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Mr. Jake Belin, Kern Oil
Ms. Susie Berlin, Northern California Power Agency & MSR Public Power
Mr. K.C. Bishop, Chevron
Mr. Tony Brunello, California Strategies
Ms. Kathleen Cole, Metropolitan Water District of Southern California
Mr. Jon Costantino, Coalition for Fair & Equitable Allocation
Mr. Michael Cote, Ruby Canyon Engineering
Mr. Danny Cullenward
Mr. Gary Grimes, Paramount Petroleum
Ms. Emily Grubert
Mr. Jerry Gureghian, Green Holdings
Ms. Claire Halbrook
Ms. Barbara Haya, Stanford University
Mr. Miles Heller, Tesoro
Ms. Jerilyn Lopez Mendoza, Southern Californian Gas/SDPGE
Mr. Bob Lucas, California Coalition for Environmental and Economic Balance
Mr. Dell Majure, Kimberly-Clark Corporation
Ms. Teresa Makarewicz, Shell Oil Company
Ms. Marcie Milner, Shell Energy North America
Mr. Ralph Moran, BP America
Mr. Tim O'Connor, EDF
Ms. Barbara Toole O'Neil
Mr. Steve Piateck, Alon Petroleum
Ms. Kara Roeder, Procter & Gamble
Mr. Paul Shepard, Wildflower Energy
Mr. Adam R. Smith, Southern California Edison
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Ms. Katy Young, Climate Action Reserve
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CHAIRPERSON NICHOLS: Good morning, ladies and gentlemen. We're going to get started right away without our usual preliminaries. We have a quorum. We can get moving.

If you want to quickly call the roll, that would be good.

BOARD CLERK JENSEN: Dr. Balmes?
BOARD MEMBER BALMES: Here.

BOARD CLERK JENSEN: Ms. Berg?
BOARD MEMBER BERG: Here.

BOARD CLERK JENSEN: Mr. De La Torre?

Mr. Eisenhut?

BOARD MEMBER EISENHUT: Here.

BOARD CLERK JENSEN: Supervisor Gioia?
BOARD MEMBER GIOIA: Here.

BOARD CLERK JENSEN: Mayor Mitchell?
BOARD MEMBER MITCHELL: Here.

BOARD CLERK JENSEN: Mrs. Riordan?
BOARD MEMBER RIORDAN: Here.

BOARD CLERK JENSEN: Supervisor Roberts?

Supervisor Serna?

BOARD MEMBER SERNA: Here.

BOARD CLERK JENSEN: Dr. Sherriffs?

CHAIRPERSON NICHOLS: Here. Oh, apologize. I'm
jumping the gun. I'm ready to go.

BOARD MEMBER SHERRIFFS: Here.

BOARD CLERK JENSEN: Professor Sperling?

BOARD MEMBER SPERLING: Here.

BOARD CLERK JENSEN: Chairman Nichols?

CHAIRPERSON NICHOLS: Here

BOARD CLERK JENSEN: We have a quorum.

CHAIRPERSON NICHOLS: Thank you very much. You can tell I'm eager to get this meeting underway because we do have a lot of work to do.

I just wanted to make a couple of sort of administrative announcements. The first is that for anybody who wasn't following what was happening yesterday, we're beginning this morning with continuation of the Board discussion of the truck and bus rule.

I'm also anxious to make a slight change in our agenda for today to move the item relating to expanding the list for people who are interested in purchasing electric vehicles for the rebate program. It's a very small item and it doesn't take much work. I'm afraid if it comes at the end of the day, we're going to run into quorum problems and we do have to take a vote on that one. I'd like to do that right after we finish with truck and bus and then we can move on to the cap and trade issue. So AQIP will come right after this first item on truck and
Before we get back to the discussion that we started yesterday, I would like to also, however, just for the record, do something else which I neglected to do yesterday, which was to report back on the results of our closed session that we had at lunch during our Board meeting yesterday. As I think it was announced, we were planning on having an executive session. The Board did meet briefly in closed session, and we appointed a subcommittee of two Board members to do a performance review, as requested, an annual performance review by our -- of our Executive Officer. And they will then report back to the full Board and the full Board will consider with Mr. Corey and give him the results of his review, which I think is not going to be an unhappy experience. But hopefully it will set the mark for a good practice with the Board operations. So that's what we did in our executive session and that's all we did. So I think that closes that piece of it. And we can get back to the work that we need to get completed today on amending the truck and bus rule.

When we left yesterday, the Board members had all given the staff a list of questions or issues that we wanted them to address. And they've worked through the night and into the early morning I understand to come up
with responses to all of those issues and they're prepared
to go through them.

Before we do that, I think it might be helpful,
just as a reminder of what we're doing here, if we step
back for a moment and just had a brief overview of where
we are in the process. So Board Member Berg, who has been
intimately involved in this rule -- I know she's a truck
owner because she told us about that yesterday. But she
probably knows more truck owners than most of us and has
spent more time with them looking at their trucks. And
I'd like to ask her to offer a brief comment.

BOARD MEMBER BERG: Thank you very much, Chairman
Nichols. And I wanted to thank you also for your
leadership yesterday. And it was very helpful to have the
evening to consider the testimony and thank my fellow
Board Member Supervisor Serna for his suggestion to get
the issues out on the table.

I was thinking last night and very early this
morning about the truck and bus rule. And being one of
the Board members that has been on this rule from the
beginning, it has been one of my key projects. And
probably because I'm a small business owner, I do have
trucks and I do understand the complexity of trying to
regulate so many industries under one regulation. So with
that, I just wanted to offer to some of our new Board
members a little bit of context on this regulation.

One of the things we counted on or that I counted on within this regulation was the timing factor that we would be able to regulate the larger fleets and have the opportunity of learning as we embraced the smaller fleets. We knew that the bringing in of the smaller fleets were going to be a very large challenge, given the fact that they were almost 50 percent of the inventory and individual owners. And when you look at that many owners with one to three trucks, it is quite a woman's job, not only to get the information out to them, but also an enforcement issue. So I think part that is what we're seeing today is our understanding of what we have learned and the additional information.

One of the things through public testimony of the other the original rule and the other amendment really was about we would be willing to come back to the table when information was available to see that we should consider current regulation and how to improve it and how the impact on industry versus the emission inventory versus timing all played together. And I think that also is another thing that we're seeing today.

I think when we came back in 2010, we were truly driven by the deep, deep recession that quite frankly even in 2008 nobody really understood how much that was going
to hit us and what a dramatic impact it would have for a short period of time on emissions. And people talk about, well, is the Board backsliding. I don't consider it backsliding when we can re-evaluate actual emissions and then hold industry accountable for actual emissions. That's not backsliding. That's allowing industry to participate at the level that the economy is currently performing at.

So when we look at today's amendments, we are back here because there is 50 percent of the inventory of trucks out there that are now due. And in looking at that, I'm really thankful that staff will be looking at each individual concern that we have. But I was struck when I went over my notes that on the small fleets, the first truck we're looking at a six-month delay that in effect they are going to have to be in compliance by June of this year. That's truck number one. And I'm hoping that staff will be able to share with us what the inventory percentage is and that the other delay is really about truck number two and three. And it will be -- I'll be interested in also hearing what we were going to -- what the current rule is versus what the delay is. And also, of course, all is for not if we truly can't enforce and make sure that people are playing by the rules that we have in front of us.
So this is very complicated. We're talking about for-hire and vocational. And within the vocational, there is such a wide breadth. I think if we were to in hindsight have bifurcated this rule into two parts, it still would have been complicated just over the vocational issues. And so we do have a yoman's job in front of us.

Thank you, Chairman Nichols, for your leadership to allow us to think about it over the night. And I'm really looking forward to what staff has to present to us, and my fellow Board members, your input. Thank you.

CHAIRPERSON NICHOLS: Thank you. That's all useful history and perspective I think.

Let's just turn it over to the staff and walk through the issues that we asked you to think about and get back to us on.

EXECUTIVE OFFICER COREY: Yes, Chairman Nichols, what we're going to do is have both Erik and Cynthia -- which we're going to break down the slides. We prepared slides for the issues the questions raised by Board members. And our recommendation is to work through each one. Pull up the slide, have a discussion on the issue, get questions, have direction, and move to the next one because there are several we'll be walking through.

With that, Erik will tee up the range of issues we're going to go through and begin.
MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:

Thank you Mr. Corey.

(Thereupon an overhead presentation was presented as follows.)

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Good morning, madam Chairman can members of the Board.

When we last saw you yesterday afternoon, you had a number of key questions about staff's proposal, items that you heard during the course of testimony yesterday. So we're prepared this morning to come back and talk about each one of those one by one with you as Mr. Corey indicated.

I want to say that we certainly appreciate the challenges and struggles that you all are facing. They're the same struggles that we face as we drafted these regulations. I would say the testimony yesterday is entirely consistent with the comments and the feedback we got through the public process that we went through, concerns about balancing small fleets versus large, compliant versus future compliant, the roll of incentives, how to address rural versus urban issues. Very difficult challenges that we spent a lot of time and a lot of thought trying to find an appropriate balance and we want to share our thoughts and our efforts on that with you this morning.
So we'll start. I'll go through the list of things that we had to walk through with you. The first was around the loan denial issues. How to address compliance challenges that fleets are facing when they cannot obtain the means to come into compliance, some options around that for you.

The close interaction between incentives and small fleets. We are not able to separate those two. They are so intricately related in terms of how they interact for multiple programs here. So Cynthia will walk you through those.

We heard a lot about discussion about cattle trucks and for-hire versus not for-hire. Some thoughts on that for you and new information there.

Are there opportunities for additional credits for compliant fleets? Is there more we can do to recognize those who have already made the investments. And if so, what are the potential impacts associated with making changes to that.

Our thoughts on whether or not additional changes should be done relative to lower use school buses as we heard yesterday.

What options do we have on water trucks?

And I think finishing up with enforcement. I think what we have laid out for you today really bookends
the comments that Ms. Burg just made in terms of how do we address those that are struggling and looking for ways to come into compliance and how can we enhance our enforcement efforts to make sure we have a robust program that has a level playing field for all that are needing to comply with the rule.

Next slide.

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MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:

First, let's talk about how we can best recognize the financial challenges. We heard a lot about this yesterday. Staff certainly was aware through the work we had done over the fall and over the winter that there are substantial, significant number of fleets that are struggling to try to find a way to come into compliance.

What we're typically talking about are smaller fleets that have one to three trucks. And the data we have would suggest there is about 5,000 or so of these trucks in the state where the owner applied for a loan and was denied for a loan. Those are exactly the target audience of trucks we're talking about with this provision.

We certainly heard the concerns from industry and other stakeholders that the current proposal that we had in the 45-day notice was not sufficient to ensure that we
truly were capturing those mostly in need and we weren't
simply providing an opportunity for those who are looking
for ways around the cleanup requirements to simply get
themselves some additional time.

So as we talked yesterday, we were prepared to
propose a number of changes to staff's original proposal
that would tighten up those requirements by requiring
additional information about the trucks, both the
replacement truck and the truck to be replaced, additional
information about the loans, requirements to use certain
types of lenders that we would have a higher confidence
would provide a legitimate assessment of a loan
application, and requirements that those documents be
signed under penalty of perjury, as well as to make those
who have already applied to ARB under a good faith
advisory to re-apply so they can also be subject to the
same level of scrutiny any new applicants would receive.
Certainly, as I said earlier, you heard a lot of testimony
that even that may not be sufficient.

We've looked at some other options that have been
suggested in terms of can we reduce the time period in
which fleets have access to that. So the current proposal
would have that -- would provide a up to four-year
extension until 2018 for such fleets before they would
need to go to a 2012 truck. We could look at reducing
that period. That's certainly an option the Board could consider.

One thing that the Board should also keep in mind is that by reducing the amount of time, the challenge some of these fleets are going to face to go directly to a 2010 truck will be hard. We may need to look at whether or not the next step for these fleets is a 2010 truck or simply getting a retrofit or other types of PM control on the truck.

Next slide.

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MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: One of the options that we looked at through the regulatory development process and ultimately did not propose because we felt a regulatory approach would be clear to fleets and was superior was to use the existing process we already have through our enforcement and settlement program.

So we already have a program in place where when we have fleets that are not able to comply with an ARB regulation, not necessarily the truck and bus regulation, we bring them in. We work with them. We put them into the settlement process where we can work out a time line for that fleet to come into compliance. This is something that's already allowed and afforded ARB in statute. It's something that we have a process in place to handle. It
allows us to consider a number of relevant factors which I think are germane to what we're talking about today. The types of steps that fleets have taken already to come into compliance, the financial ability of fleets to comply, whether fleets self-reported and came to us with their challenges versus finding them out in the field on their own.

So there is a number of things that I think get to many of the same thing we're trying to do, but through an alternative path. What this allows us to do is come up with an individualized compliance plan for fleets based on the specific nature of their fleet.

CHAIRPERSON NICHOLS: Excuse me, but isn't this essentially the same thing that we did with the port trucks?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I believe so.

CHAIRPERSON NICHOLS: No, it's not. We did involve a much more sort of rigorous hands-on process with those folks, at least at the end of the day.

Sorry, I didn't mean to distract you here. Maybe this is irrelevant.

But I'm looking for -- we have an example of a situation where we sort of narrowed the bins in a very progressive way. It got us down at last to the people
that weren't able to comply or wouldn't comply. And then there was some people at the very end who didn't and couldn't and they still weren't happy. But we at least had done everything we could to help those who wanted to. So I'm looking for whether this is a similar kind of a process.

SSD CHIEF MARVIN: This is Cynthia Marvin.

I would say it's a little bit different in the port truck situation. What we did was used the enforcement discretion, the advisory approach. We created what we called a funnel primarily the assistance of the Bay Area district and set up milestones for fleets to follow through on this path to compliance in terms of did you apply for a loan? Did you show proof of financing? Did you order your retrofit?

So there is some parallels in terms of the steps in the process. But that was done from a policy perspective under the regulation. It wasn't done in a fleet by fleet settlement process. And there was no possibility to extend the ultimate time frame before that four-month leeway period.

CHAIRPERSON NICHOLS: But that was also a more limited set of items.

SSD CHIEF MARVIN: It was a much smaller population.
MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: What I would add to that is that the experience we gained through working with the port operators in Oakland I think has informed how we might move forward on something like this in terms of establishing -- if this is the direction the Board wants to go, establishing discrete milestones that fleets have to make to ensure they remain on a path to compliance. These are the types of flexibilities we have within the settlement process that ARB currently has in its current program.

CHAIRPERSON NICHOLS: Obviously, we're doubling back to this. And it's out of order the way you presented these items. But enforcement is key to every element of this. And so I would hope that you would be building that into whatever this process is from the start.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: The last thing I would say on this slide is in consideration that we've had at the staff level is this is a much more resource-intensive component for staff to implement. And we have to be mindful that in order to do so would likely require the redirection of resources in order to accommodate what we believe could be as many as 5,000 trucks that would potentially come through this program. So something for consideration to be sure.

Next slide.
SSD CHIEF MARVIN: So in light of that, I've tried to summarize -- not the pros and cons, but a comparison of those two options for the Board for them to think about and deliberate as they look at what can be done relative have to trying to address this very difficult challenge.

On one hand, you have the staff proposal, which is a fairly simple process. Somebody applies for a loan and are denied. They report that to ARB. They have a number of years of which to get their 2010 truck versus something that we would have in the enforcement effort that would be much more comprehensive, discrete milestones. We would be engaging with that fleet on a much more regular basis than if we did through staff's proposal.

The proposal allows fleets to self-identify themselves with no penalty through our reporting program in compliance with the rule versus potentially ARB staff having to go out and find non-compliant fleets. Those who couldn't get the financialing and decided they're going to continue to operate until they're found because there is no regulatory option available to them. So it adds additional burden for us in terms of trying to locate indicate them in the field.
But as we heard yesterday, and I think it's critically important, the staff proposal -- there are a lot of concerns that the potential for abuse is there. There's substantial potential for abuse versus what we would be able to be a much lower likelihood of abuse through the enforcement settlement process we would go with if we didn't have this provision in the rule.

You also heard I think a lot of people say that the staff proposal rewards noncompliance. The fleets that haven't done anything yet can go get a piece of paper and they wouldn't have to do anything for some time to come. The other option would motivate compliance because they would be on a pathway. They would have discrete milestones they would have to meet in order to stay in the program and be afforded some additional time to come into compliance versus facing other enforcement actions that we could take some vehicle registration blocks, vehicle impoundments and penalties.

The amended proposal provides more time. There is a greater loss of benefits because we're not going to see those PM benefits for four years versus the typical one year. And I would say this might need to go out a little further than that with some of the fleets we'll likely see. But certainly a smaller period of time -- less than the four years in the current proposal.
I've touched a little bit about the resources. It would require what we have, what we've proposed in the staff presentation. We think we can accommodate within the existing program that we have for reporting. We would have enforcement follow-up, but that would be part of our normal course of action versus the alternative, which would be very resource intensive on behalf of ARB staff that would require redirection of resources and prioritizing how we staff overall the truck and bus efforts we have underway.

So with that Chairman Nichols, that concludes what I have on this particular item. We're ready to answer any questions.

CHAIRPERSON NICHOLS: Okay. Questions or should we just roll through this? I think you've resolved -- addressed the issues that needed to be addressed. Let's just go onto the next one.

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SSD CHIEF MARVIN: Supervisor Serna teed up the question that was echoed by a number of Board members, which is what mechanisms do we have available to increase the financial assistance to support truck upgrades?

And our focus and his question was specifically about both commercial financing and public incentives. In our response, we're going to focus on the programs and the
funds that are currently under the authority of both this
Board and of our partners at the local air districts.
That's roughly two to $300 million over the next several
years potentially available to assist truck fleets come
into compliance.

In the near term, the biggest funding source is
Prop. 1B. I think it's important to recognize it's a
fixed dollar amount. We're talking about moving into
Board awards and allocations of the last installment of
Prop. 1B. So we have one more shot at those funds and
then it's strictly an implementation of existing funding
awards.

There are smaller amounts of funding available on
an ongoing basis through the Moyer program, through AB
923, and through other district revenue sources.
Certainly for the larger districts, there are some
significant funding totals that come into under these
programs, but each district must make its own hard choices
about how to allocate among many different important
project types.

The first question that we wanted to explicitly
address is can we increase the size of the funding pot
that's available for truck incentives and be responsive to
local priorities? And we at the ARB staff think the
answer is slightly. We think that there is some decision
making that could augment that truck funding pot. And there is two mechanisms.

When the district submit their funding proposals under the last round of Prop. 1B, they can chose to focus on trucks. It's always been the district's prerogative to say trucks or locomotives or ships are the most important to us or a specific combination. So they retain that ability and they certainly exercise that ability to specify what they would like to focus their efforts funded by Prop. 1B on in the coming year.

The San Joaquin Valley District Board asked the ARB who asked you to authorize in the today's Board resolution essentially the full complement of Central Valley Prop. 1B funding for trucks. And we just wanted to note that in terms of direction, this Board had already recognized the importance of Prop. 1B funding for trucks in all of the actions that you've taken.

But your ability to pre-commit those dollars is limited by statute, which requires us to go through a very specific public process. So we think the net result can be the same, but we don't believe that the Board has the ability today to make funding awards without allowing that public process to be completed. So we'll be back to you later this year or early next year having completed that public process with recommendations based on each local
air district's proposals, of course, including San Joaquin.

The other way that there is a potential to augment the funding available for trucks is the decisions that each local district Board makes about how to program Moyer 923 and other local funding sources. And that's certainly something that the Air Resources Board members who also sit on those local district boards participate in those funding decisions. And it really is local control in that case in terms of the proportion of funds that are directed to these truck projects.

The next question that we are addressing here is can we increase the access for more fleets to be able to take advantage of the funding that is available? And specifically, there are a number of things that the Board can do to increase that access for small fleets. The first fundamental component to that and really the pivotal piece is the decision that you make about whether to extend the compliance deadlines for the second and the third truck in small fleets.

With that, it opens up funding opportunities under all of the ARB and the district programs. Without that change in the regulation, current state law does not let us fund the majority of those trucks. A few of them could be funded in the first year. But by and large, we
are precluded from funding those. So that is really in your hands today.

If the Board chooses to extend those compliance deadlines, there are a number of complementary efforts that we can develop with the air districts, with stakeholders, and the public process and bring back to you for your consideration later this year. And those are changes to the Carl Moyer and to the Prop. 1B guidelines.

CHAIRPERSON NICHOLS: Can I just underscore that again because it's so counterintuitive. But it is true that the reason why we need to look at extending deadlines is because that's the only way that we can get more funding to these smaller companies, because otherwise we would be giving the money to comply, which is not allowed. You can only give the money for early compliance, pre-deadlines. So if we extend the deadline so they can be pre compliant and we give them money.

This is not a situation that we would like to be in. But it reflects a philosophy that was present from the very beginning of these programs that government doesn't pay people to comply with regulations. We would only allow them incentives if they were doing something above and beyond the regulations. Hat's a good principle in general, except when you run up against the results of it in a situation like this.
I think this is something we're going to have to grapple with soon, if not right this minute, because it's increasingly an issue for all kinds of regulations that we get into that if there is some way to give financial incentive for people to comply, it makes it easier to develop a more effective, fast tough rule.

And without it, you end up with struggles that we always face whenever we are just doing our job as regulators.

I just want to put a flag down on that one because it's a tough issue. But we can't duck it.

SSD CHIEF MARVIN: The one additional notation I might make there is the question came up yesterday about if we are limited by statute, there is the potential to change statute. If that were to happen, that would still present timing challenges in terms of how fast the Legislature could act, how fast these programs could respond and move the money through. So I think we face this challenge, regardless.

CHAIRPERSON NICHOLS: And that applies also to the idea that several people raised of some form of additional financial credit for those who did comply as well, which I personally think has some merit to it. But again, it's not something we can do as a Board.

SSD CHIEF MARVIN: So the last component of our
response is to acknowledge a couple of decisions that will ultimately be before you in the context of those guideline revisions that would allow you to really prioritize where this fixed pot of funding goes.

And one of the questions becomes: Will the Board consider fewer early or extra reductions through these programs? And I think that's already been the direction that we've been going in in both Moyer and Prop. 1B that clearly is part of the concern and the interest that we heard from you and certainly from the stakeholders yesterday. So that's an explicit discussion and consideration that can be folded into those guidelines. There has to be something, but how much is enough.

The next sorts of ideas that we had, it is within Prop. 1B the Board can chose to prioritize funding to a certain segment of the trucking sector. So here, the Board could chose to say that either funding is limited to small fleets or that small fleets, the second and third trucks, are to be prioritized within Prop. 1B. And so that will be a decision that you make later this year.

Right now, in Prop. 1B, the priority is funding any zero emission truck applications. But then small fleets and large fleets generally compete against each other on a per truck basis so there is no net advantage, whether you're replacing one truck or you're placing ten
trucks. That's a policy call that will be before you later this year.

The other sorts of things that we might do to help make more -- funding accessible to more small fleets is to decrease the size of the grant per truck. In other words, right now, if you're eligible for $40,000 to replace a truck with a brand-new model, that clearly limits the number of people who can take advantage of this fixed pot of funding.

If the Board considered lower grants per truck, there are more applicants who could receive some funding. And it's, as always, going to be a balance between how much do you help the target population? How much funding do you provide?

But the one comment we would have here is that if you consider smaller grants, those grants are really integral as down payments when truckers are applying for financing. Because when they go in for that financing, if they're able to say, "I have a commitment for a grant," whatever that amount might be, then that certainly weighs into the financial calculus that the lender will look at.

So our suggestion would be that we work with the districts and stakeholders to explore all of these options and any others that you suggest and bring to you in those guideline revisions some policy choices to make.
If you look at this combination of potential actions, the rule amendment, and the revisions to the guidelines, we think that these sorts of ideas could make grant funding available to roughly half of the small fleets to bring their second and their third trucks into compliance. That's our end statistic about the balance or the ratio of small fleets needing to come into compliance versus the amount of dollars that may be available.

CHAIRPERSON NICHOLS: And that would just be a first come, first serve kind of process? Whoever gets there first gets some money and others are left behind?

SSD CHIEF MARVIN: In the Moyer Program, most of the districts run a first come, first serve. Not all. They kind of apply other criteria.

In Prop. 1B, generally once there is a priority -- let's say there was a priority for the second and third truck and small fleets, the existing program requires a competitive process within each region. Let's say there were a thousand small trucks competing in the San Joaquin Valley, those thousand trucks would be ranked based on the potential for emission reductions from that replacement project. And the district starts at the top of that list and works its way down until there is no longer any funding available.

BOARD MEMBER BERG: Is there a way to give
priority to that first truck that was in compliance by January 1st, 2014, so those trucks that have check speaker before in compliance and have a second nd third truck, would there be a way to give them credit or reward them in a priority list for funding?

SSD CHIEF MARVIN: Two comments on that. Within the Prop. 1B Program, we had opened up the current round of funding to small fleets and specifically the first truck in the small fleets. So those who applied for that last year are right now protected under the advisory from enforcement action and the advisory allows us to work through that grant process. So however long it takes to get the grant and get the new truck introduced, they are protected. They are considered safe from enforcement action.

BOARD MEMBER BERG: I think I was referring more to the people that had gone out on their own and had on their own dime gotten into compliance. And so their first truck is in compliance today and they're applying for funding for their second truck. Would there be a mechanism to recognize them for spending their own money and giving them some priority for the second truck?

SSD CHIEF MARVIN: Yes. That completes our response.

CHAIRPERSON NICHOLS: There is another issue that
was raised, and you didn't put it in the written comments at my request. So let me just jump in here. And that has to do with the possible availability of cap and trade funds. Let me put that out there right now. Don't go there, is my short answer.

But a slightly more explanatory answer is we are bound by legislation that passed and was signed by the Governor two years ago to a process by which we develop an investment plan that is supposed to reflect the priorities of the administration and be approved by the Legislature for how to allocate that money in ways that give us the greatest amount of co-benefits and also comply with the requirement that the funds support the goals of AB 32. And we did that plan and we have an investment plan. And we have a Governor's budget which allows for a fixed sum of money for clean transportation. And within that area, we are lining out some of the opportunities.

But the priority for that has been, again as was mentioned earlier, for advanced transportation projects and things that are transformative in areas like freight. And there may still be some opportunities within the legislative process. The Pro Tem Senator Steinberg has put forth some alternative ideas about how he would like to see the funds spent. So the story isn't completely over yet, because the budget has to evolve with the
Legislature passing it and the Governor ultimately signing it.

But we are not in a position to intervene in that process at the moment. At the point when we were developing the next investment plan, it might be something that we would look at. Although, in all honesty, I don't think it fits well within the priorities for spending cap and trade money because the idea is to try to get the most greenhouse gas reductions while getting other air quality reductions as well. So it doesn't mean that it's completely ineligible because there are some improvements, obviously, as a result of getting some of the older trucks off the road. But compared with other things that we're going to be looking at for that money, it's probably not likely to make it.

So I hate to close another door on this, but I guess I'm going to go in the direction of being pessimistic here, if only because I'm the person who was quoted yesterday and rightfully so as having said these are problems we can solve with money. And of course, they can be solved with money if there is enough. But there isn't quite enough. So let's be as careful as we can and not open any ideas that we can't really follow through on. I think this is one that we're not going to be able to follow through on, at least not in the near term.
BOARD MEMBER SPERLING: What is the time frame of the investment plan?

CHAIRPERSON NICHOLS: It's a three-year plan, but it gets updated every year. So we'll start working on it, a new one, I guess soon. The Department of Finance is the one that's actually responsible for it. We did a lot of the work, we and others at Cal/EPA and the administration on developing that plan. But I don't know that we have a deadline at this stage, do we?

EXECUTIVE OFFICER COREY: It's a three-year plan. The next one would be June 30th of 2016, which means we need to start working on it in 2015.

CHAIRPERSON NICHOLS: We'll be working on it in 2015. And we're supposed to be sort of complying with it up until then. So there isn't a formal annual update. But my guess is it could be amended or modified I suppose, if it needed to be.

EXECUTIVE OFFICER COREY: The three-year plan really informed the annual budget process.

CHAIRPERSON NICHOLS: Right. It's intended for that, to be guidance. I think everybody will recall we did a presentation on it. It's pretty broad. It had the three major categories: Transportation, energy, efficiency, and renewables and natural resources, and some priorities within those areas.
The one thing it did not do, which I think, you know, many people had hoped for, was to create new programs. So this year's budget is only reflecting programs that currently are authorized by statute that money could be allocated to in ways that fit those priorities. We didn't sit down and go back and try to invent whole new kinds of programs. Many people have good ideas for things that you could do in all three of those categories. So I think it's not really a static process. But in terms of the issue that is facing us today, it's not well suited for what we're trying to accomplish.

Thank you.

BOARD MEMBER SHERRIFFS: I have a question or comment.

BOARD MEMBER RIORDAN: I just want to ask a quick question on the flow that we have. We didn't talk about cattle trucks. Are you saving that for later?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: In our haste to put this together, I realized as I put up the initial slide that we had slightly misordered them. We thought that talking about these two items first were probably of the most relevance or importance to the staff. And we would cover them all in a minute, Mrs. Riordan. My next comment.

CHAIRPERSON NICHOLS: Cattle trucks are coming.
BOARD MEMBER SHERRIFFS: Before we moo-ve on --
(Laughter)

BOARD MEMBER SHERRIFFS: -- on the prioritizing funding for the small fleet, enforcement becomes an issue again because people raised the concern yesterday about people breaking up their fleets to potentially qualify for this.

So the question of being sure that there is a mechanism in place that keeps that from happening so we can ensure that people who have been compliant are protected.

I guess an observation talking about -- we talked at the very beginning that incentives and small fleets you can hardly not talk about them together. And you pointed out we can't direct the 1B funds at this point to trucks. But could we not make some statement of support for local discretion and in that --

CHAIRPERSON NICHOLS: Yes. Absolutely.

BOARD MEMBER SHERRIFFS: Because again, people need to make a business plan. And they need some assurance that there is a commitment behind them for that. So that could be useful even though we can't --

CHAIRPERSON NICHOLS: I think that is a consistent with the request we heard from the San Joaquin District yesterday.
Next.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I won't draw out my "o" on moving on, but next we will talk about cattle trucks.

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MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: We did heard a lot yesterday about some concerns between those who haul for hire and those who do not.

Just to provide some background on this, our best estimate is there are about 500 cattle -- cattle trucks that exclusively haul cattle in the state. About 150 of those or so probably have filters already on them and are compliant.

So as you heard yesterday, kind of sounded like there was an either/or option. Either include, keep the staff proposal for all or limit them to just not for-hire truckers that would be able to take advantage of this.

This slide is already dated because there has been a lot of discussions between various stakeholders on this issue. We weren't the only ones burning the midnight oil last night, it would seem. What we would like to recommend is we keep the current proposal as is and allow that process to move forward. We can address this as a 15-day change once we have -- if a compromise is able to be worked out that's mutually agreeable to all involved.
CHAIRPERSON NICHOLS: We're not opening it to any other kinds of livestock.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: That is correct. This is cattle and cattle only is what is on the table.

CHAIRPERSON NICHOLS: All right.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Clearly, there was a lot of concern back and forth yesterday about those who have best complied and the financial disadvantage they're now at relative to those who have future compliance dates. This is something that, to be quite honest, we really struggled with throughout the development of these amendments, is how can you effectively recognize the investments that some fleets have already made. They are compliant. While some have gotten financial assistance, not all have. And even those who have, have had to invest substantial amounts of their own money in conjunction with public incentives in order to have those compliant trucks.

The way that we were able to try to bridge this gap is to look at some of the credit provisions that are in the regulation. And we extended those a number of
years, anywhere from two to four years, beyond what the current regulation would provide for.

As we looked at what else we could do, recognizing that we have a commitment in 2020 to meet the Diesel Risk Reduction Plan and we have obligations in 2023 to ensure we meet all of our SIP commitments, that our hands are fairly tied in terms of the types of things we could look at.

So as we went back and looked some more, what are the options that we have and that we believe the Board could consider relative to those bounding conditions. One of the areas that the Board could look to do is they could look to extend some of the credits that are already in there and we propose to extend out to 2020.

What the practical effect of this would be though would be to delay the final cleanup on a number of fleets and larger fleets that are probably high mileage until 2020 and will defer much of the PM benefits we expect to receive from those vehicles in the 2016-2018 time frame all the way out to 2020.

And our back-of-the-envelope estimate of the emission impact of that would be that that would probably double the loss of PM benefits we would expect from the package of amendments that are before you today. So instead of losing 7 percent or achieving 93 percent of the
emission benefits, we would probably hit around 86 percent. So it is a substantial loss of benefits to extend these out fully through 2020. So it is an option, but it comes with significant environmental disbenefit.

And the last bullet I think Chairman Nichols already talked about some of the other ideas that were discussed on tax credits, incentives, other things are beyond the purview of our regulatory authority and requires statutory changes.

So with that, I will throw this back to you.

BOARD MEMBER MITCHELL: Chairman Nichols?

CHAIRPERSON NICHOLS: Yes

BOARD MEMBER MITCHELL: I wonder if you did this calculation, what the loss of NOx benefits could be under that category of additional credit compliance, extending the dates?

ASSISTANT DIVISION CHIEF SAX: So, for example, for NOx when we say we would -- under the 93 percent cumulative benefits retained, under the current proposal, that represents a loss of 54 tons per day of NOx cumulative over the remaining life of the regulation from 2014 to 2023. For NOx, it would be much larger. It would be potentially up to 188 tons lost. Over that same period and for PM, it would go from four tons lost to about seven tons lost. So we would actually -- we're projecting we
would lose more NOx than we would lose PM.

BOARD MEMBER MITCHELL: Thank you.

CHAIRPERSON NICHOLS: Yes, Dr. Sherriffs.

BOARD MEMBER SHERRIFFS: Well -- and again, the goal is the health benefits. And although we calculated that the 93 percent was probably negligible or within the margin of error, 86 percent probably is not. That probably falls outside that iso bar.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: My expectation would be some of the conclusions we made around impacts on risk and impacts on mortality would have to be re-evaluated. That is correct.

CHAIRPERSON NICHOLS: You didn't really discuss enhanced enforcement. I mean, it's there.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: It's there.

CHAIRPERSON NICHOLS: It seems to me that there are a couple of areas that we've identified that would call for additional legislation and the one about linking registration authority seems to me to be one that we ought to be seeking, if we can. It has to go through a process within the administration to get approval to do that. But I certainly would think that would be something that would be a very useful tool to have. I see head nodding here so --
MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Yes. It's something that, you know, it's been discussed for a number of years. I believe the California Trucking Association has pursued legislation on this a number of times, has not been successful in getting that through onto the books. But I think anything that would help improve the tools that we have available to us on our enforcement efforts would be useful.

There are certainly going to be logistical issues we need to work out with Department of Motor Vehicles and our own systems to be able to fully implement something like that. But it would provide an effective tool for vehicles that are registered in California. I think we have to recognize though that a substantial number of the vehicles operating in the state originate from out of California. It would have no practical effect on our ability to do anything with those. But certainly for California registered vehicles, it could provide an effective tool beyond the ones we already have today.

CHAIRPERSON NICHOLS: It might be something that could be part of a package if somebody was working on a truck package.

All right. Well, how to proceed.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Would it best serve to just kind of talk about enforcement
first and then we can touch -- loop back on the last
couple of questions that you had?

CHAIRPERSON NICHOLS: Yeah.

BOARD MEMBER SHERRIFFS: Can I ask one other
question about the credits? Can people do anything with a
credit other than use it for their own fleet?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: No.
In other words, could another fleet take advantage of a
credit that a different fleet generated? No. There is no
trading of credits in the program.

BOARD MEMBER SHERRIFFS: We do not want --

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: We
do not want that.

BOARD MEMBER SHERRIFFS: Can you explain that a
little bit?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I
think tracking would be very difficult. And what we have
in the regulation right now is a fairly simplistic way for
a fleet to manage themselves themselves. It didn't take
into account different emissions rates of different
vehicles within the same fleet. If put a filter on a
truck that drives 10,000 miles, I could presumably not
have to clean up a truck that drives 60,000 miles down the
road. We've kind of accepted that to make this workable
for fleets, we would have to set this up that way. If you
wanted to talk about trading or exchanging credits between fleets, I think those types of considerations then need to be accounted for as well as what are the emissions occurring, because you have different requirements for areas that are NOx exempt areas versus in the San Joaquin Valley. I think it would provide a lot of complications that are probably less helpful to the overall structure of the regulation than we might like.

BOARD MEMBER SHERIFFS: Just like a truck is not a truck, a credit is not a credit.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: A truck is not a truck -- that's right. So let me talk a little bit about --

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: -- our enforcement efforts. Let me take a step back. Maybe go back one slide before this and try to set the stage a little bit.

What do we do today? What are our current activities? What are the current tools that we utilize? How do we ensure as high a level of compliance as we can? As you heard from staff yesterday, we believe that about 80 percent of the fleets are compliant that are on the road today.

We believe this for a number of reasons.
BOARD MEMBER BALMES: Erik, sorry. Because people questioned that number vigorously yesterday, can you restate your confidence in this 80 percent?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Let me talk through how we do this. It's what we see in the second bullet up there.

BOARD MEMBER BALMES: Sorry to interrupt.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: No problem.

The second result up there that talks about verified by analysis of DMV registration and truckers, what ARB has available to it are a number of different data sources regarding the trucks operating here in California. We have access to the DMV database and get a full download of the DMV database several times a year. Typically, we use that for emission inventory purposes to help us understand how the fleet is changing over time. But it provides a useful tool for us because we understand who and where these trucks are throughout the state.

We also have the data that's collected through this program that we collected through our truckers system, which is the online registration program that we have for trucks subject to this registration. What that does is captures all the vehicles that have applied for and are using the various flexibility provisions in the
regulation.

And I'm going to look over at Todd to kind of provide what the overlap in terms of the number of vehicles that we see in the DMV database and the number of vehicles that we see in the trucker's database. But when we start to put those two together, start to look at the trucks that are common to both, we start to see some very clear trends in terms of which trucks are in fleets that are compliant and which that are not. So Todd.

ASSISTANT DIVISION CHIEF SAX: Okay. So like Erik said, one of the things we did is try to cross reference these two databases. And so, for example, there is about 227,000 heavy trucks that are registered in California. There's probably about 177,000 known compliant trucks that are in truckers, not all of those are California registered. Most of them are heavy but not all of them.

What we ended up doing is cross referencing these by vehicle identification number. And then we also went through the data to identify vehicles by identical address. We went through a process of address scrubbing and other analysis tools we could use to group these by fleet.

And then we did an assessment of whether or not that fleet was compliant based on what the age of the
vehicle was in each fleet, whether or not it had a retrofit, and whether or not it was taking advantage of flexibility options, whether or not it could be following the BACT schedule and whether or not it was a light or heavy truck.

When we combine all that information together, what we see is for the California registered heavy truck population, it's about an 80 percent compliance rate. And that actually was very consistent with what we saw in our enforcement efforts we've done out in the field and fleet inspections where we see about an 80 percent compliance rate for both California registered trucks and trucks coming into California from other states. So that's why we believe 80 percent is consistent between the two data sets.

BOARD MEMBER BERG: I think where I'm confused is that we on a slide yesterday said we had a million trucks on the road.

ASSISTANT DIVISION CHIEF SAX: So there are a million trucks on the road. About 600,000 of them come in from other states.

One of things we said during the presentation was that of those 600 trucks, those are trucks that are in fleets that report mileage in California and are cleared to operate here. But many of those fleets report only a
small fraction of their total miles in California, which
to us indicates that relatively few of those trucks
actually operate in California. So when we've set up
inspections along border crossings in California, what
we've seen is an 80 percent compliance rate in those
600,000 trucks as well.

BOARD MEMBER BALMES: So thank you. As a
scientist, trumped up or otherwise, I appreciate numbers
and I appreciate that this agency tries to use evidence on
which to base our regulatory actions. So thank you.

CHAIRPERSON NICHOLS: Well, 80 percent is not
something to brag about in our normal regulatory process.
It's good, but it's not --

BOARD MEMBER BALMES: I'm not bragging about the
80 percent. The foundation of the numbers --

CHAIRPERSON NICHOLS: I was agreeing with what
you said. It's building on that. People were talking as
though 80 percent sounded like we were claiming a really
terrific rate of compliance. It's a good rate of
compliance. But under normal rules, you want to get five
percent or less non-compliance. And we're trying to get
as close to 100 as we can, knowing that's probably
impossible. But it is an indication that there is a lot
that's been done. And that I think is the main part.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:
That's exactly right. As we've looked at that number, while it is high, it can be improved upon. I think that the next slide will talk about some of the things that we're doing.

But before we leave this I want to just mention a couple of things is that some of the ideas that you heard yesterday in terms of working with the districts, working with EPA are already actions that we have underway and they're collaborative efforts we have initiated with them to better be able to have more eyes in the field, so to speak, and better leverage activities that the districts and EPA are already doing as well. So that is underway, as well as I'm very pleased to note that -- and we had actually meant to mention this yesterday is the administration is very supportive of this program and has in fact recommended additional resources be allocated from the Legislature to our diesel program, both for enforcement of the existing diesel regulations as well as for assistance of fleets as they are looking to understand what they need to do to come into compliance.

So we are working with the Legislature to try to ensure those make their way into the final budget. But it is encouraging that those resources are there. And it's very timely I think relative to what we heard yesterday and what we have going on today.
CHAIRPERSON NICHOLS: And just to sort of further explain the thought about the 80 percent, there is a lot of literature out there in the social science literature and law enforcement literature about how people react to violations and how they perceive violations going on in their communities.

And so I guess my thinking here is that if you're in the trucking business and you're subject to these rules, I'm painfully aware of them. And you're aware of one firm or one truck that isn't in compliance, to you that feels like something huge because you know somebody is getting away with it. It's like the broken window on the block. It takes everything down with it. So it becomes really important to be seen as and in fact be seriously addressing the people who are in noncompliance.

John.

BOARD MEMBER EISENHUT: I'm still struggling with the numbers. If I remember yesterday, it was reported there are about 200,000 heavy trucks registered in California. And the number that you just reflected as being registered 200,000 operating in California. The number that you just reported, which I can't remember precisely, 170,000 or so, included both heavy and lighter trucks and some unknown mix.

So is the 80 percent -- Question A, Part A is:
Where is the other 25,000? And how do we account for them?

And B, is the 80 percent compliance calculated on the 200,000 or is it calculated on the 175,000?

ASSISTANT DIVISION CHIEF SAX: So the 80 percent compliance when we look at the combination of both the DMV and truckers' data and the audits and field inspections we've done applies to all million trucks operating in California.

Now, the light trucks do not have the compliance date yet. We are counting them as compliant because they are. But they also haven't faced the compliance date yet.

For the 230,000 California registered heavy trucks, that we estimate using DMV and truckers an 80 percent compliance rate, and we see that is consistent with what we've seen in our audits and fields inspection, that 80 percent rate does not include the 20,000 or so trucks that have claimed good faith and were taking steps early this year to either install a filter or replace their truck. It also does not include -- of that 20,000, that 20,000 includes 5,000 that cannot get a loan. Those are also in the not compliant category.

The 177,000 that I mentioned which applies -- is heavy trucks, light trucks, everything in our truckers compliance reporting database, we ended up
cross-referencing those with the DMV database. All of
those are accounted for if they're registered in
California. We also have access to DMV registration data
for all of the fleets and all of the trucks that report
operation in California. And we can cross-reference those
by vehicle identification number as well.

CHAIRPERSON NICHOLS: Let's move on.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I
just wanted to add one thing because this came up
yesterday about the ability of the DMV database to be used
for such types of efforts. I think it's important to note
that the VIN, vehicle identification number, it has
encoded in it a significant amount of information that we
can decode to understand the model year of the engine and
things like that, which help us understand whether the
truck has a filter, does not have a filter, and those
types of things. So it is a very useful tool.

It may not be as people peruse it an
understanding that information is in there, although
encoded is sometimes not evident to those who might go in.
It's important to understand as we use it and we look at
it, we're able to get information like that out of it to
help us with our efforts.

CHAIRPERSON NICHOLS: Okay.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: The
last thing I just want to touch on is there was some number of comments about could I&M, inspection and maintenance, be a useful tool?

The short answer is yes. This is something we have efforts underway to look at a number of different elements of that, which we can incorporate into our program, which include things like adding additional annual inspection requirements to address some of the performance issues. We heard yesterday that fleets could undertake -- we've already begun to look at whether the existing opacity standards could be reduced to reflect a diesel filter world as opposed to a pre-diesel filter world, which those standards are based on, as well as new opportunities to use onboard diagnostics, which are now being deployed into new engines nationwide as a mechanism to understand the emission performance in the current state of these engines as they're operating here in California.

There is a lot of work going on. I expect that the Board will see this in the next couple of years as we start to incorporate programs and develop programs around those various efforts.

BOARD MEMBER SPERLING: That sounds like this is years in the future if we do this. Is that the implication of what you just said?
MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I think some like opacity have an opportunity to be done fairly quickly. It's modifying existing programs. Others, like OBD integration, would require more time. We need a greater pot penetration of these vehicles.

There is tremendous opportunity as we've seen on the light-duty sid with OBD moving forward. I don't think we'll have a smog check program for trucks, per se, but something that could identify and flag for repair trucks that are malfunctioning as they travel down the roads is something I think we can start to look at.

Sensitive to the time, there are two other questions I will just maybe touch on real briefly. And we don't have to necessarily put the slides up.

There was a question about school buses and whether or not school buses should receive -- also be able to take advantage of the 5,000 mile lower use exemption that we proposed for other trucks. And quite frankly, as we've looked at this and has been discussed with the Board a number of times in prior amendments, school buses remain a high priority for us for cleanup simply because of the exposure of the young children to diesel PM emissions as they're traveling in these trucks. We would not advocate or recommend they be included in them.

About 75 percent or so of the school buses
operating in the state already have filters, and we are working with districts to -- local air districts to make money available to complete that cleanup. We don't think that it's necessary to include those at this time.

The other question that came up regarding water trucks and whether the additional miles were going to be needed for water trucks recognizing conditions of the drought. If you remember, one of the proposals that staff made is to increase the work truck mileage from 15,000 to 20,000 miles. Work trucks have already -- are already eligible and were already eligible for the 15,000 mile exemption that was in the existing regulation. Work trucks certainly were part of that.

So by increasing that to 20,000 miles, we think we'll be able to accommodate any additional mileage these trucks may need in response to having to drive further to get non-potable water in order to use on the job site instead of fire hydrant water. We would not recommend any additional changes to that provision relative to water trucks.

BOARD MEMBER BERG: Also, Erik, could you please make a comment on if these trucks are called into service on an emergency basis, how does that apply to their mileage?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: So
the regulation has provisions that do not count against a fleet, miles they might accrue to respond to emergency. This might be something like a flood, a fire, those types of activities. So if a water truck is needed on a fire line and it's low use, the fleet would not have to worry that it will blow its budget, blow its low use mileage because it's been put into that service. So there is a mechanism for fleets to be able to do that without penalty.

CHAIRPERSON NICHOLS: Okay. That's it. Thank you. So I think what we need is to put the original staff proposal on the table as a motion and then make whatever changes people feel like they need to make

BOARD MEMBER BERG: I so move Resolution 14-3.
BOARD MEMBER EISENHUT: Second.
CHAIRPERSON NICHOLS: It's been seconded by Board Member Eisenhut. So good.

Okay. Now, I'm open to suggestions, but I think here what we are hearing is probably the only item that is -- well, I shouldn't make an assumption here.

But I would recommend that we only look at the possibility of some direction to the staff in terms of pursuing the additional funding opportunities that are out there and prioritizing funding for this area.

I would like to say, by the way, with respect to
school buses, we've been doing quite a bit to try to come up with incentive money for zero emission vehicles in that area. And that really would be the place I'd like to be looking for that.

The cattle trucks issue is also one that doesn't sound like it's ripe to be changed at this point unless anybody feels strongly on that one.

BOARD MEMBER RIORDAN: I think there was a comment by staff that there might be some revisions -- slight revision to be used in a 15-day; correct?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: That is correct.

CHAIRPERSON NICHOLS: But I'm just talking about what we would vote on today. I agree; we're open to a refinement of that, if somebody comes forward with a better idea.

So really the area that I think we're focusing on here is our level of comfort with this loan denial language and the delays for the smallest fleets to come into compliance to allow them to be eligible for incentive funding that may be out there. That's really where we have to focus in on that.

Does anybody have any thoughts about what they would like to do? I mean, I'm still quite concerned about our ability to handle this loan information without a huge
expenditure of staff time and effort. But I do understand that it's vital to people's ability to comply. So I'm willing to accept the original staff proposal on this one, but I'm certainly open to a change if anybody wants to move that.

BOARD MEMBER RIORDAN: Madam Chair, I certainly am willing to accept it and just would ask the question. If staff ultimately finds it is a problem, can they not come back to the Board with some revision if it turns out to be more problematic than we believe?

CHAIRPERSON NICHOLS: That's hard to do. I mean, just as a practical matter. I'm not saying legally.

BOARD MEMBER RIORDAN: It seems to me -- I'm willing to try it, but I also think you can modify it if you have to.

BOARD MEMBER BERG: I would be willing to be interested to see if there was any thought on changing the four year to a two year, shortening the time frame to the end of 2016. That gives almost two and a half years. And I'm in favor of keeping it just because the economy is recovering. And I do feel that we could capture these people that would have the ability to get into compliance. I do think maybe adding the PM filter, as Mr. White suggested, could be a good idea. But maybe shortening the time and therefore shortening our effort might be
something we want to consider.

    CHAIRPERSON NICHOLS: I would be delighted to do that. My only concern again is a practical one of implementation. Can we get the message out in time and actually use that period of time to make a difference? Or does that just guarantee they're going to be a whole lot of people who are going to be in the exact same situation in two years that they are today?

    MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I think the short answer to that is yes. We think we could get the word out, especially for those who have already indicated to us they have tried and not been successful in terms of getting a loan because many of those who have reported in our good faith advisory that we got we had out last year.

    I want to keep in mind and remind the Board this provision will only be open through this calendar year. So should a fleet discover next year that they are in the situation, they will need to go through our normal non-compliance penalty -- not penalty but enforcement and settlement process in order to kind of get onto that compliance path. So this would only be for fleets that go through this effort in 2014.

    BOARD MEMBER EISENHUT: Question.

    CHAIRPERSON NICHOLS: Yes.
BOARD MEMBER EISENHUT: We discussed earlier the implications of that regulation on funding -- or the potential for assistance. Does this narrow the window of available funding for those folks? And is that -- I'm still exploring this.

CHAIRPERSON NICHOLS: Understand.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Separate from the discussion on small fleets, I don't think that we would be looking for fleets that pursue the loan option as incentive funding. Some of the incentive funding dollars we've talked about would be open to them. We would be looking for them to -- working with them on finding the means to come into compliance, taking advantage of the improved economy and some other steps to become compliant.

If at the end of the two-year window as Ms. Berg has proposed, if they are still not compliant, we can put them into the enforcement and settlement process. There will always be a mechanism for them to try to bring them into compliance. What this does is sets up a regulatory framework for the initial part of that to get as many of them as compliant as possible.

CHAIRPERSON NICHOLS: And push the money that there is out the door.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: On
the small fleet side for on the second and third trucks as we discussed earlier, yes.

CHAIRPERSON NICHOLS: Dr. Serna.

BOARD MEMBER SERNA: Question for staff on the slide of comparison of loan denial options. There is the resource-intensive option and the more resource-intensive option. So when you're suggesting that one is more resource intensive, is it more resource intensive for ARB or for the local air districts?

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: For ARB. These are resource impacts that staff at ARB would experience. On one hand, the loan option as proposed would provide a fairly straight forward -- and I don't want to say cookie cutter, but we would have a mechanism for the fleets that everybody would follow which would simplify the process and our handling of that for fleets. The enforcement and settlement process is a little more one on one and would require then much more interaction between staff and each fleet as opposed to the loan provision that we've had proposed.

EXECUTIVE OFFICER COREY: I do want to add to this, because I want to make sure we're crystal clear on this point.

The loan denial provision, even with the adjustments that are being discussed, moving it to 2016,
allowing for the PM filter is from a resource ARB implementation standpoint much more resource efficient than the enforcement route that would be significant for the resource standpoint if we go the enforcement route, because it's one off negotiations with potentially hundreds of thousands of trucks.

CHAIRPERSON NICHOLS: Isn't it also the case that with the loan process those funds are administered to a considerable extent by our partners in the air districts as well. We don't do all of that work.

EXECUTIVE OFFICER COREY: In terms of the apportionment, the incentives to trucks, in particular you talked about to small fleets, the districts play a key role in that, irrespective of this decision on the loan denial provision, because we're already talking about a focus on the small fleets.

CHAIRPERSON NICHOLS: John.

BOARD MEMBER BALMES: So just to be clear, I'm in favor of Ms. Berg's two-year window for this loan denial approach. But I'm also in favor of improved enforcement. So, to me, it doesn't seem like it's an either/or. We have this two-year amended proposal if we accept Ms. Berg's proposal. But then I'd like to see vigorous enforcement afterwards. I realize it's resource-intensive and that has to be practically worked out. But am I right
that this is not an either/or here?

EXECUTIVE OFFICER COREY: It's not. In fact, the message has come through loud and clear from you all. And Erik touched on the resource request that we are getting support from. But we recognize the effective implementation of the program is going to require more boots on the ground, more aggressive assessment of the reporting documentation to ultimately have effective implementation. We will be putting an emphasis on the enforcement execution of the program.

CHAIRPERSON NICHOLS: Yes, Dr. Sherriffs.

BOARD MEMBER SHERRIFFS: And again, to clarify, talking about extending the deadline because what we're trying to do is, first of all, in the exchange is protect the health benefits. Second, be sure we protest the SIPs. And then third, equity is a big concern.

So as we talk about extending these deadlines, it's not just a free ride for two years, is it? There are things they have to be doing along the way so that it's clear that they're on that path. It's not just okay, fine, you can run dirty for two more years.

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: We can certainly look at additional elements to this proposal as we have -- as we do the 15-day changes, as we discussed yesterday and this morning, additional elements that could
be added to that to make sure. It's our expectation
fleets will simply sit on their laurels for two years. If
this do, they'll find themselves in a no compliance
situation. There is no way to become compliant.

We will know who they are. We will be able to
get materials out of to them, remind them up their
upcoming obligations. It had been suggested by the San
Joaquin Valley Board that there would be milestones
associated with that and look to incorporate those in as
we look at how to tighten up this provision to improve its
enforceability and reduce the opportunities --

CHAIRPERSON NICHOLS: So we're saying we're going
to have a 15-day set of changes here that deal just with
this issue of how we get people onto a compliance path
that we think will work and not just kick the can down the
road.

BOARD MEMBER SHERRIFFS: We owe that to the
people who have already stepped up.

CHAIRPERSON NICHOLS: I agree.

Further discussion? If not, we have a motion
with a -- it's not even an amendment, really. It's
direction to the staff about what we want to see have
happen.

The only amendment actually is the amendment to
shorten the time frame for the loan denial provision and
make that only available through December 2016.

I think that's it. Are we ready then to --

MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Can I ask one clarifying question? Is it the intent of the Board that the provision also require that at the end of 2016 they only have a particular filter installed as opposed to having the 2010 compliant truck? That will be another change that we'll need to -- it would be helpful to understand if that's what the Board is requesting.

BOARD MEMBER BERG: As per your recommendation, that is part of my suggestion.

CHAIRPERSON NICHOLS: Is it either/or? Either 2010 or a filter?

BOARD MEMBER BERG: Yes.

CHAIRPERSON NICHOLS: Okay. Just to be clear. Either/or. Okay. All right.

With that, I think we have probably achieved a degree of consensus here. But I'll see if I can do this on a voice vote then.

With the amendment that's proposed, all in favor please say aye.

(Ayes) (10)

CHAIRPERSON NICHOLS: Opposed?

Do you want to oppose? Would you like to speak to your opposition?
BOARD MEMBER DE LA TORRE: I've struggled with this one more than anything I think I've had since I've been on this Board. And I think I alluded to it yesterday in my comments. I really have a hard time, and I wasn't on this Board when the original rules were done. I wasn't here when the extension was granted in 2010, which I thought was completely appropriate at that time because it was in the future. And there was a dramatic circumstance with the economy the way it was that deserved that consideration.

In this case -- and I appreciate all the testimony yesterday. I was really surprised at how many people came and testified who had complied and came and talked to us about how unfair it was to them to have followed what we told them to do and then to have other folks who had not.

And I remember the words of one of the folks that spoke yesterday. "Ignorance and defiance." And the deadline was January 1st, 2014. And they did not comply. I was okay and I am okay with staff working with folks on an ad hoc basis. I know it's labor intensive, all those things. But working with them to get them there. But we set a deadline, and we have 80 percent compliance. I think it's working. And I understand how difficult it is. But at the end of the day, we are a
regulatory agency that has to set targets and follow through on them. And I know how tough this one is because it effects folks out there who are just trying to do their business. But it's been years and years and years in coming and we're now at the end of April, 2014. And folks, I saw a lot of defiance yesterday. I saw a lot of folks pretending they didn't know. I find it impossible to believe that they didn't know. And so that's what --

CHAIRPERSON NICHOLS: Understood. Duly noted and appreciated, Hector.

(Nays) (1)

CHAIRPERSON NICHOLS: I'd just say to all of those who were here yesterday because we did hear from an array of people, probably the ones who are going to benefit from our decision today were not in the room yesterday and were not represented. I think we saw a fair representation of people that the extremes on both sides and not the people who are out there who are actually going to be helped as a result of the decision we're making today.

So already that's it. We are finished with that item. We are going to quickly deal with the AQIP item. Do we have the right staff here for that?

This item is not going to be an extensive discussion of the CVRP program, which is our Clean Vehicle
Rebate Project. We can just state for the record here that the program is a part of AB 118, now AB 8, Air Quality Improvement Program, which provides critical incentives for the state's cleanest cars and truck as well as for advanced technology demonstrations and loan assistance for diesel trucks.

Over the past year, once again, demand for these ultra clean vehicles has grown faster than we had anticipated. And now it exceeds the available funding for this fiscal year, resulting in an anticipated funding gap of about $30 million.

The Executive Officer has already triggered an existing $5 million rebate waiting list that we had previously authorized for applicants who will receive their rebates once additional funding becomes available. However, that list is going to be full by the end of this month, leaving a projected shortfall of about $25 million.

So the staff is here today requesting authority for the Executive Officer to expand the waiting list by an additional $25 million to carry the program through June 2014 when the new fiscal year funding will be in place.

And I just want to emphasize that we are not here today to talk about any other projected changes to our incentive program for clean vehicles because that's going to be on the agenda in June. There is a paper out for
discussion that many people have seen. There's lots of ideas, issues, concerns about those ideas for how to make this program sustainable and even more effective in years to come. But for the moment, all we need to do is to give the authority to extend the waiting list.

Is there anything else that we need by way of staff report here?

EXECUTIVE OFFICER COREY: No, Chairman. That's actually right on point. It's administrative and that is the ask.

CHAIRPERSON NICHOLS: Is there anyone here who wants to testify on this item? If they don't compelled, they don't need to. Okay, let's have a motion.

BOARD MEMBER SHERIFFS: So moved.

BOARD MEMBER RIORDAN: Second.

BOARD CLERK JENSEN: Chairman Nichols, three people have signed up to speak.

CHAIRPERSON NICHOLS: Well then, we have a motion and a second, but you can come and speak anyway. You're in favor. If you want to come forward, you can come forward. If not, I'm going to assume they're here to make sure we do this.

BOARD CLERK JENSEN: Daniel Witt was the first witness.

CHAIRPERSON NICHOLS: I'm sorry?
CHAIRPERSON NICHOLS: Hi.

MR. WITT: Good morning, everyone. I'll make this very quick so that we can commence.

I'm Daniel Witt, Manager of Business Development and Policy for Tesla Motors. As you know, Tesla is a California-based manufacturer of electric vehicles. We employ more than 5,000 Californians at facilities in northern and southern portions of the state, including our assembly plant in Fremont, California, and our recently acquired facility in Lathrop. 3,000 of these employees have been hired since the start of 2013 in line with the scaling of production of the Model S sedan. Last year, we sold 22,000 of these vehicles worldwide and publicly announced plans to increase protection of the S at our factory in California to meet both demand in new and existing markets.

Additionally, Tesla operates the most robust fast charging network in California at no cost to the state, with more locations in the state than any other.

We'd like to support and frankly speak for everyone else who is in support of this proposal. And I won't go into many details on it, other than to suggest we support the staff recommendation to increase the rebate reservation list amount to 30 million in order to fulfill
the consumer interest for the remainder of the current fiscal year. And we also support the staff recommendation to access these consumers according to the current fiscal year program and funding criteria. This will reduce the ambiguity and uncertainty about rebate value and program qualifications for any additional rebate applicants during this period.

We remain committed to working with staff on next year's funding plan and all of the intricacies associated with that. As the Chairman alluded to, there is lots of discourse and discussion going on regarding the various proposals. And we are committed to being very actively involved in that.

CHAIRPERSON NICHOLS: Not to give short shrift at all to this program. It's one of the most important things we're doing right now. I think we have reserved a lot of time to talk about it in the coming months. And right now, we just need to make sure that as people are walking into dealerships looking to get electric cars, they're not told, there are no more rebates. We know there is going to be money coming as soon as the budget passes. We want to make sure that people who are thinking about buying cars right now will go out and do it and that we'll have the money available for them.

BOARD MEMBER SPERLING: Can I get a clarification
on what you just said? That the money that's coming is
going to be used to backfill for this fiscal year?

CHAIRPERSON NICHOLS: Essentially, yes. When
there is a waiting list. That means that those people who
make it onto the waiting list, whoever they are, they will
be entitled to a rebate, exactly the same as if they
brought the car earlier in the fiscal year because they're
subject to this fiscal year's rule. Any changes we make
to the rebate program would only take effect after that.

BOARD MEMBER SPERLING: Okay. Let me see if I
understand that. Only a certain amount of money was
available for this year --

CHAIRPERSON NICHOLS: We already spent it.

BOARD MEMBER SPERLING: -- at the Legislature
provides additional funding. Is that what you're
referring -- why are we running -- I guess we're running
out of money. What money are we running out of and --

CHAIRPERSON NICHOLS: This year money. Under the
rules that are in effect today, because we haven't changed
the rebate program in any way, as of yet, we don't have
enough money to fulfill the expectations of all the people
who have already purchased cars in the last couple weeks
and who will purchase them in the next couple weeks.

BOARD MEMBER SPERLING: The money set aside from
cap and trade for --
CHAIRPERSON NICHOLS: This is not cap and trade money that we're talking about here. It's AB 118 or AB 8 money.

EXECUTIVE OFFICER COREY: This is a dedicated appropriation to allow us to backfill the remainder of this fiscal year.

BOARD MEMBER SPERLING: Okay.

CHAIRPERSON NICHOLS: The cap and trade funding we're talking about is potentially being available for a variety of different programs. Some of that could come to that program. But that's not under discussion at the moment.

BOARD MEMBER SPERLING: I'm concerned because will that -- that money is actually for next fiscal year, if it's approved by the Legislature.

CHAIRPERSON NICHOLS: Yes. But it may not necessarily all going to CVRP or any particular source. This's all still under discussion.

May I have a vote on the motion, unless there is anything more that needs to be said?

BOARD CLERK JENSEN: Madam Chairman, there was one other witness. Steve Douglas.

CHAIRPERSON NICHOLS: Steve does not wish to speak. Either did Eileen. She left the room so you wouldn't call on her. Oh, no. There she is. But we know
that she would have supported us, and we appreciate her
giving us time.

The hearing is closed. We are bringing this item
forward for a vote on the motion. All those in favor
please say aye.

(Ayes) (10)

CHAIRPERSON NICHOLS: Any opposed?

Great. Thank you so much.

BOARD MEMBER SPERLING: I'd like to abstain on
this one. I have trouble with this. I'm a strong
supporter of electric vehicles, strong supporter of
incentives, but I think it's not good policy or good
discipline to be creating these ever-expanding waiting
lists every year. So I really have trouble with it. I
think we need to come up with a more stable, reliable,
robust process. And --

CHAIRPERSON NICHOLS: I think we all agree with
that. But if you feel the need to abstain on this one,
you can be shown as having abstained. Okay. Duly noted.

(Abstentions) (1)

CHAIRPERSON NICHOLS: Okay. Thank you. We will
now take a two-and-a-half minute stretch break and change
personnel.

(Whereupon a recess was taken.)

CHAIRPERSON NICHOLS: We have one item before us
today, now that we've dispensed with yesterday and our
short item, and that is amendments to our cap and trade
regulation.

We have a number of items, all of which are very
important to a distinct group of people of stakeholders,
workshops, to get us to where we are today. So there are
a number of different issues that are before us today.

We've been anticipating this for some time, and I
know staff has done a lot of work with stakeholders,
workshops, et cetera, to get us to the point where we have
a set of amendments to look at today. The date is
important, and that's why I've been pushing to make sure
that we had adequate time to discuss it. Because under
the rulemaking process, some of these items could not be
acted on until the end of the year -- by the end of the
year when they will be needed for compliance purposes
unless we take action today. So we are in a pretty narrow
window here in terms of action.

This is the second set of regulatory amendments
as part of our new process for making sure that we're
coordinating our work not only with our state
administrative law, but also with the California
Environmental Quality Act. So the proposed amendments
today, this is the final time to act on them. This is our
opportunity to actually take action. We can't defer any
further.

The proposed amendments include proposals to provide additional transition assistance for covered entities, to add new benchmarks and improve some existing benchmarks for industrial allowance allocation, to add a new offset protocol, incorporate additional cost containment features, and enhance implementation and oversight of the Cap and Trade Program.

The Cap and Trade Program, as I think everyone knows, is a part and an important part of the suite of strategies that are outlined in our initial AB 32 Greenhouse Gas Scoping Plan under AB 32 that are putting us on track to reduce our greenhouse gas emissions to 1990 levels by 2020, to maintain and continue reductions beyond 2020 as well as to create the framework for ongoing and additional actions to cut emissions beyond 2020.

By establishing a hard cap, the program ensures that California meets its 2020 target while giving businesses the flexibility to chose the lowest cost approach to reducing emissions. In doing so, it creates a powerful economic incentive for investments in cleaner more advanced technologies and has also propelled California to an international leadership role in the fight against climate change. The proposed amendments before us today are all designed to enable this program to
continue to run smoothly.

Collectively, the anticipated benefits of the proposed amendments include: Greater clarity for the cover entities on various aspects of program implementation, and they're also intended to provide additional time and certainty for industry to make some of the necessary investments in energy efficiency and greenhouse gas reductions. Because these emissions reductions will occur as a result of the program, these amendments will also serve to directly improve the State's environment.

We've moved forward carefully to get to this point. The program, as I think you all know, has been moving very smoothly without volatility in terms of the way the market has functioned. Prices have remained moderate, which is a good sign in terms of the fact that there are allowances available for people who need them to be in compliance. And because, in fact, the market is functioning so well, it is recognized today as a model for how to incentivize greenhouse gas emissions reductions and is being either adapted or in some cases directly copied by jurisdictions around the world.

The proposed amendments will allow us to continue to develop a comprehensive program to reduce dependence on fossil fuels, stimulate investment in clean and
energy-efficient technologies, and greatly improve air quality and public health within our state.

So all in all, this is a good program that we're seeking to continually make better while moving forward and doing so in a way that gives everybody plenty of awareness and opportunity to participate in the design so that it can be as sustainable as possible.

And with that, Mr. Corey, do you want to introduce the staff report?

EXECUTIVE OFFICER COREY: Yes, thank you Chairman Nichols.

Staff will present for Board consideration the set of proposed amendments to the cap and trade regulation collectively. These modifications to the program will provide additional details to clarify implementation, address stakeholder concerns, respond to Board direction on various topics, and enhance ARB's ability to oversee and implement the regulation.

We're asking that you vote to adopt the amendments today that would continue to enhance the effectiveness and oversight of the cap and trade regulation.

And in total, three Board Resolutions have directed staff to propose modifications to the cap and trade regulation to address resource shuffling, legacy
contracts, combined heat and power, emissions leakage, allowance allocation universities, cost containment, product-based benchmarks, and waste-to-energy facilities.

And in response to this direction, at the October 2013 Board hearing, staff presented a set of proposed amendments that achieve the goals outlined in each of the Board resolutions.

These amendments were developed using the same public engagement we used throughout the program development over the last four years. The public engagement included twelve public workshops, daily communication with stakeholders and members of the public, and numerous formal and informal public comment periods. Together, these activities have ensured an open and transparent rulemaking process.

With that, I'll turn it over to Sara Nichols from the Climate Change Program Evaluation Branch who will give the staff presentation. Sara.

(Thereupon an overhead presentation was presented as follows.)

AIR POLLUTION SPECIALIST NICHOLS: Thank you, Mr. Corey.

Good morning, Chairman Nichols and members of the Board.

This presentation will focus on proposed
amendments to the California cap on greenhouse gas emissions and market-based compliance mechanisms regulation, otherwise known as the cap and trade regulation.

These amendments include: Additional transition assistance for covered entities, new and revised benchmarks for industrial allocation, the addition of one new offset protocol, and the incorporation of additional cost containment mechanisms.

Staff also proposing some technical amendments to help with implementation and further enable comprehensive oversight of the market program.

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AIR POLLUTION SPECIALIST NICHOLS: For this presentation, I will begin by providing background on AB 32 and the goals of the Cap and Trade Program. I will also discuss program milestones and updates.

I will provide an overview of the comprehensive regulatory development process, which has accompanied these proposed amendments, including the 45-day and 15-day amendments. The discussion on the 15-day amendments will focus on the most significant modifications since we presented to the Board last fall.

Next I will present an overview of the environmental analysis prepared for the proposed
amendments and Mine Methane Capture Protocol in accordance with the California Environmental Quality act, or CEQA.

The final portion of this presentation will present staff's recommendation for Board consideration of the final regulatory amendments and vote today.

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AIR POLLUTION SPECIALIST NICHOLS: The Cap and Trade Program is one of a suite of complementary measures that will reduce GHG emissions under AB 32. Under the program, ARB places a statewide limit, or cap, on the emissions from all covered sources. The cap begins at the expected business-as-usual emissions and then gradually declines at two to three percent per year until the 2020 target is reached.

The total number of permits to emit, called allowances, issued each year is equal to the cap. Covered entities can buy and sell allowances and must have enough to equal their total emissions.

The transfer of allowances between market participants is referred to as a trade. By allowing trades, the program provides covered entities the flexibility to make reductions at their facility or trade with others for allowances. Trading allows entities to find the most cost-effective method of compliance while the cap ensures the state achieves its emission reduction
goals.

Emissions reductions that occur due to direct regulation are also recognized under the program. In the sense, direct regulations and the Cap and Trade Program work together to reduce this State's overall greenhouse gas emissions.

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AIR POLLUTION SPECIALIST NICHOLS: Cap and trade places a price on carbon emissions to incentivize reductions, thereby spurring innovation in lower emissions and energy-efficient technologies. The program is designed to complement other existing programs to reduce criteria and toxic air pollutants.

By setting and enforcing a strict limit on greenhouse gas emissions, the program ensures AB 32's goals are realized.

It is important to note that the Cap and Trade Program is technology neutral in that it does not mandate the use of any one specific emission reduction technology. Thus, the program allows entities the flexibility to comply with the regulation in the most cost effective manner.

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AIR POLLUTION SPECIALIST NICHOLS: ARB places an aggregate limit, or cap, on the emissions from all covered
sources for the years 2013 through 2020. Unlike
traditional air permitting programs, there are neither
specific caps for individual facilities, nor facility
level reduction targets. The cap covers approximately 85
percent of California's greenhouse gas emissions. The
program begins with a narrow scope, which includes
emissions from large stationary sources that emit equal to
or greater than 25,000 metric tons of CO2 equivalent per
year, including electricity generation and imports.

Beginning in 2015, the program will cover
emissions from the combustion of natural gas used in
residential, commercial, and small industrial sectors, as
well as the combustion of gasoline and diesel.

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AIR POLLUTION SPECIALIST NICHOLS: The cap and
trade regulation was developed over a three-year period
through an extensive consultation process. The Board
initially considered the proposed regulation in December
2010, and the Board officially adopted the final
regulation order in October 2011.

In 2012, staff proposed two sets of amendments
that were formally adopted by the Board. One set related
to implementation and the other related to linkage with
the Canadian province of Quebec.

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AIR POLLUTION SPECIALIST NICHOLS: To date, ARB has successfully held six quarterly allowance options. The next auction will be held on May 16th of this year.

The first and second allowance allocation to eligible entities occurred in November 2012 and 2013. The compliance obligation for all covered entities begin January 1, 2013.

In September 2013, ARB issued the first compliance grade offset credits, marking another important step forward. To date, ARB has issued more than 7.5 million carbon offset credits. The amendments related to will linkage with Quebec took effect in this October 2013 and linkage between the two programs occurred on January 1st, 2014.

Finally, the first compliance surrender date for the program will occur on November 1st of this year, at which time covered entities must surrender compliance instruments equal to 30 percent of their 2013 calendar year covered emissions. It's fair to say the market is operating smoothly today.

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AIR POLLUTION SPECIALIST NICHOLS: Prior to the beginning of this rulemaking process, the Board issued a total of three Resolutions in 2012 and 2013 directing staff to review items and propose changes to the
regulation as needed. The Board direction from these Resolutions is summarized on this slide. Many of these topics are the subject of the proposed amendments before you today.

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AIR POLLUTION SPECIALIST NICHOLS: In response to Board direction, staff presented a set of proposed amendments to the regulation at the October 2013 Board hearing. Staff began the public process for this rulemaking on September 6, 2013, by releasing the proposed amendments to the regulation, including the Mine Methane Capture Protocol, for a 45-day public comment period.

At the October 2013 Board hearing, the Board approved Resolution 13-44 directing the Executive Officer to consider additional modifications to the proposed amendments as part of a subsequent 15-day rulemaking package. The Board also directed the Executive Officer to make available for public review an analysis of the potential impact of offsets on coal mine economics and to complete the environmental review process by preparing written responses to all environmental comments received.

In response, on March 21, 2014, staff posted the 15-day proposed modifications to the regulation and the Mine Methane Capture Protocol and placed the Mine Methane Capture Protocol and mining economics analysis into the
record for public consideration. The comment period for
the 15 day regulatory package ended on April 5th, 2014.

On April 14, 2014, following the 15-day comment
period, ARB posted all responses to environmental comments
received in accordance with the ARB's certified regulatory
program. At the end of this presentation, we will ask
that you consider adoption of this regulation and direct
staff to complete the Final Statement of Reasons for
submission to the Office of Administrative Law.

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AIR POLLUTION SPECIALIST NICHOLS: In addition to
the required formal rulemaking public process, staff
conducted extensive additional public process to develop
these proposed amendments. Over the past two and a half
years, staff has held twelve public workshops on the
proposed amendments and has engaged in daily communication
with stakeholders and members of the public on specific
topics.

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AIR POLLUTION SPECIALIST NICHOLS: The Mine
Methane Capture Protocol stakeholder process began on
March 28, 2013, when ARB staff held a public workshop to
discuss the decision to develop potential offset
protocols, including the Mine Methane Capture Protocol.

Staff held four technical working group meetings
throughout the spring and summer of 2013 to ensure public involvement in the protocol development process.

Staff also released a total of three complete informal discussion drafts for the proposed amendments in order to ensure ample opportunity for public comment. Throughout the regulatory development process, ARB made available documents and presentations to help stakeholders prepare for the discussions. For each workshop, ARB also invited stakeholders to participate and provide informal comments on staff's working products.

Collectively, these activities have ensured an open and transparent rulemaking process for the proposed amendments. I will now walk through a summary of the proposed changes. Items marked with an asterisk on the slides indicate modifications that were proposed as part of the 15-day changes.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing many changes to the regulation to prevent leakage. By leakage, staff is referring to a decrease in emissions in California, which results in an increase in emissions outside of California. AB 32 requires ARB to minimize leakage to the extent feasible.

Staff is proposing new and modified product benchmarks. Product-based benchmarks allow business to
grow and receive allowances based their efficiency
grow and receive allowances based on their efficiency
relative to other facilities in the same sector. Changes
to the refinery sector benchmark are discussed on the next slide. Many of the 15-day changes are related to these
benchmarks.

The most significant of the leakage prevention allocation changes is the increase in assistance factors for the second compliance period. Due to the fact that ARB funded studies to assess leakage are still underway, staff is proposing to shift the first decrease in assistance factors out to 2018 in order to provide certainty to regulated entities and time for ARB to complete and review the studies.

Staff may propose additional shifts in the assistance factors after reviewing the results of these studies and before the third compliance period. Staff is proposing amendments related to allocation for new entrants and clarification of dates for opt-in covered entities.

Finally, staff is also proposing changes to the regulation's true up mechanisms so that true-up allowances can be used for the compliance year for which the allowances are provided.

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AIR POLLUTION SPECIALIST NICHOLS: We are
proposing to change the refinery allocation benchmark from the carbon-weighted tonne which was the metric used for allocation in the European Union's emission trading system to the complexity-weighted barrel. Staff calculated a benchmark using the emissions and complexity-weighted barrel throughput of California refineries. The switch to CWB was in response to a consensus from the refinery sector that this is the preferred approach.

Staff is proposing that a single complexity-weighted barrel, or CWB, benchmark be used for all refineries consistent with the long-standing ARB practice of one benchmark for one product.

While staff had previously considered a separate benchmark for smaller, less complex refineries, based on a concern that smaller refineries could not achieve the emission efficiencies of larger, more complex refineries, analysis of California-specific data showed that smaller refineries are both the most and least efficient refineries in California, as shown the above graph illustrate the emission efficiency per throughput of CWB.

In developing this benchmark, staff worked closely with refineries to understand their data and propose a benchmark that reflects a sound technical approach. Staff is proposing that gaseous and liquid hydrogen production and calcined coke production be
allocated under separate benchmarks, not as part of CWB.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing further amendments to allowance allocation for additional sectors. Specifically, staff is proposing to allocate to natural gas suppliers on behalf of their rate payers similar to the way that allowances are currently allocated to electricity distribution utilities. This methodology allocates allowances to suppliers for most of their emissions and requires suppliers to cosign a portion of these allowances to auction.

The revenue generated from these allowances is required to be used on behalf of rate payers. In 2015, suppliers would be required to cosign 25 percent to auction, with the amount cosigned increasing by five percent each year.

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AIR POLLUTION SPECIALIST NICHOLS: With regard to legacy contracts, staff is also proposing to allocate to generators that are engaged in contracts that were made prior to AB 32 and that do not allow for generators to pass through greenhouse gas emission costs to the counterparty.

Although some parties have renegotiated, staff is proposing to allocate allowances to the remaining
contracts. For those with an industrial counterparty that receives allocation, this methodology would redistribute an allocation from the industrial counterparty to the generator for the life of the contract.

For contracts where the counterparty is not receiving an allocation, the proposal limits allocation to the generator through 2017. These changes extend transition assistance while limiting a windfall to the counterparty and provide an additional incentive for contracts to be renegotiated. The 15-day changes extend the period of existence through the second compliance period.

To reward early action in energy efficiency, staff is proposing to allocate to universities and public service facilities. ARB will require entities to report on the use of this allowance value.

Lastly, staff is proposing to allocate to public wholesale water entities that a direct emissions associated with moving water to consumers. This action provides transition assistance to water rate payers, similar to the provision of such assistance to electricity and natural gas rate payers.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing amendments to covered entities to include new
sectors not previously covered, including lead acid battery recyclers, and producers and importers of liquefied natural gas.

Staff is also proposing to exempt some existing sectors, including district heating facilities and facilities that would not have otherwise been covered but for their investment in combined heat and power.

These sectors would be exempt from a compliance obligation for the first three compliance periods. Instead, the compliance obligation those facilities has been moved to the upstream natural gas supplier.

Staff is also proposing to exempt national security facilities from a compliance obligation through 2020 as these facilities already have a variety of greenhouse gas mitigation programs in place.

Specifically, in October 2009, President Obama signed an Executive Order which sets a variety of sustainability goals for federal agencies, including national security facilities, with a focus on making improvements in their environmental, energy, and economic performance. The Executive Order requires federal agencies to submit a 2020 greenhouse gas pollution reduction target and also requires agencies to meet a number of other energy, water, and waste reduction goals.

Finally, staff is proposing amendments to specify
the steps that must be taken by a covered entity if they cease operations or shut down, including the requirements for the return of allowances. Returned allowances would be auctioned on behalf of the state.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing to exempt waste-to-energy facilities from a compliance obligation under the program until January 1st, 2016, and will retire allowances equal to the amount of these exempt emissions. This particular amendment is in recognition of a continued work ARB is doing with CalRecycle to analyze maximum GHG emission reduction opportunities for various solid waste streams in the state.

Specifically, the Board has approved two Resolutions to work with CalRecycle and other stakeholders to characterize emission reduction opportunities in the state's solid waste sector.

The Board also directed ARB to direct a comprehensive approach for the most appropriate treatment of the waste sector under the Cap and Trade Program based upon this analysis. In addition, the draft Scoping Plan update also recommends that ARB develop a comprehensive strategy for mitigation of short-lived climate pollutants, including methane, by the end of 2015. This will help ARB
to continue to develop strategies that address methane emissions from the waste sector, identify opportunities for additional methane control at new and existing landfills, and identify important compliments to ARB's efforts to reduce emissions of carbon dioxide.

In light of these Board directives, ARB and CalRecycle are currently preparing a joint study to analyze maximum greenhouse gas emission reduction opportunities for solid waste in California. ARB will continue to work with CalRecycle and other state agencies to determine the most appropriate treatment of the waste sector under the program and will make any necessary modifications to the regulation, pending the results of this ongoing study.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing language to clarify the resource shuffling provisions based on the guidance issued in November 2012, which was developed jointly by ARB and the State utilities. The proposed amendments specify activities that are not considered resource shuffling referred to as safe harbors, as well as activities that are considered resource shuffling. Staff is also proposing to remove the regulation's attestation requirement that no resource shuffling has occurred.
Staff is proposing some technical amendments related to the retirement of RECs to avoid double counting under the Voluntary Renewable Energy Program. Staff is also proposing modifications to ensure that the REC retirement requirements are consistently applied to both in-state generation facilities and facilities that import electricity.

Finally, staff is proposing clarifications for RPS adjustments for electricity procured from an eligible renewable resource.

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AIR POLLUTION SPECIALIST NICHOLS: Compliance offset credits can only be generated using Board-approved offset protocols. To date, ARB has adopted four compliance offset protocols. Staff is proposing a fifth compliance offset protocol for mine methane capture, which I will discuss later in this presentation.

Staff is proposing minor amendments related to implementation of the offsets program to streamline and clarify the project review process, clarify roles for consultants and verification bodies, and strengthen the conflict of interest provisions.

Finally, in the event of invalidation, staff is proposing changes to ensure that liability is consistent for all project types. This change corrects a loophole
which previously did not apply buyer liability to forestry
offsets, and ensures that covered entities do their due
diligence when purchasing compliance offset credits.

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AIR POLLUTION SPECIALIST NICHOLS: In order to
comply, covered entities must place compliance instruments
into their compliance accounts. Staff is proposing
changes to the triennial compliance obligation to specify
the order in which instruments are retired from an
entity's compliance account. This methodology takes
instruments that do not have a vintage first, such as
offsets and reserve allowances, and then the earliest
vintage allowances.

The retirement order maximizes the use of offsets
up to the limit and removes compliance instruments in the
order of most to least challenging to liquidate at auction
if ARB were forced to close an account.

The eight percent offset usage limit is still
applied to the total emissions for the entire compliance
period. The first compliance period covers two years and
three years for the remaining compliance periods.

Last year, staff discussed with stakeholders the
possibility that an entity could inadvertently retire too
many offsets during their annual compliance that would not
be eligible for compliance at the triennial compliance
event because the offsets would exceed the eight percent limit.

In response, staff proposed that the compliance check and no retirement happen at the annual compliance event. This proposal created another concern among stakeholders that exacerbated concerns over the holding limit. After further consideration of stakeholder concerns, staff is proposing to retire offsets up to the maximum of eight percent of an entity's annual emissions.

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AIR POLLUTION SPECIALIST NICHOLS: From the beginning, ARB has believed that comprehensive market oversight is essential for fair and equitable access to compliance instruments for all market participants.

During implementation, staff has encountered several situations where individuals have applied to register as a voluntary entity but also work for another covered entity as an employee or contractor. This potentially creates an opportunity for fraudulent behavior.

To ensure that staff and the market monitor understand all of these relationships, staff is proposing amendments related to information disclosure about auction advisors and contractors. Nothing in the proposed changes would result in the compromise of attorney/client
privilege. All disclosures are treated as confidential information.

Staff is proposing additional reporting requirements for the types of contracts that support transfers. Understanding the terms of the can help staff provide meaningful aggregate data on market transactions and help monitor for market manipulation.

Staff is also proposing to clarify which types of trades are prohibited in the program. The prohibitions are to ensure that contracts that hide true ownership of allowances are prohibited, as these types of contracts could be used to exert market power.

Staff heard stakeholder concerns on these issues as originally proposed and worked with stakeholders in developing the 15-day changes. Our goal is to ensure the requirements are not overly broad or burdensome but are sufficient for staff and the market monitor to understand market participant relationships and the types of trades that are taking place.

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AIR POLLUTION SPECIALIST NICHOLS: Staff is proposing an additional cost containment mechanism that increases the availability of allowances at the highest price tier of the price containment reserve. Maintaining the availability of a sufficient supply of allowances to
satisfy demand at the reserve sale will be effective in ensuring that allowance prices do not exceed the highest priced tier, while also maintaining the environmental integrity of the cap.

Staff's proposal makes ten percent of allowances from each vintage eligible for sale at the highest price tier if the quantity of accepted bids exceeds the quantity of allowances available.

If needed, the eligible allowances will be sold beginning with the budget year furthest in the future, currently 2020, and then the preceding budget years until either all accepted bids are filled or all eligible allowances are sold.

Staff feels this mechanism is sufficient for near-term price spikes, but it does not address sustained price spikes or those that may occur in later years.

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AIR POLLUTION SPECIALIST NICHOLS: The last major amendments we are proposing is to add the Mine Methane Capture Protocol. The protocol quantifies the greenhouse gas emission reductions associated with the capture and destruction of fugitive methane.

The limited use of offsets is an important cost containment mechanisms in the Cap and Trade Program. Offsets also provide incentive for GHG emission reductions
in uncapped sectors. If adopted, this protocol will allow for the issuance of offset credits for emissions that would otherwise be released into the atmosphere as a result of mining activities at active and abandoned mines. These offsets represent real, rigorously quantified greenhouse gas emissions reductions. If adopted, each project completed under this protocol would be subject to rigorous program requirements such as reporting, verification, and auditing.

The Mine Methane Capture Protocol and mining economics analysis released with the 15-day regulatory package focused on whether mine methane capture projects could encourage more coal mining than would otherwise have occurred.

Staff reviewed data for three existing projects developed under voluntary offset protocols and compared their performance with coal production data provided by the U.S. EPA. Staff determined the net profit from the offsets, assuming a value of $10 a tonne, was less than one percent of the net profit at each of the mines.

In the analysis, staff found that the protocol would not encourage existing mines to produce more coal or encourage new coal mines to begin production. The results of the analysis show that while the protocol provides an incentive to capture and destroy coal mine methane that
would otherwise be vented into the atmosphere, the value
of the offset does not change coal production decisions,
does not shift the demand for coal, and does not affect
the price of coal. Based on this assessment, we do not
believe this offset protocol will encourage or prolong the
lives of existing mines.

The potential offset supply from these types of
projects is about 60 million metric tonnes. This
represents one of the largest domestic supplies of offsets
for which there is a rigorous quantification methodology.

Finally, it should be noted the adoption of any
offset protocol does not preclude a regulatory agency from
developing future regulations to reduce greenhouse gases.

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AIR POLLUTION SPECIALIST NICHOLS: ARB prepared
an environmental analysis for the amendments and Mine
Methane Capture Protocol as part of the staff report. The
environmental analysis concluded that compliance responses
to the proposed amendments would result in no adverse
environmental impacts. It also concluded that
implementation of the mine methane capture projects could
result in potentially significant impacts to biological
and cultural resources caused by construction of
facilities and infrastructure. Project-specific impacts
and mitigation would be identified during the
environmental review by agencies with regulatory authority over the specific projects.

Prior to adoption of an action for which potentially significant environmental impacts have been identified, ARB's certified regulatory program requires that ARB consider all feasible mitigation measures and alternatives available, which could substantially reduce these impacts.

As discussed in the staff report, ARB has concluded that no reasonable alternatives to the amendments would be more effective at carrying out the purpose for which the regulation was created. Therefore, staff prepared the findings and Statement of Overriding Considerations for the proposed amendments as a means to show this consideration for each identified significant impact. Staff is presenting this document for Board consideration and approval.

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AIR POLLUTION SPECIALIST NICHOLS: Finally, I would like to discuss the next steps for implementation of the Cap and Trade Program. ARB is currently developing adaptive management processes to monitor for potential impacts to localized air quality and forest impacts that may occur as a result of cap and trade implementation.

During 2014, ARB will continue to establish both
components of the adaptive management program, including defining procedures to collect and evaluate relevant data, and a public process to share results and findings. If potential adverse impacts are found, ARB staff will recommend appropriate responses to the Board, as necessary.

For the localized air quality component, ARB is working with California's air districts on developing a program to evaluate for localized impacts. In late 2013, ARB staff amended the mandatory reporting regulation to collect data on GHG emission increases and decreases, including the reasons for the change. ARB will use these data during annual program monitoring and reviews.

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AIR POLLUTION SPECIALIST NICHOLS: For the forest impacts component, ARB is working with the University of California Davis to develop a program to evaluate forest impacts. In February, ARB held a technical stakeholder meeting to discuss the draft report and receive input. ARB has a draft final report and will post it to our website for public comment.

In February of this year, staff held a workshop to begin the public process to consider regulatory amendments that would include the emissions from cement consumed but not produced in California into the program
starting with the second compliance period. Staff is considering using a border carbon adjustment mechanism or a mechanism that would create an emissions obligation for imported cement similar to the obligation faced by the same industry within California.

Staff held a public technical working group meeting on a potential border carbon adjustment mechanisms on April 9th and is continuing to explore the best method for this inclusion of the cement sector in the program. This mechanism could be expanded to include transportation fuels in the future.

Staff has also been working on a rice cultivation protocol which we expect to bring to the Board later this year. ARB has also initiated an interagency contract to make the modeling tool that would be used in the protocol more user-friendly.

As mentioned earlier in this presentation, November 1st of this year will mark the first annual surrender of compliance instruments for covered entities under the program. By this deadline, covered entities must surrender compliance instruments equal to 30 percent of their 2013 covered emissions using either allowances or offsets up to the eight percent usage limit.

Finally, staff is actively working to prepare for the first joint auction between the California and Quebec
Cap and Trade Programs, which we expect to occur later this year.

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AIR POLLUTION SPECIALIST NICHOLS: In conclusion, staff recommends that you approve all written responses to the environmental comments received on the proposed amendments. We also recommend that the Board approve the final rulemaking package presented before you, which includes the findings and Statements of Overriding Consideration, the final regulation order, and the proposed Mine Methane Capture Protocol.

Finally, we recommend that you approve the Resolution before you, which directs the Executive Officer to finalize the Final Statement of Reasons for this rulemaking and submit the completed regulatory package to the Office of Administrative Law.

Thank you for your consideration. And we would be happy to answer any questions you may have at this time.

CHAIRPERSON NICHOLS: Are there any questions before we turn to the testimony?

BOARD MEMBER BERG: I would agree to testimony first. I do have some questions, but maybe we could do that after testimony.

CHAIRPERSON NICHOLS: Okay. That would be fine.
Thank you.

For some reason today there's sort of a humming going on a little bit in the background. And everybody is speaking softly and quietly too, which is nice, in contrast to some of the screaming we had yesterday. Very calm, peaceful atmosphere. That's fine.

Yeah, I think we probably all have questions about some specific elements of all of this. But why don't we just go to the witness list here first then. Okay. We'll start with person number one. And the list is projected up on the wall here. Hopefully you can read it so I don't have to remind you.

And Peter Weiner, you are witness number one.

MR. WEINER: Madam Chairman, members of the Board, it's a pleasure to be here today.

I'd like to echo -- I'm Peter Weiner from Paul Hastings.

I want to echo the Chairman's statement that, from at least my perspective, cap and trade is working. It's working smoothly. And the efforts that you've been undertaking for the last year are going to make it work better.

I've been working mostly on the issue of legacy contracts with staff and Board members. I want to thank both Board members and staff, specifically Steve Cliff and
Rajinder Sahota and Richard Corey, for not only having public workshops, but really following through and meeting with stakeholders and listening to their concerns. We didn't get everything we wanted, but it's been a very good process. And we believe that the results are worth adopting.

We urge you to adopt the final regulation order today. And the reason I'm here is not only to thank you, but to explain that I also want to echo what Chairman Nichols said about the narrow window for adoption. With compliance instruments needed to be surrendered in November of 2014, it is urgent at least to the energy sector that these amendments be adopted today. And this starts at the plant level when people are wondering whether they have enough money to expand on capital for maintenance, for improvements. There are investments going on right now that are possible that will create more flexible capacity in this state so that energy gas plants can ramp up and down more frequently and better, which is good for the grid, and for reduction of greenhouse gas as well.

All of these are dependant on certainty. This goes upstream from the plant to investors and lenders and credit rating. So from our point of view, it is imperative that this order be adopted today. And we urge
your aye vote. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Barbara Haya.

MS. HAYA: Hi. Thank you. So I'm Barbara Haya, research fellow at the Stanford Law School.

So we appreciate the careful considerations that ARB staff has made in the design of the Mine Methane Capture Protocol, but we believe that two possible effects of the protocol still need to be considered and addressed by the Board.

First, we ask the Board exclude projects which flare drainage methane from active underground mines, at least until sufficient analysis has been done of the issues that we raised. My colleague, Emily Grubert, will discuss the second issue in her comments related to the conflict between the protocol and federal legislation.

Underlying both sets of comments is this: Placing a price on carbon, whether through cap and trade or carbon tax, is economically sound. Its internalizes an externality, but carbon offsets function differently. They incentivize reductions. When an offsets protocol chooses to credit certain activities and not others, it risks creating the distortionary incentives that could have outcomes contrary to the goals of AB 32.

Our underlining concern is that the full range of
incentives created by the protocol must be carefully and
conservatively considered when protocols are developed.

So regarding flaring from drainage wells at
active underground mines, as context, only ten active
underground mines in the country are able to install
drainage wells for flaring projects because only ten
currently vent methane from drainage wells rather than
capture the methane for injection into a pipeline. These
are among the gassiest mines in the country with very
large releases of methane.

On one hand, capturing this methane has large
climate benefits at very low cost, which can be captured
by offset an offset protocol, but we raise two concerns
that we believe need to be addressed. First, ARB staff's
economic analysis has not yet assessed the specific
effects we expressed concerns about. That is the increase
on mining profits specifically from offsets projects which
destroy drainage methane at active underground mines. ARB
has done a case study analysis of three projects, but they
haven't done case study analysis of specifically drainage
methane from active underground mines. We understand
these profits to be substantial and large enough to keep
some mines operating longer than they otherwise would
have.

Second, we believe ARB has opportunity to allow
offset revenues to incentivize the capture of drainage methane for use, such as electricity generation, rather than incentivizing the waste of that natural resource through flaring. Since flaring technology is less expensive to implement than systems that use methane, we're concerned that the protocol might result in the flaring of methane that would be put to use if flaring were not included in the protocol.

We believe that these potential effects of the protocol need to be avoided and monitored. A substantial portion of these effects can be avoided by immediately excluding the flaring of drainage methane at active underground mines from crediting the protocol.

We've discussed these recommendations in more detail in our written comments. Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

Greg Arnold.

MR. ARNOLD: Thank you very much. My name is Greg Arnold. I'm the President of CE2 Carbon Capital, a funder and developer of carbon emissions reduction projects and also a San Diego-based company.

I'd like to thank the staff for their economic analyses and wading through some very complex and often passionate issue.

I just want to make a few points. There's been a
lot of discussion so far about this Mine Methane Capture Protocol would be a boon to coal miners. I would point out to the Board that at least to this point and to my knowledge there have been no coal mine operators that have testified at any of these hearings. And there have been no coal mine operators that have submitted any comments. I would suspect if this were such a boon to the coal miners and their industry, they would be lining up in support of this protocol. And yet, they don't seem to be found anywhere in this process.

We agree with the staff's conclusion that the Mine Methane Capture Protocol is not a boon to the coal miners. This is actually an insignificant part of their mine operations. And in fact, it's actually difficult to get them to pay attention to these projects because it's not core to their business, and it's not an economically important part of what they do. It's not regulated by the federal government. It's not important to their bottom line. They don't have the expertise to develop these projects. In fact, they rely on companies like ours and other California-based organizations to develop these types of projects.

With respect to the models that have been presented in opposition to this, I would just point the Board's attention to the fact that, in our view, and I
think the view of others, these models don't present an accurate picture upon which either a coal mine operator or an investor would make a financial decision. Their analyses which don't consider the initial capital costs of the project, the ongoing capital costs of the project, the ongoing operating costs of the project. And basically they just take revenues and apply it to the bottom line of a coal mine and distort the actual economics of these projects with respect to a mine's operations.

I would point out that the coal mine industry is under enormous pressure. And the tail is not wagging the dog here. These projects are not what will incent new coal mining. Coal mining is under pressure from a lot of different places. But most specifically, it's the impact of cheap and abundant natural gas that's putting pressure on the coal mining industry.

If you look at quarter on quarter tonnes mined in the United States, as of Q4 2014 tonnes mined were down 6.8 percent. It shows if you look at coal tonnes mined over time, it's actually an industry that's already in steep decline.

In the end, this is really about funding environmental controls that would otherwise not be funded because these emissions are not regulated. And with that, I urge to Board to approve the Mine Methane Capture
Protocol. Thank you.

CHAIRPERSON NICHOLS: Tim O'Connor and then Adam Smith.

Mr. O'Connor.

MR. O'CONNOR: Good morning. Tim O'Connor for the Environmental Defense Fund.

Let me reiterate what Peter started off today with was sort of a thank you and a comment on all the work that staff has put into the proposal today. It's obviously been a long process since the initial set of recommendations for revisions came out. It has been very open and has been a remarkable process, especially on such a large rule, large set of amendments, and so many important issues on the table.

The rule today -- I stand up in front of you in had support of adopting the regulatory changes. You know, in our context, we evaluate it as an environmental group through the environmental integrity lens, and we think these changes -- they preserve the environmental integrity of the regulation, which for us is of utmost importance, is the paramount concern. At the same time, they recognize some important issues and expand the role and ability of the staff and the Board to look at things such as market oversight, improve some clarity around the rules ad the regulatory provisions, and also do recognize some
important cost considerations associated with how various businesses are treated in the program.

And with that, I would like to call the Board's attention to one particular area of the rule that, while we think many businesses are in need of some transition assistance, there is the largest sector of polluters in California, the refining sector, which really are unsure and actually don't think need such transition assistance.

We understand that the regulation today, of course, does have that in there. But we would ask for commitment on the part of the Board as we do engage in this analysis of the appropriateness of transition assistance that really specific emphasis be placed on whether it continues to be appropriate for that particular sector, which year over year, of course, records record profits. And as gas prices are going up, we really take care of understanding what are the economic drivers of those decisions.

Finally, I would like to comment on two areas of the rule, which the staff talked about today, that are going to be evaluated later this year. In particular, the rice protocol, which is really a landmark achievement for California if and when we are able to achieve it, getting an agricultural sector, using models that are peer reviewed and verified for calculating emissions reductions. This is something that California really can
set the pace and is setting the pace for regulatory achievements in the US.

And finally, with January 1, 2015, coming around and transportation fuels coming to this program, we really do want to recognize the Board's continued confidence in this program and bringing those fuels into the program is really something that California is remarkable for its achievement. And we need to continue the progress as the Board sees the implementation of this program for being the first of its kind to bring such a large set of emissions into market-based emission reduction program.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Adam Smith.

MR. SMITH: Good morning. Adam Smith, Southern California Edison.

Edison appreciates this opportunity to comment, and I'd like to direct all who are interested to our written comments for a full treatment of the positions outlined in the presentation today.

I'd like to highlight here two items. First off all, a few points on offsets. Southern California Edison feels strongly that mine methane protocol is a great thing for you guys to include here. I think ARB staff has proposed a protocol that can provide two clear benefits to
us. One is significant supply of offsets to the California Cap and Trade Program, while two, we're incentivizing here the reduction of emissions currently being neglected.

As SCE has stated before, a study supply of offsets in the California Cap and Trade Program will help keep allowance prices down in the long run. And this will help moderate compliance costs for California electricity customers. Southern California Edison encourages ARB staff to continue investigating additional protocols for approval, both national and international.

Secondly, I'd like to turn to the recent regulatory requirements aimed at combating market manipulation. Southern California Edison agrees that market manipulation is a real concern and that sensitive information in the wrong hands can lead to real market distortions. While the concern is real, the regulatory measure put in place to guard against is present significant compliance challenges for large market participants like us. There are requirements to disclose employees with market information, to attest to historical investigations regardless of the outcome, to inform the ARB every time we meet with our procurement review group or fulfill a PUC data request. They're onerous.

Stakeholders for many industries have voiced
their concern on this point and the ARB has responded by narrowing the scope in some instances. We thank you for that.

But overall, these regulations will still need clarity. They're still going to require significant and sustained administrative effort. And they still leave open, honestly, the possibility of creating compliance traps. Where despite a covered entity's best intentions and efforts due to the vast scope of these regulations, an entity can be found non-compliant and possibly barred from auction participation and/or fined.

Southern California Edison sincerely requests the ARB engage with stakeholders to identify solutions which can deliver useful information to the Air Resources Board without such a high administrative burden.

Southern California Edison has laid out some of those proposals in its written comments and looks forward to working with other stakeholders to identify further solutions for proposal.

When the ARB opens the regulations this fall hopefully to include the rice offset protocol and others changes, Southern California Edison requests this agency update this information disclosure requirements to add clarity to their scope and reduce the serious administrative efforts necessary to comply.
In closing, I'd like to thank you, again, the ARB staff for all their dedicated work on this and for the opportunity to comment here. You know, we look forward to working together to find solutions that will protect the integrity of this market. Thank you very much.

CHAIRPERSON NICHOLS: Thank you, Mr. Smith.

Miles Heller.

MR. HELLER: Good morning, Madam Chair, Board members.

Miles Heller with the Tesoro Mining and Marketing Company. Tesoro supports adoption of the proposed amendment today as there are important provisions in this package. We appreciate staff's hard work in bringing these proposals to you today.

For example, we support the increased industry assistance factor provided to reduce trade exposure. Tesoro believes it is important in regulations like cap and trade that the staff and Board work on provisions that do not disadvantage in-state manufacturers in favor of out-of-state manufacturing. Simply put, we must have a level playing field.

As you may be aware, Tesoro purchased the BP refinery and distribution network in Southern California last year, substantially increasing our investment in California, a contrast to what many newspaper headlines
suggest about businesses leaving California.

Tesoro takes seriously its obligation to reduce GHG emissions and looks forward to working with staff and the Board on the important integration project between the two refineries in Southern California that will reduce GHG emissions.

While we support adoption of the package today, we do hope for continued dialogue with staff on some provisions that can be modified in future rule makings.

I'll mention just two of those today. We would like to see less complicated administrative reporting and recordkeeping requirements related to corporate association. Companies like ours maintain hundreds of corporate associations, most of which have no bearing on the Cap and Trade Program. It is not just the administrative burden of maintaining these records, but it is more about the enforcement risk it brings if the records are not updated within the time requirements of the regulation.

Both WSPA and Tesoro have submitted comments on the subject that can be used to further discussions with staff. A more recent issue relates to an inconsistency between the hydrogen plant benchmark and what is required by recent reporting guidance. We have been meeting with staff on this and look forward to additional discussions.
Thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

Mr. Moran and then Claire Halbrook.

MR. MORAN: Good morning. I'm Ralph Moran with BP.

I wanted to focus on a single issue that's very important to us, one that we've not been able to work out with staff. And that is this issue of reporting of corporate associations. The revised regulatory language would require that we disclose every corporate association anywhere in the world, regardless of whether it has any connection to the AB 32 program.

Staff did add a caveat that this entity would have to be involved in power or energy or carbon. As you can imagine, that wouldn't clear the decks for us very much.

Disclosure of this information comes at a big price, a big price in terms of manpower, assembling it, compliance risk, as you heard from being able to keep up with all the changes. And business risks from disclosing a lot of relationship that we haven't in this way any time before. I checked on the number of these sort of relationships that we have in BP just in the US, it's about 500. And we do business in about 70 countries. So you can do the math on that.
The regulation also requires that we update these relationships regularly. And worse, that we are able to attest about any investigations that have gone on in any of these entities anywhere in the world in relation to a commodity market. That's not only a lot of work, but as has been said before, brings about a lot of compliance risk if we don't get this information right.

And we agree that we should be required to report on any related entity that's involved in the Cap and Trade Program. We were told by staff that the massive broadening of this requirement is due to the fact that apparently some entities were not reporting sufficiently or appropriately on the more limited language that was in the previous regulation. But we think that if companies are willfully not complying, the answer really is appropriate enforcement, and not broadening of the regulation that captures regulated entities that are complying.

It's not going to age staff in their compliance and making sure people comply. If they know that we own part of a pipeline and in Azerbaijan or part of a biofuel facility in the UK if these entities have no connection to the California program.

So we ask that the Board direct the staff to go back to the previous language it had in the original
regulation that requires this sort of reporting only when these related entities have the connection to the California program. Thank you.

ACTING CHAIRPERSON RIORDAN: Thank you. I think this is a tenor of a number of remarks.

Claire Halbrook and then Emily Grubert.

MS. HALBROOK: Good morning. I'm Claire Halbrook with PG&E.

In late 2010 when I was a post-graduate fellow at Cal/EPA, I watched from the seats of this auditorium as the Board passed the first version of the cap and trade regulation. It was very exciting.

The last three and a half years have required long hours and hard work from ARB staff and the stakeholder community, but I think we can all look back proudly. With five auctions completed, stable allowance prices, and linkage with Quebec underway, California is leading the nation and the world towards a cleaner future.

PG&E has filed written comments on a number of the amendments before you today, including some more technical items. I'd like to focus my time on three more pressing issues.

First, I'd like to reiterate what was said at the October Board hearing regarding the transition of but-for CHP compliance upstream to the natural gas supplier. We
were surprised to learn of this for the first time at the hearing, but appreciated staff's acknowledgement that additional allocation would be provided to cover this obligation.

However, language to provide this assistance was unintentionally omitted from the amendment package before you today. But we understand that staff intends to remedy this issue when the regulation is reopened to incorporate the rice cultivation protocol. And we look forward to working with staff to finalize the allocation methodology.

The second issue I'd like to highlight is that of vented emissions from underground storage facilities. Recently released regulatory language suggests that ARB intends to transition emissions produced by these facilities out of the exempt emissions category and into the emissions compliance obligation category.

PG&E does not oppose the inclusion of these emissions in the cap and trade program. Rather, we are concerned that this change is being made retroactively, applying to emissions as of January 1, 2014, particularly, when we received notice of this change when the 15-day language was released.

We were working very closely with our gas operations team to achieve the ultimate goal of reducing our emissions. However, we feel that effective public
policy would apply changes to regulated emission sources on January 1 of the year following the change. In this case, January 1, 2015.

Finally, PG&E would like to add to the course of support on the mine methane capture protocol. We agree with staff's analysis that this will remove a potent greenhouse gas from the atmosphere, with the negligible impact on coal mine revenues. This protocol is critical to ensure adequate offset supply to the market for cost containment purposes and to demonstrate California's leadership in reducing greenhouse gas emissions.

We strongly encourage the Board to adopt the mine methane capture protocol today. Thank you.

ACTING CHAIRPERSON RIORDAN: Thank you.

Could I just quickly clarify the issue about language that was omitted from the regulation? Is there something we need to know?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: On the but-for CHP, the amendments that we made would keep the obligation upstream for but-for CHP in the second compliance period.

What we had discussed with PG&E and the other utilities that supply natural gas is when we determined who was a but-for CHP, that allocation would be provided as part of the natural gas allocation. That language for
the allocation is not included in this set of amendments.

ACTING CHAIRPERSON RIORDAN: But it does need to be.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: It needs to be in there. However, the way the but-for CHP provisions are written, we would need to evaluate whether or not an entity is but-for and then provide the allocation after the fact. So it had to be done as a true up in the future anyway.

ACTING CHAIRPERSON RIORDAN: So it's not going to hang up the -- it shouldn't hang up the --

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: It would have no effect this fall when we allocated allowances anyway.

ACTING CHAIRPERSON RIORDAN: Thank you.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: It was inadvertently left out.

ACTING CHAIRPERSON RIORDAN: Thank you.

Emily Grubert and then Jerry Gureghian.

MS. GRUBERT: Hi. I'm Emily Grubert. I'm a Ph.D. Student at Stanford University. I'm speaking in opposition to the adoption of the Mine Methane Capture Protocol in its current form, because of two situations where the protocol could have an outsized impact on future federal regulation if it proceeds.
ACTING CHAIRPERSON RIORDAN: Could you move the mike a little closer?

MS. GRUBERT: Sorry. Because it could have an outsized impact on future federal regulation if it proceeds action by the Bureau of Land Management and under the Clean Air Act.

First, concerning the BLM, I'd like to alert the Board to yesterday's press release announcing an advanced proposed rulemaking on mine methane. In the BLM's words in that press release and the NPR, "The BLM is considering establishing a system for the capture, use, sale, or destruction of waste mine methane liberated from federally leased lands by active underground mines."

This is significant because some of the country's gaseous underground mines are located on federally leased lands. One area where BLM is actually requesting comments is whether it should control methane through mandates versus incentives. We believe as an existing structures that offers incentives for methane control, if adopted, the protocol has high potential to influence the design in favor of incentives rather than mandates at this time.

Secondly, concerning the Clean Air Act, which my colleague, Barbara Haya, alluded to earlier, we are concerned if the protocol allows new mines and major mine expansions to generate offsets, it could Clean Air Act
methane regulation in the future. As detailed in written comments, we recommend excluding new mines and major mine expansion gassy enough to trigger Clean Air Act permitting from the protocol.

Clean Air Act rulings on pollutants rely heavily on precedents established by rulings at similar sites. And to date, no precedent has been established for methane control from new mines and major expansions, which are relatively unusual but can be very high emitters. It's clear methane capture and/or destruction is the best available control technology in most, if not all, cases based often EPA cost forecasts and earlier rulings at landfills, which are quite similar to mines from a methane control perspective.

Our concern is that if California offset credits are available, states might not follow clear EPA guidance and might choose to preserve offset revenues for mines rather than require methane control under the Clean Air Act. Thus, the inclusion of new mines in major expansions gassy enough to require Clean Air Act permits under this protocol could change the course of the precedent from requiring methane control to not requiring methane control.

We recommend excluding these permits requiring mines from the protocol for two years to allow opportunity
for precedents to be set. These two cases illustrate our concern that the offset protocol has a high potential to weaken developing federal regulations on mine methane. And specifically the value of an offset will impose an additional financial barrier to federal regulation as regulators will have to consider the cost of removing the opportunity for offset revenue. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Jerry Gureghian and then Michael Cote.

MR. GUREGHIAN: Madam Chairman, distinguished Board members, good morning.

My name is Jerry Gureghian. I'm the Chief Executive Officer of Green Holdings, Los Angeles based developer of mine methane capture projects. And I spoke to you last October.

Thank you for providing me with the opportunity to speak before you again. Along with Biothermica and Vidais Indicatim (phonetic), we develop most of the mine methane capture projects. And over the past years, we've been hearing the same erroneous arguments surrounding economic benefits of this offset protocol, including the one that's being presented by the Stanford Law Group.

I'd like to clarify once and for all some points on this argument. First of all, a model that shows a windfall to coal mine operators is flawed, because first
and foremost, the argument "does not use a model which is
economic analysis." And number two, why? Because it
doesn't take into account any up-front capital cost which
the EPA placed conservatively at $10 million per project.
It overstates capture of the mine. And last but not
least, it doesn't take into account the cost of keeping
these projects going, which is quite costly.

Let me provide you with a sense of how costly.
In the past five years, my colleagues and I have met with
all the major and many smaller coal mining companies. And
for the sum total of our efforts has resulted in
convincing three coal mines to implement two projects.
Just two projects.

Which brings me to my second point, which I think
was covered by Greg Arnold from CE2 Capital earlier. When
was the last time a representative of the coal industry
bothered to call you, make a public comment, or show up at
a hearing? You'd think if the MMC protocol was going to
generate an additional $600 million, at least one of them
would be up here advocating for the protocol or singing
the Board's praises. No. Why? Because, on average, in a
coal mine the generates about a billion dollars a year in
revenue, electrical power costs account for about $20
million. Whereas, the annual revenue from an MMC project
is going to be about $2 million. That's not even ten
percent of a mine's electrical utility bill. After we deduct our operating costs and capital costs and our share of the project, the mine only receives a fraction of that revenue.

People keep saying why must you flare, which brings me to my third and final point. If we flare, it's because it's the only viable option. In most cases, we don't -- if we didn't have to flare, we wouldn't. Most projects would likely be located far from existing gas pipelines or points where we could connect to the local grid where we would put the methane gas to beneficial use and generate additional revenue for our projects and diversify our risk.

The truth is that without action by small company like ours, millions of tonnes of methane will continue to be vented into the earth's atmosphere. Without an MMC protocol soon, many of these projects we hope to develop will cease to be viable, and you'll be short of offsets.

Madam Chairman, distinguished Board members, California is and has always been a leader in environmental messes. And we recognize that being a leader has tremendous challenges. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Mr. Cote and then Ms. Makarewicz.

MR. COTE: Good morning, Board.
My name is Michael Cote, President of Ruby Canyon Engineering. We've been working as a subcontractor to U.S. EPA's Coalbed Methane Outreach Program for the past 16 years. And the Coalbed Methane Outreach Program is a voluntary program under the Climate Change Division to encourage coal mines to economically find ways to methane mitigation. And I can say unequivocally these projects that are included in the mine methane protocol do need incentives in order to see them deployed.

I'd also like to comment on federal regulation that the Clean Air Act does not apply to fugitive methane from surface mines or to abandoned underground coal mines. In two of the three section of the Mine Methane Protocol do not come under any kind of federal regulation or will come under any federal regulation.

That leaves underground coal mines where there is a vehicle in place called the tailoring rule, which is expected to address the reviews of ways of mitigating methane at coal mines. The process will involve PSD reviews and BACT determination. And if you look at the lion's share of coal mine methane is coming from the ventilation fans, these thermal oxidation projects, there's only seven or eight of these that have been deployed worldwide over the past decade. We consider that
the technology is still -- while not in its infancy, is not ready for prime time to be considered for BACT.

And only through the incentives of carbon financing and other types of incentives will we see these rolled out in a larger scale and maybe eventually become BACT decades away.

And then finally, I'd like to comment on the BLM's advanced notice of public rulemaking that recent eligibility criteria just came out. We were in discussions with the BLM earlier this year. And really what we believe they're looking for are voluntary cost-effective ways of addressing this issue. We don't believe there will be mandates.

And also, just so you know, that only ten percent of the coal mine methane emissions in the U.S. come from public lands. So even if they do mandate something, it will represent a very small piece of the solution. So I encourage the Board to adopt the mine methane protocol today. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Ms. Makarewicz.

MS. MAKAREWICZ: Good morning, Madam Chair, Board members, and staff.

My name is Teresa Makarewicz. I'm representing Shell Oil Company. We support the comments that are going
to be made today by our trade associations, WSPA and CCEE, but I would like to highlight two specific issues that continue to be concerns to Shell Oil Company.

The first issue relates to the inclusion of the LLC as part of the direct corporate association. Shell, like other corporations with large compliance obligations, has concerns with the constraints that are being placed upon us in establishing the same holding limit for our aggregated account without regard to the size of the compliance obligation.

However, an additional concern is the regulatory language that's being proposed that expands the definition of a direct corporate association to include an LLC. Shell maintains the position that an LLC is a specific legal entity having its own operating agreements and governance structure and that ownership of more than 50 percent is not a sufficient means to prove control.

With respect to this end, Shell has provided staff with specific language that includes requirements for providing additional evidence of control that could be considered in making the determination. The proposed language includes additional objective and verifiable criteria that provides a superior test of control beyond a mere 50 percent ownership. While we have had some discussions with staff, this issue has not been resolved
at this point.

Issue number two relates to legacy contracts. In response to Board direction to address legacy contracts, staff has proposed language that negatively impacts Shell. The Shell Refinery and Shell Energy North America share a direct corporate association. Shell Energy is a party to a legacy contract, but the refinery has no contractual relationship with respect to this contract.

The effect of the proposed amendments would remove free allowances allocated to the refinery as part of a trade-exposed sector and provide that to the contract generator to cover their compliance obligation. But for the fact that the refinery and Shell Energy have a direct corporate association, the refinery would not be required to provide these allowances to the contract generator.

Staff has indicated that this requirement provides the necessary incentive for the legacy contract parties to re-negotiate the contract. We do not believe this is true, and in the case, actually provides a disincentive for the party receiving the free allowances to renegotiate. We continue to want to work with staff in this regard. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Dell Majure.

I was already asked this question by one of my
Board members. I was hoping that we would be able to continue without a lunch break today, because I think many people have planes they'd like to get or would like to get home, one way or another. I'm hoping we can continue on without a lunch today and wrap this issue up. Thank you.

MR. MAJURE: Board members, I'm Dell Majure. I'm the Global Technical Leader for Kimberly-Clark Corporation on air issues.

I want to thank you for the opportunity to speak directly with you on a matter that stands to dramatically effect the competitiveness of one of our tissue manufacturing facilities here in Fullerton.

Let me be very clear that KC supports AB 32 and its objectives. As a company, KC has invested heavily in California and globally to improve energy efficiency and reduce carbon intensity. We have already exceeded our 2015 enterprise-wide greenhouse gas target. We're on track to double it. And we're doing that at the same time while we're growing a business. We're very much committed to climate change.

However, while we support these objectives of the regulation now before the Board, we have very serious objections to the emissions benchmarks proposed for the tissue industry sector. We ask in the strongest terms possible that the Board direct the staff to reconsider the
proposed benchmarks and prepare a new 15-day set of changes to establish the benchmark based on the normal 90 percent of the average standard.

As a background, there are only two remaining tissue facilities in California. Each utilizes a different technology to manufacture tissue products. KC's technology emits significantly less greenhouse gases per ton of finished product. And as in most industries, greenhouse gas emissions are most closely correlated with tons production.

Our first objection to the current proposed benchmark is that it discriminates against KC. It's discriminatory because it preferences one technology over another, increasing the compliance cost significantly more efficient technology, the one used by KC, while decreasing the other less sufficient one. This is not fair and not consistent with the statute of AB 32.

The second objective or objection to the proposal is that it's not supported by sound science and does not justify the departure from ARB's standard for setting product benchmarks, namely the 90 percent of the average greenhouse gas per ton of finished product.

ARB's proposal sets the individual benchmark for each type of tissue which are paper towel, tissue, facial, wiper and bath, based upon the facility level emissions
data, rather than emission data that's for each type of tissue which you need in order to set an individual benchmark. As a result, the individual benchmarks are inaccurate and do not reflect the actual greenhouse gas emissions.

Further, ARB only adjusted the individual inaccurate bath tissue benchmark to account for the functionality of the absorbancy alone. There are other functionalities for tissue to be considered.

So here's our ask. So ARB should set only one tissue benchmark based on tonnage alone that can be applied equally to all types of tissue products. This approach is consistent with ARB's benchmark setting guidance and is the approach taken by the European emissions trading scheme. If on some principle basis ARB determines it must adjust tonnage for functionality, the most reasonable and defensible option is to base it on surface areas, which is detailed in Kimberly-Clark's written comments.

So in closing, we strongly encourage the Board to direct the staff to prepare a new set of 15-day changes that proposes a single benchmark that is in line with both AB 32 and our guidance.

Thank you again for the opportunities to speak directly with you. And if you have any questions, I'll be
welcome to answer them at this time.

CHAIRPERSON NICHOLS: Thank you. I will have a question about this one.

Later. I'm sorry. After we finish. I apologize.

MS. YOUNG: Good morning. Katy Young with the Climate Action Reserve.

I'm here to express the Reserve's support for the Board's adoption of the reg amendments before it today, including the Mine Methane Capture Protocol.

We're proud that the mine methane protocol is based in large part on work the Reserve has undertaken which is embodied in the Mine Methane Capture Protocol. We appreciate staff's hard work and willingness to consider comments we've submitted on the draft, and we look forward to continued collaboration on future protocols we hope and ongoing OPR work.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you. It's been a long process. But hopefully coming to a good end.

Danny Cullenward and Kara Roeder.

MR. CULLENWARD: Good morning, Chairman Nichols and members of the Board.

My name is Danny Cullenward. I'm a Research Fellow at the University of California Berkeley. I'm here
today in my personal capacity.

Once again, I'm here, however, to ask the Board to not undermine California's carbon market with this expansive and unjustified reliance on safe harbors in its approach to regulating resource shuffling. There is no question that the Board's proposal formally and effectively eliminates the prohibition on resource shuffling through the safe harbor.

By removing the only legal barrier to resource shuffling, the proposal threatens the environmental and economic integrity of the entire carbon market.

Your own economic advisors and I have repeatedly warned you about the risks of this decision. Indeed, three major transactions have already occurred, causing between 30 and 60 million to leave million tons of carbon dioxide to leave to neighboring states.

You already have these arguments in the analysis before you in written comments, so I won't repeat them here. But I will say I'm deeply disappointed. Over the last year I worked to develop feasible solutions to the resource shuffling problem. All the while, I've recognized the utilities legitimate interest in clarifying the complexities of the original rule. Never the less, neither the Board nor any industry stakeholder has indicated a willingness to confront the environmental
trade offs in this politically expedient by substantially flawed decision.

It is also surprising that everyone has been silent about this, because the issue is very well understood behind closed doors and among stakeholders. Before submitting my most recent comment letter, for example, I raised the issue that I'm bringing with you today with several colleagues and academia and in think tanks. Several of them asked me not to say anything publicly about the three transactions that have already occurred and their relationship to the safe harbor policy the Board is enacting. A few even warned me by raising the issues I could de-stabilize the political coalition that is necessary to maintaining California climate policy. This is a delegate deal these friends told me and a necessary imperfection.

I appreciate the Board faces enormous political resistance from industry and other political constituencies, including several environmental groups who are willing to reduce costs by any means necessary in this market.

Nevertheless, the political compromise on resource shuffling represents a failure to take climate policy seriously. But if the outcome is disappointing, the process has been even worse. After more than a year
of discussion, the Board has not publicly contemplated the
leakage implications of safe harbors, let alone considered
alternative approaches. That failure is all the more
significant given that the investor-owned utilities are
the ones who wrote the safe harbors in late 2012.

   Even today, the staff response to my written
comments relies on legalese to avoid admitting what all
major stakeholders and market participants know to be
true, that the safe harbors allow electricity importers to
resource shuffle. We can do better. And if we are going
to take climate policy seriously, we have to.

   Thank you.

CHAIRPERSON NICHOLS: Thank you. Congratulations
on the good press you got on that this morning. You're
doing well.

MR. CULLENWARD: A pleasure to work with you in a
more collaborative setting.

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

   My name is Kara Roeder. I'm the plant manager at
Procter & Gamble, the manufacturing facility for paper
products located in the city of Oxnard in Ventura County.

   I wanted to come before you today to express our
support for the latest amendment to the regulation for the
tissue manufacturing product benchmark. We absolutely
believe that this proposal recognizes the functional difference that was mentioned earlier between bath tissue, facial tissue, paper towels, and delicate task wipers. We recognize that this proposal demonstrates the scientific relationship for these functional requirements as can be supported by a globally recognized technical standard.

We feel that those standards are critical to defining the correct benchmark determination for our technology for our sector.

In my manufacturing plant, we employ over 500 Californians. We utilize the latest technology to deliver the most fiber efficient products to our consumers. This technology is used by all of our competitors outside of the state of California.

We are committed absolutely to meeting the intent of the greenhouse gas reductions in an equitable landscape. And these reductions are absolutely consistent with our company's 2020 sustainability goals. So P&G encourages your support of the regulation, the proposed amendments. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Jon Costantino.

MR. COSTANTINO: Good morning, everybody.

I will agree with staff before I disagree with staff or say something they probably agree with that
refinery benchmarking is complicated, difficult, and taken a long time to get where we're at.

Five years ago, the preliminary draft report came out for the cap and trade. Five months ago, we had a workshop -- I mean a Board meeting. And five minutes before the 15-day package came out, we found that the refinery benchmark had changed from two to one.

So I want to note that logarithmic scale of activities. And sure, there's been lots of public process. But in the end, as Chairman Nichols mentioned, the beginning, we knew from the beginning that this last set of amendments was going to be the one that mattered. And to go from October where there were two benchmarks for small refiners to expressly show the difference between what a the large refiner is capable of and what a small refiner is capable of and go to one benchmark for multiple times, multiple documents, multiple discussions, it was all about two benchmarks.

The discussion about one benchmark, there wasn't one. We were discussing between October and March one other refinery and whether they fit in the atypical category or not. We never discussed one benchmark.

In fact, if you look at the amendments -- the attachments to the resolution in October, it says "direct staff to make conforming changes based on comments
received." There were only comments in support of atypical benchmark. In fact, besides coalition members, the steal workers, and environmental groups supported atypical separate benchmarking. There was no opposition and no reason to change the process at the last moment.

We'll show that -- members behind me will show how this impacts their facility directly. But the data that we have shows that two benchmarks were acceptable. And there is a multiple digit difference between what it was and what it combined down to. So it's an important aspect to know that this is a real issue for the small refiners.

From a process and a precedent point of view, we had two benchmarks in the first compliance period. We had two different methodologies. And we went to one methodology, which we all agreed was probably a better way to go. But that agreement, in October, when we testified was based on the understanding there would be two benchmarks. One methodology, two benchmarks. And now we're left with one benchmark, one methodology. And that has serious consequences.

And so in closing, I would just like to say that there is more work to be done. This process got truncated at the very end. And we ask that the Board direct staff to revisit the refining benchmark as it has serious
consequences on existing facilities. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Costantino, we are going to be hearing from other groups that are on various sides of this issue and there should be further discussion by the Board on it.

I just want to say one thing to you about the process, because I met with you personally. And I have to say that it's your actions in attempting to shoehorn one member of your client base into the small refinery category that forced us to take another look at this whole issue about why there was any separate allocation scheme for small versus large and what was the intellectual justification for that distinction.

If you're going to say we have to be frozen in time and can't learn and think based on information that's brought to us, I think you're working against both good government and against really your own client's long-term interests.

I'm not open to more discussion about this. I'm telling you in front of the audience here that I'm not accepting your criticism about the fact that the decision evolved over time.

Now, we're still able to make adjustments, and we will discuss what kinds of adjustments need to be made based on the facts and based on the evidence. But I
believe that we're not talking about a negotiating process where you get more points for the amount of time you spent chewing on the issue. We're dealing with a situation where we have to make a decision based on the actual facts and information that are in front of us.

And you're entitled to represent your clients and to advocate for them. But this whole issue would not be where it is today but for the fact that any allocation scheme that we come up with is open to some question or manipulation by some dissatisfied individual refinery. Someone who said yesterday this is true of refineries as it is of truckers or with families that fairness and exact equality are not the same thing. So we're trying to do our best to do what is fair. But we have to also do what's right based on actual information. We further discussion about it.

MR. COSTANTINO: Can I make one comment in response to that?

CHAIRPERSON NICHOLS: I opened it up, so go ahead.

MR. COSTANTINO: And you're right. This issue was headed down a path of two benchmarks. And that's what Kern and Alon who will be commenting spoke to. And I'm all for looking at the data and finding out what is the final answer.
And I think that's my point here today in speaking on behalf of the coalition. And the coalition has committed to trying to figure this out. And two benchmarks, atypical, was the topic of seven months of discussion. And at no point was it ever off the table. And so the fact that one refiner who happens to be stuck in the middle and was trying obviously to get in a position that benefited them should not cause the whole process to collapse on itself because the Board acted in the good faith. People commented in good faith in October. The discussions between October and February and March and the end of March were all in good faith. And the point today is that we shouldn't be frozen in time.

CHAIRPERSON NICHOLS: I think the point is I'll accept your comment that everybody acted in good faith and let's move on.

MR. COSTANTINO: Okay. Thank you.

CHAIRPERSON NICHOLS: All right. Next we will hear from Gary Grimes.

MR. GRIMES: Madam Chairman and distinguished Board members, good morning.

I'm Gary Grimes, Director of Technology for paramount Petroleum, which has three small refineries in the cities of Paramount, Long Beach, and Bakersfield.

Today, none of these plants is refining cruel oil
because of economic reasons. But our plants have operated since the 1920s and we expect when economics returns to restart and operate again for many years into the future.

The very recent decision to eliminate the atypical refinery category and establish single complexity weighted barrel benchmark for this industry is a significant financial blow to our plans to restart our facilities.

Next slide, please.

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MR. GRIMES: This slide shows data that CARB staff collected while developing industry benchmarks built. Metric used is CO2 emissions per barrel of primary product. Paralleling the product-based benchmarks of other industrial sectors, each dot on the graph is a refinery.

Our Paramount refinery, the red diamond in the lower left-hand corner is the most CO2 efficient refinery in California for manufacturing real products. When operating, it was 20 to 40 percent below the benchmark of this approach and can be considered the model low CO2 refinery.

Since the large refineries in California use much more energy intensive-processes to convert the heavy part of the barrel into fuel, their operators do not like this
product-based metric and pushed for alternative artificial process-based metrics, such as complexity-weighted barrels which obscure and hides product efficiencies.

Next slide, please.

---o0o--

MR. GRIMES: This is a view of California refinery efficiencies under the CWB metric. Note under this view of the world, our Paramount refinery is the least efficient refinery.

On the far right side, it's hard to see in that light, but the top right corner is our refinery now. We went from the very best to the very worst. Clearly, something is wrong with the CW methodology as proposed. Shifting to a single CWB benchmark would require the Paramount refinery at least two other small refineries to reduce emissions by 40 to 50 percent just to meet the benchmark level at a cost more than a million dollars per refinery per year. This is a large financial burden. Is it equitable and logical to policy to place this magnitude of burden on the smallest manufacturers of this sector to achieve relatively small results using an artificial measure of efficiency, when on a real product-based measure used by other industrial sectors, they are the most efficient manufacturers of their product.

Shouldn't the proper policy reward encourage
efficiency by this ultimate measure, rather than punish these manufactures? We have never manufactured a barrel of CWB, nor has anyone else. We'd like to make real barrels of gasoline, jet fuel, diesel and asphalt again for California in the near future and our efficiency by that measure is what we think is the fairest to judge us on. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Steve Piatek.

MR. PIATEK: Madam Chairman, Board members, my name is Steve Piatek. I'm the Environmental Director for Alon's West Coast Operations.

As Mr. Grimes pointed out, under the simple barrel approach, Paramount was the most efficient. Under the CWB, we're the least efficient. Both methodologies use synthetic measures of efficiency and give different weights to different processes. While I'm not sure if Paramount was the most efficient refinery in California, I clearly believe it's not the least efficient.

Next slide.

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MR. PIATEK: Many of you have seen this slide before. Each bubble represents a refinery. The larger the bubble, the more the carbon dioxide emissions.

Paramount is happy to do its share to reduce
greenhouse gas emissions. We are the second bubble to the left-hand side. Smallest bubbles.

Based on the proposed regulation, we will be required to reduce 50 percent of our CO2 emissions. Most other refiners are only required to reduce ten percent. Staff has indicated that only a ten percent reduction is feasible. Requiring Paramount to reduce and purchase credits of GHGs to 50 percent places us at a significant environmental disadvantage.

While it is especially true in light of the fact that our emissions represent — ours and Kern's represent less than three-quarters of one percent of the total sector emissions, Paramount respectfully requests that the Board direct staff to review and develop a second benchmark for fuel producing atypical refineries.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Belin.

MR. BELIN: Thank you. My name is Jake Belin. I'm President of Kern Oil and Refining Company.

I'm here this morning -- or this afternoon to speak to you specifically regarding refinery benchmarking and to specifically ask the Board to separately benchmark atypical transportation fuel producing refineries. Those refineries that produce CARB reformulated gasoline and
those refineries that produce CARB number two ultra low sulfur diesel fuel.

Chairman Nichols, your comments earlier are well spoken and well received. Initially, our approach, our focus on size, on complexity, on benchmarking did involve at least four refineries. It did involve -- of those four two, were asphalt refineries. And those asphalt refineries quite frankly proved to be display efficiencies that caused comparisons to be the kind of comparison frankly that may not have been apples to apples in nature. They muddied the water. They clouded the issue.

However, it was clear throughout the process that the transportation fuel refineries and particularly Kern and Alon are refinery sector outliers and that the one benchmark would require these refineries to reduce emissions by at least by more than 40 percent, a requirement that is unattainable. We cannot -- we simply cannot do that.

Benchmarking matters. Size matters. And that is one of the things that we have focused on and pressed on and discussed over and over.

Small refineries have opportunities for less heat integration, less exchange opportunities. We do not possess the economies of scales of bigger refineries.

In the big picture, let me speak particularly and
quickly to Kern. Our emissions account for only .6 of one percent of the refinery sector's emissions, while the three largest refinery sector emitters in California account for more than 50 percent. If -- and you can't do this, as I stated earlier. If you were to lower Kern's emission by 40 percent, it would reduce the refinery sector's overall total emissions by only one quarter of one percent.

Kern is one refinery in Bakersfield. We produce -- we're the only producer of reformulated gasoline and diesel fuel between Los Angeles and the Bay Area.

So in closing, let me state three times.

Number one: The one benchmark scenario, the reality is it presents negative financial impact on our company that is unsustainable.

Number two is we're not asking for an opt-out. We're not asking for an exemption. What we're asking is for a realistic place in your Cap and Trade Program.

And to conclude, I will simply ask this to be specific. We would ask that the Board clearly direct staff to provide a separate, a fair, and equitable benchmark for atypical transportation producing, transportation fuels, gasoline diesel producing refineries to be defined as, one, a refiner that produces CARB
reformulated gasoline; CARB number two ultra low sulfur
diesel fuel; possesses operates twelve -- less than twelve
units in its refinery; and processes less than 20 million
barrels of crude oil per year.

Thank you.

CHAIRPERSON NICHOLS: Thank you for being so
specific, and we'll continue this discussion as the
hearing goes on. Thank you.

Bob Lucas.

MR. LUCAS: Thank you.

My name is Bob Lucas. I'm here representing
California Council for Environmental and Economic Balance,
also known as CCEEB. You've heard from a number of our
members already today. And I believe we have more members
probably on your speaking list that have yet to appear on
the screen. And I'd like to endorse those comments as
well as the few that I'm going to make on behalf the
organization itself.

I'd also like to thank the accessibility provided
by the staff and the willingness to talk with us on a
variety of issues over the entire time frame of the
development of where we are today.

It's been quite impressive from our perspective
of the willingness of themselves to go out of their way at
times to help us better understand some of their positions
at times and to listen to our concerns.

   We support the adoption of the 15-day language. There are some very important elements in there, programmatic changes that are time sensitive supporting the increased industry assistance and the adoption of mine methane control offset protocol.

   With that said, there have been some last-minute changes to the 15-day package having to deal with the eight percent offset limit and annual surrender requirement. We have expressed our concerns to the staff about that late change, and there are a number of concerns that we've expressed in prior comment letters, the most recent one going back -- not the one dated April 24th. The most recent one going back to February 28th where we think there's still a list of issues that need to be addressed in future proceedings. And we would hope that we can retain the staff's attention on that and the Board's attention on that so that as these proceedings develop and continue to proceed, that we can incorporate some of those concerns into that.

   So with that said, we support the adoption of the 15-day language. And we thank you very much for your attention.

   CHAIRPERSON NICHOLS: Thank you.

   Ms. Mendoza and then Paul Shepard.
MS. MENDOZA: Good afternoon. My name is Jerilyn Lopez Mendoza.

I'm here this morning on behalf of the Southern California Gas Company and our sister company, San Diego Gas and Electric.

Thank you for the opportunity to comment on the proposed amendments to the California cap on greenhouse gas emissions and market-based compliance mechanisms. We provided comments in April to the 15-day changes issued by the agency on March 21st. As indicated in that letter, we are in support of most of the proposed changes put forward last fall and on March 21st and want to thank staff for all the hard work they put into improving and refining these amendments.

However, we want to underscore the importance of our concerns with two key issues and request additional direction on these two points. Number one is the transfer of allocation allowances to natural gas supplier accounts. And number two, we ask that provisions be made for the natural gas utility responsibility to cover the exemption for qualifying but-for combined heat and power facilities, also known as CHP facilities. These two points were actually addressed in your slide presentation this morning, slides number 13 and 14, and were also discussed earlier by PG&E.
First, SoCal Gas and SDG&E strongly support the allocation of allowances to natural gas suppliers for the protection of natural gas rate payers. The proposed methodology allocates allowances to suppliers for most of their emission and requires supplies to cosign a portion of those allowances to the auction. The revenue generated from the cosigned allowances is required to be used on behalf of the rate payers.

In 2015, suppliers will be required to cosign 25 percent of our allowances to auction, with the amount cosigned increasing at five percent a year. The required percentages are stated in Table 9.4 of your materials.

In Section 95894 Subsection (B)(1)(A), which describes the transfer of allowances to natural gas supplier accounts, there is language that can be used to define the consignment percentages as minimum percentages.

Our understanding is that the intent of the regulation was to establish limited consignment at 25 percent, graduated at five percent per year to 50 percent by 2020.

As such, we request that ARB clarify their intention in the Final Statement of Reasons that the required consignment percentages in Table 9.4 should be implemented as stated. And that at an appropriate time changes be made to the regulation to reflect the limited
consignment percentages.

Second, the proposed modification relating to CHP in Section 95851(C) extends the limited exemption emissions for qualified final output through the third compliance period and moves the compliance obligation for these emissions to the natural gas supplier.

As was stated earlier, we're concerned that there were allowances that were discussed in October that were not provided for, but we also understand will be part of the true-up process as you move forward.

I want to thank you so much for your time and attention. I was here all day yesterday. I'm here today. And I want to thank the Board for sticking with all the variety of challenging issues that are coming before you. Thank you very much.

CHAIRPERSON NICHOLS: Thanks.

MR. SHEPARD: Good morning. My name is Paul Shepard. I'm the Asset Manager for Wildflower Energy. Wildflower Energy is the generator of a pre-AB 32 long-term contract.

I'm here today to express our support for the proposed revisions to Section 95894 and 95891. We urge the Board to adopt these amendments as is it is today. Wildflower appreciates the Board's policy that
renegotiation is a preferred solution to the legacy contracts issue. In many cases, counterparties have been unwilling to renegotiate to reach negotiated solution. And we believe that the Board's actions today will encourage counterparties to come forward with a fair and balanced proposal for the pasture greenhouse gas costs in the legacy contracts to the ultimate end users.

In this regard, staff's proposal is fair and balanced. And we encourage renegotiation of the contracts.

I will also briefly address some of the comments that have been made in opposition to the proposed amendments. We do not agree that redistribution of the allowances to legacy contract holders will disrupt the compliance strategies of the counterparties. In our case, our emissions are just two percent of our counterparty's estimated emissions. In addition, the allocations under Section 95894 will be for future compliance periods. And our counterparties to these contracts will have more than enough time and opportunity to procure additional allowances.

It has also been argued since staff's proposed legacy contract language, legacy contract holders now have no incentive to renegotiate. We do not agree with this assertion. If adopted, the staff proposal will leave an
increasing proportion of compliance obligations uncompensated for by the reallocated allowances. And thus, holders of legacy contracts will be able to renegotiate with the counterparty to obtain a more complete solution.

In our case, we have put forth proposals for a reasonable pasture of greenhouse gas costs and are actively pursuing discussions with our counterparty.

In closing, we hope that the Board's adoption of the regulations today we will be able to reach a reasonable compromise with our counterparty, consistent with the ARB policy of having end users of greenhouse gas generating commodities see the cost the greenhouse gas generated. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.
Tom Vessels and then Michael Wang.
MR. VESSELS: Thank you, Chairman Nichols and the Board for allowing me to testify in favor of the amendment, specifically the Mine Methane Capture Protocol. I want to thank the staff for allowing me to participate in the stakeholders process. It was very thorough and rewarding.

I want to give you all an example of the effect that the Mine Methane Capture Protocol could have. A few months ago, I was hunting methane seeps and a truck with a
specialist with a special methane detector. We were
driving along a public paved road. We knew underneath off
to the side of the road off one location there was a mine
complex more than 200 feet deep.

We got out, and the methane detector, we took it
over. It's just a narrow wand. You just hold it out and
just bring it as close as you can to the earth. We didn't
find anything above ambient atmosphere except at one
point. For information out here in the west, the methane
content -- the ambient methane content is about two parts
per million. So we were walking along the bottom of the
hillside next to the road, and suddenly, we hit over 3,000
parts per million. And a band about this wide, and it
went straight up the hill, further than we cared to climb
at the moment.

Now, we think it's unreasonable to assume that
that was an isolated seep. This was in an area of
historic mining, over thousands of acres. But we also
don't think it's possible to go -- we think the technology
exists. We certainly found it. And we think we know how
to remediate seeps of this nature. But we can't do that
without an economic incentive. So we think that your mine
methane protocol is going to do a lot both to focus on
methane generically and giving us the ability to have an
incentive to find those seeps and remediate.
Thank you very much.

CHAIRPERSON NICHOLS: Thank you. Thanks for the story.

Michael Wang and then Loren Hutnick.

MR. WANG: Good afternoon, Madam Chair and members of the Board.

My name is Michael Wang, and I'm with the Western States Petroleum Association. As you know, we represent 27 companies that explore for, develop, refine, market, transport petroleum and petroleum products. We have supported market-based approaches in the past, and we continue to support cap and trade as a market-based approach.

I want to recognize at the outset the outreach process that the ARB staff used to arrive where we are at this rulemaking. We appreciate and recognize the continuing effort ARB exerted to communicate with and understand the issues identified by the stakeholders who are effected by the Cap and Trade Program.

And while unresolved issues remain, the process recognized the dynamic and important balance between the transparent process and the need to protect confidential business information.

We strongly support the industry assistance factor. We supported the ARB proposal to increase the
industry assistance factor to 100 percent during the second compliance period for moderately trade-exposed sources. The proposed change in the second compliance period recognizes the risk of emission leakage as the potential harm to domestic within California facilities.

As a staff indicated, we look forward to working with the ARB to investigate the adverse impacts of the proposed reduction and the potential for increasing the industry assistance factor in the third compliance period so leakage risks are minimized.

We strongly support the adoption of new methane proposals for coal mine methane. We clearly support the transition from CWT to CWB.

There are three issues that we think ongoing dialogue is needed for which we hope a process can be imposed.

We think that the refinery benchmark still is a little low. We'd like to suggest a process by which that refinery benchmark could be trued up. Similarly, we have concerns about the hydrogen plant benchmark proposed by ARB. We think it may be materially inaccurate due to inconsistent communication of hydrogen reporting requirements. This could be so because the reporting requirements that have been in place and that were used for benchmarking were not consistent with the new
reporting guidance provided earlier this year.

WSPA believes this issue must be addressed with respect to implications in the development of the hydrogen plant benchmark, as well as near term and future term reporting to ARB.

And finally, as you heard, there are questions associated with the administrative requirements which could be addressed as well.

So we'd like to end. I hate to say end, when I'm an old person.

The reporting and benchmarking must be on a consistent basis. We encourage a process to true-up and resolve inconsistencies in both the refinery and hydrogen plant benchmark.

And we'd like to ask the ARB and the staff is there any way they can see to identify a process to allow us to continue to work collaboratively on the benchmark so we can keep good dialogue going and get to the right answer. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Loren Hutnick and Susie Berlin.

MS. BERLIN: Good morning. It's afternoon. Sorry. Good afternoon, Chairman Nichols, Board, and staff.

My name is Susie Berlin. I'm representing the
Northern California Power Agency and MSR Public Power.
NCPA and MSR are both joint powers agencies comprised of municipal utilities that have their own electric generation.

We support the efforts of staff and the Board to implement revisions to the cap and trade regulation to help us move forward with the ongoing success of the program. And we do urge that the revisions be adopted.

But we do have some concerns regarding some of the provisions that are designed to prevent market manipulation. To touch on those briefly, the 15-day language makes changes to disclosure requirements for employees. We believe those are improved over what was in the original amendment. But we'd like to see some refinement. The term "knowledge" must be limited to information that is not otherwise publicly available or easily discernable in order to avoid reporting that can be onerous.

As SCE noted, some of these requirements can be onerous, but not just for large entities, for small entities as well. And we support the recommendation to work with staff and stakeholders to review the provisions and develop solutions that will address these concerns.

We also question whether these disclosure requirements are necessary at all if proposed revisions
are adopted that impose an absolute prohibition on
employees registering as voluntarily associated entities.

We thank you very much and support the revisions.
And staff are working with the EDUs on properly
recognizing the implications on the retirement order and
ensuring that EDUs that are allowed to place compliance
instruments into their compliance account directly are not
somehow penalized by the order in which the allowances are
retired.

We also ask that there be little further review
of the definition of cap and trade consultants and
advisors as we move forward and see this definition
implemented. We think that it should be narrowly
interpreted.

We support and appreciate the bidding strategy
language being added to the Section 95914. And we also
appreciated very much hearing in staff's presentation that
those disclosures are not intended to compromise any
attorney-client privileges but believe these sections
could be further reviewed and fine tuned in the context
perhaps of the fall rulemaking.

We also support the cost containment provisions,
but we ask that CARB further explore a suite of measures
that can be adopted and that the Board direct that further
work on transitioning to a post-2020 cap and trade begin
sooner rather than later.

We also support the clarification of permissible disclosures of auction-related information under limited conditions and the inclusion of the resource shuffling provisions that incorporate the current guidance language and remove the attestation requirements. These changes are necessary to take into account the interaction between the Cap and Trade Program and the State's other GHG objectives, including SB 1368, and believe incorporating the guidance language that was drafted by staff and worked on by a lot of diverse stakeholders is the right route to take. So thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Tony Brunello.

MR. BRUNELLO: Good afternoon. Tony Brunello with California Strategies.

I'm not going to spend much time here. A lot has already been said. Just two main things.

One, I think it's unique. I wanted to promote the adoption of the mine methane protocol. I think it's one of the unique things right now is that this is one of the first protocols ARB staff have developed themselves. I think the process has gone exceptionally well. I want to commend the staff on that protocol.

And second is just the federal and national
action. Very much think that your actions today on this protocol can show that there needs to be some type of national regulations to reduce emissions from mines. I think this is a great signal that something needs to be done and a great incentive in order to push that forward. I urge your adoption. Thank you for the time.

CHAIRPERSON NICHOLS: Thank you.

Brian Shillinglaw.

MR. SHILLINGLAW: Yield my time.


MR. BISHOP: I probably should have yielded my time, too.

BOARD MEMBER DE LA TORRE: It's not too late.

MR. BISHOP: Point well taken.

I would be remiss if -- Julia Bussy and Steve Errita wanted me to make a special thanks to the staff on how hard they had worked to deal with this complex regulation.

Not surprisingly, we're also strongly in support of the increase in the industry assistance factor. We think it's important to take care of leakage. We support the mine methane protocol. We believe offsets are important to keep the cost down, and we don't think we have enough offsets even with the mine methane protocol.

Finally, like many people before me that work for
large companies who are concerned about the requirement to report all of our corporate entities, Chevron has over 1,600 entities. Like Ralph who spoke about Azerbaijan, we're from Azerbaijan all the way to Ziere. And it certain isn't necessary to have all of those reports to have this function in a safe manner. So please fix that.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Marcie Milner.

MS. MILNER: Good afternoon, Chairman Nichols, members of the Board.

I'm Marcie Milner with Shell Energy North America. Shell Energy North America is a gas marketer. We also market power and environmental products in California. We are an electricity importer under ARB's regulations, and we're also a legacy contract holder. So I want to thank you for the opportunity to address you today.

And also thank you for directing staff to work with us on the legacy contract issue. We've been actively attempting to renegotiate that contract. As we noted in our written comments as well the comments that Teresa Makarewicz made earlier, we believe there is a provision in the language that is currently discriminatory to the Shell contract specifically.
And the reason that I say that is that generators that are similarly situated are receiving transition assistance in the form of free allowances from the market. And in this case, the language takes allowances from the refinery from Martinez, who is our affiliate, and gives us allowances to the generator under our contract. Martinez is not a party to the contract. They don't have any operational control or dispatch ability over the generator. And so we would urge you to try to fix this discriminatory language either through some sort of regulatory guidance or other means in order to create a level playing field.

In the mean time, we plan to continue to try to renegotiate the contract with our counterparty. That is the ultimate goal for us and, we will continue to work with staff on this it as well.

Given I have one more minute, I just wanted to suggest that the Board also in a future rulemaking please address the procurement and holding limits. Currently, that limit is arbitrary. It's too low for large emitters. And particularly with fuels coming under the cap in 2015, I think it poses an issue for large emitters to be able to procure enough allowances while providing the opportunity for smaller emitters to hoard those allowances.

I ask that you look at the EMAC recommendations,
which state that the holding and procurement limits should be set at an entity's net obligation.

Thank you for your time.

CHAIRPERSON NICHOLS: Thank you. Kathleen Cole and then Barbara O'Neil.

MS. COLE: Thank you, Chair Nichols and Board members.

I'm Kathleen Cole, legislative representative for the Metropolitan Water District of Southern California. Metropolitan is the regional water wholesaler for six county service area in Southern California. We provide drinking water for 19 million residents and businesses to support the region's one trillion dollar economy.

Metropolitan has indeed been an active participant in CARB's rulemaking on the cap and trade reg. We have submitted numerous written comments, provided oral testimony to CARB, and have been working directly with many of you and your staff since November of 2009.

This year illustrates the strong relationship between the availability of water from the State Water Project and the energy requirements of Metropolitan's own Colorado River aqueduct system. Due to the severity of the current drought, Metropolitan will receive only a five percent allocation from the State Water Project in 2014. This lack of water from the State Water Project will
require Metropolitan to operate its Colorado River system at peak capacity and load from March through the end of this year to meet the water demands in Southern California.

If the drought continues into 2015, the Colorado River system will continue to operate at peak capacity and Metropolitan will continue to acquire supplemental energy. While we can agree that as a public water wholesaler our situation is unique, we do not cleanly fit into this program and ask an accommodation so that Southern California water rate payers are treated similar to other utilities throughout the state.

We have noted that CARB has made an accommodation to agencies like San Francisco PUC, Trinity Public Utilities Districts and others and are asking for similar consideration.

We certainly appreciate the efforts of CARB members and staff to find an equitable and fair solution for Metropolitan, and we are committed to continue our efforts to resolve concerns and in light of the State's dire water supply situation.

We thank you for your consideration.

CHAIRPERSON NICHOLS: Thank you.

Barbara O'Neil. That is the last witness.

MS. O'NEIL: Good afternoon. My name is Barbara
Toole O'Neil. And I'm between you and more discussion.

Not lunch, sadly.

I appreciate -- first I wanted to say we appreciate very much all of the hard work and all of the effort of the Board and the staff for all of these regulatory updates. And I appreciate especially the very long days you've put in in the last two days.

I'm here to speak to support the Coal Mine Methane Protocol. I just want to restate a couple things. First to restate again what Greg Arnold said. Coal industry is declining. Production is declining. Six percent might not sound like something big, but in the coal industry, that's very, very important and a very large number in terms of tonnes.

Mine expansion isn't happening. New mines aren't opening. But methane will continue to be emitted. It is a natural product. It comes along with any coal.

Another perception issue that I just wanted to share by way of story. Seems to me that there is a perception that methane is encased in an impervious coal, which is encased in an impervious surrounded by rocks that aren't pervious at all.

Methane seeps everywhere. In Central Pennsylvania, there is a coal seam that's been on fire for 50 years. Imagine 50 people. If people wanted to put
that out, you can imagine all the excitement that they have had over and over again. Little towns have had to move because the coal mine -- the gases are noxious. And they creep into people's homes and other things.

As Tom Vessel said, this mine methane protocol might help incentivize people to look for methane emissions and then control them in a way so towns don't have to move, in a simple way. But methane is there and it's going to continue to be there.

In the western US, there is a -- on tribal lands, they found that they were having burning bushes in the desert similar to ancient biblical stories. They found there was methane seeping from the ground and catching fire. On those lands, they have a seam that was ignited by a lightning strike.

Please, I support obviously. I know you're very tired. I really appreciate all of your effort. And I appreciate all of the rigor you've attached to the development of the protocol. Thank you very much.

CHAIRPERSON NICHOLS: Thank you. And thanks for your testimony. It really has been important.

As you know, we were looking at this protocol last time we visited amendments to the Cap and Trade Program, and I think we were very close to adopting it at that point. But issues were raised that we felt very
strongly needed to be addressed and they have been addressed. And maybe also a result of taking more time, we have been able to hear more from folks such as your company who are out there attempting to find a way to capture some of this methane and make some money doing it. And we commend you for that. So thanks for coming.

I believe that concludes the list of witnesses, and I will therefore close the public hearing. And we can come to discussion by Board.

This is a complex set of issues, but at the end of the day, I think we're going to take a vote on the entire package. So let's just pick apart the pieces that people feel they need more information or -- it's going to have an up or down vote obviously on the package. But there can be some direction to staff to take further action.

I just had one question because it came up for the first time to me today. That was the benchmarking issue that was raised by Kimberly Clark. Does somebody wants to explain what that's about, if we need to do more work on this one.

SSD MANAGER COOMBS: So over the past couple of years, staff had heard concerns from one company within the tissue sector that the previous benchmark or the currently in place benchmark was not appropriate to the
industry, that it didn't take into account the functionality of tissue. And specifically today, we're talking about bathroom tissue.

So we worked with that company and with their competitor, Kimberly-Clark, who you heard from today, to look at how we can take into account the functionality of the tissue within the benchmark. The proposal from staff is too look at the water absorbancy of the tissue, because we believe that to be the primary function of the bathroom tissue.

We heard concerns from Kimberly-Clark that it wasn't an appropriate metric to use for the benchmark. And we looked at their proposal, which essentially would have looked at the total surface area of the tissue. It didn't take into account as well the fluffiness or the thickness of the tissue, which we thought was critical to that functionality.

CHAIRPERSON NICHOLS: It's hard not to smile. It's a topic we can all giggle about a little bit. But because you know we go from trucks to toilet tissue.

BOARD MEMBER BALMES: And the truckers didn't want you to smile.

CHAIRPERSON NICHOLS: Who said that air regulation was dry and boring, right? Okay. Thank you. Got that out.
SSD MANAGER COOMBS: So that is why staff proposed a benchmark that takes into account the water absorbancy of the bathroom tissue.

Now we also proposed to separate out the different tissue products. So the bathroom tissue, facial tissue, Delicate tissue or chem wipes as you know them, as well as the paper towels because we do have different functions for those tissues. Mr. Cliff tried to convince me he would use paper towels on a regular basis to wipe his nose, but I think we all would in a pinch.

BOARD MEMBER BALMES: Too much information.

SSD MANAGER COOMBS: So for that reason, we chose to separate out the different tissue products. We worked with -- staff worked with the best available data we had at the time on emissions to separate those out to the different products. We would welcome further information from industry if can give us more accurate data on the emissions intensity per each of those tissue products. But --

CHAIRPERSON NICHOLS: There was a claim that the information that we had used was just incorrect, as opposed to the policy or the theory.

SSD MANAGER COOMBS: We worked with the best available data that we had at the time.

CHAIRPERSON NICHOLS: But when we go about doing
these allocations, which will happen sometime between now
and the end of the year, we do look before we just put
allowances in people's accounts. There is some further
process that happens; isn't that correct? I mean, we're
not voting today on how many actual allowances each
covered entity is going to get. Perhaps you can explain
how that works.

SSD MANAGER COOMBS: It will be based on the
production that is reported this year for 2013 as well as
that benchmark. So the benchmark you're voting on today
will effect the allocation.

CHAIRPERSON NICHOLS: Oh, I'm sure it would
effect it. The question is just was there some
opportunity on a specific case basis for someone to argue
that the data that we had was incorrect or to make
adjustments or whatever. The answer is probably not, it
sounds like.

SSD MANAGER COOMBS: No.

CHAIRPERSON NICHOLS: Okay. All right. Well,
that's -- we need to understand what the deal is there.
I don't know that further discussion is going to
solve this problem, but I would appreciate it if you could
at least attempt to see if there is any way to deal with
this particular individual concern here.

As far as other requests for us to consider
working on things, I think there are a couple of them. I know the refinery issue is obviously the biggest one. So do you want to raise that issue then?

BOARD MEMBER BERG: Yes.

Before we close the Kimberly-Clark, what I heard too was that there was a choice, that we chose a different process to benchmark again. If there is a only two companies, it does seem to me a little difficult to establish -- it seems there will be a winner and a loser. So may be as we're progressing and looking at these allocations, we can also keep an open mind as to looking at it as Chairman Nichols suggested with the stakeholders to see what additional information we can get on our tissue situation.

Okay. I'll go ahead and jump into the Kern -- into the actual small refiners. I've done quite a bit of work with the small refiners and with staff. I've done -- have been working with Steve Cliff on this probably for the better part of a year. And what I'm really concerned about is that within this benchmark, what's been different have difficult for me to reconcile is when we started on the simple barrel, the small low energy, low complexity refiners were best in class. But we went into a more complex model because the low -- the simple barrel was very problematic for the large refineries. Then we
switched to a more complex model, which then disadvantaged the small fuel refiners.

And I understand that there are two refiners that are best in class out of four. But when we look at refining asphalt, my understanding of it is it needs much less refining process to get to the end product. And so I'm very concerned that we might have thrown the baby out with the bath water, so to speak, in looking at the small transportation fuel refiners. And they are, in fact, disadvantaged because size matters. And I wondered if staff could make some additional comments on this for us.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: Well, thank you. Appreciate your comments.

As you say, we've worked very closely together in trying to understand this issue. And we've also at the staff level spent a lot of time digging into the data that the refineries have provided. I think it's been a very collaborative process with the refiners as well. They've been very open about providing us data and we appreciate the effort they've gone to to go back and look into issues we identified and come back to us with either revised data or a better understanding of the data that they have supplied. So I appreciate all that effort. It has taken the better part of a year, in fact, to -- possibly a little more than a year at this point.
You mentioned that in the refining sector there's some products that are less carbon intensive. That's certainly true. It takes less energy to make certain types of products than other. That became the challenge in identifying a one-product, one-benchmark sort of approach for the refinery sector. And ultimately, we came up with this complexity-weighted or carbon dioxide or complexity-weighted barrel approach that was a proxy for products. Rather than trying to identify a carbon dioxide amount per unit of saleable product in California, which could have unintended consequences, we came up with a proxy for how efficiently each of those products is produced based on looking at the throughput of the various processes that refineries use. So that's the idea of this complexity-weighted barrel. It's a proxy for the ultimate product.

So inherently, our understanding based on talking to industry experts, not simply the refineries, but those the industry experts and Solomon and Associates is the leading expert in the world on this subject, we discovered that there should not be any bias to any particular type of product as an output. Rather, it's the technique, this complexity-weighted barrel should only recognize the inherit efficiency of the production.

So as you put product through a distillation
column or through a cat cracker, we're looking at the efficiency of that process on a greenhouse gas basis. So that's the approach that we were trying to address here.

And you're right, there are two very efficient refineries which happen to be mostly asphalt refineries. Some do make a small amount of transportation fuels. And then some that are relatively inefficient on a complexity-weighted barrel basis are providing -- producing almost exclusively transportation fuels.

In cap and trade though, we're not trying to subsidize transportation fuels as the final product. We're trying to subsidize the product that we're trying to prevent from being produced elsewhere, which would cause leakage. And we're indifferent to the final product there only to the process in this complexity-weighted barrel approach.

So when we looked at the overall data that we were supplied, we found that there are some very efficient and very inefficient. And that there is a curve. And sort of refineries are placed along that curve.

But it wasn't necessarily the case that only small refineries, small and less complex refineries, were the inefficient and large more complex refineries are the most efficient. In fact, there was a distribution. And that's what led us to ultimately propose one benchmark for
this sector.

BOARD MEMBER BERG: I understand that -- I do understand the rational. I think what I'm concerned about is under the CWB model, it does look at one process. But isn't it true that efficiency is gained through heat integration and the ability to transfer heat. So if you're a small refinery and you have less pieces of equipment or you don't have pieces of equipment that require a great deal of energy, then you do, in fact, have less ability to be able to become more efficient.

CHAIRPERSON NICHOLS: But it's on a basis of barrels; right? So that shouldn't be a problem.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: Well, I think what Board Member Berg is saying is that this economies of scale argument is that what you've got a larger process, you can use the heat from one process -- if you have more processes, you can use the heat output from one process to help --

CHAIRPERSON NICHOLS: Understood. But the metric we're using is the amount of emissions per unit of product.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: That's correct.

CHAIRPERSON NICHOLS: It should be normalized, that output.
CLIFF: I don't know that we found inherently that it's true that heat integration should be a benefit in this situation. In fact, we talked about one of the smaller refineries, which was the subject of a lot of discussion at the prior Board hearing. This is the Santa Maria Refinery Phillips 66. It falls more in the middle of that pact. So it's a smaller refinery. It doesn't make transportation fuels. It's probably less efficient on a CWB basis than some of the more well integrated refineries. But it's not true that -- necessarily true that just because you're small, you can't take advantage of efficiencies.

I think across the Board at cap and trade and we look at industrial facilities throughout cap and trade, some of the small facilities have decided to opt into the program specifically because they are very efficient. Not in the refinery sector, but in other sectors. So it's not always the case that small means less efficient. In fact, in many cases, small is more efficient.

CHAIRPERSON NICHOLS: Should be more efficient.

CLIFF: Can be, certainly.

CHAIRPERSON NICHOLS: Supervisor Gioia, you had a question.
BOARD MEMBER GIOIA: It's an interesting issue. And dealing with four refineries in my own county, I realize how complicated the refining business is. They tend to be the larger, including one very complex refinery, the Chevron refinery.

Really to me what this comes down to, do you believe that in the new approach, sort of the complexity weighted barrels approach, that you're able to factor in all of these various issues that have been raised by the small refiners. Ultimately, I'm open to hearing your thought. I mean, if we start carving -- it seems to me if we start carving out some other approaches for a subset, others in the refining industry say, well, we have some distinctions. Carve out some approaches to us. So --

CHAIRPERSON NICHOLS: There is a limited pot of allowances for this sector.

BOARD MEMBER GIOIA: It comes down to -- it doesn't mean we can't change this stuff in the future. But given the approach that you're suggesting, do you think it accommodates the very -- to the best degree possible the variation in types of refineries that exist?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: We do. I think at the staff level we're comfortable there is sufficient complexity-weighted barrel factors to incorporate all of the possible iterations of
the refineries in California and in fact worldwide. This's how it was developed.

I will say that the question that I think we evaluated at the staff level and that we're concerned about is this also an equitable approach. Fair doesn't mean equal, but I think you know does this --

BOARD MEMBER GIOIA: Someone did say that yesterday.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: I think one of the ways to look at that -- and the Board had directed us to evaluate this before -- is what is the in-state competitive impact of these various regulations. Not simply looking at leakage but really in state.

And one way to look at that is what's the potential cost on -- of these regulations after you consider allocation on a unit of product that you're going to sell into market. And so for refineries, primarily they're making a lot of different products of course, lube oil, asphalt, so forth.

Primarily, we're talking about transportation fuels. And if you look at transportation fuel sales into market, the range of cost pass through that would be expected from cap and trade is very small from the refining perspective. It's on the order of half cent a
gallon or less. And even those who are fairly inefficient on this scale that don't get as many allowances per units of CWB because their emissions per barrel of product are inherently lower, they actually fair quite well. So if the average is about say a half cent a gallon or less, these are half of that.

So if you're thinking about whether your competitive with another larger refinery, some of the larger refineries might be in the exact same range. I'm not quoting exact numbers here because this is confidential business information. I'll trying to throw out some kind of scale of what we're talking about.

So that's really one of the other things that we evaluated is are we causing undue harm to one individual entity. And I think, you know, primarily we're talking about Kern in this argument. You know, is Kern harmed as a result of this. And I think what we found in our evaluation is that we think that it's still an equitable proposal.

BOARD MEMBER BERG: I guess that's where I'm just having a hard time reconciling that because when I look at this chart and there is such a great gap and you're asking these people down here to become 40 percent off the benchmark and they are one of the lowest energy users, I just -- I can't reconcile it. It does not make sense to
me.

And I think it's cavalier on our part to suggest
that any amount paid under a regulation may be material or
may not be material when you're particularly small and you
don't have the same type of capital funding and things
that very large people who can spread these costs or pass
these costs off in a smaller way as well.

So I still remain extremely concerned that we
haven't lumped together a group with unintended
consequences on albeit two and maybe three. I get
confused about how Paramount and Alon line up in this
situation.

And so I still am very concerned about this and
would like to see if my fellow Board members would be
amenable to continue looking at this issue and coming back
to us specifically on this issue.

CHAIRPERSON NICHOLS: You know, I think we should
always be open to the possibility that we may not have
come up with the perfect decision and there could be
something better in the future. I would not want to close
it off.

But I don't want to mandate a solution at this
point either, because every alternative that's been raised
to me also has consequences that -- and raise issues about
fairness or about the effectiveness and efficiency of the
program that we're implementing.

I mean, this is the hard part of where we are with the Cap and Trade Program. The theory behind cap and trade is that people have a choice about whether to become more efficient in their own operation or by allowances. And what the staff is saying is based on best analysis that they can do, that if this company had to buy allowances because they don't have the ability within their own facility to get more effective, they would still actually be able to sell their product at a price in the marketplace that would be competitive and would keep them in business. It doesn't mean they would like to have that extra cost. Of course, they wouldn't.

But we know that not every company does have the same opportunity to change or take advantage of new technology, although I have to admit that given that cost factor, who knows what exciting opportunities might arise to make a facility more efficient. That's what you get to with the Cap and Trade Program is, as you said earlier with respect to the tissue issue I guess. There's going to be winners and losers in this process.

I don't think that Kern has to be a loser. I'm impressed by the caliber of the people and what they've been able to do with that facility that they have. So I just don't want to have us be in the position of having to
then put a thumb on the scale that, you know, takes a little bit away from everybody else or whatever. Just in order to satisfy ourselves that we've been as fair as we could be.

Having said that, you know, I understand that people continue to be worried about this. I just don't think we know what the direction is to solve it. And I don't know -- well, we can't solve it today. So the best we can do is to look at the next round of allocations and see what there is.

I don't know, Mr. Corey, do you want to respond further to that?

EXECUTIVE OFFICER COREY: Well, I think, Chairman, you just hit it. It was not about an action today. I think the point is to take -- and you're right, there is not a silver bullet. We laid out the analysis. We laid out the underlying rational. We're hearing concerns expressed. The response would be as we continue to follow up and look at the issue, we can take a second look from a refined analysis standpoint, keeping in mind the concerns that have been raised and see if that leads to in the 2015 time frame when we return is there some improvements. Do we have improved information or some adjustments warranted? Basically, keep our eye on the ball and see if there is some improvements we can return
to the Board with.

BOARD MEMBER BERG: I want to -- and Board Member Balmes has a comment. It is not my goal certainly to take a little hear, take a little there, to micro-manage the staff.

But it certainly -- I feel very compelled that when you start looking at facilities that are 40 and 50 percent off the benchmark, and there are the smallest of the small, I don't think we got it right yet. And especially given the other sectors, I think this might be one of the largest gaps. Am I correct on that?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF CLIFF: I think that's right. It's probably the largest.

BOARD MEMBER BERG: It's the largest gap. It's the smallest of the small. I think we have more work to do.

CHAIRPERSON NICHOLS: Okay. Dr. Balmes.

BOARD MEMBER BALMES: I just want to follow up on the comments of Ms. Berg and our Chairman. I think the Chairman has it right in terms of the big picture. We shouldn't be, you know, micro-managing, carving out something here, and putting in something there.

But on the other hand, when we try to have one-size-fits-all, it's not necessarily that we're going
to get it right the first time. And I appreciate staff's effort in terms of benchmarking the complex field of -- complex sector of refining.

But I think Mr. Corey maybe made an unintentional pun about refining that benchmark. But I think that we should I appreciate what Chairman Nichols said that we should go forward today with what we have, but we should take some time to look to see if we got it right.

CHAIRPERSON NICHOLS: I think that's the direction. Feel free to add.

BOARD MEMBER RIORDAN: I just want to express my concern. I don't want you to think it's Member Berg who has the only concern. I share that concern, because I think as well intentioned as cap and trade is for the betterment of all of us who live on this earth, I don't want to adversely effect a business that I think may have some uniqueness.

And while I accept that we need to move forward, I think we really seriously need to look at what the uniqueness is, what can be done to in some way -- I don't want to use the word assist, but to make the requirements not so onerous that we place them in some sort of jeopardy.

And when I speak of uniqueness, this is an area that really supports a number of businesses in that
Central Valley. I'm sure that they don't have big refineries. We who live in the more urbanized areas have these big refineries that produce and we use their product.

Here's kind of a unique situation. And I just tend to think that we've got a little bit of a concern and I want to share with you that concern.

CHAIRPERSON NICHOLS: Okay. Any other speakers?

BOARD MEMBER MITCHELL: I would just reiterate the concerns that have already been expressed. I know that this provision has to go forward today. But I do think it's wise to keep our eye on this. And in the next period of compliance, we should look at this and see where we are.

I think somebody -- Dr. Sperling once leaned over to me in the last few months and said "it's adaptive management." And that's what comes into play in our Cap and Trade Program. It's a new program we're always looking at it. And this is a discrepancy that is remarkable, and I think we should be looking at it.

CHAIRPERSON NICHOLS: I feel we have discussed this issue adequately. I'm going to only take the last word to say this is why the Waxman-Marky bill, which started out to put a price on carbon, ended up as a document of some 3,000 pages because by the time you deal
with every single sector and every single issue and try to adjust it in the context of a market-based program, that's what you come out with. We're not there yet. We're definitely still on the side of making a market that will work. I'm not suggesting that's what's happening. I'm saying that we need to keep the issue in mind that what we're doing here is pricing carbon and that will have an effect.

Okay. Let's talk about mine methane. Is there anything more that anybody wants to discuss about that? Dr. Sperling.

BOARD MEMBER SPERLING: I will chime in on the previous one, I think. I share the Chairman's concern about creating 3,000 page documents. And I think we should always be committed to simplifying.

But the one thought to generalize from it though is when you create a method where you know it's a surrogate for a lot of different variables that are in play, you know, as with the refineries, and you have one that's 40 percent off, I mean I think that's the time when you relook at it and see if adjustments are appropriate.

But anyway, back to the coal mine, a thought I had on that was it was -- the way it's structured is it talks about destruction of gas. And that troubles me a little because what it really means is it can be either
flared or it can be injected into a pipeline. If it's injected in a pipeline, it has much more value. It's much better.

CHAIRPERSON NICHOLS: Both environmental and economic value.

BOARD MEMBER SPERLING: Exactly. And what we want to be doing is encouraging the injection, not the flaring. And we don't do that in the way it's set up. So I'm not too concerned in this particular case because it's a small program and probably small impacts, although I'm open to questioning it for this particular one.

But I do want to generalize it as we go forward that we be thinking about that much more carefully about methane, because methane leakage -- even just sticking with the question of methane and methane leakage and that presentation about the huge amount of leakage coming out of the hillside going up, I think we're going to want to look at methane a lot more as we go forward. It's a huge issue, the whole physical leakage problem. It's not well understood. I'm not sure it ever will be well quantified in a general sense. So therefore, it really does lend itself to offsets.

CHAIRPERSON NICHOLS: This is a small program obviously, but it really does represent a major opportunity to learn and to get rid of some methane at the
same time.

BOARD MEMBER SPERLING: So one principle would be, you know, let's figure out how to get this right. Let's reward substitute productive use of it versus flaring of it. Make that distinction. And any of the others we come up with and just motivate you to think -- motivate us to think about how we can do more with the methane leakage issue.

CHAIRPERSON NICHOLS: Great. We are working on a report on the short-lived pollutants that the staff is in the process of organizing with the hope of bringing something back to the Board before the end of this year with some really comprehensive thoughts about how to deal with this issue. So it's very much in line with I think where we need to be going.

Okay. Other issues that people were interested --

BOARD MEMBER BALMES: I'd like to talk about the methane mine capture. So first off, going back to October, many of you remember my sort of impassioned plea not to reward coal mines. I really appreciate the time that we took to evaluate with an economic analysis what the impacts would be.

And again, staff did a Suburb job. I've been educated both by staff and by the methane capture
equipment companies about the process. And I feel very comfortable in what was stated today in testimony that it's not the coal mines that are going to make money off of this. It's really hopefully the entrepreneurs that are investing in the technology, several of whom are located in California. So I'm actually much more positive about this protocol, because I think it actually is rewarding California entrepreneurs and taking care of an important short-lived greenhouse gas.

I'm glad that Professor Sperling mentioned flaring because that is the one area where I'm concerned. I agree with him totally that productive use of methane is better than flaring it. I understand why flaring is in the protocol for facilities that -- where it's economically infeasible to inject into -- the methane into a pipeline.

But I do think I agree with him that we should be looking to get away from flaring and productive use of methane. And maybe with improved technology over time even coal mines distant from pipeline injection there may be some way to recover that methane other than to flare it.

So basically I wanted to say that I'm in support of the protocol. I was willing to vote for it in October, but holding my nose, I no longer need to hold my nose.
CHAIRPERSON NICHOLS: All right.

BOARD MEMBER BALMES: I do have one last question for staff. So the Stanford Law Group brought up the issue of new mines and major expansions that we didn't model that type of methane mine capture project because of the available existing data really didn't directly apply to such a situation. Can staff respond to that?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF SAHOTA: I appreciate that question because it ties into another area that I think is worth discussing, which is federal action on this issue and the timing for that action.

On this particular issue about new mines or expansion of existing mines, the types of methane that would be liberated are the same types of methane that would be liberated at any mine at any time. So the availability of the technology and the control mechanisms are exactly the same. It's not -- there has never been to date any kind of action under the federal BACT criteria to address this issue. We don't know when that would ever occur at the State level or the federal level.

On the Issue of the BLM news release yesterday, they're actually taking comments on partnerships, preferred technologies. It's not direct regulation at this time. And so there's still ample opportunity to get
these emission reductions prior to any regulatory activity. And if regulations did come into place, those projects would no longer be eligible because those emission reductions would then be required by regulation and all voluntary.

CHAIRPERSON NICHOLS: I guess I also did not find that argument particularly compelling, having been in the air office of EPA doing regulation under the Clean Air Act. The idea there could possibly be somebody doing something on a voluntary basis would not really cut much ice, as far as whether EPA would should feel they shouldn't go forward with regulation if there was some voluntary action going on. If anything, that would give them a grounds why they needed to make it mandatory for everybody to do it because it had been demonstrated it could be done.

So I think they just -- that's a misunderstanding of the incentives that the regulators have. Once they feel they need to address a problem, they're going to try to find a way to address it. Right now, it doesn't appear that's on anybody's serious radar screen, unfortunately. In the mean time, there's a lot of methane out there as we know escaping every day.

So Dr. Sherriffs.

BOARD MEMBER SHERRIFFS: Couple methane issues.
I presume staff is going to continue to worry about how to encourage these projects to do the productive utilization of methane, not just the destruction, as important as the destruction is. We'll probably continue to monitor the economic effects on mining, although I think we've done a very good job of researching that. And it's not something we need to be worried about at this point.

A general question about offset credits. So we are looking at potentially 50 million through mine methane capture. How many are we looking at through the rice protocol? And how many do we need to keep cap and trade stable moving forward? What are we looking for?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
SAHOTA: Under the program as it's designed through 2020, if everyone were to utilize the maximum 8 percent offset usage limit, you're looking at about 218 million metric tonnes of offsets. To date, we've issued up to eight million metric tonnes and we just started issuing last September. And this is under the current four protocols.

We expect for the first compliance period those four protocols will provide sufficient supply, if everyone didn't want to bank those offsets but actually wanted to use them all at this time.

Certainly, having something like the mine methane
protocol helps with the supply. We do realize that we are short with just the mine methane protocol, the four that we have, and even if we were to move forward with rice. Rice, the yield of offset credits per acre is very low. It's on the range of half a metric tonne to one metric tonne per acre. Through the protocol -- total for the protocol you're looking at a maximum of one to two million metric tonnes between now and 2020. So there does need to be additional work to identify offset protocols, particularly protocols that are applicable in California. And we always run into the challenge in California because we're very passionate about addressing environmental issues through regulation. So that leaves very little room for additional offsets in California.

In the Scoping Plan, we do discuss ongoing review of international potential for offsets through sector-based offsets. But this is an area that we feel like we need to keep exploring to make sure we are able to supply the full amount under the regulation.

BOARD MEMBER SHERIFFS: Thank you.

CHAIRPERSON NICHOLS: Yes, Mr. Eisenhut.

BOARD MEMBER EISENHUT: Since it was initially -- since it was introduced, I would like to acknowledge Tim O'Connor's mention of the rice protocol. I appreciate that. I understand that it's not linked to the mine
methane, but it necessarily follows the mine methane. And so I just indicated its importance.

This was a protocol -- is a protocol that really I believe was initiated by the industry in an effort to do the right thing. And it's an important not just in a real sense, but in a symbolic sense to that community and to our sister agency. And I look forward to the presentation. Thank you.

CHAIRPERSON NICHOLS: In terms of areas that need additional follow up, we actually heard quite a number of witnesses talk about their concerns about the reporting changes and oversight issues with respect to this rule. And I thought I heard you at the beginning saying you were planning on doing some additional work on that one? Is that correct?

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF SAHOTA: I think this is related to the market oversight provisions.

CHAIRPERSON NICHOLS: Yes. Correct.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF SAHOTA: We do intend to provide guidance to provide clarity on the proposed amendments. I think there was a comment that we had broadened the requirements. We had actually worked to narrow the requirements with specific language about which types of advisors and consultants you
had to report.

On the corporate associations, the requirement to list all your corporate associations has always been in the regulation. This's not a new requirement. What we did do was reduce the frequency in which you have to update that information to us. We feel it's important to have that information for entities that are in the program and those that are not directly in the program because it helps with oversight of related energy markets and other carbon markets in other parts of the world.

We had discussions with federal regulators on whether or not this was an important piece of information to gather. And we all came to the same conclusion; it is an important piece of information to have.

On the section that talked about -- I think it was -- just a second. The consultants -- going back to the consultants again. You know, we worked with the stakeholders to make sure that we narrowed that part of the requirement and we did make sure that we removed language about description of services so we did not somehow interfere with attorney-client privilege.

There was another section about reporting requirements for staff on board that have access to market-sensitive information. That requires knowing three pieces of information: Your emissions; your account
balances in the kit system; and your procurement strategy for future instruments. We worked with industry to make sure we were able to define that in a very narrow scope and felt we came to a reasonable area there.

So from our perspective, the discussion with stakeholders helped move the ball. We felt like it helped address their concerns while still helping us have enough data and information to have comprehensive oversight of the primary market.

CHAIRPERSON NICHOLS: Well, I don't know if there's been a new round of industry talking to each other or whether, you know, people are just reading it for the first time. But I think I probably got more input in the last couple of days from companies that are worried about the expense and the value of reporting that they're being asked to do and this issue about whether they would be making themselves subject to enforcement as a result of any possible error in reporting.

So I would strongly suggest that before you issue any guidance and as soon as you can after today that you open up a dialogue, invite people in for a discussion, and just kind of walk through this issue. And if it's at all possible to have a template or an example of what we're looking for by way of a report that would make this less imposing -- as unimposing and practical as possible, I
think that's what we want. Because I do understand there is always this
tension and it just is inevitable between enforcers
wanting to be able to have every possible piece of
information they can get their hands on and the need to
run a reasonable program would be people can know what
they need to submit and do it in a way that doesn't add
greatly to the cost of actual implementing this program.

BOARD MEMBER BERG: Also, Chairman Nichols, it
would be interesting to know how we're going to use the
information. It sounds like a lot of information coming
over a lot of resource time. And we're going to be
able -- we're going to have to be able to sift through
that information. And more information doesn't always
give you what you need. Sometimes you spent a great deal
of time sifting through things and you might miss
something because it's just information overload.

So I just want to echo Chairman Nichols' request.
This did come to me when we first adopted cap and trade,
and it was a concern then. And I'm hearing the same thing
from industry now. So --

CHAIRPERSON NICHOLS: Well, I would invite people
who have serious suggestions if they have alternatives
they think would be equally effective or experts we should
be talking to outside of this program that we can look to
for guidance, we should be open to that as well.

Dr. Sperling.

BOARD MEMBER SPERLING: To add to that, I guess the first question is other places are doing Cap and Trade Programs. What are they asking? European Union? And you know, Korea and a number of other places are dealing with cap and trade.

But I think -- so you don't need to answer that. But I just would hope that you're being at least consistent and not more burdensome than there.

But I guess the question I think we'd all like to hear is why is all this information so important? Why do we need to know about pipe lines in Azerbaijan?

CHAIRPERSON NICHOLS: Because we're very interested in them.

BOARD MEMBER SPERLING: I'm curious.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF SAHOTA: This goes back to some of the market rules that are in place, the holding limits and the purchase limits.

Holding limits are the maximum amount of allowances an entity can hold in its account so it isn't able to exert market power. If you have related entities in the Cap and Trade Program, then in that particular instance, having two entities with two separate accounts not sharing the holding limit gives them twice the access
to compliance instruments as would be a single entity in the program. It goes back to be able to map that relationship directly in the program for the holding limits and also for the purchase limits at the auction.

What we found in several cases is we've had entities registered for the program submit this information and not realize they were directly related up until one or two levels above. And when you talk to some of the corporate folks, they're like, oh, yes, we manage that for them at this level. So there were opportunities where there could be twice the access or triple the access to the instrument market relative to an independent single entity in the program.

From the context of related carbon markets and other parts of the world, there could be arbitrage for instruments in multi-national markets. So the concern was that we were able to identify which entities were active here, which would also be active in other carbon markets around the world.

And then, of course, going back to related energy markets, we've had examples in the past where one energy market has been used to impact the electricity market here in California. And so it's important to know if one market is being used to somehow benefit a related entity in another market or vice versa in the program. And that
information is shared with federal regulators if questions come up about, you know, we see some issue here, what can you tell us about what's going on with these entities in your program. So it helps us coordinate that oversight with our federal regulating entities and helps us monitor the primary market.

CHAIRPERSON NICHOLS: That's a really good point. It's sometimes easy to feel that because things are quiet and it's been going along so well that we're invulnerable. And in fact, we are a small island in a very large sea of sharks.

And speaking of sharks, its just reminded me before we vote on this, I do feel that despite the fact that I gave him a little bit of a hard time, the fellow who came and spoke to us about his concerns about shuffling -- resource shuffling raises an issue which we need to pay attention to. We know we need to pay attention to the general issue. We may not feel the examples he's brought up are necessarily valid. But I think it's worth a response. And I don't care if it's legalistic, being a lawyer myself. I'm happy if it's legalistic. But I would like it to be factual and explain why it is that we don't feel that we are causing excess emissions in other places as a result of our California rule. Because that is something that we definitely have
committed not to do. We don't want to do it.

So let's have an investigation on this and report back as to why we think it's -- assuming we do think it's not a problem, why it's not a problem. If it is a problem, what we're going to do about it. Are there any other issues that Board members would like to bring up today?

BOARD MEMBER MITCHELL: Chairman Nichols, I would like to address the issue that was brought up by Metropolitan Water District. Because of the drought as you heard them state here to us this morning, they are only allotted about five percent of the water that normally goes to Southern California from the State Water Project. And the bulk of the water coming into Southern California comes from the Colorado River Project. That increases their energy costs.

So I would like us to look into what relief we might be able to arrange because of what I consider to be an emergency situation. And I know there has been some discussions with Chairman Nichols and myself and probably some of the staff members as well. So --

CHAIRPERSON NICHOLS: Thank you for raising that.

BOARD MEMBER MITCHELL: That would be a concern I think.

CHAIRPERSON NICHOLS: I think had staff has had
further conversations with Metropolitan and I believe they had come up with a proposal that seemed as though it was fair, to use that word. Do you want to describe what that is?

EXECUTIVE OFFICER COREY: It's correct that we've continued the conversations. We recognize the drought situation and increased pumping of the Colorado and are working with them on a revised approach we anticipate bringing back to the Board. The commitment is there. We're working through the details and expect it to return to the Board.

CHAIRPERSON NICHOLS: It's not quite a proposal yet, but you're hoping it will be soon. Thank you.

Any more? Yes, Ms. Berg.

BOARD MEMBER BERG: This is also just a follow up. And that was when Shell North America talked about further holding and purchasing limits with the fuels coming on board and we've heard that from some of the very large emitters from the beginning of cap and trade and their concern about that. And so maybe we can just put that on our follow-up list to continue to take a look at. Thank you.

CHAIRPERSON NICHOLS: I was a little bit surprised -- I'm not saying I'm unhappy -- that we did not hear from the military. They were satisfied with our
treatment of them under this rule. They decided not to come.

BOARD MEMBER SHERRIFFS: You had mentioned the shuffling, and I had just a general question about that. It looked like staff might have some something they wanted to say about that. I'll look forward to more detail. I would appreciate a little response to that, because the question does come up.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF SAHOTA: Resource shuffling is currently prohibited. In the proposed amendments, it remains prohibited.

I think the speaker identified that they thought they had three instances had already occurred. We looked into those. At least two of those are completed transaction and we believe they are not resource shuffling. One of them was set to happen prior to cap and trade even coming into effect, which was a divestiture of a high-emitting force. Another one was related to being in compliance with other State policies about moving to low carbon energy sources, such as the RPS. There's one that was sited that we're still continuing to look at because that process hasn't completed and there's still ongoing discussions. So we're looking in that instance to determine what's the rational and the underlying thing that's driving this activity.
And I'm purposely not calling out names here in my response, just because I don't want to bring attention to these specific companies.

And you know, but in cases where resource shuffling is somehow expected, we encourage our stakeholders to reach out to us. It's encouraging that somebody who doesn't have a vested interest in the outcome of the regulation right now in terms of allowances or compliance was able to actually pull together some information and share it with us. That's encouraging that the public is paying attention and they care enough to provide those comments and pull that information together.

Moving forward, if we did find instances of resource shuffling, we would investigate and take appropriate action.

CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

CLIFF: I just want to add on the resource shuffling, specifically one of the ones that's called out is the divestiture of Reed Gardener Power Plant by DWR. This not only is not resource shuffling. It was called out in 2008 Scoping Plan as part of the state's commitment to get out of coal. So it's not resource shuffling. We divested of that plant in order to lessen our impact on the environment by one million metric tonnes, a little more than one million metric tonnes. As a state, that was a
very important commitment.

CHAIRPERSON NICHOLS: You saw the story this morning in one of the trade publications. I think a lot of the attention was devoted to Los Angeles Department of Water and Power and what's happening with their coal contracts. It appears that they either or the reporter or we are confused about what exactly they're doing and how they intend to treat it under our regulations. So that may be worthy of the some more investigation.

But in any event, I don't think one has to react to every story. But do think in this case it's an important enough issue that we just need to prepare something a little more formal than what you've just expressed because it will continue to raise questions among people that are looking for excuses for why they hate cap and trade. In fact, I think I hear Kip Lipper calling right now.

So it's time.

SENIOR ATTORNEY STOUT: Excuse me, Chairman Nichols. It's Holly Stout.

One thing I need to say before you take a vote is that the comments today did not raise any new environmental issue for the purposes of CEQA.

CHAIRPERSON NICHOLS: Okay. Thank you. So we responded to all the comments that were made during the
time that this item was out for public comment, and you're satisfied we're in compliance. All right.

So we're ready to have a motion and take a vote here. Can we do this all at once? I mean, I know we can vote on the regulation. But on the CEQA document as well?

SENIOR ATTORNEY STOUT: Correct.

CHAIRPERSON NICHOLS: All right then. I need a motion and a second.

BOARD MEMBER GIOIA: So moved.

BOARD MEMBER DE LA TORRE: Second.

CHAIRPERSON NICHOLS: All those in favor, please say aye.

(Unanimous vote)

CHAIRPERSON NICHOLS: Any opposed? Any abstentions?

Very good. We are done. Thank you very much. Do we have any request for public comment? None. Okay. Then we will be adjourned. Thank you, everybody.

(Whereupon Item 14-3-3 concluded at 1:29 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 30th day of April, 2014.

______________________________
TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277