

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

BYRON SHER AUDITORIUM
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APPEARANCES

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Supervisor John Gioia

Mayor Pro Tem Judy Mitchell

Mrs. Barbara Riordan

Supervisor Ron Roberts

Supervisor Phil Serna

Dr. Alex Sherriffs

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Mr. Alberto Ayala, Deputy Executive Officer

Ms. Edie Chang, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Ms. La Rhonda Bowen, Ombudsman

Mr. David Allgood, Air Pollution Specialist, Climate
Change Program Evaluation Branch Stationary Source
Division

APPEARANCES CONTINUED

STAFF

Mr. Richard Bode, Chief, Health and Exposure Assessment Branch

Mr. Dave Edwards, Manager, Climate Change Reporting Section

Mr. Tim Hartigan, Air Pollution Specialist, Planning and Regulatory Development Section, MSCD

Ms. Joelle Howe, Emissions Quality Assurance Section

Ms. Rajinder Sahota, Chief, Climate Change Program Evaluation Branch, SSD

Mr. Erik White, Division Chief, Mobile Source Operations Division

ALSO PRESENT

Mr. Grant Aguinaldo, Lunday-Thagard Co.

Mr. Craig Anderson, Solar Turbines

Mr. Steven Arita, Chevron Corporation

Mr. Greg Arnold, CE2 Capital

Ms. Susie Berlin, Northern California Power Agency

Mr. Will Barrett, American Lung Association

Mr. Brian Biering, Turlock Irrigation District

Mr. Jerry Bloom, OLS Energy Chico, LLC

Ms. Lisa Bowman, USW

Mr. Tony Brunello, California Strategies & Advocacy, LLC

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Buchan, Cardinal Cogen, Inc.

Ms. Julia Bussey, Chevron Corporation

Mr. David Campbell, USW Local 675

Mr. Frank Caponi, LA County Sanitation Districts

Mr. Dan Consie, Crockett Cogeneration

Mr. Jon Costantino, Coalition for Fair and Equitable Allocation

Mr. Michael Cote, Ruby Canyon Engineering

Mr. Angus Crane, NAIMA

Mr. Danny Cullenward

Mr. Taku Futamura, Wildflower Energy

Mr. Gary Geno, Climate Action Reserve

Ms. Maureen Gorsen, Loma Linda

Ms. Kassandra Gough, Calpine Corporation

Mr. Gary Grimes, Paramount Petroleum

Mr. Jerry Gureghiam, Green Holdings

Mr. Tim Haines, State Water Contractors

Mr. Frank Harris, Southern California Edison

Ms. Barbara Haya, Stanford Law School

Ms. Melina Hicks, Kern Oil & Refining Co.

Mr. Roger Isom, CCGGA/WAPA

Mr. Alex Jackson, NRDC

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Steven Kelly, Independent Energy Producers

Ms. Erica Kent, United Steeworkers

Mr. Mark Krausee, PG&E

Mr. John Larrea, California League of Food Processors

Mr. Johnny Lee

Mr. Ronald Liebert, Wheelabrator Norwalk

Ms. Debbie Lloyd, Gas Utility Group

Mr. Bob Lucas, CCEED

Mr. Bill Magavern, Coalition for Clean Air

Mr. Graeme Martin, Shell Energy

Mr. Edward Moreno, Sierra Club

Mr. Paul Morrow

Ms. Barbara Toole Oneil

Ms. Elise Paeffgen, Alston & Bird

Ms. Cindy Parsons, LADWP

Mr. Mark Parsons, Metropolitan Water District Southern California

Ms. Tanya Peacock, Southern California Gas and Electric

Mr. Norman Pedersen, SCPPA

Mr. Leonard Pettis, California State University

Mr. Bruce Ray, Johns Manville

Ms. Amber Riesenhuber, IEP

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Emily Rooney, Agricultural Council of California

Ms. Dorothy Rothrock, CMTA

Mr. Samir Sheikh, San Joaquin Valley Air District

Mr. Mike Smith, United Steeworkers Local 5

Mr. Nico Van Aelstyn, Beveridge & Diamond PC

Ms. Beth Vaughan, California Cogeneration Council

Mr. Thomas Vessels, Vessels Coal Gas, Inc.

Mr. Derek Walker, Environmental Defense Fund

Mr. Michael Wang, WSPA

Ms. Gail Welch, Qualcomm, Inc.

Mr. Peter Weiner, Paul Hastings, LLP

V. John White

Ms. Stephanie Williams, Phillip 66

Ms. Ellen Wolfe, Western Power Trading Forum

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PROCEEDINGS

1
2 ACTING CHAIRPERSON RIORDAN: Good morning. This
3 is the public meeting of the Air Resources Board. It's a
4 continued meeting.

5 And Madam Clerk, I'll ask you to call the roll,
6 please.

7 BOARD CLERK JENSEN: Dr. Balmes?

8 BOARD MEMBER BALMES: Here.

9 BOARD CLERK JENSEN: Ms. Berg?

10 Mr. De La Torre?

11 Mr. Eisenhut?

12 BOARD MEMBER EISENHUT: Here.

13 BOARD CLERK JENSEN: Supervisor Gioia?

14 BOARD MEMBER GIOIA: Here.

15 BOARD CLERK JENSEN: Mayor Pro Tem Mitchell?

16 BOARD MEMBER MITCHELL: Here.

17 BOARD CLERK JENSEN: Mrs. Riordan?

18 ACTING CHAIRPERSON RIORDAN: Here.

19 BOARD CLERK JENSEN: Supervisor Roberts?

20 Supervisor Serna?

21 BOARD MEMBER SERNA: Here.

22 BOARD CLERK JENSEN: Dr. Sherriffs?

23 BOARD MEMBER SHERRIFFS: Here.

24 BOARD CLERK JENSEN: Professor Sperling?

25 Chairman Nichols?

1 ACTING CHAIRPERSON RIORDAN: She will be here
2 shortly. I'm going to begin the meeting at her request
3 and I want to make a few announcements.

4 This is a continued meeting, but we'd like to
5 remind people to sign up with the Clerk for our
6 presentations if you're wanting to present your thoughts
7 and testimony today. If you have signed up through the
8 Internet, you simply need to let the Clerk know you're
9 here. Otherwise, fill out a slip and hand them into the
10 Clerk. And we will take you in the order as they will
11 appear on the agenda.

12 There are some things that I think are important
13 for today. We're going to have a slight change in today's
14 agenda order. Following the first item, which is 13-9-7,
15 the regulation for SIP credit from mobile agricultural
16 equipment, we will hear Agenda Item Number 13-9-9,
17 amendments to the California cap on greenhouse gas
18 emissions and market based compliance mechanisms. And
19 then our last item will be 13-9-8, amendments to the
20 regulation for mandatory reporting of greenhouse gases.

21 If you are aware, and many of you have testified
22 before, we do keep to a three-minute time because of the
23 length of our agendas. And if you are making your points
24 in three minutes, you know that you need to speak directly
25 to the Board. We will accept your written testimony, but

1 your testimony in your own words is much better. And then
2 we have the written testimony that will be made part of
3 the record.

4 Also, just another reminder, for safety reasons,
5 please note the emergency exits to the rear and to my
6 right and left side of this room. In the event of a fire
7 alarm, we are required to evacuate this room immediately
8 and go down the stairs and out of the building. And then
9 when an all-clear signal is given, we can return to the
10 hearing room and resume the hearing.

11 All right. Moving along to the first item on our
12 agenda, that's 13-9-7. This is the item for the State
13 Implementation Plan credit from mobile agricultural
14 equipment.

15 Since 2008, the agricultural industry, in
16 partnership with the U.S. Department of Agricultural
17 Natural Resources Conservation Service and the San Joaquin
18 Valley Air Pollution Control District have invested over
19 \$200 million in public and private investments by
20 participating in voluntary incentive programs that have
21 replaced over 2,500 tractors and other pieces of mobile
22 agricultural equipment with the goal of cleaning the air
23 to meet the air quality goals in the San Joaquin Valley.

24 This regulation, in conjunction with the San
25 Joaquin Valley Air Pollution Control District recently's

1 adopted Rule 9610, will ensure that the reductions
2 achieved from these valuable investments will be eligible
3 to receive credit in the State Implementation Plan to
4 continue progressing towards meeting the region's air
5 quality goals.

6 Mr. Corey, would you like to introduce this item,
7 please?

8 DEPUTY EXECUTIVE OFFICER COREY: Yes. And good
9 morning, Mrs. Riordan.

10 California is home to the world's most productive
11 agricultural region, producing over 400 different
12 commodities from farms and ranches. Diesel powered
13 off-road mobile agricultural equipment is an essential
14 part of everyday practices for growing and producing these
15 commodities. And as you know, while the San Joaquin
16 Valley has made great progress, it still has significant
17 challenges to overcome in order to achieve healthy air
18 quality for those living and working within the valley.

19 The San Joaquin Valley is classified as extreme
20 non-attainment for ozone for 1997 and 2008 ozone national
21 ambient air quality standards.

22 The Clean Air Act requires that State
23 Implementation Plans, or SIPs, demonstrate how national
24 ambient air quality standards will be met by the
25 applicable deadlines.

1 The 2007-08 hour ozone SIP developed to address
2 the 1997 ozone national ambient air quality standards
3 include a measure for mobile agricultural equipment in the
4 San Joaquin Valley. The agricultural industry has made
5 significant progress in reducing air pollution in the
6 valley by accelerating turnover of older dirtier mobile
7 agricultural equipment with the cleanest available
8 technologies through voluntary participation in local,
9 State, and federal incentive programs.

10 In 2010, a Statement of Principles was signed by
11 ARB, the San Joaquin Valley Air Pollution Control
12 District, U.S. EPA, and the United States Department of
13 Agriculture. This Statement of Principles recognizes the
14 benefit of the air quality achievements being made through
15 these voluntary incentive programs and set the foundation
16 for a partnership between the agencies to develop a
17 administrative mechanism to ensure SIP credit for the
18 investments being made in the San Joaquin Valley to clean
19 up mobile agricultural equipment.

20 The regulations staff is proposing today is the
21 outcome of that Statement of Principles, compliments the
22 San Joaquin Valley Air Pollution Control District's
23 recently adopted Rule 9610, and meets the 2007 SIP
24 commitment to clean up mobile agricultural equipment by
25 providing the administrative mechanism for SIP credit

1 eligibility.

2 Looking ahead, staff has already begun the
3 development process for an even more comprehensive
4 strategy to achieve additional reductions from mobile
5 equipment in the San Joaquin Valley through further
6 acceleration of the cleanest engine technologies.

7 Staff is currently working with stakeholders on
8 potential strategies and plans to present a proposal to
9 the Board by early 2016.

10 Tim Hartigan with the Innovative Strategies
11 Branch will now present the proposed regulation. Tim.

12 (Thereupon an overhead presentation was presented
13 as follows.)

14 AIR POLLUTION SPECIALIST HARTIGAN: Thank you,
15 Mr. Corey.

16 Good morning, Board members.

17 I'm presenting a proposed regulation for State
18 Implementation Plan credit from mobile agricultural
19 equipment. This proposed rule is designed to be the
20 statewide administrative mechanism to ensure that emission
21 reductions resulting from incentive projects from this
22 sector in the San Joaquin Valley are eligible to be
23 credited for State Implementation Plans, or SIPs.
24 Throughout this presentation, when speaking of mobile
25 agricultural equipment or mobile ag, I'm referring to

1 self-propelled diesel-powered equipment over 25 horsepower
2 that is used primarily for agriculture.

3 --o0o--

4 AIR POLLUTION SPECIALIST HARTIGAN: For an
5 overview of my presentation, first, I'll present the
6 underlying air quality needs in the San Joaquin Valley.
7 Then I'll discuss how incentive programs are providing
8 needed emission reductions from mobile ag projects in the
9 San Joaquin Valley.

10 Next, I'll show how stakeholders are working with
11 U.S. EPA to ensure these emissions reductions are eligible
12 to be credited to the SIP.

13 I'll then discuss the requirements and the
14 benefits of the proposed rule that is the outcome of these
15 efforts.

16 Finally, I'll present staff's recommendations and
17 lay out a path forward that addresses the Valley's
18 longer-term air quality needs.

19 -o0o--

20 AIR POLLUTION SPECIALIST HARTIGAN: The San
21 Joaquin Valley is the most productive agricultural region
22 in the world and a significant contributor to the state's
23 economy. Unfortunately, the region is also home to some
24 of the worst air quality in the nation and is currently
25 designated as extreme non-attainment for ozone for both

1 the '97 and 2008 national ambient air quality standards.

2 Emissions from mobile ag contribute to the
3 region's air pollution problem, amounting to about 14
4 percent of the entire emissions inventory.

5 The 2007 ozone SIP for the San Joaquin Valley
6 includes a commitment for an ARB measure to accelerate the
7 penetration of the cleanest available technologies into
8 the mobile ag fleet. This commitment recognized the
9 important role of incentives to achieve near-term
10 reductions that could be credited to the SIP.

11 -o0o--

12 AIR POLLUTION SPECIALIST HARTIGAN: The 2007 SIP
13 also identified a goal to reduce emissions of oxides of
14 nitrogen, or NOx, from this sector by five to ten tons per
15 day by 2017.

16 In 2009, ARB partnered with the agricultural
17 industry to survey California's producers, first
18 processors and custom operators, to better understand the
19 mobile ag fleet and the emissions inventory in the state
20 and San Joaquin Valley. A survey update was presented in
21 a public workshop in March of this year.

22 In 2010, the San Joaquin Valley Air District,
23 ARB, Natural Resources Conservation Service, and U.S. EPA
24 agreed in a Statement of Principles to work
25 collaboratively to develop an administrative mechanism to

1 provide SIP credit for emissions reductions from mobile ag
2 through incentive programs in the San Joaquin Valley.

3 -o0o--

4 AIR POLLUTION SPECIALIST HARTIGAN: Since 2008,
5 incentive programs in the valley, which include funds from
6 local, State, and federal sources, have successfully
7 replaced over 2,900 pieces to date of old, high-polluting
8 equipment with the cleanest available technologies.

9 With the passage of the 2008 Farm Bill, new
10 federal funds were made available to California and the
11 San Joaquin Valley for mobile ag incentive projects.
12 These new federal funds enhanced the local and State
13 funding already in place and together represent public
14 funding of over \$130 million, which has been matched by
15 more than \$120 million of private funds from the
16 agricultural industry.

17 -o0o--

18 AIR POLLUTION SPECIALIST HARTIGAN: In addition
19 to the substantial investment in cleaner equipment that
20 has already occurred, the region has earmarked at least
21 another \$20 million in the coming years to continue the
22 cleanup of mobile ag equipment. And the Governor recently
23 signed Assembly Bill 8 into law, which extends full Carl
24 Moyer Program funding through 2023, ensuring the continued
25 investment in state incentive dollars for mobile

1 agriculture projects within the San Joaquin Valley.

2 Recognizing the significant numbers of old,
3 high-polluting equipment being replaced, it is important
4 that our air quality plans formally reflect the emission
5 reductions that these incentive programs have already
6 achieved, and the emission reductions that are expected
7 from future investments.

8 Overall, staff estimates that current and future
9 investments in mobile ag incentive projects will reduce
10 NOx emissions by at least five to ten tons per day by
11 2017, meeting the 2007 SIP goal.

12 -o0o--

13 AIR POLLUTION SPECIALIST HARTIGAN: To continue
14 the momentum already underway to reduce mobile ag
15 emissions, staff is proceeding with a two-stage strategy
16 to address the near-term and long-term air quality goals
17 in the San Joaquin Valley. The proposed rule today is the
18 first step of this strategy.

19 The long-term air quality needs in the San
20 Joaquin Valley will require going beyond the 2007 SIP
21 strategy. Turnover to the cleanest available technologies
22 will need to begin when Tier 4 final equipment becomes
23 widely available for this sector in the 2020 time frame.

24 In developing this long-term strategy, staff will
25 continue to work with stakeholders to ensure that it

1 maximizes emission reductions, while providing a pathway
2 for incentives to continue to play an important role.

3 -o0o--

4 AIR POLLUTION SPECIALIST HARTIGAN: Staff's
5 proposed rule builds on the 2010 Statement of Principles
6 and is complementary to the San Joaquin Valley air
7 district's Local Rule 9610, which was adopted in June.
8 Rule 9610 is the local piece of this administrative
9 mechanisms to ensure local, State, and federally funded
10 projects in the district will be eligible for SIP credit.

11 The proposed rule today compliments Rule 9610 by
12 formalizing the statewide administrative framework to
13 ensure that mobile ag projects implemented using Carl
14 Moyer program guidelines are eligible for SIP credit.

15 Both the district's Rule 9610 and this proposed
16 rule ultimately be submitted for approval to U.S. EPA as a
17 part of the SIP.

18 -o0o--

19 AIR POLLUTION SPECIALIST HARTIGAN: The proposed
20 rule applies only to the San Joaquin Valley Air District
21 and requires that to ensure SIP credit eligibility, mobile
22 ag projects must follow the Carl Moyer Program guidelines
23 so that the resulting emission reductions are surplus,
24 quantifiable, enforceable, and permanent.

25 In addition, the district must annually report

1 emissions-related data to ARB and U.S. EPA, maintain
2 project documentation, and make the emissions-related
3 documentation available to the public. To ensure program
4 integrity and proper expenditure of public funds, the
5 district must conduct project monitoring on an annual
6 basis and allow ARB to also conduct program reviews.

7 -o0o--

8 AIR POLLUTION SPECIALIST HARTIGAN: The proposed
9 rule specifies that mobile ag projects must follow the
10 Carl Moyer Program guidelines that have set the standard
11 since 1998 for programs that provide financial incentives
12 for equipment owners to voluntarily retrofit or replace
13 older, high polluting equipment with cleaner equipment and
14 it has been a model for other incentive programs
15 throughout the state and the nation.

16 Carl Moyer program emission reductions are
17 surplus, meaning they are not otherwise required by
18 federal, State, or local rules or mandates. Carl Moyer
19 program emission reductions are both quantifiable and
20 enforceable, meaning they can be verified independently.
21 The emissions data is public, and legally binding
22 agreements identify the responsible parties to ensure that
23 reductions are achieved. And the emission reductions are
24 permanent, because older, high-polluting equipment is
25 destroyed or other measures are taken to ensure permanent

1 reductions.

2 Finally, the program's emission reductions also
3 meet U.S. EPA's guidance for SIP credit from voluntary
4 incentive programs, which similarly call for emissions to
5 be surplus, quantifiable, enforceable, and permanent.

6 -o0o--

7 AIR POLLUTION SPECIALIST HARTIGAN: While this
8 proposed rule applies directly to the San Joaquin Valley
9 Air District, it includes a provision to allow other
10 California air districts to opt in by notifying the ARB
11 Executive Officer of their intention to participate. They
12 must also adopt a local rule similar to Rule 9610 that
13 meets the requirements of this proposed rule and submit
14 their rule to ARB and the U.S. EPA for approval.

15 While most of the the requirements of the
16 proposed rule ultimately will be applied at the district
17 level, ARB must annually report to U.S. EPA the
18 appropriate program and project data in order to ensure
19 their eligibility for SIP credit.

20 -o0o--

21 AIR POLLUTION SPECIALIST HARTIGAN: We propose
22 two minor modifications to the rule language for 15-day
23 comments. Based on input from U.S. EPA, we recommend
24 inserting the specific sections of the Carl Moyer program
25 guidelines that apply. As those guidelines are updated,

1 this rule will also be updated to specify the new
2 applicable sections.

3 We also recommend specifying that opt in air
4 districts must submit their local rule to U.S. EPA for its
5 approval in addition to submitting to ARB. These
6 modifications clarify our original intent.

7 -o0o--

8 AIR POLLUTION SPECIALIST HARTIGAN: Working in
9 tandem with Rule 9610, the proposed rule establishes the
10 statewide administrative mechanisms to ensure that
11 emissions benefits of the successful mobile ag incentive
12 programs in the San Joaquin Valley and those from other
13 air districts that opt in are eligible for and accurately
14 credited to the SIP.

15 In doing so, the proposed rule will ensure that
16 NOx reductions that are being achieved to meet the 2007
17 SIP goal are appropriately credited.

18 And by ensuring that their actions count toward
19 SIP attainment, the proposed rule should encourage the
20 agricultural industry to continue to participate in
21 incentive programs.

22 -o0o--

23 AIR POLLUTION SPECIALIST HARTIGAN: Staff
24 evaluated the environmental and economic impacts of the
25 proposed rule and determined that it is administrative in

1 nature and thus does not result in any significant adverse
2 impacts. Rather, there will be positive impacts on the
3 environment and economy through continued emission
4 benefits from the operation of cleaner technologies that
5 will be deployed through the continued investment of
6 incentive funding.

7 Finally, compliance with the proposed rule will
8 impose no additional costs on ARB, the San Joaquin Valley
9 Air District, or other air districts that opt in because
10 it adds no additional costs to administering local
11 incentive programs.

12 -o0o--

13 AIR POLLUTION SPECIALIST HARTIGAN: Through the
14 development of the proposed rule, two main stakeholder
15 issues arose. First, environmental advocacy groups have
16 commented that reductions from voluntary incentive
17 programs are not enforceable. Staff has evaluated this
18 concern and determined that the Carl Moyer Program
19 guidelines ensure that reductions are enforceable because
20 they are independently and practically verifiable for the
21 duration of the project life through inspections,
22 monitoring, and other mechanisms. Furthermore, violations
23 are defined through legally binding agreements that
24 identify the parties responsible for achieving emission
25 reductions. Funding recipients are also obligated to

1 provide all emission reduction records, and those records
2 must be available for public access.

3 Environmental advocacy groups also commented that
4 ARB should require turn over of mobile ag equipment in the
5 San Joaquin Valley to Tier 3 now and later to Tier 4 when
6 it becomes available. However, staff estimates that
7 voluntary incentive programs are already working to
8 increase penetration of cleaner technologies that
9 accelerate air quality progress and meet the 2007 SIP NOx
10 emission reduction goal. And that developing a long-term
11 strategy that builds on the availability of the cleanest
12 Tier 4 technology is the best way to ensure that both
13 near-term and long-term emission reductions are achieved
14 in a way that does not require equipment to be replaced
15 more than once.

16 -o0o--

17 AIR POLLUTION SPECIALIST HARTIGAN: Staff will
18 continue to work with stakeholders on potential strategies
19 to transform the mobile ag fleet as part of the upcoming
20 SIP development effort in the San Joaquin Valley. In
21 doing so, ARB is also committed to continuing incentive
22 programs in the valley as an important tool in reducing
23 emissions, while also exploring new strategies such as
24 equipment trade up programs that assist farmers who may
25 not traditionally qualify for incentive programs to

1 destroy their old equipment and move to cleaner used
2 equipment.

3 -o0o--

4 AIR POLLUTION SPECIALIST HARTIGAN: Staff
5 recommends the Board approve the proposed rule for State
6 Implementation Plan credit from mobile agricultural
7 equipment with the proposed minor changes posted for
8 15-day comments.

9 Moving forward, staff will continue to work with
10 stakeholders to identify opportunities and successful
11 strategies to address longer term air quality needs in the
12 San Joaquin Valley and the additional reductions needed
13 from mobile agriculture equipment.

14 This concludes my presentation.

15 ACTING CHAIRPERSON RIORDAN: Thank you very much.
16 Forward members, we have three who have signed up to
17 testify. Then I will take your questions. But you may
18 have some questions before. No. All right.

19 Let's do our -- Samir Sheikh from the San Joaquin
20 Valley Air District, Roger Isom, and Bill Magavern.

21 MR. SHEIKH: Good morning, members of the Board.
22 My name is Samir Sheikh. I'm representing the San Joaquin
23 Valley Air District.

24 I'd like to start off by really expressing my
25 gratitude to Lynn Terry, Lucina Negrete, Karen Magliano,

1 Sam Gregor, and a number of other staff that have been
2 really been working closely with us in developing the
3 concepts that are before you today with the proposed
4 regulation. We fully support ARB's proposed regulation
5 for recognizing the significant reductions from ag
6 equipment that have been achieved through these voluntary
7 incentive programs that we've all worked so hard to
8 develop.

9 The most recent chapter of this story regarding
10 these voluntary incentives did start as the presenter
11 mentioned earlier with that Statement of Principles and
12 MOU that was signed back in December of 2010. We all
13 really came together to launch this really tremendous
14 voluntary incentive program as agencies and decided that
15 we really needed to come up with a mechanisms for ensuring
16 that credit for those reductions that would be achieved
17 through that program were fully recognized in the State
18 Implementation Plan process.

19 In these past several years, the district, ARB,
20 EPA, and NRCS has worked together and spent hundreds if
21 not thousands of staff hours talking about the various
22 issues involved and how we run these programs and how we
23 ultimately make sure that we deal with the various issues
24 that are related to State Implementation Plans. We've
25 come up with a framework that does ensure solid process

1 for ensuring those reductions are creditable.

2 Enforceability is something that has come up in the past
3 as a concern. I can tell you with the way these programs
4 have been designed and are implemented, these reductions
5 are about as real as they get. They're truly enforceable.
6 I think staff can attest to the various things that are
7 done in monitoring those projects to ensure those
8 reductions are truly occurring.

9 I'd like to close by really just talking about
10 the story of the ag equipment program. As we've all
11 stated here this morning, we all came together with the ag
12 community to really launch that a number of years ago back
13 in 2009. And with support from your staff in developing
14 the guidelines for that program and also providing some
15 funding towards that, we reduced really a lot of emissions
16 through that program. We've actually put over \$300
17 million. The slides mentioned over \$200 million. If you
18 include the projects that were contracted recently, it's
19 over \$300 million of investment coming in from both public
20 and private. And we've achieved our goal -- our 2017 goal
21 of over five tons per day of NOx.

22 We are committed to continuing investing in this
23 program through funding and other efforts to make sure
24 that we're continuing to reduce emissions from the ag
25 sector and look forward to working with your staff through

1 this rule and through the longer-term planning process for
2 ensuring that happens. Thank you very much for your time.

3 ACTING CHAIRPERSON RIORDAN: Thank you. Thank
4 you for your testimony.

5 Roger Isom.

6 MR. ISOM: Good morning, Mrs. Riordan, members of
7 the Board.

8 My name is Roger Isom. Here today on behalf of
9 the California Cotton Ginners and Growers Association and
10 the Western Agricultural Processors Association
11 representing tree nut haulers and processors including
12 almonds, walnuts, pecans, and pistachios.

13 I'm here to support this rule and want to make it
14 clear, you know, there is a lot of issues that we can
15 fight and argue on between us and regulatory agencies and
16 environmentalists. This is not one of them. The
17 incentive program we are talking about today is not only
18 important. It's absolutely necessary. Unlike the
19 construction rule, the truck rule, the other diesel
20 programs you have, agriculture cannot pass along its cost.
21 Agriculture has to absorb 100 percent of the cost of any
22 regulatory program that we face.

23 This program has not only been successful, we
24 have actually not only -- and we've not only met the SIP
25 requirements from the previous SIP. By the end of this

1 year, we will have exceeded them. The five to ten tons of
2 NOx per day the previous SIP called for that ARB mentioned
3 in their presentation, at the end of this year, we will
4 have exceeded that. And as mentioned, we have not stopped
5 there. In two weeks, we are going back to Washington,
6 D.C. to try to lobby to make sure the NRCS farm bill
7 funding element of this program is continued. That's to
8 the San Joaquin Valley has been roughly \$15 million or
9 more per year in addition to the Carl Moyer funding. And
10 we're going after things that the construction rule and
11 the truck rule would not have. There's exemptions in
12 there. And the ARB staff mentioned the trade-down program
13 or trade-up program, whichever way you want to look at it.
14 We're going after tractors that would otherwise have been
15 exempted when a rule -- a formal regulatory rule that's
16 out there.

17 In fact, just two weeks ago, did the first
18 prototype if you will of that rule and replaced a tractor
19 with a higher tier tractor that would otherwise have been
20 exempt. We're going to create reductions from top to
21 bottom. So based on that, we would ask that you support
22 this program as well. Thank you.

23 ACTING CHAIRPERSON RIORDAN: Thank you very much.
24 Thank you, Roger.

25 Bill Magavern. And we had something sign up a

1 little bit later, Edward Moreno following Bill.

2 MR. MAGEVERN: Good morning, Bill Magavern with
3 Coalition for Clean Air.

4 We have joined with several other groups
5 concerned about the air quality in the San Joaquin Valley.
6 We joined through our Fresno office in the ten-page
7 comment letter that you've received drafted by Earth
8 Justice. And those folks who are in the San Joaquin
9 Valley are more familiar with this issue than I am
10 personally, but I will try to summarize for you the gist
11 of that letter, which is essentially that voluntary
12 incentives alone are not sufficient to get the air quality
13 improvements that we need to get from this sector. You're
14 all well aware of the way that people living in the San
15 Joaquin Valley are suffering because the bad air quality,
16 one of the two worst polluted air basins in the country.
17 Asthma rate is almost 17 percent. It's higher among some
18 populations.

19 And we support incentives. We support the Moyer
20 program. That's part of the solution. But it needs to be
21 coupled with binding standards the same way that you have
22 done in many other areas.

23 We think that this approach that is proposed
24 today is legally suspect, and the letter goes into that
25 rational in great detail as to why it does not meet the

1 requirements under the Clean Air Act.

2 So in addition to having a voluntary incentive
3 program, we think you need to have a regulatory program
4 that that's what was envisioned back in 2007 and that the
5 proposal presents conclusions for why regulations are not
6 needed, but does not present the data necessary to support
7 those conclusions.

8 So we ask the Board to reject this proposal and
9 direct staff to come back a regulatory proposal. Thank
10 you.

11 CHAIRPERSON NICHOLS: I think we have one more
12 witness signed up for this item. Ed Moreno from the
13 Sierra Club. I don't see him.

14 This is the list. It's all over by the time I
15 arrived.

16 BOARD MEMBER RIORDAN: The Board hasn't commented
17 yet, and I'm sure our San Joaquin Valley members would
18 perhaps like to talk.

19 CHAIRPERSON NICHOLS: Absolutely. Before they do
20 comment though is there an opportunity for staff to weigh
21 in and have you discussed this voluntary versus -- I know
22 you gave your original staff report, but terms of the
23 staff, speaker's comments, is there my response to that
24 Ms. Terry?

25 DEPUTY EXECUTIVE OFFICER TERRY: Yes. Just a

1 point of clarification that the 2007 SIP that has been
2 approved by EPA thorough description of the measure, and
3 it discussed very clearly the technology issues which is
4 the timing for availability of Tier 4 engines, which we
5 now know will be 2020 and later. So that's what our
6 mobile source control staff just described as the
7 long-term regulatory strategy. And then that is combined
8 with the near-term strategy that is being implemented
9 since 2009, which is the incentive program. And the
10 measure did explicitly discuss the goal of securing
11 additional federal funding to complement the Moyer and
12 other local dollars that would be spent to achieve early
13 reductions by 2017.

14 We have tracked all of the funding to date, and
15 we are on track to meet the at least five tons goal. And
16 when we look at the money that is already available and
17 committed, we do believe we will exceed the minimum
18 estimate of five tons by 2017.

19 CHAIRPERSON NICHOLS: Thank you. And just to be
20 clear, if the engines are available in 2020, the
21 rulemaking process has to start quite a long time before
22 2020; correct? Can you give any indication of when you're
23 going to start to work on developing that regulation?

24 DIVISION CHIEF WHITE: I'm pleased to say we've
25 already begun that effort with stakeholders, with the San

1 Joaquin Valley, with the other stakeholders in the Valley.
2 We anticipate maybe late 2015, early 2016 having a
3 proposal to the Board. And it will address not only the
4 long-term needs, the 2032 needs we talked about, but
5 really looking for opportunities of emissions reductions
6 toward the 2023 standard as well.

7 CHAIRPERSON NICHOLS: So this is not just a
8 hypothetical we might get around to it some day. You're
9 actually allocating resources to this?

10 DIVISION CHIEF WHITE: That is right.

11 CHAIRPERSON NICHOLS: Let's turn to the Board
12 then for comments. Who wants to -- they're pointing at
13 each other. Dr. Sherriffs, in order the seniority.

14 BOARD MEMBER SHERRIFFS: In the order of
15 seniority, I should speak first.

16 BOARD MEMBER BALMES: Are we talking about age?

17 CHAIRPERSON NICHOLS: No. Time and service on
18 the Board.

19 BOARD MEMBER SHERRIFFS: We'll compare birth
20 certificates at our next breakfast.

21 I think, as has been said, we would strongly
22 agree. Strong regulations are a very important part of
23 this, but we have an extraordinary opportunity where there
24 ha been a lot of collaboration, a lot of working together
25 to make these incentives work. And I think that sets a

1 very good tone for the difficult negotiations on the
2 regulations. So I think it's very important that we
3 support this. And also as the representative of the San
4 Joaquin Board which unanimously supported this, I
5 certainly would be in favor of this.

6 CHAIRPERSON NICHOLS: Thank you. Mr. Eisenhut.

7 BOARD MEMBER EISENHUT: Thank you.

8 I urge support of this staff recommendation. I
9 think I have some personal experience. And I need to
10 disclose that I've been vetted and appropriately allowed
11 to participate in this discussion and this vote. But
12 without going into detail, I'm aware and I can testify to
13 its impact and its effectiveness. And I think that's
14 enough and --

15 CHAIRPERSON NICHOLS: I'm going to take that as a
16 motion and a second for the Resolution. And I'm going to
17 call on Dr. Balmes and then on Supervisor Roberts.

18 BOARD MEMBER BALMES: So I actually do research
19 in the San Joaquin Valley, Fresno in particular, with
20 regard to children's health. And I've studied asthma in
21 Fresno. Currently funded a study whether air pollution
22 impacts, obesity, and diabetes among children in the
23 Fresno area. I would just agree with Mr. Magavern that
24 it's a very big problem. The air pollution in the Central
25 Valley we need to be doing more about it. I'm

1 wholeheartedly in support of this proposal, and I look
2 forward to seeing a long term regulatory strategy.

3 CHAIRPERSON NICHOLS: Thank you.
4 Supervisor.

5 BOARD MEMBER ROBERTS: Just a quick question.
6 When the grants are awarded, are older pieces of equipment
7 taken out of circulation? It wasn't clear from the
8 presentation.

9 PLANNING AND REGULATORY DEVELOPMENT SECTION

10 MANAGER GREGOR: Yeah. When a farmer participates, they
11 have an older piece of equipment they've been using and
12 they replace it with a newer piece of equipment, the older
13 piece of equipment is destroyed.

14 BOARD MEMBER ROBERTS: There's always a one and
15 one and we know for a fact those are gone.

16 PLANNING AND REGULATORY DEVELOPMENT SECTION

17 MANAGER GREGOR: Yes.

18 CHAIRPERSON NICHOLS: They're not turning up on
19 the black market in Arizona.

20 BOARD MEMBER ROBERTS: I was hopeful that was the
21 answer. That's exactly what I was concerned with.

22 BOARD MEMBER SHERRIFFS: Refer you to slide 15.
23 I think Lynn Terry was present for the --

24 BOARD MEMBER RIORDAN: I think the Carl Moyer
25 Program sort of sets the bar there so you know things are

1 taken care of.

2 I just want to commend the district and those
3 people who went out and sought the moneys to be able to do
4 this. I think it's really very positive. And having just
5 driven through the San Joaquin Valley and noted all of the
6 agricultural efforts that are going on right now that not
7 only take care of us in California but probably world, we
8 need to do whatever we can to assist our farmers. And I'm
9 hopeful that the farm bill gets passed, because that
10 certainly will be a major step to extending funding
11 hopefully.

12 So good luck, Roger. I hope you have a lot of
13 support there to move that farm bill.

14 CHAIRPERSON NICHOLS: All right. Any further
15 comments? If not, I'm going to call the question here.
16 All in favor of the resolution in support of the SIP
17 credit plan for mobile agricultural equipment, please say
18 aye.

19 (Ayes)

20 CHAIRPERSON NICHOLS: Any opposed?

21 Any abstentions?

22 All right. Very good. Thank you all very much.

23 The next item on today's agenda is a set of
24 proposed modifications to the cap and trade regulation.
25 This action will be to consider the proposed regulatory

1 amendments, including proposals to provide additional
2 transition assistance for covered entities, add a new set
3 of offset protocols, incorporate additional cost
4 containment features, and enhance implementation and
5 oversight of the Cap and Trade Program.

6 As we discussed yesterday during the end of the
7 day when we were getting our first look at the Scoping
8 Plan, the Cap and Trade Program is a key part of the
9 comprehensive set of programs outlined in the initial
10 scoping plan to help California reach the 1990 greenhouse
11 gas emissions target by 2020 and create the framework for
12 ongoing action to cut emissions beyond 2020. It's not the
13 biggest piece of the program, but it is the capstone
14 literally.

15 By establishing the hard cap, the program ensures
16 that California will meet its 2020 emissions target while
17 giving businesses flexibility to choose the lowest cost
18 approach to reducing emissions. In doing so, it creates a
19 powerful economic incentive for investment in cleaner more
20 advanced technologies.

21 The Cap and Trade Program was adopted in 2011
22 after a multi-year public stakeholder process and is off
23 to a smooth start. As with all of our programs, we
24 continue to monitor very closely and make adjustments and
25 refine it as needed to ensure successful ongoing

1 implementation.

2 The proposed amendments before us today are
3 designed to enable the program to continue operating
4 smoothly. These proposed amendments were developed using
5 the same type and quantity of public engagement that we
6 had throughout this process, including eleven public
7 workshops.

8 I would also like to note that as called for
9 under the regulation, we are on track to formally link our
10 program with Quebec beginning January 1st, 2014. Next
11 week, we will be providing the Governor with a report
12 detailing our assessment of readiness to link. Quebec and
13 California have taken a leadership role in establishing a
14 model that will encourage others to join us in taking
15 action to reduce greenhouse gas emissions.

16 Through the leadership of our Governor and a
17 number of agreements and activities with China, Australia,
18 west coast states and others, California is actively
19 working with other jurisdictions to share what we've
20 learned and to develop a list of best practices to learn
21 from one another and expand global action to cap and
22 reduce greenhouse gas emissions.

23 China is launching seven pilot Cap and Trade
24 Programs at the provincial level in the coming months
25 which collectively are about twice as big as the

1 California program and could lay the groundwork for a
2 national program there in the future.

3 Just last week, the Governor of Washington state,
4 Governor Inslee, indicated he would like to see a
5 statewide emissions cap in Washington. And Europe, South
6 Korea, Mexico, northeastern states through the Regional
7 Greenhouse Gas Initiative and others continue to develop
8 or to implement similar or related programs in the general
9 area of cap and trade.

10 I want to particularly thank the staff who have
11 spent hundreds of hours I know on the phone and in
12 one-on-one meetings with stakeholders and members of the
13 public working to ensure that these amendments that we're
14 considering today will foster a Cap and Trade Program that
15 continues to meet the goals of AB 32.

16 Mr. Corey, would you please introduce this item?

17 DEPUTY EXECUTIVE OFFICER COREY: Yes, thank you,
18 Chairman Nichols.

19 As you indicated, staff will present a set of
20 proposed amendments to the cap and trade regulation
21 collectively. These modifications to the program will
22 provide additional details to clarify implementation,
23 address stakeholder concerns, respond to Board direction
24 of various topics, and enhance the ARB's ability to
25 oversee and implement the regulation.

1 We'll be asking that you direct staff to continue
2 to work to finalize these amendments that would enhance
3 the effectiveness and clarity of the regulation. If you
4 so direct, final adoption of these amendments would be
5 considered next spring following staff's response to
6 comments on the environmental analysis and any 15-day
7 comment periods.

8 Last fall, two Board Resolutions directed staff
9 to propose modifications to the regulation. These
10 amendments are in response to your direction in those and
11 prior Resolution as we continue to implement this
12 first-in-the-nation economy-wide Cap and Trade Program.

13 Over the past two years and in response to these
14 Board directives, staff began to identify and assess areas
15 of the regulation that might require amendments. During
16 this time, staff was in constant communication with
17 industry stakeholders and members of the public ensure an
18 open and transparent rulemaking process, including
19 workshops and regular meetings with stakeholders.

20 As the Chair mentioned, we're actively working in
21 partnership with other jurisdictions on the Cap and Trade
22 Programs. In spring 2013, the Board approved amendments
23 to link California Cap and Trade Program with that of
24 Quebec.

25 Now David Allgood from the Climate Change Program

1 Evaluation Branch will begin the staff presentation.

2 David.

3 (Whereupon the following slide show presentation
4 was given.)

5 AIR POLLUTION SPECIALIST ALLGOOD: Thank you, Mr.
6 Corey.

7 Good morning, Chairman Nichols and members of the
8 Board.

9 This presentation will focus on the proposed
10 amendments to the California cap on greenhouse gas
11 emissions and market-based compliance mechanisms
12 regulation, also known as the Cap and Trade Program.

13 These amendments include: Additional
14 transitional assistance for covered entities, the addition
15 of one new offset protocol, and the incorporation of an
16 additional cost containment mechanisms.

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

20 -o0o--

21 AIR POLLUTION SPECIALIST ALLGOOD: For this
22 presentation, I will begin by providing background on AB
23 32 and the goals of the Cap and Trade Program. I will
24 also discuss recent milestones and program updates since
25 we last presented to the Board.

1 I will then describe the amendments staff is
2 proposing to the cap and trade regulation and with a focus
3 on the most significant modifications as directed by Board
4 resolutions.

5 The final portion of this presentation will
6 discuss the next steps for rulemaking process and present
7 staff's recommendations for Board approval of the
8 resolution.

9 -o0o--

10 AIR POLLUTION SPECIALIST ALLGOOD: AB 32, the
11 Global Warming Solution Act of 2006, put a statewide
12 greenhouse gas emissions goals into law. As you heard
13 yesterday, AB 32 mandated that the ARB develop a Scoping
14 Plan to lay out the path for achieving these reductions.
15 The associated measures and policies are shown on this
16 slide. The Cap and Trade Program is a key measure towards
17 achieving our goals. You heard yesterday from staff on
18 the progress towards implementing the Scoping Plan and
19 considerations for further reduction needs as we tackle
20 climate change.

21 The Cap and Trade Program is one of a suite of
22 measures to reduce greenhouse gas emissions under AB 32.
23 Under the Cap and Trade Program, ARB places a statewide
24 limit or cap on the emissions from all covered sources
25 within California. The cap begins the expected business

1 as usual emissions and then gradually declines at two to
2 three percent per year until the 2020 goal is reached.
3 The total number of permits to emit, or allowances, issued
4 each year is equal to the cap.

5 Covered entities can buy and sell allowance and
6 must have enough to equal their total emissions. The
7 transfer of allowances between market participants is
8 referred to as a trade. By allowing trades, the program
9 provides covered entities with the flexibility to make
10 reductions at their facility or trade with others for
11 allowances.

12 Greenhouse gas emissions reductions that occur
13 due to direct regulation are also recognized as reductions
14 under the Cap and Trade Program. In this sense, direct
15 regulations and the Cap and Trade Program work together to
16 reduce the State's overall greenhouse gas emissions.

17 --o0o--

18 AIR POLLUTION SPECIALIST ALLGOOD: Cap and trade
19 places a price on carbon emissions to incentivize
20 reductions, thereby spurring innovation in low emissions
21 and energy efficient technologies.

22 The program is designed to complement other
23 existing programs to reduce air quality emissions. And by
24 setting and enforcing a strict cap on greenhouse gas
25 emissions, the Cap and Trade Program ensures that the AB

1 32 goals are realized.

2 It's important to note that the Cap and Trade
3 Program is technology neutral in that it doesn't mandate
4 the use of one specific emissions reduction technology.
5 Thus, the program allows entities the flexibility to
6 comply with the regulation in the most cost effective
7 manner.

8 -o0o--

9 AIR POLLUTION SPECIALIST ALLGOOD: As mentioned
10 previously, ARB places an aggregate limit or cap on the
11 emissions from all covered sources within California from
12 2013 to 2020. Unlike traditional air permitting programs,
13 there are neither specific caps for individual facilities
14 nor facility level reduction targets.

15 The cap covers approximately 85 percent of
16 California's greenhouse gas emissions. The program begins
17 with a narrow scope, which only includes emissions from
18 large industrial sources that emit greater than 25,000
19 metric tons of CO2 per year and electricity generation and
20 imports.

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

25 -o0o--

1 AIR POLLUTION SPECIALIST ALLGOOD: Once above the
2 threshold, an entity has an emissions compliance
3 obligation for all of its covered emissions. An entity's
4 emissions must be matched with an equal number of
5 compliance instruments that are surrendered at the end of
6 a compliance period.

7 There are two types of compliance instruments
8 that may be used to satisfy a compliance obligation. The
9 first of these are allowances. Each allowance represents
10 one metric ton of carbon dioxide equivalent and can be
11 acquired in one of three different ways: Via free
12 allocation from ARB if the entity is in an eligible
13 category, via the auction, or via a trade with another
14 market participant.

15 Allowances do not expire and are thus considered
16 bankable, and there is no limit on the amount of
17 allowances that can be used to satisfy a compliance
18 obligation.

19 Second, there are ARB-issued offset credits,
20 which represent a real and verifiable voluntary emissions
21 reduction of one metric ton of carbon dioxide equivalent
22 from uncapped sectors. Offsets can be purchased directly
23 from an offset project developer or through a trade
24 conducted on the secondary market. Offsets are bankable,
25 but can only be used to satisfy up to eight percent of an

1 entity's compliance obligation. The voluntary reductions
2 must meet the AB 32 criteria of real, enforceable,
3 quantifiable, verifiable, and permanent. And they must be
4 additional. Meaning, they are beyond regulation or what
5 would have otherwise already occurred. Offsets are also
6 subject to stringent monitoring and verification
7 requirements.

8 -o0o--

9 AIR POLLUTION SPECIALIST ALLGOOD: The cap and
10 trade regulation was developed over a three-year period
11 through an extensive consultation process. The Board
12 initially considered the proposed regulation in December
13 of 2010 and the Board officially adopted the regulation in
14 October of 2011. Staff has since proposed two sets of
15 amendments; one set related to implementation and the
16 other link to Quebec.

17 -o0o--

18 AIR POLLUTION SPECIALIST ALLGOOD: To date, ARB
19 has successfully held four quarterly State-run auctions,
20 and the next auction will be held November 19th of this
21 year. The first direct allowance allocation to eligible
22 entities occurred in November of 2012, and the first
23 compliance obligation for covered entities began January
24 of this year.

25 Last month, ARB issued the first compliance-grade

1 offset credits, marking another important milestone.
2 Staff is currently working to develop a linkage readiness
3 report in preparation for linkage with Quebec. This will
4 be presented to the Governor on November first.

5 Finally, the first compliance surrender date for
6 the program will occur next year on November 1st, of 2014.

7 -o0o--

8 AIR POLLUTION SPECIALIST ALLGOOD: Since the
9 adoption of the Cap and Trade Program in 2011, the Board
10 has issued three resolutions directing staff to review
11 items and propose changes as needed. The Board direction
12 is summarized on this slide.

13 Many of the amendments we will discuss today are
14 a direct result of Board direction.

15 -o0o--

16 AIR POLLUTION SPECIALIST ALLGOOD: Staff
17 conducted an extensive public process to develop these
18 proposed amendments. In the past year, staff has held
19 eleven public workshops on the topics included in this
20 slide. Staff also released a draft document that helped
21 inform the 45-day package.

22 I will now walk through a summary of the proposed
23 changes.

24 -o0o--

25 AIR POLLUTION SPECIALIST ALLGOOD: This slide

1 provides a summary of the proposed changes to prevent
2 leakage. By leakage, staff is referring to the decrease
3 in emissions in state that result in emissions increasing
4 outside of California.

5 Staff is proposing new and modified product
6 benchmarks. Product-based benchmarks will allow
7 businesses to grow and receive allowances based their
8 efficiency relative to other facilities in that sector.
9 Staff is proposing to change the refinery allocation from
10 the carbon weighted ton, known as CWT, to a complexity
11 weighted barrel, known as CWB. This CWB was proposed by
12 the Western States Petroleum Association and uses an
13 approach similar to the CWT, but is more reflective of
14 California data. The benchmark is still in development,
15 and we request direction from the Board to continue
16 working with stakeholders to finalize this methodology.

17 The most significant of the leakage prevention
18 allocation changes is the shift in assistance factors. As
19 ARB-funded studies are still underway, staff is proposing
20 to shift the first decrease in assistance factors to 2018
21 to provide certainty to regulated entities and time to
22 complete and review our studies. Staff may propose
23 additional shifts in the transition factors after
24 reviewing the results of the studies.

25 Staff is proposing amendments related to

1 allocation for new entrants and clarification of dates for
2 the opt-in facilities.

3 Staff is also proposing changes to the true up
4 mechanism so that these allowances can be used for the
5 compliance year that those allowance are truing up for.

6 -o0o--

7 AIR POLLUTION SPECIALIST ALLGOOD: Staff is
8 proposing further amendments to allowance allocation for
9 additional sectors. Staff is proposing to allocate to the
10 natural gas suppliers on behalf of their rate payers
11 similar to how allowances are already allocated to
12 electrical distribution utilities.

13 This methodology allocates allowances to
14 suppliers for most of their emissions and requires
15 suppliers to cosign a portion of these allowances to the
16 auction. The revenue generated from these allowances is
17 required to be used on behalf of the rate payers. In
18 2015, suppliers would be required to cosign 25 percent of
19 their allowances to auction, with the amount cosigned
20 increasing at five percent a year.

21 -o0o--

22 AIR POLLUTION SPECIALIST ALLGOOD: With regard to
23 legacy contracts, staff is also proposing to allocate to
24 generators that are engaged in contracts made prior to AB
25 32. Although some have renegotiated, staff is proposing

1 to allocate to those remaining contracts. This
2 methodology would redistribute allowance allocation from
3 the industrial source to the generator for the life of the
4 contract. For contracts where no party is currently
5 receiving industrial allocation, the proposal limits
6 allocation to the first compliance period.

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

11 Lastly, staff is proposing to allocate to public
12 wholesale water entities that have direct emissions
13 associated with moving water.

14 --o0o--

15 AIR POLLUTION SPECIALIST ALLGOOD: Staff is
16 proposing amendments to covered entities to include new
17 sectors not previously covered and exempting some existing
18 sectors.

19 Staff is also proposing to exempt facilities that
20 would not have been covered but for their investments in
21 combined heat and power. This proposal is for the first
22 compliance period only.

23 Staff is modifying this proposal in the 15-day
24 changes to extend it through 2020.

25 Staff is proposing to exempt waste to energy

1 facilities for the first compliance period and retire
2 those allowances associated with these exempt emissions.

3 A multi-agency draft report was recently released
4 that includes a comprehensive look at waste diversion
5 streams and their related greenhouse gas emissions. And
6 ARB will consider this final report and decide if
7 additional changes are needed for the waste to energy
8 facilities.

9 Staff is proposing extending the exemption to
10 national security facilities since greenhouse gas
11 mitigation strategies are already in place.

12 -o0o--

13 AIR POLLUTION SPECIALIST ALLGOOD: Let me now
14 turn to electricity generation. Staff is proposing
15 language to clarify resource shuffling provisions based on
16 the guidance issued in November of 2012 developed jointly
17 by ARB and the utilities. The guidance described
18 activities that are not considered resource shuffling.
19 And although resource shuffling is still prohibited, there
20 is no attestation requirement. Staff is also proposing
21 some technical amendments related to the retirement of
22 RECs to avoid double counting under the voluntary
23 renewable energy program.

24 Staff is also proposing modifications to ensure
25 REC retirement requirements are consistently applied to

1 both in state electrical generation facilities as well as
2 facilities that import electricity.

3 Lastly, staff is proposing clarifications to the
4 RPS adjustments for imported electricity.

5 -o0o--

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

12 A sufficient offset supply will incentivize GHG
13 reductions that otherwise have not occurred and will also
14 provide cost containment under the Cap and Trade Program.
15 We are also proposing some minor amendments related to the
16 implementation of offsets to streamline and clarify the
17 project review process.

18 And staff is strengthening the conflict of
19 interest provisions. Finally, staff is proposing changes
20 to make liability in the event of invalidation consistent
21 for all project types as was originally intended. This
22 change corrects a loophole which previously did not apply
23 buyer liability to forestry offsets. This ensures that
24 covered entities do their due diligence when purchasing
25 compliance offsets. Staff has given ample signals to the

1 marketplace that this change will be made.

2 -o0o--

3 AIR POLLUTION SPECIALIST ALLGOOD: Staff is
4 proposing changes to the surrender of allowances. Staff
5 changed the mechanisms to no longer retire allowances
6 during the annual compliance, but instead simply checked
7 that the entity was holding sufficient compliance
8 instruments in their compliance account to cover its
9 emissions obligation.

10 This change was to address stakeholder concerns
11 about possible errors in the submittal of compliance
12 instruments.

13 Staff is also proposing changes to the triennial
14 compliance obligation to specify the order that
15 instruments are retired from a covered entity's compliance
16 account. The methodology takes instruments that do not
17 have a vintage first, such as offsets and reserve
18 allowances, and then moves to the earliest vintage
19 allowances. This retirement order maximizes the use of
20 offsets up to its limit and removes compliance instruments
21 in order of most to least challenging to liquidate at an
22 auction if ARB were forced to close an account.

23 -o0o--

24 AIR POLLUTION SPECIALIST ALLGOOD: From the
25 beginning, ARB has believed a comprehensive market

1 oversight is essential for fair and equitable access to
2 compliance instruments for all market participants.
3 During the implementation, staff has encountered several
4 situations where individuals have tried to register as a
5 voluntary entity, but also work for another covered entity
6 as an employee or contractor.

7 This potentially creates an opportunity for
8 fraudulent behavior and to ensure that staff. And the
9 market monitor understand all of these relationships,
10 staff is proposing amendments related to the auction
11 advisors and contractors.

12 Staff is also proposing additional amendments
13 required for the types of contracts that support
14 transfers. Understanding the terms of contracts can help
15 staff provide meaningful aggregate data on market
16 transactions and help monitor the market for manipulation.

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

22 Staff has heard stakeholder concerns on these
23 issues and is proposing to continue to work with
24 stakeholders on this.

25 Our goal is to ensure that these changes are not

1 made overly broad, but are sufficient for staff and the
2 market monitor to understand the market participants
3 relationships and the types of trades taking place.

4 -o0o--

5 AIR POLLUTION SPECIALIST ALLGOOD: Staff is also
6 proposing an additional cost containment mechanism that
7 increases the availability of allowances at the highest
8 price tier of the price containment reserve. Maintaining
9 the availability of a sufficient offset supply of
10 allowances to satisfy the demand of the reserve sale will
11 be effective in ensuring that allowance prices do not
12 exceed the highest priced tier. Staff's proposal makes
13 ten percent of allowances from each vintage eligible for
14 sale at the highest price tier if the quantity of accepted
15 bids exceeds the quantity of allowances available in this
16 tier.

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

22 Staff feels that this mechanism is sufficient for
23 near-term price spikes, but it does not address the
24 sustained price spikes or those that might occur in later
25 years. As presented in the Resolution before you, ARB has

1 made a commitment into looking at cost containment in the
2 context of a post 2020 Cap and Trade Program.

3 The last major amendment is to add mine methane
4 capture protocol. This protocol quantifies the greenhouse
5 gas emissions associated with the capture and destruction
6 of fugitive methane.

7 If adopted, this protocol will allow the issuance
8 of offset credits for these reductions that would
9 otherwise have been released into the atmosphere as a
10 result of mining activities at active and abandoned mines.

11 These offsets represent real, rigorously
12 quantified, greenhouse gas emission reductions that would
13 otherwise be vented into the atmosphere. If adopted, each
14 of these projects done under this protocol would be
15 subject to the rigorous program requirements such as
16 reporting, verification, and auditing.

17 Staff reviewed data from three existing projects
18 developed under a voluntary offset protocol and compared
19 their performance to the coal production data provided by
20 the U.S. EPA.

21 Staff determined that the net profits of these
22 offsets, assuming a \$10 a ton value, was less than one
23 percent of the net profit of those mines. Based on this
24 assessment, we do not believe that this offset protocol
25 will encourage or prolong the life of existing mines.

1 The potential offset supply of these types is
2 about 60 million metric tons. This represents one of the
3 largest domestic supplies of offsets for which there is a
4 rigorous quantification methodology.

5 Finally, the adoption of any offset protocol does
6 not preclude any regulatory agency from developing future
7 regulations to reduce greenhouse gas emissions.

8 -o0o--

9 AIR POLLUTION SPECIALIST ALLGOOD: Moving now to
10 the environmental analysis, ARB prepared an environmental
11 analysis, EA, for the proposed amendments and the offset
12 protocol as part of the staff report according to the
13 requirements of ARB's certified program under the
14 California Environmental Quality Act, CEQA. The EA
15 concluded that compliance responses from the proposed
16 amendments would result in no adverse environmental
17 impacts.

18 It also concluded that the implementation of the
19 mine methane capture projects could result in potentially
20 significant impacts to biological resources and cultural
21 resources related to landscape disturbance caused by
22 construction of these facilities and infrastructure.

23 Project-specific impacts and mitigation would be
24 identified during the environmental review by agencies
25 with regulatory authority over specific projects.

1 -o0o--

2 AIR POLLUTION SPECIALIST ALLGOOD: Staff is
3 proposing additional modifications to the regulation. The
4 full regulatory text proposed for each modification will
5 be made available for a 15-day comment period.

6 I have mentioned some of these modifications in
7 my presentation, but I'll summarize them here. As part of
8 the 15-day changes, staff will propose modifications and
9 additions to product benchmarks. In the refining sector,
10 industry proposed that allocation to refineries in the
11 second and third compliance period be calculated using the
12 complexity weighted barrel approach, or CWB. Staff found
13 that the CWB approach is a reasonable basis upon which to
14 calculate allowance allocation to the refiners. As a
15 result of continued stakeholder discussions, staff will
16 also propose to extend the transition assistance for
17 legacy contracts through the second compliance period
18 instead of what's currently going to end at 2014.

19 As indicated earlier, staff will work with
20 stakeholders to clarify the requirements around transfer
21 requests reporting, and information on disclosure for
22 contractors and advisors. Staff will also address
23 stakeholder concerns from what data must remain static for
24 auction participation and how often registration
25 information must be updated.

1 Staff will also propose to extend the but-for
2 exemption beyond the first compliance period. The
3 compliance obligation associated with these emissions
4 would just then be moved to the point of the natural gas
5 supplier.

6 -o0o--

7 AIR POLLUTION SPECIALIST ALLGOOD: The cap and
8 trade environmental analysis completed in 2010 concluded
9 that increases in localized air pollution or forest
10 related impacts caused by this regulation or the U.S.
11 forest protocol are unlikely. However, ARB could not
12 determine with certainty that there would not be increases
13 in these impacts. As a result, ARB established an
14 adaptive management process to monitor for possible
15 adverse impacts to localized air quality and forest
16 impacts.

17 Following Board approval of an adaptive
18 management plan in 2011, staff began working with air
19 districts, universities, and other experts to identify
20 monitoring methods and response procedures for localized
21 air quality and forest impacts. Staff will release
22 additional information on monitoring procedures for forest
23 impacts this winter and are continuing to work with air
24 districts and the EJAC on local air quality impacts. Staff
25 anticipates that additional updates on the adaptive

1 management will be made in spring of 2014.

2 Staff also is in the process of finalizing the
3 linkage readiness report and provide this to the Governor
4 on November 1st.

5 Staff has also been working on a rice cultivation
6 offsets protocol, which we expect to bring to the Board in
7 spring of 2014. Staff is awaiting final research data for
8 model calibration and an assessment of the potential
9 environmental impacts of this protocol.

10 Staff has also initiated an interagency contract
11 to make the modeling tool used more user friendly.

12 -o0o--

13 AIR POLLUTION SPECIALIST ALLGOOD: In conclusion,
14 staff recommends that the Board approve the resolution
15 before you. This resolution directs staff to continue to
16 work on cost containment to develop and release a 15-day
17 changes as described in my presentation and Attachment B,
18 and to prepare response to any comments received on the EA
19 and to return to the Board that you can consider the
20 approval of the CEQA responses and the final rule making
21 package.

22 So thank you very much for your consideration.

23 CHAIRPERSON NICHOLS: Thank you.

24 I said something nice about staff in my opening
25 remarks, which I don't always do. Because you get enough

1 praise from other people. In this instance, I want to say
2 something about the presentation and the work that went
3 into it.

4 I think it's fairly obvious that we're dealing
5 with issues here that effect businesses, livelihoods and
6 many different sectors in California. Every one of them,
7 no matter how narrow and technical it may seem, is worth a
8 lot to somebody, oftentimes many somebodys.

9 In addition to that, we have created here in
10 California an actual market which is functioning as we
11 speak. There is a live market in California compliance
12 instruments and in offsets as well.

13 So one of the things I wanted to mention -- and
14 if I'm repeating something, I apologize. But the
15 Resolution that you all are proposing actually was posted
16 this morning, not long in the advance of the meeting
17 simply because if it leaked out in bits and pieces or had
18 gone out early, there might have been some competitive
19 advantage to some group or another. So just handling the
20 physical release of a document like this was in and of
21 itself an important sensitive task of very well trained
22 people to manage it.

23 I'm extremely proud of the fact we have had a
24 year's worth now of this program under our belt and that
25 none of the terrible things that people alleged might

1 happen did and moreover that we've already seen many good
2 things happening as a result of this program. But the
3 fact that we have been so successful so far obviously is
4 attributable in large part at least to an enormous amount
5 of vigilance and care on the part of everybody who's been
6 involved in managing this program, as well as in the great
7 assistance that we've had, great response that we had from
8 the communities that were subject to this regulation. So
9 it's been really an amazing, an amazing performance to
10 date.

11 I want to congratulate Mr. Allgood on that
12 presentation, because if you look at it, the number of
13 specific items that are in front of us today, each of
14 which has probably got several people who are going to
15 comment on it, is quite extraordinary. But you know, it's
16 a package. Each piece of it I think hangs together and
17 was explained. And we're going to now hear from a lot of
18 people who are going to explain why we should have done it
19 differently or better or whatever. And of course, we need
20 to listen and to take all of that into account before we
21 make any final decision.

22 So I'm suggesting that you fasten your seat belts
23 and get ready for what's going to be quite an interesting
24 set of presentations. But overall, I really just wanted
25 to say that to be here today with a package of -- I can't

1 call them minor because to somebody they're major. But
2 relative to the size of the whole program, these are fixes
3 that we're making to improve the overall smoothness and
4 operation of a program which is already working well. So
5 I just wanted to kind of lay the ground work with that.

6 I know we have more than 41 names that are in
7 front of me right now, but that's a good start. So I'm
8 hoping that we can do our usual three minute allocation to
9 people. But if it starts to get out of hand we may end up
10 having to shorten that as time goes on. But anyway, the
11 day is young. So we'll start with the three minutes per
12 speaker and begin.

13 Can you post these up on the the wall the way you
14 have in the past? Yes. I'm going to try to read three
15 names in a row. But it's easier if you look and see where
16 you are on the list.

17 We're going the start with Tim Haines, Mark
18 Parsons, and Frank Caponi.

19 MR. HAINES: Good morning, Madam Chair.

20 Nice to see familiar faces and soon new friends
21 on the Board.

22 I'm Tim Haines with the State Water Contractors.
23 We are an association of water agencies that receive water
24 from the DWR's State Water Project. We distribute that
25 water to 25 million businesses and families throughout the

1 state. 750,000 acres of agricultural land as well. The
2 customers of the State Water Project pay all of the costs
3 that are associated with delivering that water, and that
4 includes the cost of cap and trade.

5 In 2011, the Board passed Resolution that
6 directed the Executive Officer to work with the wholesale
7 water agencies in order to be able to address inequities
8 that arise as a result of using wholesale power to deliver
9 power to move water throughout the state. In the ensuing
10 three years, we made significant progress. What we've
11 been able to demonstrate with the staff is that the
12 Electric utilities do not, in fact, provide retail power
13 to the pumps that we use.

14 We've also shown that the water customers of the
15 State Water Project incur a similar cost as to the
16 electric customers that was mitigated by the Air Resources
17 Board and the allocation free allowances.

18 What we've also been able to do is demonstrate
19 that the cost burden of the electric utilities is
20 similarly diverse as it is to the State Water Project
21 customers, some that exceed free allowances, do not have a
22 surrender obligation is one example of a similarity.

23 The State Water Project is estimated to incur
24 about \$20 million in cap and trade costs in 2013. We
25 project that that cost will be on the order of about \$220

1 million between now and the end of 2020.

2 In comments that were submitted by the Department
3 of Water Resources yesterday, what they did was confirmed
4 that they are actually buying emission allowances in the
5 past. They will participate in the next carbon market.
6 And they will continue to participate in the markets going
7 into the future.

8 They've also found no prohibition from the Air
9 Resources Board being able to allocate emission allowances
10 to the State Water Project DWR.

11 The Resolution -- there's a lot more work to be
12 done. And what we like to be able to do is continue that
13 through the amendment process. We've offered some more
14 precise Resolution language that we have past along, have
15 made it available. And what we'd be like to do is work
16 with the Board and staff to reflect the progress that's
17 been made in the resolution in order to be able to set the
18 stage for being able to make future progress that we're
19 hoping for.

20 CHAIRPERSON NICHOLS: Thank you.

21 Mark Parsons.

22 MR. PARSONS: Good morning, Chair Nichols and
23 members of the Board.

24 I'm Mark Parsons, Senior Deputy General Counsel,
25 and I'm speaking on behalf of the Metropolitan Water

1 District. Metropolitan is the nation's largest wholesale
2 provider of drinking water. We distribute water from the
3 Colorado River and the State Water Project to our 26
4 member agencies and supply the water used by more than
5 half of the roughly 19 million people in the coastal
6 plains of Southern California.

7 As noted by Mr. Haines the wholesale water
8 utilities have been before your Board a number of times to
9 request the same sort of cost mitigation for their
10 customers that you have given to the customers of the
11 electric utilities. MWD appreciates the work of your
12 Board and staff in addressing their issues and are
13 heartened your stated intent in a draft Resolution to
14 continue working with Metropolitan to further development
15 methodology for our allowance allocation.

16 As this process moves forward, we request that
17 you consider Metropolitan's unique attributes and
18 circumstances in refining the allowance allocation
19 calculation.

20 While the impact of AB 32 compliance costs are
21 felt by all utilities customers, mitigating those costs
22 for each utility requires a recognition of different
23 resource mixes and regulatory requirements. As an
24 example, Metropolitan obtains much of its energy from
25 large federal hydroelectric projects under contracts that

1 will continue for at least the next 50 years. By ignoring
2 the fact that Metropolitan obtains the preponderance of
3 its energy from this emissions-free resource, the
4 regulation as drafted underallocates allowances to
5 Metropolitan for its supplemental energy needs.

6 Your Board has made accommodations for similarly
7 situated utilities, and we request you do so for MWD.

8 With respect to the State Water Project,
9 Metropolitan pays more 70 percent of the project's energy
10 cost and is very are concerned about the \$220 million cost
11 burden that the cap and trade regulation will impose. The
12 fact that the cost burden imposed by the project primarily
13 involves increased energy costs rather than the cost of
14 purchasing allowance is not a valid basis for determining
15 that the project should not receive any allocation for
16 free allowances.

17 Every dollar that a publicly-owned water or
18 electric utility pays for AB 32 compliance will ultimately
19 be paid by an in-use utility customer. By denying the
20 State Water Project allowances simply because it does not
21 have an obligation to purchase and surrender them, the
22 draft regulations would penalize the project and its
23 customers solely because it does not import or generate
24 energy.

25 This is contrary to the Board's stated purpose of

1 freely allocating allowances to the electric utilities,
2 which is to offset the rate impacts of the cap and trade
3 regulation.

4 Finally, MWD supports the written comments of the
5 Department of Water Resources and the written and oral
6 comments of the State Water Contractors as well as the
7 draft Resolution circulated by Mr. Haines. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 Mr. Caponi.

10 MR. CAPONI: Good morning, Madam Chair, members
11 of the Board.

12 My name is Frank Caponi with L.A. County
13 Sanitation District. I'm here today to speak in support
14 of this limited waste-to-energy exemption that's provided
15 as an amendment to the regulations that are before you
16 today.

17 As staff indicated in their presentation, this is
18 consistent with a couple of Board resolution, the most
19 recent of which require that the exemption be provided
20 while the situations debated in the waste sector plan
21 which I spoke of yesterday in my testimony. So we look
22 forward to debating that in 2014.

23 You made hear some come up and say that waste
24 incineration is not appropriate. It's horrible. These
25 are interesting speeches, but not relevant to the item

1 that's before you today. These will be debated as part of
2 the waste sector plan that will be going down that path in
3 2014. Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 The next three Kassandra Gough, Bill Buchan, and
6 Jon Costantino.

7 MS. GOUGH: Good morning, Chair Nichols and Board
8 members and staff.

9 My name is Kassandra Gough. I'm the Director of
10 Governmental Affairs for CalPine. We're one of the
11 state's largest independent power producers. We own and
12 operate over 6,000 megawatts of clean efficient gas
13 generation in the state, and we have 725 megawatts of
14 geothermal, making us the larger provider of renewable
15 energy in the state.

16 Today, my husband and I are celebrating our 17th
17 wedding anniversary. And I tell you that because I'm in a
18 reflective mood and how our marriage is similar to my
19 relationship with CARB. Seven years ago, as we were
20 negotiating the final version of AB 32, I had just given
21 birth to my third and final child. So I always know how
22 old these regulations are because I do remember his
23 birthday. But like a marriage at the end of the day when
24 we all adopted AB 32, we were feeling invincible and
25 powerful and life was going to be perfect. And like a

1 marriage, reality sets in and sometimes it's hard. And
2 it's not always been easy putting together these
3 regulations and working together.

4 But I believe a successful marriage is based upon
5 respect and communication and a willingness to really
6 listen to what the other person and understand what their
7 needs are and where they're coming from.

8 And I think that's what we've done here. We've
9 had bumps in the roads. We've had disagreements, but
10 we've always had open communication. Sometimes even on
11 weekends, probably not to either of our liking, but it
12 happened because it needed to be done.

13 And we've gotten to a very good place because of
14 all of this. I'm here to say thank you. Staff
15 particularly on the long-term contract issue worked with
16 us. We didn't like where they had come to originally, but
17 really listened to us. We really listened to them and
18 what they were trying to achieve in terms of the integrity
19 of the program, and we think we've gotten to a very good
20 place on that. The majority of our contracts are covered
21 while maintaining the integrity of the program.

22 Also, increasing the auction purchase limit was
23 very important to us. We're very hopeful that that
24 increase to 20 percent will occur in time for the last two
25 auctions of this year.

1 So I really want to thank Chair Nichols, your
2 staff, Board Members Berg and Sperling who aren't here
3 today, former Board Member DeeDee D'Adamo who was very
4 helpful. Richard, Edie, Steve, Rajinder, and all the
5 other people that they probably forced to work that I
6 don't even know. But thank you.

7 And so like a good marriage, there's still some
8 issues we have to work on. And there's some technical and
9 legal issues we have to work on here. But because we've
10 established this pattern of really positive communication,
11 I think we're going to make it. Thank you.

12 CHAIRPERSON NICHOLS: Thank you very much. Well
13 done. And it's going to set the stage for the rest of
14 day.

15 MR. BUCHAN: Chair Nichols and members of if
16 Board, good morning.

17 My name is Bill Buchan representing Cardinal
18 Cogen, a 48 megawatt power plant providing steam power
19 and chilled water to Stanford University. We operate
20 under a legacy contract that was put in place well before
21 AB 32. We negotiated and we were unable the pass on any
22 of the cost, which are considerable, under cap and trade.

23 While the current regulation does not address
24 legacy contracts, the new proposal that staff provided on
25 October 16th and we urge support of this. It provides

1 transition assistance through the end of the second
2 compliance period and does so on in fair way amongst
3 combining power plants as well as relative to other
4 covered entities. This is something that the original
5 draft regulations that went out in July did not do.

6 So we urge support of the October 16th proposal
7 by staff for legacy contracts. And if approved, we at
8 Cardinal Cogen pledge to work with staff to develop a
9 detailed regulation with staff. We have submitted our
10 comments in writing. And thank you for the opportunity to
11 testify.

12 CHAIRPERSON NICHOLS: Thank you. Mr. Costantino.

13 Mr. COSTANTINO: Hello. Good morning.

14 Jon Costantino. Today, I'm representing the
15 Coalition for Fair and Equitable Allocation. It's
16 actually a group of five operators of small refineries in
17 the state. And we have submitted written comment. The
18 five refiners are Phillips 66, Alon, Kern, Taggart, and
19 San Joaquin Refining.

20 And the reason we formed the coalition was to
21 address the issue of benchmarking and how one product, one
22 benchmark could possibly negatively impact the smaller
23 refineries. So I'm here today to support the fact that we
24 were able to reach resolution on a number of issues,
25 complexity weighted barrel, the second compliance period

1 assistance factor, the establishment of an atypical
2 benchmark, and actually the metrics for that atypical we
3 certainly think satisfy what a small refinery is. And
4 there is a difference between a small refiner and small
5 refinery. We think atypical focuses on small refinery.

6 One last concern is the issue of a jointly
7 operated concept of a small refinery is somehow attached
8 to a larger refinery that you have to allocate the
9 allowances as one big group. We think that's counter to
10 the definition of atypical. And the reason something is
11 atypical with integration and other issues. We will
12 certainly be working with staff to figure out what that
13 definition actually means, because we haven't seen it yet.
14 But that's our one remaining issue as a coalition.

15 I know individual members saw some stuff they
16 will be speaking to on their own. But as a coalition, we
17 were able to come together and work with staff and get
18 through this supportable position. Thank you.

19 CHAIRPERSON NICHOLS: Thank you.

20 Melinda Hicks, Cindy Parsons, and Susie Berlin.

21 MS. HICKS: Good morning, Chairman Nichols and
22 Board members.

23 My name is Melinda Hicks. I'm the Environmental
24 health and Safety Manager for Kern Oil and Refining
25 Company, a small publicly-owned refinery in Bakersfield,

1 California.

2 Kern appreciates the opportunities to come before
3 you today and show our support for the proposed amendments
4 to the Cap and Trade Program, amendments that have
5 significant potential to severely impact Kern's business
6 if not done right.

7 Kern appreciates and supports staff's proposal to
8 use the complexity weighted barrel for refinery
9 benchmarking, including the considerations for all the
10 process units, off-site adjustments, and notably the
11 establishment of a separate benchmark for atypical
12 refineries.

13 The diversity of the California refinery sector
14 makes applying a single benchmark problematic. And
15 staff's proposal most recently largely addresses concerns
16 that we previously have regarding these competitive
17 disadvantages and inequalities of refinery allocations.

18 Kern appreciates staff's in-depth analysis of
19 California refineries that identify the typical refineries
20 whose structural constraints, lack of economies of scale,
21 and lack of opportunities for heat integration justified
22 this separate benchmark.

23 We look forward to the release of the actual
24 draft regulatory language and working with staff over the
25 next several weeks in approach of the subsequent 15-day

1 amendment package. We're pleased with the strides that
2 have been made so far and confident this can be done
3 right.

4 Lastly, I want to express our support for the
5 amendments that will increase the assistance factor in the
6 second and third compliance period and also the allowance
7 for limited borrowing of true up allowances.

8 Thank you for the opportunity to address you
9 today.

10 CHAIRPERSON NICHOLS: Thank you.

11 MS. PARSONS: Good morning, Board.

12 My name is Cindy Parson with the Los Angeles
13 Department of Water and Power. We have filed written
14 comments, and I'd just to like highlight a few of them.

15 The first is regards to a new condition for
16 participating in the auction. The amendment would change
17 a disclosure requirement into an attestation requirement.
18 We're concerned that this is a significant change in the
19 rules. We're participating in an auction. And if an
20 entity has any kind of an investigation, whether it's
21 warranted or not, that that could bar that entity from
22 participating in the auction.

23 We would prefer to see that this amendment be
24 limited to either eliminate the attestation or limit the
25 scope of the attestation so that it would cover fewer

1 possible investigations.

2 The second item is the application for
3 participating in the auction. And this proposal is really
4 broadly written and such that any changes in an entity's
5 auction or account application will result in denial of
6 the entity's ability to participate in the auction. We
7 believe this requirement is too restrictive and recommends
8 that CARB work to define what constitutes a change that
9 would lead to denial of an entity to participate in an
10 auction.

11 It would be extremely difficult for an entity to
12 have no changes at all in an entity's directors and
13 officers within the time period stated, especially if the
14 entity plans to participate in all four quarterly
15 auctions.

16 And then lastly, with regards to what staff
17 brought up during the presentation with the RPS
18 adjustments, from an accounting perspective, it makes
19 sense for the credit for the RPS adjustment to be taken in
20 the same year as those -- that electricity was imported.
21 When you're doing the report and you're reporting the
22 inport, the credit should be tied to that same year. But
23 unfortunately, with the REC requirement that the RECs
24 aren't going to be retired for two to three years down the
25 road, if that credit is tied to REC retirement, the credit

1 is going to be -- it's going to be disjointed.

2 So you report the emissions in one year, and you
3 claim credit in years down the road. That's really not
4 the best way to do it from an accounting perspective. So
5 we actually would encourage ARB to consider an alternative
6 way to enable entities to claim that RPS adjustment credit
7 in the same year that you're actually reporting the
8 electricity. So that way from an inventory perspective it
9 makes a lot more sense.

10 Thank you very much.

11 CHAIRPERSON NICHOLS: Okay. Thank you.

12 Can I just ask a question while Ms. Berlin is
13 coming up? If I understood the testimony, the concern
14 would be that let's say hypothetically this Mayor of Los
15 Angeles were to remove a commissions and replace one at
16 the Department of Water and power that that could
17 invalidate their ability to participate in an auction; is
18 that correct?

19 ASSISTANT DIVISION CHIEF CLIFF: That's not the
20 intent. The intent of that language is to ensure that we
21 have information about participants in auction that remain
22 static during a defined period of time, such that there is
23 not a change in ownership or that sort of thing.

24 The type of thing that Cindy has laid out we
25 don't think is actually something that could occur. But

1 what we've said is that we're going to work with
2 stakeholders during 15-day -- during the 15-day comment to
3 try to refine that language to better define the intent
4 and ensure that we're getting what we need and it's also
5 something that we can --

6 CHAIRPERSON NICHOLS: Thank you.

7 Ms. Berlin.

8 MS. BERLIN: Good morning, Chairman Nichols,
9 members of the Board.

10 My name is Susie Berlin. I'm representing
11 Northern California Power Agency and the MSR Power Agency.
12 We are publicly-owned utilities, joint powers agencies
13 that are comprised of public-owned utilities.

14 I want to start by thanking staff for all their
15 efforts on the proposed amendments, and especially for the
16 time they took to work with stakeholders and address a lot
17 of the concerns we raised as reflected in the proposed
18 resolution.

19 We would like to highlight a couple key issues
20 regarding cost containment, resource shuffling, allowance
21 surrender designation.

22 On cost containment, the resolution directs the
23 creation of a plan for cap and trade post-2020. We think
24 this is a great idea. We believe cost containment should
25 be a pivotal part of that plan. We urge that proposal be

1 amended slightly so that the staff and the Executive
2 Director can begin working on that right away and not wait
3 until the third compliance period.

4 There are planning issues and, indeed, the
5 acknowledgement that the proposal for cost containment as
6 set forth in the regulation to be adopted today doesn't
7 address long-term price spikes, and these kinds of matters
8 should be addressed immediately. So we hope that post
9 2020 plan can be developed sooner rather than later.

10 On the issue of resource shuffling, we fully
11 support including all of the provisions for the safe
12 harbors in the body of the regulation. We just ask for a
13 slight additional modification to address instances where
14 there are transactions that we don't know what the form or
15 shape they're going to take right now, but they're clearly
16 not undertaken for purposes of avoiding a compliance
17 obligation. And we want to ensure that down the road and
18 after the fact review of these transactions will not cause
19 an entity to be in violation of the resource shuffling
20 provision.

21 On the allowance surrender designation, we ask
22 that the entities be allowed to designate which allowances
23 are surrendered for retirement. And specifically, that
24 there be a distinguishment between the allowances that are
25 freely allocated to electrical distribution utilities and

1 those that are purchased.

2 The reason for this is because there are
3 restrictions in the regulation on the use of freely
4 allocated allowances. And without an ability to ensure
5 that the allowances that are drawn out of an account
6 simply by vintage could result in a POU that has placed
7 their freely-allocated allowances into their compliance
8 account being found in violation, if those allowances
9 aren't clarified to show that the ones that were withdrawn
10 are the ones that were purchased and not freely allocated.

11 And finally, with regard to the employee
12 disclosures and the contractors, we appreciate the
13 proposed revisions or staff's acknowledgement that they
14 want to continue to work with stakeholders and ask that
15 you adopt that portion of the resolution.

16 And on facility shut downs on Section 95812, we
17 just ask that you clarify those provisions are applicable
18 to the industry sector and perhaps move them into that
19 part of the regulation instead of under allowance
20 allocation generally.

21 Thank you very much.

22 CHAIRPERSON NICHOLS: Thank you.

23 Next three are Michael Cote, Danny Cullenward,
24 and Dorothy Rothrock.

25 MR. COTE: Good morning, Chairman Nichols and

1 Board members.

2 My name is Michael Cote, the President of Ruby
3 Canyon Engineering. We are a Colorado-based small
4 business greenhouse gas consultants, coal mine methane
5 experts, and also ARB verification body.

6 I just wanted to offer support for the protocol.
7 And in fact, we believe that it will achieve its goal of
8 reducing greenhouse gas emissions in addition to effecting
9 what we consider to be an institutionally and culturally
10 difficult sector, the coal mine methane sector.

11 We've been working for the EPA's Climate Change
12 Division coal mine methane outreach program since 1998 to
13 try to effect the projects world wide. What we've seen in
14 countries that offer incentives like China and Germany and
15 Australia, we've seen the most projects developed in those
16 countries. And whereas, countries like Ukraine and Russia
17 and the United States where no incentives are offered,
18 we're seeing very little development in that sector. So
19 with the point being we really feel like the incentives
20 are effective in this space.

21 I also wanted to point out that most of the coal
22 mine methane development we have ever seen is always done
23 by small businesses. They're also energy developers,
24 technology vendors, equipment suppliers, technology
25 consultants, and many of these are actually based in

1 California and provide these services to coal mines in the
2 U.S.

3 What we've also seen that the coal mines
4 themselves are not the main beneficiaries of these type of
5 projects. The fact that the two large scale ventilation
6 air projects currently going on in the U.S. right now, Jim
7 Alta Resources and Consol Energy, neither of those mines
8 invested in each of those projects. They're being done
9 solely by small business development.

10 We also want to say we also feel like the
11 voluntary price signal is not enough to effect any more of
12 these ventilation air methane projects. We think the
13 protocol could help see more of these projects roll out in
14 the future and really have a positive impact on eventual
15 regulation and VACT for coal mine methane emissions.

16 But currently, the technology is in its infancy
17 in its application for coal mine methane emission.
18 There's only ten of these projects worldwide and there are
19 severe limits on the ranges in which they can operate.
20 Currently, two-thirds of the coal mines in the U.S. that
21 are gassy are below .3 percent methane where these
22 projects can't be deployed. Many of the projects are
23 above the flows that are limited to this technology. So
24 we feel like by using this vehicle of offset mechanisms,
25 we can see many of these projects be rolled out and the

1 technology become more mature so it can actually
2 accelerate VACT feature. Thank you.

3 CHAIRPERSON NICHOLS: Thank you.

4 Mr. Cullenward.

5 MR. CULLENWARD: Good morning, members of the
6 Board and staff.

7 My name is Danny Cullenward. I'm here today in
8 my personal capacity. By way of background, I have a law
9 degree and a Ph.D. from Stanford where I worked on the
10 policy for about ten years. I'm now a research fellow at
11 the Berkeley Energy and Climate Institute.

12 CHAIRPERSON NICHOLS: Where are you a researcher?

13 MR. CULLENWARD: At the Berkeley Energy and
14 Climate Institute.

15 One more thing about my background. I've not
16 spoken before this body before, but I was very pleased to
17 be involved in the litigation of a Rocky Mountain farmers
18 union where I represented a group of scientists and very
19 glad to see that the Ninth Circuit has upheld the
20 California's use of the best available environmental
21 science in their climate policy.

22 With that as background, I'm here to talk about a
23 very serious concern about I have about the resource
24 shuffling provisions in the staff proposal today. I'd
25 like to point out that those are almost word for word

1 identical to what the Board had issued as a directive to
2 staff.

3 My concern is that these provisions are so broad
4 and vague, they essentially swallow the prohibition on
5 resource shuffling and very easy to put basically any
6 transaction into the safe harbors. The problem with this
7 outcome is almost all economists who have looked at this
8 area agree if there is no effective rule on resource
9 shuffling, the amount of leakage that could come from that
10 is comparable to the scale of the mitigation expected
11 under the cap and trade market through 2020.

12 Let me say a few more words on this problem. I
13 don't think anybody has really thought about what this
14 kind of leakage would mean when the system links with
15 Quebec. I don't think that waiting on EPA regulations for
16 existing sources is a wise policy going forward.

17 The existing source rule under 111(d) of the
18 Clean Air Act at this point is speculation. The Obama
19 Administration has promised it by next year. If you look
20 at the litigation possibilities there as well as the
21 delays in the SIP calls, I think it's extremely unlikely
22 we would see effective action from the EPA on existing
23 sources before 2020 when you look again at how the SIP
24 process works out and how long it takes to get attainment
25 and compliance through the SIP process.

1 So I think it would be a huge mistake to permit
2 significant amounts of resource shuffling with the staff
3 proposal that's been submitted before you. I strongly urge
4 you to reach out to people to look for alternative ways of
5 structuring this process. There are many solutions out
6 there. I've written one. There are many other economists
7 that have other ideas. I strongly encourage you to focus
8 on the market integrity.

9 One last word. The statute under AB 32 requires
10 this Board to minimize leakage in the design of the
11 market-based regulations. I cannot see how a vague and
12 broad set of safe harbors that essentially would upend the
13 prohibition on resource shuffling would be consistent with
14 that. And I urge you to -- strongly urge you to revisit
15 the recommendation before you. Thank you.

16 CHAIRPERSON NICHOLS: Thank you.

17 Ms. Rothrock, is it your anniversary, too?

18 MS. ROTHROCK: No, but I have something to say
19 about marriages.

20 My name is Dorothy Rothrock with the California
21 Manufacturers and Technology Association. I also Chair
22 the AB 32 Implementation Group. And despite those very
23 sobering comments you just heard, I actually have nothing
24 but positive things to say today. I'll just let that
25 linger a little bit.

1 It's tough. As you know, manufacturers do face
2 huge challenges in California, but we really do want to
3 thank the staff for recommending that the industry
4 assistance factor be increased in the second compliance
5 period. And that we should all recognize with the
6 efficiency benchmarks, we're still seeing and we will be
7 seeing reductions in the manufacturing sector in a cost
8 effective and technologically feasible way with
9 100 percent allowance allocation up to these efficiency
10 benchmarks.

11 Also want to thank staff for all the work they've
12 been doing to adjust those benchmarks and make sure they
13 really reflect what's accurate and appropriate for the
14 industries covered. It's a huge task. They'll really had
15 to get into the nitty gritty of these companies. And I'm
16 hearing back there's some very good relationships being
17 built, and I think it really is going to help us going
18 forward.

19 Looking forward to the third and potentially
20 later compliance periods as this program goes forward, I
21 think we're looking forward to working together in good
22 faith. But I think picking up on Cassandra's marriage
23 discussion, I think we're in marriage counseling. And I
24 think it's just going -- we're going to keep working
25 together in a good faith manner to make sure we can get

1 through this and all succeed.

2 Finally, just want to also thank you. It's
3 happening again and again here, for the mine methane
4 offset protocol. Of course, increasing the option in cap
5 and trade is going to keep the cost down for everybody.
6 Thank you very much.

7 Next time I speak, I hope I'm this positive. But
8 I can't guarantee it. Thank you.

9 CHAIRPERSON NICHOLS: Angus Crane.

10 MR. FUTAMURE: Good morning, Chair Nichols, Board
11 members and staff.

12 My name is Taku Futamura. I'm the asset manager
13 for Wildflower Energy. I'm here today to indicate our
14 support to transtional assistance to legacy contract.
15 Wildflower Energy has pre-AB 32 legacy contract with a
16 third power marketer that's not explicitly address
17 greenhouse gas costs.

18 Wildflower owns two fast starting peaker plants
19 in Southern California and that are covered by pre-AB 32
20 legacy contract. Over the past four years, Wildflower has
21 been unsuccessful in its efforts to renegotiate the legacy
22 contract. And as a result, Wildflower faces serious
23 economic risk without by the ARB today. We believe that
24 the staff's proposal is fair and will achieve the ARB's
25 policy objective of encouraging parties to renegotiate

1 their contracts.

2 I also want to take a second to thank the ARB
3 staff for their hard work on this issue and taking into
4 account the various interests and issues faced by a very
5 diverse group of stakeholders. We request that the ARB
6 approve the proposed revisions to Section 95894 today.
7 Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 Did Angus Crane leave? You got bypassed. Okay.
10 Come on.

11 MR. CRANE: Good morning, Chair Nichols and
12 California Air Resources Board.

13 My name is Angus Crane. I'm Executive Vice
14 President and General Counsel for the North American
15 Insulation Manufacturers Association, or NAIMA. NAIMA is
16 the trade association for manufacturers of fiberglass and
17 rock and slag wool or mineral wool insulation.

18 We have in the state of California, NAIMA members
19 of four manufacturing: CertainTeed Corporation in
20 Chowchilla; Johns Manville in Willows, California; Knauf
21 Insulation, Shasta Lake; and Owens Corning in Santa Clara.
22 And NAIMA greatly appreciates in opportunity to support
23 California Air Resources Board proposed reclassification
24 of the mineral wool manufacturing trade exposure leakage
25 risk.

1 I would also like to particularly express our
2 appreciation to Steve Cliff and the Air Resources staff
3 that we met with multiple times in presenting our case.
4 Essentially, what had happened is that the glass industry
5 has three sectors; a flat glass, bottle glass, and the
6 fiberglass. When the assistance factors were assigned,
7 the other two glass sectors were given 100 percent
8 allowances for all three compliance periods. Fiberglass
9 was only given 100 percent the first, and then second and
10 third we were significantly reduced.

11 We went in and we sat down with the California
12 Air Resources Board. They explained to us why there was a
13 differentiation. It was because of foreign competition
14 rather than domestic competition. What was very
15 gratifying for us is we were able to sit down with Steve
16 Cliff and his team multiple times and explain to them
17 domestic leakage was far more relevant than foreign
18 leakage. And we had at California's border in Arizona two
19 manufacturing plants that could easy take care of the
20 California market. We also had two additional plants in
21 Utah and four manufacturing plants in western Canada.

22 We were then able to demonstrate to the Air
23 Resources Board that this capacity within our industry
24 could enable the plants in California to shut down and we
25 would still be able to supply the California market in

1 addition to all the other markets. We had that much
2 capacity.

3 What was very gratifying is California Air
4 Resource Board heard us. They listened to us. We
5 understood what we were saying and we are now here
6 supporting the changes that have been made.

7 So we're grateful for this opportunity. We
8 support what they have done because they have been very
9 thorough in their analysis. They looked at all of the
10 data. And it also is consistent with the information that
11 we provided. So we're very grateful. And we thank you
12 for this opportunity to support your decision.

13 CHAIRPERSON NICHOLS: Thank you.

14 Thomas Vessels.

15 MR. VESSELS: Good morning, Chairman Nichols and
16 Directors of the California Air Resources Board.

17 Thank you for giving me the opportunity to speak
18 in support of your amendment regarding the mine methane
19 capture, Cap and Trade Program.

20 We support the amendment because it gives value
21 to a waste product that is currently venting to
22 atmosphere. This will encourage the development of
23 technology and innovations to both detect the methane,
24 capture it, and in some cases convert it to beneficial and
25 economic use. This could encourage other states to pay

1 more attention to methane emissions both from mines and in
2 general. And perhaps other states even could be
3 encouraged to look positively at participating with
4 California and Quebec and the Western Climate Initiative
5 or some other type of program.

6 Thank you again very much.

7 BOARD MEMBER BALMES: Could I ask one question?
8 Sir, I have a question.

9 So you said that some of the methane capture
10 under this protocol could be used for commercial purposes.
11 So would that -- I understood this was low concentration
12 methane that was being released and captured. If it's
13 valuable, I don't understand why we would be giving credit
14 for it.

15 MR. VESSELS: Well, the methane I'm referring to
16 is not currently of value. Or presumably it would have
17 been captured and put to use.

18 But with more attention given to the reduce due
19 to having a value in the cap and trade system, it could be
20 captured to probably at least destroy it, combust it. But
21 once it's captured and is being combusted, it at least
22 could be potentially at one location where innovation
23 could take place to use it.

24 Just, for instance, as a billboard advertisement,
25 if you see a large frame of a methane being combusted, it

1 does occur to people that's wasted energy resource. Does
2 that answer your question?

3 BOARD MEMBER BALMES: Yes.

4 CHAIRPERSON NICHOLS: Okay. Thanks.

5 MS. LLOYD: Good morning, Chair Nichols and
6 members of the Board and staff. My name is Debbie Lloyd.
7 I work for the city of --

8 CHAIRPERSON NICHOLS: Could you move the
9 microphone down a little so we can hear you?

10 MS. LLOYD: Today I'm here on behalf of the
11 natural gas distribution companies. That includes the
12 investor-owned utilities of Southern California Gas
13 Company, Pacific Gas and Electric, San Diego Gas and
14 Electric, Southwest Gas Corporation, and also the
15 publicly-owned utilities includes Palo Alto and the cities
16 of Long Beach and Vernon.

17 We have submitted written comments and I'm here
18 just to highlight a few of them. First of all, we'd like
19 to say we appreciate the CARB staff's willingness to
20 engage in dialog with us and the willingness to hear our
21 concerns regarding our customers and the impacts of the
22 Cap and Trade Program on them.

23 We believe we've been good citizens in
24 implementing aggressive energy efficiency programs and
25 developing sustainable solutions. A few of us also are

1 electric utilities, so we are already engaged in cap and
2 trade and some of the solutions there.

3 We would like to express support for the
4 allocation of allowances, which will help mitigate and
5 phase in the rate impact to our customers, the use of the
6 2011 base year for calculating the emissions cap. And we
7 also encourage CARB's offset protocol review and the
8 adoption of additional protocols, which will expand the
9 offsets available and give the natural gas distribution
10 utilities additional tools for reducing greenhouse gas
11 emissions. We believe the use of these high quality
12 offset credits is an effective cost containment measure.

13 We do ask CARB to reconsider a couple items. One
14 is on holding allowances which results in double penalty
15 when in non-compliance with reporting requirement. We
16 have in our written comments submitted some suggested
17 language that would clarify the intent of holding only the
18 amount of allowances that are out of the reporting
19 compliance.

20 We also request clarification on how any withheld
21 allowances will be recirculated into the market to avoid
22 price strikes.

23 And thank you for the opportunity to address you
24 today.

25 CHAIRPERSON NICHOLS: Thanks.

1 MR. BIERING: Good morning. My name is Brian
2 Biering. I'm with Ellis and Schneider and Harris here
3 today on behalf of the Turlock Irrigation District.

4 First of all, I'd like to express our
5 appreciation on behalf of the district for the openness
6 and willingness of staff to work with the very diverse
7 group of stakeholders. I think both the 45-day rulemaking
8 package, Appendix A to the Board resolution today and
9 staff's presentation all reflect the staff's willingness
10 and openness to work with the stakeholders.

11 The issues that we'd like to comment on today
12 relate to allowance transfer issues and specifically
13 trading restrictions. It's identified in Appendix A as
14 one of the issues that the ARB is going to continue to
15 work on next year. And we're hoping that staff will take
16 a hard look at whether or not the requirements are overly
17 broad and whether or not some of the new requirements,
18 specifically the collection of allowance transfer
19 information, may impose new additional transactional costs
20 on parties engaging in allowance transfers.

21 The other issue I'd like to comment on is with
22 respect to the cost containment provisions. One of the
23 things that we've advocated for in our written comments is
24 an expansion of the offset rules. And we agree certainly
25 with the inclusion of new offset protocols. But the other

1 side of the equation is how to encourage offset demand.
2 And specifically, the eight percent offset usage limit we
3 believe should be expanded such that an entity can bank
4 that going forward. That would send a market signal in
5 the near term as to the potential demand for offsets in
6 the later parts of the program.

7 The next issue I'd like to comment on is with
8 respect to flexibility in determining the retirement order
9 for allowances. There's some provisions in the regulation
10 or the 45-day rules that will provide additional
11 flexibility with respect to the allowance transfer --
12 excuse me -- the annual retirement obligation that we
13 believe there should be more flexibility with the
14 triannual compliance obligation and specifically allow
15 regulated entities to determine the order in which the
16 retire their allowances.

17 And finally, I'd like to speak to the issue of
18 resource shuffling. We certainly don't share the concern
19 by the gentleman from U.C. Berkeley about the potential
20 adverse effects of the resource shuffling prohibitions.
21 With you we do agree there is some remaining ambiguity and
22 ask the Board reconsider its decision to not provide
23 advisory opinions on this issue and provide stakeholders
24 with a little bit more certainty on a question of resource
25 shuffling provision by allowing for advisory opinions if

1 stakeholders bring questions to the ARB.

2 Thank you for the opportunity to speak today.

3 CHAIRPERSON NICHOLS: Thanks.

4 MR. AGUINALDO: Good morning Madam Chair, members
5 of the Board.

6 As one of California's smallest petroleum
7 companies, Lunday-Thagardtag Company appreciates the
8 opportunity to comment on your staff's proposal to the
9 refinery sector allocations.

10 First, we support staff's proposal to adopt the
11 complexity weighted barrel methodology, inclusive of
12 the adjustments for off sites, non-crude sensible heat, as
13 well as the non-energy utilities.

14 Secondly, we support the staff's proposal to
15 benchmark atypical refineries such as us separate from our
16 more typical counterparts.

17 And third, we support staff's proposal to define
18 a California atypical refinery as one of those having less
19 than twelve process units and processing less than 20
20 million barrels of crude per year.

21 We look forward to working with your staff on the
22 development of the actual language.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 MR. ARNOLD: Good morning, Madam Chair, Board

1 members, staff.

2 My name is Greg Arnold, President of CE2 Carbon
3 Capital, a San Diego-based funder and developer of Carbon
4 emission reduction projects for the Cap and Trade Program.

5 We're also an industry intervener on ARB's behalf
6 in the offsets lawsuit and its ongoing appeal.

7 We'd like to thank the ARB staff today for their
8 hard and thorough work to understand the value and
9 evaluate the technical merits of the mine methane capture
10 protocol and for taking the care to delve into the facts
11 and data on a very complex subject.

12 We're here today to voice our support for staff's
13 recommendation to include the MMC protocol as part of the
14 Cap and Trade Program. The substantial offsets supply the
15 MMC protocol can deliver is an important part of meeting
16 the cost containment efforts of the program.

17 With two years left, in compliance period one,
18 we're not quite at the halfway point for the offset
19 requirements projected for the program. These emissions
20 reductions are a critical part of the cost containment,
21 not only for covered entities, but for rate payers as
22 well.

23 Today, methane emissions at cold mines are
24 unregulated by the federal government, a situation that is
25 likely to remain into the foreseeable future. As a

1 result, most mine methane emissions are released into the
2 environment. Without revenues from carbon offsets, there
3 is no economic incentive to mitigate them. You can see
4 how this has played out in the landfill gas methane
5 capture sector as the mitigation is being curtailed now
6 that compliance-grade offsets are no longer an economic
7 incentive.

8 You'll hear criticisms today and may have heard
9 some in the past that this protocol will lead to
10 additional coal mining. We disagree. Coal competes in a
11 global marketplace and its dominance and power generation
12 is being eroded by the low price and abundant supplies of
13 natural gas.

14 The revenues from mine methane capture projects
15 are only a small part, not a material driver, of the
16 economics of the coal mining operation. They are,
17 however, the critical piece that funds emissions controls.

18 I would like to note that certain critics
19 overstate mine economics because their analysis considers
20 only project revenues without factoring in the substantial
21 costs, capital included, long paid backs, and risks of
22 developing coal mine methane capture projects.

23 To be frank, some of the critics just don't like
24 offsets. What the Board is really considering today is
25 whether or not to create an incentive to fund additional

1 emissions control projects that will otherwise not take
2 place and whether California will exert its traditional
3 leadership role at the vanguard of U.S. Environmental
4 policy. We believe you should and we hope that you will.
5 Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Mr. Bloom.

8 MR. BLOOM: Good morning. I'm appearing on
9 behalf of OLS Energy Chino. We operate a 30 megawatt CHP
10 facility at the California Institute for Men in Chino,
11 California. Since 1988, OLS has provided Southern
12 California Edison with 26 megawatts of power under a
13 legacy PPA.

14 The modified staff proposal issued on October
15 16th provides transition assistance through the second
16 compliance period for the legacy contract holders.

17 OLS is very appreciative of all the efforts of
18 staff and others to come up with this proposal, and we
19 greatly support it. We're also appreciative of the
20 efforts of staff on this regard.

21 OLS also submitted in its written comments some
22 tweaks to the definition of legacy contract to remove any
23 ambiguity. We ask that you take these into consideration
24 as you go forward. Thank you very much.

25 MS. VAUGHAN: Good morning, Chair Nichols and

1 Board members.

2 My name is Beth Vaughan, Executive Director of
3 the California Cogeneration council. And I've appeared
4 before you on this issue of legacy contracts.

5 Within our membership, we have a number of
6 combined heat and power projects between the thermal host
7 and the third-party cogenerator. And these contracts do
8 not have provisions to enable the recovery of GHG
9 compliance costs.

10 The modified staff proposal providing transition
11 assistance to the end of the second compliance period
12 solves the problem for I believe the majority of the 20
13 eligible legacy contracts that have been identified by ARB
14 staff. And I'm happy to say almost all of mine. It
15 includes all but one of my member contracts.

16 To put that into perspective, three years ago,
17 when the draft regulation came out October 28th of 2010, I
18 remember my dates too, not by the birth of my children.
19 And at that time I believe we identified within our
20 membership about twelve of these legacy contracts. When I
21 appeared before you a year ago, we were down to six. And
22 now we only have one where the regulation does not solve
23 for them.

24 So I'd like to thank the ARB Board and members
25 with whom I've met on this issue and all the staff who

1 have been working very hard over a very long period of
2 time for proposing this change in addressing what I
3 believe is significant issue for those affected companies.
4 However, as I mentioned, the modified staff proposal does
5 not solve for one of our facilities and this is Crockett
6 Cogen. This is because the thermal contract between
7 Crockett and C&H sugar extends beyond 2013.

8 Crockett Cogen is the only facility on ARB's list
9 of 20 eligible generators in the unique situation where
10 the industrial host meets the definition of energy
11 intensive trade exposed entity but is not covered by the
12 cap and trade regulation. In this case, C&H sugar
13 refinery is not an industrial covered entity because it
14 did not emit greater than 25,000 metric tons. This is
15 solely because Crockett Cogen combusts natural gas it
16 supplies all the thermal energy used in the production of
17 the sugar, and it provides the steam that C&H uses to run
18 its two steam turbines to produce on-site electricity.

19 But for Crockett Cogen, C&H would be an
20 industrial covered entity receiving an allocation of free
21 allowances under the regulation. If C&H emitted above the
22 25,000 metric tons threshold, it would receive the free
23 allowances that could be transferred to Crockett Cogen as
24 per the 45-day proposed amendment.

25 Our recommendation is to make an exception for

1 Crockett because of this unique situation and to provide
2 transition assistance for the term of its legacy contract.
3 Thank you.

4 MR. WEINER: Madam Chair and members of the
5 Board, I'm Peter Weiner from Paul Hastings. I'm here to
6 speak on two different issues today.

7 First, I'd like to thank all the Board members
8 and staff for your attention to legacy contracts. We
9 support the proposal that was issued on October 16th and
10 very much appreciate it. It recognizes the reality in the
11 marketplace for these generators.

12 We would ask on that that as staff goes to
13 develop the 15-day proposal that they consider the
14 levelling of the playing field for those legacy contracts
15 that are addressed here with those that have industrial
16 counterparties so that the base year and the true-up
17 provisions are the same. These are meaningful in the
18 amounts of millions of dollars for these entities. And we
19 submitted written comments on that.

20 The rest of the time I'd like to devote to
21 something else. And by the way, we do think the
22 Resolution as prepared on the legacy contracts can include
23 this kind of technical amendment.

24 The other thing I'd like to speak about is that
25 I'm here also on behalf of the CSP Alliance, which are

1 developers and operators of solar thermal energy
2 facilities. And of course, solar energy displaces
3 greenhouse gas emissions in our electrical sector and is
4 much to be desired. But these solar thermal facilities do
5 use a small amount of gas, a diminimous amount, to help
6 stabilize the energy source to heat up water so it's ready
7 for solar or to keep turbines so they won't crack in the
8 cold at night in the desert.

9 And the Energy Commission prompted by Assembly
10 Member Skinner's Bill AB 1954 has recognized that this
11 diminimous use of gas should be still included in the
12 definition of renewable energy. So we've asked in written
13 comments that the Board consider that as an amendment.
14 You've done so on geothermal. You've done it on fuel
15 cells. We think this is a similar technology that should
16 be recognized in that way.

17 We would ask that, if possible, that the
18 Resolution be amended, if necessary, to include a
19 direction to staff to look at this issue. We have to
20 discussed with staff a couple of different ways this could
21 be accomplished and we would quarterly come further
22 discussions with them. But we do think including it in
23 the Resolution would be very useful. If you have any
24 questions, be happy to answer them. Thank you very much.

25 CHAIRPERSON NICHOLS: Okay. Thank you.

1 George Morrow.

2 MR. MORROW: Good morning, Chair Nichols and
3 Board members.

4 I'm George Morrow, Director of Azusa Light and
5 Water. We're a member of the Southern California Public
6 Power Authority and one of the owners of San Juan
7 generating station through SCCPA. There's five of us. As
8 many of you in this room know, we're working very hard to
9 find an exit strategy for San Juan. It's very tough
10 negotiations. Going to be very extensive for us. We're
11 basically leaving 25 years of an asset out there and we
12 still have debt to pay. Kind of like if you have a car.
13 You have a five-year payment and you shut it down after
14 three years and let it sit in the garage, you're still
15 making the payments. We're moving in the direction and I
16 think it can be accomplished.

17 Our concern today is that there's some language
18 in Section 95812 that says if a facility that receives
19 allowances is shut down, then those allowances would be
20 returned to the CARB.

21 Now talking with staff, we understand that might
22 be a bit of a ministerial error that that language really
23 only intended to apply to industrial facilities, not to
24 the electric utilities. Of course, this whole program cap
25 and trade is to give in large part utilities and other

1 entities incentives to do the right thing, to reduce
2 greenhouse gases. And walking away from San Juan is one
3 of the things we're doing to reduce our greenhouse gas
4 footprint.

5 So it becomes a disincentive if we think we have
6 that risk. So we're asking that be relocated to Section
7 95891. That will give us the clarity we need to -- what's
8 going to be a very tough business case to at least provide
9 a bit of benefit economically as we proceed.

10 Thank you for your time.

11 CHAIRPERSON NICHOLS: Thank you.

12 I'm trying to keep score and notes and I hope
13 others are, too, of all these comments. We'll have to
14 wrap them up at the end. Ms. Oneil.

15 MS. ONEIL: My name is Barbara Toole Oneil. I'm
16 a consultant. I've worked in energy and environmental
17 issues for most of my professional life. I worked in
18 environment and fuels.

19 I'm here to speak on behalf of the mine methane
20 and capture protocol. I'm in support of the protocol and
21 I commend the Board and the staff that have worked on the
22 protocol. They were very engaging. They worked very hard
23 to understand the issues.

24 California's been a leader for many, many things.
25 And I think this is an opportunity for California to

1 continue its leadership particularly for mine methane
2 protocol. California has many riches, but one of the
3 things California doesn't have is coal. They don't. So
4 it's difficult to understand the mining industry, to
5 understand that since it is not within our state
6 boundaries.

7 In the coal industry, mining industry, as
8 previous speakers have mentioned, people worry about
9 producing the coal and the coal has provided historically
10 a quality of life that we enjoy today.

11 Coal also has the moniker of being dirty. It has
12 all sorts of other things. And we're moving ahead. One
13 of the things that happens when you mine coal all the time
14 is that you get methane emissions. This is an opportunity
15 to address an environmental issues that is unlikely to be
16 regulated at the federal level, to incentivize the
17 companies that spoke here, like CE2 Capital, to develop
18 projects that will reduce a true environmental issue and
19 reduce the methane and perhaps be able to flare it or use
20 it for on site and beneficial use or cobenefit. I think
21 it's a great opportunity.

22 And again, I commend the staff. They did an
23 excellent job of listening.

24 CHAIRPERSON NICHOLS: Thank you. Thanks for
25 coming.

1 MR. ANDERSON: Thank you, Chair Nichols and
2 members of the Board.

3 My name is Craig Anderson, and I represent solar
4 turbines. We've been manufacturing in California for 87
5 years. And we have 5,000 employees in the San Diego
6 region.

7 While their business leaders remain concerned
8 about the long-term ability to expand our businesses under
9 the Cap and Trade Program, we sincerely appreciate the
10 effort made by staff to understand our concerns. Steve
11 and his group has worked with us extensively, and we thank
12 him for that.

13 We are particularly thankful for the personal
14 visits that were made by Supervisor Roberts and Chair
15 Nichols to our factory down in San Diego. We look forward
16 to working with the staff on the leakage exposure
17 assessments.

18 For today, we urge the Board to adopt the
19 proposed amendments to the assistance factors for the
20 first three compliance periods.

21 Chair Nichols, as you personally saw, our
22 products are used worldwide by governments and businesses
23 to reduce their greenhouse gas emissions through the
24 application of combined heat and power. Many of our
25 customers are here in California, several of them are here

1 today.

2 We recommend that the ARB support the application
3 of CHP by providing full allowance assistance throughout
4 the compliance periods for covered entities using CHP.

5 Again, thank you for your consideration and we
6 look forward to working with the Board in the future.

7 CHAIRPERSON NICHOLS: Thank you.

8 MR. LIEBERT: Good morning. My name is Ron
9 Liebert with the Law Firm Ellis Schneider and Harris. I'm
10 here on behalf of the Wheelabrator Norwalk.

11 Wheelabrator Norwalk is a non-standard QF that
12 provides steam to a State hospital. The Norwalk facility
13 is operating under a pre-AB 32 legacy contract that does
14 not take into account for greenhouse gas costs.

15 We, therefore, support the staff proposal to
16 provide transitional assistance to legacy contracts for
17 the second triannual compliance presented to ensure that
18 legacy contract generators are not detrimentally burdened
19 financially as a result of the inability to pass through
20 GHG costs.

21 We believe the staff proposal is a fair and
22 balanced approach. We also request that the ARB adopt the
23 45-day language today so that legacy contract generators
24 will have certainty that they need that they will qualify
25 for transitional assistance. Thank you.

1 CHAIRPERSON NICHOLS: Thank you.

2 MS. HAYA: I'm Barbara Haya, a research fellow at
3 the Stanford Law School.

4 Thank you for the opportunity to speak today
5 about the proposal mine methane capture protocol.

6 Over the last six months, as a participant in the
7 Mine Methane Capture Protocol Working Group, I saw Board
8 staff work for make sure the methods of measuring
9 emissions reductions from individual projects under the
10 protocol are accurate.

11 But I'm here today because several broader scale
12 issues remain unaddressed. There was large scale
13 over-crediting unless preventative measures are taken.
14 California's offsets program follows pretty dismal
15 experience thus far with other offsets programs that have
16 largely failed to deliver the reductions they claim.

17 California has the opportunity to do this right.
18 Doing it right requires solid analysis and conservative
19 decisions about project eligibility which ensure the wider
20 effects of the incentives created by the protocol are
21 positive and the credits represent real additional
22 emissions reductions.

23 And let me briefly mention three key concerns.
24 One: By allowing all new methane capture from abandoned
25 mines to participate in the protocol, it is possible and

1 perhaps likely the majority of these credit from abandoned
2 mines will be from non-additional projects that were
3 already being built. These are projects that would be
4 subsidizing projects that would have been built without
5 the offsets protocol. To avoid this, the Board should
6 exclude sub-categories of abandoned mines most likely to
7 implement mine methane capture projects on their own.

8 Secondly, there is a risk of weakening
9 implementation of the Clean Air Act rules with respect to
10 greenhouse gas emissions from new and expanded coal mines.
11 This can be solved by refining eligibility criteria by
12 this relatively small portion of possible participating
13 projects, at least until there is more certainty about
14 what these Clean Air Act rulings will look like.

15 Third, we understand that the income generated by
16 offsets credits can substantially improve the profits of
17 some participating mines. I've done an analyses of ten
18 mines and find much larger possible impacts on mine
19 profits than the Board staff has found, particularly at
20 drainage wells and at the gaseous mines where the cost of
21 implementing the mine methane capture projects are the
22 lowest.

23 And given the seriousness of increasing the coal
24 mine methane projects, I believe more refined and
25 especially transparent analysis is needed by the Board.

1 So I urge the Board to only adopt this protocol and any
2 other new proposed offsets protocols after adequate
3 analysis has been done to ensure the protocol will not
4 infuse California's Cap and Trade Program with substantial
5 numbers of false carbon credits. Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Dan Consie.

8 MR. CONSIE: Good morning Chair Nichols and the
9 Board members.

10 My name is Dan Consie, I'm the Asset Manager for
11 Crockett Cogeneration. We are 240 megawatt combined cycle
12 cogeneration facility, and we supply the thermal load for
13 the C&H Sugar Refinery in Crockett, California.

14 We supply C&H with approximately two million
15 MMBTU of steam annually. Were C&H to self-supply this
16 steam, they may be facing a compliance obligation of
17 approximately 135,000 metric tons annually.

18 However, as Ms. Vaughn mentioned earlier, C&H is
19 not a covered entity under the Cap and Trade Program. The
20 entire compliance obligation associated with the thermal
21 load is borne by Crockett Cogeneration. There is no
22 mechanism in the thermal scales contract to pass through
23 that cost of compliance to C&H.

24 I'd like to thank the Board and the staff members
25 for considering the issues that those of us with legacy

1 contracts are facing. I also appreciate the modified
2 staff proposal that just was released that extends
3 transition assistance through the second compliance period
4 for entities such as Crocket Cogen. However, as
5 Ms. Vaughan said earlier, our thermal contract with C&H
6 extends beyond the third compliance period.

7 And therefore, I'm here to request transition
8 assistance for Crockett Cogeneration through the remaining
9 term of its thermal sales contract. Thank you.

10 CHAIRPERSON NICHOLS: Thank you.

11 Tanya Peacock.

12 MS. PEACOCK: Good morning, Chair Nichols,
13 members.

14 I'm Tanya Peacock representing Southern
15 California Gas Company and San Diego Gas and Electric.

16 And first, I'd like to add my appreciation to
17 staff's open and collaborative rulemaking approach. We
18 really appreciate all the time and effort they've spent
19 listening to our concerns and responding.

20 In particular, we support and ask you to approve
21 the new section on natural gas suppliers that provides an
22 allocation of allowances to gas utilities on behalf of our
23 customers. We also support changes to industrial
24 assistance, the addition of the resource shuffling
25 guidelines, and the new offset protocols.

1 We do remain concerned about some of the market
2 monitoring provisions. We have submitted written comments
3 discussing our concerns in detail, but I would just say
4 there is a section that appears to preclude SoCal Gas and
5 SDG&E from auction participation due to circumstances
6 outside of their control. And I note in the Resolution
7 that staff is going to continue to work with compliance
8 entities to resolve some of these issues, and we
9 appreciate that effort.

10 I also note in the Resolution and we support the
11 direction to develop a cost containment plan. But we feel
12 that 2018 would be too late. So we encourage that that
13 plan be developed earlier in the second compliance period.

14 So thank you very much for the opportunity to
15 present these comments. And we look forward to continuing
16 to work with staff to make the cap and trade program a
17 success. Thank you.

18 CHAIRPERSON NICHOLS: Thank you.

19 MS. RIESENHUBER: Good morning, Board and member.
20 My name is Amber Riesenhuber with the Independent Energy
21 Producers Association. IEP is a trade association of
22 independent power producers representing over a 26,000
23 megawatts of in-state generation. We're here today to
24 speak to you regarding legacy contracts. This has been a
25 longstanding issue for EIP, so we're pleased to say we

1 appreciate the staff and Board's movement on this issue.

2 Specifically, we support the proposal to provide
3 relief to legacy contracts with industrial counterparties
4 that are receiving a free allocation. This coverage is
5 designed to provide coverage throughout the duration of
6 the contract. We think that's appropriate.

7 Second, we support the revised staff proposal to
8 provide transition assistance through 2017 rather than
9 2014 as originally proposed. We think this is a
10 substantial improvement to addressing contracts without
11 reasonable cost recovery that are pre-AB 32 contracts.

12 So we support the Board's approval of the revised
13 staff proposal and we agree with the staff that we can
14 address these changes through a subsequent 15-day comment
15 period.

16 I'd just really like to thank the Board
17 especially over the past few months in working with us on
18 this issue. And we really look forward to working with
19 staff going forward. Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 I'm just going to point out that we are about to
22 take up witness number 30, and I now have the third page
23 of the list of people who have asked to testify and that
24 brings us to 60. So I'm going to do two things.

25 First of all, I'm going to cut off new speakers

1 from this item. People can come speak on the public
2 comment period if they absolutely feel that they must
3 speak. But I think 60 witnesses covering every interest
4 group and every issue is sufficient. If there is some
5 hardship case that somebody wants to make to the clerk,
6 they can do that. But they're going to have to come to
7 me, because I really feel you've had enough time to decide
8 if you want to speak or not. And hopefully we will hear
9 all points of view.

10 Secondly, people have been using their -- not
11 everyone has used their full three minutes, and we
12 appreciate that. But for those of you who have not spoken
13 yet, I'm going to stipulate that you thank the staff.
14 I'll consider that every single person here thanks the
15 staff for their good work on these issues because it's
16 obvious they did a good job. And anything else you can do
17 in all seriousness to tighten up the testimony would be
18 much appreciated. Thank very much.

19 MR. STRONG: Good morning. My name is Aaron
20 Strong from Stanford University.

21 I'd like to start by thanking the staff for their
22 incredible work. And in all honesty, I've been working
23 with the staff very closely for the last six months
24 participating in the technical working groups that have
25 been used to help develop the mine methane offset

1 compliance protocol.

2 And I participated in this process with goal of
3 helping the ensure the environmental integrity of both
4 this protocol and of the Cap and Trade Program as a whole
5 through careful analysis, research, and devoted attention
6 to detail.

7 I'm not from an advocacy organization, nor do I
8 have any financial interest in outcome of the protocol.
9 I'm here in my academic capacity.

10 I participated in the process out of the firm and
11 profound belief that where many other carbon offsets
12 schemes in other cap and trade programs have failed or
13 been ineffective due to flaws in their initial design that
14 California is in a unique position to finally get this
15 right by ensuring that the market does not become flooded
16 with junk credits that do not represent real reductions.

17 In the technical working group, we discussed the
18 details of hyperbolic declining curves used to estimate
19 base line emissions from abandoned coal mines and the
20 global warming potentials of non-methane hydrocarbons
21 leaking from mines.

22 As a doctoral student with an amazing opportunity
23 to engage with Board staff on these scientific questions,
24 I have to tell you being part of this process was humbling
25 and inspiring. In writing the rules to address many of

1 these issues, the staff conducted conservative analyses
2 that erred on the side of caution in order to avoid
3 crediting emissions reductions that aren't real. We
4 applaud this effort and commend staff on their tremendous
5 attention to detail.

6 Having participated in this process actively and
7 having seen the impressive work of the staff in preparing
8 this protocol, I'm here today to say simply we aren't
9 there yet. In my academic opinion, this protocol is not
10 quite ready for adoption. My message put succinctly is
11 this: More work needs to be done to assess the strong
12 possibility of the parole increasing emissions by making
13 coal mining more profitable at some mines and truly
14 conservative business as usual assumptions need to be made
15 when setting eligibility criteria for projects at
16 abandoned mines in order to avoid generating substantial
17 non-additional credits. The details of our analyses and
18 suggestion are included in our submitted written comments.

19 Now, I'm not an offsets opponent. I love
20 offsets. I think they're great. My concern is that three
21 years ago I don't want to see a scientific paper come
22 out that says half of the offsets being generated from
23 this protocol are junk. Let's take more time to get it
24 right. Take the time to make sure we're crossing every T,
25 dotting every I. And we can do this. So I urge the Board

1 not to adopt this draft yet and ask staff to draft the
2 full analysis necessary to ensure the program's long-term
3 integrity.

4 Thank you so much.

5 MS. PAEFFGEN: Good morning, Chair Nichols,
6 members of the Board, staff.

7 My name is Elise Paeffgen. I'm from Alston &
8 Bird.

9 I'd also like to begin my thanking the staff
10 particularly for increasing --

11 CHAIRPERSON NICHOLS: I'm sorry. I think
12 everyone misunderstood me. I was saying you don't need to
13 do it. Cut it out. That will cut ten seconds for every
14 speaker. That will add up to an hour at the end of the
15 day. May be you can wave to them. Blow them a kiss.
16 Bring them gifts. Thumbs up. Thumbs up.

17 BOARD MEMBER BALMES: I don't think they
18 understood stipulate.

19 MS. PAEFFGEN: We are very grateful particularly
20 for the increase in the industry assistance factor.

21 And I'm here to talk specifically about the
22 leakage risk classification for new entrants. We're
23 grateful that new entrants have an opportunity to have a
24 leakage risk classification factor assigned to them. If
25 they're not currently in the program, and they come in and

1 are not listed in Table 8.1 but they have the first three
2 digits of a NAX code in that table, they will be put into
3 the low leakage risk classification.

4 This is helpful to an extent because they are
5 able to get an industry assistance factor. But we are
6 concerned because there's language that states that
7 they'll be in the low leakage risk classification until a
8 leakage risk classification is added for that sector. And
9 we'd just like a bit more clarity on how factor will be
10 assigned to that sector with the process going forward.
11 This presents a concern for industry that is considering
12 increasing production in California, whether they become a
13 new entrant and how they will be treated and how many
14 allowances they all be allocated. Thank you.

15 CHAIRPERSON NICHOLS: Thanks.

16 MR. STRONG: Good morning. Derrick Walker with
17 Environmental Defense Fund.

18 As Chair Nichols alluded to earlier, California's
19 program is making a huge difference in places near and
20 far. In fact, on Monday, Governor Brown and his
21 counterparts from Washington, Oregon, and British Columbia
22 will sign and make an historic announcement on a joint
23 partnership to address several issues, including a price
24 on carbon.

25 We agree with most of today's proposed

1 amendments, which taken together will bolster the
2 long-term viability of this program. We have filed
3 extensive comments, with emphasis on our support for a
4 cost containment mechanism, a rice offsets protocol, which
5 I heard discussed earlier, which includes aggregation, and
6 a reasonable allocation and consignment auction for
7 entities in the natural gas sector.

8 There is, however, one element of today's package
9 that creates tremendous concern for us. That is the
10 extension of transition assistance to the refining sector.
11 We believe that this decision is premature as research has
12 not been finalized to demonstrate its necessity. In fact,
13 WSPA's own analysis found that 100 percent transition
14 assistance is unnecessary, not to mention that it won't
15 make much of a difference to these very large petroleum
16 companies.

17 We have excerpted WSPA's analysis in our written
18 comments that we filed to the Board.

19 What's more, the extension of this transition
20 assistance amounts to between a 550 million and \$750
21 million give away, money that could be invested to improve
22 the environment and public health in communities that have
23 suffered for decades from the effects of air pollution
24 from refineries. We urge the Board to reject this
25 extension of transition assistance.

1 In closing, I want to strongly commend the
2 language in the resolution today that asks the Executive
3 Officer to begin working on post 2020 cap and trade along
4 with cost containment. This is an essential piece in
5 maximizing the overall economic and environmental benefits
6 of this historic program. Thank you very much.

7 CHAIRPERSON NICHOLS: Thanks.

8 MR. WHITE: Good morning. Madam Chair and Board
9 members.

10 I'm John White with the Center for Energy
11 Efficiency and Renewable Technology. We are here today to
12 express our strong opposition to the mine methane
13 protocol. I want to leave to others the discussion about
14 subsidies and details for the coal industry and the
15 practical aspects of the protocol, because my plea to you
16 is to consider this is the cart before the horse. And we
17 have other work that's more important that needs to be
18 done with respect to getting a handle on methane.

19 One of the disappointments that we have with the
20 implementation of AB 32 has been the failure until very
21 recently to get to work on short-lived pollutants,
22 particularly methane. This is a complicated subject.
23 It's also reflective of updated science. Methane is a
24 pollutant. It's an air pollutant that causes ozone. It
25 should be regulated and treated as such, starting with

1 California but also EPA.

2 We think that there are available technologies.
3 But more importantly, in terms of leadership and in terms
4 of sending the right signals to the market, we think that
5 this Board should step back from this protocol until it
6 has developed a comprehensive framework for the control,
7 the measurement, and the reduction in addition of methane
8 in California.

9 We think that the context of that comprehensive
10 plan, which we believe is within sight. We're pleased as
11 we said yesterday that it is on the agenda for
12 consideration. But we think that all the support for this
13 mine methane protocol should be deferred until that day
14 when we have a complete plan for the measurement and the
15 regulation and the reduction of emissions of methane. And
16 to send a signal to EPA that it's long past time they
17 eliminated the exemption from methane as an air pollutant.
18 This originated because in the early days of air pollution
19 science, it was thought that methane was non-reactive with
20 respect to the formation of ozone. We now know based on
21 the most recent evidence that is not the case. It causes
22 ozone for slowly. It's less reactive, but still reactive
23 and causes rural ozone, in some cases, significant
24 amounts.

25 So we think it's time to reboot and readjust our

1 planning and our regulatory strategy to focus on methane
2 as an air pollutant and a very powerful global warming
3 agent, and then consider this protocol once we've done
4 that work. Thank you for your consideration.

5 CHAIRPERSON NICHOLS: Thank you.

6 Jerry Gureghiam followed by Frank Harris and Mark
7 Krausse.

8 MR. GUREGHIAM: Good morning, Madam Chairman,
9 members of the Board.

10 My name is Jerry Gureghiam. I'm the Chief
11 Executive Officer of Green Holdings, a Los Angeles based
12 developer of mine methane capture projects.

13 Thank you for providing me with the opportunity
14 to speak in support of the mine methane protocol today.

15 I've been authorized to make these comments on
16 behalf (inaudible) and Quebec's biothermica which are also
17 in the business of developing MMC projects.

18 Our companies will be responsible for the largest
19 share of off sets that will be generated as a result of
20 adopting this protocol.

21 Madam Chair, I'd like to take the brief time
22 allotted to me address an issue which has been raised in
23 the past which may still be of concern to some members in
24 adopting the MMC protocol. Namely, will MMC projects
25 create unwanted subsidies for the coal industry or give a

1 new lease of life to coal mines which should otherwise be
2 shut down.

3 Simply put, MMC is not the source of municipal
4 profits for coal mine operators. Why? For these reasons:

5 Number one: They are coal companies, not offset
6 project developers. They lack the necessary skills and
7 expertise to develop these projects and have no strategic
8 reason to build that capability.

9 Secondly, these projects do not represent the
10 source of material profits. Even at an extremely gassy
11 mine, each 100 tons of coal releases enough gas for just
12 one offset.

13 Under any reasonable assumptions about pricing
14 and margins, there just isn't enough bang for the buck in
15 the offsets of MMC project to impact the economic fortune
16 of coal mines.

17 For these and other reasons, mines are not going
18 to develop MMC projects on their own. I've spent the last
19 several years trying to convince mine operators to allow
20 us to develop these projects. Believe me, it's tough
21 enough to sell when I'm offering to pay for all the cost
22 and do all the work. There is a reason you won't find a
23 single MMC project that's been developed to date without
24 an offset project developer.

25 The task of developing these projects and

1 delivering large offset volumes needed to contain carbon
2 prices rests with companies like ours, entrepreneurial and
3 willing to take a chance on our uncertain outcome.

4 Madam Chair, we are small companies and we have
5 more in common with Silicon Valley start-ups than with big
6 coal. Any revenue we can generate from the sale of
7 offsets will be used to pay for significant capital out
8 lays such as project require and to hopefully earn a
9 little profit for us on the costs we incur to develop and
10 operate the projects. Some of the funds will be used to
11 delve new materials, new skills and processes, or new
12 equipment, which will find its way in other pollution
13 control applications in California.

14 Madam Chairman, members of the Board, by voting
15 to approve the MMC project today, you'll be creating an
16 incentive for innovation and entrepreneurship when none
17 exists. You'll be reducing emissions from significant
18 sources that will otherwise go unaddressed. You'll assure
19 the supply of offsets which everybody agrees is crucial
20 and you will most definitely not be able enabling the coal
21 industry.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you

24 MR. HARRIS: Hello, Chair Nichols, members of the
25 Board. My name is Frank Harris. I'm here to represent

1 Southern California Edison. We submitted detailed
2 comments, and I want to just highlight a few items from
3 those comments.

4 Particularly, I want to encourage staff to
5 continue to clarify the information, submission, and
6 attestation requirements to enable auction participation
7 and program compliance. And this includes the treatment
8 of confidential information and the release or provision
9 of information to other regulatory agencies such as the
10 Public Utilities Commission.

11 I also want to encourage staff to continue
12 efforts to address cost containment goals established by
13 the Board in Resolution 1251. We absolutely support the
14 cost containment measure that has been proposed to date.
15 We don't think that it's complete. We don't think it's
16 efficient. And we encourage the staff to continue to work
17 on that.

18 As I said, there are a number of other comments
19 that are included in our written comments that I'll leave
20 up to staff to review. I wanted to, however, just
21 congratulate staff on the mine methane protocol and offer
22 our support for that protocol. It's appropriate the
23 Board reviews this protocol along with dialog and cost
24 containment. All of the economic forecasts that have been
25 used in developing the rules and the processes here for

1 the Cap and Trade Program included the full provision of
2 offsets in terms of the forecasting for the price.

3 Indeed, the study showed allowance cost would
4 increase significantly without the use of offsets. So we
5 have to look at the mine methane protocol as a significant
6 part of the cost containment program.

7 Further, there is a great example of a way to
8 reduce emissions from an existing economic activity. It's
9 hard for me to understand how moving backwards would help
10 to reduce the release of methane. You have in front of
11 you a protocol that can go a long way towards pulling a
12 great amount of methane out of the atmosphere. Not
13 approving this is not going to help that.

14 As the staff indicated in their presentation, the
15 protocol does not in any way rule out future regulatory
16 action on the part of the EPA or any states or regions
17 where the protocol might be applied.

18 So I encourage the Board to approve the protocol.
19 Finally, once again, this would also show that California
20 can demonstrate how to provide incentives to reduce a
21 potent greenhouse gas in a way that works for both the
22 environment and the business community.

23 Thank you very much.

24 CHAIRPERSON NICHOLS: Thank you.

25 MR. KRAUSSE: Good morning, Chairman Nichols,

1 Board members.

2 Mark Krausse on behalf of Pacific Gas and
3 Electric Company.

4 I want to begin by stating our strong support for
5 the amendments that you have before you. The inclusion of
6 the natural gas sector into cap and trade was I think a
7 subject with potential but working with staff and with
8 Board members we appreciate the help and we think we got
9 it just right.

10 So support the regulation. If I want to pick up
11 where Frank left off on the mine methane protocol. PG&E
12 supported cap and trade and supported this program in
13 large part because of where we saw offsets playing a
14 valuable role in bringing prices -- keeping prices
15 contained. So mine methane is an area of very potent
16 greenhouse gas that we think the Board's protocol is doing
17 exactly the right thing. We urge your support on that.

18 I want to just echo also a point that the gas
19 utility group representative made about withholding, the
20 withholding provision in the regulation. This is an issue
21 where for a late report or under-report of number of tons,
22 a handful of tons perhaps, a utility could lose their
23 entire allocation. It's not clear in the rule at all that
24 wouldn't happen for even if it's gas report, perhaps for
25 the electrification and vice versa.

1 So we propose language that gas utility group
2 mentioned as well in there our joint letter to provide
3 some proportionality if you have a report that's late, you
4 would withhold the allowances only for that. That's one
5 issue.

6 I would say probably the most important I think,
7 well, for a number of us, certainly for Pacific Gas and
8 Electric is cost containment. The staff's resolution on
9 cost containment gets it right. Staff admitted that they
10 haven't gone far enough on developing cost containment.
11 We're concerned about APCR in the out years. But solving
12 that in the out years doesn't do anybody any good in terms
13 of reducing angst. If that could be approached sooner
14 rather than later and we would propose bring it back to
15 the Board in January of 2015. That's the beginning of the
16 second compliance period. That's when we all have concern
17 about how the next round of cap and trade begins to look.
18 We urge the Board to put that date, January 2015, into the
19 resolution.

20 I think that's most of it. We were caught a
21 little unaware by Resolution language on but for CHP. It
22 appears that compliance obligation is going to shift back
23 to the utilities. We'll work with staff, but this morning
24 is the first we saw of it.

25 So I thank you. And I'll stop.

1 CHAIRPERSON NICHOLS: Thank you. You get extra
2 credit, to be delivered in 2015.

3 Bruce Ray, Michael Wang.

4 MR. RAY: Chairman Nichols, members of the Board,
5 good morning.

6 My name is Bruce Ray. I'm with Johns Manville,
7 we're a Berkshire Hathaway company making among other
8 things many different forms of insulation, including
9 building insulation. We have one of our flagship North
10 American manufacturing locations. It's in Willows in
11 Glenn County about an hour north of here where we make
12 fiberglass building insulation.

13 I think as you know, energy efficiency is one of
14 the cheapest and quickest ways to achieve greenhouse gas
15 emission reductions. And one of the best ways to achieve
16 that energy efficiency is improving buildings with
17 additional insulation.

18 You heard Mr. Crane speak earlier. We endorse
19 his comments. We are a member of NAIMA and also endorse
20 the written comments submitted by NAIMA. We just want to
21 drive home the Johns Manville support for the staff
22 recommendation to move our industry category from a medium
23 risk to a high leakage risk category. And as explained in
24 the NAIMA comments, there are two principle reasons for
25 this. One is the presence of many additional fiberglass

1 building insulation manufacturing locations in the western
2 United States, including just outside the border of
3 California.

4 And the other reason that's explained in detail
5 in the written comments is the continuing generally low
6 level of capacity utilization in the fiberglass building
7 insulation industry. This is due to unfortunately the
8 continuing low level of new housing starts in the
9 United States. So ask that you support the staff
10 recommendation in this regard. And unless you have any
11 questions, I thank you for letting me address you.

12 CHAIRPERSON NICHOLS: Thank you.

13 Mike Wang.

14 Mr. WANG: Good morning. Mike Wang with the
15 Western States Petroleum Association.

16 WSPA has been a long-time supporter of market
17 mechanism and cap and trade and we continue to do so.
18 This morning I want to highlight five issues from our
19 written comments.

20 First, we support the coal mine methane offset
21 protocol. As you know, offsets are a critical cost
22 containment process so additional protocols are important.
23 We support ARB's use of the CWB, and we support the
24 changes to the MRR that would support the change to the
25 CWB.

1 We support the ARB's proposal to increase the
2 industry assistance factor for the second or third
3 compliance period. We are encouraged that the Board will
4 continue to study the issue of trade exposure and leakage
5 and look forward to the results when they come up with
6 respect to a third compliance period.

7 We have continuing technical concerns that have
8 been raised associated with hydrogen plant, the treatment
9 of a hydrogen plant, electricity and steam and metering
10 requirements.

11 These could impact allowance allocations and
12 facility operations. So we think that important that we
13 continue to work with staff in the 15-day package and in
14 the ensuing weeks and months to try to get resolution on
15 these issues.

16 Finally, we recognize that staff is planning to
17 make changes to reduce or remove administrative burden,
18 and we support those efforts as well. Thank you.

19 CHAIRPERSON NICHOLS: Thanks.

20 Bill Magavern.

21 MR. MAGAVERN: Good morning. Bill Magavern with
22 the Coalition for Clean Air.

23 I promise this is the last time you'll hear from
24 me this month. I just want to focus on three areas where
25 we suggest the Board make changes to the proposal.

1 The first is we oppose the continued give-away of
2 allowances to the industrial sector. The primary
3 beneficiaries are the big oil companies. These are among
4 the biggest polluters in the state and among the most
5 profitable companies in the entire world. The Expert
6 Economic Advisory Committee that ARB charged with advising
7 on the allocation process recommended auctioning virtually
8 all the allowances and specifically warned against over
9 allocating the transition allowances.

10 We, of course, agree that you need to minimize
11 leakage. That's a good idea. It's required by AB 32.
12 But in this case, there's been no demonstration that these
13 facilities are at risk for leakage. So we urge you to end
14 that transition assistance and not give away this valuable
15 public asset that the value of which should be used for
16 the benefit of the public, not for those companies.

17 Secondly, we oppose the exemption for the
18 incinerators. There's no reason to give any special
19 privileges for garbage burning when instead we should be
20 following the State's adopted hierarchy which emphasizes
21 first reducing, reducing, recycling, and composting.

22 And thirdly, we oppose the adoption of the mine
23 methane protocol. Others have testified as to the
24 technical reasons why it shouldn't be adopted. I would
25 just ask you to look at fundamentally what's happening

1 here if this is adopted. You have a law which requires
2 California to reduce California's greenhouse gas
3 emissions. If this is adopted, then instead, what will
4 happen is the state's polluters, instead of reducing their
5 own pollution here in California, will send money out of
6 state to the companies that mine coal, which can then use
7 that money to dig up more coal, our dirtiest energy
8 source, so it will be burned in other states and possibly
9 other countries very much against what we're trying to do
10 to reduce CO2 emissions. I would ask is that really the
11 direction you want to go implementing this law.

12 Thank you.

13 CHAIRPERSON NICHOLS: Thank you.

14 Ms. Rooney.

15 MS. ROONEY: Good morning. Chair Nichols and
16 members of the Board, my name is Emily Rooney. I'm with
17 Agricultural Council of California. Ag Council represents
18 approximately 15,000 farmers across the State of
19 California representing from small farmer-owned businesses
20 to some of the world's best known brands, including food
21 processors and cooperatives. Our comments are consistent
22 with the comments we submitted back in August on one of
23 the original drafts of this proposed regulation.

24 Regarding the industry assistance factor, Ag
25 Council is working with the Air Resources Board and its

1 private contractors to work on a leakage analysis for the
2 food processing industry. And we're also working on the
3 product-based emissions benchmark. So this process has
4 taken a little bit longer than anticipated. But we are
5 slowly working through that process so we appreciate the
6 extension of free allowances through the second compliance
7 period.

8 Regarding the new natural gas program, we also
9 support the language which would provide free allowances
10 for suppliers to sell on the market for natural gas. I'm
11 trying to abbreviate my comments here.

12 There is one area of concern, and we're just
13 seeking clarification as to the need to publish the
14 efficiency benchmarks in the regulation. There are a
15 number of single operators that will be setting some of
16 those benchmarks in the regulation. And so we're
17 concerned that this could -- this information could end up
18 being provided to some of their competitors. But we will
19 work with staff to get through this process as well.

20 But overall, we are looking forward to working
21 through the leakage analysis and the benchmarks. And we
22 just appreciate the time that everybody has taken. Thank
23 you very much.

24 CHAIRPERSON NICHOLS: Thank you.

25 With had a slight shuffling of the order I guess,

1 and I left out Leonard Pettis from Cal State.

2 MR. PETTIS: Good morning, Chair Nichols, Board
3 members, staff.

4 Leonard Pettis, California State University.

5 We stand in support of the resolutions,
6 particularly the ones for but for combined heat and power
7 and legacy contracts. Those are significant to us. And I
8 think most of us here can appreciate the California State
9 University. We have at least three members of the Board
10 who have matriculated through our university system. And
11 if our numbers are right, at least one in ten of my
12 colleagues behind me are from the system.

13 So as taxpayers, let us all be aware that we've
14 already spent ten million in purchasing allowances. So
15 that we can continue to operate these plants. So we are
16 very committed to managing our budgets, and at the same
17 time being responsible for our environment and providing a
18 clean, safe, and healthy environment for our students to
19 live and work in.

20 So we're pleased with the fact that the staff
21 listened to us. We've learned a lot from you and
22 hopefully that you have learned a lot from us. Special
23 thanks to Steve Cliff and Trish Johnson who stayed late
24 many nights and helped us navigate through the complex
25 application process so that we could participate in the

1 auction process. We want to continue to do that.

2 We want to continue to work with you. We hope we
3 can revive some of our canceled studies that we have done
4 for combined heat and power plants on campus, because
5 those are contributors to relieving stress on the grid.
6 We know this Board is also in a larger effort coordinating
7 with the Energy Commission and the Public Utilities
8 Commission to solve the grid constraints as a result of
9 closing over 8,000 megawatts of once-through cooling
10 plants. So all of this ties directly into our
11 environmental concerns.

12 We appreciate again what has been done. We look
13 forward to working with you in the future. Thank you.

14 CHAIRPERSON NICHOLS: Thanks.

15 Ed Moreno.

16 MR. MORENO: Good morning. Ed Moreno with Sierra
17 Club California.

18 As you will hear, Sierra Club shares NRDC's
19 concerns about the coal mine methane protocol. We want to
20 underscore two points. One is technical. We believe the
21 protocol isn't ripe and needs additional analysis. The
22 difference between the Stanford's researcher's analysis
23 and the staff CARB analysis are significant enough to
24 warrant a more careful review and consideration.

25 For instance, there are significant differences

1 in the assumption about how this protocol will be applied
2 and how the coal mining industry works and will respond.

3 Another simply is policy choices. Is devising a
4 protocol for offsets that will keep coal mines open really
5 what California legislators had in mind when they passed
6 AB 32? Is this of the best or right way at the moment to
7 reduce overall greenhouse gases? We don't believe it is.

8 And therefore, on behalf of the Sierra Club, I
9 respectfully ask that you reject the protocol as designed.
10 Thank you.

11 CHAIRPERSON NICHOLS: Thank you.

12 MR. PEDERSEN: Good morning. Norman Pedersen for
13 Southern California Public Power Authority.

14 SCPPA submitted a written comment on over 20
15 topics. I'll hit some highlights. First, SCPPA
16 appreciates a proposed provision that would make
17 additional allowances available through the allowance
18 price containment reserve if there were a short-term price
19 spike. However, the new provision would not be sufficient
20 to contain allowance prices if there were a long-term
21 supply/demand imbalance. More work needs to be done.

22 Second, SCPPA appreciates the new section
23 included in the regulation the resource shuffling save
24 harbors that were developed in 2012. However, SCPPA
25 recommends a couple of clarifications, particularly a

1 clarification that there may be other legitimate
2 transactions that aren't captured by the safe harbors.

3 Third, there is a provision in the 45-day
4 language requiring that directly allocated allowances must
5 be surrendered if a facility shuts down or ceases
6 production.

7 We understand, as I think George Morrow mentioned
8 earlier, that the staff intends for this provision to
9 apply only to industrial facilities, not electric
10 distribution utilities that shut down fossil fuel
11 generation. However, the phrase of the section is
12 ambiguous. The section should be clarified.

13 Fourth, there is a new requirement that renewable
14 energy credits or RECs must be retired in order to claim
15 an RPS adjustment.

16 The CEC and the CPUC administer the RPS program.
17 The CEC and the CPUC have established rules governing the
18 retirement of RECs for POUs and IOUs respectfully. The
19 ARB should not be developing REC retirement rules that may
20 be at odds with CEC or CPUC rules and which make it more
21 difficult for utilities to meet their RPS goals. The ARB
22 should adopt the same approach for the RPS adjustment RECs
23 as for specified source RECs, namely, require the RECs
24 serial numbers to be reported without requiring that the
25 RECs be retired in the same year for which the RPS

1 adjustment is claimed.

2 Fifth and lastly, a new section would bar an
3 entity's participation in an auction if the information
4 provided in the entity's auction or account application
5 changes 30 days before or 15 days after an auction. If an
6 entity wanted to participate in all four auctions each
7 year, the entity would have to make sure nothing in its
8 auction or account application changed for 180 days out of
9 the year. That's excessive and should be changed. We
10 hope to see 45-day language that makes provisions
11 consistent with these comments and our written comments.
12 Thank you.

13 CHAIRPERSON NICHOLS: Thank you.

14 MR. LARREA: John Larrea with the California
15 League of Food Processors. Thank you.

16 And Madam Chair, I'm sorry, but I'm just going to
17 have to violate the stipulation for staff because many of
18 our members are family-owned businesses. And those that
19 aren't any more still retain that characteristic within
20 the corporate identity. And David Allgood in working with
21 us over the past three years has had the unenviable task
22 of walking into the living rooms of the families and
23 telling you cannot longer do business in the way you've
24 been doing it and you have to change. That was tough.

25 But over these three years, he has really

1 obtained the trust and the respect of our corporate
2 businesses to the point where I didn't even think he could
3 get that far. So we are looking forward to working with
4 you to continue to work on the benchmarks. I had to get
5 that in.

6 CHAIRPERSON NICHOLS: We'll penalize you with a
7 donation to Charity.

8 MR. LARREA: In his name. Maybe we'll name a can
9 of beans after him.

10 With regards to the staff proposal, we think the
11 staff proposals reflect an increasingly deeper
12 understanding of the impacts of this program on businesses
13 and how hard it is for us to be able to comply in a manner
14 that is going to be acceptable. We think these current
15 proposals make this program much stronger, make it less
16 costly, and make it more efficient.

17 And in that regard, I think it also gives us a
18 step towards making it more transportable, more attractive
19 to other states and other countries so they may adopt it.
20 We think it has a long way to go still. However, we're
21 more than willing to continue to work with staff and with
22 the ARB to try to make this program the best it can be and
23 actually be a program that other states and other
24 countries can adopt. Thank you.

25 CHAIRPERSON NICHOLS: Thank you so much.

1 MR. BRUNELLO: Board members, staff, my name is
2 Tony Brunello. I represent represent CE2 Carbon Capital
3 and several other offset providers.

4 I had other comments prepared, but I want to hit
5 on two key points. One is about this is in support of the
6 mine methane protocol. First, I've heard quite a few
7 comments that it would be better to have an academic peer
8 review process for the mine methane protocol moving
9 forward and potentially delay.

10 I would say I'm amazed at how long it has taken
11 to get to today to pass the coal mine methane protocol.
12 At this time back in 2009, we assumed there would be
13 dozens of offset protocols that would be approved through
14 ARB. The last time that protocols were approved was 2003.
15 The amount of scrutiny that has gone into this existing
16 protocol has been unprecedented in my mind. Much of the
17 material that has gone into this was developed back as
18 late as 2007-2008.

19 Staff have been more open than I've ever seen and
20 transparent and trying to bring in as many parties. And
21 even proactively working with some of the groups that have
22 talked today to give even more and as much information as
23 possible and go out of their way to help them. I really
24 commend the staff. I know that's what we want to say.
25 It's been amazing over the last couple years on that. I

1 think all of you should be commended. Obviously, there
2 are base lines and additionality components and of course
3 whatever is going through is going to be additional from
4 what has been done anyway.

5 My second point is leadership. And I really
6 think that if this protocol is adopted, it's something
7 California should be proud. Of last time I read the
8 paper, the coal mine industry is not doing very well
9 across the United States. I think the Air Resources Board
10 has played a key role, whether it renewable portfolio
11 standards, clean cars, et cetera. This protocol you
12 cannot have an influence in other states, but you can have
13 some voluntary efforts in coal mines across the
14 United States. I think it's something that ARB should be
15 proud of to be able to highlight the fact there's over 70
16 million tons of methane being released from coal mines
17 across the United States each year and not much is being
18 done about it.

19 So I would agree with NRDC and many other parties
20 something needs to be done with this nationally. This is
21 a great pathway to try to help in that effort and send a
22 signal to the U.S. something needs to be done. So thank
23 you.

24 CHAIRPERSON NICHOLS: Thanks.

25 MS. WELCH: Good morning, Madam Chair, members of

1 the Board and staff.

2 My name is Gail Welch. I'm with Qualcomm
3 telecommunication company headquartered in San Diego,
4 California. We submitted comments online.

5 We are in the Cap and Trade Program because of
6 our investment in combined heat and power to power our
7 campus offices, labs, and data centers. We came here
8 today looking actually to address the 2013 and '14 first
9 compliance period exemption on but for CHP, which as you
10 know has been recognized for industrial energy Efficiency
11 and reducing greenhouse gases. Our regional intent was to
12 tell you for the issue of allowances beyond 2015, we felt
13 it was necessary to treat all but for CHP equitably
14 whether it was a public university, public or private
15 entity.

16 This morning, we did find out that the CARB will
17 not be adapting the reg as proposed and just released some
18 amendments that would we feel extend the uncertainty as
19 CARB continues to work a solution. We would like to work
20 more closely with you to better understand the impact of
21 today's amendment that was released. And we continue to
22 be concerned until the regs are adopted particularly for
23 the near term 2013 the uncertainty may force us to
24 unnecessarily incur a significant cost to purchase
25 allowances in order to meet our current CARB requirements.

1 As the registration currently stands, we are as
2 well as other but for CHP facilities covered entities
3 without an allowance allocation.

4 With respect to 2013-14, we appreciate CARB
5 providing a patch for these but four facilities for the
6 first compliance period through the limited exemption for
7 thermal emissions, but we feel this doesn't solve the
8 issue for Qualcomm and other but for entities.

9 One of the reasons is because the formula only
10 works for smaller CHP systems and actually discourages CHP
11 investment to meet additional new growth.

12 Our other concern with 2013 is with requiring the
13 application process. We addressed this in our comments.
14 We feel CARB already has this information from our annual
15 reporting to approve entities for the exemption.

16 I would like to point out that the California
17 Clean Distributed Generation Coalition has submitted
18 comments online in support of our comments here today.

19 And in closing, we urge CARB to respond to our
20 concerns and in particular to provide an equitable
21 solution to provide allowances beyond 2015 to all but four
22 entities, whether public or private, who have demonstrated
23 early action and energy Efficiency in reducing greenhouse
24 gas.

25 Thank you. We look forward to increased

1 communication with the Board, the staff. And thank you
2 for your time.

3 CHAIRPERSON NICHOLS: Okay. Thank you.

4 Gary Geno, Julia Bussey, Erica Kent.

5 MR. GENO: Good morning. And thank you for the
6 opportunity.

7 My name is Gary Gero, the President of the
8 Climate Action Reserve. We're very pleased to be here
9 today to support the adoption of the mine methane
10 protocol. And also very pleased that it's based on work
11 that we did at the Climate Action Reserve. I was just
12 looking back at the dates to see an anniversaries in light
13 of Kassandra. It was almost to the day, just one day off,
14 four years ago that we adopted our version of this
15 protocol.

16 Our protocol was really based on a deep analysis
17 of the circumstances regarding mining. We brought
18 together technical experts from around the country, looked
19 at mining operations, and really did a deep dive into
20 determining what is truly additional in these
21 circumstances and our protocol that is now forming the
22 basis of the ARB protocol really sought to limit and
23 provide exclusions to keep out non-additional projects.

24 We are very happy to be part of the ARB's
25 technical work group in this regard as well and help

1 inform that process. And I think that this is, in fact, a
2 very good protocol because the reductions can be very
3 accurately measured. They are, in fact, permanent
4 emission reductions. The ownership of those reductions is
5 always very clear. And as you've heard, there is a large
6 potential. All of those things are the things that you
7 want in an offset protocol.

8 I will also say that the destruction of the low
9 concentration methane from ventilation air systems, which
10 is a component of this protocol, is a new and innovative
11 application of technology. That's exactly what AB 32 is
12 looking to do is to drive new and innovative applications
13 of technology and certainly one of the key benefits of
14 offsets themselves. So I think there is a lot of good
15 reason to support this protocol.

16 I'll say that we have heard a number of comments
17 about the economics and whether, in fact, this will drive
18 additional mining. I guess the short -- my short response
19 to that would be that if there are profitable economic
20 opportunities for mines, mine operators today don't lack
21 the capital or the access to capital to implement those
22 opportunities. So any additional revenue -- and this is
23 going to be small relative to the overall revenue for a
24 mine -- is not going to drive them into unprofitable
25 activities. They're already capturing those profitable

1 ones.

2 With that, I want to say thank you for the
3 opportunity. We do strongly support the adoption of this
4 protocol today. And I will seed my 30 seconds.

5 CHAIRPERSON NICHOLS: Thank you. Much
6 appreciated.

7 Ms. Bussey.

8 MS. BUSSEY: Thank you. My name is Julia Bussey.
9 I'm representing Chevron today.

10 Chevron is very pleased that ARB is considering
11 adoption of several new policies that represent
12 significant improvements in the Cap and Trade Program, the
13 first of which is industry assistance. This industry
14 assistance factor recognizes the competitive environment
15 that refining and other energy intensive and trade-exposed
16 industries faced. And if left unchanged, that competitive
17 disadvantage could lead to leakage and significant impacts
18 on California's economy. We believe this change is really
19 a wonderful and important change to make. We also look
20 forward to working with the Air Resources Board on the
21 studies that are being done to evaluate trade exposure
22 next year.

23 Secondly, we would like to offer some support --
24 a lot of support for cost containment measures. The cost
25 containment measures that are considered will go a long

1 way towards addressing our concerns regarding potential
2 high prices in the short term. We agree with many of the
3 other companies that have stated that we do think that
4 cost containment measures should be considered earlier
5 than 2018. And we trust that we will be able to work
6 through and figure out really a better way to address cost
7 containment in the long term.

8 Lastly, we support the mine methane capture
9 protocol. And we are puzzled why there are parties who
10 think that this protocol is problematic. We have worked
11 in great depth with the Air Resources Board staff to
12 ensure that this protocol is robust. We believe that it
13 is very technically sound. And we believe that it
14 introduces an incentive to destroy methane very simply
15 that would not otherwise be captured. It's very hard to
16 understand why that could be a bad thing to do.

17 And then lastly, we would like to raise that we
18 are concerned with some of the proposed changes regarding
19 market and administrative burden. But we notice those
20 will be addressed in 15-day changes, so we look forward to
21 working with you.

22 And I seed my 47 seconds.

23 CHAIRPERSON NICHOLS: Thank you.

24 Erica Kent, Mike Smith, Lisa Bowman.

25 MS. KENT: Good morning. My name is Erica Kent.

1 On behalf of the United Steel Workers and our ten
2 unionized oil refineries, we offer the following
3 observations and recommendations for the Board and CARB
4 staff to consider in the implementation of the Cap and
5 Trade Program. California has a strong tradition of
6 demonstrating that a healthy environmental and strong
7 economy can work hand in hand. And we are confident it
8 can do the same with the Global Warming Solutions Act. We
9 would like to see more effort at addressing imports of
10 intermediates and finished fuel products into the state.
11 CARB needs to create a mechanism which provides an
12 obligation for all entities importing petroleum and
13 non-petroleum transportation fuels equal of those in-state
14 refiners currently regulated as station source GHG
15 emitters.

16 Currently, only in-state refineries are obligated
17 to pay for stationary source GHG emissions. To prevent
18 leakage of GHGs emissions associated with the manufacture
19 of petroleum and intermediates to out-of-state refineries,
20 a program must be put in place. Until such time, the
21 typical benchmark required for larger refineries must
22 remain fair, allowing reductions equally from every
23 facility.

24 A benchmarking scenario where some refineries get
25 all free allowances and some refineries must buy 25

1 percent of their allowance is opposed by the steel workers
2 and will not get the GHG emissions down to the target the
3 State has set.

4 I work for Phillips 66 oil refinery. I represent
5 as a union leader all of the oil refiners in L.A. basin.
6 We are not interested in losing any more of our California
7 refiners in this state. The USW has supported the Global
8 Warming Solutions Act and AB 32 from the very beginning.
9 I was a statewide coordinator for that program for the USW
10 in California. The reason that we were able to support it
11 so unilaterally was because we believed it was going to
12 create a strong economic, new green workforce development
13 in California. If we lose jobs as a result of this, it
14 doesn't take care of those needs we have in terms of job
15 creation and reducing emissions. Thank you.

16 CHAIRPERSON NICHOLS: Thank you.

17 MR. SMITH: Good morning, Chair Nichols and
18 Board.

19 My name is Mike Smith. I'm representing United
20 Steel Workers Local 5 out of Martinez, California. We
21 represent the oil refineries in Northern California.

22 We're concerned with the benchmarking or the new
23 comments or the new changes of the benchmarking of the oil
24 refineries. We represent workers at oil refineries of all
25 sizes and configurations. If CARB doesn't do this the

1 right publicly and include our input, it will give an
2 unfair competitive advantage to some in-state and all
3 out-of-state importers of intermediates and finished
4 products. Any small refinery should be looked at on its
5 face. Don't look at it as a refiner. Look at the size
6 and configuration of the existing site.

7 Sufficient time for careful review and analysis
8 of this morning's new proposal and a subsequent dedicated
9 Board hearing since refinery benchmarking methodology does
10 not take place under a new methodology until 2014 is
11 needed. USW wants to hear this, and we are being denied
12 active participation in this process. We feel that this
13 is very important to ensure our good union jobs that we
14 have today and into the future. Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 Lisa Bowman, are you here?

17 MS. BOWMAN: Good morning, again to the Board and
18 Chairman Nichols.

19 I, too, just as the last two individuals, are
20 part of the United Steel Workers Union. I'm out of
21 southern California Local 675.

22 Back in 2011, I actually addressed you guys on
23 this issue. And I recall coming up -- you guys came up
24 with a resolution at the time. Well, I'm here again, and
25 we were once up against a deadline. And that's when you

1 guys actually came up with that resolution. Now we have
2 one hour to seek changes. New concepts that further
3 disadvantage smaller refineries have been introduced and
4 you are considering voting on this.

5 We didn't find this out until we were actually on
6 the plane. We almost missed this hearing.

7 So from a personal perspective, from a union
8 perspective, from a union steward's perspective to
9 represent several hundred workers within my facility, I
10 would ask that you guys tack take a step back and allow us
11 the opportunity to be able to address the changes that you
12 proposed that we found out about this morning. We think
13 some other things should be done. We think some Q and A
14 should be done. We have some questions. And I'm sure my
15 group has more questions than I can even think of. So
16 that's basically what we are asking. This is a
17 disadvantage from the perspective in which we see it.
18 Thank you.

19 CHAIRPERSON NICHOLS: Thank you.

20 David Campbell.

21 MR. CAMPBELL: Madam Chair, Board members and
22 staff. It's barely good morning, but still morning. I'll
23 try to be as short as possible.

24 I'm Dave Campbell, Secretary Treasurer for United
25 Steel Workers Local 675 in Southern California. Like Mike

1 Smith from Local 5, we represent workers in refineries in
2 a range of sizes and configurations.

3 Lisa is correct. These changes under atypical
4 and typical benchmarks we were not aware of until this
5 morning after we get off the plane. And the schedule was
6 such that we almost missed this hearing.

7 We're concerned about the issue of leakage. If
8 the small refiners maintain all of the cost of under
9 benchmarking for carbon credits, we're concerned that the
10 cost of barging intermediate finished product from
11 Washington state and also the cost of the shipping by
12 tanker finished products from Asia are going to be less
13 than the cost for meeting these requirements to the small
14 refiners. And we're concerned that approximately half of
15 the jobs in the refining sector in California are
16 threatened by that.

17 So we would request, as Lisa said, that that part
18 of this proposal be subject to a longer hearing process of
19 40 -- I thought I heard somebody say it was a 45-day
20 process, but we would request that you consider separating
21 out that part and giving all the parties a little longer
22 time to consider all that.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thanks.

25 Stephanie.

1 MS. WILLIAMS: Good afternoon. My name is
2 Stephanie Williams, and I'm the Governmental relations
3 Manager for Phillips 66. And it's a pleasure for me to be
4 here today.

5 We would like to offer our support for much of
6 the publicly-vetted items contained in the 45-day
7 proposal. They're really going ahead in the right
8 direction, and we appreciate the work that they've done.

9 We also include our support of other comments,
10 those of the Western States Petroleum Association, the
11 Coalition for Fair and Equitable Allocation, and the Blue
12 Green Alliance.

13 Phillips 66 has significant operations in
14 California that are included under the program, including
15 four separate refining facilities and four different
16 cities and a petroleum coker cal signer.

17 Phillips 66 has proactively participated in every
18 opportunity under the rule making process -- many of you
19 have seen me in your offices -- since 2008. We have met
20 with staff, Board members. We provided Board members and
21 staff company-sensitive information. We brought our
22 refineries managers who work with us. We've done every
23 thing possible to get our story out to the Board and the
24 staff. And --

25 CHAIRPERSON NICHOLS: You've done a good job.

1 MS. WILLIAMS: Thank you. This is all for a
2 specific purpose to help craft a workable regulation that
3 does not cause inequities within the state which could
4 disproportionately harm certain refiners -- that would be
5 us -- including our California operations, all five sites.

6 So the benchmarking allocation issues need to be
7 thoroughly discussed and will require adequate time for
8 evaluation and comment.

9 On top of creating in-state competitive issues,
10 any cost burden added to a California refinery makes it
11 less competitive versus refineries outside of California
12 who can import into California without Cap and trade
13 compliance cost. Without any protection from imports or
14 finished and intermediate products, the real world barge
15 shipping costs to import fuel in California are only about
16 three to six cents. You could see how that could be a
17 problem. You can barge from Washington state. We have a
18 refinery into Washington state. You can barge from Canada
19 right into Los Angeles. You can barge from Asia right
20 into Los Angeles.

21 So this is very critical on -- the marine
22 terminals are privately owned. You don't know what's
23 coming in and what's going out. We have our own marine
24 terminals. So do our competitors. So we have concerns
25 that certain benchmarking proposals will have unintended

1 consequence and tilting the in-state competitive balance.

2 If CARB proceeds with the current single typical
3 benchmarking proposal, some in-state refiners will be
4 required to purchase 25 percent of their allowances, while
5 other refiners will have virtually no obligation to
6 purchase in the program, because most of their allowances
7 will be given to them for free.

8 And I'm said this like five times. We're still
9 here saying it.

10 So we have participated in the last issues, and
11 we just want to put those issues out on the table and let
12 you know we want to be here. We want you to make that
13 happen.

14 CHAIRPERSON NICHOLS: I found your way to extend
15 your time. There's a question.

16 BOARD MEMBER GIOIA: I have one question on one
17 of the issues you've raised. I'm familiar with it, coming
18 from Contra Costa. I know that issue of jointly operated
19 facilities.

20 MS. WILLIAMS: Phillips 66 amendment, yes.

21 BOARD MEMBER GIOIA: So I'm familiar that this
22 effects only Phillips 66.

23 MS. WILLIAMS: Yes, it does. Both refineries.

24 BOARD MEMBER GIOIA: Chevron has a refinery in
25 Southern California and one in Contra Costa. They're not

1 considered jointly operated. They're separate. Phillips
2 66 happens to have a refinery in Contra Costa, refinery in
3 Southern California. Because they're jointly operated,
4 even though they're different facilities, they would be
5 combined. So I want to ask staff later a question, but I
6 wanted to give you a chance to --

7 MS. WILLIAMS: I'd like to detail what that looks
8 like.

9 BOARD MEMBER GIOIA: Let me ask the question.
10 I'm trying to understand --

11 CHAIRPERSON NICHOLS: Before you answer.

12 BOARD MEMBER GIOIA: I'd trying to be helpful
13 because I'm trying to understand.

14 I know the situation. I hear about it all the
15 time. So just make for me the case why you think that
16 jointly operated really clearly why the jointly operated
17 facilities because in this particular case because there
18 are two separate facilities in two parts of the state, not
19 unlike Chevron, which is not jointly operated, should be
20 treated separately. Just so I understand. I think I do,
21 but I want to make sure I understand it.

22 MS. WILLIAMS: Let's take for example my Rodeo in
23 Contra Costa and Santa Maria, which is San Luis Obispo
24 near Avila Beach. They're jointly connected by pipeline,
25 but the pipelines aren't direct. The pipeline from Rodeo,

1 which is very small, smaller from of the atypical. That's
2 why we're in that group. The pipeline is a common carrier
3 pipeline. Anybody can get on it. We happen to own a lot
4 of pipeline because we're a pipeline company. Takes you
5 to San Joaquin Valley and then takes a bus stop, gets on
6 another pipeline and goes to our facility. If you call
7 that jointly operated, you pretty much have the entire
8 state jointly operated.

9 BOARD MEMBER GIOIA: Your concern is this term
10 jointly operated will combine you and take you out of the
11 small refiner class?

12 MS. WILLIAMS: It completely eliminates just me.
13 It's a Phillips 66 amendment and it's supported by Valero.
14 When you start seeing oil refineries supporting and
15 opposing things that are competitive, I have to wonder
16 what's going on.

17 BOARD MEMBER GIOIA: Thanks. I'll ask staff
18 questions later on.

19 CHAIRPERSON NICHOLS: Thank you.

20 MS. GORSEN: Maureen Gorsen with Alston & Bird.
21 We're representing Loma Linda Hospital and Medical Center.
22 Loma Linda is an educational health sciences institution
23 in Riverside County offering degrees to over 4,000
24 students in medicine, dentistry, nursing, pharmacy, and
25 public health. They also operate a medical center, a

1 nonprofit medical center, and a 900 bed hospital.

2 This is where I'll just blow kisses to staff.

3 Loma Linda not be subject to cap and trade but
4 for the fact that it installed a combined heat and power
5 system to more efficiently meet its energy needs. We
6 support the amendments to provide transition assistance to
7 Loma Linda University and support the 100 percent
8 transition assistance through the second compliance
9 period.

10 At one point, Loma Linda had estimated its cost
11 to purchase allowance to be in excess of \$750,000 a year.
12 That would be an incredible hardship. Loma Linda admits
13 more than 33,000 inpatients and serves over 500,000
14 out-patients, and over 70 percent of its patients are on
15 Medicare or Medicaid. They cannot pass on those costs.
16 We urge CARB to adopt the amendments.

17 CHAIRPERSON NICHOLS: Will Barrett, Johnny Lee,
18 Gary Grimes.

19 MR. BARRETT: Good afternoon. My name is Will
20 Barrett with the American Lung Association of California.

21 I'd just first like to start by echoing the
22 comments and concerns made by the coalition for clean air
23 regarding the ongoing allocation of allowances under the
24 program.

25 Also wanted to briefly get into -- the echo also

1 many of the comments related to the impacts of methane
2 mine protocol and think more time is needed to evaluate
3 the concerns raised today by several of the groups and
4 academics that testified.

5 At the national level, the American Lung
6 Association supports the phase out of coal and a
7 transition to cleaner energy sources for the climate air
8 quality and localized public health benefits or damages
9 associated with all phases of the coal use. We believe
10 additional time is needed to review the protocol and urge
11 you to take that time to do so just to ensure that any
12 projects under that protocol do not incent more coal or
13 probably result in non-additional projects going forward.

14 So thank you very much.

15 CHAIRPERSON NICHOLS: Okay. Johnny Lee and then
16 Gary Grimes and last all ex Jackson.

17 MR. LEE: Hello, Board members and, members of
18 the public.

19 My name is Johnny Lee. I'm from San Jose. I'm a
20 member of the public. And I'm here to talk about the cap
21 and trade program. I followed it silently over the past
22 few years and seen it develop. I was here last month at
23 the cap and trade hearing meeting when we called it the
24 new offset compliance protocol meeting. And I think that
25 they're on a great path of allowing more offset protocols

1 to be introduced into cap and trade.

2 But I think the problem is that instead of
3 helping out a lot of the small companies with innovative
4 idea to get off the ground, like the cap and trade should
5 be doing, we are just giving a lot of money to the big
6 companies who either own landfills or coal mines. We're
7 just taxing the people, putting a tax on energy, and
8 giving to multi-million dollar companies.

9 I think this cap and trade program, if you do it
10 effectively, should be helping out small company with the
11 innovative ideas.

12 Next time when you guys allow offset compliance
13 protocols, consider allowing the VCS methodologies, which
14 is a list of verified carbon standard that has off site
15 compliance protocols that are currently being used by
16 other cap and trade programs. I think that we can benefit
17 by having small companies get more from the Cap and Trade
18 Programs instead of giving more money to big multi-million
19 dollar companies. Thank you.

20 CHAIRPERSON NICHOLS: Okay. Thanks.

21 Gary Grimes

22 MR. GRIMES: Good afternoon, Chairman Nichols and
23 Board members.

24 My name is Gary Grimes. I'm the Director of
25 Technology for Paramount Petroleum. My company is a small

1 independent oil refinery with three small oil refineries
2 in California: Paramount, Long Beach, and Bakersfield.
3 We're a member of the small refinery coalition that Jon
4 Costantino talked about earlier, so I will not repeat his
5 statements, but I will echo his appreciation for the final
6 outcome reached in the quest to be equitable to all
7 parties. However, we are concerned from something we
8 first saw this morning that the staff is proposing to make
9 unidentified changes to the current true up language where
10 there has been a decrease in production. We believe any
11 new any changes in the true up provisions must be coupled
12 with recognition that facilities may have emissions
13 without having proportional CWB.

14 We're in the process of reconfiguring our
15 California refineries. These unspecified rule changes can
16 have significant impact on us and similarly situated
17 entities. These clarifications have never been mentioned
18 or discussed in any of the staff's previous notices on
19 this rule making package before today. We believe
20 fundamental fairness requires businesses be given a full
21 comment period to review and comment on any staff
22 proposals.

23 Moreover, we believe that under the
24 Administrative Procedures Act, any such changes must go
25 through a full comment period since they were never

1 mentioned or discussed in any of the staff's previous
2 notices on this rule package.

3 To fully appreciate the challenge staff faces on
4 our industry, one only needs to look at the wide diversity
5 of refineries remaining in California.

6 Next slide.

7 -o0o--

8 MR. GRIMES: I'd like to call your attention to
9 the slide that shows all the refineries in California's
10 bubble. The size of the bubbles is proportional to their
11 CO2 emissions. My company's refineries are the three red
12 bubbles in the lower left-hand corner. A perfect metaphor
13 for these smaller refineries is that we are like mice in a
14 field full of dancing elephants. We are continuously in
15 danger of being squished by our much larger competitors.
16 Oil refining is complicated and hazardous commodity
17 business with very thin margins and a few pennies a
18 gallons means a difference between profit and loss and job
19 or no job for many people at these companies.

20 One product that distinguishes these refineries
21 is that many of them produce asphalt. Asphalt is made
22 from the heaviest bitumen part of a barrel of oil.
23 Asphalt refineries don't have expensive and very energy
24 intensive processes the big bubble refineries use to crack
25 these launching molecules of gasoline and diesel fuel.

1 Although the CWB methodology addresses the thermal
2 efficiency of refinery processing, it does not address the
3 processing efficiency of the simple barrel approach used
4 partly in the first compliance period.

5 I'd also like to comment on the refiner leakage
6 risk. Much of the bitumen used to grease asphalt today in
7 California is imported from mid-continent rail, the
8 resulting increase CO2s emission. These refineries should
9 be considered at high risk of leakage since much of it has
10 already leaked from the state. Asphalt refineries in
11 contrast to the big bubble refineries compete in two
12 industries: Fuels and materials. Although we believe our
13 polymer road asphalts which effectively sequester crude
14 oil make the smoothest quietest highways. We must compete
15 on price with cement manufacturers who have the highest
16 allocation factors and special adjustment.

17 CHAIRPERSON NICHOLS: Excuse me. Your time is
18 up, sir.

19 MR. GRIMES: Thank you for the opportunity to
20 address you today.

21 CHAIRPERSON NICHOLS: We do have your written
22 testimony also. So thanks. Okay.

23 MR. JACKSON: Good afternoon, Chair Nichols and
24 members of the Board.

25 Alex Jackson on behalf of the Natural Resources

1 Defense Council. Thanks for bearing with me through 58
2 other commentors.

3 CHAIRPERSON NICHOLS: We were waiting for you.

4 MR. JACKSON: Great. I hope I don't disappoint.

5 In March 2012, Dallas Berkshaw, a member of the
6 EACC, current member of EMAC, and I'm sure future member
7 of all other panels that end in AC testified before the
8 Senate Select Committee that ARB had developed the best
9 designed Cap and Trade Program anywhere in the world.
10 That was true then. It is true now. And it will be true
11 after today.

12 But from our perspective, if the Board moves
13 forward with the current list of amendments before it,
14 unmodified, it will be a little less true. That's for
15 three main reasons:

16 First, the proposal to dramatically increase free
17 allocation to industry for leakage prevention on the basis
18 of no evidence that additional assistance is required.

19 Second, to loosen the rules prohibiting resource
20 shuffling, which is a form of leakage.

21 And third, to add an offset protocol that will
22 send new revenue to out-of-state coal mines with the
23 benefit of containing allowance prices that are not in
24 need of additional containment.

25 First on transition assistance. This is a small

1 change on paper. Simply shifting one number in allocation
2 formulas for industry with a huge impact. On the order of
3 60 million allowances by 2020, which could be upwards of a
4 billion dollars. The lion's share of that is going to the
5 cash strapped oil industry, which somehow found \$43
6 million to lobby in Sacramento alone since 2009 but hasn't
7 found the time to invest in emission reductions.

8 What has been the industry response? More,
9 please. More, please. Already, the lobbying has begun to
10 extend transition assistance against in the third
11 compliance period. Who can blame them? As long as stall,
12 delay, and obstruction continue to earn reward, that's
13 only a rational response.

14 We ask the Board to instead uphold its commitment
15 to transitioning toward allocating allowance value through
16 an auction process that is open to all comers,
17 transparent, and ensures the benefits of allowance value
18 accrue to all Californians.

19 Second on resource shuffling, we ask the Board to
20 tighten the rules. We appreciate and recognize the
21 ultimate and best solution is to get other jurisdictions
22 on board. Certainly thank California and ARB in
23 particular for everything it is doing to help and
24 encourage that along. We also recognize in combination
25 with other AB 32 policies California is having outside

1 impact on emissions well beyond its borders, but well
2 within its legal limits, of course.

3 In the mean time, as we heard from Mr. Cullenward
4 who has studied this issue, resource shuffling is a trap
5 door that can severely undermine the effectiveness of the
6 program. At a minimum, we ask the Board to direct staff
7 to ensure it retains its authority to prohibit
8 transactions it has long considered resource shuffling,
9 such as laundering and contract swapping, despite the
10 presence of the safe harbor. I have comments I will
11 submit to that effect today.

12 CHAIRPERSON NICHOLS: We note you've expressed
13 your views on the mine issue in the press this morning.
14 So I think probably people have seen that as well.

15 MR. JACKSON: Fair enough. Thank you for your
16 time.

17 CHAIRPERSON NICHOLS: Okay. That was the end of
18 the list of people who signed up to speak on this item.

19 I'm going to close the public hearing at this
20 point and move to discussion with the Board. And in the
21 interest of organizing the discussions since there is a
22 lot of us and a lot of issues, my suggestion is that we
23 take note of the fact if you use the presentation that the
24 staff gave this morning, which you all have in a written
25 form as a way to kind of organize this, there may be some

1 better way to do it.

2 But I went through my list and I'm very pleased
3 to say that the vast majority of items on the list either
4 weren't commented on at all or were pretty much
5 unanimously supported, which is very nice. However, there
6 are a number that I think do require some further
7 discussion.

8 So I'm going to sort of give my quick list. And
9 then if others want to add to that, but let's do that
10 first and then we can kind of discuss them in a somewhat
11 orderly fashion. So the first one on my list is the
12 refinery allocation and whether we properly considered
13 small refiners. And then I go to the water entities and
14 how we're treating water. Then the offset protocol. And
15 then I go to -- at least I have a question I think about
16 the information disclosure, the information people have to
17 provide for trading. And if that's unduly burdensome or
18 how the staff is going to deal with that.

19 And those -- other than the sort of overarching
20 issue, which is very important one -- I shouldn't neglect
21 it -- of the transition assistance and whether it's right
22 to be doing it the way we're doing it, proposing to do it.
23 Those were the main issues on my agenda. Does that cover
24 the basic topics that other people had flagged also?

25 BOARD MEMBER GIOIA: Did you include the resource

1 shuffling?

2 CHAIRPERSON NICHOLS: Yes. I guess that goes
3 into compliance. So but yes, resource, it's an issue of
4 its own. Resource shuffling.

5 So with that, can we get staff to maybe quickly
6 give us their responses on these and then sort of pursue
7 the questions? John, did you have a better --

8 BOARD MEMBER BALMES: Should we do it one at a
9 time?

10 CHAIRPERSON NICHOLS: That's fine.

11 BOARD MEMBER DE LA TORRE: Chair, I had one other
12 one that's sort of a brief clarification on the penalties
13 for not reporting properly and then the scale of those
14 penalties.

15 CHAIRPERSON NICHOLS: Okay. I get that's an item
16 unto itself I think.

17 Any others?

18 BOARD MEMBER ROBERTS: I'm not sure how it fits
19 in. There was a comment made about the need to use some
20 gas from the thermal production. And it's a little like
21 one I'm more familiar with, and that's solar testing for
22 their -- on turbines. I don't know if those are directly
23 related. They seem like a similar product, situation and
24 I'd like --

25 CHAIRPERSON NICHOLS: The solar industry that

1 needs to preheat their facilities with using some gas and
2 how we're handling that.

3 BOARD MEMBER ROBERTS: And then the solar
4 industry, not single products. But one was a thermal
5 industry. I'm talking about actually company Solar
6 Industries and their use of gas also --

7 CHAIRPERSON NICHOLS: Solar turbines?

8 BOARD MEMBER ROBERTS: The testing of their
9 engines, the turbines. It's not clear to me we resolved
10 that. I'm still very concerned about that.

11 DEPUTY EXECUTIVE OFFICER COREY: As we working
12 through the list of items, we can go to the solar thermal
13 issue that was raised and discuss it.

14 BOARD MEMBER ROBERTS: Solar thermal and solar
15 industries two different things.

16 It sounds like, but it's not clear to me, for the
17 cogen issues other than the universities, maybe we're
18 working towards a solution.

19 CHAIRPERSON NICHOLS: Everyone is happy, I would
20 say. Peace has broken out, as far as I can tell.

21 So if we were going to start at the beginning,
22 maybe somebody else can --

23 DEPUTY EXECUTIVE OFFICER COREY: I'll have Steve
24 Cliff work through the list and discuss the issues.
25 Because of some of the comments made I heard, I wanted to

1 underscore the fact there is not a vote today. I think
2 there's some confusion about action and many of the
3 elements that are being discussed fall under the 15 day
4 process. Steve will be calling those out.

5 CHAIRPERSON NICHOLS: We're giving direction to
6 staff to go back and develop things as part of the second
7 round of the 15-day proposal process. So there will not
8 be any final vote.

9 DEPUTY EXECUTIVE OFFICER COREY: That's correct.

10 CHAIRPERSON NICHOLS: On any of this taken today.
11 That we're just trying to -- thank you for the
12 clarification. We're trying to solidify our direction to
13 staff. Thanks. Yes.

14 BOARD MEMBER SERNA: I don't know if is in your
15 list or not, but I'd like staff to respond. This is more
16 of a process subject than a substantive one I think. But
17 there were some clear concerns expressed about last-minute
18 noticing of some of the rulemaking by the Steel Workers
19 and others. I'd like you to be prepared to respond to
20 that as well.

21 DEPUTY EXECUTIVE OFFICER COREY: We'll cover that
22 as part of the discussion. Steve can clarify -- each of
23 those items were actually have been part of a process.
24 And the reference was to the release of the Resolution.
25 And the Resolution reflected a 15-day process and ongoing

1 stakeholder dialog. We will clarify on each of the points
2 we walk through.

3 CHAIRPERSON NICHOLS: All right. Let's begin
4 then.

5 ASSISTANT DIVISION CHIEF CLIFF: Thank you.
6 The but for CHP Qualcomm brought up, I want to
7 make a clarification. I was going to add that.

8 I appreciate the chance to address you today. As
9 several had mentioned, there's sort of a process question
10 I think is worth at least addressing at a high level and
11 I'll try to touch on those at each individual one.

12 We released a proposed Resolution this morning
13 with several items that staff was proposing to take up in
14 15-day changes. The process there is that we would
15 continue to work with stakeholders, draft language, and
16 then put out that language in an official notice that
17 would be out for comment for at least 15 days. And so
18 that's similar to what we did with this package where we
19 have a 45-day public comment period. Anything that's
20 within the scope of the current notice we could put out
21 again for changes. And that would be for a subsequent 15
22 day period.

23 We'd be coming back to the Board at the end of
24 that process, finalizing the environmental document, and
25 then asking for your approval on the 45-day amendments

1 that we proposed that are in front of you today, as well
2 as the subsequent 15-day amendments.

3 So many of those items that we put out today are
4 what we would propose to do in 15 day amendments. Those
5 are sort of subsequent to this.

6 I know several have raised concern that this is
7 their first chance to see that. We're trying to give them
8 a preview of what will be coming. It's a good chance for
9 them to know that it's coming up and we'll continue to
10 work with them. There will be an official notice when
11 each of the changes comes out at a later date.

12 I guess in no particular order, I'm going to use
13 the list that Chairman Nichols first started with and
14 we'll go through these various ones.

15 The first one that was mentioned is the refinery
16 allocation. Up until now, we've been working with
17 refineries to develop a new proposal for allocating
18 allowances starting in the second compliance period. The
19 current regulation as finalized would allocate allowances
20 using a carbon dioxide weighted ton approach, similar to
21 what's used in the European Union.

22 Going forward, we're proposing to use the
23 language using a complexity weighted barrel approach.
24 They have similar outcomes. But the refineries have made
25 a case, and we've analyzed the data and support changing

1 to this new approach. That it's easier for them to report
2 and verify. It provides an equitable outcome for the
3 various refineries.

4 In that, as we go forward and actually propose
5 language, we did put out -- we did have a workshop back in
6 August to discuss this with refineries and -- or sorry --
7 in October -- early October to discuss this with
8 refineries. And several issues were brought up. So we're
9 going to continue to work with stakeholders to refine our
10 proposal before we put out the actual language.

11 CHAIRPERSON NICHOLS: Steve, just to be clear, is
12 the Steel Workers Union or other stakeholders also
13 included in these discussions? Or is it only the
14 refiners?

15 ASSISTANT DIVISION CHIEF CLIFF: I don't believe
16 the Steel Workers have attended our workshops. They're
17 certainly welcome. We of course those via list serve and
18 publicly notice those in the web cast workshops. We
19 invite their participation. For the folks where we have
20 the contact information, we're glad to reach out to them.

21 CHAIRPERSON NICHOLS: I think that's part of the
22 point here is when people been involved and then they feel
23 surprised. Whether they could have found out or not isn't
24 really the right question. I think we should be making a
25 little extra effort at outreach here as we move forward.

1 ASSISTANT DIVISION CHIEF CLIFF: Maybe I can ask
2 for Stephanie William's help.

3 CHAIRPERSON NICHOLS: I'm sure she would be happy
4 to.

5 BOARD MEMBER BALMES: I think it's a little
6 disingenuous. I'm totally supportive of involving the
7 Steel Workers early. But I think Stephanie, she was able
8 to bring them here today. She could have informed them
9 about things earlier.

10 CHAIRPERSON NICHOLS: Fair enough. But we err on
11 the side of over inclusivity.

12 Yes, question.

13 BOARD MEMBER RIORDAN: May I ask a question?

14 In this process of the additional comment and
15 working with stakeholders and in this particular area of
16 refineries, can they deal with what was brought up I think
17 towards the end of testimony about those refineries that
18 are producing asphalt components that people rely on for
19 the building industry, which has, quite frankly, in
20 Southern California been very slow. And now they may be
21 ramping up a little bit. Is that the time they can come
22 to you and talk to you about that?

23 ASSISTANT DIVISION CHIEF CLIFF: Absolutely. I
24 think the asphalt industry would be covered under the
25 refinery allocation. We look forward to their

1 participation. Many of the refineries -- those that
2 produce asphalt have been very involved in our allocation
3 process so far.

4 Within the general allocation, this question of
5 general typical versus atypical. We have proposed that
6 the typical refinery would get a benchmark and an atypical
7 refinery would get a benchmark. In that case, what's at
8 issue and that Phillips has brought up is that these
9 refineries that they have which operate essentially as
10 one, even though they're in different cities and they're
11 different facilities, would be using the benchmark that is
12 for a family typical refinery rather than an atypical
13 refinery.

14 Staff believes that's appropriate because, first,
15 Phillips has made a case in the first compliance period to
16 allocate based on the assumption that those refineries
17 work together and they can't be separated for the purposes
18 of allocation in the first compliance period.

19 Secondly, they made a case to the Energy
20 Information Administration to consider those refineries
21 essentially as one for the purposes of reporting to the
22 Department of Energy. So staff believes it's appropriate
23 to treat them the same way in our process.

24 I want to make clear that they would get
25 allowances for their facility in Santa Maria. They would

1 be using the same sort of reporting as any of the other
2 refineries.

3 The only thing in question is whether or not they
4 get the higher or the lower benchmark for these refineries
5 that are operating in different cities, but essentially
6 are linked together in terms of how they operate. So
7 we're certainly willing to continue to work with Phillip
8 66 trying to understand those issues.

9 But all of the information that we've been
10 provided in the public reports and what they previously
11 indicated to us suggest they're operating really as a
12 linked unit. And that's why staff made the proposal to
13 treat them as such in the 15-day amendments that we
14 suggested this morning.

15 CHAIRPERSON NICHOLS: John, do you want to --

16 BOARD MEMBER GIOIA: You said there's going to be
17 further discussion exploring that issue and what it really
18 means to jointly operate two facilities; right?

19 ASSISTANT DIVISION CHIEF CLIFF: That's correct.

20 BOARD MEMBER GIOIA: That are located in two
21 parts of the state, because I know there are other
22 refinery companies that have similar types of facilities.
23 I don't know how they operate. They don't call them
24 jointly operated.

25 CHAIRPERSON NICHOLS: I think they call them

1 whatever is convenient at the time.

2 BOARD MEMBER GIOIA: There's going to be further
3 discussion on that issue to flush out the meaning of joint
4 operation.

5 ASSISTANT DIVISION CHIEF CLIFF: That's correct.
6 There will be. We have a process to go through and then
7 we would actually put out language. At this point, we've
8 sort of written our proposal, but it's not in regulatory
9 language.

10 BOARD MEMBER GIOIA: Can you just tell us what --
11 in a nutshell, not long, what's at the heart of the joint
12 operation of facilities that get different feedstock with
13 different -- what does that really mean?

14 ASSISTANT DIVISION CHIEF CLIFF: Essentially,
15 what it means is that the Santa Maria refinery provides an
16 intermediate product that is then shipped to the Rodeo
17 refinery in order to finalize that for products that would
18 be saleable in California. So sort of without the Rodeo
19 refinery, that Santa Maria refinery would not be putting
20 product onto the market.

21 In terms of thinking about them as a different
22 unit, in fact, they need to be operated together in order
23 to get the product that's made at Santa Maria to be
24 salable.

25 CHAIRPERSON NICHOLS: The Santa Maria refinery is

1 not selling that product to other companies, other than
2 their own refinery.

3 ASSISTANT DIVISION CHIEF CLIFF: That's correct.

4 In all fairness, they said to us more recently,
5 well, if we don't own that refinery and it was selling to
6 someone else, how would it be considered? I think that's
7 an important point we need to continue to evaluate.

8 BOARD MEMBER SHERRIFFS: Are they actually
9 selling their own products to themselves?

10 MS. WILLIAMS: I could tell you.

11 CHAIRPERSON NICHOLS: Could we have some order
12 here?

13 Stephanie, you'll be called on if you need to be.
14 Let's hear from staff.

15 ASSISTANT DIVISION CHIEF CLIFF: They are linked
16 via pipeline.

17 BOARD MEMBER SHERRIFFS: Are they selling --

18 ASSISTANT DIVISION CHIEF CLIFF: As we understand
19 it, it's essentially one unit. They aren't selling it.

20 BOARD MEMBER SHERRIFFS: The sale is at the end
21 of the Rodeo treatment.

22 ASSISTANT DIVISION CHIEF CLIFF: That's correct.

23 CHAIRPERSON NICHOLS: I called on John Eisenhut
24 first. I'm going to try to get you guys to raise a hand
25 or something.

1 BOARD MEMBER EISENHUT: Steve, the allocation
2 methodology or the proposed change in allocation
3 methodology, will that result in a redistribution within
4 the industry or in addition to the industry allocation?

5 ASSISTANT DIVISION CHIEF CLIFF: It wouldn't be a
6 redistribution within the industry. There is no -- in the
7 second compliance period -- starting in the second
8 compliance period, there is no pre-defined amount of
9 allowances for this sector. So they would receive
10 allowances based on their total production, which in this
11 case would be carbon complexity weighted barrel. They
12 would either get the benchmark for an atypical refinery or
13 a benchmark for the typical refinery in the way we've been
14 discussing it. So it doesn't redistribute allowances
15 among the various refineries.

16 The way this works out is if this particular
17 refinery were to get more allowances, that would come out
18 of a pool of allowances that hasn't been earmarked for
19 anything else. The way we think about that is essentially
20 those allowances would otherwise go to auction.

21 BOARD MEMBER EISENHUT: Is it your preliminary
22 analysis that the recalculation will result in higher
23 allowances to the industry in total?

24 ASSISTANT DIVISION CHIEF CLIFF: It would result
25 in higher allowances to the industry in total, yes.

1 CHAIRPERSON NICHOLS: So the petroleum industry
2 will be getting more allowances for free.

3 BOARD MEMBER EISENHUT: A material number? A
4 material number? Or a diminimous number?

5 ASSISTANT DIVISION CHIEF CLIFF: I'm not sure
6 offhand.

7 BOARD MEMBER EISENHUT: I think to me that's an
8 important part of the calculation.

9 ASSISTANT DIVISION CHIEF CLIFF: Okay. That's
10 good. Thank you.

11 CHAIRPERSON NICHOLS: All right.
12 Supervisor Serna.

13 BOARD MEMBER SERNA: Thank you, Madam Chair.

14 I guess I share the same theme of curiosity that
15 Supervisor Gioia has in terms of really understanding what
16 we think jointly operated facility really means.

17 I want to understand -- is it because the
18 pipeline -- my understanding is the pipeline is actually
19 owned by Phillips, but it's used by other refineries that
20 don't obviously own the pipeline, that that is what staff
21 is holding your hat on in terms of saying that is a linked
22 facility? In addition to the fact you've got raw product
23 at one end and refined product at the other. Is it
24 because of the -- basically the ownership disposition of
25 the pipeline that, in part, that we're concluding at least

1 at this point that it's a joint facility?

2 ASSISTANT DIVISION CHIEF CLIFF: That's a really
3 good question. From our perspective, as you mentioned
4 that the issue of what would happen if, for example, the
5 Santa Maria refinery weren't owned by the same company or
6 say they weren't linked by that pipeline. That's
7 something we still have to evaluate.

8 In our mind, it's not really about the pipeline,
9 per se. It's about how these facilities are operated.
10 It's our understanding from what we've been told by
11 Phillips and their representatives that the refinery
12 manager at the Rodeo facility is directing the operation
13 of the refinery in Santa Maria. There are separate
14 refinery managers, but the operations are essentially at
15 the direction of the Rodeo facility.

16 So many of the "typical" facilities have those
17 processes integrated at one facility, within one boundary,
18 one fence line. In this case, it happens that they don't
19 have them at one facility. And so from our perspective,
20 even though they are at separate facilities because
21 they're operating as one, they are really a typical unit.

22 An atypical refinery produce is a refinery product
23 which is product that would be saleable in commerce in
24 California. But they do so with a much lower complexity
25 and a much lower overall throughput.

1 That's not really the case here. There really --
2 the input product to the Rodeo facility is made at a
3 different facility, but they operate together as a typical
4 refinery. The facility in Santa Maria is not producing
5 primary refinery product as defined by the regulation.
6 From our perspective, that makes it appear as though it's
7 typical because it's reliant upon the Rodeo facility to
8 finish that product and sell it into commerce.

9 CHAIRPERSON NICHOLS: If I may, I think the
10 bottom line here is that one California company operating
11 in California feels itself to be significantly
12 disadvantaged by this approach. And this has been an
13 issue for quite some time now. They feel that a system
14 that worked for the rest of the industry pretty much
15 didn't work for them. They're looking for a way to
16 resolve that issue, which is not unreasonable. It's
17 appropriate for them.

18 The question is if this isn't the right way to
19 analyze their business, what is the right way to analyze
20 their business? Because we know that the refinery
21 industry is competitive. We've seen this time and time
22 again. It's appropriately so, I guess. But it's very
23 difficult with us for us to try to come in and design a
24 system that works perfectly for everybody. But I think
25 the staff is committed to keep talking about this, at

1 least to see if there is a way to make it better and
2 hopefully it will. Yes.

3 BOARD MEMBER BALMES: Just a short informational
4 question. So I heard Steve say that with the original
5 allocations to the refinery industry that Phillips said
6 they were -- this was one operation. And to another
7 branch of government, Department of Energy, I believe,
8 they also said that. And now they're saying they're
9 separate. I actually don't know what's the right answer,
10 but seems to me it's one way or the other. You can't have
11 it both ways.

12 CHAIRPERSON NICHOLS: Okay. Well, I think we're
13 not going to try to answer that question at this moment.

14 But let's move on to the rest of your list.

15 ASSISTANT DIVISION CHIEF CLIFF: The next one on
16 the list is water. We have a proposal to allocate
17 allowances in the 45-day package to municipal water
18 agencies or public water agencies. We did put out this
19 morning in our 15-day change a list that we're looking at
20 the possibility of increasing the number of allowances
21 through some additional analysis that we're doing.

22 I know that Tim Haines from the State Water
23 Contractors had suggested some language for the
24 Resolution. I think, you know, staff is certainly
25 interested in continuing to work with the water

1 contractors and with the water agencies to see what the
2 most equitable solution is. I think we've come a long way
3 in the several years we've been working on a very
4 difficult issue, and we're committed to continuing to work
5 on this issue with them.

6 CHAIRPERSON NICHOLS: Okay.

7 BOARD MEMBER ROBERTS: You're going to be meeting
8 with them see, if we can get this are solved?

9 ASSISTANT DIVISION CHIEF CLIFF: We meet with
10 them regularly, yes. We'll continue to work with them. I
11 don't know if we have anything calendared yet. We've had
12 a few meetings over the last several weeks.

13 CHAIRPERSON NICHOLS: Back to the opening comment
14 from Kassandra Gough, we meet with people until they feel
15 like they're married to us. They have no choice.

16 BOARD MEMBER MITCHELL: I would just encourage
17 you to keep meeting with the water agencies and water
18 district, Metro Water, L.A. Department of Water and Power.
19 This is an important issue for them as well as for the
20 public. And so I think it's important that we work that
21 out. Thank you.

22 CHAIRPERSON NICHOLS: Hectar.

23 BOARD MEMBER DE LA TORRE: One specific thing
24 with regard to the water folks is their use of
25 hydroelectric power in their systems. And to me, it's

1 pretty clear that hydro by definition is not polluting.
2 So that should not be included in whatever formula,
3 whatever mechanism that we use to get them to do offsets.
4 They shouldn't need to deal with hydro. If it's
5 electricity from a power plant, et cetera, et cetera,
6 obviously. But I think the hydro component should be
7 subtracted from whatever it is that we're asking them to
8 do to mitigate.

9 And whatever that number is, staff can come up
10 with some kind of formula based on the low mark for how
11 much hydro they've gotten in any given year for the last
12 several years or the median of the last several years or
13 the average in the last -- whatever metric you want to
14 chose that's a reasonable number for how much hydro
15 they've gotten over the last several years on a going
16 forward basis they should not have to offset that or
17 mitigate that.

18 CHAIRPERSON NICHOLS: I think the issue, if I
19 could reframe it a little bit, is just how do we make sure
20 we're offsetting Carbon that's associated with their
21 activities, pumping and moving water. We're not trying to
22 change the way they do business or penalize them certainly
23 for using hydro when they can. It's a question of how do
24 we account for the carbon they are generating or creating
25 by the way we they move water around.

1 I know as agencies that deal directly with
2 retailers and with the public, they're very concerned as
3 is everybody about rates and how they can account for
4 those rates. And that's I think where we've been trying
5 to work with them to find a way to make sure that doesn't
6 disadvantage anybody unnecessarily.

7 BOARD MEMBER ROBERTS: You know, from the start,
8 it's almost like there's been an oversight here. We
9 didn't grant them allowances. It's like we're struggling
10 to catch up. I hope we do. But there should have been
11 some different considerations I think going back to the
12 very start of this.

13 CHAIRPERSON NICHOLS: Well, I think before this
14 gets resolved at the end we're going to have to have one
15 more discussion, you know, between staff and the Board
16 about how we're approaching each one of these issues where
17 they're really complicated policy questions inbedded in
18 it, just to make sure everybody is satisfied what we're
19 doing is as straightforward and transparent as it can be.
20 Okay.

21 ASSISTANT DIVISION CHIEF CLIFF: I was going to
22 slip in my issue on the but for. I think there is
23 actually a misunderstanding about what we proposed. I
24 wanted to clarify that.

25 Qualcomm requested transition assistance in the

1 form of allowances starting in the second compliance
2 period. What we've actually proposed in this attachment
3 to the attachment to the Resolution this morning is that
4 we would exempt but for going forward. So they won't be a
5 covered entity. In that vein, I don't think there is a
6 need for transition assistance. You heard PG&E mention
7 they saw this late. It essentially pushes the obligation
8 upstream to the natural gas utility. And we have a
9 proposal for allocation to the natural gas utility.

10 I think that that should cover the issue with the
11 but for CHP. Essentially an exemption through 2020.

12 CHAIRPERSON NICHOLS: Just to be clear, this
13 reflects the overall state policy which is to encourage
14 cogeneration. So we're trying to be part of making sure
15 that we're not doing anything that causes there to be a
16 disincentive for cogen.

17 ASSISTANT DIVISION CHIEF CLIFF: I'm happy to
18 follow up with Gail after to be sure this is clear.

19 BOARD MEMBER ROBERTS: Would this be a time to
20 introduce the companies that are producing equipment like
21 solar?

22 CHAIRPERSON NICHOLS: You talk want to talk about
23 your solar turbines people? Our solar turbines people.

24 BOARD MEMBER ROBERTS: If the but for is
25 applicable.

1 CHAIRPERSON NICHOLS: They're in a different
2 situation.

3 ASSISTANT DIVISION CHIEF CLIFF: I think what
4 you're referring to is whether or not there's a way to
5 account for the emission reductions associated with the
6 turbines that they produced.

7 BOARD MEMBER ROBERTS: I sent a letter some time
8 ago to pose the question. We have companies that are
9 producing equipment that significantly reduces greenhouse
10 gas. And in the testing of that equipment to shipment,
11 we're penalizing them.

12 And it just seems in not crediting them for what
13 the ultimate benefits are, which are absolutely hugely
14 significant.

15 CHAIRPERSON NICHOLS: It's a valiant argument,
16 but it's a tool for analysis. It leads you to want to
17 give free allowances to anybody who manufactures anything
18 that improves energy efficiency, of which there are many
19 kinds of companies in California.

20 I think in all fairness to the staff, they have
21 worked very closely with the solar turbines people to find
22 every way they could to work the rules to their benefits
23 so they had minimal -- as minimal as possible costs
24 associated with compliance with this program. But there
25 are some. And I don't think there's, for me, any way

1 around that. So that, unfortunately, I think that's sort
2 of -- that's where the discussion lies at this point.
3 There is no specific avenue we can pursue to just exempt
4 them completely from the program.

5 ASSISTANT DIVISION CHIEF CLIFF: I'd note that
6 the proposal to provide more transition assistance to all
7 of the industrial covered entities through the second
8 compliance period is also a benefit to the solar turbines.
9 Their industry is listed as medium leakage risk. Rather
10 than having a 75 percent assistance factor starting in
11 2015, they would remain at 100 percent if that part of the
12 amendments is approved ultimately by the Board.

13 CHAIRPERSON NICHOLS: If we pass, just to be
14 clear, they would through 2015.

15 ASSISTANT DIVISION CHIEF CLIFF: Through 2017
16 remain at 100 percent.

17 CHAIRPERSON NICHOLS: Remain at 100 percent
18 assistance factor. So no additional liability for them.
19 They're in the program, but their allowances are free.

20 ASSISTANT DIVISION CHIEF CLIFF: That's correct.

21 CHAIRPERSON NICHOLS: They could reduce their
22 emissions and sell their allowances if they wanted to.

23 ASSISTANT DIVISION CHIEF CLIFF: Or bank them for
24 future use.

25 What I'll say on resource shuffling is that we

1 work really closely with the industry both the importers
2 of electricity, the utilities in California, our federal
3 counterparts, the California ISO, and other stakeholders
4 to develop the provisions to determine what is and what is
5 not resource shuffling at the direction of the Board last
6 year. So we spent many months developing these provisions
7 and ultimately we came up with the safe harbor. So what I
8 want to say is that resource shuffling is prohibited by
9 the regulation. When resource shuffling happens, if it
10 does and we identify it, then we will enforce that
11 provision of the regulation very strongly.

12 We have listed out what are the safe harbors and
13 those safe harbors are things we don't see as resource
14 shuffling. Those are the types of things that are
15 transactions need to occur, not because they're trying to
16 avoid a compliance obligation in our program or that would
17 be termed as leakage, but rather something that's being
18 done because it's needed in the electricity market in
19 order to ensure the flow of electrons into California.

20 We did a really good job trying to craft the
21 right type of policy where we're prohibiting resource
22 shuffling when it exists. We're minimizing leakage in
23 accordance with AB 32, but we also have to realize we
24 can't regulate all those outside of California so we're
25 not able to tell power plants outside of California that

1 they must not produce coal power any more, for example.
2 We're responsible for the emissions here in California.
3 And I think that we've done a really good job trying to
4 prevent those.

5 And the reason that I'm saying I think we did a
6 good job in part is because we worked really closely with
7 the ISO to ensure that we have a safe and reliable supply
8 of electricity while still getting reductions in the
9 electricity sector.

10 It seems like what's at question and from some of
11 the comments that came up today really is about can
12 California ensure that emissions in the entire WEC go
13 down. And I think that, in fact, they will. That
14 emission in the WEC are going to go down through
15 California policies. Not only cap and trade, but also the
16 renewable portfolio standard that's under law.

17 So we will see emission reductions in the WEC as
18 a result of California's policy. We will see emission
19 reductions in the California as a result of those
20 policies. Could there be more? Certainly. And the way
21 we would see more is through a broader program through
22 these national programs or through new national standards,
23 which we hope to see strong national standards that we
24 hope the EPA will continue to work on.

25 CHAIRPERSON NICHOLS: Okay. It's obviously a

1 difficult issue. I agree I've probably spent more time on
2 this than most people have. And we understand that
3 there's this risk. We also understand there is an equal,
4 if not greater, risk of doing something that would really
5 have a negative impact on the whole electricity market and
6 the ability for people to buy and sell electricity freely
7 as they do. That's been something they've been worried
8 about from the very beginning of this program and spent a
9 lot of time and energy trying to make sure we didn't
10 cause.

11 So giving people a clearer indication of what
12 will not be covered does provide some greater degree of
13 certainty, but it doesn't do anything to weaken the
14 overall prohibition. And I think just helps focus
15 attention on the big coal contracts, which are the things
16 we always were the most concerned about to begin with. So
17 I'm not too worried about that.

18 BOARD MEMBER SHERRIFFS: Can I ask a question?
19 Do we have a good mechanisms to be tracking this that it
20 actually is moving the way we hope we are having those
21 positive impacts or --

22 ASSISTANT DIVISION CHIEF CLIFF: We do. Our
23 reporting regulation requires very stringent reporting of
24 all electricity imports into California. There is
25 information about the type of electricity that's produced

1 throughout the west from the Energy information
2 Administration and other reporting mechanisms. So we're
3 able to track electricity as it's produced and as it's
4 imported into California. And you know, we're able to see
5 as we move along whether or not those emissions are
6 continuing to decrease.

7 To the extent that there could be refined
8 proposals, we're certainly welcome -- we certainly welcome
9 those from stakeholders. But at this point, given how
10 many work we did with respect the various stakeholders on
11 this issue, I think we're not certain there is any more
12 that really could be done. We did spend a long time
13 trying to nail down these provisions.

14 CHAIRPERSON NICHOLS: All right. But the issue
15 of potential areas of abuse is being monitored by a number
16 of different entities, including the Federal Energy
17 Regulatory Commission and the Commodity Futures Trading
18 Corporation. There are a lot of people looking at
19 electricity contracts out there to see if there's
20 violations going on as well.

21 Okay. You had a couple of smaller ones on
22 penalties, important. But what kind of discretion there
23 is on awarding penalties and whether the fears that were
24 expressed by PG&E and others are things that we should be
25 dealing with in terms of making sure that there is

1 proportionality if somebody commits a relatively minor or
2 inadvertent violation of the rules on reporting.

3 ASSISTANT DIVISION CHIEF CLIFF: There were
4 actually two issues that came up under this general theme.
5 One the SCPPA and LADWP brought up. There is a particular
6 provision in our regulation which indicates that if an
7 entity shuts down, they would have to give back the free
8 allowances that they're provided.

9 I think there is a misread of the regulation
10 there. The concern among SCPPA and LADWP is if they shut
11 down a facility, they could lose allowances. Utilities
12 are freely provided allowances to minimize the cost burden
13 on their rate payers. The intent of that provision and
14 the language of that provision is clear that if the
15 utilities shut down and the utilities shut down their
16 account, they would have to give back those allowances.
17 That's not really a case that I think is likely, although
18 there have been some small utilities that have sold to
19 other entities. A utility like LADWP isn't going to shut
20 down.

21 In the case of a facility shut down, we would not
22 be taking allowances away from what would have otherwise
23 been provided. As SCCPA and LADWO said, that would be an
24 incorrect incentive where we want them to shut down high
25 emitting facilities. I think that is a misread of that

1 provision.

2 I've gone back and reviewed this section. It's
3 95812 in our regulation. I think the language is clear,
4 and I've indicated that to them in conversations. They've
5 asked for some clarification. You know, I think this is
6 really as much clarification as we can provide. It's very
7 difficult for us to anticipate every possible situation in
8 the regulation. So sometimes provisions are written a
9 little bit broadly specifically for that reason.

10 We've tried to come up with language that is
11 really an entity shuts down, then they have to give us the
12 allowances back. So I think it correctly is written. But
13 we'll continue to work with them and see if there is some
14 sort of specific wording that might give more comfort
15 there.

16 The other issue that was identified by PG&E is a
17 provision in our regulation which says if you're not in
18 compliance with the mandatory reporting regulation, then
19 we can't give you free allowances. And that provision is
20 specifically put in the regulation in order to ensure that
21 we get good data before we're giving out allowances. We
22 think that's a really important thing to continue to do.

23 The concern that's come up is, well, what if we
24 didn't comply with the regulation on the gas side. Would
25 we lose our electricity allowances or vice versa. What

1 we've said and how we operationalized this is you've got
2 to come into compliance. You have to make sure and give
3 us good data. Until that time, we can't provide the free
4 allowances. Otherwise, if we don't have that provision,
5 the regulation would simply say on November 1st each year
6 or going forward on October 15th each year, you get your
7 allowances no matter what we do. We don't think that is a
8 good provision to have in there. So we have this in there
9 to ensure they come into compliance with our reporting
10 regulation and to have it to provide us good data as
11 required by those regulations.

12 We can't again anticipate every situation again.
13 But how we've operationalized this is once we get those
14 data, once everything is in compliance, then the
15 allowances have been provided.

16 CHAIRPERSON NICHOLS: Okay. By my read, that
17 brings us to mine methane capture and the protocol. Have
18 I missed anything else? If so, if that's true, I'm going
19 to see a few words about that before launching into the
20 discussion.

21 ASSISTANT DIVISION CHIEF CLIFF: There were just
22 two others that came up. One was on the solar thermal and
23 on the information disclosure and those sorts of things.

24 Can I just say quickly on the solar thermal, it's
25 something we're interested in continuing to work with

1 stakeholders on. We didn't make any proposal in this --
2 under this notice to exempt those types of facilities. So
3 that sort of exemption wouldn't be in the scope of the
4 current regulatory amendments. But we will continue to
5 work with that industry to try to see if the incentives
6 are incorrect for the types of good behavior that they're
7 suggesting, which is to do renewables that do have some
8 emissions associated with it. So we'll continue to work
9 with them on that.

10 CHAIRPERSON NICHOLS: Is there an actual problem
11 for real world solar facilities at this point?

12 ASSISTANT DIVISION CHIEF CLIFF: We don't believe
13 it is. The one in particular that came up today is a
14 facility that construction is underway. So it's not on
15 line yet.

16 CHAIRPERSON NICHOLS: So we have a little time to
17 work on it?

18 ASSISTANT DIVISION CHIEF CLIFF: That's right.

19 CHAIRPERSON NICHOLS: Okay. On the information
20 disclosure, I'm going to ask Rajinder to talk about that.

21 CHIEF SAHOTA: On the information disclosure,
22 that's to ensure we have adequate information to
23 comprehensive oversight of the entire market program.
24 Before the market program began, we had a lot of critics
25 saying you're going to have a lot of situations like

1 Enron. Markets are not the way to handle greenhouse gas
2 reductions.

3 In implementation of the program for the last 20
4 months in working with our market monitor, coordinating
5 with federal regulators like the CFTC, FERC, and
6 coordinating with the State agencies, we realize we needed
7 additional information or more comprehensive information.
8 The amendments proposed in the 45-day package are to help
9 us have adequate oversight to ensure the integrity of the
10 program is there for all participants.

11 We understand the stakeholder's concerns that
12 some of the wording could be more precise and the scope of
13 the reporting could be a little better defined. We agree
14 to keep working with them because we think that is true in
15 some cases when we went back and reviewed the language.
16 We're committed to finding a middle ground here where we
17 have enough information to adequately monitor the market
18 and ensure that we're not overly reaching for information
19 without these entities, their contractors, or about their
20 officers and directors when it's not necessary. So we are
21 committed here to keep working as part of the 15-day
22 process.

23 CHAIRPERSON NICHOLS: Any further Board comments
24 or questions on that one? Judy.

25 BOARD MEMBER MITCHELL: I think that what we

1 heard in the testimony was that we'd like to see that
2 language tightened up. And it appears you're going to do
3 that. As an attorney, I know when you see over broad
4 language, you can use it in many ways that were
5 unintended. And I think it's really important that you
6 get that right.

7 CHIEF SAHOTA: We absolutely agree. In certain
8 situations, we can do our best to get it right and will
9 work with our legal staff to do that and the State
10 Attorney General's office because they are a resource to
11 us on this particular area in terms of market oversight.

12 One of the things that we always do with our
13 rulemaking is if there's questions or concerns, we provide
14 guidance as part of the rulemaking. And so, you know, we
15 always want to clarify our intent here. And we'll do our
16 best in the regulatory text. But we can always provide
17 guidance this goes along with that text.

18 CHAIRPERSON NICHOLS: Okay. Thank you.

19 Any additional items on the list then? No.
20 Okay. So the protocol issue, I wanted to make a couple
21 comments before asking other members to weigh in here.

22 First of all, this is a reminder that we are not
23 actually adopting anything today. Whatever it is we say,
24 whether it's pro or con, we're not saying yea or nay. We
25 can't. We have to go through additional process here.

1 Secondly, in terms of where the comments are sort
2 of converging, we are hearing two very distinct kinds of
3 comments from those who oppose as well as from those who
4 support this protocol.

5 I, myself, have been in the camp of those who are
6 frustrated that we don't have more protocols. As staff
7 knows because they've heard from me regularly on this, why
8 does this take so long? Why is this so hard? Especially
9 why don't we have more protocols that directly effect
10 things that happen in California?

11 And I know that the next one that's up for --
12 looks like it's going to make it to finish line is one
13 that deals with rice growing, which at least has
14 potential, you know, for helping some folks directly in
15 California. And I was actually thrilled to hear today,
16 which I did not know, there are companies in California
17 that are in the business of doing the mine methane capture
18 projects because I had not heard that before.

19 Having said all of that, however, you know, we
20 made a commitment when we adopted the Cap and Trade
21 Program that we would work to assure that there was an
22 adequate supply of offsets available to keep prices
23 moderate. We've been very lucky that for a variety of
24 different reasons prices didn't go through the roof yet,
25 but were also very early in the program. Somehow or

1 another, you need to find that perfect balance between
2 having too many offsets in which case people don't go out
3 and develop those projects and you don't get the emissions
4 reductions from them versus having not enough offsets, in
5 which case the prices go up and they're not very useful in
6 terms of their intended functions.

7 We knew from the beginning that California was
8 going to be a tough place to provide offsets from because
9 we regulate pretty much anything. If it looks like it's a
10 promising area for regulation, we're going to require it
11 to be cleaned up. So it's going to be very hard to come
12 up with an offset project.

13 But still, we have to keep searching for them I
14 think or we are not being true to our primary mission,
15 which is obviously to benefit the state of California.
16 However, when you look at the Cap and Trade Program, I
17 think some of the opposition to offsets is fundamental to
18 dislike cap and trade. There are people, and some of
19 those we've certainly heard from, who are going to find a
20 reason to dislike any offset protocol that comes to us.
21 No question about that. We've heard a number of those
22 reasons.

23 I am satisfied that the staff is beyond
24 meticulous and careful in their review of these protocols
25 to try to make sure that there is no hole in them when it

1 comes to being real and enforceable and verifiable and
2 excess of regulatory requirements. However, having said
3 that, when we're dealing with the coal industry, there is
4 something that makes a lot of people nervous that we're
5 somehow doing something in an area that we're not
6 comfortable with in California. We don't use coal in
7 California to any significant extent at all, and certainly
8 we don't have any coal mines in California because we
9 don't have coal.

10 So there is a lot of I think appropriate concern
11 that we be able to fully explain why it is that what we're
12 doing in this area does not do anything that's going to
13 somehow encourage, prop up, incentivize, whatever, an
14 increase or even a continuation of coal mining activities
15 beyond what's already absolutely necessary.

16 And staff has presented a number of comments when
17 I've questioned them about this and probably other Board
18 members have asked you some of these questions, too, about
19 why you feel this is something we don't really need to be
20 worried about. But I'd like to give them an opportunity
21 to maybe say a little bit more about why they came to the
22 conclusion that this thing was ready for prime time.

23 CHIEF SAHOTA: So there are a couple themes, like
24 you said, that came through on the protocol. One was
25 incentives for the coal industry. Another was technical

1 merits related to additionality.

2 On the technical merits, we can safely say from
3 the staff perspective we addressed all the concerns to
4 ensure the protocols meet the AB 32 criteria. We
5 approached the development of this protocol the same way
6 we approached the development of the four existing
7 protocols. We feel like they're technically sound
8 documents and they will deliver real reductions for our
9 offset potential.

10 In terms of the incentives for coal mines, we've
11 looked at data from U.S. EPA. We've looked at data from
12 existing projects. And we've compared those numbers with
13 what was presented by the folks from the Stanford Law
14 Clinic and some of other commentors here today. When
15 we've looked at the data which really looks at the real
16 recoverable amount of methane at these projects, the
17 amount of potential price for these offsets in the market,
18 the capital costs that can be anywhere in the several
19 millions to ten million for capital development, and
20 factored all that into the net profits of the mines on an
21 annual basis in the U.S., it's always come out to less
22 than one percent of the potential profit.

23 In addition to that, we've realized these
24 projects are not being undertaken by the mine companies
25 themselves. You heard today from several commentors

1 they're California-based entities doing these projects.
2 It's really people who see an opportunity to deploy new
3 infrastructure and new technology to come up with some
4 kind of agreement contractually to have the mine host
5 those projects and then get some small revenue stream from
6 those projects.

7 When you think about the transactional cost from
8 the point of capital costs for development, the
9 transactional costs for bringing those to market, and what
10 potential small percentage might end up at the mine, it's
11 even less than one percent of one percent.

12 So looking at that data, we feel very confident
13 this is not going to somehow support new mines or
14 expansion of existing mines only because there is now an
15 offset revenue stream available to these folks.

16 CHAIRPERSON NICHOLS: So what about the issue of
17 EPA or other regulations that might come along that would
18 require this to be done and whether we're going to be
19 sitting here with a pool of offsets that we've created
20 when, in fact, in the future these wouldn't even be
21 allowable as offsets of regulation come into effect?
22 What's the response to that?

23 CHIEF SAHOTA: Currently, there is no plan for
24 EPA to regulate fugitive methane from mines. If they were
25 going to regulated that, it would be several years before

1 those regulations would be in a place or take effect.

2 If we were to adopt a protocol as part of this
3 rulemaking, which would be sometime next year, and a
4 project was developed beginning the day after that
5 protocol came into being, those projects would be eligible
6 to generate offsets.

7 But let's say two years from now EPA decides
8 they're going to regulate mine methane. After that point
9 of that regulation, no new projects could come into
10 California because those would be required reductions
11 under our regulation. And they would no longer be
12 additional and no longer be common practice. They would
13 be required reductions. So existing projects before that
14 development of that federal regulation would continue to
15 get some revenue for a defined period. New projects would
16 not be eligible after that period.

17 CHAIRPERSON NICHOLS: What is the defined period
18 that they could keep on getting revenue?

19 CHIEF SAHOTA: The defined period is ten years.
20 It's referred to as a crediting period, the same as what
21 we have our digester protocol. This is really to ensure
22 folks that make investments in these projects they have a
23 period for investment return on those upfront costs for
24 developing the projects.

25 CHAIRPERSON NICHOLS: Those are my major

1 questions. And I have a proposal to maybe do a little bit
2 more work in that area before this comes back. But I
3 think others Board members may wish to comment. Judy.

4 BOARD MEMBER MITCHELL: Thank you, Madam Chair.

5 My concern, and we heard it from some of the
6 comments, was the issue of junk offsets. And so that gets
7 back to the fact that this has to be quantifiable and
8 verifiable. And we've heard some other people that it is.
9 But how does ARB know that it is? What oversight do we do
10 in such an operation to get that information? If you have
11 a company that is capturing the methane, they have an
12 obvious motivation to inflate that because they're going
13 to get money off the sale of the offset. We need to be in
14 the minimum in the loop there to intervene when something
15 like -- some enterprise such as this.

16 CHIEF SAHOTA: That's a really great question,
17 and I think that goes to the overall design of the offset
18 program for the cap and trade regulation. We have
19 vigorous reporting requirements. You have to report data
20 on your operations associated with that project annually
21 to ARB. If you are a project located outside the state of
22 California, you have to submit yourself voluntarily to the
23 jurisdiction of the state of California for enforcement
24 potential.

25 We also have a third party audit program where

1 third party verifiers of those emissions reports are
2 trained and accredited by the Air Resources Board. And
3 they have to take exam to demonstrate they understand our
4 regulatory requirements and they understand the
5 fundamentals of that offset protocol they're reviewing.

6 The auditors, the verifiers, are subject to ARB
7 oversight. ARB staff also is on the ground to monitor
8 some of these projects when the verifiers goes out there.
9 We have traveled to Maine. We have traveled to South
10 Carolina to look at forestry projects. So we have a very
11 well developed audit program in addition to the third
12 party verifier program.

13 If we find that an offset is fraudulent or
14 invalid and it has already been used for compliance, the
15 entity that used that offset for compliance has to replace
16 it with a valid allowance or offset to ensure the
17 environmental integrity of the program.

18 Having said that, nothing precludes the state of
19 California from pursuing enforcement action, criminal and
20 financial, against anyone that provides false
21 misinformation to the state of California

22 CHAIRPERSON NICHOLS: If anything, we get accused
23 of being so rigid and so different to deal with, nobody
24 really wants to try to present offsets.

25 Mrs. Riordan and then Mr. De La Torre, Dr.

1 Balmes, and Mr. Serna.

2 BOARD MEMBER RIORDAN: Two things that I think
3 are important. And some day maybe we could just have a
4 tutorial, a little bit about verification and third party
5 verification. Some of us have have had some experience
6 with that. But I think it's helpful to maybe remind the
7 Board about verification and what it entails and how we go
8 about doing that.

9 The other part of this that makes me feel
10 comfortable with this protocol is again more of a third
11 party involvement. And that's the Climate Action Reserve.
12 I think their input -- again, maybe we could have a quick
13 tutorial on that entity. To know that there are people --
14 professional people who have no vested interest in other
15 than having a protocol that is a good protocol that will
16 serve us well to be involved.

17 So when Gary testified, it's very helpful to
18 anybody who understands their role in this development of
19 a protocol. And when they put their sort of stamp of
20 approval on it, that gives me some comfort. If you don't
21 know the Climate Action Reserve, that doesn't mean as
22 much. So I think it could be very helpful just to
23 understand what the process is, some of the fundamentals.

24 CHAIRPERSON NICHOLS: Great testimonial.

25 Hector, did you have a comment? Yes.

1 BOARD MEMBER DE LA TORRE: First of all,
2 clarification on the point about the ten years. That
3 starts from the beginning, and it's ten years. It's not
4 ten years from when the regulation would kick in.

5 CHIEF SAHOTA: That's right. Ten years from the
6 date the project actually commences.

7 BOARD MEMBER DE LA TORRE: All right. And then
8 the follow-up question I had is: Who does it now? Who is
9 doing methane capture and in mines now? And why are they
10 doing it? If it's not being regulated, why are they doing
11 it?

12 CHIEF SAHOTA: There are some folks who are in
13 mines that have drainage methane, which is removing
14 methane ahead of areas where they're excavating. It has
15 to be removed so you don't have a safety issue when you
16 move into that mining area.

17 That methane is rich enough you can inject it
18 into a pipeline and get useful energy out of it and you
19 can sell it on the transmission line. Those projects are
20 occurring. They're financially viable on their own
21 without offset credit. Those are not allowed because the
22 business-as-usual protocol and are economically viable on
23 their own.

24 When we talk about what's under this protocol,
25 we're talking about projects that there is no end put from

1 that methane because it's so low in concentration you
2 can't use it for useful energy. So the projects that have
3 occurred to date are really under the voluntary protocols.
4 The Climate Action Reserve has a protocol. The verified
5 carbon standard has a protocol. So folks have done these
6 projects in the hopes of getting some offset credit to
7 sell into the voluntary marketplace. That's what we're
8 seeing here.

9 BOARD MEMBER DE LA TORRE: It's venting.

10 CHIEF SAHOTA: it's vented methane for health and
11 safety reasons. It's vented for ensuring the integrity of
12 the mine area where you're going to be excavating for the
13 worker safety. It's all pure vented emissions.

14 BOARD MEMBER DE LA TORRE: And for the question
15 of abandoned mines, clearly, if it's a working mine, that
16 venting is going to be much more than an abandoned mine.
17 So when they -- this issue of whether someone would use
18 the credit money to double back and go back in and re-up
19 with the mining operation using this revenue as the
20 trigger point, what's your response on that?

21 CHIEF SAHOTA: So the idea that you would take an
22 abandoned mine and restart it for the purpose of this
23 protocol, it begs the question would you expend more money
24 and effort into restarting the mine based on the potential
25 revenue you could get from that offset?

1 When you look at abandoned mines, they have sharp
2 decline curves for how fugitive methane is vented out of
3 those. If you think this is going to be something that's
4 viable in the next year or the next two or three years,
5 then you're probably not going to shut that mine down.

6 But as we looked at the evidence and the data
7 from U.S. EPA and the project data and the market data and
8 offset prices, the offset itself is not going to be more
9 than one percent of the net revenue for that mine as a
10 working mine. To restart that to sell a commodity for
11 which you already shut that mine down doesn't seem to make
12 economic sense.

13 BOARD MEMBER DE LA TORRE: Could we put something
14 into this protocol that prohibited closed mines from
15 qualifying for it?

16 CHAIRPERSON NICHOLS: I think the closed mines
17 are one of the best options for getting projects done, as
18 I understand it.

19 CHIEF SAHOTA: Right. Gives an incentive or some
20 kind of return once you close the mine if you're not able
21 to make some kind of economic benefit on keeping the mine
22 open. To us, it's a benefit as mines close as a phase out
23 incentive to keep providing some revenue from that mine.
24 We can certainly discuss and talk about this --

25 BOARD MEMBER DE LA TORRE: The reason I say that

1 is -- and you said that the venting is so much less after
2 it's closed. So of the eleven percent of U.S. methane
3 emissions that are coming from mines, that's from our
4 statistics I imagine, the Lyon's share is from active
5 mines, not from these closed ones. I guess that we want
6 to capture everything we want. But we can't.

7 But having something there that gets to this
8 question of closed and a disincentive to -- it may never
9 happen. And the economics may not work, et cetera. But
10 you may want to make it tough.

11 CHAIRPERSON NICHOLS: I think I'm going to ask
12 John to do his questions. And let's get our questions
13 done and then think about what we want staff to do.

14 BOARD MEMBER BALMES: So I'm going fairly
15 long-winded on this one, but I promise to be short on the
16 other.

17 I'm going to violate your stipulation and say
18 staff has been incredibly responsive to me. What I shook
19 the tree and I got a lot of fruit back. And I appreciate
20 Richard, Steve and Rajinder for educating me about this.
21 I knew nothing about coal mine gas capture a couple weeks
22 ago, and now I know probably than I want to.

23 I also would say just as an aside is that I wrote
24 a chapter for a book, which the Chairman knows about
25 because she wrote the forward, where I had the praise our

1 Cap and Trade Program before it was launched. And I feel
2 very good. The book just came out and I feel very good.

3 CHAIRPERSON NICHOLS: They didn't send me a copy
4 of it.

5 BOARD MEMBER BALMES: So that said, I'm very
6 conflicted about this protocol. But I'm not conflicted
7 about the technical merits of the program. Staff has
8 reassured me that we can verify the emissions, that we can
9 enforce the protocol, and there is additionality.

10 I first thought abandoned mines didn't admit that
11 much methane. But I think they do, they'll -- Mr. De La
12 Torre's question was a good one in terms of how much.

13 So my problem, the reason I'm conflicted, is on
14 principle. I agree with my environmental health advocate
15 colleagues that have testified that supporting the coal
16 industry in any way, shape, or form is problematic to me.

17 It was mentioned by Will Barrett of the Lung
18 Association that the Lung Association has a specific
19 policy to get us to stop using coal for power generation
20 in this country and around the world. And the American
21 Thoracic Society, which is the professional link to the
22 Lung Association, I'm Chair of the Environmental Health
23 Policy Committee, and we had a meeting where we decided to
24 endorse the Lung Association position and work to stop the
25 combustion of coal.

1 So I have a little bit of a problem being in
2 favor of this protocol on that principle. Ms. O'Neill in
3 testimony said coal was dirty. That's true. But it's
4 beyond dirty. Coal emissions kill people. I just want to
5 make that clear. Coal emissions kill people. We get all
6 excited about Fukushima and the people that might be
7 harmed by radiation from that power plant disaster.

8 But coal kills thousands -- tens of thousands of
9 people per year around the world and in the country as
10 well. So I have trouble being supportive of the coal
11 industry.

12 That said, I think that staff has convinced me
13 I'm going to hold any nose and probably be supportive of
14 this. And you know, I guess I need to be a little bit
15 more convinced as we talk that we need offset protocols
16 outside of California to maintain the integrity of the
17 program. I'm more impressed with the fact we can capture
18 a lot of methane with this protocol. That's good for the
19 climate. But in general, I have problems with offsets
20 outside of California. I realize we have other ones,
21 deforestation.

22 CHAIRPERSON NICHOLS: I was just reminding myself
23 how to say something, which I then decided I shouldn't but
24 I will anyway. When we adopted our first set of offset
25 protocols related to forestry and which did allow for

1 offsets in California, the meeting room was packed with
2 people dressed as trees and carrying banners and claiming
3 that we were incentivizing clear cutting. So none of
4 these things are free of controversy.

5 BOARD MEMBER BALMES: I understand. It's the
6 co-benefits issue that was important to me. I'd like to
7 see protocols where disadvantaged communities are
8 benefited in terms of decreased exposure to criteria
9 pollutants.

10 CHAIRPERSON NICHOLS: I think we all would. As
11 I've said before, there is a constant tension between
12 regulating things and allowing them to be used as offsets.
13 There are lots of things that could become potential
14 offsets if you didn't think that you should just ban them
15 or restrict them.

16 Most of the things that I think everyone would
17 like to see happen in terms of reduced emissions from
18 things like diesel are things that we wouldn't allow to be
19 offsets, because we would think they should be permitted
20 if they're really bad. But there may be ideas out there
21 that we have not thought of. I'm quite sure we're not top
22 of of everything.

23 BOARD MEMBER BALMES: I would like to see RED
24 move forward, but that's a different story.

25 In any event, I am, like I said, persuaded that

1 the climate benefit of this protocol is the reason I'm
2 going to hold my nose and being supportive.

3 CHAIRPERSON NICHOLS: I'm sorry to be factitious.
4 I think your thoughts and ethical concerns about this are
5 appropriate.

6 BOARD MEMBER BALMES: The last thing I would like
7 to ask for Rajinder to respond to was whether or not -- I
8 think it was Aaron Strong that the doctoral student from
9 Stanford, if I got that correct. He commended the staff
10 for the work they've done but said we needed to do more.
11 Could you respond to his concerns?

12 CHIEF SAHOTA: I think it depends on what areas
13 that the commentor thinks we need to do more work on.
14 When it comes to some of the technical equations and some
15 of the emission factors in the protocol, staff would like
16 to make strategic changes there.

17 When it comes to the overall process, how we
18 assess additionality, which is, is this activity beyond
19 business as usual. Is it activity that wouldn't commonly
20 occur? The process we deploy there is the same process we
21 used for the four existing protocols. That process has
22 been successfully litigated by the ARB and the State
23 Attorney General's office in a lawsuit brought on a group
24 in California that's opposed to all offsets.

25 The question of is this business as usual, is

1 this not business as usual, something that's always going
2 to be a question there. We use the same process we used
3 before and we feel confident it's a legal and sound
4 process.

5 BOARD MEMBER BALMES: I would just close by
6 saying that that's the kind of response I've been getting
7 from Rajinder all along and it's very reassuring inform
8 me.

9 I just wanted to echo what Mrs. Riordan said. I
10 think the verification is really a key issue here.

11 CHAIRPERSON NICHOLS: Okay. Mr. Serna.

12 BOARD MEMBER SERNA: Thank you, Madam Chair.

13 For the most part, Dr. Balmes hit on most of what
14 I wanted to get some answers on.

15 Specifically, some of the commentary testimonial
16 information today about missing information or what hasn't
17 been done. You obviously asked that. I'm not going to go
18 so far as to say I'm holding my nose to go along with MMC
19 protocol, but I was I have to admit a bit torn in my
20 thinking in terms of what it all means. I mean, we're
21 getting pretty drastic differences of opinion on this
22 particular subject today. And it was probably one of the
23 most common threads or themes we heard of concern or
24 support.

25 I'm feeling confident at this point, given the

1 discussion with staff in the last several minutes about
2 it, that we are doing our due diligence to make sure we
3 are moving forward with the offsets that are defensible.
4 I certainly appreciate as a new member -- a relatively new
5 member of the Board that the frustration that the Chair
6 acknowledged early on that, you know, we do need to move
7 forward with acknowledging the offsets that make up the
8 eight percent of the compliance obligation instruments
9 we're asking entities to consider.

10 I appreciate all the work of staff. Certainly
11 appreciate all the testimony on both sides of the subject
12 today. And hopefully moving forward, there's going to be
13 some refinement on the subject. But again, appreciate my
14 colleague's comments. I think this is probably one of the
15 more important parts of the amendments we are considering
16 today and that you presented. Appreciate it. Thank you.

17 CHAIRPERSON NICHOLS: Yes.

18 BOARD MEMBER SHERRIFFS: Dr. Balmes, I'm glad you
19 get fruit when you shake the tree. I get a little methane
20 sometimes.

21 Anyway, yeah, this is a difficult one in some
22 ways to swallow. But if we can have a positive impact on
23 this greenhouse gas that otherwise would be emitted and
24 not managed, I think that's tremendous.

25 One question is that -- was great to hear the

1 California businesses are really in the forefront and
2 stand to be the first in line in terms of being involved
3 in this if it comes to pass.

4 Is there a way to give -- because physically
5 these things are happening out of state. Is there a way
6 to give extra credit within the credit process for
7 businesses that are centered in California, even though
8 the process may not be happening in California. That's
9 one way to bring it to California.

10 The other question as I was thinking about these
11 offset credits being created, what a huge need there is
12 within the methane. Is there a danger of these
13 out-of-state credits pushing the development of California
14 credits aside. Because it's a little harder to think of
15 where these credits are going to come in California for
16 reasons that have been discussed. So a concern. Because
17 there is a cap on credits in a sense. A zillion credits
18 out there, but only eight percent of it be used.

19 CHAIRPERSON NICHOLS: Well, I think the questions
20 that you're asking, just if I may at this point bring it
21 back to hopefully where we can actually takes action and
22 give our court reporter a break after five hours and
23 decide what we're doing next.

24 I think that this is an issue which has been so
25 contentious on the part of people whose support and

1 interest in this program is obviously sincere and positive
2 that I think we owe it to ourselves to ask our staff to do
3 some additional work on this issue before it comes back.
4 And I think they've indicated they are willing to do that,
5 to both meet with and perhaps in a workshop format but
6 also in writing respond to the suggestions that have been
7 made in terms of additional technical work that should be
8 done to make the protocol absolutely air tight. And then
9 also to respond to -- there is a lot of numbers that have
10 been thrown around out there by economists. And not all
11 numbers are created equal. To try to give some additional
12 support to the belief that we have that there is no
13 incentive encompassed in this. There is nothing in it
14 that will be adding to the burden of additional coal
15 mining going on.

16 I do think that one of the things we always need
17 to look at when -- and we've said we would and I think we
18 have to date when we look at a protocol is this going to
19 be the toughest protocol literally ever. We want this to
20 be the gold standard and benchmark for others. We want
21 others to use it, not just in the California program but
22 elsewhere in the world. Because the methane that's being
23 emitted in coal mines in the United States pales by
24 comparison to the methane that's being emitted from other
25 places. So anything we can do to make sure that our

1 protocol is something that we will be able to literally
2 export I think is important.

3 So I'd like to give some direction to the staff
4 as part of the Resolution, otherwise which I think is in
5 pretty good shape that they would come back to us with
6 some additional work on this one issue. But, you know,
7 within the general context of understanding that for all
8 the reasons that people have stated, we recognize that
9 this is one that we're probably going to be moving forward
10 with. Is that sufficiently clear?

11 Okay. With that, are we prepared to propose the
12 Resolution and vote on it at this time? Yes? Would
13 anybody like to do that? Who wants to be first?

14 BOARD MEMBER RIORDAN: Madam Chair, I would be
15 happy to move the staff recommendations Resolution with
16 some of the input that has been talked about and I think
17 is pretty clear to the staff. If staff needs more
18 clarification, you can ask after we conclude our meeting.

19 BOARD MEMBER BALMES: I'll second that.

20 CHAIRPERSON NICHOLS: Thank you, sir.

21 All those in favor, please say aye.

22 (Ayes)

23 CHAIRPERSON NICHOLS: Opposed?

24 Abstentions?

25 Okay. Thank you so much. This has been a long

1 process, but it's been I think overall a very positive
2 one.

3 Before we take a break, which I know we need to
4 do, could I just get an estimate of the time that people
5 think is needed for the mandatory reporting rule? This is
6 a mandatory regulation, so we have to hold a hearing. We
7 have to act. We have to have a quorum for it. And we've
8 got people with other obligations in their lives. Would
9 like to get a sense of what we're talking about here.

10 DEPUTY EXECUTIVE OFFICER TERRY: Staff
11 presentation should be no more than 15 minutes. And I
12 don't know how many people have signed up to.

13 BOARD CLERK JENSEN: Ten people have signed up.

14 CHAIRPERSON NICHOLS: Ten.

15 Can we take a brief lunch break and stretch and
16 all of that? Half an hour for lunch and then come back at
17 2:00. Okay.

18

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1 AFTERNOON SESSION

2 2:00 P.M.

3 CHAIRPERSON NICHOLS: Welcome back, everybody
4 from our short break. Thanks to all who were so prompt.
5 We're ready to resume the meeting. We're going to be
6 moving into the public hearing to consider amendments to
7 the regulation for mandatory reporting of greenhouse gas
8 emissions. This rule is really at the very heart of our
9 entire climate program because without the data, we
10 wouldn't have the ability to develop the Scoping Plan or
11 all of the rules and regulations under AB 32. So it's
12 been important from the beginning, and it now is in need
13 of some further amendment. And I think at this point, I'm
14 going to turn this directly over to the staff.

15 DEPUTY EXECUTIVE OFFICER COREY: All right.
16 Thank you, Chairman Nichols. Staff's proposing limited
17 amendments, and it will be Dave Edwards that's giving the
18 presentation on proposed amendments to the mandatory
19 reporting regulation. Dave.

20 MANAGER EDWARDS: We're going to have Joell Howe
21 give the presentation for us.

22 DEPUTY EXECUTIVE OFFICER COREY: Two things I was
23 trying to accomplish. One, I was trying to get it done
24 relatively quickly. Two, to the right person.

25 CHAIRPERSON NICHOLS: Nice hand off.

1 700 entity that report their emissions and product data.
2 The reporting entities subject to this regulation fall
3 into three main categories.

4 The first is stationary facilities whose GHG
5 emissions are greater than 10,000 metric tons of carbon
6 dioxide equivalent or CO2 E per year.

7 The second is suppliers of fuels with emissions
8 over 10,000 metric tons. This includes transportation
9 fuels, natural gas, and other fuels. All electricity
10 importers must report under the requirements of this
11 regulation. There is no minimum threshold for these
12 entities.

13 -o0o--

14 MS. HOWE: To ensure consistent reporting,
15 entities submit all GHG emissions data and product data
16 through the California Electronic Greenhouse Gas Emissions
17 Reporting Tool or, Cal e-GGRT. This online reporting tool
18 is consistent with the U.S. EPA's GHG reporting tool in
19 order to minimize the burden on reporters.

20 Of the 713 facilities that reported to us this
21 year, only two were out of compliance. That equates to
22 over 99 percent compliance rate. This was a very
23 successful year for mandatory reporting program.

24 -o0o--

25 MS. HOWE: Now I will explain the amendments

1 Finally, staff is proposing flexibility that
2 allows reporting entities to still receive allowance
3 allocations on the portion of data that does meet accuracy
4 requirements rather than risk losing all the allocation
5 if some of this data does not meet accuracy requirements.
6 However, the reporting entities will still have to provide
7 an estimate for their excluded product data.

8 -o0o--

9 MS. HOWE: Staff has proposed changes to the
10 various technical requirements. The proposal includes the
11 reporting of the activity data associated with hydraulic
12 fracturing, or fracing. Staff is proposing to add
13 additional data reporting from the natural gas fuel
14 suppliers to support the cap and trade covered emissions
15 calculation.

16 Next, staff is proposing adding requirements to
17 ensure specified sources of electricity are accurately
18 claimed in our program by adding language requiring
19 sellers of imported specified source power to guarantee
20 the power source by contract.

21 Staff is also proposing to add a requirement to
22 report CO2 emissions from stationary fuel cells to help
23 track the installation of fuel cell technology in
24 California.

25 Staff is proposing the reporting of activity data

1 to assess the basis for yearly changes in greenhouse gas
2 emissions to support cap and trade's adaptive management
3 initiatives.

4 -o0o--

5 MS. HOWE: Yesterday, staff released suggested
6 modifications to the proposed amendments. Based on
7 discussion and comments received today, these will be a
8 part of our 15-day package of modified text.

9 Oil and gas stakeholders were concerned about the
10 feasibility and cost of the oil well work over and
11 completion data requirement. Staff is proposing to change
12 this to require non-metered activity data. This change
13 still allows for a valid estimation of emissions but
14 greatly reduces the implementation cost. This
15 modification reduces about 98 percent of the total
16 estimated cost of the proposed amendments.

17 Language to fully implement the complexity
18 weighted barrel reporting to support benchmarking and
19 allocations is reflected in the 15-day language.

20 Originally proposed electric power entity
21 amendments regarding system power and treaty power are
22 being withdrawn.

23 Finally, the original proposed language for
24 reporting the qualitative basis for year over year
25 emissions changes included a reference to criteria and

1 toxic emissions. With the 15-day language, the
2 requirement would be to only report changes in GHG
3 emissions.

4 -o0o--

5 MS. HOWE: Staff recommends the approval of the
6 proposed amendments to the regulation for the mandatory
7 reporting of greenhouse gas emissions, which also includes
8 the 15-day change described today.

9 Thank you for your time. Are there any
10 questions?

11 CHAIRPERSON NICHOLS: I don't see any questions
12 now. There may be some after we hear from the public.
13 This is a public hearing item. I think we should move
14 directly into that.

15 We'll start with Norman Pedersen and then Nico
16 Van Aelstyn and John Larrea.

17 MR. PEDERSEN: Good afternoon. Norman Pedersen,
18 Southern California Public Power Authority.

19 SCPPA commends three changes in the 45-day
20 language that we saw in the 15-day changes that the staff
21 released yesterday.

22 First, the 15-day changes would remove the
23 multiple new provisions regarding imports of system power
24 that were in the 45-day language. The 45-day provisions
25 would have burdened actually the staff with the need to

1 develop system emission factors for all system power
2 suppliers. I think that was a good change.

3 Second, the staff in the 15-day changes would
4 eliminate the retroactive effect of a 45-day rule change
5 about reporting imports from asset controlling suppliers.
6 Making the rule change that was proposed in the 45-day
7 language effective retroactively to the beginning of 2013
8 would have unfairly harmed importers whose contracts do
9 not specify the asset controlling suppliers system as a
10 source of imported electricity.

11 Third, the 15-day changes revise a provision that
12 was in the 45-day language requiring operators of certain
13 facilities, including power plants, to report on the
14 reason for changes in the release of criteria pollutants.
15 This will be changed to apply to just changes in the
16 release of greenhouse gases. This is a appropriate. The
17 MRR is under authority of AB 32. The enabling legislation
18 for the MRR AB 32 refers to reporting greenhouse gas
19 emissions, not criteria pollutants.

20 We applaud these changes in the 15-day changes
21 that we saw yesterday. However, we are concerned about
22 particularly one of the 15-day changes. The 15-day
23 language would unfortunately reverse what we saw as a very
24 helpful rule change that was in the 45-day language and
25 that we applauded in our comments on the 45-day language.

1 We did submit written comments. We commented on ten
2 issues.

3 The 45-day language would have deleted a
4 troublesome provision in the MRR that requires an electric
5 power entity to retain hourly metered data for specified
6 sources and renewable energy sources and use the data for
7 verification purposes. Tracking and verified detailed
8 hourly data would be burdensome and would be unnecessary.
9 Since MRR reports are for annual periods, hourly
10 information should be irrelevant so long as annual figures
11 are accurate. We believe the deletion of the hourly
12 metered data requirements should not be reversed.

13 Thank you.

14 CHAIRPERSON NICHOLS: Great. I was wondering if
15 you were going to be able to wrap that up.

16 Mr. Van Aelstyn and then Mr. Larrea.

17 MR. VAN AELSTYN: Good afternoon. Nico Van
18 Aelstyn of Beveridge & Diamond.

19 I'm here this afternoon to speak on behalf of the
20 Powerex Corporation reservation. I don't know the
21 morning's stipulation still stands.

22 CHAIRPERSON NICHOLS: It's been lifted.

23 MR. VAN AELSTYN: Well, then, I will just add my
24 word of thanks to the staff for all their good hard work
25 over the last many months.

1 So very briefly, Powerex is the wholly-owned
2 marketing subsidiary of the British Columbia Hydro and
3 Power Authority, which is a Provincial Crown corporation
4 owned by the government of British Columbia. Powerex
5 sells wholesale power in the United States pursuant to
6 market based rate authority granted by the Federal Energy
7 Regulatory Commission.

8 Powerex has been a reliable source of electricity
9 in California for many years and fully intends to continue
10 to be so.

11 Powerex appreciates the effort ARB and ARB staff
12 have put into developing the Cap and Trade Program, which
13 we believe serves to fulfill AB 32's mandate to reduce
14 greenhouse gas emission and combat climate change. The
15 program is built on the foundation of the mandatory
16 reporting rule. It came first. Let's not forget.

17 The program and the MRR now and the program --
18 the amendments to the MRR now before the Board ensuant to
19 be before the Board in the 15-day rule changes do achieve
20 progress toward achieving the goals of AB 32 in our view.

21 With these changes, we believe that ARB is
22 generally on the right track. The development of the
23 greenhouse gas reporting program has been a learning
24 process for all of us during the last several years and
25 improvements continue to be made, including today.

1 We welcome the proposals now before the Board
2 that further clarify that buyers and sellers in the
3 wholesale power markets must be very clear when
4 contracting for the delivery of specified power. That
5 intention must be embodied in a written power contract and
6 the delivery must then be confirmed in the NRC e-tag.

7 In particular, we support the proposal's
8 extension of this principle of clear intent to asset
9 controlling suppliers by specifying that they can determine
10 when they are selling specified power and when they are
11 not. It is only with this kind of clarity that the carbon
12 price signal can do what it's intended to do, which is to
13 incentivize the development of clean power generation.

14 Again, we believe ARB is generally going in the
15 right direction on these and other issues. That said, we
16 do believe there are further refinements to be made to
17 clear up residual confusion within the wholesale power
18 markets. We look forward to continuing to engage with ARB
19 staff with respect to the draft 15-day rule changes that
20 were issued yesterday. We understand these changes were
21 likely drafted without the benefit of all those
22 stakeholders, including us, that submitted comments this
23 week. But we do think that the changes would benefit from
24 a review of the stakeholders' comments that have been
25 submitted on the 45-day rule changes.

1 CHAIRPERSON NICHOLS: Thank you.

2 Mr. Larrea and Brian Biering and Cindy Parson.

3 MR. LARREA: John Larrea with the California
4 League of Food processors. Just here to again
5 congratulate staff on the MRR proposal. We are very
6 pleased with the definitions we've been able to work out
7 associated with our processes and the food processing
8 definitions that are needed for the benchmarking.

9 There are still a few that need to be tweaked.
10 So we just want to make sure that staff is going to
11 continue to work with us on those to get those as accurate
12 as possible. And also just to thank staff for their
13 patients in terms of our ability to be deliver the data
14 that they need in order to do the benchmarks. As you
15 know, we have our seasons at odds with most others and we
16 are very intensive and it kind of helps to give us just a
17 little bit of extra time to get back together to focus on
18 it. So we should have that for you by early next year.
19 Thank you.

20 CHAIRPERSON NICHOLS: Thanks.

21 MR. BIERING: Brian Biering with Ellis and
22 Schneider and Harris on behalf of the Turlock Irrigation
23 District.

24 I'm going to quickly second a comment that Norm
25 Pedersen from SCPPA made with regard to changes in the

1 45-day language that was subsequently reversed through
2 proposed 15-day language changes which were released just
3 yesterday.

4 What the issue really relates to is the retention
5 of meter data for out-of-state power plants when imported
6 from out-of-state power plant. The usual way of verifying
7 the imports from that source are through the e-tags. The
8 been changed to require importers to retain meter data
9 that the facility generates. And the reason that this
10 change is potentially problematic is it would basically
11 require the importers to go through and compare the
12 metered data, the e-tags by an hourly basis all hours of
13 the year. And that I think particularly for smaller POUs
14 could create a pretty significant administrative burden
15 with very little upside in terms of improvement of
16 accuracy for the reporting.

17 So we are generally supportive of most of the
18 changes that are proposed in the 15-day changes, except
19 for that one. Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 Cindy Parsons and Susie Berlin and Steve Kelly.

22 MS. PARSONS: Hi, again. Cindy Parson with Los
23 Angeles Department of Water and Power. And I'd actually
24 like to provide some detail as far as what Norman and
25 Brian spoke about as far as this meter data issue.

1 We were actually the one who brought it to ARB
2 staff's attention as far as it being problematic.
3 Basically, nobody knew what to do with it. It was in the
4 rule. We didn't know how it was supposed to be applied.
5 So we pointed out that it was a problem. We asked them to
6 remove it. Removing it would allow verification on an
7 annual basis. So this is an annual report. You're
8 reporting an annual report based on e-tags. And you could
9 take the annual generation data from the facility and
10 compare the two. As long as it's within a few percentage,
11 you're good.

12 So initially, staff agreed and they struck it out
13 in the 45-day language. A few weeks ago, they contacted
14 us and said they wanted to put it back in. And their
15 expectation for putting it back in is that they want us to
16 do this hour by hour comparison between the meter and the
17 e-tag and to report the lesser of the two.

18 They also asked us to actually do an exercise,
19 which we did. Took is 20 hours of staff time to do this
20 exercise for one month. Very labor intensive. It
21 required a lot of data manipulation because you have to
22 line up the hours, and you have to make adjustments for
23 time zone changes and all that. So when all is said and
24 done, the difference was 1.6 percent. So huge labor cost,
25 very small improvement in accuracy.

1 So basically what we would like to do is retain
2 the original amendment, which is to strike out that
3 language. We also did the exercise of comparing annual
4 versus annual. The result was 1.59 percent. So much less
5 labor intensive to do the annual comparison. So we ask
6 that the Board retain the original amendment and that's
7 for 9511(g)(1)(n).

8 The second item I'd like to address briefly has
9 to do with reporting specified imports of asset
10 controlling supplier power. The amendment could result in
11 assigning default emissions to this low GHG energy. For
12 the past two years, all energy provided by asset
13 controlling suppliers has received a low GHG emission
14 factor, regardless of the type of contract. Now you have
15 to have a specified contract. As a result, higher
16 emissions will be reported for some of this energy.

17 Our concern is what impact is that going to have
18 on the statewide greenhouse gas emissions inventory and
19 what impact is that going to have on the Cap and Trade
20 Program when all of a sudden you have higher emissions for
21 low GHG power. And in addition, it's not accurate. So if
22 you're concerned about accuracy on the specified imports,
23 why not also be concerned about accuracy for the asset
24 controlling supplier. Thank you very much.

25 CHAIRPERSON NICHOLS: Thank you.

1 Ms. Berlin.

2 MS. BERLIN: Good afternoon. Susie Berlin for
3 the MSR Public Power Agency.

4 Just have a few brief comments. I want to
5 express appreciation for some of the amendments that are
6 reflected in staff's proposed modifications, specifically
7 the removing the requirement to report differences in
8 criteria pollutants and striking all references to system
9 power and also the reference to not having to have the
10 decreases or increases of five percent or more in the GHG
11 emissions verified.

12 And I was also going to speak briefly or maybe
13 not as briefly as I will about the hourly verification in
14 Section 95111(g) requirements. But I'm instead going to
15 echo the issues that were raised by SCPPA, TID, and LADWP
16 that the hourly matching is a very, very labor intensive
17 task and the members of MSR have undertaken efforts to try
18 to come up with the order of magnitude and what that would
19 cost in additional resources. And it's extremely
20 intensive. So we urge the revisions to the -- we urge the
21 original amendment to be retained and not to reinsert the
22 language that would require the hourly matching.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thanks.

25 Steve Kelly.

1 MR. KELLY: Thank you, Mr. Chair and Board.

2 I'm Steven Kelly, the Policy Direct for the
3 Independent Energy Producers Association, which is a trade
4 association of non-utility-owned electric generators
5 primary located in California.

6 I do have members who are located out of state,
7 but the bulk of our generation, about 26,000 megawatts is
8 located in the state. We produce jobs and tax revenues to
9 the local economies in doing that. And our goal from the
10 beginning is to make sure that AB 32 was essentially
11 competitively neutral in terms of generation types that
12 were bidding into the California independent system
13 operator and forth.

14 And the primary reason for that is because
15 generation located in California reports its emission out
16 the stack. That means we have an obligation to buy
17 allowances for 100 percent of the emissions that we
18 produce. And we're particularly interested in making sure
19 everybody else shares the burden.

20 One of the concerns that we have had and continue
21 to have is the methodology for calculating the default
22 emissions rate for unspecified system power. And we
23 believe that the current methodology that has been used
24 over the last year creates reverse incentives. It fosters
25 resource shuffling as people move from specified resources

1 to create unspecified resources so they can get around a
2 specific -- the actual emissions that they have, and
3 fosters leakage. And more importantly, it undermines the
4 environmental improvement that we are all trying to
5 achieve.

6 Recently, IEP submitted comments on the 45-day
7 language supporting the changes the staff are proposing to
8 make more specific what the emissions rate would be
9 associated with unspecified system power imported into
10 California. And included in those comments, we actually
11 did a study of one of the out-of-state entities that
12 delivers unspecified system power to California. And that
13 analysis suggests that their actual emissions based on
14 EPA-reported data for 2009 and 2012 is anywhere between 16
15 and 40 percent higher than the default emissions factor
16 that is used today by your agency.

17 That creates a huge competitive advantage. And
18 it harms in-state generators that are providing jobs and
19 tax base.

20 We supported the 45-day language and filed
21 comments on that. We have concerns about the decision
22 released yesterday to remove the effort to try to perfect
23 the calculation of the default emissions factor. We ask
24 the staff and this agency to continue its efforts in
25 moving towards being getting more accurate representation

1 of the emission factors associated with power imported
2 into California, reinstate the 45-day language that was
3 proposed to remove for the 15-day language. Because if
4 you don't do this, otherwise, we're looking at competitive
5 imbalance and reverse incentives, which I think we're all
6 trying to remove. Thank you.

7 CHAIRPERSON NICHOLS: Thank you.

8 Mr. Harris and then Elise Paeffgen and Michael
9 Wang.

10 MR. HARRIS: Thank you very much. Frank Harris
11 with Edison.

12 And I want to thank this opportunity to thank
13 staff and I want to thank them retroactively. I mentioned
14 to Steve it was the Chair's fault I couldn't thank him
15 last time I testified. So here we are.

16 The revisions to the mandatory reporting
17 regulation by their very nature are complicated and the
18 issues don't readily sort of lend themselves to the three
19 minutes of testimony. We have been working with staff
20 quite a bit on these issues. And I think that how we
21 would like to frame it up falls into three main buckets in
22 terms of when we would like to see out of reporting
23 regulations. First of all, they should coordinate well
24 with the requirements of other regulators so that as we
25 are recording in one -- from one regulation, that

1 coordinates well with how we have to report for others.

2 Reporting requirements should recognize how
3 existing markets operate and how data is developed and
4 provided. And then finally, the reporting requirements
5 should facilitate flexibility as market structures emerge
6 and develop. Sort of three overarching guidelines that we
7 kind of look for.

8 As such, Edison supports removing the designation
9 of system power in the proposed amendment, the 15-day
10 language. We absolutely support the most fully and
11 completely accurate evaluation of system power
12 non-specific imports into California. We think that is
13 something that needs to be continually pursued and kept up
14 to date so that California knows the nature of the energy
15 that's being delivered into the state to the best it can.

16 The problem with the system power designation as
17 it was is that it creates perverse incentives and does not
18 coordinate well with the way that the electricity trades
19 occur in the short-term market. So we support the 15-day
20 package that was released yesterday.

21 Finally, I'll just close with this. We suggest
22 that the staff recognize proposed changes related to the
23 future energy imbalance market that's being developed by
24 the CAISO And recognize that might require further
25 alteration of this regulation. We think that the CAISO's

1 proposal is not fully baked yet, not completely mature.
2 So we suggested its immature for the ARB to develop a
3 regulatory treatment of that structure until we're clear
4 on which direction the CAISO is going. Thank you very
5 much.

6 CHAIRPERSON NICHOLS: Thank you.

7 MS. PAEFFGEN: Good afternoon. I'm a Elise
8 Paeffgen from Alston & Bird.

9 The rules, as we all know, are complicated and
10 changing. And entities, particularly new entrants, are
11 really struggling to understand the requirements and how
12 changes impact them. So we're wondering how much
13 compliance assistance will the Board provide to these
14 entities and what happens if an honest mistake is made?
15 Thank you.

16 CHAIRPERSON NICHOLS: Okay. Michael Wang.

17 MR. WANG: Good afternoon. Michael Wang with
18 Western States Petroleum association.

19 Over the past years, we've trod a smooth path to
20 your offices and burned up staff's phone lines as we've
21 come to understand your needs and you've become to
22 understand our operating requirements.

23 We appreciate and support many of the changes
24 that were proposed in the 15-day package that was released
25 yesterday because they support the CWB that you all talked

1 about earlier today. We also support and appreciate the
2 change in the provision that calls for reporting only GHG
3 emissions if they change by more than five percent plus or
4 minus from the previous year.

5 At this point, we do want to point out some
6 issues that we think the Board would be interested in.

7 First, we proposed a series of definitions and
8 edits to terms in the MMR definitions that were critically
9 important to ensure the integrity and consistency of the
10 product weighted approach. Staff's adopted most of them.
11 But some edits we think might have been missed
12 inadvertently. For example, the ARB did not include a CWB
13 factor for hydrogen.

14 We realize that the staff has looking at a series
15 of alternatives and we'd like to make sure that as part of
16 the work going on with the 15-day package that the factors
17 used in the hydrogen plants in the Solomom method be
18 reviewed within those alternatives. We think that's
19 important and critically important for the integrity of
20 the CWB.

21 We have a specific request in two areas of the
22 proposal. We ask the Board to not act on the strike out
23 on page B15 Section K11 and also not act on Section E on
24 page B22. We ask the Board not act on these changes
25 because this is, to us, relatively new change and

1 proposals may have serious ramifications on facilities
2 operations up to and including the unit shut down for
3 metered calibration. If after consultation with
4 stakeholders ARB remains convinced that these changes need
5 to be made, they could be done -- achieved at that time.
6 Thank you.

7 CHAIRPERSON NICHOLS: Okay. Thanks.

8 Mr. Martin.

9 MR. MARTIN: Good afternoon. Graeme Martin from
10 Shell Energy.

11 We are a retail electric provider in the state of
12 California and an energy importer in the Cap and Trade
13 Program.

14 Shell Energy is very supportive of staff's
15 recommendation in the reporting rule to maintain the
16 requirement that obligated entities maintain metered data
17 and report power imports as directly delivered. The
18 California RPS statute requires only renewable energy
19 imported without substituted energy from another source
20 can be counted.

21 Staff's proposal is fully aligned with the
22 statute and language to ensure no system power can be
23 claimed as a specified emissions rate.

24 The way power is schedule, if an ARB specified
25 source is generating less than the import schedule in any

1 hour, the controlled area keeps the schedule whole with
2 system energy and requiring obligated entities to only
3 claim the eligible specified energy actually delivered
4 maintains the integrity of the emissions data related to
5 imports.

6 As a CARB and regulated entity, Shell Energy
7 believes maintaining the language staff has proposed will
8 ensure more accurate emissions accounting. And we'd be
9 happy to work with other stakeholders to explain how this
10 information could be easily tracked and reported.

11 Thank you so much.

12 CHAIRPERSON NICHOLS: Thank you.

13 Ellen Wolfe and then Steve Larrea and Tim Tutt.

14 MS. WOLFE: Thank you, Chairman Nichols and Board
15 members.

16 My name is Ellen Wolfe. I'm providing comment
17 today on behalf of the Western Power Training Forum.

18 WPTF is a diverse organization of over 60 power
19 marketers, generators, investment banks, public utilities,
20 and energy service providers that transact in the
21 California energy markets. We submitted some written
22 comments and wish to provide additional oral comments
23 today on three issues pertaining to the regulation.

24 First, I'll offer respectfully a counter position
25 to some of the commentators before me to reinstate the

1 language that would require retention of meter data to
2 demonstrate that electricity generated by a specified
3 resource at that time that electricity is delivered to
4 California.

5 Throughout the evolution of this regulation, CARB
6 staff has consistently strived to ensure the accuracy of
7 the reported emissions. Elimination of the language
8 requiring matching of generation to delivery would
9 undermine this objective and result in overcounting of low
10 emissions imports.

11 When electricity is scheduled for delivery from a
12 generating resource the balancing area in which the
13 generator is located typically commits to provide
14 contingency reserves. This means in the event a committed
15 generator is unavailable in an hour, the host balancing
16 area will provide energy from its own system to ensure the
17 volume of energy scheduled is met. In this situation, the
18 volume of delivered energy exceeds the volume of energy
19 actually produced by the generator in that hour.

20 In recognition of this, both the CPUC and the CEC
21 require that for RFS standard procurement category one
22 that is energy directly delivered from renewable energy
23 sources, only the lesser of energy generated or scheduled
24 may be counted towards RPS targets.

25 WPTF believes that the same approach should be

1 used under greenhouse gas reporting program to ensure the
2 accounting of the renewable imports under the Cap and
3 Trade Program will be accurate. And it will be aligned
4 with that under the RPS program.

5 We also recommend that the approach be applied
6 symmetrically to all imported electricity and not just
7 renewable energy. To do otherwise would be discriminatory
8 towards renewable generation as it would apply a stricter
9 standard for renewable imports than for other low emission
10 imports.

11 Because generation meter data is already
12 collected and utilized for financial settlement of
13 electricity transactions, requiring importers to retain
14 such data to document that the imported electricity was
15 generated by the facility at the time the power was
16 directly delivered does not create a significant burden on
17 generators or importers.

18 Our second area of concern is with respect to
19 requirements for specification of imported electricity.
20 WPTF considers as a matter of principle the owners of a
21 low emission generating source should control whether
22 electricity from that source is specified and should
23 appropriately capture the economic benefit of avoided
24 greenhouse gas emissions.

25 We have one final concern related to the efforts

1 to improve the regulation with respect to clarifications
2 being made. And we're concerned some of the modifications
3 in 95103(H)(G) may be applied retroactively. And we
4 request that the staff issue implementing guidance on the
5 applicability of these changes for electricity importers
6 to explicitly ensure the proposed changes to requirements
7 for specified sources do not apply for electricity
8 delivered pursuant to contracts executed prior to January
9 1st, 2014.

10 CHAIRPERSON NICHOLS: We have your written
11 testimony also.

12 Steve Arita and Tim Tutt.

13 MR. ARITA: Good afternoon, Chairman Nichols,
14 members of the Board.

15 My name is Steve Arita. I'm with Chevron
16 Corporation. And I'd just like to start by expressing our
17 thanks to staff, in particular, Edie and Richard Corey.
18 And I've probably been camped out on Richard Bode's office
19 for the last three months or so with Steve and dealing
20 with all of the proposed revisions to the mandatory
21 reporting reg.

22 We appreciate the fact that they listened to us
23 and they hear our concerns. In particular in regards to
24 the criteria and the TAC reporting requirement and making
25 those revisions, we appreciate those. As well as the

1 other changes that were proposed on the oil well testing
2 requirement. We totally appreciate those revisions.

3 I would like to raise though there are two issues
4 that are still of a concern to us. They are Section 95103
5 and 95113. These were changes that while we have been in
6 discussions with staff, some of the changes we just saw as
7 of yesterday when this release -- the 15-day revisions
8 came out, we talked extensively with the staff. We
9 understand I think each other's concerns and where we're
10 coming from.

11 I think the important thing that I just want to
12 emphasize is that -- we've always emphasized this. We, as
13 Chevron, we understand the importance of getting accurate
14 data. It feeds up through the Cap and Trade Program. We
15 totally understand that, and we realize the importance of
16 that. In fact, we advocate for strongly and make sure we
17 have accurate data for all reporters.

18 I think the concern though that we have is that
19 we believe also because we are such a very complex
20 industry that there has to be a recognition that there can
21 be other ways of quantifying and determining data
22 accuracy. And I think that's probably where there's some
23 disagreement we have the staff. We notice you have it
24 listed in the 15-day draft comments that we can continue
25 those discussions. But Madam Chair again, I think we

1 understand we have to get accurate data. That's number
2 one. But I think what we'd like to see is if staff can
3 recognize there are other ways, many different ways, to
4 determine data accuracy, data collection, and make sure
5 that we're at 95 percent accuracy, which is what the MRR
6 calls for. So, again, I would urge the Board and Madam
7 Chair if we can recognize that. That would go a long ways
8 to helping from an operational flexibility standpoint.

9 Thank you very much.

10 CHAIRPERSON NICHOLS: Thank you.

11 Mr. Tutt.

12 MR. TUTT: Thank you. Good afternoon, Madam
13 Chair, staff, Board.

14 My name is Tim Tutt representing the Sacramento
15 Municipal Utility District. And we, too, appreciate the
16 15-day changes for the most part. There were items in
17 there that we really appreciated being added by staff.
18 There was one item that we wished would have been added
19 and another item that we're kind of nervous has been
20 added.

21 The item that we wish had been added involves our
22 SMUD pipeline. We're kind of in a unique situation in
23 that we have a 75-mile pipeline that only serves our power
24 plants that are all obligated entities. We have a
25 compliance obligation for those power plants. We also

1 have a reporting obligation for the pipeline, which is
2 calculated on different metrics than the compliance
3 obligation for the power plants.

4 So we're nervous that at some point we can get
5 into a situation where we have an extraneous compliance
6 obligation from the pipeline side that we shouldn't have.
7 Because our obligation is on the power plants, not on the
8 gas we're delivering to those plants.

9 It's also an additional burden for us to be
10 reporting on the pipeline and then reporting on the power
11 plant side.

12 The issue that we're a little nervous about has
13 been raised a lot today. That's the question of this
14 hourly comparison of the metered versus schedule data. It
15 is true that on the CEC and the CPUC, they have required
16 this hourly comparison. And there are times -- we procure
17 renewable generation from a counterparty at a certain
18 amount, and then it's scheduled. And the generation at
19 any hour can vary from the schedule. It can be lower or
20 higher.

21 But what we're seeing at the CEC is they're only
22 counting the lower part and not counting the higher part
23 in any hour as by content category one. But that other
24 amount that we contracted for is still renewable and is
25 still then presumably a zero emission obligation.

1 We're not sure how that's going to be treated in
2 the mandatory reporting regulations. We might have a
3 clear renewable procurement at the CEC and have it be
4 treated as having an emission obligation here. That's
5 inconsistent.

6 We think that there is some work that needs to be
7 done to make sure that this all works seamlessly together.
8 And we also think that what will happen in the market with
9 both the policy at the CEC and now this potential policy
10 here is that parties will have a tendency to over-schedule
11 to make sure they get the generation counted as category
12 one and not have any emission obligation for it. So that
13 over-scheduling basically implies that the transmission
14 system is being inefficiently used because you don't need
15 to schedule that much power. You're just doing it to
16 avoid the complications of all the machinations of these
17 mechanisms that are being set up. So we do think there
18 needs to be more thought that needs to go into these
19 policies, both at the CEC and here. Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 That concludes the list of witnesses I have. Was
22 there anybody else who intended to testify on this item
23 and did not? Okay.

24 Then I think we can close the record as far as
25 public hearing is concerned. I would like to hear back

1 from staff since you gave a pretty bare bones
2 presentation. And I appreciate you were responding to our
3 obviously desire for conciseness here. But there have
4 been a couple of points raised. This hourly matching
5 thing obviously came up a few times, the possibility of
6 alternative ways to verify data. And there's some other
7 points as well. But could we hear back on your response
8 to those?

9 DEPUTY EXECUTIVE OFFICER TERRY: Chairman, maybe
10 I can kick it off, because we did shorten on the Executive
11 Officer's statement a bit. And the reason we have Steve
12 Cliff sitting with the staff who work on mandatory
13 reporting is that it is essential that the product data
14 change and be done and in effect by January for the Cap
15 and Trade Program. So I wanted to make sure that the
16 Board was aware of that. And that's --

17 CHAIRPERSON NICHOLS: No, I don't think -- I
18 don't have any desire to prolong this. I'm just trying to
19 make sure we answered the question.

20 DEPUTY EXECUTIVE OFFICER TERRY: Point two is
21 that we are proposing to put 15-day changes out next week
22 related to product data. Some of the other questions
23 before staff go into them, I just wanted the Board to be
24 aware that they don't to be resolved in this 15-day
25 process for the January deadline. So if the Board has

1 concerns about some of these, Steve is here to answer the
2 question about the relevance to the cap and trade in the
3 January deadline. I just wanted that preface.

4 CHAIRPERSON NICHOLS: Okay.

5 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
6 This is Richard Bode.

7 And let me address three of these things which I
8 think you identified. One was this reporting hourly data.
9 So as the mandatory reporting regulation is written now,
10 it requires that for verification purposes that they
11 remaining document their meter generation data and
12 basically demonstrating document that as this power is
13 generated is actually delivered to California as well.

14 So we actually had heard a comment from the
15 stakeholder, actually it was LADWP, which brought up this
16 administrative burden to do this and it could be done in
17 more of a monthly averaging way methodology. So we felt a
18 need to make a change. And we opened it up. We got quite
19 a few stakeholder comments back and addressed the issue of
20 data accuracy it wasn't kept as it was for.

21 The administrative burden as well, we've talked a
22 little bit to other stakeholders, and we think this is
23 maybe something we can work out with quite a few of these
24 municipal utilities to reduce the administrative burden of
25 doing this kind of tracking of this information. But

1 probably with the stakeholder comments we got, we thought
2 it was better -- if we want to do this, we should open it
3 up to a broader group of stakeholders and do it. But at
4 this time for data accuracy needs, we need to keep it
5 where it was.

6 CHAIRPERSON NICHOLS: Well, what actual data are
7 you looking at in this situation?

8 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
9 We're looking at the database -- it's the data of what's
10 scheduled to come to California and what actually gets
11 delivered to California. And it's done at the time that
12 power is generated. And that tracking is usually done at
13 the most on an hourly basis.

14 CHAIRPERSON NICHOLS: That's done by whom? By
15 the generator?

16 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
17 That's done by the person that actually receives the power
18 as well.

19 CHAIRPERSON NICHOLS: So I'm still -- I mean, I'm
20 trying to picture a big computer sitting somewhere and
21 what it's collecting, who's doing this.

22 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
23 So actually the data is being generated. The data is
24 being created by, of course, the one that's generating the
25 power and as that power is being delivered into California

1 itself. And the one that receives the power has to
2 document that. They do -- right now, they do it on an
3 hourly basis.

4 CHAIRPERSON NICHOLS: It's data they're
5 collecting now.

6 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
7 Data they're collecting now on an hourly basis. So the
8 request was to actually ease that because of
9 administrative burdens. We think because of the comments
10 about the accuracy of how you account for that data as you
11 move away from the hourly basis that it was better at this
12 time to stay with what we have.

13 CHAIRPERSON NICHOLS: Instinctively it seems to
14 me createing some new more generalized weekly, monthly,
15 whatever is actually more prone to create mistakes than
16 just using whatever it is they collect today and having
17 that available. I may be missing something.

18 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
19 I think you're right. When we look at some of the -- how
20 the data can be changed and manipulated, that was another
21 concern as well that you did not come up with the same
22 tools. I think LADWP brought up some examples they had.
23 They ended up with different tools as well.

24 CHAIRPERSON NICHOLS: Okay. I realize that we
25 need to move on with this, but there are other questions

1 that were raised.

2 Yes, Ms. Mitchell.

3 BOARD MEMBER MITCHELL: Just on that issue, I
4 understand that there is a need to do the annual report.
5 You're requiring hourly data for what is going to be
6 turned into an annual report. I am concerned about the
7 administrative burden on that. And if the difference is
8 only the 1.5 percent, I think we need to look carefully at
9 that and see how can that be resolved. That's all.

10 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
11 I think this is one we'd like to work with the
12 stakeholders, too. Because as we talk to others, they've
13 said they can minimize that administrative burden
14 templates that we can device and work with stakeholders.
15 So I think that's one of the things we do out of this is
16 actually sit down with LAWDP and others who brought this
17 up to see how we can minimize this burden.

18 CHAIRPERSON NICHOLS: Just talk about the process
19 moving forward because, you know, we talked quite a bit in
20 the last item about how we were going to go about working
21 through the items to get to the 15-day changes and then
22 what happens after that. So how is that going to happen
23 with respect to this regulation?

24 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
25 So for all the changes or --

1 CHAIRPERSON NICHOLS: Well, no.

2 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
3 Or just this one here?

4 CHAIRPERSON NICHOLS: You're going to be doing
5 something next week apparently. What is that going to be
6 and what happens after that?

7 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
8 We'll take the changes we've heard today and prepare
9 modified text for 15-day review and put that through.

10 And I think what we also heard was some comments
11 that are going to be making won't result in regulatory
12 changes. And those of which will -- we do this quite a
13 bit through the year. We provide guidance for the
14 interpretation of the regulation or provide guidance in
15 how to minimize administrative burden.

16 And I think that's something we probably -- you
17 know, we always work with stakeholders on. And that is a
18 something that we put together between now and the
19 beginning of the reporting season, which starts next year.
20 And at the beginning of next year, we'll have guidance
21 available. We will work with the stakeholders how to
22 implement that guidance and make sure that we're all
23 understanding what we're doing.

24 CHAIRPERSON NICHOLS: Okay. Any other comments
25 or questions from the Board?

1 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
2 Do you want me to go into the system power?

3 CHAIRPERSON NICHOLS: Yes.

4 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
5 So system power was the other issue that we had initially
6 proposed. It was another comment that was brought to us
7 by at stakeholder that would be used in a very limited
8 fashion for a different type of power to basically define
9 how a group of facilities would define the carbon
10 intensity of their power.

11 When we actually proposed it, we heard quite a
12 few comments from stakeholders, some strong comments, and
13 realized it basically interfered with the design of
14 electricity market as it was originally developed. Also
15 with the input that we received from a number of different
16 California State agencies, the Energy Commission, the
17 California Public Utilities Commission, as well as quite a
18 few other stakeholders.

19 This is another one where we put our toe in the
20 water and realized this it was an issue we have to work at
21 before we develop this kind of system power definition.
22 It would have to be done with a much bigger group and
23 looking at its impact on the whole electricity market.

24 So at that time, we decided we're going to
25 withdraw that. It really only -- might have effected one

1 facility at most. At that, had really limited
2 application. So it seemed pretty wise we actually pull
3 this one back.

4 As we heard today, we have had some that are
5 opposed -- quite a few in support. Some that are opposed
6 because they're hoping to use it. And I think Mr. Kelly's
7 comment about the default emission factors actually
8 applied to this system power. That was idea that was the
9 concerns, too. People thought we were trying to change
10 the default unspecified system power value that had been
11 created through a multi-party stakeholder process back two
12 or three years ago. It seemed wise we pull that one back,
13 too.

14 As you can hear, the electricity market has quite
15 a few different stakeholders, in state and out of state
16 stakeholders. I think before we move on these things, we
17 need a much bigger stakeholder process.

18 CHAIRPERSON NICHOLS: Okay. Obviously, this is
19 an extremely technical regulation. And it has been from
20 the beginning and maybe even getting more that way as time
21 goes on.

22 Seems like the major changes of importance are
23 the additions of new types of data and new facilities that
24 weren't being captured before under our rule. So from my
25 perspective, those are the things that are most

1 concerning. To the extent stakeholders all seem to have a
2 few little things they'd like to see changed, I just want
3 to make sure that we are open to those kinds of
4 considerations on an ongoing basis.

5 I realize that's very difficult because
6 inevitably any change in how you collect data is going to
7 be threatening to some as well as maybe provide
8 opportunities for others. But I hope this is going to be
9 some -- there's going to be some sort of regular check-in
10 on how this is all going so that there are opportunities
11 to improve the regulation as time goes on.

12 DEPUTY EXECUTIVE OFFICER TERRY: And actually,
13 each time we look at the cap and trade regulation, the
14 staff is working with the mandatory reporting staff to see
15 the interplay. Because every change to cap and trade, you
16 know, potentially has an impact on reporting and vice
17 versa. So if there is anything the Board would like staff
18 to look at, follow up on, we can come back in the spring
19 and report on mandatory reporting status, along with the
20 finalizing cap and trade issues as well.

21 CHAIRPERSON NICHOLS: Clearly, you're continuing
22 to talk to the stakeholders. They seem to be liking the
23 experience of camping out at your offices. So that's
24 fine.

25 I just want to make sure that as a Board that

1 we're keeping an eye on this thing sufficiently so that if
2 it's having a negative impact as is suggested and there
3 are better alternatives that we're not unable to consider
4 those kinds of improvements. So I'm hoping that would be
5 the case and that we can just move on.

6 DEPUTY EXECUTIVE OFFICER COREY: I just wanted to
7 underscore the periodic reporting back. Really what
8 you're getting at is how is it going? Are there
9 outstanding issues? We will continue to make adjustments
10 going forward. That's what's been demonstrated here and
11 will continue to be.

12 CHAIRPERSON NICHOLS: Okay. In that case, I
13 think we can probably move the resolution and get this
14 adopted. So do I have a motion?

15 BOARD MEMBER ROBERTS: So moved.

16 CHAIRPERSON NICHOLS: So moved by Supervisor
17 Roberts.

18 BOARD MEMBER RIORDAN: Second.

19 CHAIRPERSON NICHOLS: Seconded by Mrs. Riordan.

20 Any further comments or discussion?

21 If not, all in favor please say aye.

22 (Aye)

23 CHAIRPERSON NICHOLS: All opposed?

24 Any abstentions?

25 Okay. I think we've got this underway and you

1 can move onto the 15-day changes.

2 Did we get anybody sign signing up for public
3 comment?

4 Okay. I think that is it then for our agenda. I
5 don't think I made the announcement. Our agenda showed an
6 executive session. We did not have an executive session.
7 There was no need for it. We put it on the agenda every
8 Board meeting so we have the ability if we need to have a
9 discussion of legal issues. We did not need that. So
10 there was not one. With that, we're adjourned.

11 (Whereupon the Air Resources Board meeting
12 adjourned at 3:02 PM)

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