM projects are not additional that the CDM -- isn't having very much affect at all on the CDM electricity sector.
And we've not seen evidence that domestic offsets will be any better. Under a national bill, it looks like agricultural offsets would be included, for example, from activities which farmers are doing anyway under another program called the Conservation Reserve Program. And then we just heard from the previous speaker about problems with forestry offsets and how dubious the reductions are that would be calculated under them.

So what should California do? For one, we should not accept CDM credits under a California offsets program. If California will have an offsetting program, it must be small. Some suggested a maximum of ten percent of emissions reductions. This is for a variety of reasons. One is emissions reductions are always less certain when they're measured against counterfactual scenario compared to if they're measured under a cap. And there are a variety of other suggestions that I have that I've submitted.

CHAIRPERSON NICHOLS: Thank you.

I believe Dr. Telles has a question.

BOARD MEMBER TELLES: I have a question. I read your letter that you sent us, and thank you. Do you know if anybody else has confirmed your research? Anybody else do the same type of project and can demonstrate that the CDM is 50 percent fraudulent?
MS. HAYA: There's several researchers that have done similar projects. Down at Stanford, there are some researchers that have looked into the CDM. They say between one-third and two-thirds are not additional. And then there are a few researchers in Germany that have documented how poorly the CDM application documents are and also that many of these are not additional. And I can send you more information.

BOARD MEMBER TELLES: Just another quick question.

Has anybody looked at these other entities that are -- can give offset credits, and are they any better?

MS. HAYA: So the voluntary offsets programs that we see in this country are generally believed to be less stringent and less good.

And as I understand it, the problem is additionality testing or filtering out business as usual projects. It's very, very difficult to do inherently. And what California needs to do is to implement -- if it's going to do an offsetting program, it needs to implement its own offsetting program based on its own analysis of where it can really have an effect.

CHAIRPERSON NICHOLS: Thank you. Okay.

Payal Parekh and then Paul Mason and Tamara Rasberry.
MS. PAREKH: Hello. My name is Paral Parekh. I'm the Climate Program Director at International Rivers. My organization is well poised to comment on international offsets as we've been tracking the clean development mechanism, the world's largest offset market, since its inception.

Two major problems in the CDM are the large number of non-additional credits, as Barbara Haya just alluded to, as well as the adverse social and environmental impacts of many products.

According to various academic studies, not only Barbara's, as she mentioned, between one-third to three-quarters of emission reductions under the CDM are not considered to be real, i.e., they are not additional. This undermines the environmental integrity of the Cap and Trade Program.

An example of a project with adverse environmental and social impacts is Chowge (phonetic) hydro-electric project in China. Despite the force displacement of 7,500 persons and the failure to adequately compensate displaced, the project was approved by the CDM. And I would like to add this project is unfortunately not an exception, but rather the rule.

We need real emission reductions here in California, and we want to incentivize change that will
allow California to take the lead toward a greener economy.

But offsets actually just delay the action that's necessary. And instead, I would say they're akin to a get out of jail free card.

Under AB 32, CARB is required to ensure the validity of emission reductions, yet the further away they occur, the more difficult it is for CARB to ensure that emission reductions are actually real, putting the whole program in jeopardy.

Therefore, we recommend the following:

First, we recommend that international offsets should be prohibited;

Secondly, if offsets are deemed necessary, they should be within the state of California and limited to ten percent of required emissions reductions under the Cap and Trade Program;

Thirdly, these offsets must be required to have positive co-benefits for local communities;

And lastly, CARB should be responsible for issuing offsets to ensure the quality of these offsets and that they are truly real and additional.

Thank you.

CHAIRPERSON NICHOLS: Paul Mason, Tamara Rasberry, Nico Van Aelstyn.
MR. MASON: Good afternoon, Chairman Nichols and members of the Board.

Paul Mason on behalf of Pacific Forest Trust.

And I'm going to direct my comments to the action item of withdrawing the endorsement of the voluntary protocols, which our organization supports. We think it's a useful and appropriate use of the staff time and resources to focus on developing regulatory protocols. There is inevitably some confusion and turmoil as you move from these voluntary early action protocols to regulatory protocols. And I think the best way to deal with that is going to be to try and get the regulatory protocols done as quickly as possible. So we would certainly urge you to move forthwith on that project.

We'd also emphasize that I think there's real benefit to the Air Resources Board clearly taking the lead on that. I'm sure there's a lot of temptation to outsource some of that, since you have so many projects on your plate right now already. But this is clearly going to be an important part of the program and is an area of expertise that I think would really benefit the agency to have some additional depth on offsets and particularly on forest offsets. It also puts you in a position to make sure there is a really good public process.

It was nice in staff's presentation to hear some
reference to projects that had been done previously under
some of these voluntary early actions. That's been one of
the areas of some confusion, given the timetable in the
PDR. That's sort of in conflict with Senate Bill 1771,
which was Senator Sher's bill back in 2000 which created
the California Climate Action Registry and made very clear
representations that those that were engaging in emissions
reductions pursuant to that process would use their best
efforts to include those in any regulatory program that
may happen. So it was a little bit concerning to see a
direct conflict there. And I hope you'll continue to
clarify how that's going to shake out.

One final observation. I think it will be very
useful to actually require the majority of offsets to
happen from within California for the same reasons other
folks have identified. I think it's going to make sure
that the co-benefits of offsets actually accrue to
Californians, benefits for fish and wildlife and air
quality, depending on the type of offsets they may be.
They're also going to be much easier logistics to deal
with than trying to do them in other states or other
countries entirely.

Thank you for your consideration.

CHAIRPERSON NICHOLS: Thank you.

Tamara Rasberry.
MS. RASBERRY: Thank you.

Hi. I'm Tamara Rasberry from Sempra Energy.

This is my first time in front of the Board, so I appreciate the opportunity to speak. I actually want to speak on the action item about withdrawing the protocols. As ARB implements AB 32, it must remain mindful of the need to create and market regulatory certainty.

Offsets result from voluntary investments that would not have otherwise been made and which reduce GHG emissions. To the extent potential investors are sent signals by the Board that offset protocols on which they rely may be changed in the future, they will be unwilling to make such investments because they could become stranded. This uncertainty would fly in the face of the overall objective of AB 32 to reduce GHG emissions, because investments that would otherwise have reduced GHG emissions would be unnecessarily discouraged.

Additionally, the voluntary climate action preserve protocols have each undergone an extensive stakeholder involved process. Potential modifications to the existing protocols may be a more viable and efficient means to address these areas of concerns and, in turn, help to maintain important market signals for existing offsets and minimize the cost to ARB.

Where investments have already been made in
reliance on these protocols, will the Board provide
assurance these investments will not be stranded? If the
answer is no, it should be readily apparent why withdrawal
of these offset protocols would discourage voluntary
investments to reduce GHG emissions.

In order to achieve accurate market signals,
preserve work product, and minimize cost, Sempra
respectfully asks the Board not to withdraw the previous
adoption of voluntary protocols.

Thank you.

CHAIRPERSON NICHOLS: Okay. Nico Van Aelstyn and
then Gary Gero.

MR. VAN AELSTYN: Good afternoon. My name is
Nico Van Aelstyn, and I'm here on behalf of the Carbon
Offset Providers Coalition.

Madam Chairwoman and members of the Board, thank
you for the opportunity to speak. And I join with many of
the other speakers in commending the staff on their
presentation today and on the good work that has been done
thus far.

I have a number of comments I'd like to make very
quickly. We have submitted written comments, but I'd like
to highlight a couple of points in there.

The first is who are, the Carbon Offset Providers
Coalition. You've been hearing a lot from those that
might wish to purchase offsets and those that are opposed
to offsets, per se. We represent a coalition of companies
and NGOs that are in the business of actually creating
offsets and generating projects which develop offset
credits. We're on the ground. We're doing that work
across the United States in many different companies and
many different communities and providing a lot of very
good green jobs in the process.

Four points I'd like to make. First on the
first agenda item with regard to offsets discussion
generally. We, too, were encouraged by Brieanne's report
that you will continue to consider the four percent cap.
We think the four percent cap is too low. And in part of
the way that it was presented, I think it presents a bit
of a false dichotomy, and the discussion here today feeds
into that, of environment versus economy.

We respectfully suggest that is a false dichotomy
and that the focus rather than being on quantity to
limits, which are arbitrary and create a lot of problems,
should be on offset quality. That's how you ensure
creating rigor is to ensure the offsets themselves meet
the criteria that have been referenced many times of real
additional, verifiable, and permanent. That's where the
focus should be.

To the extent there needs to be a quantitative
limit, we respectfully suggest four percent is way too low
and creates a number of problems. First, as has been
mentioned by many, offsets are a very important cost
containment mechanism. It's needed. A study by the U.S.
EPA analyzing the ACES bill that passed the House last
June concluded that without offsets, the cost of
compliance could be twice as high as with unrestricted use
of offsets. So they are needed to keep costs down.
They're also needed to ensure that greenhouse gas
reductions are achieved now. Ordering a company to
achieve a goal some years from now does not ensure
reductions are made today. Offsets generate reductions
today, sequestration today. And in deed, millions of tons
of greenhouse gas emissions have been reduced or
sequestered in the last 15 years in the voluntary market,
and those early actions should be endorsed and supported.
Very quickly, the start date of
December 31, 2006, is too late. Note that the bill that
passed the House had a 2001 start date. We should be
consistent with that.
Finally, very lastly, the actual resolution, I
join Dr. Telles in a concern about the not having seen it
and the notice was a little bit vague. We didn't know
exactly why. We have a number of issues with it. But one
of them is we suggest that the Board take advantage of the
WCI's work, the evaluation report of existing offset protocols that's due out now and take advantage of that to consider those protocols.

CHAIRPERSON NICHOLS: Gary Gero.

I'm going to take the liberty of interjecting for a moment here while Gary is coming forward. I don't mean to preempt your time. You get your full time.

But I want to make sure that people understand that the Climate Action Reserve, although it is a free-standing entity, it's a nonprofit organization in California, is the successor to an agency that was created by California state law. It was originally a part of the Climate Action Registry, California Climate Action Registry. I had the honor of serving as its first Board Chairman when I was Resources Secretary. And it has evolved now into a separate organization working on voluntary carbon offsets and has a stellar Board, which is chaired by our Secretary of U.S. EPA, Linda Adams. So there has been a close relationship here and an evolution over time.

And as the language of the proposed resolution in front of you points out, AB 32 makes it clear that ARB was supposed to identify opportunities for voluntary reductions. We were supposed to reward those reductions
to the maximum extent possible under any kind of a mandatory program that we came up with.

There is no deviation from that commitment. And the reason why we've worked so closely with the Reserve over the years is because we wanted there to be a supply of the kind of high quality excellent offsets that everyone who believes that offsets should exist at all thinks are the sort that should be used.

So this was intended to be a model, and it has served as a model. There is no question about that or about the technical work that has gone into the creation of those registered offsets that the Reserve is now responsible for.

Our only concern now as we move into a Cap and Trade Program is the need to maintain an arm's length relationship with the CAR or any other organization that would come forward and start to try to do the same thing in terms of developing the kind of high quality offsets that we need and to make sure that we don't inadvertently by stamping these things with an ARB seal of approval turn them into something regulatory when they were not intended for that purpose.

And I know that I've been asked this question by others, and so it seems like it's easier to just try to say it one more time. We have every expectation that as
we move forward into the mandatory program, the Cap and
Trade Program, that the offsets that have been created
pursuant to the protocols that we approved are going to be
accepted for compliance purposes, by and large. They all
are going to need to have some additional bells and
whistles added in terms of reporting and monitoring,
because now we're moving into a mandatory world. So those
kind of changes are going to be needed.

Some of them may also need other technical
changes. They've already been amended several times. And
they all will need, if ARB is going to approve them for
offset purposes, to go through a process under the
California Environmental Quality Act, which we never did
for the voluntary offsets. It's been questioned whether
we should have done it or not, and I think there is a very
good argument to be made that it was governmental action,
but, at the time, we believed we were doing the right
thing encouraging voluntary action. So we said simply
yes, these are all good.

But the situation before us now is one where we
have to move onto the next phase of this process. And so
I just want to make sure that everybody knows that, you
know, we feel proud of the work that was done by CAR and
have been very involved over the years in facilitating
that work. And we do want to make sure that we, to the
maximum extent possible, honor the work that has been done
under that program.

So just to be very clear, I know the word "offsets" covers a multitude of sins, and I'm well aware
of the problems with the CDM and other kinds of programs
people have offered up where there was a question about
the baseline and the monitoring and so forth. But we want
to make sure that people are aware that we are standing
behind the work that has been done here.

So if anybody else wants to comment on Gary's
time.

BOARD MEMBER RIORDAN: Thanks you, Gary.

MR. GERO: By all means.

BOARD MEMBER RIORDAN: As another former Board
member, I said this to the staff just not as eloquently as
you, Madam Chairman, but I certainly want us to look at
and be mindful of any unintended consequences that might
befall some of those early efforts that the business
communities have made. And that's why I was willing to
serve, because I did want to protect those who really
stepped forward at a time when it was really innovative
and, you know, there was a lot of time spent and
innovation with the company. So I'm glad to hear you say
that.

I'm going to reiterate it, because I felt so
strongly that we need to indeed recognize those early
efforts by people and we should not penalize them in any
way for that early effort.

So thank you.

CHAIRPERSON NICHOLS: Thank you.

Okay. Now, Gary, do you have anything to say?

MR. GERO: I think you've said it for me. Thank
you. But let me do take a moment just to address the
Board.

And I'm Gary Gero, the President of the Climate
Action Reserve. And we've enjoyed a long partnership with
the State of California. As you note, we were originally
the California Climate Action Registry and created by

First, let me just say thank you for that strong
statement and for making it clear that the Air Resources
Board continues to support and encourage and recognize
early voluntary actions, particularly those that are
undertaken in accordance with high quality standards, such
as those that we as an organization have promulgated and
this Board has recognized. We certainly appreciate that.

As you note, that was, in fact, the fundamental
goal and mission of the original creation of the
California Climate Action Registry, and it remains our
sole purpose today. As an organization, we may have
changed our name, we may have expanded our geographic
scope, but we continue to state very clearly that our
mission and our sole mission is to encourage early actions
and ensure those early actions are recognized. And I
think that is clear from the statement you made that that
is consistent with how you see the work that we've done.

I want to actually say that I support the action
that's before you here today. In particular, the idea of
clearly defining early on in the process what the
compliance protocols can and should be for the Cap and
Trade Program. It is vital that market players, all
communities, and all stakeholders know what the rules are
going to be for offsets in the Cap and Trade Program as
early as possible so they can begin the process of
developing projects in accordance with those rules and
develop projects and offsets themselves.

We're pleased that you are articulating a clear
path for that. We stand behind that clear path. We want
to help inform that process.

One of the things you may not be aware of about
our organization is that we are now considered the
largest -- certainly considered the highest quality
offsets program in the United States. We have more than
200 projects in our system from 41 states. We expect to
issue ten million offset tons by the end of this year. So
clearly we are taking over a significant role in this sector, and we want to use that experience in the infrastructure we've built to help inform the ARB process and work with you.

Clearly, this kind of public/private partnership has achieved great success in the past, and we want to make sure that we continue to build on those successes as you move forward with your compliance program.

CHAIRPERSON NICHOLS: I think that's your time. If you have written testimony --

MR. GERO: I'd be happy to provide it. And if there are questions, I would be happy to answer them.

CHAIRPERSON NICHOLS: Thank you.

Next witness is Steve Elias, followed by Randall Friedman and Jim Feichtl.

MR. ELIAS: I'll wave mine.


Thank you.

Randal Friedman.

MR. FRIEDMAN: Madam Chair, members, Randal Friedman on behalf of the U.S. Navy.

We did submit written comments that I'll touch on. I'm glad to be following this discussion of early action, because that's the primary point I wanted to make.

And to do that, I'd like to use as an example our San
Clemente Island installation 50 miles off the coast of southern California, critical installation for our training and activities.

To get power at the island to run radar communications and living quarters, we barge fuel from San Diego. That's the only way to get power. That's the only way to run the island.

Back in 1998, we thought there would be a better way to do that, so we installed three wind turbans. We now supply 15 percent of the island's power by these wind turbans.

Fast forward to today, we think that -- and I understand it is a very difficult question, but we think there should be some avenue to recognize the fact that we have installed those wind turbans under no requirement and just to do the right thing. Yet, under the proposal, there would be no avenue to obtain offsets for that or recognition. I suppose we could have just continued to barge the fuel the last ten years to the island and combust the extra fuel and the pollution, and then we would be in a situation where we could obtain the offsets, but I don't think that would be doing the right thing either.

So we want to raise that as a long-standing issue of ours as an agency that has done a lot of early actions.
We believe that there should be some avenue to obtain some recognition for that.

Also in terms of offsets, we operate globally. We have installations all over the world and all over the country. We certainly would support the widest consideration of offsets. Certainly, if we move emissions to California from another state, we would like to be able to take that carbon with us so that we can -- whatever offset requirements might exist in California from the -- we can use those emissions from where it was being relocated from.

We did submit comments. I just wanted to highlight on those two issues. And thank you.

CHAIRPERSON NICHOLS: Thank you.

Jim Feichtl, Timothy O'Connor, Bob Lucas.

MR. FEICHTL: Chairman, Board members, thank you.

My name is Jim Feichtl, and I'm with the Loma Prieta Chapter of the Sierra Club.

I'd like to thank the Board for proposing the forest project protocols. My main objection to the forest project protocols is the inclusion of a provision that allows the most destructive forestry method, clearcutting, to be used in projects that are supposed to be good for the environment. Clearcutting, as it is practiced here in California, where 99.9 percent of everything is removed
from the land, the soil is plowed and compacted, and then herbicides applied is never good for the environment.

The Sierra Nevada provides over 60 percent of the water that's used in California. The clearcut areas, snow pack melts faster. The water runs off sooner. It does not -- a clear cut plantation, which is what replaces the clear cut, is not as resilient as a naturally diverse forest.

Here where we're dealing with climate change over perhaps the next 100 years, the ability of a natural forest is much greater to adapt to those climate conditions. Young tree plantations use 70 percent more water than an old growth forest in the dry summer months.

This is just not a good idea. I think we need to really look at what kind of other environmental destruction is happening when you decide to allow something like clearcutting in a Cap and Trade Program project. Thank you.

CHAIRPERSON NICHOLS: Thank you. We've heard from a lot of people with that viewpoint.

Tim O'Connor and Bob Lucas and Marilyn Woodhouse.

MR. O'CONNOR: Good afternoon. My name is Tim O'Connor. I'm an attorney with the Environmental Defense Fund here in Sacramento.

Let me start by saying that EDF supports the
recommendation by the staff as well as the Board's
commitment to ensuring that offsets used by businesses to
meet compliance obligations are of the highest quality and
retaining integrity of the program as a whole.

The transition from a voluntary program to a
mandatory compliance grade program is an important step
that we look forward to working with the agency in, and
adopting compliance-grade protocols is something that I
think we all look forward to working on.

Offsets are an important part of the California
Emission Reduction Program. They can help contain costs
of the overall program and facilitate emission reductions
across many different sectors.

Since the Cap and Trade Program effectiveness
will be judged and reinforced by the cost of the program
as a whole, it's important that we provide to California
businesses the opportunity to find low-cost emission
reductions opportunities at the outset of the program and
continuing through the program durations.

Credits generated from projects that include
domestic and international forestry, agriculture and
nutrient management, landfills, high global warming
potential gas emissions, wetland restoration, manure
management are all very important and just the types of
projects that we're going to be seeking and needing to
generate emission reductions from in order to achieve our
cclimate change goals.

Over the next several months and starting today,
the conversation is going to center on how we can manage a
program that allows for the certification of
compliance-grade offset projects. Brieanne discussed a
couple methods for improving some of those projects. And
EDF right now would like to talk about one particular
method that we think would be a valuable tool that the
Board could use to help them with that process.

The protocol development process, if it were
retained solely in-house, would take away valuable staff
time and resources that is needed to look at the program
as a whole and measure the effectiveness of the various
endeavors that we hope to achieve.

However, it's also important for the agency to
retain administrative oversight and interaction with the
approved protocols, since the credits are going to be used
in California to reduce our emissions and achieve our
emission reduction goals.

Therefore, EDF would propose the use of an expert
review board, possibly external with the agency, but arm
in arm with the agency in close coordination to assist
evaluation of the technical issues that are going to be
before the Board.
There are examples of boards like this in programs like the ACES program as well as in the CDM. We are preparing a proposal for the Board we will be submitting soon. We look forward to working with the Board starting in April at the next meeting and continuing thereon. Thank you.

CHAIRPERSON NICHOLS: Thank you. This is a work in progress, as you correctly point out.

Bob Lucas and Marilyn Woodhouse and Bill Magavern.

MR. LUCAS: Thank you very much. My name is Bob Lucas. I'm here today representing the California Council for Environmental and Economic Balance, known as CCEEB. And I also wanted to extend our appreciation to the staff and acknowledge the very long, arduous path that they've been on so far and also acknowledge their willingness to work with us as these policies are developed.

In fact, the slide that Brieanne showed here what is the role of offsets, I thought it was a very fair representation of how offsets work in the system and why they're so important. Offsets are an important cost containment mechanism, and we believe they should be allowed to function within the program to reduce compliance costs to the benefit of the program and to the
benefit of the state.

At the moment, in the current form, we believe that the PDR is overly restrictive with regard to offsets. Instead of quantitative restrictions on the use of offsets, we believe that the PDR should focus on the quality of offsets.

In addition, we think the ARB should consider adopting standards of current operable trading partners in order to create a marketplace that has available offsets. With regard to linking, we think it's important to link to existing markets that will allow covered entities to enter into a larger market and have options and compliance paths. Without trading partners from the outset, the number of available offsets will be limited and cause significant costs. We believe linkage and offsets should be allowed to reduce costs and reduce leakage.

And with regard to further program development, we'd like to urge your recognition that it's important to have verified offsets, third-party verifiers, approvals, linkages, and dispute resolution processes in place from the onset of the regulation.

Towards this end, we think that it would be good for you to consider asking staff to develop a work plan if they haven't already with clear completion deadlines for
tools, organizations, policies, and systems that must be in place for regulated entities to comply with the regulation.

And finally, just to highlight this point, we believe alignment with current, international, national, and regional programs would be the best opportunity for a California Cap and Trade Program to work. We're concerned that without aligning definitions and policies California will be isolated, and we believe this will cause the program to suffer significant leakage. We would like to avoid that.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.


MS. WOODHOUSE: I have to arrange myself here. Well, my name is Marilyn Woodhouse. I'm the anti-clearcutting organizer for the Motherlode Chapter of the Sierra Club and one of the founders of the Battle Creek Alliance.

We appreciate that the Board is considering withdrawing the adoption of the CAR forestry protocols, and we would like to speak about that.

First of all, we have been collecting signatures on a petition for some time now, and we would like to present it to you. There are a couple of thousand signers
on this petition, and luckily not all of them are requesting three minutes each.

This petition says that industrial scale clearcutting is converting California's diverse forests to fire-prone tree plantations, threatening water quality, promoting extensive use of chemical herbicides, contributing to global climate change, endangering wildlife and their habitat, and damaging private property values and businesses in affected regions.

We, the citizens of California and supporters of sustainable logging, call upon the Governor of California, the Legislature of California, California Department of Forestry and Fire Protection, and the Environmental and Natural Resource Agencies of the State of California to use all means at their disposal to end this destructive practice.

When the forestry protocols were approved last fall, we were shocked and disappointed that clearcutting was included in what could be used to sell as offset credits. Some of us who are here today live in areas that have been clearcut extensively, so we live with this physical reality of what clearcutting does.

This is -- I don't know if anybody can see that. That's Mount Lassen in the background there. There are many thousands of acres of clearcuts already, and they are
The timber industry likes to call trees a renewable resource, but replanting a clearcut does not replace a forest or its systems. Plantations of a single kind of tree doused with herbicides and other petrochemicals and cut and recut for the few cycles it takes to destroy the soil are not going to maintain the life support system that the forests provide for all of us.

Besides living near thousands of acres of clearcuts, I live where there was a fire in 2005. It was started by human thoughtless, and it burnt about 90 percent of my 20 acres. When the trees were there, I suppose that I took them for granted because I expected them to always be there. But now that they're gone, I watch the small tree seedlings that I planted afterwards, and I know I will never see big trees on my land again in my lifetime. And the reason that I won't see that is because trees take a lot longer than a human lifetime to grow large.

The deforestation and the clearcutting in the county that I live in or the state or the country or the world is causing irreparable harm to systems that took hundreds to thousands of years to evolve, and they will not recover in any comprehensible human time scale. We
hope that you will consider this when you are determining
how to monetize natural services that functioning forests
provide and reject any deceptive ideas that a replanted
clearcut can replace those forests.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Bill Magavern, Luke Breit, and Brian Nowicki.

MR. MAGAVERN: Bill Magavern, Director of Sierra
Club California.

To start with the big picture, cap and trade is
certainly not our favorite mechanism for reducing
greenhouse gas emissions. We think there are much better
ways that are sure to get those emission reductions. But
within the context of a larger package like the Scoping
Plan that includes many different measures, we could
support a well-designed cap and auction system. And
certainly the issue of offsets is one of the major issues
that would affect the program design.

We are not opposed to all use of offsets, but we
do think that the proposal in the preliminary draft reg
allows for far too liberal use of offsets and that that
really would undermine some of the central purposes of AB
32. AB 32 says that California will reduce our emissions
to 1990 levels by the year 2020. It does not say that we
will hire out that emission reduction work to other
jurisdictions. If we do hire out that work to other
jurisdictions, we lose a lot of the benefits of AB 32.

What we really need to do here in California is
to fundamentally transform our energy economy. And we can
show the way for the rest of the country and the rest of
the world.

We also can create those energy efficiencies here
in California which will create jobs here in California.
If we, instead, tell our big power plants and fuel
providers that what they can do is scour the world looking
for the cheapest possible offsets, which as you've already
heard, in many cases will not provide additional emission
reductions, will just be business as usual, if we send
that message, then of course that's what they'll do. And
you're hearing there are representatives say they want
more offsets available. And, sure, that's their job.

They want to find the cheapest possible ways to comply.

But what AB 32 says is we need to reduce our
emissions. And so we're very concerned that the offsets
if they are granted too liberally could become a large
loophole that could swallow up most of the benefits of the
proposed cap and trade regulations.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. BREIT: Madam Chair and members, I'm here in support of the resolution to withdraw the approval of the voluntary protocols. And I want to quote a very wise man who once said, "The forest is a peculiar organism of unlimited kindness and benevolence that makes no demands for its sustenance and extends generously the products of live activity. It offers protection to all beings, offering shade even to those who destroy it."

I want to put this in the larger worldwide context dealing with forests. Over the past century, the earth's mantle of forests has been reduced to tattered remnants. As the world population has grown from 2.3 billion in 1950 to 6.7 billion today, some 300 billion acres of the world's original forests cover, nearly half, has been lost. The destruction continues. In each of the last dozen years, about 14.6 million hectares of forests have been cut, bulldozed, or burned.

Vast forests are essential to life itself. They absorb carbon dioxide, the main climate-altering gas, in the atmosphere and produce oxygen anchor soils that prevent erosion, regulate water flow, and protect watersheds, modify climate, and cool the air, and provide a habitat for millions of species and plants and animals.

Sorry. I had a stroke last year.
By providing water cycle regulations, soil conservation, and biodiversity, forests are vital to maintaining healthy ecosystems on which humanity depends.

In North America, farmers and forests depend on migratory birds along with bats and insects to pollinate crops, disburse seeds, and prey on pests. Mexican brown bats, for example, dine on a variety of insects that plague corn and cotton and potato crops in the U.S., saving farmers millions of dollars in damage while reducing the use of pesticides.

The world's forests act as great reservoirs that store about 830 million tons of carbon. The world's remaining and old growth forests play a critical role in the fight against global warming deforestation and degradation account for nearly 20 percent.

I just want to add that remember that the forests are the lungs of the earth and we forget it at our peril.

CHAIRPERSON NICHOLS: Thank you, Mr. Breit.

Appreciate that.

Brian Nowicki, Bonnie Holmes-Gen, and Michael Endicott.

MR. NOWICKI: Madam Chair, members of the Board, good afternoon. My name is Brian Nowicki with the Center for Biological Diversity. We want to support the resolution before the Board today and hope that you will
vote to pass it.

When the Air Resources Board adopted the forest protocol last September, Board Member D'Adamo, among several Board members expressing concerns about the standards applied in the voluntary protocol, asked, "Can we at a later point as part of our adoption of a cap and trade insist on a higher standard for forestry or whatever industry the protocols apply to?"

And Deputy Executive Officer Lynn Terry replied, "We want to be very clear that this protocol is for voluntary actions and that the Board's approval today is restricted to that arena. And that for the purposes of cap and trade, the Board will consider the rules of the game in terms of offsets that may be brought into the system. And so, yes, those kinds of criteria will be developed going forward as part of the cap and trade rule development process. That is, additional environmental quality criteria will be considered before incorporating the voluntary methodologies into the regulatory Cap and Trade Program."

Nonetheless, the preliminary draft regulation for the cap and trade rule released a few months later stated, "The Air Resources Board believes that the previously adopted quantification methods are of the highest quality and should be integrated into the compliance system."
That directly contradicted those previous statements and intentions and is one of the reasons we strongly support the action before the Board today, which we see as a good path to rectifying the situation.

Since then, we have communicated to Air Resources Board our concerns that the adoption of the protocols without independent review failed to take into account the significant potential negative environmental impacts of the protocol as required under the California Environmental Quality Act, as well as the co-benefits considerations of AB 32.

In short, well, the forest protocol adopted by the Board for voluntary measures is not the gold standard that is needed and to which California should aspire.

Although there is more than we have time to get into today, in short, the Board's protocol is not ready for prime time, and there is a great opportunity before us to improve it. We strongly support ARB's commitment to do so in the plan outlined today. And critical to that effort is withdrawal of the volunteer protocols as you move forward with the process to develop the review and then to develop the protocols for a compliance mechanism.

Lastly, I would like to point out, Dr. Telles, that when Air Resources Board adopted a voluntary forest protocol, Dr. Telles specifically asked staff about the
potential for including air quality co-benefits, particularly with regard to fire, in the further development of the forest protocol for the regulatory mechanism.

Thank you very much.

CHAIRPERSON NICHOLS: Okay.

Bonnie Holmes-Gen, followed by Michael Endicott, and Susan Robinson.

MS. HOLMES-GEN: Thank you, Chairman Nichols and Board members, for my three minutes.

I'm Bonnie Holmes-Gen on behalf of the American Lung Association of California. And the American Lung Association is committed to achieving a strong process forward toward achieving our AB 32 goals and reducing greenhouse gas emissions. But we want to make sure along the way that we're achieving the most public health benefits, that we are achieving the highest level of air quality benefits also.

And so with regard to this discussion today, there's been a lot of discussion about offsets and the cost containment strategy. And we want to talk about the public health aspects of our offset strategies.

And there's really two keys points I want to make. One key point is I think the Board needs to get a better understanding of how the use of offsets will impact
local communities and how the use of offsets will impact public health outcomes in these communities.

Clearly, the availability of offsets will have a great impact on decisions that are made by regulated sources, on the level of cleanup and upgrading of their facilities. And these decisions are of particular concern for us to vulnerable communities, communities that are already highly impacted. And these decisions impact whether communities will experience improvements in air quality or continue along the lines of the status quo in the current level of poor health outcomes.

So the second key question I think the Board needs to understand is how will the use of different offsets policies impact local public health outcomes. And I think you need this information to decide on the best design for Cap and Trade Program.

We think that the Board should look carefully at a number of the different strategies, including placing stricter limits on offset, restricting the ability of facilities in highly-polluted areas in your vulnerable communities to use offsets and prioritizing offsets in California.

And I know that the Air Board and Department of Health Services in the context of public health working group is beginning to look at a number of these health
impacts on local issues.

I wanted to raise these issues to, number one, highlight the importance of public health analysis and the development of the health impact analysis on the Cap and Trade Program; and two, to request that the Board focus on these issues of local public health impacts as key factors to be considered in the development of the regulation and to consider these factors now and not after the regulation is adopted.

We're going to be continuing the dialogue with you, and I appreciate the opportunity to raise these issues.

CHAIRPERSON NICHOLS: Thank you.

Michael Endicott and Susan Robinson and Erin Rogers.

MR. ENDICOTT: Can I pretend I'm Bonnie Holmes-Gen for the last 22 seconds she had?

CHAIRPERSON NICHOLS: No.

MR. ENDICOTT: Michael Endicott, Resource Sustainability --

CHAIRPERSON NICHOLS: That would be trading, and we disapprove of that.

MR. ENDICOTT: -- for Sierra Club California.

Thank you for this opportunity to speak.

There is a little box there that says yes or no.
It's a little confusing. We're definitely in favor of the proposed action to withdraw the ratification of the protocols for now.

But with development, I want to follow up on my colleague, Bill Magavern's, comment that not all offsets are created equal. And we think it's really important that you develop whatever cap and auction system that you have or however you incorporate offsets into it. If you don't prioritize them, you also will have a grave effect on whether AB 32 will be effective. By that I mean is that some offsets could be used here in California to directly reduce the emissions in some other facility or some offsets could be used to help people of low income, for instance, get energy-efficient air conditioners or refrigerators and thereby reduce the need to generate the electricity and emit the gas in the first place.

Lastly is sequestration. Sequestration has some potential benefits. Particularly, forestry has some good aspects to it. But it also carries some very risky proposals and could put the entire program at risk.

We appreciate the Chair's comments about the need for the arm's length between and you CAR, which is a nonprofit. In some ways, we're working in both places with CAR and with them, but it is amazing to me that we're going to have a debate in CAR about whether a sustained
yield plan is a regulatory document for purposes of establishing baseline. And they're not a regulatory agency. So when you ratify something, you are the regulatory agency. And we would like to work with you to make sure that AB 32 is enacted in a proper fashion.

So to that end, I would say specifically that even within protocols, not all offsets are created equal. So as you go into a regulatory compliance program, which in some cases would include recognition of early actions, that you need to distinguish between what protocols you're adopting or not. It's one thing for me who decided to come up here by my car rather than the train, to buy and plant a tree in Israel to offset my carbon emissions today that I could have saved by going by train.

But it's another thing when I'm actually going to use that to avoid something that is regulatory required upon me to reduce that emission.

So that's why we need to distinguish that voluntary protocols have a role, but when they actually are going to serve to offset or delay reduction of carbon emissions, it's problematic. So we thank you and urge you to withdraw what you've done. Let's get the regulatory requirements together. Make sure that it really is additional, because there is no certainty in some of these items, especially in terms of enforcement potential for
leakage. We want to make sure that you actually do incorporate the highest standards.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Susan Robinson, and Erin Rogers will be last.

MS. ROBINSON: Hello. I'm Susan Robinson. I spent 25 years of my career -- I'm recently retired -- in the oil and gas industry, but today I'm here to talk about forestry protocols.

And I had a handout. I hope all the Board got this handout that shows some of the clearcutting practices. Lots of other people have talked about the clearcutting, and we testified previously, so I'll try to be brief. I'm representing Ebbetts Pass Forest Watch. They're a not-for-profit organization located in Arnold, California, in the sierra. We have many members throughout the state that have vacation homes in our area and are interested in the issue that we work on, which is promoting healthy forests and healthy watersheds.

So thank you for your resolution today, and we are supporting the withdraw of the adoption of the forestry protocol.

Other people have talked about the issue of forestry protocols, and I'll try to be very brief.

Clearcutting is a huge problem in the protocols as is the
conversion of native natural forests, biodiverse forests, and plantations. We all read all the time about the forest destruction in the Amazon. What we're saying here in California is it's okay to clearcut our forests, but not the Amazon forests. It's okay to clearcut our forests and convert them into tree plantations, but that wouldn't be good for the Amazon forests. So somehow we need to get our heads around that.

And also the science; the common sense shows us clearcutting produces more CO2 emissions than any other form of logging. And plantations are not real forests.

So we support your action today. Having come from an oil and gas industry background, the other thing that I would like to say is that in the cap and trade protocol environment, I think it would be problematic for many large industrial companies to go to the shareholders and the public and say that we are going to offset our emissions by these credits which are coming from the clearcutting of forests. And we don't think that would fly too well.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Erin Rogers.

MS. ROGERS: Hi. Good afternoon, Chairman Nichols and Board members. I'm Erin Rogers from the Union
of Concerned Scientists.

I just wanted to say that, you know, offsets are not an inherent part of a cap and trade system. If you look back at the acid rain Cap and Trade Program that many see as a model for some of our greenhouse gas Cap and Trade Programs, there were no offsets involved.

Offsets by nature are outside of the Cap and Trade Program. And the Cap and Trade Program itself without offsets is designed to be flexible to lower costs. That's the purpose of the cap and trade program is to allow flexibility within the capped sectors.

Offsets coming from outside of the Cap and Trade Program bring in a whole new level of complexity and bureaucracy that makes the cap and trade system I think more onerous in the long run.

You know, the Governor Market Advisory Committee said that the cap and trade system -- the offsets component of the cap and trade system could take more resources to run than the whole cap and trade system itself. And because offsets by nature are so uncertain and oftentimes you're measuring against a hypothetical, getting some kind of certainty about whether those emission reductions are real is costly. It takes a lot of resources. It takes a lot of verifying and measuring, and the transaction costs go up. And so when we talk about
cost containment and cost of the program, I think that we
need to look at what the cost to private entities are and
what the cost to the public are.

And while offsets may allow the private capped
entities to have a short-term economic benefit, we also
need to look at the public social cost of an offset
program by looking at the public subsidy that our
verification and monitoring systems provide to the capped
entities and also to the economic value of the co-benefits
that we are loosing out on, like increased air quality,
technology development, job creation in the state and all
of those things, and are the long-term costs to getting to
where we need to go by 2050 in our capped sectors. If we
can invest in our capped sectors now and avoid locking in
new fossil fuel technology, it's going to be a lot cheaper
in the long run to get to where we need to go. So we
think the offset limit should be lowered, and we support
the action item today.

Thanks.

CHAIRPERSON NICHOLS: Thank you.

That concludes our list of witnesses. I think
it's fair to say that the Board members have now heard a
full range of opinions from way too few to way too many
offsets are being considered by the staff. And I think
that gives you a pretty good capsule version of what the
staff is now attempting to make sense out of and to come to a resolution here, which is going to be acceptable and also actually fulfill the mandates of AB 32.

So this is just a preview, but hopefully by the time this comes back for a decision, there will be some further enlightenment on this issue.

In the mean time, we do have a resolution in front of us, Resolution Number 10-22. Could I have a motion to adopt that resolution?

BOARD MEMBER Balmes: So moved.

BOARD MEMBER Riordan: Second.

CHAIRPERSON Nichols: All those in favor please say aye.

(Ayes)

CHAIRPERSON Nichols: Any abstentions?

BOARD MEMBER Telles: No.

CHAIRPERSON Nichols: Okay. No or abstain? An absolute no. Okay.

BOARD MEMBER Riordan: Madam Chair, maybe I don't know if you're anticipating a break, but there is that noise --

EXECUTIVE OFFICER Goldstene: We're working on it.

BOARD MEMBER Riordan: You're working on it.

Thank you. It's not a device that somebody is holding.
CHAIRPERSON NICHOLS: The noise at the moment sounds like an air conditioning fan.

EXECUTIVE OFFICER GOLDSTENE: It's some kind of static.

CHAIRPERSON NICHOLS: We had been offered -- I'm sorry I asked for a passage of a resolution without considering an amendment that has been presented by Barry. I apologize. But I'm reminded that it was here. I frankly don't understand the meaning of this proposal, and I'm not inclined to commit our staff to a 90-day turn-around on technical review. If somebody wants to ask that we pause and reconsider, I would do that.

BOARD MEMBER TELLES: I don't understand what Barry's suggesting either. And after reading the resolution, I don't see that there's any concerns. And when we passed the Scoping Plan, his resolution basically was adopted.

And one of the things we did was to assure that the districts had an opportunity to participate in this process. And am I not reading this correctly? Is it somewhere in here excluding the district from that process?

BOARD MEMBER BERG: My understanding is that the districts are doing protocols that they're basing their CEQA plans on and other types of regulations and
therefore -- and they're committing funds on the basis of accepting programs that allow them to participate.

Barry, maybe you better come up and help very quickly.

CHAIRPERSON NICHOLS: That actually was a fairly good description.

The Placer County Air Pollution Control District has developed a protocol for biomass to energy. We have developed three or four protocols. In addition to that, other air districts are doing that. We have set the framework for a voluntary offset bank. So if someone needed, for example, to do mitigation under CEQA, they could call upon it. Sacramento is about to adopt such an entity. The San Joaquin Valley is developing one. We simply want, like with all of our technical documents, whether it's a regulation or now in this case a protocol, to have your staff simply provide us technical input.

BOARD MEMBER BERG: So I don't disagree with you on the 90 days. I don't know if that's possible, but I think it's a fair request.

CHAIRPERSON NICHOLS: If it's routine, it's routine.

I would ask Mr. Goldstene to comment if you've been refusing to review protocols that CAPCOA has given to you.
EXECUTIVE OFFICER GOLDSTENE: I don't know if we've had any submitted.

I'm still not understanding the purpose of the review. This is for their own program in their districts. They are the arbiters of what counts.

CHAIRPERSON NICHOLS: And it's going to put us in the exact same business that we said we don't want to be in with respect to voluntary protocols.

EXECUTIVE OFFICER GOLDSTENE: And I'm not comfortable making decisions like that without bringing them back to the Board for consideration. I mean, where we would be opining on -- I'm not sure what level of review Mr. Wallerstein is asking for.

CHAIRPERSON NICHOLS: If it's a voluntary protocol, it's a voluntary protocol. If it comes to us for approval in a formal sense, we're going to have to do CEQA review and we're going to have to listen to whatever objections people give us to those voluntary protocols.

If they want to use their protocols for CEQA purposes where they're the lead agency and they're looking for sort of a cover from the Air Resources Board, that's exactly what we can't give them without a more serious commitment. I don't mean that in a derogatory --

MR. WALLERSTEIN: Madam Chair, we're asking for the same level of effort -- not even the same level of
effort -- the same courtesy being extended to CCAR. And we've had protocols from my agency before the staff for nine months. My understanding is the Placer County Air District protocol has been here for a year.

CHAIRPERSON NICHOLS: Well, at one point, the districts were talking about being in the business of doing voluntary offset banks and running trading of offsets. Is that still part of your plan?

MR. WALLERSTEIN: In terms of having a pool of legitimate offsets available to businesses within our jurisdiction, yes. But I would point out that the Climate Action Reserve now is not just developing protocols. They actually are providing an exchange. So why would a nonprofit be okay to provide that kind of advise to, but your partner local air districts somehow not appropriate? We just simply don't understand that.

CHAIRPERSON NICHOLS: I think we're now trying to not be in the business of providing it. I think that's exactly what the motion that we just passed was designed to do, which was to withdraw from the business of being an advisor to CAR.

EXECUTIVE OFFICER GOLDSTENE: We really have our hands full just working on the protocol what we want to be going forward with purposes of compliance.

CHAIRPERSON NICHOLS: But, conversely, Barry,
while I have you up at the podium here, while we're working on this cap and trade rule, we are looking at the need for high-quality offsets and to have a pool of them. I think if districts want to be out there looking to develop protocols for compliance offsets, particularly if they're in areas where we think we need more offsets from within the state, that that would be something that we should be trying to encourage that we should be trying to get that to happen.

I'm looking at Kevin, who's looking a little bemused.

DEPUTY EXECUTIVE OFFICER TERRY: Since my staff did look at the Placer protocol, I can answer. And the point about the resolution today was to transition to compliance-grade protocols in a public process. And so we have our hands full with the commitments to take the existing protocols through that public process.

From my standpoint, if the districts were to produce a very high quality rigorous accounting protocol that they would want considered for compliance purposes, it could go into the queue to have a public process.

So, you know, our resolution does not preclude them coming forward with a protocol that we could move into that process ultimately.
But what we're not in the position to do is to look at a number of voluntary protocols at the same time we're meeting our commitment on the compliance grade.

CHAIRPERSON NICHOLS: I'm somewhat familiar with the Placer protocol situation. And that's where I think maybe the question is do you really want an answer. Sometimes things sit there for a while, because people wouldn't like the answer they got back.

MR. WALLERSTEIN: Actually, I can tell you they would like an answer. I've talked to the Air Pollution Control Officer. I can tell you to the extent there was some deficiency identified in anyone's work, we would naturally go about the process of simply correcting the deficiency. But we don't know that without an answer.

CHAIRPERSON NICHOLS: If you're speaking for them, I will speak back to them through you and tell them we'll be happy to sit down with them and have that conversation. But again, we're not going to be approving it. We're not going to be approving or disapproving.

MR. WALLERSTEIN: We're simply asking to get the feedback on the technical documents that we prepared. It's just a matter of that.

CHAIRPERSON NICHOLS: I think you're asking for a commitment in a public setting from this Board of something that the staff is telling you that they don't
I have the time to do. I don't think it's a matter of refusal. I think it's a matter of if you want it at a level other than cursory, we've got to provide a real commitment of personnel to do that for you. And I think we need to sit down and understand what that really would mean before the Board could direct that to happen.

Yes?

BOARD MEMBER TELLES: You know, in the presentation, one of the things was to have some kind of consistent protocols between California and the Western Climate Initiative. It seems to me it would make sense to have some kind of consistent protocols with California and California with our districts that there should be some unified effort to have some way to develop offsets in an area or whatever you're going to use it for. But listen to the districts and come together on it rather than having this kind of adversarial relationship, this kind of surface when we get the Scoping Plan if you remember --

CHAIRPERSON NICHOLS: Well, I completely agree with you, Dr. Telles. And maybe you could help as a member of both Boards in assisting to make sure that that happens, because there needs to be some sort of a joint process as opposed to things being developed and then sent up for a yes or no kind of a response. I mean, that's not a partnership. That's a review process. It's not the
same thing.

BOARD MEMBER TELLES: Well, if communication began early on the development of process and there was a mechanism to communicate versus just -- he's hearing just a no. I think that's what he said.

CHAIRPERSON NICHOLS: I think he said he wants to send us his protocol and get it reviewed. And I don't think -- you're not talking about sending something that's somebody's work product and having it reviewed. I think you're talking about some sort of actual joint process where these things would be reviewed together.

BOARD MEMBER TELLES: Exactly. And maybe that's --

MR. WALLERSTEIN: We all along the way have invited the CARB's staff's participation. But as I mentioned before, the Placer protocol has been here a year. Ours have been here nine months. We're just simply asking for the technical input.

Now, if the CARB can't provide that, then obviously you leave us no choice but to proceed without your input. But we would prefer not to be put in that position.

EXECUTIVE OFFICER GOLDSTENE: I'm not sure what position you're being put in. I'm not sure what our technical review adds to your process.
CHAIRPERSON NICHOLS: I'm not going to suggest that we act on any language here today one way or another. This is an important enough issue so that I would be happy to sit down with the approval of my fellow Board members and convene a process where we would meet as we have in the past occasionally, the Board members from other districts, and try to hammer this out. This is not the place to try to deal with this kind of comment.

Thank you.

I think we will take a ten-minute break at this point for everybody's comfort and then we'll reassemble. (Thereupon a recess was taken.)

CHAIRPERSON NICHOLS: We're going to start with the Haagen-Smit award so that the people who came here just for that item can break and go on and do other things, and then we will pick up with the railroad item as our last item of business of the day.

So if there are people here who have been waiting for the railroad, I apologize, but I think it will be more efficient if we do it this way.

And so I think I'm going to invite the people who are presenting and the people who are receiving awards to come up and sit in the front row if you would, please. And then we'll get on with it.

(Thereupon an overhead presentation was
EXECUTIVE OFFICER GOLDSTENE: It's truly an honor to showcase this year's Haagen-Smit Clean Air Award recipients here today before our Board members, staff, and members of the public. And to be reminded of the important contributions the late Arie Haagen-Smit made to air pollution, science, and regulation and the significance of his career as our first Chairman. Today's presentation will briefly go over the history of the award program and will highlight the accomplishments of the 2009 award recipients.

Dr. Haagen-Smit was a native of the Netherlands and a leader in developing air quality standards based on his research efforts. Dr. Haagen-Smit is known by many as the Father of Air Pollution Control and was a graduate of the University of Utrecht and a biochemistry professor at the California Institute of Technology in Pasadena for 16 years before beginning his air pollution research in 1948. Through a series of experiments, he found that most of California's smog resulted from photochemistry, when exhaust from motor vehicles and industrial facilities react with sunlight to create ozone. This breakthrough is the foundation upon which today's nationwide air pollution standards are based. The National Medal of Science and the physical sciences discipline was presented to Dr.
Haagen-Smit by President Nixon at a White House ceremony on October 10th, 1973.

After serving for eight years as an original Board member of ARB's predecessor, the Motor Vehicle Pollution Control Board, Dr. Haagen-Smit became ARB's first Chairman in 1968.

In 1977, he passed away of lung cancer two months after the ARB laboratory in El Monte was dedicated in his name.

EXECUTIVE OFFICER GOLDSTENE: Since 2001, the Air Resources Board has sponsored the Haagen-Smit Clean Air Awards. The awards are given to two or three people each year to recognize significant career efforts in at least one of several air quality categories, which are research, environmental policy, science and technology, public education, or community service.

Over the last nine years, 22 distinguished people have received the award. The Selection Committee is comprised of past winners Senator Fran Pavley, Dr. Alan Lloyd, and Professor Arthur Winer. They considered 15 nominations for this year's award.

CHAIRPERSON NICHOLS: Thank you, Mr. Goldstene.

I'm going to stand with my back to the audience, because I'm told if I do that it will appear on the
The first award recipient that I would like to present is Timothy V. Johnson. This award goes to Mr. Johnson for his dedication and hard work in the area of emission control technologies.

And to say a few words about Dr. Johnson's work, I'd like to invite up previous winner of the Haagen-Smit award, Dr. Bob Sawyer, to come up and speak for a few minutes.

DR. SAWYER: Thank you, Mary.

I'm honored to be able to introduce Tim Johnson, although under the circumstances I'm standing in for Mike Walsh. It's not how I would have favored doing this. Tim spent his entire career or nearly his entire career at Corning, where he was instrumental in the development and then carrying onto the application of ceramic materials in exhaust control systems.

I think he's probably the single person in the United States that had the most to do with the development and introduction of the catalyst trap for diesel engines. He's sort of Dr. Diesel English Trap as far as I'm concerned. And I am so delighted he was selected to receive the award.

CHAIRPERSON NICHOLS: Thank you.

Just to be a little bit more formal about this,
Dr. Johnson is the Director of Emerging Regulation and Technologies for Corning Environmental Technologies, which is a part of Corning, Incorporated.

Dr. Johnson is responsible for tracking emerging mobile emissions regulations and technologies that may lead to improved air quality. He's been with Corning for 20 years. He's an acknowledged expert and frequent speaker on diesel emission control technology and trends.

Dr. Johnson was recognized for his technical accomplishments in 2008 by being made an international fellow of the Society of Automotive Engineers.

He was instrumental in the development of the National Clean Diesel Program, which is successfully controlling pollutants from millions of legacy diesel vehicles that continue to operate across the United States.

Dr. Johnson is active in various advisory committees. He currently co-Chairs the U.S. EPA's Advisory Working Group on diesel emission control retrofits. He's also a member of the U.S. EPA Clean Air Act Advisory Committee and the U.S. EPA Mobile Source Technical Review Subcommittee. Formerly, he served on California Air Resources Board's International Diesel Retrofit Advisory Committee, just to name a few of his areas of public service.
He recently edited the book "Diesel Filter Technology" published by SEA International. On behalf of the Air Resources Board, we want to present you with this award, Dr. Johnson, as well as a resolution from Senator Fran Pavley, who as you heard is a previous awardee and a member of the Committee and ask you to except them with our congratulations. (Applause) DR. JOHNSON: I'm not very good at public speaking. Well, thank you very much, Ms. Nichols. This is really a true honor and a highlight of my career. And it's not too often where an individual can work in a field that has such a profound impact on public health and welfare. And I would like to thank Corning, Incorporated, for allowing me to fill this position. It's unique for a company to allow someone like me to have free reign and work on things that we think should be done both for mutual benefit for society and for American enterprises. So thank you very much.

CHAIRPERSON NICHOLS: Thank you. (Applause) CHAIRPERSON NICHOLS: Okay. The next award recipient that I'd like to present is Margo Tsirigotis Oge
for her dedication and hard work in the area of environmental policy. And to say a few words about Ms. Oge's work, I'd like to invite Dr. Alan Lloyd, who's a previous winner and also a previous ARB Chairman, to come up and say a few words.

DR. LLOYD: Thank you very much, Madam Chair, members of the Board.

First of all, I'd like to thank Dr. Balmes and Dr. Telles for jumping to our friend Mike Walsh's aid when he needed it. Thank you.

I'm delighted to be here to speak on behalf of my colleague, a friend, a member of our council, Margo Oge. Mike also was going to prepare some comments for her as well.

So, again, she's universally admired around the world, feared in some quarters. But I think it's a real true honor to be here to work with her.

I would also say it's a testament of the current Chairman that she spotted Margo's talent, pulled her from the ranks. People didn't know who she was. And she's been on the national scene ever since and doing a great job.

Her accomplishments run all the way from the light-duty vehicle, heavy-duty vehicle, railroads, coming after aircraft now on the fuel economy, as stated there.
She's basically saved millions of millions of lives for the U.S. population. She's shown great technical and political skills as you know for different administrations she has survived, not only survived, but thrived. She's exhibited great courage, vision, and also these days something I've highly value with things going on around the world in different ways, great personal integrity, impeccable.

She is also, as I was reminded by one of my colleagues in San Francisco office I asked Father Kamacate, "What I can say about Margo that I might not say otherwise?" He said she is a wonderful role model for professional women out there. I don't think there's anything I could say better than that.

Together with the technical accomplishments, her personal accomplishments, and her integrity, and through it all, she takes time to talk to people, mentor people. She's got a great staff and I think with Mary developed a great relationship and also when I was here a great relationship with California.

So it gives me wonderful pleasure to again congratulate Margo as the other candidates as well and congratulate all of them. Thank you.

CHAIRPERSON NICHOLS: Thank you very much, Alan.

I'll do the official introduction for Margo as
Margo Oge is the Director of the Office of Transportation and Air Quality for the United States Environmental Protection Agency. She's been with U.S. EPA since 1980 and has held various management positions in the agency.

Under Ms. Oge's leadership, the U.S. EPA finalized three of the nation's most significant environmental accomplishments, the Clean Tier 2 Motor Vehicle and Gasoline Sulfur Program, the historic 2007 Diesel Truck, Buses, and Diesel Fuel Rule, and the recently finalized Clean Off-Road Diesel Program. These programs set more than a 90 percent reduction in harmful pollutants emitted from cars, trucks, buses, construction, farming, and industrial equipment and gasoline and diesel fuel.

As a result of these three rules alone, we estimate that there will be more than 22,000 premature deaths prevented, as well as thousands of respiratory illnesses avoided.

In 2004, Ms. Oge was a recipient of the Presidential Distinguished Executive Rank Award for her outstanding leadership on environmental transportation issues. She's also a previous winner of the presidential meritorious award. In 2002, the Women's Council on Energy
and the Environment honored Ms. Oge with its Women of the Year Achievement Award. The award recognized her for leadership in shepherding the Tier 2 and heavy-duty diesel rules to fruition. She was the first non-political appointee to receive the award.

So it's my great pleasure to be able to present this Haagen-Smit Award to Margo for her work.

And while she's coming up, I will also mention since I have been revealed as a long-time friend of Margo's that one of the things I admire most about Margo is her courage. I know she came to the United States as a very young woman barely speaking any English -- none at all -- as a person of Greek decent. She married a Turk. And she has worked very hard not to lose her Greek accent.

(Applause)

MS. OGE: Thank you, Mary and Alan Lloyd.

I'm a little bit upset -- actually, I'm very upset with what happened with Mike Walsh, so I would like to ask that all of us take a moment of silence and pray for Mike. He's a mentor. He's been my mentor, one of the best colleagues and friends.

(Thereupon a moment of silence was observed.)

MS. OGE: Mary, this is a greater honor. I'm humble in receiving this award.

I think what makes it extraordinary special is
the admiration I have about this agency, CARB. Your leadership, work, the forward thinking, and the work that you have done in the last 30, 40 years saving lives, promoting advances in clean technologies. And it has been a real honor to be your friend and colleagues in the efforts to address environmental issues, public health issues in the transportation sector.

I would not have been here taking this award or real accepting this honor without my colleagues at EPA. There are a couple of them here I want to recognize. Chet France, maybe you can stand up, Chet; Christopher Grandor, Carl Simon, and Bill Charmley. Without them and the team of outstanding people that we have in our office, none of us would have been here accepting any awards. So thanks to all of you. And thank you, Mary and Alan.

(Applause)

CHAIRPERSON NICHOLS: I don't want to give anybody the impression that the Haagen-Smit award is jinxed or associated with health issues, but our third award recipient is not able to be with us here in Sacramento because of health problems. And it's perhaps somewhat ironic, because he's receiving the award for his work in the area of environmental health research.

The award goes to John M. Peters. Dr. Peters is the Hastings professor of preventative medicine at the
University of Southern California's Keck School of Medicine and Director of the Division of Environmental Health in the Department of Preventative Medicine. He's also an adjunct professor of epidemiology in UCLA's School of Public Health.

In an over 40-year career, Dr. Peters has published over 150 research papers, reports, and chapters on subjects such as the health effects of air pollution, vinyl chloride, and other chemicals in both the work and general environment. He's the principle investigator of the children's health study, a landmark epidemiological investigation to identify chronic health effects from exposure to air pollution in southern California communities, which has followed 11,000 children for periods as long as 13 years. The study has led to broader public awareness of health actions needed to protect children's health.

He is also the principle investigator of a National Institute of Environmental Health Sciences funded project to continue to follow these children into adulthood. Dr. Peters has received many awards and recognitions throughout his career. In 2009, he received the Harvard School of Public Health Alumni Award of Merit. This award, the highest honor presented to alumni by the Harvard School of Public Health, recognizes leaders who...
advance the science of public health, improve its community practice, provide exceptional leadership of public health institutions, or contribute significantly to the training and accomplishments of the fields' future professionals. Dr. Peters was inducted into the Johns Hopkins Society of Scholars in 2004.

And I would like to invite a friend and colleague Bonnie Holmes-Gen from the Lung Association to come up and say you a few words about Dr. Peters at this time.

MS. HOLMES-GEN: Thank you, Chairman Nichols.

It's a great honor and a pleasure to make some comments on the importance of Dr. John Peters' life work and particularly the tremendous contribution of his land work research, the children's health study.

As Chairman Nichols stated, this study that was developed in collaboration with the Air Board changed the public health community's understanding of the harm caused by air pollution to growing lungs. And as the findings from the study rolled out over a ten-year period, there were many revelations that not only break new scientific ground that from my perspective became a wake-up call to the public and to policy makers.

The Lung Association was particularly fascinated with the findings about the link between air pollution and new onset asthma, in addition to exacerbation of asthma
from air pollution.

And this study was one of the early studies to directly measure traffic impacts and found children living near busy roadways to be at increased risk for asthma.

The media was paying very close attention to Dr. Peters' work. And I remember well when the headline came out in the L.A. Times, "Smog Harms Children's Lungs for Life, Study Finds. Eight Years of Research Yields the Most Definitive Evidence Yet That Dirty Air Stunts Lung Growth."

And I remember talking to Dr. Peters, and he specifically said, yes, we can say there is abnormal lung development in children. And this message sent legislators clambering to hold hearings and briefings to understand this new data and understand the critical importance of the state's investments in pollution control.

Dr. Peters and his colleagues work in conducting this children's health study, had a tremendous impact on the public health policy arena in California and at the national and international level. And his study findings have supported the development of stronger standards and regulations to protect public health, including the state and federal ambient air quality standards and new control measures to ratchet down on ozone and particle pollution.
His research has also been critical to public outreach and education efforts in communities around the state. And it's important to note that Dr. Peters was just not focused on his academic pursuits, but he really cares about the human impact of pollution on the communities he's interacted with and how pollution has affected their lives.

As was mentioned earlier, Dr. Peters had the foresight to nurture and develop a whole new generation of excellent investigators at the University of Southern California. And this is a tremendous contribution that we are all thankful for.

It's unfortunate that Dr. Peters could not be here with us today because of illness, but the American Lung Association would like to applaud his extraordinary contribution to research and public policy and to congratulate all the award winners. Thank you.

(Applause)

CHAIRPERSON NICHOLS: Thank you, Bonnie.

I will be presenting Dr. Peters' award to him personally at USC at a somewhat later date. His colleagues have arranged a small reception for him. So I'll be able to do that.

I'd also now at this time like to invite the awardees and their guests and the staff who have worked
with them to adjourn at their convenience to a small
reception that's been organized for them. I realize that
it's a little bit difficult to be jolly at the moment, but
the fact is that we do need to celebrate accomplishments
whenever we have the opportunity. And as soon as the
Board members have completed their work, I know many of us
will be over to join you as well.

So again I want to congratulate you. Thank you
all for having not only done the things you've done, but
done them in a way that endured the slings and arrows of
the public process. It's always a sacrifice of time and
sometimes of even seems like one's health to get involved
in these issues, but I think the results have been
extraordinary for California and for the country. And so
we want to thank all the award winners once again.

This will conclude this portion of the program,
unless any of the other Board members would like to add
anything.

BOARD MEMBER BERG: Congratulations.

BOARD MEMBER BALMES: I'd like to say one thing
about Dr. Peters. Since I was one of the physician
scientists that was nurtured by him at USC, it gives me
great pleasure to see him get this award, especially at
this stage of his life. And I don't want to say any more
than that, but to say he's a wonderful person who deeply
cares about people as well as doing science at the highest order.

CHAIRPERSON NICHOLS: We're now going to turn to an update on the issue of railroads and risks from locomotives and rail yards.

And I'd like to indicate at the outset that I believe there's at least one person who requested Spanish translation so if you could make that announcement that there is Spanish translation available.

(Thereupon the announcement was translated into Spanish.)

CHAIRPERSON NICHOLS: Okay. Today, staff is going to be providing an update on the events that have occurred since we met in September and directed our staff to return to the Board with specific recommendations on how to reduce the emissions and risks at the highest risk rail yards in California as expeditiously as possible.

I'm going to ask Mr. Goldstene to introduce this item.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

In September, the staff estimated that current ARB and U.S. EPA measures would reduce diesel PM emissions at the state's 18 major rail yards about 50 percent in 2015 and 65 percent by 2020. These significant reductions
are directly attributable to the actions this Board and
the U.S. EPA have taken in the last few years.

However, the health risks posed by rail yards is
high, and we need to do more. Our analysis shows that the
emissions from locomotives must be further reduced to
significantly reduce the emissions and risks at rail
yards. Unfortunately, we are preempted by federal law
from directly regulating the vast majority of these
locomotives. There are our measures that may have small
benefits, but as presented in September, these measures
typically are costly, not cost effective, or have
practical limitations to their implementation.

Based on staff's evaluation of potential
opportunities for further emission reductions, we
recommend pursuing a commitment by the railroads to
achieve additional reductions starting in 2010 and
continuing over the next ten to 13 years. The approach
would include an enforceable provision if the railroads
fail to meet their commitments. This provision would
direct ARB to adopt specified regulations and take other
appropriate action.

Working out the specifics of the proposed
approach will require holding discussions directly with
the railroads and other stakeholders. Pursuant to past
Board directives with agreements on railroads on
presenting this proposed process to the Board for your concurrence, the details it would need to be discussed include the rail yard specific reduction targets, the time frames for actions, and the enforceable provision. However, we are sufficiently optimistic that we propose to further develop this approach over the next few months and then return to the Board with a more fully developed recommendation.

I'll now ask Mr. Harold Holmes of the Stationary Source Division to make the staff presentation. Harold.

(Thereupon an overhead presentation was presented as follows.)

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Thank you, Mr. Goldstene. Good afternoon, Chairman Nichols and members of the Board. Today's presentation is an update on our efforts to reduce emissions and risks at high risk rail yards.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES:

As you may recall, at the September Board meeting, staff presented recommendations to further reduce emissions and risks from both locomotives and at rail yards. A particular emphasize was placed on locomotives because of their large contributions to both regional and rail yard NOx and PM emissions. In addition, staff discussed
emerging locomotive technologies that could further reduce locomotive emissions. Staff also highlighted the benefits provided by the existing ARB and U.S. EPA regulations and agreements.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Just to recap those benefits, the ARB has adopted a number of regulations that specifically reduce both locomotive and rail yard emissions. The ARB regulations include measures to require the best available emission control technology for drayage trucks, transport refrigeration units, and cargo handling equipment, as well as a requirement to use cleaner fuel with interstate locomotives.

The ARB also has two agreements with UP and BNSF that provides significant diesel PM and NOx emission reductions. These agreements require the cleanest Tier 2 locomotives as a fleet average in the South Coast air basin and requirements to install idling reduction devices on intrastate locomotives and the use of cleaner fuel for interstate locomotives operating in California.

In addition, the U.S. EPA approved regulations in 1998 and 2008 that provide significant locomotive NOx and PM emission reductions nationally and in California.

Finally, federal and state incentive funds have
and will continue to provide benefits in California. For example, the U.S. EPA recently awarded the Air Resources Board about $9 million that, together with funds provided by BNSF, will be used to repower 11 older BNSF switch locomotives in the South Coast air basin by September of this year.

As shown in the next slide, these actions have and will continue to reduce the emissions from locomotives and equipment operating in rail yards.

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UNIDENTIFIED SPEAKER: Excuse me, Chairman Nichols.

CHAIRMAN NICHOLS: Yes?

UNIDENTIFIED SPEAKER: It looks like the screen has a timer that shuts off right after five o'clock, and it takes about six to ten minutes before we can turn it back on.

CHAIRPERSON NICHOLS: So the presentation won't be visible.

EXECUTIVE OFFICER GOLDSTENE: Won't be visible to the people in the audience. You can see it on your screens.

CHAIRPERSON NICHOLS: I think you can just present it orally. That will be all right.

EXECUTIVE OFFICER GOLDSTENE: This is available
on our website.

CHAIRPERSON NICHOLS: Okay. And it can be shown on the screen there. We'll just make due then.

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Slide four then. There is a slide with significant diesel PM emission reductions, number four.

This slide shows the estimate rail yard diesel PM emission reductions from the existing U.S. EPA and ARB regulations on average, for the 18 major rail yards. As you can see, rail yard diesel PM emissions are estimated to decline rapidly by greater than 50 percent by 2015 and about 66 percent or about two-thirds by 2020.

It is important to note that the teal-colored boxes illustrate the significance of locomotive diesel PM emissions within the rail yards, which is that second large box across there.

On average, locomotives account for over 85 percent of total rail yard diesel PM emissions.

Admittedly, these levels can vary by rail yard but the impact is pretty consistent among all rail yards after 2015. However, even with this positive trend and progress, remaining diesel risks at rail yards are still too high and additional actions are warranted.

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In recognition of these significant remaining risks and considering the public comments provided at the September Board meeting, the Board directed staff to develop an approach for the railroads to prepare and implement risk reduction plans for the high risk rail yards.

A particular emphasis was placed on using the BNSF San Bernardino rail yard as a template for the other high risk rail yards. As part of this effort, the Board directed staff to investigate a potential enforcement provision that would trigger ARB regulatory action if the rail yard risk reduction approach was not effective.

Staff was also directed to coordinate with stakeholders in evaluating options and to report back to the Board with specific recommendations.

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

In response to this direction, the staff has sought input from key stakeholders in assessing possible approaches. To compliment this effort, staff collected additional technical information on selected high risk rail yards and including specifically the San Bernardino rail yard.

Staff also solicited input from stakeholders on possible enforceable provisions. And all of this was done in an effort to better inform the decision-making process.
ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Based on these discussions and our own analysis, staff has identified an approach that can accelerate and further reduce emissions and risk from high risk rail yards. The overall approach entails obtaining a written commitment from the rail yards to meet identified, rail-yard-specific reductions at specified intervals over the next decade.

As we clearly need to develop the details of this commitment approach through a stakeholder process, at this point in time, staff chose to advise the Board of the need to engage all stakeholders and seek the Board's concurrence with our approach prior to engaging in detailed discussions.

In general, staff believes that the commitments can be established through an exchange of letters between the Air Resources Board and the two affected rail yards. The first letter would be from ARB to the railroads setting forth ARB's expectations. The second letter would be from the railroads to ARB committing to meet those expectations.

The commitment letters, of course, would be developed through an open and transparent process. Following the exchange of the letters, the railroads would begin meeting the commitments.

The next series of slides will outline the
framework and the timing for implementing the staff's proposal.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES: A logical question is what measures might the railroads implement to meet these commitments. These commitments will likely be based on a performance standard approach. As shown in the slide and the next, there are a number of options available. This slide simply indicates that there are significant potential emission reductions that can be achieved by replacing, retrofitting, or remanufacturing locomotives.

Based on our analysis of the available data, the major benefits at the individual rail yards will come primarily from cleaning up the locomotives.

In general, ARB's ability to achieve these levels of emission reductions through a direct regulatory approach is very limited and primarily due to federal preemption issues. Thus, staff believes the commitment approach is the most viable strategy in obtaining the greatest levels of rail yard and locomotive emissions reductions and to achieve those reductions sooner.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES: In some cases, there may be additional benefits from other
measures. For example, operational measures, such as truck gate or maintenance facilities, could be evaluated to achieve emissions and risk reduction targets. The railroads could also evaluate and consider accelerated turnover of intermodal rail yard equipment such as cranes, yard hostlers, and drayage trucks and transport refrigeration units.

The rail yards could also consider alternative fuels, such as natural gas or electrification. And for classification rail yards with significant locomotive maintenance operations, the rail yards could evaluate and consider the use of stationary collection systems.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES: I would now like to summarize what we believe to be the key provisions.

Each of these provisions needs to be discussed further with all stakeholders prior to developing recommended provisions.

The first key provision is the number of high risk rail yards to be included. ARB staff analysis indicates that the initial focus should be on the following four rail yards: San Bernardino, Commerce, Hobart, and the ICTF rail yard located near the port of Long Beach.
These four rail yards would be followed by three others: Roseville, Barstow, and Oakland.

The next key provision is to identify the rail-yard-specific reduction targets. In addition to the numeric value of the target, there is work that needs to be done to establish the milestone years for those targets, the method for assessing compliance with the targets, and how growth is considered in determining compliance.

To ensure that there is an ongoing assessment of progress, there is a need for periodic analysis and reporting of emissions, risks, and compliance status. We would expect this to be done through a robust public process.

The last two measures on this slide are designed to keep ARB's feet to the fire. In particular, some stakeholders have expressed a strong desire to have an enforceable provision that would trigger ARB action to adopt regulatory measures within our authority or to take specified actions. ARB staff agrees that this is appropriate and is committed to seek such a provision.

The next slide lists possible actions that ARB could commit to take should the railroads fail to meet their commitments.
ENGINEERING EVALUATION SECTION MANAGER HOLMES:  A preliminary list of potential actions the ARB would take if the railroads fail to meet their commitments are:

Adopt regulations for non-preempted locomotives and impose a rail yard risk reduction program. We would also evaluate a series of other measures whose adoption is dependant on meeting ARB requirements for cost, cost effectiveness, and technical feasibility.

We would also pursue greater authority from new federal legislation or regulations. ARB staff does not expect these actions to be nearly as effective as the staff's proposal. And this assessment is based primarily on the need to reduce emissions from the large number of preempted locomotives to be able to also achieve significant reductions at the high risk rail yards.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES: If the Board concurs with staff's recommended approach, this particular slide highlights the next steps that staff would take.

First, staff would immediately begin discussing the specifics with key stakeholders with the objective of developing a draft commitment letter to the railroads that establishes ARB's expectations and then the railroads would prepare a letter of commitment response.
We would then release the draft commitment letters for public comment. Based on the public comments, staff would revise the letters and present the final commitment letters to the Board for concurrence. If the Board approves, we would exchange the commitment letters with the railroads, followed shortly by the release of detailed rail-yard-specific plans for meeting those commitments.

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ENGINEERING EVALUATION SECTION MANAGER HOLMES:

This slide presents the staff's proposed timing. As you can see, the schedule is tight given the scope and the level of details for the specific provisions that would need to be addressed.

However, staff is confident that we can develop the appropriate commitments and return to the Board at the April or May Board meeting.

There are a number of benefits to the staff's proposal. First, this approach would achieve significantly greater emissions reductions than the existing measures. For example, we expect about a 40 percent additional reduction in the risk at the San Bernardino rail yard over the benefits from existing measures. This difference in benefits is largely attributable to the fact that the commitments would cover
both preempted and non-preempted locomotives. In addition, this approach can be implemented fairly quickly. Also this approach facilitates dialogue between the railroads and local communities.

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Based on the benefits, staff recommends that the Board support the approach of pursuing commitments from the railroads to further reduce emissions and risks at high risk rail yards.

We recommend that the Board direct staff to initiate detailed discussions of the key provisions of the commitment letters with interested stakeholders, also to hold public meetings to provide opportunities for broad public comment, and then return to the Board in April/May time frame with the final commitment letters for Board concurrence.

That concludes the staff presentation. I would be glad to answer any questions.

CHAIRPERSON NICHOLS: Would Board members like to ask questions now or wait until we've heard testimony?

Oh, just one.

BOARD MEMBER LOVERIDGE: This is not a question, but really of quorum and ability to stay with this item. And I think it makes a difference as we invite people to
testify what quorum boundaries we face. I would ask the
Board members when they need to leave.

CHAIRPERSON NICHOLS: Charlyn has informed we
will lose a quorum at 6:30. So I think she had already
polled the group.

EXECUTIVE OFFICER GOLDSTENE: Some might leave
sooner. Supervisor Roberts, what time do you think you
need to leave?

BOARD MEMBER ROBERTS: I'll be leaving at 6:00.

CHAIRPERSON NICHOLS: At 6:00.

BOARD MEMBER LOVERIDGE: I only make this point,
because there are 33 people listed to speak. When 33
people finish speaking, there will no longer be a quorum
on the Board.

CHAIRPERSON NICHOLS: Well, and I think this is
an issue really for the community people who have taken
the time and trouble and expenses to come and appear
before us. I know they are anxious to be heard. I know
they're also anxious for there to be progress, and I don't
want us to do anything that slows down movement. I know
everyone is impatient. I'm certainly impatient to get
moving on the next phase of this activity. And we do need
to hear from people.

There are a number of organizations that have
two, three, or more people all planning to speak. I mean,
one solution would be to just call for one from each organization. Another would be to do a one-minute rule. I think we can ask you to caucus if you'd like and take a minute to decide what you want to do.

UNIDENTIFIED SPEAKER: We came a long way. We want our three minutes.

CHAIRPERSON NICHOLS: There won't be anyone listening if we all take the time.

BOARD MEMBER LOVERIDGE: If we all take three minutes, there will not be a quorum and no action can be taken.

CHAIRPERSON NICHOLS: There's no explicit action required on this item. The staff is seeking direction and guidance, but it's not actually a resolution item.

So I can stay, since I'm not going anywhere. I'm happy to stay until the end. So we have a couple of Board members who will stay and listen to all the testimony.

But just be aware that we won't be able to take any formal action, but we can give direction. Those of us who are here are always good at giving direction, speaking for myself.

BOARD MEMBER RIORDAN: And I think that, Madam Chair, let's begin with some of the community members and see how well we do. We can offer some comments.

I'm one of those who has to leave early. So I'd
be interested and I'd like to hear from the community as much as I can before I leave.

CHAIRPERSON NICHOLS: All right. Well, let's do that. The very first person on our list was a person who asked for a translation service, so let's start with her.

Maria Birrueta, please come forward.

And then the next witness after that would be Graciela Larios. I think you all can see the list. I'm going to take Ms. Riordan's advise and call community group members first.

MS. BIRRUETA: Good afternoon. My name is Maria Birrueta. I'm from the west side of San Bernardino.

And I belong to CCAEJ. And as you can see, we are wearing black. And this is a way to show you how that we are not in agreement and also to call your attention to that our community is highly contaminated, highly polluted. We're experiencing a very high level of pollution. And you already know this and you already know that we occupy the fourth place in the entire world, number four in terms of pollution.

And this is something that impacts me extraordinarily, because people are dying of cancer in my community. There are children that are born premature. There are a lot of illnesses due to the pollution. And you know this. And what are you doing about this? What
is being done?

So we want solutions; we don't want any more extensions because we are all guilty that people are dying. And we're accomplices. And more than anything else, the people who have a political post because the people who cause this pollution do not apply -- the laws don't apply. That's why I'm wearing black, because my community is in mourning. Always in mourning. And we want action. We want action now. We want strict laws applied. We want restrictions from you to those companies that are murdering people. Because we vote and you have the right and the responsibility to respect us. You need -- you're responsible to respect, because we have a right to breathe fresh air.

Thank you very much.

CHAIRPERSON NICHOLS: All right. We will next hear from number five, Ms. Larios.

MS. LARIOS: Hello. My name is Graciela Larios. I work with the Center for Community Action Environmental Justice. I'm a community organizer and working in the west side of San Bernardino.

And we've seen on previous mitigation plans for the railroad system has shown to be inadequate. And the proof we show is that it only takes a few seconds, if not minutes, to notice how bad the air quality is in the west
side of San Bernardino.

A solution: We need rules. We need regulations enforced. We need less talk and more action now. If you need to monitor and measure more, simply go door to door and talk to the people, and they'll surely tell you how bad the air has gotten throughout the years.

So basically I'm just asking you short and sweet, we have no more time to spare and waste. And unfortunately some of us or some others it's too late for them. So time is valuable.

And thank you so much for your time.

CHAIRPERSON NICHOLS: Okay. Ms. Gendreav. You can come up in order here.

MS. GENDREAV: Of course. Thank you.

My name is Megs Gendreav. I'm actually a Ph.D. candidate from U.C. Riverside. I'm appearing here currently today because I've been interning and doing dissertation research with the Community Center for Action and Environmental Justice.

Now, the focus of my research has been in the San Bernardino area, the west side of San Bernardino around BNSF rail yard. And we've seen a lot of data come out in the past couple years, but you don't need to look at those health risk reports to see what's going on in this community. It's visible to the eye when you walk into
this community. People everywhere have stories of
neighbors and family members, loved ones, people they work
with who have died of cancer in the past few years. You
see little kids who need inhalers, right.

I had the first little boy who came to my house
this year for Halloween opened up his bag and he had an
enormous inhaler in it. It's like, come on. This kid is
going out to celebrate Halloween and get candy, and he
can't even go out without having to worry about being able
to breathe.

So like my colleagues, I'd like to ask that you
implement regulatory measures now. Don't wait for the
railroads to agree with you. Don't wait for them to
commit to things on letter. Create mitigative strategies
that are actually health protective and create them now.
The community needs it.

Thanks very much.

MS. BETANCOURT: Good afternoon, Board members.

My name is Sylvia Betancourt, and I work with the
Center for Community Action and Environmental Justice.

We've waited long enough. Many of you Board
members are familiar with my testimony. I come from a
community that is highly impacted. I work in two
communities that are highly impacted.

We've tried multiple routes to address the
problem of air pollution from the railroad industry. We've tried MOUs. We've tried community-driven legislation. And what has it gotten us? We aren't any closer to finding any relief to what people are suffering in our communities. And it's time now to take action. In fact, I can count back, and we are beyond the 120 days that this Board directed to its staff to come back with some real solutions for our communities.

Moving beyond that date is an affront to this Board. It's an affront to our communities that are impacted by the activities from rail.

When I was -- I think as well, I was taken aback by how late it came, how late the proposal by the staff was presented to the public. It was something that was finished just today. And I think that that's a reflection of how little priority there has been on this issue. And I really want to point out how just looking at it, it doesn't have any teeth. It's vague. It's too vague, and there aren't any real enforcement measures within it. In fact, I ask, where's the CEQA review? Are there any alternatives that were considered?

What our community needs is real commitments by this Board. This Board has the authority and the duty to protect the air and to protect these communities. It's an air pollution issue. It's an air pollution issue caused
by a railroad industry that has not come to the table voluntarily. What makes us think they're going to commit to voluntary agreements if they haven't in the last twelve years? We have very little faith that at this point the railroad industry will comply with agreements that are vague. What we need are real measurable outcomes for our communities. What we need is strong regulation.

Thank you for your time today.

CHAIRPERSON NICHOLS: Josie Gaytan.

MS. GAYTON: Good afternoon. My name is Josie Gayton, and I live in Riverside. And I'm a community organizer in west side San Bernardino.

I was just coming here to ask the Board or to tell the Board if they could help us, because I've worked at the school district for 23 years, and I've seen these kids at the beginning. Twenty years ago, kids were coming out and playing in the yard and they would come out -- two and three kids would come out with the inhalers. And now we go out there and we have to carry a box to go out there and do their PE. It's very sad.

We just urge the Board to publicly step forward and defend our communities. This can be effected by requiring the BNSF to take immediate steps to existing conditions that pose health risks to the neighbors. They are not doing nothing for neighbors. We just keep hearing
they're going to do more meetings and do more studies and
we promise you this and we promise you that. They're not
doing anything. We have to force them to do something.
We are here telling you guys we are dying in our
communities. And we are saying we need something done
today. Can't wait any more. Thank you.

CHAIRPERSON NICHOLS: Rudy Flores.

MR. FLORES: Thank you, ladies and gentlemen.
My name is Rudi Flores, and I'm from San
Bernardino, specifically the west side.
I'm a cancer survivor. And I'm a borderline COPD
patient.

On the west side, we have over 3300 in a million
dying from cancer. As the lady before me had stated,
fourth in the world in pollution.

There's been too much foot dragging going on in
12 years. There's no excuse for that. Absolutely not.
It's unconscionable. If we were asking for justice, it's
not coming. We haven't seen it. We're asking you now.
We're asking you now, not 12 years ago. We're asking you
now. Twelve years is a little too long to go on. We have
a body count. Maybe that's what it will take to get up
here to make you understand it has to be now.

I have for you here the petition of the people
that live on west side. There's over a thousand in here.
Also in this is a copy of the Sorell report, and this should be aired like dirty laundry on corporations, because these corporations use the Sorell report on who to dump on. And we are being dumped on.

The only thing that's really going to make any difference is a complete moratorium on diesel-burning fuels in this country. That's the only answer. The only one. The only one.

We're asking you to take some action. And all of us here who are in support of stronger regulations on the rail yards, I'm going to ask my friends here to stand up. Is that clear enough for you?

Thank you.

MS. KNOTT: Good evening, Board members. I've spoken with a few of you. And as you may know, I grew up right next to the Los Angeles Union Pacific Rail Yard.

Initially, the view was a yard full of containers, and now it's a facility that houses a maintenance facility for the UP yard.

Our communities know how quickly changes can be made in the rail yards and how not having to conform to agreements might -- they might change the structure of their yards.

Therefore, I, my family, my friends, we ask you
to adopt regulations that would make the air in our communities cleaner. CARB needs to adopt regulations that will force rail yards to comply rather than having voluntary program that they may or may not follow.

In order to ensure that our communities are protected and to prevent their communities from having burdens placed on them, we ask you that you give direction to the staff and to ask them to enforce regulation to bring a plan that is meaningful to these communities.

Thinking back in 2005, we weren't part of an agreement that was made with the rail yards. And we want the opportunity to voice our opinion and voice the needs that these communities need.

So once again, we ask you to give direction to staff and move forward with regulation.

Thank you.

MR. MERIN: Good afternoon, ladies and gentlemen of the Board.

I'm here representing a community that is asking for -- from this Board that would demand the BNSF company to regulate the regulations that the state of California has required of other companies regarding diesel fuel motors, engines.

This community, which is made up of Latin American people, and who live around the yard in the City
of Commerce, we are worried because of pollution left behind by heavy machinery left with working with diesel engines, which they use to move the containers.

One example of this is the company has in this yard more than 100 trucks that use diesel engines and they use these trucks to move the containers. The cranes also are operated with diesel fuel, the locomotives, of course. And if we were to add to this all the owner-operator trucks and driver trucks that bring the cargo from the Long Beach Harbor to Los Angeles.

This is why this community is asking from you that you require that the machinery be replaced that they no longer use diesel operated machinery. They should use new technology like natural gas, electricity.

I want to thank the lady who is patient enough to listen to us. And that's all. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

I think it's Angelo Logan.

MR. LOGAN: Hello, Madam Chair. I would like to ask permission to swap my time with Gideon Kracov.

CHAIRPERSON NICHOLS: Sure.

(Thereupon an overhead presentation was presented as follows.)

MR. KRACOV: We have a very brief PowerPoint.

Good afternoon, Chairman Nichols and Board
members. My name is Gideon Kracov, for East Yard Communities. I'd like to speak to two points. The first is the legal background and history that brings us here today. And secondly, to provide a framework for your decision making that shows that this Board is ready and able to take action today.

Next slide.

--o0o--

MR. KRACOV: The California Health and Safety Code gives ARB the duty to adopt rules for non-preempted mobile sources, including locomotives. This is the Board's charge. Thus, ARB SIPS include locomotive reduction targets and concede that additional mitigation is needed.

In 2007, environmental groups filed a petition for rulemaking challenging the 2005 MOU and failure to adopt new regulations.

Last January, ARB granted a petition in part. Mr. Goldstene confirmed that every feasible effort is needed and that staff would undergo technical analysis and present a plan.

Staff did so and in its August options report determined numerous measures are both economically and technologically feasible. Then legal staff concluded that many -- not all, but many measures likely are not
preempted. For example, hundreds of the dirtiest switcher
and medium horsepower locomotives may be regulated
including numerous site-specific measures.

Then in September of 2009, after a thorough
hearing, this Board declined the incentive-only approach.
It directed staff to present specific plan for risk
reduction and a regulatory backdrop.

Next slide.

--o0o--

MR. KRACOV: Now here's some governing legal
principles for approaching the issue today.

First, your Board has the authority and a sound
legal basis to take action. I don't think your staff
disagrees, because the record for the past two years
identifies control measures that are feasible, cost
effective, and likely not preempted. And that is
consistent with this Board's charge.

Second, ARB's actions are required to be clear
and implementable, quantifiable, and enforceable.

Third, the Board heard this issue exhaustively
last September and made directives. Let's not rehash and
lose progress. Now is the time for detailed commitments.
The Board's directive focused on health risk reduction for
rail yards and a regulatory backstop. This should include
specific measures, such as monitoring and a time line for
compliance.

Now, an exchange of letters alone with uncertain
details is not sufficient. Enforcement is key. And the
Board must act formally by motion or resolution to be
convincing and accountable to the public.

In summary, let's make progress today. The
railroads can seize this opportunity to invest in rather
than continuing to fight these improvements. The
sustainability our goods movement industry depends on it.

Thank you very much.

CHAIRPERSON NICHOLS: Okay.

MS. RAMIREZ: Good afternoon or evening. I was
prepared to say good morning. It's been a while.

My name is Isella Ramirez. I'm here with East
Yards Community for Environmental Justice. I grew up in
the city of Commerce where all my family lives and where I
work.

I'm here today to urge the Board and the staff to
stop talking and start fighting, and I'll provide a short
anecdote for some context.

So there is a group of family and close friends
that was having dinner at the table. And the table was
filled with chatter, until suddenly the youngest party
member stood up and decided to speak up. "Stop talking.
Let's fight," the little boy cried. I can only assume the
boy had grown frustrated with the mindless chatter of his adult family members and friends. And today, I am this young boy. I'm here to demand that this Board and this staff stop talking and start taking some real action. It is very concerning that ARB staff intends to fall back on the usual voluntary agreements with the railroads. I believe that the Board was very clear that you were looking for a strategic plan that would include a regulatory approach at the September hearing. And yet, judging from the freshly available staff presentation, it seems that six months and then some was just enough time for staff to vacation and develop a very vague 15-slide PowerPoint presentation. Furthermore, it is very concerning that staff believes that continuing to be pen pals with the railroads will result in fruitful dialogue between community members and the railroads. I've been to these so-called public meetings between ARB and the railroads and the community. And believe me, they're not productive, and it's not a real conversation.

Given the fact that your own HRAs reported that studies at the study rail yards alone released 210 tons of diesel pollution a year, putting over three million Californians at an elevated risk of cancer, we cannot
afford to continue talking. We need to start fighting.

The staff's technical options report details 37 different options that can become regulations. And staff should be directed to explore their own document and stop relying on vague industry-friendly agreements.

To close, I'd would like to remind you that the impacted communities are that small boy in the midst of your mindless chatter. Again, stop talking. Start fighting. Stop talking about your concerns for our health and start fighting. Start fighting to make sure that two of the wealthiest corporations in the world become responsible businesses and respectful neighbors.

Start fighting to push yourself and your staff to develop real, meaningful, health-protective regulations that truly hold the polluters accountable for their actions.

And finally start fighting on behalf of the communities that you all aim to protect. Please direct your staff to remove the "if" on slide 11 and get busy on developing regulation and implementation.

Thank you.

CHAIRPERSON NICHOLS: Staff, would you please put up the slide that's on page 4 of your presentation? I want you to keep that up there.

I want to ask you to look at this slide. And if
you don't believe it, because you think the data are wrong or you think the regulations aren't real or you think that something else is erroneous about it, then tell me.

But I have to respectfully ask the members of the community who are here, you are all organized. You're all activated and upset, but something is going on out there. And it started in 2005, according to this slide. And it's continuing on a downward slope.

Now, maybe it's not as much as you want. But I just have to reject -- I just have to reject the conclusion that nothing is happening. I think it hurts your credibility if you tell me that there's nothing going on here that's causing reductions in the levels of pollution here based on these slides. I mean, unless you have a factual basis for that disagreement.

Okay. I'm going to continue to listen. Thank you.

MS. SANTANA: Good evening, Chair Nichols and members of the Board.

I guess I'll just begin by saying this is just me. I live in Commerce, and I can only tell you what I experience. And so I don't know about numbers and data. I just know what I go through on a daily basis and what my family goes through.

So, Chair Nichols, earlier this morning you
stated we are a powerful regulatory agency. I believe that to be true. This Board has the power to choose life over big business.

I testified at the last Board meeting in September, and I asked you to consider the health and well-being of my beautiful nieces and countless other children in my community and across the state who deserve the clean air and a healthy life and who are also unable to come up here to speak for themselves.

Three years have passed since the last HRA on the 18 rail yards in California. Four months have passed since the last Board meeting.

So just the question is how much longer do we have to breathe in the toxic air before you finally decide to take some strong, strong action?

The railroads are operating from a business perspective. Their bottom line, regardless of any agreements or concessions they make is profit.

I'm here to ask that you stay true to the mission of this Board and assume your powerful regulatory role that you profess and make our health your bottom line.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. MATA: Hello. My name is Nathan Mata. I'm
here with East Yard Communities for Environmental Justice.

And I'm here today because after living in Commerce for most of my life, I've seen nothing change in the rail yards. And I'm sure -- well, I guess I'm wrong, but I was going to say you've seen it as well.

Even though you have the authority to, you know, change it and actually implement laws, I'm not seeing much be done. And it's sad that, you know, this is like the most important thing to me, and it's like the last thing on your agenda. And we came an eight-hour drive. And you're getting mad at us, because we feel nothing is being done.

And it's obvious to us that the rail yards don't care about us, because, you know, they're not really doing much either. They're just creating other projects and like other cities and saying they're going green, but they're complaining about fixing up the rail yards they already have.

So I'm here today to tell you to do your jobs and actually protect our health. Thank you.

CHAIRPERSON NICHOLS: Maria Reyes.

MS. REYES: Good afternoon. My name is Maria Reyes.

I'm a very happy to see the statistics that you're showing that pollution has gone down. But then
there must be something left to do, because there are damages.

I represent the Long Beach Alliance for Children Suffering from Asthma. And I know that in my community, they want to expand the railroad yards. And at this time, we have been very, very impacted by pollution. This area would be extremely hurt, because close to the railroads there are four schools and the students. And I see emergency situations almost of day. And most of them, their health is not in very good shape. Most of them suffer from asthma. And for this reason, I'm asking for real regulations, strict regulations, and that people comply with them before other projects start underway, projects that may hurt both the environment and our health.

And I'm also requesting more information for the community, and I would like to see a green project in my community and clean air.

Thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

I believe the next is Anna Arridla.

MS. ARRIDLA: Good evening. My name is Anna Arridla. I'm here from the East Yard Communities for the Environmental Justice.

If we're here late, it's because you changed your
agenda and put us late. It's not our fault.

We are here to discuss the subject of the Air
Resource Board responsibility.

Somewhere I read that the Board shall adopt and
implement control measures that are necessary, cost
effective, technology -- I can say the word -- because
I'm angry, that's way.

CHAIRPERSON NICHOLS: I'm sorry. Please, we're
here to listen, and we're sitting here listening.

MS. ARRIDLA: In heavy motor vehicles, utility
engines in locomotives unless preempted by the federal
law.

We are tired of the talk, talk, and no action.

The state has the authority and duty to regulate rail
yards in California. This Board represents the state of
California. We need rules and regulations to control the
toxic air contaminations that are produced in the rail
yards.

We cannot wait to the slow process you are
putting us through. People are dying. You don't
understand that. We need them now.

While the Board members sit here and talk and
talk, the toxic air contaminant our killing children,
citizens. The toxic air is producing asthma, cancers, and
other diseases. Our children are being sacrificed, are
being killed so that the railroad can make money.

Illnesses are destroying our lives, our communities.

The railroad has been conducting business since the wild west days. These days are over, and we are in the 21st century. The world has changed. But the railroad runs their business as if they were in the 18th century. The railroad has not changed. And it's job of this Board is to make rules and regulations to make them change. I know it's a big job. It takes guts to do it. And nobody has them.

We are tired. We cannot wait. The railroad and us have to share this earth, and you have to provide the environment where both of us can survive. They can make their money and we can breathe clean air. The Board must make the rules, regulations, and enforce them. And that is a big job. You're putting us against a wall. And about the only thing left for us to do is change the Board.

Thank you.

MS. VIVAR: Good evening, Chairman Nichols and Board members.

I submitted a letter that hopefully you have in front of you, but I'm going to read part of it for your reference.

"We, the undersigned public health and
environmental justice organizations ask you to exercise your authority in protecting the public health of California communities by taking enforceable steps to reduce emissions and health risks from rail yards and locomotives.

"Several of us previously filed a petition for rulemaking seeking enforceable regulations for California rail yards and locomotives. On January 20th of 2009, Executive Officer Goldstene granted the petition for rulemaking in part.

"Air toxic emissions from California rail yards and locomotives present a significant concern. Over three million Californians are exposed by rail yard sources to excess cancer risk from more than ten in one million. The California Air Resources Board insists that every feasible effort is needed to reduce localized risk in communities adjacent to the states rail yards. Under state law, the Board stall adopt and implement control measures that are necessary, cost effective, and technologically feasible for mobile goods movements sources. Yet, the Board has not directly regulated California or locomotives; instead, favoring controversial contractual agreements with railroads or MOUs.

"Therefore, the petition for rulemaking was filed to compel Board action. In light of the granting the
petition for rulemaking, several hearings including the September 2009, were held to consider recommendations to implement further locomotive and rail yard emission reductions."

As you can tell, a lot of us came to that meeting.

"And CARB staff agrees that ARB has the legal authority to regulate rail yards in California because they are significant sources of pollution in the area and region. However, staff has made a judgment call to use voluntary agreements to avoid litigation. This is inconsistent with CARB actions to curb diesel emission from trucks, off-road equipment, and marine vessels, all of which have triggered legal action.

"CARB has been willing to go to court to protect these very important diesel regulations, and these residents living near rail yards deserve to be protected with the same if not more vigor.

So, in September, you heard -- you remember the motion that you gave, but unfortunately rail yard related activity is having negative impacts on air quality and public health. Adjacent communities primarily consisting of large populations of low-income minority bear the disproportionate burden of such activities. So we urge you to please take these recommendations that they're
giving you and use enforceable measures to make sure that
they happen."

Thank you.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER RIORDAN: Madam Chairman, while the
next person is coming up, may I make a brief comment?

Because I'm one of those who needs to leave.

I think it was important that you asked for the
slide four to be put up, because we do see progress. It
may not be as quickly as everyone would like, but there is
progress. And there's steady progress. It's not
something that happened and then went away. But it's
steady progress, and it will continue to compound and be
even greater.

Slide number three is important, too, and it
shows what we have been able to do with the combination of
regulations, railroad/ARB agreements, and standards
established by EPA.

I think based on what I have experienced in the
process -- and remember, I was here with the first
agreement, second agreement, and now looking at the third
step.

I'm still, based on what staff has provided me in
terms of information, committed to working with an
agreement with some sort of a backstop, if necessary. But
I think we can achieve far greater good at each of these yards if we proceed in the same fashion, because we want to regulate things that we can't except by a mutual consent between the ARB and the railroads.

So, Madam Chair, I realize I won't be here, but I just wanted to have you know how I felt about the staff recommendation, which is at this point in time support.

Also, to the community, there are many opportunities to interact through public meetings, public hearings. This is going to be fully in the open. So your input is very valuable.

I had made to some of the community members that I spoke to earlier a commitment to continue to work with them. And I pledge that now. And I thank you.

And thank you for understanding that I need to be on a plane.

CHAIRPERSON NICHOLS: Understood. Thank you.

Did you have any other comments at this point?

Okay. We will carry on. Thanks so much for your hard work today.

Who is next? Here.

MS. CARRILLO: Chairman Nichols, my name -- my voice is very bad. My name is Sofia Carrillo. I live in Wilmington. I'm organizer for Coalition for a Safe Environment.
THE INTERPRETER: She asked me to support her because of her respiratory problems.

CHAIRPERSON NICHOLS: Understood.

THE INTERPRETER: The Coalition for a Safe Environment wishes to request that the Air Resources Board adopt measures that reduce toxic air emission to insignificant that prevent public health impacts and including enforceable compliance requirements.

Coalition for a Safe Environment would like to request the following recommendations be included in adopted measures: The prohibition of maintenance facilities within 1,500 feet of fence line residents; conduct a health risk assessment of VOC emissions of the ambient leakage of VOCs from locomotive trains, from the incomplete burning of diesel fuel, fuel storage tanks, and ground contamination.

Benzene is a VOC of diesel fuel which can cause leukaemia, lymphoma, myeloma, and anemia. Yet, there is no reference to any study of public health impacts of these toxic chemicals.

Require a comprehensive health impact assessment in addition to an HRA in order to determine all the public health impacts of rail yards and train routes.

The Los Angeles County Department of Public Health and U.S. EPA Region 9 both support the use of HIAs.
Require the installation of air purification systems in residents' homes, public schools, senior citizen housing, and all sensitive receptors within 150 feet. Require the railroad industry to establish a public health care trust fund to mitigate its public health impacts.

Require the railroad industry to pay for the relocation of residents who wish to move but cannot afford to move.

MS. ARRIDLA: And, in February 23rd, I got a surgery on my breast and my back. (Inaudible) I don't have history to cancer. To me, it's what's very important is stay here. Listen, we don't hear more words. We need action. Please.

Thank you.

CHAIRPERSON NICHOLS: I believe that Shankar Prasad -- oh, there you are. Okay. Welcome back. I received a report, an update on Mike Walsh. I can tell everybody that he is doing very well. He's alert and talking. They don't seem to find anything other than exhaustion from his recent incredible travel pace, which was even worse than normal. They're going to keep him under observation for a while, but he was talking and appeared to feel fine just a short bit ago. Very good.

(Applause)
MR. PRASAD: That's very good news.

Good evening, Chairman Nichols and members of the Board. It's always a pleasure to come before you and have a word in expressing our views and positions.

In addition to myself, on behalf of -- my name is Shankar Prasad from Coalition for Clean Air. And I'm also speaking on behalf of American Lung Association and Union of Concerned Scientists.

People look up to you, as many of the awardees noted, across the world for the actions you take because you have shown the leadership and the approaches.

In same regard, we urge you all to consider showing your leadership by, if you're proceeding with an MOU agreement, please make sure that simultaneously and in a parallel process develop those backstop regulations along with the districts also included in the same process.

We also urge you to direct the staff to show some data as to how the two approaches would differ that would give the benefit for us to know why one method is preferred over the other, what steps can be taken are for the lack of backstop regulations, what additional benefit you are really getting through the MOU approach.

We also urge you to consider a fee mechanism to provide incentives as matching funds for further emission
reductions.

Thank you.

CHAIRPERSON NICHOLS: Thank you. That's a very constructive suggestion.

Now Angelo.

MR. LOGAN: Thank you, Madam Chair and members of the Board.

Angelo Logan with East Yard Communities for Environmental Justice.

And so the recommendations that are before you today are basically a proposal to go into a negotiation process. This negotiation process is to reach voluntary agreement. A process without certainty that the actions within the agreement will be acceptable are that even that at the end of this four-month process that an agreement will be reached between the two parties, that of the ARB and the rail yards.

This basic concept has been the idea for addressing the unacceptable high cancer risk in these rail yards that were identified after the health risk assessment in 2007. That's been three years ago. And I think that this is the reason that you feel the sense of frustration from the community. We've gone for three years knowing there is unacceptably high cancer risk at these rail yards. And to go into another negotiating
process with no certainty is very frustrating. And, honestly, we just don't have faith that we're going to reach an agreement that's acceptable.

In terms -- is that my time?

CHAIRPERSON NICHOLS: I think it is, but I think you can continue.

MR. LOGAN: In terms of the charts and whatnot, they're very complicated. As you know, we can put a chart up and it's very deceiving. We're not saying -- I don't think anyone is saying there's been no progress. But in terms of this situation, it is a crisis situation, and we need to leave no stone unturned to achieve health protective measures for the communities. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Daniel Mata, Bonnie Holmes-Gen, and I believe that concludes the community witness, so we'll then give the railroads a chance to speak.

Shankar, were you speaking for Bonnie also?

Okay.

MR. MATA: Good evening, members of the Board. I come from the city of Commerce from the East Yard Group and also representing the city of Commerce where I lived for 15 years and where my children have grown up. And I don't want in the future that they should suffer
from cancer. So I'm asking you please do something right now.

Thank you.

CHAIRPERSON NICHOLS: Okay. That was the end of the testimony of the witnesses.

And in light of the fact that we asked for the citizens to go first and the government people are going to wait until the very end, I thought we would hear from the railroads next.

MS. WHEELIS: Madam Chairman, members of the Board, my name is Darcy Wheelis with the Association of American Railroads. I'm speaking today for Mark Stehly of BNSF railway. He was not able to stay today.

I'd like to recap some progress BNSF has made in reducing emissions at their operations since September when we were last before you.

First, the implementation of the fleet average agreement has had a significant impact on the type of locomotives currently operating in the South Coast. BNSF is not running any Tier 0 line haul locomotives in the basin. All the units are now Tier 1 or Tier 2, and all of them purchased since 2003. Virtually every BNSF switch engine is Tier 0 or better.

And as staff mentioned in their report, $10 million in Dara funding will go to the purchase of eleven
ultra-low emitting switch locomotives; six will go to
commerce, three will go to San Bernardino and three to
Watson. And as you know, those locomotives reduce
emissions by 80 and 90 percent when compared to older
locomotives that we will replace. And those will go into
service later this year.

BNSF is also working with the city of San
Bernardino and SANBAG helping them to implement their
grants for more LNG drayage trucks in that city. Just
last week, Mark Stehly had a meeting with the mayor of San
Bernardino to try to move that project forward.

BNSF supports staff's proposal and is optimistic
that we can work with your staff and other stakeholders to
quickly fashion a comprehensive plan that will achieve
substantial emission reductions from these two yards in
the 2020 to 2023 time frame. And these reductions will be
faster and greater than any reductions that can be
achieved by regulatory path.

Thank you.

CHAIRPERSON NICHOLS: Okay.

MS. VALDEZ: Good evening, Chair Nichols and
members of the ARB Board.

My name is Lupe Valdez, and I serve as Director
of Public Affairs for Union Pacific Railroad.

Previously, I served as a DEO for the South Coast
AQMD, as well as Public Affairs Administrator for Metro Link in southern California.

We support the staff's proposal for a commitment approach to reduce emissions at Commerce and the ICTF by about 85 percent between the years 2020 and 2023 time frame. We expect that new inventories at all these yards will be completed within weeks, which will form the basis for our reduction plan.

In Commerce, we have had reductions with repowered equipment and equipment that has added emission controls on things like cranes, forklifts, and something called cone trucks.

For ICTA, we are awaiting a draft EIR to be released sometime early this summer for our modernization that aims at reducing emissions as well as modernizing that facility.

UP has committed to improve the environmental performance of our locomotive fleet and of our rail yard operations. We are open to discuss any ideas from residents that will reduce emissions and risk, are safe and feasible and comply with federal laws.

And with that, I say thank you. And thank you for giving me this opportunity to speak. If you have any questions, feel free to ask.

CHAIRPERSON NICHOLS: I would appreciate if you
will stick around in case we have questions when we go forward.

Mike Barr.

MR. BARR: Thank you, Madam Chair and Board members.

My name is Mike Barr, and I represent the Association of American Railroads. Over the last decade, the ARB has used regulation and resolutions and studies and agreements to reduce emissions from locomotives and rail yards in California. ARB regulation of equipment, like TRUs, and early compliance by the railroads has achieved substantial additional and early reductions.

Enforceable ARB agreements have avoided the preemptions issues that we were talking about and achieved many more reductions earlier than additional regulation.

Some stakeholders are now urging ARB to adopt more regulation aimed at rail yards, but federal law preempts most state and local regulation of railroads facilities in rail yards, including regulation of most locomotives operating at rail yards.

As an alternative, the railroads are willing to make new commitments to reduce emissions at specific rail yards of greatest concern.

This commitment approach will achieve greater emission reductions earlier and more reliably than more
regulation, as explained by your staff in detail. We believe this approach will produce clear and detailed and quantified and additional and enforceable and early commitments which the railroads will fully perform on schedule as they performed in the past.

Thank you.

BOARD MEMBER BALMES: Can I ask a question?

CHAIRPERSON NICHOLS: Yes. Before you do, I think Mayor Loveridge needs to say something, because he's going to have to leave for a plane also.

BOARD MEMBER LOVERIDGE: Just several points. First to acknowledge those who drove here, it's a long day, a long drive. One of the things you value in politics is people going with their feet and testimony is important.

One first point is more than 120 days have passed. I guess we are now into six months of September, and one is a little disappointed that we didn't have this kind of a hearing earlier.

When we talk about risk, it struck me we weren't talking about what's happening in 18 yards. We're talking what's happening in the high risk yard, particularly San Bernardino, which had a risk which was much greater than any other yard.

So it's not an abstraction. There's a kind of
urgency. You heard that from the statements of people who
live in and around the yards.

Third point, I do think we need to figure out how
to measure this stuff. So it isn't simply one risk
measurement at a period. There needs to be some sort
of -- I'm not sure the cost of how you do this, but I
think you need to do this and see what progress or more
progress is needed.

I guess my own position is we need to have the
best way to make a difference sooner rather than later.
This is not something we want to wait until 2020 or 2030.
It seems to me the risk that we saw requires us to act
sooner rather than -- sooner rather than later.

I do think the kind of agreements we talked about
need to be matched by backstop rules and in tandem with
something Mary Nichols has talked about.

When I first got into thinking about goods
movement, I remembered the kind of call for cleaner air
and faster freight. It does seem to me we need to figure
out how to get these to work in tandem so we see rail
traffic and communities in this context of faster freight
and cleaner air.

And, finally, just for San Bernardino, beyond the
commitment of CARB, I think we need to invite the
commitment of South Coast, county of San Bernardino, city
of San Bernardino. You certainly have mine. The private
sector needs to be involved.

The risk numbers for San Bernardino are so
unacceptable that it requires all of us to not simply
express concern, but to demonstrate through actions. So
you certainly have my best efforts. I look forward to
measurements that show the progress I think we can make
together.

CHAIRPERSON NICHOLS: Thank you.

Yes, John. Sorry.

BOARD MEMBER BALMES: I have a question for Mr. Barr.

So, Mr. Barr, you mentioned yard-specific
measures that the railroads are prepared to take. Can you
tell me what those type of measures would be?

MR. BARR: Yeah, it depends on each yard. And,
of course, they have done some studies, and they're
starting with San Bernardino, as you know.

I'm sorry Mark Stehly isn't here to explain it in
more detail.

But they've looked at very detailed projections
of the emissions as actually measured over the last
several years throughout the yard and focused on those
measures that reduce emissions, but also reducing them
where they matter the most. And that includes, for
example, at San Bernardino a much upgraded gate entry system for the trucks, a much reduced dwell time in the rail yard, and a very much expedited exit system which has reduced the actual dwell time of the trucks in the rail yard by a very substantial number, which is I know being discussed in detail.

But before we can make any further progress, the Executive Officer needs to notify you that we're ready to, you know, negotiate. And that's under your 2005 resolution. But the facts are being analyzed in great detail, more detail than has ever been analyzed before at any rail yard. And that needs to be reproduced at each one of these four rail yards now, right away. That's a very substantial action that's not occurring anywhere else, and it's very important for this effort to succeed.

BOARD MEMBER BALMES: I would just say that I'm not prepared to support anything that doesn't include yard-specific measures like you're talking about.

CHAIRPERSON NICHOLS: Thank you. That's helpful.

MR. MARCKWALD: Good afternoon, Madam Chair and members of the Board.

I'm Kirk Marckwald here for the California rail industry. Just four quick points.

We believe the staff's proposal before you today is faithful to your Board's direction last September. And
we also believe clearly that the commitment approach will achieve reductions years earlier than the regulatory pathway could. As both railroads have testified today, they are ready to begin working with your staff and other stakeholders immediately to begin to fashion a concrete commitment that we believe that those four designated yards can demonstrate a reduction of up to 85 percent over time.

Third, by taking this approach, your Board will retain any backstop authority you may have. And in the future, for whatever reason, if the commitment approach did not work out, you could immediately opt to go that route.

But I want to be clear, the freight railroads have a 15-year track record of success with the ARB of keeping every commitment we have made. If your Board ratifies this approach and we can reach agreement with your staff, the railroads will keep our commitment as we have over the past decade and a half to achieve the agreed-upon levels of emission reductions on the agreed-upon timetable. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Question. Sorry.

BOARD MEMBER TELLES: Why do you believe that a voluntary approach would gain more emissions reductions
than a regulatory approach?

MR. MARCKWALD: I think that as your staff has pointed out, the reductions that could come about from a regulatory approach are rather narrow and go to a certain class of locomotives. And I will say that it's a group of locomotives that are going to be cascading out of service as they're replaced by newer locomotives. It's a very narrow regulatory hook you have with respect to locomotives. And as the staff pointed out in the 2015/2020 time frame, the locomotive emissions are the most important part of the retaining pie.

And I think in the case of a commitment approach that we can take actions, both yard-specific actions that improve the real emission reductions in a variety of actions, some of which your staff had indicated and we can do that immediately.

If you went the regulatory approach, depending how you did it, I think our belief is you would have some number of months, if not years, of development of the proposal and final approvals of other people like the EPA I think would have to weigh in. We are ready to get going right now, and we are ready to submit the plans for these four yards in the July time frame of 2010.

CHAIRPERSON NICHOLS: Thank you.

I think it's now time for the government folks to
get their turn last. Appreciate your patience. So South
Coast, and I believe we also have Don Duffy from Placer.
Is he here? No.

MR. WALLERSTEIN: Chairman Nichols, we're trying
to get a slide shown so that we can help answer one of the
questions you've asked.

This is a slide that we showed to our Board
members last Friday. This is from the risk assessments
you've been hearing about.

As you look at that San Bernardino railroad,
that's equivalent to 250 large refineries being dropped
into a neighborhood. If we looked at Commerce, it would
be 50 large refineries.

If we reduced that risk by 95 percent, it would
still exceed the allowable risk that we currently specify
for refinery. We actually get them much, much lower.

And so we ask you to think about the fact that
you regulate dry cleaners. You regulate gas stations.
These are small businesses, not large major national
corporations.

You also have adopted a regulation for foreign
flagged ships, including operating outside of the boundary
of the state of California.

Why should this industry be different? It was
noted that they've already submitted risk assessments.
Well, when they submitted the risk assessments under the last MOU, they followed up with a reduction plan.

Ask yourselves, why wasn't that a good plan? It only contained measures that were rules on the books today. So if the community seems concerned about a redo, it's because they've been through this dance before.

I'd also like to point out that you have some significant leverage here. You have Prop. 1B funds. We jointly have Moyer funds. You have AB 118 funds. The railroads are seeking significant financial contributions from federal transportation reauthorization, and they want authorization of new rail yards and expansion of existing rail yards. And the communities are simply asking that you treat this industry the way you have treated other industries.

So our recommendation to you is to initiate rulemaking, but at the same time initiate a process where your staff can open dialogues on voluntary enforceable agreements with the railroads. You have nothing to lose by doing that.

If anyone suggests they would take their existing Tier 2 locomotives and pull them out of southern California because you initiated rulemaking because they inserted a provision like that in the previous MOUs, I would suggest that the political backlash that would occur
from southern California to Sacramento to Washington, D.C., makes that an empty threat.

So we suggest that you negotiate from a position of strength and treat this industry the way you have treated every other industry, from large corporations to small businesses.

Now my staff will provide some additional detail.

Thank you.

MR. GREENWALD: Good evening.

Peter Greenwald, South Coast Air Quality Management District.

Your staff today presented information regarding emissions from rail yards. I want to start by speaking briefly about proximity and risk in residential areas.

The slide I'm showing you here is taken from your website. It's taken from a May 2008 presentation by your staff regarding health risks at the BNSF San Bernardino rail yard. The right four bars show contribution by source category to the maximum individual cancer risk in 2005. The medium high blue bar is trucks. The short light blue is line haul locomotives. The tall greenish bar is cargo handling equipment. And the tall gray bar on the right is other equipment, such as refrigeration units.

Now, your Board has adopted important rules that will substantially reduce the emissions from the tall
bars, cargo handling equipment, refrigeration units and trucks. But because of their proximity to residents and because their contribution to risk was so high to begin with, cargo handling equipment could well be the greatest contributor to maximum individual cancer risks at the San Bernardino rail yard in 2020. That's the indication from the information that your staff has provided.

Other significant contributors will be refrigeration units, switching locomotives, trucks, and line hauls.

Now, your Board has general authority to regulate cargo handling equipment. You've done it before. You also can and have regulated refrigeration units. And your staff indicates that you have authority to regulate -- likely authority to regulate locomotive switchers and many medium horsepower locomotives.

So are there opportunities for further control of these sources to a very great degree? The answer clearly is yes. The railroads have proposed new electrified cranes and expanded rail yards near the Los Angeles and Long Beach ports. If electrified technologies are good enough for the residents of west Long Beach, they should also be good enough for the residents of San Bernardino, Commerce, and other highly impacted communities. The largest source of diesel emissions from cargo handling
equipment at San Bernardino is yard hostlers.

South Coast AQMD along with the port of Los Angeles funded development of a full electric yard hostler which the port will soon begin to deploy. They're even built in southern California.

Finally, a word about line haul locomotives.

Under your 1998 MOU, the railroads have in the last five years since Tier 2 locomotives became available achieved a fleet average equal to Tier 2 standards, at least that's the requirement.

Based on this experience, based on the demonstrated ability of the railroads to preferentially route cleaner line haul locomotives to this region, your staff, the CARB staff, recommended that the port set a goal of 95 percent Tier 4 locomotives entering port properties by 2020.

This is also an appropriate goal for rail yards. It would provide significant risk benefits beyond what your staff is proposing. Your staff is not -- the proposal does not include Tier 4 locomotives, which have much greater control than the other tiers.

EXECUTIVE OFFICER GOLDSTENE: Chairman Berg --

I'm not sure who.

I'd like to ask Deputy Executive Officer Fletcher to comment on this slide for a moment if you don't mind
just to clarify a few points.

BOARD MEMBER BERG: That's fine. But could we just have him wrap up his testimony?

And your time is up, so can you give us a concluding sentence?

MR. GREENWALD: Sure.

The railroads buy new locomotives every year. We simply ask why they could not route new Tier 4 locomotives here as they do with Tier 2.

And if I may just make one more point. Your recommendation -- your staff's recommendation to the ports for 95 percent Tier 4s by 2020, we have great concern that the staff proposal, which was just released today, will undermine your recommendation to the ports. That's a real problem, because the ports have projects which they are considering to approve. If you are not willing to push for the same actions which you've asked the ports to do, what is that going to do to their inclination to act?

BOARD MEMBER BERG: Thank you very much.

And staff response?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Just briefly on the slide Mr. Greenwald has up, this is based on data I believe from 2005. As we pointed out before, there's been significant actions taken. As Mr. Greenwald mentioned, the on-road trucks, the cargo handling
equipment, and the other categories have rules already in place that will drop this. In fact, the trucks now are already 85 percent cleaner.

So his characterization that cargo handling equipment is going to be the single largest source in the San Bernardino rail yard is not correct. The locomotives will represent as we've shown in the previous slide in San Bernardino approximately 80 to 85 percent of the overall risk at that rail yard.

BOARD MEMBER BERG: Thank you very much.

MR. GREENWALD: I need to reiterate that the statement related to the risk at the maximum exposed individual, and our technical staff reviewed the information and railroads' submittal, and that is the indication.

BOARD MEMBER BERG: Okay. Thank you.

Our next speaker, Barbara.

MS. BAIRD: Thank you.

Good evening, Chairman Nichols and Board members.

I'm Barbara Baird, District Counsel for the South Coast AQMD.

Want to point out that in litigation brought by the railroads, the court has ruled that CARB is the agency with authority to regulate locomotives. While we have appealed, that decision remains in effect. Therefore,
CARB must take the primary role in regulation as applied to locomotives. However, we will work cooperatively to ensure that regulations make the maximum use of both agencies authority.

Now Mr. Barr referred to preemption under ICTA. But the Surface Transportation Board that implements ICTA has repeatedly stated ICTA is not intended to interfere with the role of the states in implementing the Clean Air Act.

Indeed, ICTA preemption only occurs if a regulation would unreasonably interfere with rail operations. And in deciding whether it's reasonable, the STB says you must balance the environmental benefit against the degree of interference. Given the tremendous environmental and public health benefits here, a reasonable regulation should be upheld.

Now, staff is apparently concerned that if they initiate regulation, the railroads will back out of the 1998 MOU. But EPA has committed to adopt a backstop rule to make up any reductions lost by the MOU. In fact, that commitment was signed by Chair Nichols when she was at EPA and has been published in the federal register. If EPA finds the railroads are not achieving the required reduction, EPA must adopt emission control measures to achieve such reductions from the rail yards, or if
necessary from other national transportation sources. So the railroads would be taking a serious risk if they were to back out of the MOU. Moreover, CARB has authority to adopt a risk-based regulation for rail yards. The law, as you know, requires CARB to adopt air toxic control measures for non-vehicular sources. Two California Attorney General opinions treat indirect sources such as rail yards as non-vehicular sources. ATCMs require the best available control technology, unless CARB determines based on an assessment of risk that an alternative level of reduction is necessary to prevent endangerment of public health. This provision allows you to adopt a rule setting a risk level for the rail yards to reach. We believe CARB needs to take action in tandem and take the strongest action possible. The railroads have used the 2005 MOU against us, and they have already been given an opportunity to voluntarily reduce risk. We urge CARB to initiate regulation concurrently while seeking voluntary action by enforceable means. Thank you. And I'll be happy to answer any questions.

CHAIRPERSON NICHOLS: I don't have any questions. Sorry.

BOARD MEMBER TELLES: A general question to
By 2020, what will be the cancer risk in the neighborhoods around these rail yards?

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

Let's start with San Bernardino since there seems to be a lot of focus there.

First of all, there is a little conclusion. The MICR in 2005 was 2500 in a million. That's correct. In 2010, that's been reduced by at least 50 percent, probably at a greater level. With an updated inventory and health risk assessment, we'd be able to determine it's around 1200 or 1300 in a million.

When we look at 2015, we're looking at about 900 in a million and about 600 in a million in 2020. That's without additional measures.

Also, one of the things we believe that will be critical, especially the slide that was presented earlier, is looking at the source weighted contribution. And because trucks was about 70 percent of that contribution at San Bernardino, our recent drayage truck regulation actually significantly reduced the contribution. So that slide when you look at it is already shifted this year because of our regulations.

CHAIRPERSON NICHOLS: I'm afraid I was -- go ahead.
BOARD MEMBER TELLES: Just a follow-up question.

By 2020, if it's 600, will it still be the highest in --

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

It will still be the highest of all the rail yards.

BOARD MEMBER TELLES: In the state and the

nation?

ENGINEERING EVALUATION SECTION MANAGER HOLMES:

No, not in the nation. Unfortunately, California is the

only one who's done health risk assessments. There is a

city called Chicago that has about 30 major rail yards

that probably would at least challenge us for some of

those numbers.

CHAIRPERSON NICHOLS: Particularly since there's

been no action there. But I mean, I don't think our goal

is to be better than Chicago, although Chicago is a pretty

nice city. I like Chicago, I really do.

You know, I think our goal is to reduce risk to

the maximum extent possible. It's an unfortunate thing

that the rail yards are also attractors of trucks, as San

Bernardino seems to be really at the epicenter of that.

So the city or the residents are being exposed to other

sources, but they're all part of I suppose one great

transportation corridor. But it comes from multiple

different directions.

You know, I think there is a couple of points
that I would like to make. And obviously, it would have
been better if the staff presentation would have been
available earlier and there could have been briefings and
meetings with other people so that they would have had a
better opportunity to focus on what is and isn't being
said.

But I guess my view is that we are not talking --
I should say -- you are not talking -- I'm not talking
about initiating some sort of a negotiating process with
the railroads. I don't think -- I think that was done
before. It led to the MOU. We obviously have a
disagreement I suppose with the district about whether
that was a good thing or not to do. And we all agree the
process wasn't what it should have been. But the results
I think have been verified and they were real. So the
question is: Could you do better?

My thought is that the next step in this process
does need to be something which is enforceable. And while
everyone likes to use the word "regulation" versus
"voluntary" as though those were sort of the only two
choices that were out there, I do think that there is a
middle ground here. And the middle ground, which is what
the staff was calling commitment, is something that would
be initiated by ARB with a letter that would state
specifically what we were asking the railroads to do and
the response would be a letter back from the railroads saying, yes, this is what we're going to do.

Once we had those two letters in the file on record in public available to everyone, they would be available to the community to monitor.

And I think, you know, one of the things that has to be in the letters is what the evidence is going to be as to whether there's been compliance with the measures that are spelled out, you know, in the letters.

And I believe that that sort of situation leads to something that is enforceable, not only by us through regulations that would be developed simultaneously with this exchange going on, but also by the community as well. They're beneficiaries of this process.

The thing that I -- well, I'm concerned about timing, as everybody else is. But anybody who thinks the regulatory process is quick doesn't understand how regulations work in this state. If we were to publish a proposed rule as an ISOR, I guess we would call it, in a month, we wouldn't have something that had been approved by OAL for a year. And that would be at warp speed.

EXECUTIVE OFFICER GOLDSTENE: It would take us a lot longer than a month to put it together. It's at least at a year after that point.

CHAIRPERSON NICHOLS: So I think that people have
been setting up a false dichotomy here.

I do want to say though that the ARB is not the only agency with regulatory authority here. And I agree with Barry that we should use the leverage that we have with money that's available to us. South Coast District, in the case of San Bernardino, needs to be using the authority that they have, as does the city of San Bernardino. You know, everybody has a piece of this.

And I realize that the staff here is focused on their piece of it, because that's the thing that they do. But I also think that some leadership is needed. And we talked about this last September to bring these other agencies together so this isn't just a case of, you know, somebody coming in here and saying, "You guys don't have enough guts. Well, you guys don't have enough guts."

Come on. Let's go over this, could we please, and actually talk about who can do what.

So, you know, South Coast has indicated they have some authority and some funding here. We should be sitting down with them and the mayor of San Bernardino. We know he's very concerned. Perhaps take advantage of Mayor Loveridge's offer to be the liaison on this and put everybody's cards on the table, everybody's authorities on the table and look at what we can do.

The goal here is the risk-based approach, without
a doubt. It's to get down the risk levels at the worst
yards as quickly as we possibly can. And it needs to be
spelled out in writing in a way that everybody can see it
and so that it's enforceable. Not some back room deal or
negotiations. That's not going to work. And I don't
think anybody on this Board would sit still for something
like that.

So the only real question is are there legal
authorities that we have that we are not using or not
exercising appropriately? I don't think the staff has
gone through in exhaustive detail why, each and every
aspect of all the legal authorities they've looked at.

I've had an opportunity to sit with them, because
this is very painful to me. I mean, personally it's
painful, because I'm a believer in using every drop of
legal authority that you have to solve problems.

But, you know, as we've looked at what they have
to go through on the individual pieces of this rail yard
problem, it seems like they've done what they could do or
are proposing to do what they can do and are now prepared
to go the next step to do everything that would pass the
cost effectiveness test and maybe even beyond the cost
effectiveness test that we do have to live by. We are not
free to ignore that, even if we want to.

So I'm inclined to direct the staff to pursue the
approach that they've indicated here, but to do it in a
very timely and very clear manner.

I agree, and I hope that the tone of the
presentation and the slides was clear that this is not
just kind of waiting to see what the railroads are going
to do. This is about us articulating what we expect and
getting the response back from them.

Yes?

BOARD MEMBER TELLES: Can I ask one more
question?

CHAIRPERSON NICHOLS: You could, but John Balmes
had his hand up first.

BOARD MEMBER BALMES: I'll make some remarks
later, but there was one disconnect I had with your
comments.

Mostly, I liked what I heard.

But you said that the time for negotiations has
passed. And I agree on a certain level because we need to
act. But what I heard the railroad say, Mr. Barr in
particular, was that they were waiting for direction from
us to start negotiating.

CHAIRPERSON NICHOLS: Yes. Well, I think what
they will do -- and I understand this since they're being
asked to make a commitment, they're wanting to see what we
are asking them to commit to and whether they're going to
say yes or no. If they come back and say, "We like items 1, 3, 5 and 7, but don't like number 2 and 6, and could we have it slightly different?" We'll have to see.

But I think that's -- I guess you would call it negotiation. I would prefer to call it an exchange.

So --

BOARD MEMBER TELLES: I don't have any experience with knowing how well the voluntary action has been going on. So I'm asking a question to kind of give me some information on that.

In the risk reduction from 2005 to now from 2500 to 1200, what percentage of that is related to voluntary actions from the railroad industry versus regulation from CARB?

ENGINEERING EVALUATION SECTION MANAGER HOLMES: A great percentage of it is from the regulations.

I want to point out though that a significant part is from the 1998 agreement in the South Coast air basin that we negotiated with them. Fifty percent of the PM emissions from locomotives are from that agreement.

Also, they've taken a number of actions beyond our regulations. For example, accelerated cargo handling fleet equipment turnover, that was their own voluntary action. So there's a number that would supplement our regulations.
BOARD MEMBER TELLES: How much is percentage from
the --

ENGINEERING EVALUATION SECTION MANAGER HOLMES:
Off the top of my head, I'd say a 75/25 split, something
like that.

BOARD MEMBER TELLES: Twenty-five from the
railroads and 75 from regulation. So 25 from some
voluntary action from the railroads and 75 from
regulations?

ENGINEERING EVALUATION SECTION MANAGER HOLMES:
Right.

BOARD MEMBER TELLES: Seems to me the regulation
is more successful.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Let
me put some context on that. And that is we recognize we
had clear legal authority to go after the 75 percent.
That's the cargo handling equipment. That's the drayage
trucks and TRUs. Those are the three measures where those
are 70 percent.

When we get into the next phase and what we can
regulate, it really gets complicated because we are
limited to what we call pre-Tier 0 or un-remanufactured
locomotives. As you heard Darcy indicate that the San
Bernardino or BNSF has already pulled out all pre-Tier 0
zero locomotives. So if we were to do a regulation, we
would be essentially controlling locomotives that are not there anymore.

And when we did our technical option report last year, we did identify that there was a fair number of pre-Tier 0 and a flag that is a regulation that we can do. But the railroads always have the option of bringing in Tier 0 or re-manufactured locomotives.

Our objective is not yet from a pre-Tier 0 to a Tier 0. It's to get from a pre-Tier 0 to a Tier 3. And that's what we would lose if we tried to do regulations is that we just don't think they'll be very effective.

The reductions we're going for now in this approach that we've suggested really are looking at taking switch locomotives to the Tier 3, medium horsepower to Tier 3, and then these line hauls from Tier 2 to what we call Tier 3 plus. That was the table we had put up there. Those are all locomotives that we do not have regulatory authority to do for the most part.

So, you know, in looking at -- you've asked what the difference was between regulations and agreement, we really think we're talking about perhaps a five or ten percent reduction in risks versus a 30 to 40 percent reduction in risk as we go through time. So, you know, we have taken all the regulatory -- most of the regulatory authority that we've had to date.
CHAIRPERSON NICHOLS: Five to ten percent for what versus --

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Five to ten percent for -- if we did a regulation on locomotives, we get five percent reduction.

CHAIRPERSON NICHOLS: That's the answer he's searching for.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: We're looking for four times the benefits of the approach. Those are estimates. It depends upon the nature of the locomotives fleet. But the objective really is to get to the higher tiers, and that's what our objective is here.

CHAIRPERSON NICHOLS: Ken.

BOARD MEMBER YEAGER: So, Mr. Fletcher, you're saying that there really aren't any other regulations that we might want to investigate?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: There are two other regulations that we identified -- or kind of two sets.

One, we could do a risk reduction audit and plan regulation that would have targets in it that would be essentially unenforceable. They would be similar to what we're proposing here in terms of saying we want you to get to this level and we want you to do the following things. But if it involves preempted locomotives, you don't have
to meet it. And that's the real rub here is that the only way you're going to get substantial reductions is to go after the preempted locomotives.

The other regulations that have been mentioned are those that relate to the electrification of cargo handling equipment, drayage trucks, TRU electrification with the rail yards. And if you look at San Bernardino, for example, and we think that probably 15 percent of the total risk out into the future is related to the cargo handling equipment and trucks are there. If you eliminated that equipment completely, you would take the risk from 600 in a million to probably 520 in a million or 525 in a million. That's completely eliminating all of that equipment.

The other consideration on the electrification that we're committed to re-look at it if we have to trigger this other enforceable provision is that when we did the analysis of the 37 options, those were options we looked at certainly. But they did not pass the cost effective criteria that this Board has established for adoption of regulations. They were extraordinarily expensive and not very cost effective. That's the other problem.

BOARD MEMBER YEAGER: And you've communicated most of this information to the community members? I know
that obviously many of them want more regulation, but it
sounds like it may not achieve the ends they like.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes,
we have. But I think we haven't done a very good job of
it. And we are committed to -- again, we'd be happy to
sit down and walk through -- when we get additional data
as we're collecting, we keep getting more and more
information because we keep pushing this issue. I think
we can sit down and sort of walk through what we know
about the various sources in the rail yards and can deal
with things like operational measures that Dr. Balmes is
very interested in and show whether or not that has really
a measurable benefit. Is it a good thing to do or not
from an emissions and risk perspective?

BOARD MEMBER YEAGER: Just very briefly, I wanted
to echo what Chair Nichols was saying. Maybe there is
that middle ground. I can understand the hesitancy of
people want to go voluntary, but it doesn't sound like
coming up with a regulation would be timely or all that
effective.

But given that, too, I would hope that in another
year let's say if the issue isn't as resolved as we would
like, I'd hate for the response to be, well, we still need
to do some sort of voluntary, because it would take so
long to get the regulation in order. I'm just wondering
if it looks like we are not making progress in
negotiations, if we want to start some sort of regulation
so that we don't have to say, well, in a year, you know,
we need to wait another year.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Our
objective is exactly that. We think that we can -- we
don't want to do them in parallel, because railroads have
pretty much made it clear you can't do both at the same
time.

On the other hand, the Air Resources staff can do
all the legwork necessary to develop the structure of a
regulation, so that if we have to trigger this backstop,
then we can put regulations to this Board within about
six months. And so we're not going to stop -- we're not
going to sit back and not do anything on that front.

We're also not -- the railroads again have a very
good track record of meeting the commitments they make to
us.

But on the other hand, we do not again want to be
in exactly the position you say, which is, well, now we're
going to do regs. We think we know how to do the
regulations. We just don't think they'll be as effective
as what we're trying to do here.

BOARD MEMBER BERG: I'm just highly distressed
over the fact that the community perception and the work
that we are doing is just so far apart.

And so I really appreciate, Mr. Fletcher, your commitment. We've got to find a way to communicate more effectively, to communicate sooner.

The sense of not having the participation -- or I think their biggest fear, and I can really understand this, is that this communication through letter will go between us and the rail yards. And they will be brought in after the fact. And it will be the same type of public hearing and the same type of workshops that I personally have attended. And it is extremely frustrating, and so I can really relate to how they're feeling.

On the other hand, I do know that there has been progress. And so we need to be able to communicate that progress in a way and we need to set up a better mechanism other than us speaking at the community and them feeling like we're speaking at them and not hearing them.

Likewise, I do think that I have toured the Commerce yard. And those residents that literally back up to the rail yard, short of shutting the rail yard down, I don't really know how we could come up with anything that could be more acceptable, and we know that's not possible.

So maybe we need to hear from the communities as well specifically what we can do within these agreements.

And you have given us your ideas on the
regulations. We need to get back to them as to what we
feel regulation, idea by idea, what we feel we can do and
what we can't do.

I feel so conflicted up here understanding that
if I were to support regulation only that I really feel
like I'd be doing the community a disservice. Because I
do feel that if we can come to an agreement with the rail
yards, we will get these emissions faster.

But I agree with my other fellow Board members,
it has to be rail yard specific. It absolutely has to be
measurable. The railroads have got to agree, and it's got
to be enforceable. And if not, then maybe what we have to
do is absolutely take the regulation route, understanding
that we're not going to get there either. And that's
what's so frustrating to me is because I know we all want
to achieve the goal and it's how to get there.

And so I really would like to call on the rail
yards companies for the railroad companies come to the
table earnestly. We need this done quickly.

At any point this falls apart, we need staff back
here saying it didn't work immediately and let's then go
on to the next step. Not waiting for the time line to
come back here in four or five months to say we've been
working and talking and going back and forth, and it at
the end of the day didn't work. I will have to let you
know that I would be one of the Board members that would be very unhappy if we did it that way.

So we need to -- I'm hearing from the railroad companies. I'm hearing from staff that this is a positive way to go. That means that they should get back to us in a positive in a short period of time. And if not, we absolutely have to proceed on the regulatory route and show the communities that we are willing to stand up.

CHAIRPERSON NICHOLS: Dr. Balmes.

BOARD MEMBER BALMES: I realize the hour is late, so I'll try to be quick here, because many of my points have been stated by my colleagues. But I have about six points.

So first off, I think we have to do something to address the community concerns. I was very moved in September by the testimony. And as Mayor Loveridge said, it's six months later. And I think progress is being made. I'll really pleased to hear Mr. Barr of the railroads say that the railroads are ready to make specific commitments both to reduce locomotive emissions where I think the biggest bang for the buck is and just reducing emissions, but also yard-specific operational changes, because that will address some of the concerns that Ms. Berg put forward with regard to having something visible to the community that we're actually making a
difference.

I know that and I'm persuaded by staff's presentation that focusing on the locomotives the voluntary agreement approach will have a great impact on reducing emissions. But the community will trust us a lot more when they see changes visible in their neighborhoods.

I also think that the parallel process of backstop regulation development is critical. I was pleased to hear Mr. Fletcher say that, you know, the staff is ready to move that way. Six months seems to be a long time. I think we should be ready to move quicker if we fail to get the emissions reduction that the railroads are promising.

I think that as Mayor Loveridge said, we need to monitor the results. We need to come up with metrics and milestones to make sure that we're achieving what we are intended to achieve and then get back to us quickly, as Ms. Berg suggested.

I think that the process has to be transparent. And I realize the staff is making that commitment. I heard from the railroads they are willing to make that commitment to do it transparently. But we already see the level of trust the community has for us. Not very much.

So we have to earn that trust back.

And even though Mr. Fletcher sort of pooh-poohed
1 the risk reduction idea because it's not really
2 enforceable, I think actually it's a good idea. Because
3 if the railroads weren't coming close to meeting those
4 risk reduction targets, they wouldn't look very good. And
5 it would be another lever potentially in terms of getting
6 cooperation.

7 And, finally, I think Dr. Prasad's suggestion
8 about incentives should be part of our approach. You
9 know, it's expensive to come up with new locomotives.
10 It's expensive to electrify cargo handling. If we can
11 come up with support for the ports to move forward, then I
12 think we need to figure out better incentives to move
13 forward with the rail yards.
14 And I think Barry Wallerstein's point about if
15 it's good enough for the ports, it should be good enough
16 for the rail yards is I think a good motto that we should
17 approach this with.
18 So I'm willing to support the staff approach with
19 these multiple caveats.

20 CHAIRPERSON NICHOLS: I was about to say, I've
21 been taking notes, and I think I'm going to try to sum up
22 some direction in a second.
23 But I saw Bob Fletcher sort of flinching when you
24 talked about the risk reductions. I just wanted to see if
25 you had a -- did you want to comment on that?
I agree. I think that in our slide we put up, we indicated that that -- if we go to the backstop, that is the second regulation we would absolutely do.

CHAIRPERSON NICHOLS: So I think that's right.

STATIONARY SOURCE DIVISION CHIEF FLETCHER:

Sorry. Didn't mean to flinch.

CHAIRPERSON NICHOLS: Okay. So there is a couple of terms that I've had propped up here that I just want to reiterate.

What we're looking for is commitments that are rail-yard-specific, that are measurable -- that contain measurable commitments that are enforceable. We want them to be transparent, meaning clear I guess. And also that the community gets to look at them and ask questions and figure out --

BOARD MEMBER BALMES: I think it behooves us to have the community be involved in the process earlier than later.

Ms. Berg said it well. Instead of us talking to them --

CHAIRPERSON NICHOLS: Well, I'm completely in favor. I just was mindful of people saying they didn't want to sit in rooms and listen to talk anymore. So the structure of this is going to be a little complicated I
think.

BOARD MEMBER BALMES: I think it's going to be complicated, but I think it's really key.

CHAIRPERSON NICHOLS: The other point was that we want to make sure that we are using incentives, and we want there to be a backstop that's developed to the point where it can be brought out and utilized quickly. I think six months is too long. We would all agree with that. And that it needs to include regulations which would potentially test our authority, but that's what we would be doing in the area of risk reduction.

So, yeah, I think that's it.

Oh, there is one other thing. One of the witnesses from the community spoke about the desire to have things done at the fence line and have people moved away from the edges around the east yard, not San Bernardino. But that level of community involvement and the railroad's willingness to listen and to adopt feasible measures I think is a very important element of what Sandy is talking about. Because it's not easy for anyone, including us, to interpret all of the monitoring data from a station that anybody can see, whether a fence line has been changed or there's been operational changes that they look for.

And I believe I heard the representative of one
of the railroads saying that they were willing to -- I
don't think she quite said they would do it, but she said
they would at least seriously look at doing things of that
nature.

So I'd like to see that element put into the
discussion that we're having with both the railroads and
the community groups as well.

And I really do want to pursue my vision of
bringing in these other organizations that also have some
authority, including the cities and the districts and
having them involved in this as well and bringing what
they can to this equation. Because after all is said and
done, as I think Dr. Telles pointed out, the level of risk
is still very high. And so it would behoove everybody to
do whatever they can do using whatever authorities they
have to contribute to that.

Is that an acceptable summary? Are people
feeling like that covers the ground?

All right. I think that's it then. And I think
that concludes our meeting. Thank you very much.

(Thereupon the California Air Resources Board
adjourned at 7:05 p.m.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of March, 2010.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277