

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
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Ms. Sandra Berg

Ms. Doreene D'Adamo

Ms. Lydia H. Kennard

Mr. Ron Roberts

Dr. Daniel Sperling

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Mr. Tom Cackette, Chief Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Mr. Bob Fletcher, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

Ms. Mary Alice Morency, Board Clerk

Mr. Bill Blackburn, Air Pollution Specialist, SSD

Ms. Edie Chang, Assistant Chief, SSD

Mr. Steve Cliff, Chief, Climate Change Program Evaluation Branch, SSD

Mr. Richard Corey, Chief, SSD

Ms. Rajinder Sahota, Manager, Program Operations Section, SSD

Mr. Sam Wade, Air Resources Engineer, Program Operations Section, Stationary Source Division

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Jake Alarid, LICI and Veterans

Mr. Andrew Barrera, CA Hispanic Chamber of Commerce

Ms. Lori Bateman

Ms. Kate Beardsley, PG&E

Mr. Allan Bedwell, BGC Environmental Broker Services

Ms. Susie Berlin

Ms. Lisa Bowman

Mr. James Brady, 100 Black Men

Mr. Jack Broadbent, Bay Area AQMD

Mr. David Campbell, USW Local 675

Mr. Julian Canete, CA Hispanic Chamber of Commercy

Mr. Frank Caponi, LA County Sanitation Districts

Mr. Jeff Clark, United Steelworkers

Ms. Brenda Coleman, CA Chamber of Commerce

Ms. Alegria de la Cruz, CRPE

Mr. Doug Davie, Wellhead Electric

Ms. Kristin Eberhard, NRDC

Mr. Eric Emblum

Mr. Alex Esparza, LA Mayor Antonio Villagairoso

Mr. Ron Espinoza, United Steelworkers

Ms. Mary Kay Faryan, US Navy

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Saskia Feast, EOS Climate

Mr. Willie Galvan, American GI Forum of CA

Mr. Gary Gero, Climate Action Reserve

Mr. Randy Gordon

Ms. Kassandra Gough, Calpine

Mr. Tim Haines, State Water Contractors

Mr. Frank Harris, Southern California Edison

Mr. Norm Hattich, CA Contractors Alliance

Mr. Douglas Headrick, State Water Contractors

Mr. Mike Hertel, Southern California Edison

Ms. Bonnie Holmes-Gen, American Lung Association

Mr. Ed Itzigheine

Mr. Dan Kalb, Union of Concerned Scientists

Mr. Greg Karras, CBE

Mr. Steven Kelly, Independent Energy Producers

Mr. John Larrea, California League of Food Processors

Ms. Barbara Lee, CAPCOA

Mr. Patrick Lenz

Mr. Edwin Lombard, Sacramento Black Chamber of Commerce

Ms. Catherine Lyons, Bay Area Council

Mr. Bruce Magnani, CA Cogeneration Council

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Debra Man, Metropolitan Water District

Ms. Marlia Maples

Mr. Tim Maples, WSPA

Mr. Dan Masnada, State Water Contractors

Ms. Julia May, CBE

Mr. Charles McIntyre, West Coast Protection League

Mr. Ned McKinley

Ms. Jeanne Merrill, CA Climate and Agriculture Network

Mr. Mike Miller

Ms. Lily Mitchell, SCPPA

Ms. Cindy Montanez, LA Department of Water and Power

Mr. Ralph Moran

Mr. Brian Nowiczki, Center for Biological Diversity

Mr. Berman Obaldia, TELACU

Mr. Tim O'Connor, Environmental Defense Fund

Ms. Cindy Parsons, LA Department of Water and Power

Ms. Michelle Passero, The Nature Conservancy

Mr. Norm Pedersen, Southern California Public Power Authority

Mr. Norman Plotkin

Mr. Bob Reeb, Desert Water Agency

Mr. Chris Riley

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Steve Robbins, State Water Contractors

Mr. Mike Robson

Mr. Mike Rogge, California Manufacturers

Ms. Emily Rooney, Ag Council of California

Ms. Kris Rosa, Silicon Valley Leadership Group

Mr. Steven Schiller, CA Energy Efficiency Industry Council

Mr. Andrew Schwartz, CA PUC

Mr. Paul Shepard, Wildflower Energy

Mr. Vince Signorotti, Energy Source

Mr. David Simmons

Mr. Steve Swader

Mr. Rand Swenson

Mr. Tim Tutt, SMUD

Mr. Nico van Aelstyn, Powerex Corp.

Mr. Erick Verduzco Vega, South Bay Latino Chamber

Mr. Elvis Villareal

Mr. Keith Vines

Mr. Nathan Voegelik, Yurok Tribe

Mr. Jeffrey A. Volberg

Mr. Barry Wallerstein, SQAQMD

Mr. Mike Wang, WSPA

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Chuck White, Waste Management

Ms. Kathy West

Mr. Ryan Young, Greenlining Institute

INDEX

PAGE

Item 11-8-1	
Chairperson Nichols	4
Executive Officer Goldstene	10
Staff Presentation	12
Mr. McIntyre	26
Mr. Kelly	29
Mr. Schwartz	41
Ms. Lee	45
Mr. Wallerstein	46
Mr. Broadbent	48
Mr. Riley	51
Mr. Green	51
Ms. Bowman	53
Mr. Moran	55
Mr. O'Connor	57
Mr. Caponi	58
Mr. Hattich	61
Mr. Wang	62
Ms. Beardsley	65
Mr. Shepard	67
Mr. Voegeli	72
Mr. Davie	75
Ms. Feast	77
Ms. Holmes-Gen	79
Mr. Robson	81
Mr. Haines	82
Mr. Headrick	84
Mr. Robbins	86
Mr. Masnada	86
Ms. Passero	90
Mr. Campbell	91
Mr. Bedwell	93
Ms. Eberhard	97
Mr. Swenson	99
Mr. Signorotti	102
Ms. Man	103
Mr. Gordon	106
Mr. Simmons	107
Mr. Young	108
Ms. West	110
Mr. Miller	111
Mr. Vines	112
Mr. Itzigheine	113
Mr. Kalb	119

INDEX CONTINUED

	<u>PAGE</u>
Mr. Espinoza	121
Mr. Villareal	124
Mr. Swader	124
Mr. White	132
Mr. Magnani	135
Mr. Pedersen	136
Mr. Schiller	138
Ms. Lyons	141
Mr. Lenz	142
Mr. Harris	144
Mr. van Aelstyn	148
Ms. Berlin	151
Mr. Volberg	154
Ms. Rosa	155
Ms. Faryan	156
Mr. McKinley	157
Ms. Maples	159
Mr. Plotkin	161
Mr. Verduzco Vega	163
Mr. Lombard	165
Mr. Brady	167
Ms. Gough	169
Mr. Tutt	172
Mr. Reeb	174
Ms. Merrill	175
Ms. Coleman	176
Mr. Galvan	178
Ms. May	180
Mr. Karras	182
Mr. de la Cruz	184
Mr. Barrera	189
Mr. Canete	191
Ms. Solise	193
Ms. Parsons	197
Mr. Alarid	199
Mr. Maples	202
Mr. Larrea	204
Ms. Rooney	206
Mr. Clark	208
Mr. Rogge	211
Mr. Obaldia	213
Ms. Bateman	216
Mr. Gero	218
Mr. Emblum	220
Board Discussion	222
Motion	275
Vote	275

INDEX CONTINUED

	<u>PAGE</u>
Item 11-8-2	
Chairperson Nichols	276
Executive Officer Goldstene	276
Staff Presentation	277
Ms. Beardsley	283
Ms. Mitchell	285
Ms. Parsons	286
Mr. Harris	287
Motion	290
Vote	290
Adjournment	293
Reporter's Certificate	293

PROCEEDINGS

1
2 CHAIRPERSON NICHOLS: Before we formally begin,
3 I'd like to ask everybody to please rise and face the flag
4 and say the Pledge of Allegiance.

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

7 CHAIRPERSON NICHOLS: Thank you.

8 I'll ask the clerk to please call the roll.

9 BOARD CLERK MORENCY: Dr. Balmes?

10 BOARD MEMBER BALMES: Here.

11 BOARD CLERK MORENCY: Ms. Berg?

12 BOARD MEMBER BERG: Here.

13 BOARD CLERK MORENCY: Ms. D'Adamo?

14 BOARD MEMBER D'ADAMO: Here.

15 BOARD CLERK MORENCY: Ms. Kennard?

16 Mayor Loveridge?

17 Mrs. Riordan?

18 Supervisor Roberts?

19 BOARD MEMBER ROBERTS: Here.

20 BOARD CLERK MORENCY: Professor Sperling?

21 BOARD MEMBER SPERLING: Here.

22 BOARD CLERK MORENCY: Supervisor Yeager?

23 BOARD MEMBER YEAGER: Here.

24 BOARD CLERK MORENCY: Chairman Nichols?

25 CHAIRPERSON NICHOLS: Here.

1 BOARD CLERK MORENCY: Madam Chairman, we have a
2 quorum.

3 CHAIRPERSON NICHOLS: Thank you.

4 I want to make a few announcements before we get
5 started. Due to the large number of attendees, we have
6 reserved the room next door, the Coastal Hearing Room, so
7 that if you want to move out or if you need to talk and
8 watch at the same time, there's audio/visual service in
9 the Coastal Hearing Room.

10 We have interpretation services available in
11 Spanish for any who wish it. There are headsets available
12 outside the hearing room at the attendant sign-up table.

13 (Whereupon the announcement was translated into
14 Spanish.)

15 CHAIRPERSON NICHOLS: Thank you.

16 Anyone who wishes to testify and has not signed
17 up online should fill out a request to speak card from the
18 table outside the auditorium. We would appreciate it if
19 you would turn it in to the Board Clerk as soon as
20 possible. I would probably announce a cutoff at some
21 point around noon. So if you think you might want to
22 testify, you should fill out a card. You do have the
23 option to include your name on the speaker card.

24 But if you've already signed up in advance
25 online, you don't need to sign one of these cards. We

1 already have your information and you're already on the
2 list. But we do need you to check in with the Clerk of
3 the Board just to make sure that you stay on the speakers'
4 list.

5 Also, for anybody who's unfamiliar with our
6 process, the Board normally imposes a three-minute time
7 limit on every speaker, no matter who you are. We may
8 shorten that time if it gets to be too late. And if we
9 get too many repetitive speeches, we may even shorten it a
10 little further than that. But really, we want to hear
11 from as many people as possible. And the best way for
12 that to happen is if you don't just read your written
13 testimony. If you've submitted a written statement, it
14 will get to us and we will read it. So we don't need you
15 to do that. It's much better if you can just summarize it
16 in your own words. And everything that you said and wrote
17 will get into the record.

18 I would also like to point out for safety reasons
19 there are exits at the rear of the room and on the sides
20 of the podium here. In the event of a fire alarm, we are
21 required to vacate this room immediately and go down the
22 stairs at the back of the auditorium here and to leave the
23 building until we hear an all-clear signal.

24 I think other than that and letting you know we
25 are planning to take a lunch break today at about 12:30,

1 that's pretty much it for the ways and means here.

2 And I think with that, we're ready to begin the
3 first item, unless there are any other comments. Thank
4 you.

5 We do have three items on today's agenda that are
6 going to be presented together: The response to comments
7 on the environmental analysis for the cap and trade
8 regulation, the Adaptive Management Plan, and the final
9 cap and trade regulation, include four compliance offset
10 protocols.

11 This is an important milestone in a long process.
12 As required by the California Global Warming Solutions Act
13 of 2006, better known as AB 32, the Air Resources Board
14 adopted a Scoping Plan to reduce greenhouse gas emissions
15 in the state to 1990 levels by 2020. The Scoping Plan
16 includes a large and diverse set of tools to achieve the
17 emissions reductions that are needed to achieve that goal.
18 One of those tools that was described in the Scoping Plan
19 is a market-based program for trading emissions, the cap
20 and trade regulation. But in order to actually design and
21 develop that program, it's taken a period of several
22 years, including a great deal of thought about alternative
23 ways to get those reductions.

24 Because the cap and trade regulations places a
25 cap on emissions, it helps to ensure that we will reach

1 our greenhouse gas emissions reduction goals. The program
2 sends a clear signal to the global investment community
3 that an investment in California's clean technology and
4 clean energy industries will be rewarded, maintaining our
5 status as a magnet for clean tech investment.

6 The Board first considered this proposed
7 regulation last December, and we directed the staff to
8 modify it and to further develop it in certain areas.

9 As I mentioned before, the items before us today
10 are the response to comments on the environmental analysis
11 and the Adaptive Management Plan and the final regulation
12 with modifications made since last December.

13 The Adaptive Management Plan will allow us to
14 monitor and respond, should there be unintended impacts of
15 implementing the Cap and Trade Program.

16 It's a little bit unusual for the Board to be
17 considering the final regulation. Normally, our action in
18 December would have been to adopt the rule and then
19 delegate to the Executive Officer the task of doing the
20 final clean-up amendments. But I believe that it's
21 important that this measure come back before the full
22 Board and that we all have an opportunity to hear from the
23 public and to be thoroughly informed about what it is that
24 we're acting on here today. And I think our Executive
25 Officer will explain more about this process in his

1 opening remarks.

2 But I do want to take just a minute before we
3 actually launch into the discussion about the specifics to
4 consider what it is that we're doing here today in its
5 context.

6 For at least a half a century, every American
7 President and many of our other national leaders have
8 called for the United States to move away from our
9 dependence on foreign oil and become energy independent,
10 whether it was under Ford or Nixon or Carter and now,
11 President Obama, they've almost always used identical
12 language. What they called for was a way to break our
13 dependence on oil.

14 For over 50 years, we have not even come close to
15 making a dent in that dependence. In fact, on the
16 contrary, we're using more and more petroleum, with more
17 of it coming from outside our borders.

18 The main reason why we have not succeeded in
19 addressing our addiction to petroleum is because we
20 weren't using the right set of tools. Cap and trade is
21 one new tool that is available that for the first time
22 allows us to provide a reward for doing the right thing.
23 We're finally able to utilize the power of our economy to
24 address the petroleum habit by putting a price on carbon
25 and thereby making it more attractive and more possible

1 for people to do something other than burn fossil fuels.

2 The sources that produce those climate-forcing
3 gases are the same sources that produce the pollution that
4 cause smog. Under cap and trade, those that find
5 alternatives to fossil fuels as a source of energy or
6 those who use less of them will benefit. Those that
7 improve the efficiency of their operations will benefit.
8 Those that are unable to make the necessary transition to
9 clean energy will not profit from that, but will
10 contribute to paying for the cleanup.

11 Cap and trade provides a reasonable and flexible
12 approach to steer our economy towards cleaner sources of
13 energy. Cap and trade on its own is not the solution. It
14 works with a suite of other programs, including standards
15 for ultra clean cars, low-carbon fuels, and renewable
16 electricity. And while cap and trade by itself does not
17 reduce an overly large proportion of our greenhouse gas
18 emissions, it is the cap stone to the other programs. It
19 literally provides the cap.

20 But by putting a price on carbon, cap and trade
21 sends a policy signal to the market and guarantees that
22 California will continue to attract the lion's share of
23 investment in clean technology.

24 And when the nation is ready to address the
25 growing danger of climate change, as I believe it must and

1 it will, California's climate program will serve as the
2 model for a national program. We believe that if we
3 implement a Cap and Trade Program in California other
4 states, the federal government, and other nations will
5 join with us.

6 We also believe that there are significant
7 advantages to being the designers of the first
8 comprehensive program. We will be doing our part to
9 address climate change, and we believe that this
10 regulation is an important step in that effort.

11 I want to acknowledge that there has been an
12 enormous amount of work starting with the staff of the Air
13 Resources Board in developing this regulation. And I'm
14 doing this in part because I want to put this out on the
15 record so that nobody else has to thank the staff for
16 doing a great job. You can just omit that part of your
17 testimony, and that will save us probably an hour's worth
18 of time if before you say all the things that you want us
19 to fix or change about the rule, we can just all nod and
20 agree that, although we often thank our staff for their
21 hard work when we consider regulations, I do think in this
22 case that is an effort that has surpassed in complexity
23 and in requirements for learning new areas and working
24 with diverse communities, anything else that we've ever
25 undertaken.

1 So to James Goldstene and Bob Fletcher, I want to
2 acknowledge your tremendous leadership. I'm really proud
3 of the effort that you and your team, which includes all
4 the folks sitting at the staff table, a few that I see
5 scattered in the audience, and dozens who are scattered
6 throughout the agency and hopefully at least getting a
7 chance to watch some of this on their computers, it's been
8 a phenomenal effort. You invested the hours over the last
9 three years to understand the range of industries that are
10 covered to immerse yourself in the details of carbon
11 markets, to learn about our electricity system at a level
12 that we never had to before at ARB, as well as to chase
13 down thousands of details that matter to the people who
14 are going to be affected by this regulation.

15 And I don't want to underestimate who they are,
16 the numbers of them, or the work that's required to
17 reflect on and respond to the over 1100 written comments
18 that we received on this proposed regulation. I believe
19 that you have made yourselves available to the
20 stakeholders, not only in formal workshops but in
21 literally thousands of one-on-one meetings and phone
22 calls, often starting early in the morning and running
23 into the late hours every night of the week. Not just
24 this past week, but for many, many weeks to come. I've
25 even heard that people have ended up in discussions at

1 weekend soccer matches and swim meets. So truly, this has
2 been an amazing effort.

3 Obviously, the Air Resources Board did not do
4 this alone. We particularly owe thanks to our sister
5 agencies, the Public Utilities Commission and the
6 California Energy Commission, who have worked with us
7 every step of the way in making sure that what we did here
8 to implement AB 32 worked with their own efforts and their
9 own legal mandates to make sure that we have an adequate
10 supply of affordable energy in the state of California.
11 And we will continue that close working relationship into
12 the future.

13 So with that, I want to turn the microphone over
14 to Mr. Goldstene.

15 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
16 Nichols.

17 At this meeting, staff will present for the
18 Board's consideration the response to comments on the
19 functional equivalent document, which is the official name
20 for staff's environmental analysis, the Adaptive
21 Management Plan, and finally the final regulation order
22 for the cap and trade regulation.

23 In addition, the staff will present the key
24 elements of the cap and trade regulation and the
25 modifications that have been made since the Board

1 considered the regulation last December.

2 Staff is recommending that you vote today to
3 approve the response to comments on the functional
4 equivalent document, approve the Adaptive Management Plan,
5 and adopt the cap and trade regulation.

6 In December last year, the Board considered the
7 cap and trade regulation and directed staff to make
8 modifications and then make the modified regulation
9 available for public comment. The Board also delegated
10 authority to the Executive Officer to consider the
11 comments received and then to either take final action to
12 adopt the regulation or return the regulation to the Board
13 for further consideration.

14 As Chairman Nichols indicated and because of the
15 significance of this rule-making and attention and the
16 leadership that we'll be providing for the nation and the
17 world, we're choosing to present the final regulation to
18 the Board for final action.

19 If the Board adopts a regulation today, staff
20 will submit the final rulemaking package next week to the
21 Office of Administrative Law.

22 I'd also like to note that in designing the Cap
23 and Trade Program, we've worked closely with our partners
24 in the Western Climate Initiative to design a regional
25 greenhouse gas market program. The regulation includes

1 the framework for linking California's program with
2 programs implemented in other WCI jurisdictions. We'll be
3 back next year with specific recommendations for linking
4 with partner jurisdictions in the Western Climate
5 Initiative.

6 Now I'd like to ask Mr. Sam Wade from our Climate
7 Change Evaluation Branch to begin the staff presentation.
8 Sam.

9 AIR RESOURCES ENGINEER WADE: Thank you, Mr.
10 Goldstene.

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

13 AIR RESOURCES ENGINEER WADE: Good morning,
14 Chairman Nichols and members of the Board.

15 This presentation will focus on the California
16 cap on greenhouse gas emissions and market-based
17 compliance mechanism regulation, commonly referred to as
18 the cap and trade regulation.

19 --o0o--

20 AIR RESOURCES ENGINEER WADE: Today, I will
21 present three items for Board consideration. The first
22 item is the response to comments on the cap and trade
23 functional equivalent document, or FED.

24 The second item is the Adaptive Management Plan.
25 While we don't believe there will be any adverse air

1 quality or forest resource impacts as the result of cap
2 and trade, we are committed to observing these areas and
3 taking action as appropriate. The Adaptive Management
4 Plan lays out a process for targeted monitoring, analysis,
5 and response, if necessary.

6 The final action for Board consideration is to
7 adopt the final regulation order for cap and trade. This
8 document contains the regulation and four compliance
9 offset protocols.

10 --o0o--

11 AIR RESOURCES ENGINEER WADE: I will begin by
12 providing background on the regulation development process
13 and the basics of cap and trade. Then I will present the
14 program details with a focus on the most significant
15 modifications that we made as directed by Resolution
16 10-42. These modifications are primarily related to
17 allowance allocation.

18 I will then provide some information on the
19 developments, findings, and responses included in the cap
20 and trade FED and provide an overview of the Adaptive
21 Management Plan.

22 My final set of slides will provide a status
23 update on next steps to implement the program if the Board
24 chooses to adopt the regulation.

25 --o0o--

1 AIR RESOURCES ENGINEER WADE: It has taken three
2 years and an extensive consultation process to develop the
3 final regulation. We held over 40 public workshops and
4 over 1,000 individual stakeholders meetings while
5 developing the regulation. We received over 1100 written
6 comment letters, each of which we will respond to in our
7 final statement of reasons.

8 We have collaborated closely over the last three
9 years with the Western Climate Initiative partner
10 jurisdictions, and we've spent hundreds of hours
11 interfacing with our colleagues at sister agencies, such
12 as the California Energy Commission and the California
13 Public Utilities Commission.

14 The Board initially considered the proposed
15 regulation in December of 2010 and directed staff to work
16 with stakeholders to make changes as provided in
17 Resolution 10-42.

18 This year, staff noticed two 15-day packages of
19 rule modifications for public comment and held additional
20 workshops to discuss these modifications. Staff is
21 committed to continue the level of outreach and public
22 engagement if the Board directs us to implement this
23 program.

24 --o0o--

25 AIR RESOURCES ENGINEER WADE: AB 32 represents a

1 pioneering effort to address climate change. California's
2 long-standing pollution control programs have demonstrated
3 that strong environmental regulation and economic growth
4 can go hand in hand. The Cap and Trade Program is a major
5 component of the suite of complementary measures needed to
6 meet the AB 32 mandate. The enforceable cap is designed
7 to ensure that we meet the AB 32 goal, providing a
8 powerful backstop so that even if other measures do not
9 achieve their estimated reductions, we will meet our
10 objective.

11 The program creates a carbon price that provides
12 a broad, economy-wide incentive for investments in clean
13 technology, and increased energy efficiency. The proposed
14 regulation would limit aggregate emissions, but allow
15 covered entities the flexibility to find the best and
16 lowest cost emission reduction strategies.

17 --o0o--

18 AIR RESOURCES ENGINEER WADE: The Cap and Trade
19 Program establishes a limit, or cap, on the amount of
20 greenhouse gases that can be emitted by all covered
21 entities. The cap provides certainty in the total tons of
22 greenhouse gases that may be emitted. Cap and trade uses
23 allowances to limit total emissions. Allowances are
24 permits to emit greenhouse gases, and each one is equal to
25 one metric ton of emissions. The number of allowances

1 entity would need to register with ARB, report its
2 emissions each year, and have those emissions verified by
3 a third party.

4 To comply, these covered entities must turn in
5 allowances or offsets equal to their emissions.

6 To enhance flexibility, the program establishes
7 multi-year compliance periods, the first from 2013 through
8 2014; the second from 2015 through 2017; and the third
9 from 2018 through 2020. Once allowances or offsets are
10 surrendered, they are permanently removed from the market.
11 The covered entities must comply with recordkeeping,
12 trading rules, verification, and other requirements in the
13 regulation.

14 --o0o--

15 AIR RESOURCES ENGINEER WADE: Allowances will be
16 issued freely by the State and sold at auctions
17 administered by the State. The program is flexible
18 because these allowances can be traded.

19 The program design includes other cost
20 containment features, such as the limited use of offsets
21 and allowance reserve and banking of allowances.

22 The staff worked closely with the State's
23 Attorney General's Office to ensure the program is
24 enforceable and includes strong market oversight.

25 --o0o--

1 AIR RESOURCES ENGINEER WADE: For the next few
2 slides, I'd like to focus in more detail on the most
3 significant areas of change to the regulation since last
4 December.

5 In the first 15-day notice, we modified the
6 ruling to begin the first compliance period in 2013. This
7 change in timing allows for additional testing and
8 deployment of the program infrastructure in 2012 and
9 addresses stakeholder concerns about ensuring program
10 readiness before the start of the compliance obligation.

11 Most importantly, this modification to the start
12 of the first compliance period does not result in any
13 changes to the cap stringency. That is, the program will
14 achieve the same level of greenhouse gas reductions as if
15 the compliance obligation had started in 2012.

16 Cap and trade relies on accurate reporting under
17 ARB's mandatory reporting program for greenhouse gases.
18 Covered entities must report their 2011 greenhouse gas
19 emissions using the revised mandatory reporting
20 regulation, which was updated to support the need of cap
21 and trade.

22 --o0o--

23 AIR RESOURCES ENGINEER WADE: Based on the
24 Board's direction given in December of last year, staff
25 made rule modifications in the first and second 15-day

1 notices to finalize the allowance allocation rules for
2 covered sectors. The allowance allocation portion of the
3 rulemaking has been subject to some of the most intense
4 stakeholder interest, as it underlies the cost of
5 compliance in the program.

6 The overall allocation strategy is based on
7 recommendations made by the Economic and Allowance
8 Advisory Committee. The EAAC recommendations were based
9 on considerations of cost effectiveness, fairness,
10 environmental effectiveness, and simplicity.

11 Staff has adopted an approach with a high initial
12 level of free allocation to industrial sources. This will
13 help ensure a smooth program start. In the longer term,
14 free allocation will decline based on two main factors.
15 One is the cap decline factor, which is necessary to
16 ensure that we will reduce the emissions to meet the 2020
17 goal.

18 The other factor is the risk of emissions
19 leakage. Emission leakage could result if industrial
20 production activities move out of California as the result
21 of greenhouse gas regulations. Staff has conducted an
22 extensive analysis of leakage risk using a peer review
23 methodology that has been employed in other existing Cap
24 and Trade Programs.

25 We are committed to continue work on leakage risk

1 analysis before 2015 and adjust the leakage risk
2 categorizations, if necessary. We sustain high levels of
3 allocation only in sectors where it's needed to minimize
4 emissions leakage risk. Sectors where sustained free
5 allocation is not needed to prevent leakage will be
6 transitioned to use auction as the primary allocation
7 method. The proceeds raised by auctioning allowances
8 could be used for a variety of AB 32 related objectives.

9 --o0o--

10 AIR RESOURCES ENGINEER WADE: I will now discuss
11 the details of how benchmarks were developed for free
12 allocation to the industrial facilities. Allocation to
13 industry is primarily based on greenhouse gas performance
14 benchmarks that are tied to production of specific
15 products.

16 For example, one ton of cement or one barrel of
17 crude oil.

18 For facilities that do not produce an industrial
19 product that is easily benchmarked, which is the case in
20 industries such as food processing, we employ an alternate
21 benchmark approach based on energy use at those
22 facilities. The most efficient installations that meet or
23 exceed the benchmarks will initially receive all the
24 allowances they need for compliance and may have some
25 excess to sell. Installations that do not meet the

1 benchmarks will have a shortage of allowances and must
2 either lower their emissions or purchase additional
3 compliance instruments to cover their excess emissions.

4 For each of the products, ARB staff developed a
5 benchmark based on a sector specific, better than average,
6 emissions efficiency level. Our original approach to
7 benchmarking was proposed in the Initial Statement of
8 Reasons released in October of 2010. In this document, we
9 stated that benchmarks would be set equal to 90 percent of
10 the sector's average emissions intensity. Subsequently,
11 best in class benchmarks were developed for any sector
12 where the 90 percent of average benchmark would be more
13 stringent than the emissions intensity of the best
14 California facility. This change was made so that at
15 least one facility in each sector would receive enough
16 freely allocated allowances to cover its emissions.

17 The following two slides shows example of the 90
18 percent of average and best in class approaches.

19 --o0o--

20 AIR RESOURCES ENGINEER WADE: This slide shows
21 the product benchmark for container glass. This benchmark
22 was set at 90 percent of the sector's average emission
23 intensity shown as the red dotted line. As you can see,
24 there is one facility that is already better than this
25 benchmark. This facility will be able to sell its excess

1 exact allocation for each electric electricity.

2 We allocate allowances to the sector starting at
3 90 percent of recent emissions. The allocation declines
4 in line with the rate of decline of the overall program
5 emissions cap.

6 Within the sector, the allocation to each
7 electric utility is based on the carbon costs embedded in
8 the price of electricity of each utility on behalf of its
9 rate payers as well as projected investments in energy
10 efficiency and early investments in renewable resources.

11 To determine the appropriate amount of allowances
12 for each utility, staff performed an analysis based on
13 resource plans filed with the Energy Commission for the
14 2009 Integrated Energy Policy Report. The allocation
15 builds in the expectation that each utility will achieve
16 its 33 percent renewable portfolio standard goal and
17 continue aggressive investments in energy efficiency.

18 This approach achieves several objectives:

19 It recognizes that early investment was made by
20 some utility rate payers in renewable generation;

21 It acknowledges the different emissions intensity
22 profiles of California utilities;

23 And provides strong incentives for all utilities
24 to continue to reduce their emission intensity of the
25 power they buy.

1 This free allocation to utilities on behalf of
2 their customers is not intended to interfere with the
3 development of a carbon price, and an appropriate carbon
4 price in electric rates is essential to create the direct
5 incentives for electricity conservation and efficient
6 greenhouse gas reducing technologies, such as combined
7 heat and power.

8 To this end, staff will continue to coordinate
9 with the California Public Utilities Commission, the
10 Energy Commission, the investor-owned utilities, and
11 publicly-owned utilities to ensure that any changes to the
12 electric rate structure in response to the Cap and Trade
13 Program in general and free allocation specifically
14 support AB 32 goals.

15 --o0o--

16 AIR RESOURCES ENGINEER WADE: Electricity
17 generators, including waste to energy facilities and
18 co-generation units at facilities without a leakage risk,
19 are not allocated allowances based on our principles. We
20 understand that waste-to-energy generators serve a role in
21 waste diversion. And staff will continue to coordinate
22 with CalRecycle and stakeholders to ensure equal treatment
23 of all sub-sectors of the waste industry under our
24 comprehensive climate change policy.

25 Under the regulation, water agencies also do not

1 receive free allowances. While each of these entities
2 uses electricity to transport water in and around
3 California, the emissions associated within activity are
4 included in the pool of allowances set aside for the
5 electric sector.

6 Staff views the role of these entities as
7 analogous to electricity marketers and not electricity
8 utilities. We believe the customers of the water agencies
9 are appropriately compensated through the existing
10 allocation to electrical utilities for any carbon cost
11 passed through the water rates.

12 --o0o--

13 AIR RESOURCES ENGINEER WADE: Flexibility is
14 inherent in the choice of cap and trade as a policy tool
15 because the program allows entities to trade compliance
16 instruments and find the lowest cost reductions. The
17 proposed regulation finalizes elements designed to further
18 reduce compliance costs, while ensuring environmental
19 integrity. These include multi-year compliance periods,
20 banking, the creation of price containment reserve, and
21 offset credits. A multi-year compliance period provides
22 flexibility by smoothing out annual emission variations.
23 It also gives covered entities a longer time frame to
24 reduce their emission.

25 Banking allows entities to hold spare allowances

1 and use them for compliance in a later period. This
2 provides an incentive for covered entities to make early
3 reductions since we expect the declining cap to push
4 allowances prices higher in the future.

5 The reserve provides a soft ceiling allowance
6 price so that if prices exceed expected level, entities
7 may buy additional allowances from ARB.

8 Offsets provide another cost containment
9 mechanism by allowing for the limited use of voluntary
10 emission reductions that have occurred at sources not
11 covered by the cap.

12 In future rule-makings, linkage with other
13 jurisdictions could provide for a broader program with
14 more participants and greater opportunities to motivate
15 the low cost greenhouse gas reductions.

16 --o0o--

17 AIR RESOURCES ENGINEER WADE: We've taken a
18 variety of steps to ensure smooth market operations. The
19 program requires that any market participant acquiring
20 compliance instruments register with ARB. Staff is
21 currently developing a market tracking system that will
22 allow us to track information about the market
23 participants that hold and trade compliance instruments.
24 This system will provide a chain of custody for allowances
25 and offsets.

1 We developed rules that will reduce the
2 opportunities for market manipulation. The proposed
3 regulation establishes extensive requirements for
4 information disclosure to assist in this market
5 monitoring.

6 The regulation is designed to prevent efforts to
7 corner the market. To this end, we've introduced limits
8 on how many allowances an entity may hold or purchase at
9 auction. Some large emitters commented that the holding
10 limit did not allow for sufficient banking. We worked
11 with these stakeholders to balance those limits so they
12 provide enough flexibility for these large emitters to
13 acquire the allowances they need for compliance, but still
14 accomplishes the goal of limiting the potential for market
15 manipulation.

16 We'll be contracting with an independent market
17 monitor to review bidder behavior at each auction and
18 report to ARB on any activities that may reduce the
19 efficiency of the auctions. The monitor will also search
20 for anti-competitive or manipulative behavior in allowance
21 holdings and secondary market trading and will support the
22 efforts in ARB staff investigating market manipulation
23 cases.

24 We're establishing a Market Surveillance
25 Committee composed of experts to advise staff on rule

1 development and analysis to combat manipulation.

2 The enforcement provisions are designed to ensure
3 that the environmental integrity of the program will
4 incent compliance.

5 In response to stakeholder's comments, the
6 enforcement language was adjusted to ensure there was no
7 layering of penalties between cap and trade and the
8 mandatory reporting program.

9 --o0o--

10 AIR RESOURCES ENGINEER WADE: I would like to use
11 the next few slides to discuss the environmental analysis
12 conducted by the ARB for the cap and trade regulation,
13 including the offset protocols.

14 --o0o--

15 AIR RESOURCES ENGINEER WADE: In accordance with
16 ARB's certified regulatory program under the California
17 Environmental Quality Act, staff prepared a programmatic
18 environmental analysis referred to as the Functional
19 Equivalent Document, or FED. The FED was included in the
20 Initial Statement of Reasons as Appendix O. The
21 environmental analysis focused on the proposed regulation
22 and the four offset protocols.

23 In evaluating for potential significant impacts,
24 staff consistently took a conservative approach. The
25 scope of the programmatic analysis included the review of

1 potential adverse environmental impacts of the proposed
2 regulation and offset protocols. If, during this review,
3 any potential significant adverse impacts were identified,
4 feasible mitigation measures were also identified. The
5 programmatic analysis included a review of reasonable
6 alternatives to the proposed regulation and offset
7 protocols.

8 --o0o--

9 AIR RESOURCES ENGINEER WADE: To ensure early
10 stakeholder involvement and in accordance with CEQA, ARB
11 conducted a scoping meeting on August 23rd, 2010. The
12 purpose of the meeting was to provide the opportunity for
13 agency representatives, stakeholders, and interested
14 parties to bring up subject areas to be addressed in the
15 FED's environmental analysis.

16 The FED was released for public comment on
17 October 28th, 2010. It was circulated through the State
18 Clearinghouse and publicly noticed in major newspapers in
19 both northern and southern California.

20 Subsequently, two sets of 15-day changes modified
21 regulatory text to provide clarity and provide
22 modifications as directed by the Board in Resolution
23 10-42.

24 Because ARB received comments pertaining to the
25 FED from public agencies, a response to comment was posted

1 on October 10th, 2011, ten days prior to this Board
2 hearing.

3 Board members were also provided the FED with the
4 responses to comments at the same time for their careful
5 review and consideration for today's hearing.

6 --o0o--

7 AIR RESOURCES ENGINEER WADE: ARB received 19
8 comments letters and oral testimony related to the FED
9 that raised environmental issues associated with the
10 proposed action during the initial 45-day comment period
11 at the December 16th Board hearing and during the comment
12 period for the two day 15-day change notices.

13 Many comments received pertained to the
14 alternatives to cap and trade that were analyzed in the
15 FED. ARB also received comments pertaining to the
16 potential for localized air quality impacts and other
17 comments related to the forest impacts of the proposed
18 compliance offset protocol for U.S. Forestry projects.

19 To monitor and respond to these concerns, ARB has
20 incorporated adaptive management as a design element of
21 the program implementation. This plan is discussed in the
22 following slides.

23 --o0o--

24 AIR RESOURCES ENGINEER WADE: The Adaptive
25 Management Plan is a formal process to monitor and respond

1 to potential impacts from the implementation of the
2 regulatory program. ARB is committed to an adaptive
3 management process as an integral component to Cap and
4 Trade Program implementation.

5 --o0o--

6 AIR RESOURCES ENGINEER WADE: This slide provides
7 the scope of the Adaptive Management Plan. The plan is
8 focused on two specific areas: Localized air quality
9 impacts from the proposed cap and trade regulation; and
10 forest impacts from the proposed compliance offset
11 protocols for U.S. forest projects.

12 --o0o--

13 AIR RESOURCES ENGINEER WADE: The key elements of
14 the Adaptive Management Plan are shown here and include
15 information gathering, review and analysis, and response.
16 Most of the information will come from the data ARB
17 collects as part of the program implementation, such as
18 emissions data reports from the mandatory reporting
19 regulation, allowance, price and use, or forest offset
20 project annual reports.

21 ARB will take a step-wise approach to evaluating
22 the data gathered to investigate three questions.

23 First: Has an environmental change occurred?

24 Is the environmental change caused directly or
25 indirectly by the cap and trade regulation or forest

1 protocol?

2 And finally, has the environmental change had an
3 adverse localized air quality or forest impact?

4 To implement the review and analysis element, ARB
5 will work with local air districts to further define data
6 gathering needed to evaluate potential local air quality
7 impacts. We will work with a contractor with forest
8 expertise to filter and analyze data needed to evaluate
9 potential forest impacts.

10 If the analysis process confirms there has been
11 or will be an adverse impact, the plan requires ARB to
12 take action to respond appropriately.

13 --o0o--

14 AIR RESOURCES ENGINEER WADE: The schedule for
15 the plan, including the public process is shown here. If
16 the plan is approved by the Board, staff will begin in
17 November to work with air districts, Departments of the
18 Natural Resources Agency, and stakeholders to implement
19 the plan.

20 Although not shown on this slide, in early 2012,
21 staff will conduct an independent third-party contract
22 with an independent third party forestry expert.

23 Staff will provide the Board an update on the
24 plan implementation in mid 2012. The first adaptive
25 management report is planned for December 2012 and will

1 focus on the first phase of implementation.

2 Annually thereafter, staff will provide adaptive
3 management reports to the public and the Board. Reports
4 will be released for public comment, and staff will
5 consider the comments received prior to presenting a
6 report, including any recommendations, to the Board.

7 The annual Adaptive Management Plan reports will,
8 among other things, outline the data collected and the
9 trends observed and discuss any recommended responses.

10 --o0o--

11 AIR RESOURCES ENGINEER WADE: In the next few
12 slides, we'll highlight activities that are underway or
13 will be implemented for a program start of January 1,
14 2012, if the Board chooses to adopt the final regulation
15 order.

16 --o0o--

17 AIR RESOURCES ENGINEER WADE: One of the key
18 areas currently being addressed is related to market
19 operations. Staff has been working with the U.S. EPA and
20 their contractor to develop the market tracking system.
21 The system should be ready the register market
22 participants in early 2012.

23 Staff will be hiring a contractor to develop a
24 process for market simulations with stakeholder input as
25 part of a program readiness before compliance begins on

1 January 1st, 2013. We are working with the University of
2 California to develop this process.

3 We'll be arranging for support from a financial
4 services provider, an auction platform provider, and the
5 independent market monitor mentioned previously to get the
6 auctions up and running by August of 2012. And we'll have
7 proposals in response to an RFP to review within the next
8 few weeks. Additionally, we'll be continuing our leakage
9 and benchmarking work with the help of external experts.

10 --o0o--

11 AIR RESOURCES ENGINEER WADE: Staff will continue
12 to monitor offset protocol development and propose
13 technical updates to adopt protocols in the U.S. forestry
14 protocol as needed. In future rule-makings, staff will
15 bring new offset protocols before the Board.

16 California is continuing to participate in the
17 Western Climate Initiative. Currently, three Canadian
18 jurisdictions are considering implementation of Cap and
19 Trade Programs and linking them to form a regional market
20 with California.

21 Expanding California's program to a regional
22 market creates a greater potential for a lower cost
23 program and enhances market liquidity.

24 Establishing a regional program requires that ARB
25 and WCI partner jurisdiction work closely together to

1 harmonize a number of specific regulatory and operational
2 aspects of the program, including such provisions as the
3 sources subject to compliance obligation and evaluation of
4 regulatory base lines for existing offset protocols.

5 Furthermore, ARB and WCI must work together to
6 establish a regional administrative organization to
7 regionally coordinate administration of cap and trade
8 services.

9 ARB staff expects to work closely with the WCI
10 partner jurisdictions over the coming months to address
11 harmonization issues, develop the necessary regulatory
12 amendments to formally link approved programs, and prepare
13 the necessary policy and technical documents to
14 effectively implement a regional program.

15 --o0o--

16 AIR RESOURCES ENGINEER WADE: In summary, staff
17 recommends that the Board act to approve the functional
18 equivalent document, including our response to FED
19 comments and the Adaptive Management Plan for cap and
20 trade.

21 Pending adoption of the FED, staff recommends the
22 Board adopt the regulation order, including the four
23 compliance offset protocols.

24 This concludes the staff presentation. Thank you
25 very much for your attention. I'd like to turn the floor

1 over to Mr. Goldstene for a closing statement.

2 EXECUTIVE OFFICER GOLDSTENE: Thank you, Sam.

3 As you can tell from the presentation, designing
4 this program has been a major undertaking with extensive
5 coordination of stakeholders. Your vote today will signal
6 that California will be the first in the United States to
7 implement an economy-wide greenhouse gas emissions
8 reduction program beginning in 2012.

9 I also want to mention that the Board will not
10 have the option today of making changes to the regulation
11 as part of this rulemaking action. This is because next
12 week is the deadline for submitting the regulation to the
13 Office of Administrative Law, and there is not enough time
14 before the deadline to modify the regulation and make the
15 modifications available for the required 15-day public
16 comment period.

17 However, changes can be made in the future as
18 part of a separate regulatory action. If the Board wishes
19 to direct staff to continue to evaluate specific issues
20 moving forward, the Board's direction can be included in
21 the Resolution.

22 I'd also like to thank the staff for all their
23 hard work. It's been a long road for all of us. And even
24 though Chairman Nichols said we shouldn't take time
25 thanking each other, I think it is important for the staff

1 to know that me and the senior team greatly appreciate the
2 work that they have been doing.

3 CHAIRPERSON NICHOLS: Thank you, Mr. Goldstene.

4 I also think that thanks are due to all the
5 stakeholders who worked so closely with us over the past
6 three years. This is certainly not something that we did
7 on our own. And I see a lot of very familiar faces in the
8 auditorium and have heard from many of them, including a
9 couple of early morning e-mails sort of wishing me good
10 luck, which was a little ominous. I'm taking it in a
11 positive spirit. And I really do appreciate all the time
12 and effort that people have put into this.

13 This obviously got a lot of stakeholder
14 attention. And I see that there are many people in the
15 audience. We have 73 names of people who have signed up
16 to testify today, and we could certainly hear from all of
17 you in an adequate amount of time.

18 But I understand that there are some people who
19 signed up online and who have not yet checked in. That's
20 perfectly acceptable if somebody decides they don't want
21 to speak, you can sign up here and not speak as well. But
22 if there is anybody who's holding back from letting us
23 know that you do plan to speak, I would really appreciate
24 it, because it happens the staff enormously if they can
25 organize and make sure that we have the appropriate names

1 in the right order and can manage the flow of the
2 information. So I really would urge you to sign up if you
3 think that you want to speak.

4 Before we do turn to those who are on the list
5 though, I'd like to give my fellow Board members an
6 opportunity if any of them have any comments they'd like
7 to make in terms of what they're going to be looking for
8 or listening to or anything else you care to add at this
9 particular moment. You don't have to. But if you wish
10 to, this is the time to get it off your chest.

11 Yes, Dr. Sperling.

12 BOARD MEMBER SPERLING: I have a question about
13 this Adaptive Management Plan. I understand the concept
14 of it. And hasn't really -- I don't know if there is a
15 history to this. I just went in our material in what was
16 given to us. It said the focus is localized air quality
17 impacts and forest impacts. And that confused me a
18 little, because there are all kinds of issues here before
19 us about how we need to be adapting the management of the
20 Cap and Trade Program to different issues that arise,
21 different information.

22 So then I looked and I saw that there is a
23 website with a report, and I went to the report and it
24 basically says the same thing. So I'm a little confused
25 that why is this Adaptive Management Plan so limited when,

1 in fact, we're spending the whole day talking about issues
2 that probably should be part of an Adaptive Management
3 Plan.

4 ASSISTANT CHIEF CHANG: This is Edie Chang.

5 The Adaptive Management Plan that should be
6 viewed is a subset of the broad are monitoring that we
7 always do as we implement regulations in our programs. So
8 we will be monitoring and implementing all kinds of
9 aspects of the cap and trade regulation as we could be
10 with any regulation that we implement and if we want to
11 know what things are happening on the ground.

12 The Adaptive Management Plan is focusing on the
13 specific areas. They were identified as areas of concern
14 in the environmental analysis that we did. So these were
15 a couple areas that we identified as areas of concern.
16 And we are putting together sort of a formal plan to look
17 at those particular areas. But we will be continuing to
18 monitor the other parts of the regulation as well.

19 BOARD MEMBER SPERLING: Like market manipulation
20 for instance, that's a big issue. Why wouldn't that be
21 part of this ongoing process? Is there some legalese I'm
22 missing here why this is so constrained and limited?

23 CHIEF COUNSEL PETER: Dr. Sperling, this is Ellen
24 Peter.

25 BOARD MEMBER SPERLING: The layer speaks up.

1 CHAIRPERSON NICHOLS: You said the word "legal."

2 CHIEF COUNSEL PETER: You're exactly right. The
3 Adaptive Management Program focuses on the environmental
4 impacts only. The other -- and they're laid out in a very
5 specific document that we put out for public comment.
6 It's a narrow focused issue on the issues that were
7 raised, the localized neighborhood impacts and the
8 forestry impacts. That's a separate document and is part
9 of the functional equivalent process. And that's setting
10 over in one piece.

11 The other piece, as you point out, the market
12 manipulation and the other things the Board directed staff
13 to look at, those will be done. They're not gathered at
14 this moment in one particular plan for to you look at.
15 That's just a legal requirement. The adaptive management
16 is something that is actually something that the Air Board
17 has not done before, but we decided it was important
18 enough to make a very strong commitment. How we're going
19 to monitor it and commit what we're going to do with
20 respect to adaptive management. It's just a bifurcation
21 of environmental impact versus other kinds of designs
22 elements you were referring to.

23 BOARD MEMBER SPERLING: Let me leave it on the
24 table I think we'll be coming back to it later is what are
25 the formal processes we're going to be using for all of

1 these other aspects of cap and trade that there is
2 questions about that will be evolving as we go along.

3 CHAIRPERSON NICHOLS: Good question. Okay. I
4 think we will then turn to the audience since I don't see
5 any other hands raised here, and begin by calling on our
6 colleague from the California Public Utilities Commission,
7 Andrew Schwartz.

8 MR. SCHWARTZ: Madam Chairman and esteemed
9 members of the Board, thank you for the opportunity to
10 speak today.

11 My name is Andy Schwartz. I'm a supervisor of
12 the Emerging Procurement Strategy Section of the CPUC's
13 energy division.

14 I'm here on behalf of the Commission to convey
15 the CPUC's strong support for this regulation and to
16 encourage its adoption. As you all know, the CPUC has
17 been a supporter of cap and trade and over the years have
18 worked in partnership with the Air Resources Board in the
19 development of effective and efficient regulation to
20 address climate change.

21 The implications of the climate change result
22 from unfettered emissions of carbon dioxide and other
23 global warming pollutants are profound and pose, as you
24 know, one of the greatest challenges that modern society
25 faces.

1 California has bravely stepped in to fill a
2 policy void, particularly at the national level, to
3 implement an approach that will provide the market signal
4 that will effectively transition our economy away from
5 fossil fuel in the various environmental, socioeconomic
6 and political challenges that continued reliance on them
7 engenders.

8 As you also know, the utilities we regulate are
9 among the most significant contributors to climate change.
10 Statewide, the electricity sector accounts for over 20
11 percent of California's annual emissions. In addition to
12 being a significant source of emissions, CPUC
13 jurisdictional utilities, including electricity and gas,
14 as well as water are likely to face significant
15 operational challenges resulting from the impacts of
16 climate change. Changing, more volatile weather
17 conditions have implications for service demands in the
18 state as well as on the ability to meet those demands
19 given the challenges posed by sea level rise, heat waves,
20 water availability, and increased storm intensity.

21 Over the past several years, the staff of the
22 CPUC has worked closely with your staff to help develop
23 and refine the body of regulation you have before you to
24 ensure it is able to achieve its fundamental objectives of
25 reducing greenhouse gas emissions at least cost, while

1 ensuring safe and reliable access to energy services
2 that's the life blood of our economy.

3 Overall, I believe we are satisfied the
4 regulations provide a robust framework that will
5 internalize the cost of carbon emissions, and in so doing,
6 harness the creativity of the market to adapt to the
7 realities of a post-carbon world.

8 As we move into program implementation, we look
9 forward to continuing our work with ARB. And
10 particularly, we look forward to working with staff to
11 address some of the seams issues between the Cap and Trade
12 Program and the recently codified 33 percent NRPS program
13 pursuant to Senate Bill 2. Additional greater
14 definitional clarity will be necessary to ensure market
15 participants clearly understand what does and does not
16 constitute resource shuffling.

17 We are also keenly interested in addressing a
18 number of issues related to the sectorial allowance
19 allocation; in particular, to address indirect emission
20 cost exposures faced by the emission-intense trade-exposed
21 industries, as well as to address concerns with those
22 generators operating under legacy contracts signed before
23 AB 32 went into effect or before AB 32 was adopted and
24 which do not allow for GHG pass-through.

25 Lastly, the CPUC has been and will continue to

1 engage with ARB as we deliberate on the use of allowance
2 revenues generated from the allocation of allowances to
3 the investor-owned utilities.

4 Let me be clear, however, that these concerns do
5 not in any way stand in the way of adoption of this
6 critical regulation today. It is true there remains some
7 issues as inevitably is the case with any new and complex
8 regulatory regime. To the extent problems arise, the
9 regulation will be refined and modified. However, these
10 are costs and risks that we can bear, while the costs and
11 risks of inaction, science indicates, our descendants most
12 profoundly cannot.

13 So again, I urge you on behalf of the CPUC to
14 adopt this body of regulation today. Thank you.

15 CHAIRPERSON NICHOLS: Thank you, Andrew.

16 I'm next going to take out of order three
17 representatives of local air pollution control agencies,
18 because I understand that they've all been meeting and
19 need to leave early.

20 But I want to particularly call them forward at
21 this point because, as everybody knows, California has a
22 system of air quality regulation, which includes both
23 State and regional entities operating under State and
24 federal law and developing this program, although it was a
25 task that was assigned to the Air Resources Board is one

1 where we have also needed to be and tried to be mindful of
2 the responsibilities of the local agencies that administer
3 the permitting and most of the enforcement programs
4 related to conventional air pollutants and who have
5 increasingly also begun to step up their own efforts to
6 deal with global warming pollution as well.

7 So I don't know how the three of you wish to sort
8 yourselves out, your timing. But come on and you can
9 speak in whatever order you would like. I guess we'll
10 start with Barbara.

11 Hi, Barbara.

12 MS. LEE: Good morning, Madam Chairman and
13 members of the Board. My name is Barbara Lee. I'm the
14 Air Pollution Control Officer for Northern Sonoma County
15 and also Chair the Climate Protection of the Air Pollution
16 Control Officers Association.

17 I'm very happy to be here before you today. The
18 Air Districts recognize that the steps you are taking
19 today are truly historic. And we applaud your commitment
20 to managing the air quality and public health aspects of
21 this Cap and Trade Program through your Adaptive
22 Management Plan. We stand ready to work with you as you
23 do that and appreciate the recognition of our role in
24 that.

25 That said, there are some significant

1 implementation issues that remain to be worked out with
2 that program and, indeed, with how the broader Cap and
3 Trade Program and the other AB 32 efforts will interact
4 with the traditional air pollution control program that we
5 implement in partnership with you and have for so many
6 years.

7 We look forward to resolving those issues with
8 staff, have appreciated the support of this Board for
9 resolving those issues in the past. And while we had
10 hoped to have more to report to you at this point in time
11 on progress in that regard, we have had a very encouraging
12 meeting with staff this week. We are planning another
13 meeting in December and hope to make some real progress
14 there.

15 We would ask you to have us back early in 2012 to
16 talk with you about the progress we hope to have made by
17 then and would appreciate a strong commitment from you to
18 hear that early in the year so that we all have something
19 concrete and some real momentum to move forward on.

20 But thank you very much for taking our comments
21 today. And congratulations to staff and to this Board on
22 showing some tremendous leadership in climate protection.

23 CHAIRPERSON NICHOLS: Thank you.

24 Dr. Wallerstein.

25 DR. WALLERSTEIN: Good morning, Chairman Nichols

1 and members of the Board.

2 I'm Barry Wallerstein, the Executive Officer of
3 the South Coast Air Quality Management District.

4 First, I want to say to you that it is extremely
5 important that you adopt the program today. This is truly
6 an historic moment in air pollution control, not just for
7 the state, but the nation and the world. So we hope you
8 take action today.

9 Secondly, I have what I hope is just a small
10 request and it piggybacks onto Barbara Lee was requesting.
11 That is on page 13 of your resolution at the top of the
12 page is a provision that the staff has added, and we're
13 thankful they have, about working with the local air
14 districts. And we would simply ask that at the end of
15 that provision at the top of page 13 that you simply add a
16 statement that says "come back before the Board the first
17 quarter of 2012 to report on progress working with the
18 local air districts."

19 The reason that I'm asking that it be
20 specifically included in the Resolution is there have been
21 two other occasions where the Board has told both the air
22 districts and the staff to get together and work in
23 partnership on various issues associated with
24 implementation of AB 32. Unfortunately, we have not seen
25 those provisions in Board resolutions actually come to

1 fruition.

2 So I think it's important for your Board to
3 monitor us at the local air districts as well as your
4 staff and have a report back in the first quarter. So if
5 you could just add one sentence, we'd be very happy.
6 Thank you.

7 CHAIRPERSON NICHOLS: Thank you.

8 MR. BROADBENT: Good morning, Madam Chair,
9 members of the Board.

10 My name is Jack Broadbent. I'm the Executive
11 Officer for the Bay Area Air Quality Management District.
12 And I appreciate the opportunity to be here this morning
13 to talk to you about the cap and trade regulation and the
14 regulations on the Adaptive Management Plan.

15 Along with my colleagues at the Air Pollution
16 Control Districts, we remain supportive of the Cap and
17 Trade Program and are committed to assist in its
18 implementation.

19 We continue to believe that there should be
20 continued and ongoing dialogue about how we can harmonize,
21 frankly, the local Air Pollution Control Program with the
22 Cap and Trade Program. And we think there's going to be a
23 considerable amount of discussion that's going to be
24 needed in the future in order to make that harmonization
25 work, only because I know your staff and, of course, the

1 Air Pollution Control District staffs don't want to see
2 conflicts. We don't want to see any issues arise as we
3 continue to move forward in not only addressing regional
4 smog, but also localized impacts and continue to reduce
5 climate change precursors.

6 What I wanted to speak about specifically, Madam
7 Chair, was the Adaptive Management Plan. In the Bay Area,
8 we have a number of communities that already experience
9 relatively high levels of toxic air contaminants. This is
10 due in large part to their proximity to mobile as well as
11 stationary sources. And frankly, just the density of the
12 Bay Area, which is why several years ago we initiated an
13 effort referred to as our clean air communities initiative
14 to understand and reduce these risks.

15 So we have a number of communities that I know
16 you all are very familiar with in and around the Bay Area
17 where the district, actually in concert with your staff,
18 have been seeking to be able to estimate the risks in
19 these communities, model what those risks are, conduct
20 ambient monitoring, and then target our grants and our
21 regulatory efforts to be able to reduce these risks. It's
22 a very extensive program in place that we take very
23 seriously to be able to deal with this issue.

24 And your staff has indicated that you do not
25 believe there are going to be impacts associated with the

1 Cap and Trade Program. And, indeed, that's what's the
2 basis of the Adaptive Management Plan.

3 We also believe that, frankly, there are
4 mechanisms in place, but there needs to be a lot of
5 coordination, we believe, with the Bay Area Air District.
6 And you've also heard from also the other districts as
7 well.

8 That's why I think it's very critical this
9 Resolution that your staff has included in the Adaptive
10 Management Plan calls for that coordination. We think,
11 however, there is going to be very much of a need for your
12 Board, specifically Madam Chair, to hear back from all of
13 us in a very distinct time frame. Because this is too
14 important of an issue. It's also frankly you're moving
15 ahead with a program where you don't know exactly what
16 people are going to do in the Cap and Trade Program. You
17 cannot predict human behavior in a program like this.

18 And so given that, we think it's really
19 important -- I'll stop here. It's really important that
20 you hear back from us to really talk about how we can
21 coordinate our efforts into the future. And I just --
22 along those lines, we think that a little beefing up of
23 the resolution along those lines would go a long way. So
24 thank you, Madam Chair.

25 CHAIRPERSON NICHOLS: A number of us have been

1 taking notes. So thank you.

2 Larry, you want to jump in here, too?

3 MR. GREENE: Yes, ma'am, Madam Chair and members
4 of the Board. The local Air District can watch across the
5 street and run over here. That's one of the advantages I
6 have.

7 I very much support what has been requested by
8 the other Air Districts. I ask that you include that. We
9 have some intensive work over the next number of weeks and
10 will be working with your staff on Adaptive Management in
11 addition to other things.

12 I also want to commend you for today. I was at
13 Copenhagen and will be in South Africa representing our
14 national association. And I can tell you it makes a
15 difference when you tell people you're from the
16 United States and then you tell them you're from
17 California. And that makes a difference to people. We've
18 been a leader, and I think it's important for us to
19 continue that. And we urge your support on this. Thank
20 you.

21 CHAIRPERSON NICHOLS: Thank you very much.

22 Okay. I think we should return then to the
23 regular order. And our next speaker is Chris Riley
24 followed by Lisa Bowman.

25 MR. RILEY: Good morning. Chris Riley, concerned

1 citizen employed by Velaro and come to you to oppose part
2 of the plan that will put a tax on emission allowances,
3 particularly concerned with the auctioning process. I've
4 been to several auctions. I see how things go. People
5 act irrationally. Things become interesting. I'm
6 particularly concerned about that environment and how that
7 works.

8 I'm concerned about how these emission taxes and,
9 in general, how this will have impacts on our families, in
10 particular the impacts on the higher energy costs that
11 will be incurred and then consequently what will happen to
12 our jobs as well as to all the impacts, residential and
13 commercial.

14 And I'm deeply concerned especially in this
15 environment of the already large losses that are incurred
16 on this economy, what the further onset of higher energy
17 costs and therefore layoffs will have on our environment
18 as it stands now and particularly going forward. And
19 worse yet, how this plan in general looks at energy growth
20 and not just sustaining where we're at, but becoming a
21 global economy, which we should be thinking about ever
22 more so and the impacts of what we have and how we do
23 things, not just here, locally, or statewide or even
24 nationally but globally. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Those are all valid concerns and hopefully get a
2 chance to listen to some answers as well.

3 Lisa Bowman is next. Lisa. And then Ralph Moran
4 an.

5 MS. BOWMAN: Good morning, Madam Chairperson and
6 Board.

7 I'm here on behalf of California United
8 Steelworkers Local 675. And along with me, I have two
9 other United Steelworkers from our sister refineries.
10 We're all ConocoPhillips employees. We are hourly
11 employees, and we have a two-sided thing here. One is we
12 support AB 32. But the flip side of that -- I'm coming to
13 you from a very -- I'm a citizen in my neighborhood. And
14 my employer is in my neighborhood. And that employer
15 allows me the opportunity to take care of my family.

16 But what we see is that everything was not
17 particularly looked at. And some of the impacts from this
18 bill can put us out of work. We are in an economy where
19 we have a need to take care of our families. And the way
20 society is today -- I'm going to be perfectly blunt with
21 you. There are not many job opportunities out there where
22 a single mother can raise three children without
23 government assistance. I've never had government
24 assistance. And this job has afforded me that
25 opportunity.

1 In addition to that, with ConocoPhillips
2 remaining in our local neighborhoods, it provides taxes
3 that pay for things that one day I hope to be able to
4 utilize. We have senior citizen assistance. We have ride
5 share to pick up these seniors. If this refinery
6 disappears, where am I going to retire, too?

7 What we're asking is you take the time, give our
8 employer an opportunity to see what they can do to meet
9 your regulations. That's all we're asking. We're not
10 saying disappear. We're saying give us some leeway,
11 because we're talking about not affecting companies, but
12 all these people in these blue shirts you're looking at,
13 they have children. They play Little League. Those
14 programs would disappear because our employer pays into
15 those types of things.

16 A lot of us are volunteers in our neighborhood
17 where our employer allows us time off from work to
18 volunteer. And to apply to what's being asked in such a
19 short time frame, we're hitting a block wall. And there
20 are going to be plenty of people out of work and we don't
21 want to see that happen. I can tell you right now the
22 United Steelworkers, we're very serious about keeping
23 people employed and where people can sustain their own
24 likelihood without government assistance. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 MR. MORAN: Good morning. Ralph Moran with BP
2 America.

3 We worked extensively with staff on this
4 regulation over the last four years. And while we support
5 a well-designed Cap and Trade Program and there has been
6 progress on the regulation, I have to say we're
7 disappointed with where the regulation stands right now.
8 And the primary reason we're disappointed is because, as
9 currently designed, we think it stands a pretty good
10 chance of not working. And in the mean time, inflicting a
11 good deal of pain on California industry.

12 Our message to staff has been clear. The most
13 important objective is that it work, that the program
14 deliver real emission reductions cost effectively. But
15 that objective seems to have been replaced by a different
16 objective being to get as much as possible from the
17 program as quickly as possible, rather than keeping the
18 end game in mind.

19 Our concerns that have gone unaddressed are about
20 things like inadequate cost control, over controlling of
21 the market through things like unjustified holding limits,
22 addressing or failure to address properly the trade
23 exposure, and doing things that have, indeed, necessary by
24 all of you and staff included like incentivizing
25 co-generation.

1 Supervisor Roberts, you expressed an interest in
2 this recently. It just hasn't been addressed. Addressing
3 these concerns would not in any way compromise the goals
4 of the program. In fact, it would probably increase the
5 potential of the program would succeed.

6 Our most immediate concern now is with this 10
7 percent reduction in allocation to industry. Everyone
8 from US Secretary of Energy Chu to your own EAAC Committee
9 and staff's own analysis has concluded that industry will
10 be trade exposed when competing against industry who is
11 not similarly regulated.

12 It is our view that in this case staff have
13 ignored their own report that says that 100 percent free
14 allocation to industry is necessary to avoid this leakage.
15 And we're especially perplexed by this action to reduce
16 our allocation because it won't do anything to help the
17 program succeed.

18 We think that the California program does have
19 the opportunity to be an example, but it also has the
20 chance to be a cautionary tail if not done right. And
21 each of you can influence that outcome.

22 Please ask staff to reverse course on their
23 reduction and allocation to our industry and to put in
24 place a real process to evaluate the concerns of industry.
25 Thank you.

1 CHAIRPERSON NICHOLS: Thank you.

2 Tim O'Connor from the Environmental Defense Fund
3 and then Frank Caponi.

4 MR. O'CONNOR: Good morning.

5 On behalf of Environmental Defense Fund and our
6 over 700,000 members, I stand here today in front of you
7 to urge your vote in support of this monumentally
8 important program. This program, an economy-wide cap and
9 trade regulation, really is California's moonshine; our
10 moonshine to reduce greenhouse gas emissions. It's going
11 to reduce emissions. It's going to protect our economy.
12 It's going to reestablish the United States through our
13 great states actions as a leader internationally on this
14 issue.

15 The vote today is a statement. California's army
16 of pollution sources -- I'm taking a metaphor I heard
17 earlier today on the radio. They need to start cutting
18 emissions. They need to start cutting climate change
19 pollution. They need to start reaping the benefits of
20 increased efficiency. They need to start delivering
21 cleaner air and a more stable atmosphere. It's what the
22 U.S. should have done ten years ago. It's what they
23 should have done last year. It's what the U.S. as a
24 nation needs to do today, and it's what California needs
25 to do today to pass this program.

1 Failure to act today is really not an option.
2 It's too costly, too harmful to our economy, too harmful
3 to our kids, to our elderly, and to our future
4 generations. This program, the price on pollution, the
5 improvements in air quality that it will bring, the fight
6 against climate change is really what the public voted for
7 when we voted down Prop. 23.

8 The public, myself included, stood up and said we
9 need positive action to address climate change, and we
10 think that the Air Board's direction to protect our
11 economy to reduce our emissions and to clean up our air is
12 the way to go.

13 I urge your vote in support of this important
14 program. And with the last minute, I'll yield it to
15 applause to the staff that hasn't been given to this
16 audience. Thank you for your participation in all the
17 working groups and everything. I know you said you'd save
18 an hour, but since I'm saving a minute, I just want to say
19 thank you very much, staff.

20 CHAIRPERSON NICHOLS: Okay. Thank you.

21 Frank Caponi. Are you here? Yes. Followed by
22 Norm Hattich and Mike Wang.

23 MR. CAPONI: Good morning, Madam Chair and
24 members of the Board.

25 My name is Frank Caponi representing the Los

1 Angeles County Sanitation Districts. I'm here today to
2 talk to you about the waste to energy issue that we've
3 spent the better part of three years talking about.

4 Seventy-two cities, unincorporated areas of L.A.
5 County, a bipartisan group of legislators, international
6 experts, and for a short time, even CARB staff supported
7 an exclusion for these facilities. The U.S. EPA,
8 CalRecycle, international experts, and for a short time
9 even the CARB staff supported the analysis that came to
10 this conclusion.

11 Last December, Mayor Loveridge introduced a
12 Resolution that had three actions in it. The first action
13 was to find a mechanism to satisfy the risk of emission
14 leakage. Staff has been working on this with us very
15 diligently, but it's not completed. Find a mechanism to
16 satisfy all compliance obligations. This has not
17 happened. Report back to the Board on all the progress of
18 this. This has not happened. So there is a lot of undone
19 work here as part of the original Resolution.

20 Staff said in the presentations that we're part
21 of the electrical sector. We are not. We're waste
22 management facilities. A byproduct of being waste
23 management facilities is doing what we've been asked to do
24 over the years, produce renewable energy. And it goes to
25 the goal that Chairman Nichols talked about, reducing

1 reliance on fossil fuels. We're doing what we can as to
2 that end. But I think we're being penalized unfairly.

3 Staff in the current Resolution is asking for a
4 comprehensive Waste Management Plan. This really can't
5 happen because by including us in the cap and trade
6 sector, they've already picked the winners and losers in
7 this game. That's not fair. We need to continue the work
8 that started and come to more equitable solution.

9 What am I asking? I'm asking that you re-insert
10 the original language that Mayor Loveridge introduced in
11 December. That work has not been done. I think Barry
12 Wallerstein, Dr. Wallerstein, alluded to the fact that
13 some of the Resolutions have not been completed. That's
14 one of them. I'd like to see that go back in. And
15 continue to work with that.

16 Unfortunately, Mayor Loveridge is not here to
17 speak to this issue. But I'm sure he would agree with us
18 on this one.

19 And also there is a current Resolution in the
20 package, which is asking for this comprehensive solid
21 waste management overview. We'll go ahead and support
22 that. We think there should be a comprehensive analysis.
23 But there has to be time certain on this. This is open
24 ended. This is an issue that needs to resolve now, not
25 two or three years in the future. So we request it be

1 time certain, this be completed by the end of next year,
2 but also that there be at least quarterly reports back to
3 the Board so you guys could figure out where the status of
4 this is. Thank you very much.

5 CHAIRPERSON NICHOLS: Thank you.

6 So I'm looking at the draft Resolution which I
7 think came out last night or this morning. I'm not quite
8 sure, which it does contain language in it that requires
9 that the Executive Officer propose regulatory amendments
10 as appropriate so that AB 32 implementation, including the
11 cap and trade regulation, aligns with statewide management
12 goals, statewide waste management goals, and provides
13 equitable treatment to all sectors involved in waste to
14 energy.

15 MR. CAPONI: We support that alignment, but it's
16 very, very broad. The original Resolution language has
17 not been completed yet. The actions need to be completed
18 there, that I think will make it whole. If we include
19 that Resolution with the new Resolution, put a time stamp
20 on it, I think we're there. I think we've got it
21 together.

22 CHAIRPERSON NICHOLS: Thank you.

23 Norm Hattich.

24 MR. HATTICH: Good morning, Madam Chair and Air
25 Board members.

1 My name is Norm Hattich. I'm here representing
2 the California Contractors Alliance. We're 15 industrial
3 contractors that do work throughout California and western
4 United States. We have over 3,000 employees that are
5 highly trained and highly paid. We see this as a threat
6 to our membership. We do not think it has been thought
7 thoroughly, and we're very much against this proposal.
8 Thank you for the opportunity to speak.

9 CHAIRPERSON NICHOLS: Okay. That was to the
10 point.

11 Mike Wang and then Brian Nowiczki.

12 MR. WANG: Good morning. I'm Mike Wang speaking
13 for the Western States Petroleum Association, as our
14 President, Kathy Reheis-Boyd, is out of the country. We
15 submitted written comments. I'll be highlighting some
16 issues before you.

17 We represent companies that implement your
18 regulations. Our members support environmental protection
19 and we've worked diligently to implement State and local
20 environmental programs.

21 So what have we done? Since the early 1980s,
22 we've reduced pollutants from service stations,
23 refineries, terminals, and oil and gas facilities. Our
24 facilities, as you know, are the cleanest in the world and
25 they produce the cleanest products in the world.

1 We've also implemented four rounds of controls on
2 gasoline, two rounds of controls on diesel, and
3 innumerable changes to specialized fuels used in mobile
4 and stationary sources.

5 Our members are responsible for making your
6 emission reductions a reality through diligence,
7 engineering, safety, and cost control.

8 We understand that greenhouse gas control is upon
9 us and we want to comply.

10 But there are concerns. What you are hearing
11 from us is: Can we choose alternatives? Can we choose an
12 alternative to the ten percent reduction in allocations?
13 Can we evaluate leakage and trade exposure and make needed
14 program improvements and adjustments? Can we choose
15 alternatives to dealing with greenhouse gas emissions from
16 transportation of fuels in California? Can we achieve the
17 goals of AB 32 easier?

18 Right now, it's important to remember that the
19 industry is faced with five concurrent rule-makings,
20 including this regulation, the high-carbon intensity crude
21 regulation, low-carbon fuel standard, clean fuel outlet,
22 and energy efficiency audit reports. We need to ensure
23 that we make decisions that make sense and are consistent
24 with future programs.

25 We join with others in asking that a ten percent

1 reduction in allocations be removed. Let companies devote
2 precious capital to greenhouse gas emission reduction
3 projects that you have told us will be required in the
4 future.

5 We ask that ARB work with stakeholders to correct
6 and refine technical provisions. We ask that ARB work
7 with stakeholders to monitor the progress and issues of
8 the Cap and Trade Program as part of the Adaptive
9 Management Plan.

10 We note that the bifurcation that was noted by
11 staff earlier this morning is not well founded. You need
12 a comprehensive review of all the issues, not simply
13 environmental, but you need environmental and economic
14 issues analyzed.

15 Finally, we ask that the ARB work with other
16 agencies to monitor whether and to what extent the overall
17 state economy is affected by the Cap and Trade Program.

18 We close by stating the obvious: That continued
19 employment in California is important, not only to
20 maintain jobs in California for Californians, but also
21 because jobs and facilities operating in California will
22 ensure that AB 32 emission reductions will occur.

23 Finally, we do note that our comments to the
24 final environmental document were omitted from your record
25 as shown. We are sure that this is inadvertent. We sent

1 it on July 28th. So we ask that ARB staff re-look at the
2 record for the FED and ensure that all comments were
3 included in the record. Thank you.

4 CHAIRPERSON NICHOLS: I certainly would hope they
5 would do that, if there were comments that were
6 overlooked.

7 MR. WANG: We actually submitted on the web. We
8 have a receipt that was submitted on July 28th. And it
9 was not shown in either the record or in --

10 CHAIRPERSON NICHOLS: I'm seeing some mystified
11 looks, but they're going to check right away.

12 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
13 CLIFF: The FED was noticed last October for 45 days on
14 the cap and trade regulation. I think he might be
15 speaking about the FED associated with the supplemental
16 alternatives to the Scoping Plan.

17 MR. WANG: We should talk about it. Thank you.

18 CHAIRPERSON NICHOLS: Sounds like you need to get
19 off line and clarify what the document is and where it was
20 directed. But we certainly don't intentionally overlook
21 any comments.

22 Brian Nowickzi from the Center for Biological
23 Diversity, if you're here. If not, we'll hear from Kate
24 Beardsley followed by Paul Shepard.

25 MS. BEARDSLEY: Good morning, Chairman Nichols

1 and Board members.

2 My name is Kate Beardsley. I'm here today
3 speaking on behalf of Pacific Gas and Electric Company.

4 PG&E provides gas and electricity to
5 approximately one in 20 Americans. I appreciate being so
6 early in the lineup. I think back in December I was 110.
7 So I haven't practiced as much as I should have.

8 But anyway, ARB has made significant progress
9 over the last twelve months in the development of the Cap
10 and Trade Program. We believe that critical design
11 features of the Cap and Trade Program, such as allocating
12 allowances for the benefit of electric utility customers,
13 the use of high quality offsets, and the presence of an
14 allowance price containment reserve will support and
15 complement AB 32 goals to achieve real emission reductions
16 while containing cost to Californians.

17 We will continue to work with ARB and its
18 stakeholders to ensure that these types of cost control
19 mechanisms play a robust and critical role in the Cap and
20 Trade Program moving forward. And we appreciate the
21 Resolution item that touches on that.

22 We also look forward to continuing to work with
23 ARB and the energy agencies as ARB prepares to launch the
24 program. The decision to defer the start of the program
25 to 2013 provides valuable time for ARB to conduct market

1 stimulation and system testing prior to the start of
2 program. Those are efforts we very much support.

3 In particular, we are pleased to see that ARB
4 plans to work with stakeholders and an external entity to
5 do these market simulations. We think those will be
6 extremely valuable and allow ARB to make any necessary
7 modifications to the regulations.

8 We also encourage ARB staff to continue to
9 develop offset protocols, given their significant cost
10 containment benefits, mitigate the price containment
11 through an allowance price containment reserve contingency
12 plan, active market monitoring, establish a market
13 surveillance committee.

14 So we really appreciate all those things are in
15 scope in the Resolution. So thank you very much. Thank
16 you staff. I'll stop there.

17 CHAIRPERSON NICHOLS: Thank you. We appreciate
18 that. Okay.

19 Paul Shepard and then Nathan Voegeli.

20 MR. SHEPARD: Good morning. My name is Paul
21 Shepard. I'm the Director of Asset Management for the
22 Indigo and Larkspur generating facilities in southern
23 California.

24 We appreciate staff's hard work, I'll say it
25 quickly, and openness during the rulemaking process.

1 However, one matter that was identified early on
2 and has not yet been resolved is the treatment of certain
3 generators with power contracts that do not account for
4 compliance with AB 32 because they were executed before AB
5 32. These pre-AB 32 contracts do not contemplate the
6 significant compliance costs of this regulation. And
7 while most generators are able to pass through their costs
8 by selling power at the wholesaler through an assortment
9 of avoided costs, this limited group of generators with
10 these pre-AB 32 contracts will not be able to.

11 These contracts of concern to us were our
12 long-term contracts were entered into during the emergency
13 crisis in 2001. The State, at that time, strongly
14 encouraged long-term contracts. And we are finding
15 ourselves for our long-term contract of the State being in
16 a potential detrimental situation. This pre-AB 32
17 contract was identified early on in the Market Advisory
18 Committee's June 2007 report the PUC and CEC's October
19 2008 recommendations to the ARB, as well as the Initial
20 Statement of Reasons and Resolution 10-42 for this
21 regulation.

22 Just recently, staff's August 15-day package
23 encouraged parties with these pre-AB 32 contacts to
24 re-negotiate. However, outside of large contract
25 restructuring or portfolio restructuring, there is really

1 little incentive for the counterparties to renegotiate
2 with a generator, because they can sell and use the power
3 from a pre-AB 78 contract generator more cheaply.

4 These affected generators have submitted several
5 proposals during the 15-day and 45-day comment periods for
6 this regulation. These proposals would resolve the
7 current situation. And we are asking that the Board and
8 the staff work with these handful of generators to obtain
9 resolution in the first quarter of 2012, before the first
10 auction occurs next year.

11 Thank you for providing me the opportunity to
12 present our concerns. And I hope we can have the
13 resolution early next year.

14 CHAIRPERSON NICHOLS: Thank you.

15 BOARD MEMBER BERG: Madam Chair, this is Sandy.

16 CHAIRPERSON NICHOLS: Yes?

17 BOARD MEMBER BERG: Could I just ask staff, I
18 believe there is some Resolution language regarding this
19 issue; is that correct?

20 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

21 CLIFF: That's correct. We're aware of a number of
22 different contracts. And we're committed to monitoring
23 those moving forward. We have strongly suggested that
24 parties try to renegotiate. We understand that in many
25 cases there aren't strong incentives for that

1 renegotiation.

2 But we're committed to trying to watch this
3 issue, narrow down the subset of contracts that ultimately
4 can't be renegotiated in advance of the compliance
5 obligation, and then recommend any sort of solution that
6 we think is necessary in order to mitigate impacts.

7 BOARD MEMBER BERG: From our perspective,
8 however, if we aren't able to encourage that action, then
9 do we have other Plan B?

10 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
11 CLIFF: I think there is not a one-size-fits-all solution
12 here. And the one in particular that's being identified,
13 these are contracts with marketers. So effectively,
14 allocation to that generator would mean that a marketer
15 could potentially receive windfall profits at the expense
16 of California consumers.

17 I don't know that that's ultimately what would
18 happen. We would need to continue to look at it in each
19 individual case. And again, I think part of the trouble
20 here is when we put out language originally that suggested
21 we were open to looking at it on a case-by-case basis, we
22 received dozens of different situations that some, in
23 fact, weren't really an inability to have a cost recovery
24 mechanism, but they simply weren't happy with the
25 particular contract that they had negotiated and didn't

1 feel they were appropriately compensated. In other words,
2 they didn't get enough back. So it made it very difficult
3 for us to analyze that in the context of the overall
4 allocation system.

5 And I think, moving forward, we can narrow that
6 down to a subset that we truly need to really focus on.

7 As the Energy Commission mentioned, they are
8 committed to looking at this issue as well for those
9 contracts, which are between generators and the
10 investor-owned utilities.

11 BOARD MEMBER BERG: Thank you. I can cross that
12 off my list now.

13 CHAIRPERSON NICHOLS: For the moment anyway.

14 Yes?

15 BOARD MEMBER D'ADAMO: Just since we're on this
16 anyway, I had a call yesterday with representatives from
17 the Independent Power Producers Association. And of
18 course they brought this up and talking about transitional
19 assistance, which is what you were just talking about,
20 Steve. They also brought up another alternative, making
21 the deliverer the party that would comply -- that would
22 comply in order to provide for an additional incentive.
23 So since we're talking about this in more detail right
24 now, if you could speak to that. I just want to make sure
25 I understand that alternative.

1 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

2 CLIFF: So I assume that means making the party that is
3 purchasing the power have the compliance obligation.

4 Essentially, that would mean transferring the
5 compliance obligation from the smokestack to the entity
6 that purchases the power. I think in large part the
7 concerns that the independent power producers have raised
8 is one of the issues that the PUC is going to be taking
9 up. So we're going to work closely with them on that
10 particular issue.

11 The ones that are a little more challenging for
12 us to deal with I think are these ones between marketers
13 and those who provide steam to other entities who don't
14 otherwise face any sort of compensation from the program.

15 So in this case, the investor-owned utilities
16 have received allowance value, assuming they will be
17 purchasing some sort of power. And to the extent that
18 that power actually doesn't have a carbon cost embedded in
19 it, I think that's appropriate for the PUC to look very
20 closely at those contracts, as they indicated, they're
21 committed to doing that with us.

22 CHAIRPERSON NICHOLS: Thank you.

23 Mr. Voegeli, you've been waiting patiently.

24 MR. VOEGELI: Good morning, Madam Chair, members
25 of the Board. My name is Nathan Voegeli. I'm here

1 representing the Yurok Tribe.

2 I do want to extend a recognition to the ARB
3 staff who was very helpful to us in working with us on
4 native concerns and ARB's native concerns throughout this.

5 Next slide, please.

6 --o0o--

7 MR. VOEGELI: I wanted to address first a limited
8 issue. Before I do, I want to say the Yurok Tribe
9 supports robust enforcement of these cap and trade
10 regulations. Our issue is limited to Section 95975(1)(1)
11 and the specific wording of that. As it's worded, it
12 would not explicitly prohibit punitive damages against
13 tribes.

14 Next slide.

15 --o0o--

16 MR. VOEGELI: Numerous federal and State statutes
17 as well as court decisions have recognized policy
18 prohibiting generally punitive damages against government
19 entities. The tribe is seeking to be recognized the same
20 as other governmental entities. We understand from ARB
21 staff that this -- we will be treated in this way and that
22 there is no language revision to Section 95975 needed.

23 Based on that, we expect non-discriminatory
24 treatment as a tribal government and no imposition of
25 punitive damages.

1 Next slide.

2 --o0o--

3 MR. VOEGELI: I just want to conclude and wrap up
4 very briefly. Again, we support full and robust
5 enforcements of these regulations. Our sole concern with
6 the current regulations are with Section 95975 and
7 ensuring that the tribes are not treated any different
8 from government utilities. Thank you.

9 CHAIRPERSON NICHOLS: Thank you. I take it the
10 staff can provide assurance that that's the case if you
11 want to say so for the record.

12 STAFF COUNSEL BROWN: That's the case.

13 CHIEF COUNSEL PETER: We have received advise
14 from California Attorney Generals on this issue, and I'd
15 like to defer to Jason Gray on that particular question.
16 He's the attorney working on that tribal issue.

17 MR. GRAY: This is Jason Gray with ARB's legal
18 office here.

19 We did work with the Attorney Generals on these
20 provisions and have spoken with stakeholders, including
21 the Yurok Tribe. We are committed and I think the
22 language supports not discriminating against offset
23 project developers on tribal lands. And we will work with
24 them to ensure that this works.

25 CHAIRPERSON NICHOLS: Thank you. I appreciate

1 that.

2 Appreciate the vigilance of the Yurok tribe as
3 well. Okay.

4 Doug Davie from Wellhead Electric and Saskia
5 Feast.

6 MR. DAVIE: Good morning, Chairman Nichols,
7 members of the Board and staff.

8 My name is Doug Davie, and I'm a Vice President
9 with Wellhead Electric Company.

10 Wellhead, through its commonly ownership
11 companies, is an independent power producer with a
12 portfolio of about 350 megawatts in California. The
13 contracts with all three investor-owned utilities. We've
14 been in the business since 1990.

15 We appreciate the effort that's gone into the
16 regs, but there is this nagging problem of pre-AB 32
17 contracts that was just spoken about. I don't want to --
18 I'll omit some of my comments, because they've been
19 addressed.

20 But in addition to the problem that Mr. Cliff
21 just identified, which is the utilities are receiving
22 allowances for costs they do not incur, a windfall profit,
23 there's two related problems that I want the Board to be
24 very aware of that are directly tied to this.

25 First is that because the utility customers are

1 not seen -- the utilities are not seeing the cost of these
2 greenhouse gases, there would not be the transparency of
3 the pass-through of costs and therefore the price signal
4 for these contracts to be impacting consumer behavior.

5 Second, the absence of this greenhouse gas price
6 signal could well result in higher emitting greenhouse gas
7 resources being dispatched, because a lower emitting
8 resource would have a greenhouse gas cost, making it more
9 expensive. Economic dispatch would thus result in higher
10 than necessary greenhouse gas emissions.

11 Wellhead has proposed some very specific changes
12 that would eliminate this problem and would do so without
13 the changing the balance of benefits or burdens under the
14 contracts. We understand that your Resolution has
15 identified this as an issue. What we would like to ask is
16 that to that Resolution you ask a time frame to make it
17 clear that if the negotiations are not making progress or
18 successful within a very limited time frame -- I think it
19 should be as short as 60 days -- the Executive Director be
20 required to report back and step in and there be positive
21 movement on going back into the regulations to do two
22 things.

23 One: Ensure that the allocation of free
24 allowances does not result in a windfall.

25 And second: To ensure that the cost of GHG

1 compliance is transparent to consumers and the utilities.

2 The time frame is critical. As we're going into
3 2012, people are starting to make plans. It's a
4 significant financial commitment exposure uncertainty
5 that's there. We understand that the PUC and the ARB
6 would both like this to be resolved and go away through
7 bilateral negotiations, but the proposed regulations are
8 already giving the utilities the free allowances. They
9 already have it. So now they're being asked to give it
10 up. And I think that's a problem for renegotiations.

11 CHAIRPERSON NICHOLS: Thank you.

12 Saskia Feast, followed by Bonnie Holmes-Gen and
13 Mike Robson.

14 MS. FEAST: Good morning, Madam Chairwoman and
15 the Board.

16 My name is Saskia Feast. I'm the VP of Business
17 Development at EOS Climate. EOS is a venture-backed
18 company headquartered in San Francisco. Our mission was
19 and remains to use innovative business solutions to
20 address the huge threat of refrigerants at end of life.
21 Refrigerants are a threat to both the ozone layer and a
22 significant threat to the environment.

23 ARB is the first regulatory body in the world to
24 address this problem by recognizing the destruction of
25 ozone-depleting substances as one of the compliance

1 offsets.

2 And as a direct result of the regulations that
3 you're moving forward today, EOS has been able to use
4 carbon finance to accelerate the adoption of new
5 technologies from commercial to residential cooling
6 systems. This is generating economic opportunities and
7 transforming business.

8 Cap and trade is one small piece of the overall
9 program, and offsets are yet another small piece of that
10 program. I know we're not supposed to spend time thanking
11 the staff, but the level of detail and understanding your
12 staff has on this small section of this huge program is to
13 be applauded. And we will continue to work with the staff
14 to provide technical information to ensure that the offset
15 protocols reflect current best practice and scientific
16 information.

17 Finally, as an entrepreneur and a business woman,
18 I support market-based mechanisms as the most efficient
19 way to put a price on carbon, sending a clear signal to
20 other business people like myself, to investors, and to
21 our customers.

22 EOS is a member of the clean economy network, a
23 group that also supports moving forward with these
24 regulations today. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Bonnie Holmes-Gen.

2 MS. HOLMES-GEN: Good morning, Chairman Nichols
3 and Board members.

4 I'm Bonnie Holmes-Gen with the American Lung
5 Association in California. The American Lung Association
6 has been a strong supporter of California's leadership on
7 clean air and climate change over the years, and now we
8 are supporting California's moving forward to adopt a cap
9 and trade element of the AB 32 plan.

10 And as a public health organization, we believe
11 that California must move forward today and use every
12 possible tool that's available in the battle against
13 global warming, which is, of course, the biggest public
14 health threat of our time. And we see the Cap and Trade
15 Program as an important tool.

16 We appreciate that the AB 32 program includes a
17 mix of regulatory and market strategies, and this ensures
18 both a strong backdrop of regulations, such as the Clean
19 Cars Program, and Low-Carbon Fuel Standard, and Renewable
20 Portfolio Standard, combined with the declining cap on
21 carbon emissions and the price you're establishing today.

22 As you have stated, Chair Nichols, the sources of
23 air pollution and greenhouse gases are the same, and this
24 means our AB 32 efforts are not only addressing climate
25 change, but are resulting in real benefits to our overall

1 efforts to reduce ozone and particle pollution, which is
2 critical for protecting public health.

3 And with the American Lung Association, we
4 believe that California's unique air quality problems have
5 elevated the importance of successful implementation of AB
6 32. We're very concerned, of course, about the current
7 situation, the pollution problems we experience in
8 California which are the direct result of our reliance on
9 dirty fossil fuels.

10 We often talk about our state of the air report.
11 We can't help but mention it once again that with our
12 grading system, we find that over 90 percent of California
13 residents are living in areas that have unhealthy air
14 quality according to our State of the Air findings. And
15 of course, many residence are living in areas that have
16 high levels of air pollution for days or months a year up
17 to 100 days per year in some areas. And this causes
18 severe illness, even premature death, increasing asthma
19 attacks, emphysema, chronic bronchitis, and other serious
20 illnesses.

21 So we appreciate that the Cap and Trade Program
22 works together with our existing air quality laws and that
23 industries will be responsible for both criteria air
24 pollution controls and cap and trade requirements under AB
25 32.

1 As you've featured this morning, I think it's
2 very important this requires a partnership between the air
3 districts and the Air Board to make sure that both
4 programs are running smoothly. And we appreciate the
5 emphasis that you've placed on that today.

6 I want to particularly mention the Adaptive
7 Management Program. We are very pleased that ARB is
8 committed to this program. We think it's extremely
9 important in response to environmental review that has
10 gone over this past year to move forward with this and to
11 ensure that ARB is doing this annual monitoring protecting
12 against any unintended impacts.

13 Thank you again. Let's move forward, and we
14 strongly support this program.

15 CHAIRPERSON NICHOLS: Thank you.

16 Mike Robson.

17 MR. ROBSON: I'm Mike Robson. I'm here on behalf
18 of the Glass Packaging Institute.

19 The Glass Packaging Institute represents the five
20 remaining glass container manufacturers in California.
21 GPI represents -- they submitted written comments, so I'll
22 just be very quick and summarize that for your behalf.

23 Basically GPI opposes the emission benchmarks and
24 the cap adjustment factor that was established by the
25 staff in the regulation, the benchmark for this industry.

1 The benchmarking cap adjustment factor for the glass
2 container industry aren't properly reflecting this
3 industry's early actions in reducing the greenhouse gas
4 emissions that have been going on for the last 25 years.
5 And are not adequately minimizing the risk of leakage in
6 this industry.

7 This industry is already competing against China
8 and Mexico in glass containers coming into the state. If
9 you guys -- if CARB does not adjust or have another look
10 at these two items, we're afraid that the California glass
11 plants and the 2600 union workers that are employed there
12 are going to be -- going to shut their doors and those
13 people will be put out of work. So we'd like you as you
14 go forward to take a look at the cap adjustment factor and
15 the benchmark for the glass container industry. Thanks.

16 CHAIRPERSON NICHOLS: Thank you. I think that
17 will be addressed.

18 I now have four individuals who have signed up
19 together representing State Water Contractors. So if you
20 want to all come forward, that would be great: Tim
21 Haines, Douglas Headrick, Steve Robbins, and Dan Masnada.

22 MR. HAINES: Chair Nichols, members of the Board
23 I'm Tim Haines with the State Water Contractors.

24 The members of our association receive water from
25 the State Water Project. We distribute that water

1 throughout the state of California. And in return, we pay
2 for all the costs that are associated with that.

3 The primary mission of the State Water Project is
4 the delivery of water. When you look at it from the
5 electric side, it's the equivalent of the sixth largest
6 electric utility in the state of California.

7 As a consequence, it's fallen under the cap and
8 trade regulations. Before the Board adopted the
9 regulations in December, there was a group of utilities
10 that got together to decide how to allocate emission
11 allowances amongst themselves. We weren't included in
12 that. As a consequence, the allocation didn't take into
13 consideration the fact that 90 percent of our costs are
14 incurred in southern California. And when the emission
15 allowances were granted to the utilities, they received an
16 equivalent of only about 60 percent of that cost
17 equivalent.

18 Conversely, when you look at northern California,
19 you have just the reverse that's occurred. Ten percent of
20 our costs are incurred in northern California and around
21 40 percent of the value of the emission allowances were
22 provided to northern California.

23 When you look at this, the result is essentially
24 a wealth transfer from customers in southern California to
25 northern California. We have in comments that we've

1 submitted identified a number of other concerns that this
2 type of -- got misalignment between our costs and how the
3 value of the allowances were provided. So I won't get
4 into those here.

5 What we've provided is an allocation that we
6 think addresses the concern that we've raised. We think
7 that it's also a way that the Air Resources Board can
8 achieve the objectives that it has under the cap and trade
9 regulation.

10 We think that it is an allocation that's very
11 consistent with what the Board adopted in December of last
12 year. It doesn't allocate any additional allowances than
13 what were allocated. And it doesn't regulate any fewer
14 emission sources throughout the state of California.

15 As you deliberate today, we'd like you to take
16 those things into consideration and adopt the allocation
17 that we've proposed.

18 CHAIRPERSON NICHOLS: Thank you. Appreciate your
19 work on this.

20 Okay. Mr. Headrick, you're next.

21 MR. HEADRICK: Thank you, Chairman Nichols and
22 Air Board members.

23 My name is Doug Headrick. I represent the San
24 Bernardino Valley Municipal Water District. We are a
25 State contractor, but more recently, we have been focusing

1 on maximizing the use of our local resources so that we
2 can minimize the dependency on the State Water Project and
3 thereby reducing the energy needed to move water.

4 We serve about 800,000 people in San Bernardino
5 and Riverside Counties. The largest community that we
6 serve is the city of San Bernardino. The city of San
7 Bernardino has the unfortunate distinction of having the
8 highest poverty rate in the state of California, the
9 second highest in the United States. Over 100,000
10 people -- second only to Detroit, by the way. 100,000
11 people in one community live below the poverty line.

12 In addition, the city of San Bernardino purchases
13 thousands of acre feet of State Water Project water every
14 year. Something they have dutifully paid for for the past
15 30 years through their property taxes and water rates.

16 This cap and trade regulation if passed as it's
17 being proposed will essentially take millions of dollars
18 from the poorest community in California and transfer that
19 to communities in northern California: San Francisco,
20 Sacramento, others.

21 This can easily be remedied. We're talking about
22 one-and-a-half percent of emission allowances that are
23 available to be allocated to the State Water Project.
24 It's the right thing to do.

25 And also it's not very easy for us anymore to

1 raise water rates, would be the national outcome of this
2 regulation. If you read the Sacramento Bee this morning,
3 the Bee one top headline was a protest that's going on in
4 the city of Davis right now over water rate increases.

5 Thank you for your time.

6 CHAIRPERSON NICHOLS: Thank you.

7 MR. ROBBINS: Chairman Nichols, members of the
8 Board.

9 I'm Steve Robbins. I'm the General Manager of
10 Coachella Valley Water District. Coachella Valley Water
11 District is in eastern Riverside County, and we serve a
12 population of about 400,000 people.

13 Without the change in these allocations, it's
14 estimated that this will cost my agency upwards of \$2
15 million a year just for my agency in additional costs.
16 When I relate that to my water rates, that's roughly a
17 five percent increase in my water rate just to cover this
18 one cost. I don't think that's fair.

19 I echo the comments of the previous speakers.
20 And I would urge you to consider the reallocation as
21 proposed.

22 CHAIRPERSON NICHOLS: Thank you.

23 MR. MASNADA: Chairman Nichols, members of the
24 Board.

25 My name is Dan Masnada, the General Manager of

1 the Castaic Lake Water Agency. We serve the Santa Clarita
2 Valley just north of Los Angeles.

3 I won't repeat the points that have already been
4 made, other than to strongly urge the Air Resources
5 Control Board to modify its regulations to correct the
6 inequities that have been mentioned by providing carbon
7 allowances to the Department of Water Resources for the
8 State Water Project. Left unchanged, cap and trade
9 amounts to no more than a bait and switch for millions of
10 State Water Project customers.

11 Thank you very much.

12 CHAIRPERSON NICHOLS: Thank you.

13 BOARD MEMBER ROBERTS: Madam Chair, before we
14 leave this, what I'm hearing is a simple solution. And in
15 the presentation, I heard all these comments about
16 fairness and simplicity. And what's being recommended
17 here is an adjustment in allowances. Could staff respond
18 to that?

19 CHAIRPERSON NICHOLS: Sure.

20 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

21 CLIFF: As Mr. Goldstene said, we're not able to make
22 adjustments to the regulation today, because there
23 wouldn't be sufficient time to notice it in advance of the
24 OAL deadline next Friday.

25 BOARD MEMBER ROBERTS: How do we do that in the

1 Resolution if we should choose?

2 CHAIRPERSON NICHOLS: Direct the staff to come
3 back with a proposed amendment to the rule in a timely
4 fashion. Nobody is going to be having to --

5 BOARD MEMBER ROBERTS: We could put language in
6 the resolution directing them to do something and then
7 come back with it?

8 CHAIRPERSON NICHOLS: Yes. We can could that.

9 BOARD MEMBER ROBERTS: We'll talk more about
10 this.

11 I ask that we kind of look at this in detail
12 months ago, and I'm not satisfied with the answers that
13 I'm receiving, which basically says, well, we're going to
14 give it to the electric rates.

15 But the allowances that have been given to the
16 utilities really didn't incorporate this analysis. They
17 have haven't changed because of water rates. There is a
18 dramatic disparity. So, you know, I'm not satisfied with
19 what I'm hearing. And I thought I was emphatic when we
20 talked about this last December.

21 CHAIRPERSON NICHOLS: Well, I think the staff has
22 had a number of meetings with Water Contractors. I sat in
23 on one of them myself. And I think they were persuaded
24 that because of the way we dealt with the same issue about
25 north/south split, the reality that we have more emissions

1 attributable to activities in southern California because
2 of the nature of our electrical supply, population, and so
3 forth, that this would work in a direction that would be
4 equitable. But obviously, this has not proven to be
5 something that has been satisfactory as far as the water
6 agencies are concerned.

7 And I certainly agree with you that from the
8 perspective of the public, the most direct impact they
9 might see from this program, if it were in the form of
10 water rates, would be a serious concern.

11 So I think it is something that deserves to be
12 looked at in a more focused way, I guess would be fair to
13 say. I don't think it's too late to do that. So I think
14 there's -- we could have more conversation about this.

15 BOARD MEMBER ROBERTS: Maybe when we're in our
16 discussion, we can talk about that.

17 CHAIRPERSON NICHOLS: So thank you.

18 Our next witness is Michelle Passero from the
19 Nature Conservancy.

20 I'm going to take one person out of line who made
21 a special request because we won't get to them in time.
22 If there is anybody who has a real time constraint -- I
23 know nobody likes to wait until the end. But if somebody
24 has some unbreakable commitment or whatever, you can let
25 the Clerk know, and we will do our best to accommodate

1 you.

2 Michelle.

3 MS. PASSERO: Good morning. The Nature
4 Conservancy supports the final regulations of the Cap and
5 Trade Program.

6 I know this has been said earlier by my
7 colleague, but it's worth saying again that less than a
8 year ago, California voters voted overwhelmingly to reject
9 Prop. 23 in support of AB 32 and reducing greenhouse gas
10 emissions. This program is an important piece in
11 fulfilling that public mandate and meeting our target by
12 providing a declining greenhouse gas cap.

13 It's also significant because it recognizes the
14 important role of forests and nature and helping to
15 address climate change.

16 It creates new economy for forest land owners so
17 that they may receive a financial incentive to protect and
18 manage forests in a way that provides additional benefits
19 for our climate. This is really innovative and promotes
20 economic growth. We urge the Board to adopt these final
21 regulations.

22 We also recognize that there's more work to be
23 done. We appreciate the work of staff to develop Adaptive
24 Management Plan for forests and treatment within the Cap
25 and Trade Program. I have a letter from the Nature

1 Conservancy and colleagues providing some comments for the
2 process moving forward, and we look forward to being a
3 part of that.

4 We also appreciate in the draft resolution there
5 is acknowledgement around the use of allowance revenue,
6 and I believe it ties back to some of the recommendations
7 of the Economic Allocation Advisory Committee. There are
8 a number of important recommendations within that Advisory
9 report, including investing those funds to promote AB 32
10 reductions and helping communities adapt to the impacts of
11 climate change.

12 We do look forward to working with ARB and others
13 moving forward to ensure these investments are used in the
14 most productive way possible for our quality of life.
15 Thank you.

16 CHAIRPERSON NICHOLS: Thank you.

17 David Campbell from Steelworkers.

18 MR. CAMPBELL: Good morning, Madam Chair and
19 esteemed members of the Board.

20 My name is David Campbell. I'm
21 Secretary/Treasurer for United Steelworkers Local 675 in
22 Southern California.

23 And I wanted to comment, as Lisa did, that the
24 United Steelworkers has supported AB 32, even while we
25 were questioning the issue of carbon leakage.

1 I think in my discussions with people from the
2 environmental community, there's some people who say,
3 well, these companies are making plenty of money. And
4 while it's in general true, just like super markets, they
5 look at the performance of each site as return on
6 investment and ask themselves the question: Is this
7 producing the return that we want? So it's possible in
8 the market that we have right now that there are some
9 refineries that are struggling on the issue of
10 competitiveness.

11 And in the past few years, a refinery in
12 Jalandhar, India has come on line. It's a very
13 sophisticated refinery. It's now making 600,000 barrels
14 per day of California Air Resource Board gasoline.

15 CHAIRPERSON NICHOLS: Which refinery was that?

16 MR. CAMPBELL: Jalandhar, India, owned by a
17 company called Reliant.

18 And, therefore, we're concerned about the issue
19 of possible job threats if some of these refineries that
20 are on the edge of being non-competitive were to be even
21 placed in a worse position.

22 As you know, some of the companies are in
23 relatively good shape in terms of AB 32 compliance. Some
24 are not. And I'm not going to engage in trying to analyze
25 why I think.

1 But on a go-forward basis, there are some
2 companies that want 100 percent allowances. And listening
3 to the environmental side, there are some concern, well,
4 just take the value of that money and run elsewhere with
5 it anyhow.

6 And I think it makes sense if the plan could be
7 amended to say, okay, if we are going to give you the
8 100 percent allowance, but you -- for the extra allowance,
9 you can't trade it. You have to take that money. You
10 have to put it -- invest it in that facility on equipment
11 that would help you get to that 90 percent benchmark.

12 CHAIRPERSON NICHOLS: Thank you. It's an
13 interesting suggestion. Appreciate that.

14 Allan Bedwell and then Kristin Eberhard.

15 MR. BEDWELL: Chairman Nichols and members of the
16 Board.

17 I'm Allan Bedwell with BGC Environmental Brokers
18 Service. We are formally known as Cantor CO2e.

19 BGC is currently working with a number and
20 variety of clients here in California and throughout the
21 U.S. We are actively participating in the emission market
22 that was created with the passage of AB 32 in 2006.

23 We want to flag one very important critical issue
24 in this rule, and that is our outstanding concern that is
25 shared by many participants in the market that as a result

1 of establishing buyer liability for offsets that actually
2 you're creating a barrier to potential success of this
3 program. And by assigning liability to buyers of offsets,
4 CARB is actually having a chilling effect on companies
5 being able to cost effectively comply with this
6 regulation.

7 Case in point, since CARB initially established
8 buyer liability in your draft regulation, we've seen in
9 the marketplace a 50 percent difference between CARB
10 guaranteed allowances, their pricing, with no buyer
11 liability, compared to a 50 percent lower price for CARB
12 offsets. And we believe that that is primarily a result
13 of the buyer liability issue. Essentially, no one is
14 buying offsets in terms of pricing as compared to
15 allowances. There's just not -- we're not seeing the
16 demand that we are for allowances.

17 And as a result, buyer liability will keep costs
18 artificially high because of limits that use the offsets
19 as a viable compliance tool. In other words, because this
20 buyer liability it's got a chilling effect on interest and
21 utilization of offsets. And that makes additional costs
22 barrier to cost of compliance here in the market.

23 As a result of buyer liability for offsets, CARB
24 is risking missing your emissions reduction goals under
25 cap and trade. It's a viable tool that should be

1 utilized. And because of liability, you're also
2 increasing likelihood of leakage by artificially raising
3 compliance costs.

4 Again, we urge you through your resolution that
5 you actually do away with buyer liability for offsets. No
6 other program in California that is basically managed by a
7 California air agency requires a secondary verification of
8 product in terms of impacting its usability. The agency
9 itself manages that very effectively, and we believe that
10 buyer liability is a necessary extra layer of liability.

11 Thank you very much.

12 CHAIRPERSON NICHOLS: Thank you. Oh, yes.
13 Sorry.

14 Before you leave, sir, we have a question for
15 you.

16 BOARD MEMBER D'ADAMO: Actually of staff. This
17 is the issue I haven't heard before. Could staff respond?

18 CHAIRPERSON NICHOLS: They're fully involved in
19 this particular market. Okay. Sorry. I've heard from a
20 lot of them.

21 Okay. Go ahead.

22 EXECUTIVE OFFICER GOLDSTONE: This issue called a
23 buyer liability is a rule that we're recommending that
24 says if a regulated entity is turning in an offset as part
25 of their compliance, if somehow that offset becomes

1 invalidated, the regulated entity is liable for making up
2 the difference. So if an offset fails, say a company
3 turns in an offset --

4 CHAIRPERSON NICHOLS: There is a question about
5 who should be responsible in that situation.

6 BOARD MEMBER BERG: Is there some criteria on
7 that failure? I mean --

8 CHAIRPERSON NICHOLS: Well, yeah. Absolutely.
9 It's just a question of when there is an issue of
10 adjudicated failure, who's going to have to bear the cost.
11 Is it the person who presented that offset for compliance
12 or do we go back?

13 The people who wanted change want ARB to take
14 responsibility. And basically if the offset turns out not
15 to be good, we would make it up or the system would eat
16 it. So that's the only viable alternative that's really
17 been presented as far as I know.

18 Rajinder, did you want to comment?

19 PROGRAM OPERATIONS SECTION MANAGER SAHOTA: I
20 just was going to say specifically to Ms. Berg's question
21 about criteria, the regulation has provisions about what
22 conditions we would invalidate a process for new
23 information to be submitted by the project developers and
24 the entity that owns the offsets before we would
25 invalidate. There is a very well thought out and well

1 laid out process for invalidation and a lengthy time for
2 if we did invalidate for a buyer to go out and get
3 additional compliance instruments to replace that offset.
4 So we've worked with stakeholders extensively on this,
5 including regulated entities and project developers.

6 EXECUTIVE OFFICER GOLDSTONE: The companies that
7 are pushing for eliminating the buyer liability provision
8 are entities that are not actually part of the regulation.
9 They're market makers. They're people who make their
10 money on market liquidity. And their main concern, which
11 you just heard expressed, is by having the buyer liability
12 provision in place, it may slow down or reduce market
13 liquidity and they make that money on trades.

14 CHAIRPERSON NICHOLS: Okay. Thank you.
15 Kristen.

16 MS. EBERHARD: Good morning. Congratulations to
17 CARB and California on continuing the march on staying on
18 the cutting edge of clean energy.

19 The purpose of AB 32, which is the broader
20 program of the Cap and Trade Program we're talking about
21 today is part of, is to change, is to change from a more
22 polluting economy to a lesser polluting economy. It's a
23 change from more polluting fuels, resources, processes, to
24 cleaner resources, processes, and behaviors.

25 Now, change is hard. That's why teenagers are

1 hard to deal, with because they're going through a lot of
2 change.

3 And there's some real disagreements about how
4 exactly how to spur that change, exactly how fast it
5 should be exactly, who's going to make the changes.

6 But I just want to take us back for a second, a
7 few things I think everybody agrees with. We all agree we
8 have to make investments now in the technologies and the
9 infrastructures and the solutions that are really going to
10 power our economy in the coming decades.

11 Second, we all agree that leakage, jobs leaving
12 the state or pollution leaving the state, is something
13 that nobody wants. Environmentalists don't want that.
14 Business doesn't want that. Nobody wants to see leakage.

15 And finally, I think most of us can agree that
16 windfall profits where money is going into shareholders'
17 pockets and not making the changes we need to make, that's
18 a waste we don't want to see happen.

19 So we appreciate the process that CARB has gone
20 through in trying to find the balance in accomplishing
21 these goals that we all agree with. In particular, we
22 were happy to see the resolution language for use of
23 auction value in the utility sector and making sure that
24 that really gets invested in solutions.

25 And we think there was a good process on trying

1 to find the right balance for the industrial sector of
2 protecting those industries that are leakage exposed while
3 not giving too much away for free.

4 We think there are improvements that could be
5 continued to be made to make sure there is the right
6 incentive to make investments and improvements in that
7 sector. And we look forward to working with CARB in the
8 process as we implement this program. Thank you.

9 CHAIRPERSON NICHOLS: Okay. Thank you.

10 I see Rand Swenson is standing by, waiting.
11 You're next.

12 I agreed to call three people out of order who
13 needed to leave early. And they are Vince Signorotti
14 number 35, number 66, Randy Gordon, and number 56, which
15 would be Debra Man.

16 So we're going to hear from Mr. Swenson. And
17 then we'll hear from Mr. Signorotti and from Debra Man and
18 Randy Gordon. Thank you.

19 MR. GORDON: Great. Thank you. Good morning,
20 Chairman Nichols and members of the Board.

21 My name is Rand Swenson. I'm the refinery
22 manager for our ConocoPhillips facility in Rodeo,
23 California and the San Francisco Bay Area.

24 Our two California refineries, the
25 ConocoPhillips, are spread over four sites and we produce

1 15 percent of the state's transportation fuels. Been in
2 operation since the early 1900s.

3 I'm here today to express my concern for some
4 elements of the regulation that began on day one of the
5 program, January 1st, 2013. We oppose the application of
6 a ten percent cut in free allowances really because of the
7 way it is applied to benchmarking and certain in-state
8 refineries and really does not apply to foreign and
9 interstate refineries.

10 We do not believe it is necessary for emission
11 reduction purposes to cut free allowances by ten percent
12 in the trade exposed refining sector we work in every day.

13 And the inappropriate application of the layering
14 and benchmarking results really in certain refineries
15 getting ten percent free allowances and/or receiving a 20
16 percent penalty. I believe it is appropriate to re-visit
17 this inequity of in-state refining at a future public
18 meeting of the Board.

19 We've provided two charts, which hopefully will
20 show up. We're working on that right now.

21 The charts show that there is 15 refineries
22 that -- I believe you might have a package. The Board
23 members have a package inside here that have the charts in
24 them?

25 CHAIRPERSON NICHOLS: Yes.

1 MR. SWENSON: There's 15 refineries that
2 manufacture California clean fuels in the state of
3 California. The diversity -- you can see on one of the
4 charts there would be different green and blue colors
5 represent what part of the state they're in. But you can
6 see the size of the refineries varies all the way from
7 facilities that are 250,000 barrels or more in size, all
8 the way down to some of the smaller 25,000 barrel a day
9 size refineries in the central part of the state.

10 Some large consolidated operations that actually
11 have an economy of scale that helps their operations.
12 Others, really like my sites, are medium multi-operations
13 location connected by pipeline.

14 So again, some of those ones that are in the
15 middle there have been built up over decades of change and
16 implementation, always with the CARB regulations in mind,
17 always meeting the local air pollution criteria. They've
18 been cobbled together in different ways which create these
19 inefficiencies that show up in the benchmarking.

20 On average, again, the larger refineries have
21 more economies of scale. We don't think that picking
22 winners and losers through modified benchmarking
23 creates -- does in fact create immediate competitive
24 issues for facilities like mine.

25 This 20 percent difference is significant and

1 transfers to tens of millions of dollars out of our local
2 operating budget the first day the program starts. These
3 are the dollars that will be diverted from potential
4 capital investments that we can make to reduce our own
5 emissions and better comply with the goals of the state.

6 So we do ask you today to include in your Board
7 resolution to review and revise as necessary any portion
8 of the regulation that will eliminate California jobs.
9 Specifically, the reviews should encompass the
10 benchmarking methodology, assesses a 20 percent penalty on
11 some refineries, and of course, the trade exposure issue
12 from imports from states like Washington, Texas, and of
13 course, the foreign imports that are coming in.

14 CHAIRPERSON NICHOLS: Thank you, Mr. Swenson.
15 Time is up.

16 MR. SIGNOROTTI: Thank you, Madam Chairman and
17 members of the Board. I appreciate you taking me out of
18 order. I do have an appointment in two minutes.

19 I'm a Vice President with Energy Source. We are
20 a start-up geothermal company. We are almost completed
21 with building our first geothermal power plant at the
22 Salton Sea. We support cap and trade for just a couple of
23 reasons I'm going to point out.

24 Number one is that it provides market certainty,
25 and that is critical for our business.

1 And secondly, it creates a strong market signal
2 for investors and innovators. And the investment that we
3 have at the Salton Sea represents hundreds of millions of
4 dollars, hundreds of jobs over a 24-month period to build
5 this, and dozens of jobs to operate it over a 25-year
6 period.

7 So we believe that the regulations are necessary
8 to encourage additional investments at the Salton Sea and
9 elsewhere. I thank you for your time.

10 CHAIRPERSON NICHOLS: Thank you.

11 Debra man.

12 MS. MAN: Thank you, Chair Nichols and members of
13 the Board.

14 I'm Debra Man. I'm the Assistant General Manager
15 and Chief Operating Officer for the Metropolitan Water
16 District in southern California. I appreciate being
17 allowed to follow the State Water Contractor talk.

18 As the largest public wholesale water agency in
19 the nation, Metropolitan imports water from Colorado River
20 system as well as the State Water Project. And it
21 distributes it to its 26 public member agencies. This
22 water serves 19 million people, and it is also supportive
23 of the businesses and industries that comprise a one
24 trillion dollar economy in our service area. And our
25 service area encompasses six counties in southern

1 California.

2 Metropolitan has actively participated in the Air
3 Resources Control Board rulemaking process. And in that
4 process, we have submitted and provided substantial
5 justification that Metropolitan is not an electric
6 utility. It is not a marketer. It is a public wholesale
7 water agency for which the cap and trade regulations do
8 not appropriately apply.

9 We have also in this process submitted
10 substantial justification. The Metropolitan should be
11 exempt from the cap and trade regulations for the
12 following reasons.

13 First: Metropolitan is a consumer of imported
14 electricity. We import electricity for the sole purpose
15 of delivering Colorado River water to our consumers within
16 our service area.

17 Second: Metropolitan is not an electricity
18 utility. We're not a marketer. We don't sell energy. We
19 are not a retail provider. We do not generate or produce
20 electricity.

21 The third thing I would like to mention is we
22 are, of course, very concerned about our rates and the
23 rates where the regulations regulating Metropolitan now as
24 an electric utility and later as a water utility would
25 result in duplicative regulatory requirements and

1 unnecessary cumulative costs on a water rates, which we
2 feel are unreasonable for our rate payers.

3 Also, I would like to mention that Metropolitan
4 would be required as a public agency to compete against
5 the private for-profit entities in the carbon market. We
6 do not think this is an appropriate place for the public
7 agency.

8 And finally, our greenhouse gas emissions, which
9 have been assigned to our imported electricity, are
10 already well below 50 percent of what they were in the
11 1990 levels.

12 Our comments are separate from State Water
13 Contractors. Although we are very supportive of the State
14 Water Contractors and we ask to be included in the
15 discussions that may ensue with the State Water
16 Contractors per Board Member Roberts' suggestion.

17 Last thing I'd like to say, we'd like to request
18 the supplemental Resolution that would exempt Metropolitan
19 from the cap and trade regulation, that we would be
20 regulated under a water sector or wet cap regulation that
21 comes in the future instead of the cap and trade, or that
22 the ARB staff be instructed to work with us on alternative
23 compliance measures. Thank you very much.

24 CHAIRPERSON NICHOLS: Thank you, Debra.

25 Okay. Now we had Mr. Gordon.

1 MR. GORDON: Good morning, Chairman Nichols and
2 Board members.

3 My name is Randy Gordon. I'm president and CEO
4 of the Long Beach Area Chamber of Commerce. Or
5 organization represents over a thousand businesses in the
6 Long Beach area. We're one of the largest chambers in Los
7 Angeles County.

8 Our Chamber has a record of supporting
9 well-designed initiatives that protect human health and
10 the environment such as the green port policy in Long
11 Beach. However, we believe this cap and trade rule as
12 proposed is not well designed. It will kill jobs and make
13 California businesses less competitive with other states.

14 Charging regulated industries up to ten percent
15 for other emissions allowances is an unjustified energy
16 tax that will impact all businesses. The resulting higher
17 energy cost will lead to leakage of jobs, businesses, and
18 revenues.

19 With unemployment at 12 percent statewide and
20 almost 14 percent in the Long Beach area, these are losses
21 we simply can't afford. Couple the fact that none of our
22 neighbors in the Western Climate Initiative are pursuing
23 cap and trade policies at this time, it becomes even more
24 important that California's program minimizes costs and
25 leakage. We urge you to revisit the economic impacts of

1 this proposal and eliminate provisions such as the
2 emissions tax before finalizing the regulation.

3 Thank you so much.

4 CHAIRPERSON NICHOLS: Okay. We'll go back to the
5 regular order then. It's David Simmons.

6 MR. SIMMONS: Good morning.

7 My name is David Simmons. I'm on the Board of
8 the Local 675. And I worked as a hydrotreater and
9 operator for 15 years, and now I'm a health and safety rep
10 for the refinery.

11 I have a concern. I've heard people talking
12 about the regulations. I was a proponent of this bill. I
13 worked with the Blue and Green Alliance, because it's
14 something important for California.

15 But right now, I feel that the deck is kind of
16 staked against us California workers who are taxpayers who
17 care about this state.

18 Now, myself, I would like to have at least a
19 level playing field, because I'm thinking now everybody
20 has got their interest, but what about us? What about us
21 workers that depend on those jobs? What about us, the
22 people who have families to take care of? And the way
23 that you administer this law could affect our jobs. And
24 we never expected that. We never expected that certain
25 elements of our industry would get a free ride and the

1 rest of us have it dumped on our backs.

2 We just want a level playing field to give our
3 companies a chance to be competitive so that we could
4 maintain our jobs. And when you sit and think about this
5 law, think about us. Just think about us. We want to be
6 part of the solution, not a problem. But we do want to
7 still have opportunity to earn a good living for our
8 families. Thank you very much.

9 CHAIRPERSON NICHOLS: Thank you, sir.

10 Ryan Young and then Kathy West.

11 MR. YOUNG: Good morning, Chairman Nichols, Board
12 members.

13 I'm Ryan Brisco-Young on behalf of the
14 Greenlining Institute.

15 Broadly, the Greenlining Institute works to
16 create wealth building opportunities in low income and
17 communities of color. As part of that effort, Greenlining
18 assets program advocates to ensure that California's
19 minority residents are active stakeholders in our efforts
20 to fight global warming and to create equitable health,
21 economic, environmental policies.

22 Many of us would agree that today's vote is an
23 important milestone. Californians should be proud they
24 are the leaders of what we consider the definitive issue
25 of our times.

1 Still, there is much work to be done. And in the
2 2012 election, communities of color expressed overwhelming
3 support for AB 32. AB 32 recognizes disproportionate
4 impact climate change will have on disadvantaged and
5 low-income communities.

6 California Health and Safety Code must be devoted
7 towards the most impacted communities in California. Now
8 that there will be a comprehensive framework in place, the
9 ARB must turn its attention to ensuring that investments
10 are made in the most vulnerable communities in a manner
11 that reduces greenhouse gases and mitigates direct
12 economic health and environmental impacts. These impacts
13 include disproportionate rising costs for basic
14 necessities, localized pollution, and heat-related illness
15 and death. AB 32 requires it. Our community needs it and
16 it's the right thing to do.

17 The public support from low-income communities
18 and communities of color are the reason that AB 32
19 survived the attacks from big oil companies last November
20 and they are watching.

21 Greenlining looks forward to working with you to
22 ensure there is an equitable distribution of economic and
23 environmental benefits and burdens of climate change as
24 well as our efforts to combat it.

25 Thank you very much.

1 CHAIRPERSON NICHOLS: Kathy West and then Mike
2 Miller.

3 As you're coming up, could I just check. We've
4 been going for two-and-a-half hours. Does the court
5 reporter need a break? We will take a break at 12:30 for
6 lunch, just so you can plan on that. Okay. Thanks.

7 MS. WEST: Thank you for hearing our concerns.

8 My name is Kathy West. I'm a maintenance
9 mechanic at the ConocoPhillips refinery, a 30-year oil
10 worker and a union member. And as a single mother, I
11 raised two kids with good wages.

12 At our Santa Maria refinery, we just hired twelve
13 operators and two mechanics five months ago. What's going
14 to happen to their future, their families, also the other
15 200 folks that walk through the gate each day? Your
16 decisions are going to affect a lot of people.

17 Our refinery is safe. It's clean. And even
18 though we've been there for 60 years, I run into people
19 all the time that don't even know we're in their
20 neighborhood.

21 What about your jobs when you get rid of the
22 refining out of California?

23 I want clean air, too. I wants to protect the
24 planet. But making fuel overseas and tankering it to
25 California does nothing to save the planet.

1 We also heard that they killed 250 workers
2 building that big refinery. And that's unacceptable.

3 I ask you to please delay, delay, delay, you
4 know. And find out what long-term effects you're going to
5 have on all the communities that you're going to effect.
6 Thank you.

7 CHAIRPERSON NICHOLS: Mike Miller and then Keith
8 Vines.

9 MR. MILLER: Good morning, Madam Chair and
10 members of the Board.

11 My name is Mike Miller. I'm the President of the
12 United Steelworkers Local 326 located in Rodeo,
13 California. I'm an employee of ConocoPhillips and have
14 been in the refining business for 22 years. Although we
15 are not against AB 32 and clean air, we are concerned with
16 the implementation date.

17 Initially, CARB planned two to four percent
18 increases, but has recently announced a ten percent
19 haircut, which creates an uneven playing field for small
20 to mid-refineries. We ask that you consider the potential
21 for plant closures, leakage of jobs, and the possibility
22 of our imports from our counties, disadvantaging
23 California refining.

24 Benchmarking of refineries creates winners and
25 losers based on refinery configuration. The losers have

1 to pay allocations to CARB for performing as less
2 efficient refineries. Imports are not included in this
3 penalty, giving imports from Washington, India and China a
4 cost advantage and half of in-state refineries \$150
5 million penalty to share.

6 I have seen and participated in many local
7 fund-raising and local events in which our company
8 provides money -- well-needed money to our education in
9 our communities and our cash-strapped school districts.

10 I ask that you please give us the chance to keep
11 having the American dream and be homeowners in the state
12 of California. There's nothing better than California
13 living. Thank you for your time.

14 MR. VINES: Hello. I'm Keith Vines. I work at
15 the ConocoPhillips Refinery in Rodeo, California. I've
16 been there 23 years. I work at the water treatment plant,
17 so I understand about discharging to the Bay with a clean
18 product. I understand that every day.

19 I want to reiterate what my sister said back
20 there about this is personal for me. My mom and my family
21 lives in the town.

22 And reiterate what Mike said. We've seen the
23 schools, the streets, schools being built. Football
24 fields being redone. Fund-raisers like he said to keep
25 the school district functioning. The district office

1 being built for them. I think this has a major part of
2 the community and for the company to do so.

3 I just took my position as unit chair at Rodeo.
4 And I talked to my people in Philadelphia recently there
5 the refinery is going to be sold. But within six months
6 if it's not, they're going to shut their gates.

7 I went to Dallas to a convention and talked to
8 some people that their refinery's already shut down and
9 they don't have jobs. That concerns me.

10 The lady back here said that people that just got
11 hired -- we have four classes that just have got hired.
12 And my concern is looking at them in the face and telling
13 them they might not have a job.

14 I just hope that the companies and the Board and
15 this bill, I just hope we can come together and come to a
16 resolution and re-think this or come up with a better
17 plan. I'm not saying we're against it. We're for it.
18 But give us a chance to react to it in a timely manner.

19 And most of all, I believe blue. I believe red,
20 white, and blue. And please don't bring the east coast to
21 the west coast. Thank you.

22 MR. ITZIGHEINE: Good morning, Madam Chair and
23 members of the Board.

24 My name is Ed Itzigheine. I've been a refinery
25 operator for the last ten years. I've been in a similar

1 industry for more than 25 years.

2 My concern today is our jobs, our families, our
3 communities. I work at the hydrocracker at the Rodeo
4 refinery. We make the cleanest fuels in the world, and we
5 do it the most environmentally safe than anybody else. We
6 have the best workers, the most responsible workers.

7 We all care about our communities. Our company
8 does so much for the local communities, like Keith was
9 saying. The local high school has a shop program, which
10 is almost unheard of these days. We have volunteers that
11 go to the elementary schools and help tutor the children
12 in reading and math. They do so many fund-raisers and
13 such.

14 It's really a good place to work. It really
15 affords us to do so many things. Even with our schedules,
16 with our shift schedules, when my son was in school, I was
17 the only father that ever went to field trips or day
18 events or whatever. And all that trickles down. It's a
19 drug-free workplace. That all trickles down into the
20 community.

21 We need these jobs, and it scares me that your
22 attempt to do monumental great thing, which I support
23 wholeheartedly, will have a negative effect, which will
24 have a negative effect of anybody else following your
25 lead.

1 If this impacts us economically, no other state
2 is going to buy into it. No other nation is going to buy
3 into it. You need to do this right. That's all I'm
4 saying. You need to do it right. Otherwise, it's going
5 to hurt us all. Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 I believe there is a few other individuals who
8 have all signed up who are here from the Steelworkers
9 Union. I just want to take the liberty of saying a word
10 or two to you directly.

11 First of all, I can't tell you how grateful I am
12 to you for the very positive tone of your testimony.
13 You've done everything I could have possibly wished for in
14 terms of presenting your arguments and in a way that is
15 coherent and persuasive and personal. And I think I just
16 speak for all the Board members when I tell you how
17 appreciative we are of that.

18 I'm also appreciative of the fact that you were
19 supporters and I know you've been supporters because we've
20 seen your support in the past for the environment.

21 I go back a very long way, not with respect to
22 your particular local, but having been around in the very
23 early days of Clean Air Act, back when we were really
24 first tackling really dirty things like coke ovens and
25 steel plants. So I remember very well that this was one

1 of the few things that really stepped up and worked hard
2 for clean air and has undergone some very, very hard
3 times.

4 And we are in very hard times right now in our
5 state. So we are not at all thinking that this is
6 something that we can do lightly or easily.

7 I think we've tried hard in designing this
8 regulation to do it in a way that will not unduly penalize
9 any sector or any individual company. But I understand
10 that ConocoPhillips feels very strongly. And they came
11 here today and said that they feel they're being put at a
12 disadvantage as a result of this program. We're going to
13 give hard thought to what we can do, because we are in a
14 transition period here. Not today or tomorrow or next
15 week or next month, but eventually our society is going to
16 have to use less gasoline. That's all there is to it. We
17 know that's coming.

18 And really, the question is how are we going to
19 put together the resources as a society to help develop
20 those alternative fuels, because we're not going to stop
21 moving. We're not going to stop hopefully investing in
22 our economy.

23 So this is what we have to try to work through,
24 and we don't think we're the source of all that's done or
25 this is the end of the story either. We still have to

1 keep working on this. But I think we've all been very
2 impressed by what you've had to say.

3 Ron, did you want to add something?

4 BOARD MEMBER ROBERTS: Yeah. First of all, the
5 testimony has been compelling. And you know, we're
6 thinking globally. And it's all of a sudden bringing the
7 neighborhood. I think it makes everyone probably a little
8 uncomfortable because of the complexity and all this.

9 I'm wondering -- and part of what you I'm seeing
10 is our system, it basically says, okay, if you're not a
11 refinery and not meeting the standards, you go off and pay
12 a big fee, buy some allowances somewhere, which does
13 nothing for the refinery and maintaining those jobs.

14 And I was just wondering if you can somehow take
15 that fee, whatever it might be, and establish it in a
16 trust for that refinery to require changes for them to
17 draw down on those funds and to change that refinery. But
18 it does that in subsequent years. It gives them a better
19 chance to meet sustainability.

20 But if that money gets sent to some forest in
21 Brazil or in some other state or even somewhere out of
22 their region, it seems to me it just increasingly makes it
23 harder for them to maintain those jobs in that industry.

24 And I don't know what that mechanism is, but it
25 just seems to me that we're not allowing for them to be

1 able to take those fees and plug them back in and do an
2 even better job in meeting those goals in the future.

3 So we're penalizing them, which makes it more
4 difficult for them to accomplish what it is we want them
5 to accomplish. I'm not sure -- I'm sure staff is going to
6 have a very cogent position on all this.

7 CHAIRPERSON NICHOLS: Well, not really. They
8 have been doing some thinking about what to do with the
9 value of the allowances that we are not giving away for
10 free. And you know, we don't have that proposal out yet.
11 So I don't know that they can talk about it too
12 concretely.

13 But part of the idea of not just handing out all
14 of the allowances at the beginning of the program and
15 letting everybody go off and trade is that you would
16 create a fund that could be used for various purposes, of
17 which this is one. People talked about ten percent for
18 environmental justice communities, other percentages for
19 other things.

20 BOARD MEMBER ROBERTS: But that's what I'm
21 talking about, their fees from their refinery would go
22 into a trust fund to make improvements at that refinery.

23 CHAIRPERSON NICHOLS: I think that's another
24 idea.

25 (Applause)

1 CHAIRPERSON NICHOLS: Well, thank you. That's a
2 good suggestion. We will bring back all of this I guess
3 at the end of the day before we actually vote on anything.

4 But in the mean time, I guess we should hear
5 from -- we have a lot of folks left waiting to speak to
6 us.

7 So Dan Kalb, you are next. And then Ron
8 Espinoza.

9 MR. KALB: Madam Chair, members of the Board, Dan
10 Kalb from the Union of Concerned Scientists.

11 First and foremost, this action today, as you've
12 heard before, is indeed truly historic. You are putting a
13 cap on harmful heat trapping emissions, a market price on
14 carbon pollution, and effectively putting us on a pathway
15 to reduce our dependence on fossil fuels through 2020 and
16 beyond.

17 Let us not forget why we're doing this in the
18 first place. The overwhelming majority of scientists are
19 clear that global warming is real, primarily caused by
20 humans burning fossil fuels. And if we fail to take
21 action to reduce our emissions, we will be subjecting
22 ourselves and our children and our grandchildren to the
23 potentially devastating impacts of global warming which,
24 of course, includes increased air pollution in our
25 communities and threats to our water supply due to

1 substantial loss of snow pack, among other very serious
2 impacts.

3 We note that the petroleum industry has gotten
4 most of what they have asked for in this regulation, some
5 would say too much, of course. It's always a compromise.

6 It is important to remember that, to be
7 effective, this market-based nature of this program
8 depends on incentivizing the largest emitters to become
9 more efficient and to innovate with new technologies and
10 processes in order to reduce harmful emissions.

11 If you give everything away, you reduce that
12 incentive and risk windfall profits to already very
13 profitable entities, funds that could be better spent on a
14 combination of rebates to residents in those communities
15 and investments in reducing emissions and clean energy
16 workforce development.

17 But for now, we strongly urge your adoption of
18 this landmark program. And going forward, we remind
19 everyone that there will be a need to do rigorous
20 monitoring, enforcement, evaluation, and oversight of this
21 program and possibly strengthening adjustments prior to
22 the start of the second compliance period.

23 I want to thank our well deserve to the staff for
24 the hard work over the last few years and few months and
25 now the really hard work is about to begin. Thank you

1 very much.

2 CHAIRPERSON NICHOLS: Thank you.

3 Ron Espinoza. And then Elvis Villareal.

4 MR. ESPINOZA: Good morning, still, Madam Chair
5 and members of the Board.

6 I'm Ron Espinoza with the United Steelworkers, an
7 international representative, staff representative for
8 them.

9 I think it needs to be said that the steelworkers
10 that you see, they're not all from ConocoPhillips out here
11 in the chairs -- are not here seated behind me dancing for
12 their employers. It needs to be said.

13 We were in opposition to Proposition 23 last
14 year. And where -- the employers -- we were in opposition
15 to the employers and we were for 23.

16 We were also for AB 32. We understand clean air.

17 I worked for Shell Oil for 28 years. And I
18 remember what was like as a kid in Martinez when I was
19 young. And I understand the need for regulation. But
20 what we're here for is that we want to see a reasonable
21 implementation of this plan. The plan we see being
22 submitted by the staff as it currently exists does not
23 meet our goal of reasonable implementation. I would like
24 to read a proposed USW resolution in order to make
25 implementation a more reasonable and feasible plan.

1 "Whereas, the State of California is faced with
2 adverse economic times with unemployment levels exceeding
3 12.1 percent.

4 "And whereas, a 10 percent reduction in free
5 allowances at the start of the program has a potential to
6 disadvantage medium and small size refineries and could
7 lead to lost refinery jobs in a state already suffering
8 double digit unemployment and weaken in-state
9 manufacturing while contributing to leakage of jobs to
10 competitors outside the state.

11 "And whereas, the ten percent reduction in free
12 allowances selectively increases the operating costs to
13 only some companies, and as a result, provides a direct
14 economic benefit in the marketplace to others operating
15 within the state.

16 "And whereas, the impact of a ten percent
17 reduction to some of the 15 refineries and not others is
18 not in the best interest of protecting jobs in California
19 and may put at risk inconsistent and comparatively priced
20 supply of clean fuels for California consumption and
21 create an energy and security risk for foreign imports due
22 to supply shortages.

23 "Now, therefore be it resolved, that the Board
24 approves the Cap and Trade Program with the express
25 proviso that companies will receive 100 percent free

1 allowances in the first and second compliance period, 2013
2 through 2017, less the required annual cap reduction. And
3 this will be implemented in regulation by establishing
4 energy efficiency, benchmarks at sector average, as
5 opposed to 90 percent of sector average in other value
6 lower than 100 percent of sector average.

7 "And where no company will receive greater than
8 100 percent allowances and where competitive impacts
9 between in-state companies are eliminated.

10 "And now, therefore be it further resolved, the
11 Board approves the Cap and Trade Program with the
12 expressed proviso of allowances during the first and
13 second compliance period, 2013 through 2017, and all
14 sections in the regulation citing any reduction in free
15 allowances, Subarticle 9 and following, shall be revised
16 to show 100 percent free allowances for the period of 2013
17 through 2017.

18 "And be it finally resolved, in 2012, the ARB
19 staff shall develop a public process to quantitatively
20 evaluate the appropriate level for reduction of free
21 allowances to in-state manufacturers as the program moves
22 forward. This will include further evaluation of trade
23 exposure."

24 Thank you very much.

25 CHAIRPERSON NICHOLS: Thank you.

1 Could you please submit a written version of
2 that? Thanks.

3 Elvis Villareal and then Steve Swader.

4 MR. VILLAREAL: Good morning, ladies and
5 gentlemen.

6 My name is Elvis Villareal. I'm a United States
7 Marine veteran of war. And I'm one of the many vets that
8 ConocoPhillips has provided or helped with providing a job
9 to provide for our families outside the military.

10 ConocoPhillips is probably the leading refinery
11 in providing jobs for veterans coming back from war or
12 being discharged honorably from the military.

13 My concern is if ConocoPhillips and other
14 companies like Conoco are forced to close or move
15 elsewhere overseas and begin refining overseas, well,
16 obviously, we'll lose those jobs.

17 But my concern is what's going to happen when
18 these countries, Saudi Arabia, Russia, India, Pakistan,
19 turn their backs on us and all of our companies are in
20 their territory? That's a concern that I have as an
21 American and as a patriot.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Steve Swader.

25 MR. SWADER: Hello, Madam Chairman, member of the

1 Board.

2 I work at ConocoPhillips Santa Maria facility in
3 Rodeo Grande. We represent 80 members. I'm a sulfur
4 plant operator.

5 Having heard a lot of the conversations that go
6 back and forth, I'd like to give you some economic numbers
7 that go with this. I represent 80 members. If the 80
8 members lost their job because we've been told if we were
9 no longer be able to make a profit, we will cease to run
10 the refinery. With 80 members losing their job would cost
11 the State \$761,000 in State taxes in the first year.
12 Every ten weeks, you would loss approximately \$1.2 million
13 of income in the local economy. That would be gone. If
14 you multiply that times ten, that's what you'll get if
15 ConocoPhillips leaves this state.

16 Your unemployment rate would then go to \$36,000 a
17 week in the Santa Maria area. And in a year, you would
18 pay \$936,000 in unemployment.

19 If consumers drive the economy, and they're 70
20 percent of the economy, you've just taken two-thirds of
21 the economic spending of these people and replaced it with
22 the cost to the state. That doesn't sound like very good
23 business.

24 You talk about reducing California refining costs
25 or petroleum. We just heard that you're going to drive

1 the EPA standard to 50 or 55 miles a gallon in 2025. In
2 14 years, you're going to get most of what you want to do
3 in two years without the chaos that it will cause.

4 I support AB 32. I've driven down to L.A. I've
5 seen the brown haze disappear. I raised two daughters in
6 this state. We drove the San Diego almost every year.
7 Drove through that. It's better now.

8 I've seen tremendous improvement in our refinery
9 over emissions control. I run a sulfur refinery unit. We
10 remove over 99.5 percent of the sulfur in a crude unit.
11 We spend money on emissions. Marty Haul is here from the
12 environmental from our company. She works closely with
13 Mark Elliott of the San Luis Obispo County Air Quality
14 Control Board. He's been in our units looking at things
15 we do, working with us. We work with the environmental
16 groups.

17 But we also need jobs. Without a job, what am I
18 supposed to do?

19 Thank you for your concern.

20 CHAIRPERSON NICHOLS: Thank you.

21 Charles McIntyre.

22 MR. MC INTYRE: Good morning. My name is Charles
23 McIntyre. I'm president of West Coast Protection League.

24 I've worked in the glass industry 32 years. I'm
25 a third-generation glass man. I represent glass plants in

1 California, also cast metal products which is the
2 foundries, the guys that make the fiberglass.

3 We're having a really hard time with this. You
4 know, nobody is arguing about clean air. These
5 manufacturers are spending millions of dollars every year
6 to meet different requirements and different standards.
7 Well, it's getting to a point to where you are going to
8 put people out of work.

9 A perfect example is you take the glass industry
10 back in the early '80s, there was 19 glass plants in this
11 state. You guys probably remember that. It employed
12 20,500 union employees which were skilled jobs with
13 benefits and living wages. Now, we have five glass plants
14 in the state, and we're down from 20,500 jobs to 2700
15 jobs.

16 So this industry and this economy, we are having
17 a hard time competing. We have glass coming in from
18 China. We have glass coming in from Mexico. And then the
19 fiberglass operations. And you turn on the news and all
20 you hear is about green, green, green. That's good. You
21 got green jobs right here in this state in different areas
22 of manufacturing that you're jeopardizing. And you take
23 the glass manufacturing, for example, you know, the
24 recycling effort that this industry does. This industry
25 recycles at an 80 percent rate. Okay. You start shutting

1 these factories down or they close their doors and move or
2 go out of this country, what are you going to do with all
3 the recycled glass? Are you going to ship it to China?
4 What's the carbon footprint on that going to be? Are you
5 going to send it to Mexico?

6 We have to have a level playing field. All
7 manufacturing here in California needs to have a level
8 playing field. California manufacturers are leaving the
9 state at an alarming rate.

10 At our glass plants, we have the United
11 Steelworkers are our mold makers in these factories, also,
12 and the GMP International Union.

13 So pretty soon, California, if you drive through
14 the Bay Area and you drive down through southern
15 California, we're starting to look like the rust belt of
16 the northeast. And we need to take a look at that. And
17 we don't want to put these men and women out of work in
18 this state. Thank you very much.

19 CHAIRPERSON NICHOLS: I just can't resist saying
20 that, you know, I feel a lot differently about glass
21 manufacturing in terms of what I know about the industry
22 than I do about oil refining. And maybe it's unfair.
23 But, you know, oil refining is a global industry. And we
24 keep reading about record profits. And I know it's all
25 segmented out and maybe individual units have to kind of

1 prove themselves.

2 But I think about the problem with global
3 warming, and I think about the fact that Conoco Phillips
4 reportedly reported \$14 billion in profits last year. And
5 I think to myself, couldn't they be diverting some of that
6 to helping both save these jobs and meet their
7 requirements here to do something about the problem of
8 global warming?

9 I don't know what the answer is going to be here,
10 but it seems like they're treating us in California as
11 though we were just a rust belt state. And that's not --
12 I don't think that as right.

13 All right. We've got more witnesses here to hear
14 from a variety of places. Next is Steven Kelly from
15 Independent Energy Producers.

16 MR. KELLY: Hello. And thank you.

17 I'm Steven Kelly, the Policy Director for the
18 Independent Energy Producers Association, which is a trade
19 association of non-utility owned generation, mostly
20 natural gas fired, combined heat and power, and
21 renewables. We represent about 26,000 megawatts of
22 installed capacity in California today.

23 And we had circulated a letter to the Board I
24 think dated October 10th that summarized some key concerns
25 we had. So I don't want to spend too much time on those.

1 And I know prior speakers have already raised those.

2 I would like to make a couple observations about
3 the issue of the treatment of the pre-AB 32 existing
4 contracts.

5 And I just want to make clear that by -- we're
6 not talking about the entire electric sector here. By
7 definition, we're talking about certain entities that are
8 entered into these early contracts that do not have a
9 reasonable means for cost recovery under the terms of the
10 contract or pass through of the costs, like other
11 obligated entities.

12 This is a relatively small group, we believe.
13 But unfortunately for this group, it's very, very
14 important that they be recognized for the situation they
15 find themselves in. You can imagine that if you are
16 losing money every hour that you're operating, that
17 creates a huge operational problem. Shut down risk. And
18 unfortunately, we know that economic theory will tell you,
19 you can't make that up in value. So we have a problem
20 here.

21 And the solution on the table so far has been
22 that these parties should bilaterally renegotiate these
23 transactions. We would support that if that were
24 practical. But unfortunately, it's two parties to the
25 deal and the counterparty, the buyer in these

1 transactions, is lucky to be getting a windfall that we
2 don't support -- but will be getting a windfall that will
3 make it foolish for them to renegotiate these on a
4 voluntary basis in most respects. We believe we have to
5 deal with this.

6 And our members need regulatory certainty. I
7 want to emphasize that, because these issues have been on
8 the table for a long time. And we would like some clarity
9 on when this is going to get resolved.

10 I just want to make the treatment of these
11 primarily in-state generation resources that serve
12 combined heat and power and so forth. I want to contrast
13 this to what's happening to some other out-of-state
14 treatment facilities. I'm going to point the finger at
15 the treatment for Bonnyville Power Administration, which
16 is an exporter/importer into California. There was enough
17 attention to their problem that they have a special
18 carve-out in these regulations in our view, which we think
19 is going to foster contract shuffling and leakage, which
20 were two goals that the Board I think has been opposed to.

21 So we have this juxtaposition, which is somewhat
22 striking that in-state generators may be faced with a
23 problem of cost recovery while there is special treatment
24 for some out-of-state importers. We think it's now time
25 to direct attention to these issues.

1 I did submit a Resolution this morning for your
2 consideration in this matter. And I just want to point
3 out real quickly the Resolution in front of you is helpful
4 but not sufficient. It doesn't have a time certain
5 deadline for resolution of this matter.

6 And I also want to point out that this is not a
7 PUC only problem. There are a number of contracts that
8 are not under PUC jurisdiction, and that's why we are at
9 the CARB to get resolution for this. So thank you very
10 much.

11 CHAIRPERSON NICHOLS: Okay. Chuck White.

12 MR. WHITE: Thank you, Madam Chair and members of
13 the Board.

14 Chuck White, Director of Regulatory Affairs for
15 Waste Management.

16 Waste Management is the largest provider of
17 comprehensive waste recycling and renewable energy
18 services in California and north America.

19 We support AB 32. We support the direction
20 overall that the Board is going in. Waste Management is
21 heavily investing in alternative fuels and alternative
22 energy from waste. Our Altamont Landfill gas to LNG is
23 currently producing the lowest carbon fuel available in
24 California on a commercial scale. We're looking at
25 building a second such plant in southern California, and

1 we're looking at developing other types of alternative
2 fuel and alternative energy projects from waste in the
3 not-too-distant future. We believe that the Cap and Trade
4 Program and a low-carbon fuel standard will support these
5 efforts.

6 And we certainly support the comments that Steve
7 Kelly made. We are a member of the IEPA. I'm here to
8 speak to you about one issue of concern to us. That's the
9 waste to energy issue and the way it's being dealt with in
10 these regulations.

11 We don't own or operate any of the three waste to
12 energy plants in California, but we do send waste
13 materials to them. We believe that they are really going
14 to be severely damaged if they are -- have a compliance
15 obligation for their anthropogenic portion of emissions,
16 which is about 40 percent. And the problem -- the way the
17 staff and the Board have gone about developing these
18 regulations, you're just simply looking at what is emitted
19 from the stack as opposed to looking at the comprehensive
20 life cycle assessment of waste to energy as compared to
21 other waste management and recycling activities.

22 We really think that there needs to be a
23 re-looking at the waste to energy aspect, particularly
24 with respect to the three existing plants, because it
25 would be really disadvantageous if these plants were to

1 shut down as a result of the increased cost. We think it
2 could be as much as \$8 a ton to comply with these
3 regulations. California would lose a diversion
4 opportunity and energy source.

5 And so really the approach we've taken is
6 contrary to a number of different programs, including
7 CARB's own program with respect to your renewable energy
8 standard waste to energy is one of the best ways to avoid
9 greenhouse gas emissions. CARB's sister agency,
10 CalRecycle, did a life cycle assessment and concluded that
11 waste to energy is one of the best ways to reduce
12 greenhouse gas emissions overall.

13 The European Union emission trading scheme
14 similarly views waste to energy as a greenhouse gas
15 benefit. The RGGI specifically excluded waste to energy
16 from their regulatory framework specifically for this
17 reason, because you need to deal with waste to energy not
18 on a specific emission from a stack basis, but an overall
19 life cycle assessment. That's what we encourage the Board
20 to do really in the future. I know you can't make the
21 changes today. But really, there is no other greenhouse
22 gas program in the world that regulates waste to energy as
23 CARB is proposing to do without considering the life cycle
24 assessment of it.

25 We would just urge you to keep the door open for

1 further discussions and hopefully we can work with you to
2 come up with a reasonable solution to keep these existing
3 waste to energy facilities operating and working in
4 California. Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Bruce Magnani.

7 MR. MAGNANI: Thank you, Madam Chair and members
8 of the Board.

9 I'm here today on behalf of the California
10 Cogeneration Council, natural gas-fired cogenerators
11 throughout the state of California.

12 My comments are related to language that was in
13 the Resolution 10-42 that directed the Executive Officer
14 to review treatment of combined heat and power facilities
15 in the Cap and Trade Program, to ensure appropriate
16 incentives are provided for increased and efficient use of
17 cogeneration.

18 Our membership that deal and operate these
19 facilities across the state don't believe that the rule in
20 front of you, the regulation in front of you, adequately
21 addresses the concerns, the complex ownership nature of
22 combined heat and power facilities, and how services are
23 provided.

24 We would ask the Board to adopt language moving
25 forward that ensures that staff conduct workshops and

1 address these problems prior to the first auction that
2 happens in the state of California. Otherwise, these
3 facilities will be hard-pressed to continue to operate
4 under the circumstances. So thank you very much.

5 CHAIRPERSON NICHOLS: Thank you.

6 Norman Pedersen.

7 MR. PEDERSEN: Good afternoon. I'm Norman
8 Pedersen for Southern California Public Power Authority.

9 You know, cap and trade has been in retreat the
10 last two or three years. Today, however, I've got my
11 Washington crossing the Delaware tie on. You'll remember
12 that Washington was in retreat from the British in 1776,
13 but the tables turned when he crossed the Delaware and
14 beat the Hessians at Trenton.

15 Your Cap and Trade Program has been pragmatically
16 designed to attain the AB 32 goal, while minimizing
17 economic and political risk. You have a program before
18 you that has been designed to succeed. If there is going
19 to be an event that's going to turn the cap and trade
20 tide, this is likely to be it.

21 Here are some of the key features that you have
22 pragmatically incorporated to achieve success.

23 First: Direct allocation. A direct allocation
24 to retail providers of electricity on behalf of their rate
25 payers to mitigate the impact on electricity consumers and

1 direct allocation to industrial sources to mitigate
2 leakage.

3 Second: Allowing the use of offsets as
4 compliance instruments to cover up to eight percent of an
5 entity's compliance obligation.

6 Third: The cost containment reserve.

7 However, while your program has been designed to
8 achieve success, there is some potential pitfalls that
9 we'll be addressing I hope next year.

10 First: There may not be an adequate supply of
11 offsets. We urge you to move aggressively next year to
12 approve additional offset protocols to assure that the
13 market will have an adequate supply of offsets.

14 Secondly: The prohibition in the regulation on
15 resource shuffling as written could adversely affect the
16 wholesale electricity market. It could create uncertainty
17 and a loss of liquidity in that market. We appreciate the
18 direction to the Executive Officer of page 10 of the
19 Resolution that you'll be considering today to continue
20 discussion with stakeholders about amending the resource
21 shuffling provisions.

22 Third: While we applaud the creation of a cost
23 containment reserve, we share Dr. Sperling's concerns
24 about the market we're creating. The Regulation does not
25 create a mechanism for refilling the reserve if it's

1 exhausted. The Adaptive Management Program does not reach
2 market issues.

3 We support the direction on page 12 of the
4 Resolution to the Executive Director to work with
5 stakeholders on market issues next year.

6 We look forward to working with you and
7 supporting you on the issues that remain to be addressed
8 in 2012, including the offset resource shuffling and
9 market issues. And thank you very much.

10 CHAIRPERSON NICHOLS: Thank you. I think you get
11 extra time for the tie. The tie is amazing. Great.
12 Thank you.

13 Steven Schiller. And then I'm going to call out
14 of order number 74, Catherine Lyons from the Bay Area
15 Council.

16 MR. SCHILLER: I guess I should have put the Bugs
17 Bunny tie on this morning.

18 CHAIRPERSON NICHOLS: You get extra time for
19 special ties or caps.

20 MR. SCHILLER: My name is Steve Schiller, the
21 Board Chair of the California Energy Efficiency Industry
22 Council. The council is a statewide trade association of
23 non-utility companies that provide energy efficiency
24 products and services here in California.

25 The Council supports the adoption of the proposed

1 cap and trade regulations for the purpose of putting a
2 price on greenhouse gas emissions.

3 We see the proposed regulation as another
4 positive step in California's leadership by demonstrating
5 how to develop an energy infrastructure in a carbon
6 constrained world.

7 We believe the regulation will also support a
8 stable energy and business environment that will result in
9 our member companies in the efficiency industry be able to
10 grow and employ more Californians.

11 We do offer a few suggestions to implementation
12 that are contained in a letter we submitted. One, that
13 the Air Board and the PUC must establish strong oversight
14 to ensure that the funds generated as a result of the
15 regulation are spent only on consumer rate relief and
16 mitigation measures. And I guess it will be up to
17 ConocoPhillips to decide how to spend their money.

18 Secondly, a good way to meet the State's goal of
19 maximizing cost effective energy efficiency is to utilize
20 a fund, such as the Air Pollution Control Fund. We just
21 ask that it be absolutely clear that those funds can be
22 used for mitigation measure such as efficiency.

23 Also with respect to efficiency, while it's an
24 excellent opportunity for mitigation and a cost effective
25 way to meet the cap, we do ask you to use some caution in

1 enforcing and implementing the program to make sure there
2 isn't double counting, which is certainly a possibility
3 that can occur with efficiency in a capped system.

4 And then the fourth point is that all
5 participants must realize this is only one part of our
6 overall efforts and can't replace our other greenhouse gas
7 mitigation policies an energy policies, in particular, the
8 funding of the public goods charge.

9 So the Efficiency Council member companies alone
10 employ over 5,000 people in energy efficiency jobs. Our
11 companies will continue to hire more individuals in
12 California and continue on the basis of the strong policy
13 that the Board has shown and will continue to show with
14 this environmental stewardship.

15 I guess last, on just a personal note speaking --
16 listening to all this today as an appointed regulator and
17 actually the world's largest greenhouse gas mitigation
18 mechanism, the Kyoto Protocols mitigation mechanism, I
19 know there is going to be some bumps in the road and there
20 will be some pain with this. But that pain will have
21 returned in that just coming back from Africa where our
22 last Board meeting was and seeing directly the impacts of
23 climate change, the challenges of that, it's important for
24 us, as Californians, to show that Americans can and will
25 provide the leadership so that the rest of world can reap

1 the benefits of climate change mitigation.

2 With that, I thank you and the staff also.

3 CHAIRPERSON NICHOLS: Thank you. Okay.

4 Ms. Lyons.

5 MS. LYONS: Good afternoon, Madam Chair and
6 members of the Board. Thank you for taking me early.

7 My name is Catherine Lyons. I'm representing the
8 Bay Area Council Jim Wunderman and the business
9 communities of the Bay Area region.

10 I'm here to announce our support of the
11 implementation of the California Cap and Trade Program
12 without further costly delays to the California economy
13 and environment. The Bay Area Council is proud to have
14 been the first business group -- or the business group to
15 negotiate and the first business group to support
16 California's landmark effort to address global climate
17 change back in 2006. We are happy to be at this point in
18 the process.

19 Our members are business leaders of some of the
20 region's largest employers, and they know how much is at
21 stake if we don't take steps towards reducing emissions.

22 The following reasons compel the business
23 community to act on this issue. California's momentum to
24 become the center of clean technology innovation would be
25 lost if we back pedal on our commitment to become a clean

1 energy based economy. Investors, manufacturers, and
2 workers in California's clean energy sector face fierce
3 global competition, and our partners in emission trading
4 are moving forward with developing our growing market and
5 need a clear signal from California that would stabilize
6 carbon pricing.

7 Now the real work begins, and the business
8 community is committed to ensuring that our state reduces
9 its emissions by the required 15 percent by 2020.

10 Thank you again for your leadership. And thank
11 you to the staff. And we look forward to working with you
12 in the future. Thank you.

13 CHAIRPERSON NICHOLS: Thank you. Thanks for the
14 support.

15 Patrick Lenz and then Mike Hertel.

16 MR. LENZ: Good morning, Madam Chair and members.
17 Patrick Lenz, the Vice President for Budget and Capital
18 Resources for the University of California, Office of the
19 President.

20 I'm encouraged by the testimony I've heard this
21 morning, Madam Chair, and the openness of the Committee,
22 particularly as it's outlined in the Resolution that
23 indicates that the design of the regulations -- and I'll
24 paraphrase -- "seeks to minimize the cost and maximize the
25 total benefits and encourages early action to reduce

1 greenhouse gas emissions."

2 I indicate that, because we're concerned that the
3 current regulations that are being considered by the Board
4 would require U.C. to purchase 100 percent of our
5 allowance starting in year one of the Cap and Trade
6 Program at an annual cost of between 12 and \$28 million.
7 We have serious concerns about any additional cost in this
8 kind of a fiscal climate where the university has taken a
9 \$650 million budget reduction in the 2011-12 fiscal year
10 and is likely to face another \$100 million reduction.

11 The university supports the goals of AB 32, and
12 we've never sought an exemption from the Cap and Trade
13 Program. However, the University believes that public
14 entities that are regulated under the cap and trade should
15 be treated no worse than industrial facilities or the
16 utilities companies.

17 We have been working with your staff, Madam
18 Chair, and I know with you over the past couple of years
19 on the development of a compliance path that maintains the
20 Cap and Trade Program integrity while minimizing any
21 negative impact on the University's mission of teaching
22 research and public service.

23 The University has a proposal that we would still
24 like to be considered. In exchange for a free allocation
25 of allowances, CARB would require our regulated U.C.

1 campuses to invest a sum commensurate to 125 percent of
2 the market value of freely allocated allowances in the
3 abatement projects. U.C. will commit to reducing the
4 regulated emission by 7 percent by 2020. This is in line
5 with the overall statewide emissions reductions that CARB
6 is targeting with its Cap and Trade Program.

7 The University is deeply committed to AB 32 and
8 its goals. And we are encouraged by Supervisor Roberts'
9 comments that would look at an alternative where we are
10 making investments, not penalizing the University, in our
11 efforts to reduce greenhouse gases.

12 I appreciate your time, Madam Chair, and look
13 forward to working with you and with the staff on this
14 issue.

15 CHAIRPERSON NICHOLS: Thank you very much.

16 Mr. Hertel. Mr. Harris, not Mr. Hertel. Okay.

17 MR. HARRIS: We've upgrading. Mike is still
18 here.

19 My name is Frank Harris. I represent Southern
20 California Edison.

21 I appreciate the opportunity to speak today.
22 Southern California Edison agrees that a well-designed Cap
23 and Trade Program is the most efficient and effective way
24 of achieving the State's GHG reduction goals.

25 To that end, Edison continues to support the

1 development of a broad national Cap and Trade Program and
2 has appreciated the opportunity to work with all the staff
3 and the leadership of the Board. We commend the staff and
4 the leadership for the significant efforts of developing
5 the regulation.

6 Many elements of this regulation have taken a
7 great deal of work. The allocation of -- the allowance
8 allocation of allocating allowances for the distribution
9 of utilities on behalf of our customers we believe is a
10 great step to help reinforce the concept that a Cap and
11 Trade Program can be developed effectively and
12 efficiently.

13 And Edison supports the disposition of this
14 allowance value, all of it, to our customers. And we'll
15 continue to work with the California Public Utilities
16 Commission in their efforts. By providing all this
17 allowance value to our customers, this would mitigate the
18 cost that these customers have already borne in terms of
19 reducing the emissions from serving their load and
20 reducing -- providing more renewable energy, some of the
21 energy efficiency programs, and other investments that the
22 utilities have been making on their behalf.

23 While we understand the concerns that were
24 expressed by some of the water utilities that appeared
25 here today, we urge the Board to consider those same

1 investments and the extent to which the water utilities
2 have made those investments, because certainly that was a
3 key part in the negotiation on the allowance allocation.

4 And another key element of this was the manner in
5 which the allowance value would be returned to the
6 eventual customers. As the Board considered the issues
7 presented by the water utilities, we hope you'll keep that
8 issue in mind.

9 Similarly, we urge the Board to take caution in
10 reopening power contract agreements that have already been
11 negotiated with a broad set of parties. These contracts
12 balanced many issues on both sides of the transaction that
13 were important to all these parties. And we hope the
14 Board wouldn't step in to address one issue that is on one
15 single side of the party -- of the contract. Reopening
16 these negotiations we feel would be a real problem, a real
17 challenge. And won't really help us to continue the
18 reliable service here in California.

19 There are other elements of this regulation that
20 we -- I ran out of time.

21 Can we pretend I have Norm's tie on?

22 There are other elements that we agree need to be
23 continued to be worked on. We understand that the Board
24 is considering an amendment process and new rule making.
25 We simply urge you to begin this rulemaking as soon as

1 possible.

2 Thank you very much for the opportunity.

3 CHAIRPERSON NICHOLS: Thanks for your comments.

4 BOARD MEMBER BERG: Madam Chair, may I just ask
5 Mr. Harris a question?

6 CHAIRPERSON NICHOLS: I just want to give him
7 more time.

8 BOARD MEMBER BERG: And it isn't because of his
9 tie.

10 Mr. Harris, could you just please -- I don't
11 understand your comment on the long-term contract, when,
12 in fact, on the post AB 32 contracts, my understanding is
13 that the price of carbon can, in fact, be included within
14 the contract, but the pre cannot? And so if you're
15 getting allowances and funds to be able to mitigate that,
16 I'm not making the connection as to where the issue is on
17 the other side. If you could just help me with that.

18 MR. HARRIS: Certainly, these contracts include
19 language that allows for the pass through of the
20 compliance costs. That was part of the negotiated
21 agreement. I think that's one of my key points. And that
22 is one element that's already in this agreement.

23 Whenever you design these types of contracts and
24 you engage in these transactions, there are a variety of
25 different elements that each side of the transaction is

1 looking -- a variety of different goals each side of the
2 transaction is looking to achieve in this contract.

3 And so in these contracts that I'm referring to,
4 the ability to pass through the GHG costs is present there
5 in the contracts I'm referring to. There are certainly a
6 number of elements that both sides had to agree to accept
7 that perhaps they would have preferred not to accept. And
8 so reopening the contract on the basis of one of those
9 concerns we feel doesn't really support the power
10 procurement practice that we engage in here in California.

11 BOARD MEMBER BERG: Am I understanding correctly
12 that the contracts that you're speaking about, they do
13 have the ability to recover compliance costs, which would
14 include the greenhouse gas?

15 MR. HARRIS: Yes. For southern California
16 Edison, my understanding, we have no contracts that don't
17 allow it.

18 BOARD MEMBER BERG: Thank you very much, sir.

19 CHAIRPERSON NICHOLS: Thank you.

20 Nico van Aelstyn and then Susie Berlin. And that
21 will be it before we break for lunch.

22 MR. VAN AELSTYN: Thank you, Madam Chairman and
23 members of the Board.

24 My name is Nico van Aelstyn. I'm here today on
25 behalf of Powerex Corporation. I know I have a challenge

1 in front of me as stomachs are beginning to rumble. I'll
2 just take a moment.

3 Powerex Corporation, if you don't know, is a
4 wholly owned energy marketing subsidiary of the British
5 Columbia hydro and power authority. It's a crown
6 corporation that is wholly owned by the government of
7 British Columbia.

8 Powerex is a low-carbon supplier of energy from
9 large hydro and renewable sources. And it is one of the
10 largest importers of electricity into the state of
11 California. As it turns out, it is licensed by FERC as a
12 rate authority.

13 Powerex supports the cap and trade regulation
14 today and urges its adoption. We are very supportive of
15 California's efforts, and also those of the Western
16 Climate Initiative to develop a Cap and Trade Program and
17 to combat global climate change.

18 And we are very appreciative of all the work
19 that's been done by the staff and in particular with
20 regard to these issues of electricity markets because they
21 are very complicated. We notice that the first speaker
22 today was from the CPUC, and I think that's appropriate
23 given a lot of overlap here.

24 That said, however, there are a number of
25 problems in the regulation that do need to be addressed

1 preferably in the first quarter of 2012. We second the
2 calls of many today to commend the Resolution 1132 and its
3 specific calls for a number of regulatory refinements and
4 also the call those be done early in 2012 so the program
5 will be ready to launch full implementation in 2013.

6 In particular, in Resolution 1132 at page 10, we
7 support the call to continue discussions with stakeholders
8 to identify potential amendments to the regulation. And
9 in particular, the first one up that is mentioned is to
10 address resource shuffling. We notice the CPUC gentleman
11 addressed that as well. That was one of our comments.

12 There are three other comments that are very
13 important that really do need to be addressed if the
14 regulation is to work, to be a workable program, and for
15 it to be frankly fully defensible. Those are the asset
16 controlling supplier provision that must be addressed, the
17 RPS adjustment, and the qualified export adjustment. All
18 three of those are dealt with in detail in our written
19 comments, and we provided simple and discrete proposed
20 changes that would address the potentially very
21 significant problems in the current language of those
22 three provisions. So we hope that more specific direction
23 can be given to Board staff to address those as well as
24 resource shuffling per Resolution 1132.

25 And again, we support the Resolution, the

1 regulation, and urge its adoption. But we also strongly
2 support that these issues be addressed in early 2012.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 Susie Berlin.

6 MS. BERLIN: Good afternoon, Madam Chair, members
7 of the Board.

8 My name is Susie Berlin. I represent the
9 Northern California Power Agency. NCPA is a JPA that is
10 comprised of publicly-owned utilities that provide
11 electric service to customers throughout California
12 basically from Redding down to Lompoc. NCPA supports the
13 proposed changes and cost containment and provisions that
14 not only facilitate electrical distribution utilities in
15 their ability to meet their obligations under the program,
16 but also further the objections of AB 32 more broadly.

17 Particularly, NCPA supports the finalization of
18 the allowance allocation methodology for electrical
19 distribution utilities, the metric upon which that
20 allocation is based was thoroughly evaluated by a broad
21 range of stakeholders, as well as CARB and the Cal/EPA
22 staff, not just the electric utilities.

23 As CARB and others have repeatedly concluded,
24 it's the electrical distribution utilities that have the
25 most direct link to all California residences and

1 businesses and provide the most cost effective and
2 efficient vehicles for delivery of that value of the
3 allowance value back to the residents and businesses while
4 advancing the objectives of AB 32.

5 While we've heard the concerns of the Water
6 Contractors, we believe those concerns are addressed by
7 the return of the allowance value to all the customers,
8 which is done thorough the electrical distribution
9 utilities.

10 NCPA also supports the direction for ongoing
11 monitoring of the markets and urges the Executive Officer
12 to act promptly if the market manipulation or volatility
13 is discovered. The success is contingent of the efficacy
14 of the program structure, including the cost containment
15 provisions contained therein, such as the reserve account.

16 NCPA also supports the Resolution's direction to
17 have the program reviewed by an independent monitor and
18 for market simulations prior to the January 1, 2013,
19 enforcement of the program. But we would urge a slight
20 modification that would require a report to the Board
21 prior to the launching the first auction. And that if
22 shortcomings or concerns are identified in the simulations
23 that the first auction be postponed until those concerns
24 are addressed.

25 Thank you very much for your time.

1 CHAIRPERSON NICHOLS: Thank you.

2 I know it takes a little time to get out and find
3 a place to grab lunch around here, although there is a
4 cafeteria on the first floor. But I'd like to try to get
5 back here in 45 minutes, if we can, rather than a full
6 hour, just because we have a lot of witnesses again ahead
7 of us I should say. Some are for and some are against us.
8 But hopefully they're all for us.

9 So I would like to ask everybody though if you're
10 thinking about testifying and you didn't turn your card
11 in, please turn it in before you leave, because I'm not
12 going to be just continuing to accept more blue cards as
13 we go along. We've already had a bunch while we're
14 speaking. So we'll cut it off before we start up again.
15 Thanks.

16 (Whereupon a lunch recess was taken at 12:34)

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AFTERNOON SESSION

1:24 p.m.

CHAIRPERSON NICHOLS: We'll just resume our hearing at this point.

And I believe that the next person on the list to testify is Jeffrey Volberg. Go right ahead.

MR. VOLBERG: Madam Chair and member, I'm Jeff Volberg with the San Diego County Water Authority. And I'm here on behalf of the Water Authority to talk about the treatment of both the State Water Project and the Metropolitan Water District under this plan.

I will associate myself with the comments of both the State Water Contractors and Debra Man from the Metropolitan Water District and keep things brief. But there are a couple of points I would like to make.

One is that this plan is going to have an impact on the water rates of the San Diego County rate payers who have in the last three years faced a 60 percent increase in their rates. And it will do that without any corresponding benefit in terms of water supply, water supply reliability. So that is a concern we have. And mitigating the cost to the rate payer of this through the electrical companies rebating, accrediting doesn't sync up very well, because water customers and electricity customers aren't necessarily the same.

1 And as an example, a farmer who uses a great deal
2 of water and very little electricity would not be
3 receiving the rebate to the extent that somebody that uses
4 a very large amount of electricity and very little water
5 would receive. So the two don't sync up well.

6 I understand that this is the final version and
7 that it can't be changed here today. I would join with
8 the others who have suggested that the Board do start
9 working on and seeking amendments to resolve these
10 problems in this final document as soon as possible,
11 preferably within the year.

12 And again, I'd like to reiterate that this will
13 have a strong impact on rate payers in southern California
14 and the San Diego area in particular. There's been an
15 article in the Union Tribune yesterday and also an
16 editorial this morning that indicate what the impacts will
17 be. And so I hope you take that into consideration as we
18 go forward in the coming years to make amendments to the
19 regulatory scheme.

20 Thank you very much for your time. Appreciate
21 the opportunity.

22 CHAIRPERSON NICHOLS: Thank you.

23 Kris Rosa from Silicon Valley Leadership Group.

24 MR. ROSA: Good afternoon.

25 Kris Rosa on behalf of the Silicon Valley

1 Leadership Group. Just a quick word about the proposed
2 regs.

3 The Silicon Valley Leadership Group believes that
4 the cap and trade is the most efficient and effective way
5 to reduce global warming pollution and also spurring the
6 clean energy innovation. We respectfully request that the
7 Board take final action to adopt the proposed cap and
8 trade regulations. Thank you.

9 CHAIRPERSON NICHOLS: Thank you.

10 Marlia Maples. I'm sorry. I'm wrong. It's Mary
11 Kay Faryan. I skipped a couple of lines here.

12 MS. FARYAN: Good afternoon, Madam Chair, members
13 of the Board.

14 My name is Mary Kay Faryan. I'm counsel for Navy
15 Region Southwest here on behalf of the Admiral French and
16 the military installations in California. We've provided
17 detailed comments on the unique issues this regulation
18 raises with military facilities, so I won't belabor that
19 point, except to say that any future discussions with
20 staff will have to be consistent with the issues we have
21 raised in those correspondence.

22 You've also heard from Navy's leadership in D.C.
23 on this important matter. We remain committed to work
24 with California to demonstrate reductions from federally
25 mandated greenhouse gas and energy reduction mandates.

1 These exceed those called for in this regulation.

2 The DOD also demonstrates tremendous leadership
3 in the development of alternative energy sources and
4 renewable energy development. Despite your warning, we
5 would like to thank your staff for their hard in crafting
6 a temporary solution to concerns. We look forward to
7 working with them and the Board on long-term program that
8 reflects the military's commitment to this issue as well
9 as the limitations we face with the current program.

10 Thank you.

11 CHAIRPERSON NICHOLS: Thank you. So next we'll
12 hear from Ned McKinley.

13 MR. MC KINLEY: Good afternoon, Chairman Nichols
14 members of the Board. My name is Ned McKinley. I'm here
15 on behalf of Major General Anthony Jackson, the commanding
16 general for marine corps installations west. I'm here
17 today not just on behalf of the Marine Corps, but also the
18 Department of Defense, just following on Mary Kay Faryan's
19 comments.

20 Currently, one installation in the state exceeds
21 the applicability threshold of the Cap and Trade Program.
22 This is the Marine Corps air ground combat center at 29
23 Palms. This base is a vital national security asset as
24 demonstrated by the fact that 95 percent of marines
25 require training at this base before deploying overseas.

1 Now, in the military, we have a special
2 challenge. We need to meet our national security
3 requirements and the national security strategy which
4 itself is dictated by Congress and President, while at the
5 same time meeting a broad range of environmental mandates.
6 Many of these mandates require reductions in greenhouse
7 gases. For example, President Obama issued Executive
8 Order 13514 in 2009.

9 In the case of the combat center, they have a
10 comprehensive plan to meet those mandates. They are on
11 track to reduce greenhouse gases by 34 percent by 2020,
12 which exceed the goals of AB 32.

13 Some of the ways they will be achieving this is
14 by the use of greater renewable energy. Currently, they
15 get about five percent of their electricity through PV.
16 They also have one cogeneration or combined heat and power
17 plants. And next year, a second one will come on line.
18 When this comes on line, the base will be essentially
19 independent of the grid, which will be important for the
20 base to meet its energy security goals.

21 And also very noteworthy is with the second CHP
22 plant, the base will produce about half as many greenhouse
23 gas emissions as power purchased from the grid.

24 Now, as currently designed, the Cap and Trade
25 Program does present legal obstacles to participation by

1 the Department of Defense. Those obstacles we have
2 described and comments we have previously submitted to the
3 Board, we have -- we're very appreciative of the dialogue
4 of the past year with the Board and the staff to work
5 through those things. And we do look forward to working
6 with you to establish a framework for ensuring that the
7 military reduces greenhouse gas emissions in a way that is
8 consistent both with our national security mission and the
9 goals of AB 32. Thank you.

10 BOARD MEMBER D'ADAMO: Thank you.

11 Marlia Maples.

12 MS. MAPLES: Good afternoon. I'm Marlia Maples.
13 I'm from Bakersfield, which is in Kern County. I'm
14 self-employed business owner of a small business, woman
15 owned. I'm a mother. I'm married. I volunteer.

16 But I'm here representing the community at large.
17 In our area, we have 16.2 percent unemployment. We live
18 in an area that leads the nation in our air resources and
19 we have alternative energy in our solar. But our main
20 income and job producers is the petroleum industry or ag.
21 Either way, you're going to be impacting us.

22 I travel across the nation, and I look at things
23 like diesel prices. And if you impose this ten percent --
24 and I buy my diesel in Oklahoma, you're going to be
25 charging me 95 cents a gallon more, because every one of

1 these costs are going to be passed onto me as a consumer.
2 And I cannot afford one penny more in anything. I cannot
3 help support one more homeless shelter. I cannot help one
4 more unemployed family. I'm taxed out.

5 And I just don't understand why people don't seem
6 to get it. One-hundred percent of nothing is still
7 nothing. When these jobs leave California because I
8 filled up my truck over in Nevada or Arizona and I came
9 over and I picked up my load of fruits, nuts, veggies,
10 whatever, I had 200 gallons of gas. And I didn't have to
11 get gas again until I got back into Nevada. So I didn't
12 pay this precious tax.

13 So I'm just speaking as a consumer. I know this
14 is a job killer. And until we get these folks back to
15 work, the young men, the veteran this morning said, we
16 need jobs for our veterans. We need jobs for our veterans
17 bad. We need jobs for everyone. And losing them to other
18 states, while it may keep everything okay nationally, it's
19 not helping California. California is destitute without
20 doing something.

21 I feel like the solution to the problem is let
22 the business owners run their businesses, make a profit.
23 Profit is not a dirty word. Incentivize the individuals
24 who make those profits. And tell the young woman or man
25 who's getting the hand-out or temporary assistance, look

1 what you can achieve if you try. It's available.

2 BOARD MEMBER D'ADAMO: Thank you.

3 Next is Norman Plotkin, followed by Erick
4 Verduzco Vega.

5 MR. PLOTKIN: Thank you, Board members.

6 Norman Plotkin representing the California
7 Independent Petroleum Association.

8 We believe that -- actually, we're deeply
9 concerned that the current climate policy construct will
10 lead to widespread curtailment of domestic oil and gas
11 production. To reiterate our previously filed comments,
12 we were posted on the CARB continuing on the path of
13 adoption of the Cap and Trade Program. As noted
14 previously, as CIPA began the climate change policy
15 journey with the position that market mechanisms most
16 efficiently provide for compliance flexibility, the
17 evolution of our position has been influenced by two
18 irrefutable factors.

19 First, the emissions numbers. The Legislative
20 Analyst's Office has covered quite comprehensively that
21 enough activity has been undertaken, numerous programs and
22 policies put into place, coupled with the dramatically
23 reduced economic output have allowed us to achieve or at
24 least establish a glide path toward emission reduction
25 targets envisioned by the framers of AB 32.

1 Secondly, we look at the market design features
2 of the currently proposed program and inherently
3 understand that no matter how well intentioned, they
4 pretend disaster for the economy as a whole and regulated
5 parties specifically.

6 CIPA asserts again that CARB has met all of the
7 emission targets required by AB 32 and need only eliminate
8 the cap and trade program from the current policy mix to
9 arrive at a combined strategy that satisfies AB 32 and
10 does not set us up for a re-run of the terrible crisis the
11 State experienced last time it embarked upon an untested
12 and Rube Goldberg policy regime.

13 Having registered our opposition to the cap and
14 trade scheme, we understand you likely have no intention
15 of abandoning this train wreck today. Therefore, we note
16 the following areas of major concern.

17 While developing a soft start to the Cap and
18 Trade Program, it is a nice gesture in these economic
19 times. The ten percent reduction, known as the haircut,
20 poses potential significant problems for the availability
21 of allowances at the onset of the program when uncertainty
22 is expected to be greatest. At the very least, this will
23 lead to severe inefficiency of the market and will likely
24 increase the already significant cost burdens to industry
25 sectors.

1 No documentation or information substantiating
2 the need for the haircut has been presented. In reality,
3 the reductions originally planned during the first
4 compliance period now occur up front, instead of staggered
5 over a three-year period.

6 Also, the reduction in allowances has no relevant
7 air quality benefit or emission reductions. It basically
8 will generate hundreds of millions of dollars for no
9 stated purpose and is a hidden tax on industry.

10 With respect to the benchmark, other than the
11 initial guidelines on how sector benchmarking would
12 identify allowance allocation to various industries, staff
13 has not provided information on the individual protocols.
14 For example, the proposed oil and gas extraction
15 benchmarks are derived from a process that remains a black
16 box to the regulated community. The generation of these
17 benchmark values cannot be duplicated by the public
18 sector. The methods and protocols used by staff should
19 undergo the same scrutiny -- final note, if I may --
20 self-generation of -- emissions related to self-generation
21 is going to have a substantial impact on oil production.

22 BOARD MEMBER D'ADAMO: Thank you.

23 Next, Erick Verduzco Vega, followed by Edwin
24 Lombard.

25 MR. VERDUZCO VEGA: Good afternoon, members of

1 the Board. My name is Erick Verduzco Vega.

2 I want to talk to you today as the President of
3 the South Bay Latino Chamber of Commerce, which represents
4 about 360 businesses in the South Bay region of Los
5 Angeles County and also as a small business owner myself.

6 Our goal at the Chamber is to foster a healthy
7 economic climate for our businesses. And also very
8 important is to be able to provide responsible growth
9 opportunities for our Chamber members.

10 With the current state of California's economy,
11 our mission to foster that type of climate has been more
12 challenging than it's ever been before, specifically in my
13 last 11 years as part of the Chamber of Commerce.

14 As a small business owner myself, I can honestly
15 say that my business, much like many of the other members
16 of our Chamber of Commerce, we simply can't afford an
17 arbitrary price on carbon. We're concerned because even
18 if we, as small businesses, don't have to pay directly for
19 greenhouse gas emissions, we do know that these costs are
20 going to come from the higher energy costs that will be
21 associated with the costs of producing products that we
22 then have to sell to our customers.

23 We're also concerned because oftentimes in order
24 to stay in the black to remain profitable, these large
25 companies that will be responsible for paying these added

1 costs, we believe that more than likely they are going to
2 have to cut back on a lot of the purchases of products and
3 services they get from our Chamber members. We're very
4 concerned because it's those products and services that we
5 provide to the larger companies that often are the key
6 elements that help our businesses stay profitable and
7 allow us to keep our employees and even hire more
8 employees.

9 Right now, the number one priority in the state
10 of California should be protecting and creating jobs,
11 especially protecting those businesses that create those
12 jobs.

13 I'm very concerned, because quite frequently,
14 I've been getting a lot of requests and I've seen a trend
15 from other states, like Nevada, for example, to attract
16 businesses to take them from California to their state,
17 always claiming that their business climate is friendlier
18 and, hence, more conducive to profit.

19 We respectfully urge you to correct a serious
20 flaw in your cap and trade regulation before putting even
21 more jobs at risk. Thank you very much.

22 MR. LOMBARD: Good afternoon.

23 My name is Edwin Lombard. I'm the owner and
24 operator of Edwin Lombard Management. I'm an advocate for
25 minority small businesses throughout the state of

1 California.

2 Today, I'm here representing the Black Business
3 Association and 27 Black Chambers throughout the state.

4 There is no doubt that a lot of work and time and
5 energy has gone into crafting of the cap and trade
6 regulation that you and your staff have created. And we'd
7 like to commend you on your effort.

8 But among my stakeholders and people in my
9 community, there is concern that this rule is seriously
10 flawed. The decision to eliminate up to ten percent of
11 free emission allowances will have the effect of
12 increasing energy costs. This is of critical interest to
13 small and minority-owned businesses and communities of
14 color since we spend a higher percentage of our budgets on
15 energy and can least afford even small increases in any
16 cost, especially those for utilities and fuel.

17 We'll be hard hit when the cost of food,
18 transportation, clothing, and other necessary items goes
19 up as cap and trade costs are passed along because we are
20 the end users. Our small businesses are worried that in
21 order to pay the bills under this regulation, we'll have
22 to lay off workers.

23 Families are worried about losing paychecks and
24 health care benefits, at the same time, the cost of living
25 will be going up under cap and trade. Small and minority

1 owned businesses are worried about losing customers who
2 can no longer afford to buy their products and services
3 because of cap and trade-related costs increase. It
4 doesn't appear that the economic gratifications have been
5 sufficiently explored.

6 Throughout the AB 32 regulatory process,
7 stakeholders have been told, "Don't worry. There will be
8 no cost or economic pain."

9 I'm here to tell you that we are worried, and we
10 would like to see you modify this rule to eliminate
11 sources that create the pain such as the emission tax.
12 Thank you very much.

13 BOARD MEMBER D'ADAMO: Thank you, Mr. Lombard.
14 James Brady.

15 MR. BRADY: Good afternoon. My name is James
16 Brady. I'm here representing 100 Black Men of the Bay
17 Area, as well as my own private business, Continue.

18 I'm a green business here in Sacramento. And we
19 recycle universal waste, which is dry cell batteries,
20 florescent lightbulbs, and compacts. I'm doing my part to
21 reduce carbon emissions around the state, as well as in my
22 water supply.

23 I'm particularly worried about the cap and trade
24 regulation, because it's clear that the emissions
25 allowance tax, there will be much higher energy prices and

1 that businesses will be passing those prices onto their
2 customers. That means I'll not only be paying more
3 directly for the utilities and gas, I'll also be paying
4 more for things I use every day. I want AB 32 to succeed,
5 but not by reducing my businesses carbon footprint to zero
6 because the costs would really put me out of business.

7 Now, I have somewhat of a unique business in that
8 I don't have to transport anything. So most of the waste
9 that I recycle goes by Fed Ex right out of the state.
10 There is some carbon footprint there, but it's not from me
11 as a small business person.

12 In the one thing that I want to emphasize is
13 water. I hear a lot of talk about water. And one of the
14 biggest use of water is the utility companies. There is a
15 new technology out called atmospheric water generation.
16 At some point in time, I hear people talking about cap and
17 trade. We need a cap on the tap, because eventually
18 people are going to start revolting because of the price
19 of water going up. And I think that if there was a way, a
20 demand put on water districts and water companies to
21 generate drinking water atmospherically, it wouldn't cost
22 \$550 per acre feet to transport water from one location to
23 another.

24 So I think that we are on the horizons to some
25 things that are going to occur in the next couple years.

1 And it's already happening in Davis and Stockton where the
2 cities no longer can afford to keep up with the price of
3 water. Therefore, we're going to have to figure out a
4 better way atmospherically to provide and generate water
5 to those people in those communities that can't afford it.

6 Thank you very much.

7 CHAIRPERSON NICHOLS: Thank you.

8 Kassandra Gough.

9 MS. GOUGH: Madam Chair and Board, my name is
10 Kassandra Gough, and I'm here today representing Calpine.

11 Calpine is the state's largest independent power
12 producer. We're also the largest cogenerator, and we're
13 the largest supplier of renewable energy to the state.

14 We're strong supporters of carbon regulations at
15 both the state and national level. But I want to
16 emphasize because we're an independent power producer and
17 we sell to load serving entities and municipalities, we
18 are not receiving any free allowances. We're not here
19 today to talk about receiving free allowances, but to talk
20 about some other issues -- well, actually want to sort of
21 receiving some allowances.

22 Since 2001, Calpine has met the call of
23 regulators and legislators to build clean efficient power
24 plants in California so that we can be independent and not
25 have to import dirty coal. Calpine has invested seven

1 billion dollars since 2001 to do that. We are currently
2 today, this very day, employing over 300 construction
3 craft men and women in Hayward, California, to built a
4 power plant that's the first in the nation to have a
5 greenhouse gas limit in its federal air permit. We're
6 very proud of that.

7 We support cap and trade, but we urge the Board
8 and staff to make further refinements to the regulation
9 that we think will improve it and treat parties equitably.

10 First on the long-term contract issue, Calpine is
11 in the position of holding some pre AB 32 long-term
12 contracts. In our case, these are for combined heat and
13 power for either sales of electricity and/or steam to
14 private parties. These are not CPUC jurisdictional.
15 These are not contracts within Edison, SCG&E, or PG&E.
16 These are with private parties. In some instances,
17 they're receiving free allowances for the emissions, yet
18 we're the obligated party. In others, they're not,
19 because the other party is too small. These contracts
20 were drafted in the 1980s, and we would like to resolve
21 that issue and work with the Board before the first
22 auction. We need certainty. And the Resolution currently
23 doesn't have a time frame.

24 Second, Calpine, as I told you, is a very
25 efficient company. But we're also very large. And

1 because of our size and the investment we made in
2 California, we're not afforded the same flexibilities that
3 other market players are with regards to banking, which is
4 a huge cost containment mechanism. Right now, I heard
5 staff earlier today say they had a holding limit and they
6 put that in place for fear of market manipulation. Yet,
7 the six million allowances that you're allowing any party
8 to hold, including bankers and brokers who have no
9 obligation, that's it. You're not tying the holding limit
10 to the size of an obligated entity's emissions. So we are
11 not afforded the same flexibilities. We will have to
12 over-comply and retire allowances earlier.

13 Again, we urge certainty. We urge the Board and
14 staff not to look at these and monitor these issues. We
15 urge them to take action, before us certainty before the
16 first auction, good, bad, or indifferent. Thank you.

17 CHAIRPERSON NICHOLS: Oh, sorry. Cassandra,
18 excuse me, before you go, we have a question.

19 BOARD MEMBER D'ADAMO: I have a question on the
20 language. I know you and I met before this draft
21 Resolution came out. So have you taken a look at page 10?

22 MS. GOUGH: I have. And I appreciate that they
23 had mentioned auction frequency, holding, and purchase
24 limits. And that's good.

25 But the language says that staff will work with

1 stakeholders during the initial implementation of the cap
2 and trade. We had suggested language that would be more
3 specific to say prior to the first compliance -- or the
4 first auction or at least that regulations would be
5 completed before 2013. And I know those were resisted.

6 So what I read is during the initial
7 implementation, I read that as meaning sometime during the
8 first compliance period we'll get to it. I know earlier
9 discussions with staff was we would re-look at and
10 re-visit the issue for the second compliance period. And
11 we maintained that the holding and auction purchase limits
12 should be adjusted for the first compliance period.

13 CHAIRPERSON NICHOLS: Thank you.

14 Tim Tutt.

15 MR. TUTT: Good afternoon, Madam Chair and
16 members of the Board.

17 I'm Tim Tutt representing the Sacramento
18 Municipal Utility District. Thank you for the opportunity
19 to speak here this afternoon.

20 SMUD supports and applauds the adoption of the
21 proposed cap and trade regulation. It's been a great
22 process. And the staff deserves a commendation, even
23 though you asked us not to commend the staff. They've
24 overcome a lot of hurdles in the last year to get to this
25 point.

1 We look forward to working with you and your
2 staff as the cap and trade is implemented through the
3 market monitoring activities and auctions, potential
4 linkages with other jurisdictions, and other program
5 modifications.

6 There are four items in particular that we would
7 appreciate you directing staff to work on during the
8 initial implementation of the program. And these are:

9 Additional flexibility for the procurement of
10 biomethane resources to achieve the zero GHG treatment
11 these resources deserve;

12 Modifications to remove disincentives for
13 cogeneration contracts. We heard a lot about this today
14 where the GHG allowance costs fall on one party and
15 they're not easily able to be passed on in the contractual
16 relationships;

17 And continued direction to your staff to consider
18 how allowance policies could be modified to account for
19 the growth of electric transportation, a topic that has
20 not been included in the regulations to date and, thus,
21 remains from your Resolution in December of last year as
22 something for staff to work on and discuss and address.

23 And finally, continued consideration of greater
24 conformance with the cap and trade and the state's RPS,
25 particularly the 33 percent RPS that was passed by the

1 Legislature.

2 As the cap and trade regulations stand, there's a
3 potential for new renewable development in the RPS,
4 eligible for the RPS, that would provide zero GHG benefit
5 to the purchasing entity. That's some thing we want to
6 continue talking about with you and your staff.

7 That's it. Thank you for your consideration of
8 my comments today. In closing, I just want to say a
9 simple, well-deserved congratulations to everybody. Thank
10 you.

11 CHAIRPERSON NICHOLS: Bob Reeb.

12 MR. REEB: Thank you, Madam Chair and members.

13 Today, I'm here appearing on behalf of Desert
14 Water Agency. The Agency is a retail service water
15 provider for the city of Palm Springs and pays for and
16 receives an entitlement from the State Water Project.

17 The agency supports the requests by the State
18 Water Contractors for the Board to direct the Executive
19 Officer to allocate an allowance in the future to the
20 State Water Project in recognition of the potential cost
21 impacts of water consumers.

22 Desert Water Agency is a customer of Southern
23 California Edison, but also a customer of the State Water
24 Project and therefore deserves consideration of an
25 allowance on the basis of fairness and equity.

1 As a public agency, Desert Water is not allowed
2 to profit from this enterprise. Therefore, any savings
3 resulting from a savings from the State Water Project will
4 necessarily benefit its customers.

5 Finally, as a side note, Desert Water in
6 partnership with Southern California Edison has installed
7 a 37 and a half kilowatt solar project in one portion of
8 its corporation yard and is currently evaluating an
9 expansion of that facility, continuing its commitment to
10 clean energy, as well as an investment in water
11 conservation programs that will not only reduce gallons
12 per capita per day water consumption, but reduce
13 electricity demand as well. Thank you.

14 CHAIRPERSON NICHOLS: Jeanne Merrill.

15 MR. MERRILL: Thank you.

16 I'm with the California Climate and Agriculture
17 Network. And we are a coalition of sustainable
18 agricultural organizations.

19 We are farmers and advocates who came together
20 out of concerns for California agriculture's unique
21 vulnerabilities to climate change. We're supporters of AB
22 32. Many of our farmers wrote letters in support of AB 32
23 and opposing Prop. 23.

24 I'm here to talk to you a little bit about
25 offsets and next steps. As we proceed in implementation

1 of cap and trade, we're concerned about having a plan that
2 will help California agriculture address climate change
3 sustainably and effectively.

4 And we think through offsets that take a whole
5 farm systems approach and full life cycle analysis along
6 with allowance value investments in research, technical
7 assistance for farmers, and financial incentives for those
8 farmers who can't participate in the offsets market are
9 essential components to helping California agriculture
10 begin to address climate change.

11 We are not there yet as a state. We're the
12 largest ag state in the country, and we have yet to really
13 fully flush out a plan for making sure that California
14 agriculture remains viable and sustainable in the long
15 term. We're very interested in working with the staff and
16 the Board on those issues. Thanks.

17 CHAIRPERSON NICHOLS: Thanks for your comment.
18 Brenda Coleman.

19 MS. COLEMAN: Good afternoon. Brenda Coleman
20 here on behalf of the California Chamber of Commerce.

21 My comments today are on behalf of Cal Chamber
22 and also the AB 32 Implementation Group, of which Cal
23 Chamber is a member of.

24 Members, as it stands, we have several concerns
25 there are still several flaws with the proposed regulation

1 ranging from the imposition of buyer liability to other
2 issues that have already been outlined before you today.

3 If left unaddressed, these flaws will only
4 exacerbate the current fragile economy that we are facing
5 and ultimately jeopardize the success of the program going
6 forward.

7 With regard to the haircut, we believe this is an
8 illegal tax that will negatively impact businesses and
9 consumers at a time when they can least afford it.

10 Arbitrarily withholding up to ten percent of
11 allowances will only put California companies at an
12 immediate competitive disadvantage. It runs contrary to
13 CARB's recognition of a soft start to the program and does
14 nothing to mitigate economic or emissions leakage.

15 Members, with a twelve percent unemployment rate,
16 it is unwise to ignore the economic impact of the haircut
17 by continuing to move forward with this tax proposal.

18 We strongly encourage CARB to keep in mind that
19 constitutionally fees must provide a direct benefit or
20 service to the fee payer or be directly connected to a
21 reasonable regulatory program serving the fee payers.
22 Otherwise, these fees are taxes and are subject to a
23 two-thirds vote of the Legislature.

24 We, therefore, ask if you plan to vote the
25 Resolution through today that you commit to addressing the

1 design flaws in a way that is consistent with the AB 32
2 requirements of maximizing benefits and minimizing costs.

3 We ask you to be cognizant of the fact that every
4 industry sector is hurting, struggling with the nation's
5 second highest unemployment rate. Modifications in 2012
6 are crucial in order to ensure that the program is ready,
7 functional, and efficacious.

8 Finally, we believe creating a metric that
9 assesses economic leakage and other economic impacts that
10 may be attributed to the regulation should be made a
11 priority. This will entail reviewing the program on an
12 annual basis, much like what is being proposed under the
13 Adaptive Management Plan. Measuring and mitigating these
14 impacts would send the confident signal needed for
15 successful implementation of the program, as well as
16 successful linkage to future regional and/or federal
17 programs.

18 Thank you.

19 CHAIRPERSON NICHOLS: Willy.

20 MR. GALVAN: Madam Chair and Board members, thank
21 you for allowing me to speak today.

22 I'm Willie Galvan, State Commander of the
23 American GI Forum, a veterans family organization with 26
24 chapters throughout California.

25 Our veterans are very concerned, both in

1 businesses and others. Most of the veterans live in
2 regions that have high unemployment rate. Now, the
3 regulation being proposed now would require California
4 manufacturers to pay CARB tens of millions of dollars
5 throughout the years. This money could cause companies to
6 stop hiring or even lay off employees. That's why the
7 veterans are really worried. They're coming from Iraq
8 fighting our wars and now looking at unemployment lines as
9 it is now. And with this, they may be looking at more.

10 We have a lot of veterans working for
11 manufacturers. CARB does not need to take allowances for
12 manufacturers in 2013. They have the necessary reductions
13 included in the declining cap.

14 We, as the veterans and the local community, ask
15 you to re-think taking money from California manufacturing
16 sector and redirect this money, as it were, to private
17 venture capital into the businesses that would not survive
18 without subsidies.

19 Thank you very much for letting me speak and to
20 really think about the veterans and our businesses that
21 are hurting at this time because of the economy. But
22 again, think about the tax, then ten percent tax on
23 carbons that will reduce hiring for us. Thank you very
24 much.

25 CHAIRPERSON NICHOLS: Greg Karras.

1 MS. MAY: I'm Julia May. This is Greg Karras.
2 We'd like to switch if that's okay.

3 CHAIRPERSON NICHOLS: Of course.

4 MS. MAY: So I'm Julia May of Communities for a
5 Better Environment. I'm a senior scientist at CBE.

6 We strongly oppose the regulation adoption as
7 shown in our specific comments.

8 You heard from our many dozens of community
9 members who drove all night from all over California last
10 August to oppose cap and trade. They also protested the
11 severe adverse impacts in communities of color suffered
12 due to the extreme air pollution in California that is not
13 being addressed as required in which CARB has acknowledged
14 could be made even worse by the regulation.

15 The regulation certainly does not maximize the
16 reduction of co-pollutants as required by AB 32. So we're
17 here again today, and despite promises, the cap and trade
18 regs have not gotten any better. They already failed to
19 address harmful and ineffective offsets, fraud,
20 over-allocation, banked credits in early years causing
21 failure to reduce greenhouse gases in later years and many
22 other issues, one of which was brought up earlier today.

23 I also wanted to thank -- here's some examples of
24 how it's gotten worse. You've added exemptions. The
25 staff has added exemptions, the worst possible benchmarks

1 for oil refineries using secret data and changes to the
2 definition of permanent reductions, so that permanent now
3 means a finite time period.

4 I did want to thank Supervisor Roberts for
5 bringing up the problem of taking money from local
6 refineries and using that money to pay for offsets
7 projects outside California. If CARB instead chose to
8 clean up air pollution right here, we'd get massive public
9 health improvements and create local jobs.

10 For example, if CARB required that oil refineries
11 replace old boilers and heaters, that would create scores
12 of great union jobs, reduce millions of tons per year of
13 greenhouse gases, and substantial co-pollutant reductions
14 as well.

15 This is a straight-forward plan the EJ community
16 has repeatedly asked for. Ditch cap and trade. Require
17 local refineries and other industries to clean up and
18 modernize equipment here in California and keep and create
19 jobs here.

20 Instead, ten days ago, staff proposed this new
21 Adaptive Management Plan, which has been schlep into the
22 regulation hiding gaping deficiencies with a completely
23 inadequate ten-day notice period. This plan is apparently
24 supposed to take place of actual mitigation for the
25 potential negative air impacts CARB has acknowledged might

1 occur due to cap and trade.

2 The plan is a plan to plan later for the purpose
3 of fixing cap and trade in an unidentified way after a
4 third-party consultant is hired to figure out what to do
5 and after CARB has a conversation with local air districts
6 about how to develop the plan. But you can't adopt an
7 idea as mitigation.

8 Just to finish, CARB in its own document quotes
9 the fact it may not be able to determine if there is an
10 increase in pollution. And it may not be able to
11 determine whether it was caused by cap and trade or other
12 purposes.

13 So we really urge you to re-think this. You've
14 added a year on to your enforcement. You have the time to
15 re-think this. Many people have asked you to do so.

16 CHAIRPERSON NICHOLS: Thanks.

17 Greg.

18 MR. KARRAS: Thank you.

19 I want to highlight two really important points
20 from our comments. We think we proved this. Want to make
21 sure that you understand, because we think it demands that
22 you not adopt the plan.

23 First, the proposal, as proposed, will exacerbate
24 disparate impacts of pollution on communities of color.
25 You know, I think, and we believe it's proven beyond

1 dispute, that pollutants do disparately impact some
2 communities in our state. In particular, refinery
3 emissions of GHG copollutants, like particulate matter,
4 disparately expose low-income people of color at
5 refineries in the state. That's proved. And California
6 refinery emissions are the extreme high among U.S. refine
7 regions, even on average. Your staff on the record has
8 acknowledged that fact.

9 So that higher emission intensity, when it's
10 lower elsewhere and refineries are staying in business,
11 that's unnecessary. Therefore, allowing continued
12 emissions at that level, as your plan would do, would
13 cause disparate impacts, whether or not the emissions
14 increase.

15 My second point, we believe we proved that the
16 emissions are very likely to increase and by amounts so
17 large that you really can't ignore them.

18 Refinery emissions are driven mainly by crude
19 quality. Your staff has also acknowledged that's a
20 driver.

21 Your staff has also acknowledged that crude
22 quality is changing quickly in the refining sector now.
23 We believe we've shown that your proposal by giving free
24 emission credits now -- emissions credits that are cheaper
25 than the price discounts on dirtier cheaper oil later and

1 then benchmarks that actually encourage retooling, adding
2 capacity, making refineries more complex to refine the
3 dirtier oil, that's almost a done deal.

4 We've actually done a lot of peer reviewed
5 research. I've done a lot of peer reviewed research.
6 Why? Because ARB and other agencies, our groups, and the
7 environmental justice community had to do it. So we can
8 predict with great specificity how dirty it will be. It
9 depends how dirty the oil gets more than anything else.
10 We're talking about something in the range of 20 to 50
11 million tons per year of increased emissions due to your
12 plan. It won't fix the climate. That will overwhelm
13 everything else you talk about doing if you let that
14 happen. It won't work, and it will violate environmental
15 rights.

16 Please, we urgently ask you -- and it's not too
17 late yet. Rethink this. Do not adopt this flawed,
18 illegal, unjust plan.

19 CHAIRPERSON NICHOLS: Alegria de la Cruz.

20 MS. CRUZ: Good afternoon, Chairman Nichols,
21 members of the Board.

22 My name is Alegria de la Cruz with the Center on
23 Race, Poverty and the Environment.

24 My organization represents environmental justice
25 communities from the San Joaquin Valley. We remain

1 dedicated to engage in the process and the best and most
2 proactive way we can to protect our community's public
3 health.

4 I'm here today to express our opposition to the
5 Board's approval of this regulation. I stand here in
6 solidarity with my union brothers and sisters in our
7 opposition, even if we have different perspectives on our
8 concerns with this rule.

9 The environmental justice movement has long
10 advocated for direct regulation at the emission's source
11 because those regs create good union jobs. They promote
12 California's green economy and create the situation for a
13 just transition.

14 They also pave the path for corporations to be
15 good neighbors and protect jobs and public health in
16 communities where they are located.

17 The risks that working people and people of color
18 will suffer as a result of this program have not been
19 addressed.

20 And we have given you our best. We have shared
21 with you our personal testimony about the severe health
22 realities our communities face every day. We have
23 provided you some of the best, most cutting edge data and
24 research about cap and trade's failures in every
25 jurisdiction where it has been implemented. Failures not

1 only to reduce emissions, but also to protect communities
2 most vulnerable to localized pollution impacts. We
3 provided information as to how a trading program will fail
4 to maximize co-benefits to California's green economy. At
5 every step in this process, you have dismissed those
6 concerns.

7 Only now, ten days before this final approval,
8 did you release an Adaptive Management Plan, which
9 purports to address the health concerns we have raised for
10 years. Given the short time we have had to review and
11 respond, I'm grateful this plan was short and
12 unsubstantive, but it's brevity and lack of substance also
13 speaks to its flaws. This plan recognizes that there is a
14 risk that copollutants and toxic emissions may increase
15 under this program, yet this plan does nothing to address
16 the immediate and imminent threats to our already
17 overburdened community's health.

18 Instead, the plan adopts a wait and see approach.
19 Combined with its vagueness, its lack of enforceability,
20 and its over-reliance on CARB's discretion as to when the
21 program must be adjusted, this program can not adjust the
22 real and imminent threat to our communities they will face
23 when cap and trade is implemented.

24 This plan requires CARB find a cap and trade rule
25 cause an increase in emissions and the increase has an

1 adverse impact before it acts. Yet, in almost the same
2 breath, that plan says it will be very difficult to
3 determine when there is a direct or indirect causal link
4 to the reg. And it will also be very difficult to
5 determine when an adverse impact is caused by the reg.
6 Given these two impossibly high hurdles, an Adaptive
7 Management Plan will certainly not be able to address the
8 impacts we know will happen.

9 AB 32 requires that you design regulations in a
10 way that does not disproportionately impact vulnerable
11 communities. Similarly, California Government Code
12 Section 11135 prohibits unlawful discrimination by a state
13 agency in its conduct of its program and activities.

14 A cap and trade program will disproportionately
15 impact communities of color, as they will suffer from the
16 increase of emissions at its source or because of these
17 communities will not equally enjoy the cobenefits of
18 emission reductions.

19 We believe in AB 32. We worked to draft it, to
20 pass it, to defend it. And we will continue to use all
21 tools we have to make sure its intent and promise survive
22 this process. You have the power to do this right. You
23 do. Please do it.

24 CHAIRPERSON NICHOLS: Thank you. I'm going to
25 ask you a question, which will extend your time for a

1 moment.

2 What exactly are you advocating as a way to
3 protect the refinery jobs that the people here are talking
4 about that you believe will get you the emissions
5 reductions from AB 32?

6 MS. CRUZ: Direct regulations at the source of
7 pollution -- pollution emissions provides certainty to the
8 industry of how they need to address those reductions.
9 They provide good clean jobs to California's union workers
10 by giving jobs to pipe fitters and folks that need the put
11 those pollution controls at the source.

12 CHAIRPERSON NICHOLS: You think if we told each
13 refinery to reduce its emissions by a certain percentage
14 that would then get those emissions reductions and no
15 threat to the jobs in those refineries, that the companies
16 would just go ahead and do it and not pass the cost along?

17 MS. CRUZ: You've heard from our union brothers
18 and sisters today that the plan you have in front of them
19 right now there also create those same risks. The same
20 risks exist that corporations must face in order to move
21 towards a green economy. There are different ways to
22 achieve that goal. We have said time and again that
23 direct regulations at a pollution's source are the way
24 that we can both provide a path to green jobs for
25 California's economy and protect people who suffer from

1 localized pollution. Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 Andrew Barrera.

4 MR. BARRERA: Honorable Chair and members of the
5 Board.

6 My name is Andrew Barrera. I'm a member of the
7 Los Angeles Metro Hispanic Chamber of Commerce and also on
8 the Board of Directors for the southern region for the
9 California Hispanic Chamber.

10 In L.A., we're already feeling the effects of AB
11 32. Through the laws and policies, we have seen a
12 substantial increase in energy costs. The Los Angeles
13 Department of Water and Power already faces enormous costs
14 to comply with the renewable portfolio standard. Example,
15 we already have high rates right now in Los Angeles, and
16 they're asking for higher rates because they need to
17 comply. Those costs gets passed down to us, to the
18 consumers.

19 We simply can't afford a new emissions allowance
20 tax on top of everything. This is not a case of just
21 basically taxing the large emitters. But those costs
22 travel down to the consumer, to small businesses, and our
23 communities and our families.

24 Some will argue that they need to put a price on
25 the use of carbon as a conservation measure. But we say

1 and I say representing thousands of businesses in Los
2 Angeles and in the country that we don't need any such
3 regulation or tax to pull back and to conserve.

4 We operate on such thin margins. The economy is
5 so tight right now that we're trying to do everything that
6 we can to cut down on the costs so we can survive, so we
7 don't have to down size, so we can keep goods and services
8 in the community.

9 And you know, we have a stake in these issues. I
10 know we've come here. I've come here in the past, and it
11 almost seems like it's a ho-hum status quo. I really
12 implore to you that we have a stake. We have real people
13 and real communities that are looking to you for your
14 guidance and direction.

15 You know, this is not a concept where the whole
16 country, the whole world is participating. It's
17 California by itself. And you, yourself, have
18 acknowledged in the past that cap and trade cannot succeed
19 without a regional effort. And clearly, California is
20 doing it by itself. And it's making our community, our
21 state business unfriendly. We're asking you, please, take
22 a look at us. Just don't take us as a group of people
23 coming in and trying to plead our case.

24 As a representative of the California Hispanic
25 Chambers, we represent over 600,000 businesses and

1 hundreds of thousands of family members and millions of
2 consumers.

3 So I ask you to eliminate this tax. And we see
4 it as an unaffordable increase. And I want to thank you
5 very much for your patience.

6 CHAIRPERSON NICHOLS: Thank you.

7 Julian Canete.

8 MR. CANETE: Thank you, Madam Chair. Good
9 afternoon.

10 Julian Canete, President, CEO, California
11 Hispanic Chambers of Commerce.

12 As you know, as I've said in the past, we're
13 supportive of the reduction of greenhouse emissions. But
14 as you know also, we have been concerned about the costs
15 of the implementation of AB 32. And in reviewing the
16 proposed cap and trade regulations, our concerns have
17 increased.

18 In particular, by putting a price on emission
19 allowances, you are, in effect, imposing a multi-billion
20 dollar energy tax, not just on the regulated entities, but
21 all businesses and consumers in the state, small and
22 minority owned businesses, which make up the minority of
23 our businesses, will suffer the most as they operate on
24 very narrow margins. As my colleague said previously, on
25 very narrow margins to begin with. Because of this new

1 energy tax, they are likely to have to lay off workers,
2 who in turn will lose the wages and benefits upon which
3 their families depend.

4 This agency has always maintained that to be
5 effective, a Cap and Trade Program must be part of a
6 regional multi-state effort, but the other states in the
7 Western Climate Initiative have decided not to go forward
8 at this time in order to protect their economies. This
9 will put our businesses at even a greater competitive
10 disadvantage than we are already at.

11 The Scoping Plan acknowledges that California,
12 acting alone, cannot materially impact worldwide climate
13 change. Under the circumstances, forging ahead with a
14 California-only cap and trade policy that includes
15 arbitrary fees for emissions allowances will be a little
16 more than expensive, but an effective gesture that will
17 further harm our businesses, our communities, and our
18 economies.

19 The California Hispanic Chambers of Commerce
20 urges you to eliminate these superfluous costs before
21 finalizing a cap and trade policy.

22 Thank you for your time.

23 CHAIRPERSON NICHOLS: Thank you.

24 Alex Esparza.

25 MS. SOLISE: I'm Silvia Solise here for Alex

1 Esparza today. And Alex and I are here on behalf of Mayor
2 Antonio Villagairosa, Mayor of Los Angeles.

3 We would like to thank the Board and particularly
4 the Chair's leadership in showing that California can
5 blaze the trail and showing that it is possible to
6 establish ambitious emission reduction goals while
7 ensuring a fair and equitable Cap and Trade Program that
8 minimize impacts on electric rate payers, particularly low
9 income customers.

10 Mayor Villagairosa remains committed to working
11 with you and the Brown Administration to achieve the 33
12 percent renewable portfolio standard to transition away
13 from coal and increase energy efficiency programs
14 throughout the city.

15 While we realize that further refinements will be
16 made in 2012, we are confident that the Board will work
17 closely with the L.A. Department of Water and Power and
18 other stakeholders to resolve any remaining issues so that
19 this critically important program may commence without
20 further delays. The Mayor strongly supports the Board's
21 adoption of this AB 32 regulation after addressing
22 remaining concerns of interest to the Department, which
23 you will hear about in more detail from Cindy Montanez and
24 Cindy Parsons of the Los Angeles Department of Water and
25 Power.

1 Thank you very much for listening.

2 CHAIRPERSON NICHOLS: Thank you for your
3 testimony. Would you please convey to the Mayor also our
4 appreciation from the city's efforts on climate as well.

5 MS. SOLISE: Yes. Thank you.

6 CHAIRPERSON NICHOLS: Good afternoon.

7 MS. MONTANEZ: Good afternoon, Madam Chair and
8 Board members.

9 I'm Cindy Montanez. I'm here on behalf of the
10 Los Angeles Department of Water and Power.

11 I just first have to start by saying we greatly
12 appreciate the very thoughtful leadership that you have
13 consistently provided throughout this process and this
14 proceeding. There is no question that you set the stage
15 for historic reductions in greenhouse gas emissions in
16 California.

17 You have much to be commended for, and I
18 personally must say that I'm very proud of the city of Los
19 Angeles and that the Mayor continues to stand very
20 strongly in support of AB 32.

21 We remain steadfast in our commitment to do our
22 share to reduce statewide greenhouse gas emissions back to
23 1990 levels. L.A. DWP emissions have been reduced by 20
24 percent from 1990 levels. We achieved our 20 percent RPS
25 goal in 2010 and continue to evaluate the most cost

1 effective means to move away from coal, increase
2 reviewable energy, and aggressively pursue renewable
3 energy efficiency measures to help the State achieve its
4 AB 32 goals.

5 L.A. DWP appreciates the tremendous amount of
6 work that's gone into the development of the regulation by
7 each one of the Board members, the ARB staff, other agency
8 staff, and many other stakeholders. We submitted written
9 comments on both 15-day packages.

10 First, we support the administrative allocation
11 of allowances to the electric utilities. The allocations
12 combined with the existing State mandates and goals for
13 coal transition, RPS and energy efficiency will set
14 parameters for L.A. DWP to transition its resources and
15 dramatically reduce its greenhouse gas emissions in a
16 manner that is much more sensitive to our local rate
17 payers, many which come from low-income communities.

18 Second, we support the option for publicly-owned
19 utilities to directly surrender allowances to ARB for
20 compliance. This will save the administrative cost of
21 consigning to auction and purchasing back the same
22 allowances with no environmental benefit.

23 We appreciate the course you have taken. There
24 are two issues that we would kindly ask be further
25 examined prior to adoption.

1 First, we ask that the resource shuffling
2 provisions in the regulation provide greater clarity so it
3 reflects our mutual interest to incentivize early
4 divestiture of high-emitting sources. In particular, L.A.
5 DWP would like certainty that divesting its ownership
6 interest in the Navajo generating station in Arizona will
7 be treated as an emission reduction and not be considered
8 resource shuffling.

9 We appreciate the language that's in the
10 Resolution right now that provides directive for us to
11 continue to work with the Executive Director and with the
12 staff to ensure that the regulation does not discourage an
13 early transition from coal, but that we are able to come
14 up with something that works for all of us.

15 Second, L.A. DWP has concerns with amendments to
16 the definition of electricity importer. As both a
17 regulated provider and a transmitter of energy for others,
18 we are concerned that the shifting of the compliance
19 obligation from the entity that owns the electricity
20 that's being imported to the entity that's physically
21 scheduling the power has broader implications if possible
22 unintended consequences for specified resources. Cindy
23 Parsons from the L.A. Department of Water and Power will
24 get more into that issue.

25 Finally, I just want to thank you for the

1 opportunity you've given us to make sure that L.A.'s voice
2 has been heard. We do think L.A.'s voice has been heard
3 in this proceeding. We look forward to continuing to work
4 with you, because we understand the success of the AB 32
5 is very much dependent on the success of Los Angeles. The
6 more emissions that we are able to reduce, I think the
7 more success we are going to have. We take our
8 responsibility very, very seriously. And we look forward
9 to strengthening our partnership with the Air Resources
10 Board.

11 CHAIRPERSON NICHOLS: Thank you.

12 Cindy Parsons.

13 MS. PARSONS: Good afternoon. My name is Cindy
14 Parsons with the Los Angeles Department of Water and
15 Power.

16 As Cindy Montanez mentioned, I'm here to bring to
17 your attention issues that we have identified with regards
18 to the definition of electricity importer and the
19 consequences that has on how electricity in ports are
20 treated.

21 The second 15-day package, there were some
22 revisions to the definition that shift the point of
23 regulation from the owner of the electricity to the
24 scheduler or the transmission provider. This change seems
25 contrary to the point of regulation that was recommended

1 to ARB by the CPUC and CEC, which was the first deliverer
2 point of regulation is the entity that owns the
3 electricity as it is delivered to the grid in California.
4 The point of regulation was vetted at the Energy
5 Commission for over a year, and they rejected proposals
6 that made schedulers the point of regulation and went with
7 making the owner of the electricity the point of
8 regulation.

9 For the past three years, during development of
10 the cap and trade regulations, everything has been
11 designed around the first deliverer approach based on
12 ownership. It seems strange that it would be changed at
13 the very last minute like this.

14 Changing the definition of electricity importer
15 by deleting three words, "holds title to" and substituting
16 "delivers" make all the difference when it comes to who is
17 responsible for reporting the import and satisfying the
18 compliance obligation.

19 Here are a few examples of issues created by this
20 change: Allowance allocation.

21 Allowances were allocated to each utility on
22 behalf of their customers. If utilities are not
23 responsible for reporting their own imports, some
24 utilities will be over-allocated and other entities will
25 have to cover those emissions.

1 The cap and trade regulation requires each
2 utility to be in compliance with the reporting regulation
3 in order to receive their annual allocation. If
4 electricity is reported by another entity, it is outside
5 the control of the utility. And if that other entity is
6 not in compliance, could that prevent the utility from
7 receiving their annual allocation?

8 These are just a few of the problems created by
9 the revision to this definition. In addition, this change
10 was proposed during the second 15-day package and was not
11 vetted before it was incorporated into the final version
12 of the regulation. L.A. DWP asked the Board direct staff
13 to either stick with the original point of regulation that
14 was recommended to ARB by the CPUC and CEC or work with
15 stakeholders to fully explore the consequences of changing
16 the point of regulation before changing it.

17 If I may just finish.

18 Keep the door open to fix this issue next year.

19 And if you have any questions, I'd be happy to
20 entertain them. Thank you very much for your
21 consideration.

22 CHAIRPERSON NICHOLS: Thank you. No questions.
23 Thanks.

24 Jake Alarid.

25 MR. ALARID: Good afternoon. My name is Jake

1 Alarid. I'm the past National Commander of the GI Forum.
2 I'm also on the Board of the Latino Institute for
3 Corporate Responsibility. I live in Whittier, California,
4 L.A. County.

5 The California Air Resources Board will vote today on new
6 regulations that will cost energy producers and energy
7 intensive industry millions of dollars if they want to
8 continue to operate in California. This new rule, part of
9 CARB's implementation of a cap and trade system under AB
10 32, will require large energy uses to purchase emission
11 allowances to stay in business and provide the fuels,
12 products, and services essential to our every-day lives.

13 We are not opposed to a well designed Cap and
14 Trade Program as an element of California's greenhouse gas
15 emissions reduction strategy. However, we have
16 significant concerns that the rule currently contemplated
17 by the California Air Resources Board will increase energy
18 costs and lead to losses of businesses, jobs, and economic
19 activity. This directly contradicts not only the
20 requirements under AB 32 that such regulations must
21 minimize negative economic impacts, but also the Governor
22 and Legislature's stated goal of preserving and creating
23 jobs as the most important means of fueling our state's
24 economic recovery.

25 The rule as written includes unnecessary ten

1 percent reduction in the amount of carbon emission
2 allocations for major industries. That means refiners
3 will be required to purchase a ten percent emission at a
4 significant cost. This so-called haircut is an
5 unjustified and not needed to meet the cap. By forcing
6 trade exposed industries to purchase up to ten percent of
7 emission allowances, CARB will be, in effect, imposing a
8 new tax on regulated entities. We believe this tax will
9 lead to a dramatically higher energy cost that will harm
10 virtually every sector of our economy.

11 Refineries that process mainly heavy high sulfur,
12 crude oil, receive crude oil via pipelines from California
13 and both foreign and domestic crude oil by tanker via the
14 Port of Long beach. Refineries produce a high
15 transportation fuel such as gasoline, diesel fuel, and jet
16 fuel. Other products include fuel-grade petroleum coke.
17 Refineries also produce California Air Resources Board
18 gasoline using ethanol to meet the government mandated OSH
19 ten requirements. Refined products are distributed to
20 customers in southern California, Nevada, and Arizona by
21 pipeline and truck.

22 With twelve percent unemployment in California,
23 we cannot afford businesses shutting their doors and
24 moving their businesses to another state. Thousands of
25 currently employed people could be affected by losing

1 their job, not to mention the domino effects on small
2 businesses and communities as people become unemployed.

3 As past National Commander of a veterans
4 organization, I'm also concerned on veteran unemployment,
5 especially Iraq and Afghanistan returning veterans. This
6 state of California needs to retain its workforce, create
7 more jobs, and bring businesses into California and
8 maintain its business competitiveness. Thank you.

9 CHAIRPERSON NICHOLS: Thank you, sir.

10 Tim Maples.

11 MR. MAPLES: Thank you very much for having this
12 opportunities.

13 I'm a member of the Western States Petroleum
14 Association. I'm employed by National Oilwell Varco out
15 of Houston, Texas. We have operations in Bakersfield,
16 California.

17 It's kind of ironic to see who's on what side of
18 the issue. I notice that the municipalities, the
19 geothermal plants, and the hydro electric plants are over
20 here, and us bad guys are over there that do the fossil
21 fuels.

22 Basically, what I want to say is that our company
23 is a job provider. We just purchased a Los Angeles-based
24 company for \$770 million, 2900 employees. And they
25 produced my little company back ten years ago for a nice

1 figure. As an entrepreneur, I had a nice chance to grow
2 my business. I had 19 employees. And I think that is
3 what's at stake here.

4 It's kind of troubling to me to see that the
5 carbon offsets that we're going to be debating and the
6 haircut I keep on hearing about, that these boats that
7 come into the Long Beach harbor and L.A. to be off-loaded,
8 they don't have the constraints. They don't deal with the
9 same issues that we do.

10 We need to keep our domestic production and our
11 domestic energy policy to help the economy of Bakersfield
12 and of California. We are the highest generating revenue
13 base in the state through fuel taxes and local, state and
14 local taxes and city taxes.

15 When you put your fuel in the car, I know
16 everyone knows here that we are also supplementing the
17 green technology. We pay for one of the largest wind
18 farms in the Tehachapi area in northern Kern County. We
19 also have one of the largest geothermal facilities just
20 north of us at the China Lake Naval Weapons Center,
21 geothermal project.

22 We are very, very conscious of what's going on.
23 We want to be in support of growing California, growing
24 jobs. Thank you very much.

25 CHAIRPERSON NICHOLS: Thank you.

1 MR. LARREA: Good afternoon. John Larrea with
2 the California League of Food Processors.

3 I want to thank you, first of all, for inviting
4 us to be able to comment here.

5 The California League of Food Processor is a
6 trade association representing fruit, vegetable, and dairy
7 processors in California.

8 And just to keep it short, I wanted to let you
9 know that we do echo the concerns of both the Cal Chamber
10 and the AB 32 Implementation Group in terms of the
11 incompleteness of this particular regulation at this
12 particular time.

13 It's best to remember that industries like ours,
14 the medium-size industries, are the job generators for
15 California. We are going to have to generate jobs in
16 order to get out of this recession. If AB 32 continues to
17 go over the next four or five years, we're going to have a
18 very difficult time increasing our processes as well as
19 eliminating this. And it's going to cost us a lot of jobs
20 and a lot of money.

21 That said, I just want to say that the regulation
22 for us is still incomplete, and there still seems to be a
23 misunderstanding how this is going to impact ag and food
24 processing. One of the examples is the NAICS code. Food
25 processors are still lumped together under a three-digit

1 NAICS code. That means you're putting seasonal processors
2 such as fruit and vegetable, lumping them in with meat
3 processors and dairy processors that operate on a 24/7/365
4 day operation. These are completely different operations,
5 and you cannot lump us all together just in one. You need
6 to understand what the differences are in our industry.

7 Secondly, on benchmarks, we have been working a
8 year-and-a-half now with the staff on coming up with a new
9 benchmark. We've shown them why the old equation didn't
10 work, and we presented new equations there. But we have
11 yet to establish benchmarks for industry that represent
12 our actual operating procedures out there.

13 The original benchmarks, which are set way too
14 high at 85 percent, are not reflective of California, nor
15 of the nation, where this it was supposed to be going in
16 the first place. So we need to establish that again.

17 Finally, on our leakage risk, we've been set at a
18 medium leakage risk. This means we are going to be
19 increasing our costs for each compliance period. You've
20 got to remember, we operate in some of the highest
21 unemployment areas in the state. These people are not
22 facing twelve percent unemployment. They're facing 18 to
23 24 percent unemployment. These are communities of 5,000,
24 15,000 people where if we end up throwing hundreds of
25 thousands of dollars away on allocations means that we may

1 end up losing 50, 100 people. And that ripples down to
2 those communities.

3 The food processing industry represents less than
4 one-half of one percent of the total emissions in
5 California. And that's based on the most recent data
6 that's just been posted by here.

7 And we feel that you need to understand our
8 industry, and you need to understand the impacts of AB 32
9 and specifically of the cap and trade on us before you
10 roll us into this. It may be a better idea to move us
11 into this on 2015 as we have one of the largest natural
12 gas users here. This will give us time to understand the
13 industry and what the impacts are going to be.

14 Finally, I would like to thank the Board because
15 you will be taking up another study to study our industry.
16 And we are appreciative of that. It just goes to show
17 that really you need to understand the industry before you
18 put us into this.

19 CHAIRPERSON NICHOLS: Thank you.

20 Emily Rooney.

21 MS. ROONEY: Good afternoon, Madam Chair and
22 members of the Board.

23 My name is Emily Rooney. I'm here with
24 Agricultural Council of California.

25 Ag Council is a public policy association

1 representing approximately 15,000 farmers ranging from
2 farmer-owned businesses to the world's best known brands.
3 Many of our members will be participating in cap and
4 trade. And our members participate in global and domestic
5 markets and routinely work to improve their environmental
6 footprint. Not only are the consumers demanding it, but
7 it's also the right thing to do.

8 Ag Council has been working with staff through
9 this process, and we still have a few outstanding issues.
10 The benchmarking issue that John just recently cited, but
11 also we are concerned that the cost containment measures
12 in this regulation are not strong enough. In fact, a
13 price floor of \$10 per allowance we think is
14 counterproductive to some of these efforts.

15 But our biggest concern for this effort for this
16 regulation still remains the same as it did in December.
17 We believe the food manufacturing industry should be moved
18 from a medium to a high leakage risk category due to the
19 international domestic market competition and the
20 inability to pass on costs.

21 That said, Ag Council supports the language in
22 Resolution 11-32, page 11, that allows staff to take a
23 deeper look at food manufacturing. And we look forward to
24 collaborating with staff on that project.

25 Thank you very much.

1 CHAIRPERSON NICHOLS: Thank you. Appreciate the
2 collaboration that's been ongoing here.

3 Jeff Clark.

4 MR. CLARK: Good afternoon. My name is Jeff
5 Clark, Secretary/Treasurer of the United Steelworkers
6 Local 5 in Martinez, California. We represent
7 approximately 1800 workers in the refining and petro
8 chemical industry, including Chevron, Shell, and Tesoro
9 refineries.

10 We rise in opposition to the proposed ten percent
11 reduction in credits. We don't need to provide any
12 encouragement in this industry to encourage refining
13 companies to import finished product. We've already seen
14 the impact of importing finished product on the east
15 coast. There are currently three refineries on the east
16 coast that are up for sale and if they are not sold in the
17 next few months will be closed.

18 We think there is a direct correlation to the
19 level of imported finished product and those refineries
20 futures. We think the reduction of the ten percent
21 credits would only encourage refining companies to import
22 finished products into the state of California. We think
23 it's an economic issue for the state, and we think that
24 the importation of finished product will put jobs in
25 jeopardy. We encourage you to reconsider the ten percent

1 reduction in credits.

2 I would like to say on my own personal opinion,
3 not speaking from an organization, I was interested in the
4 concept that was mentioned by Dave Campbell who's the
5 Secretary/Treasurer from Local 675 about exploring options
6 for the top ten percent that you're considering
7 eliminating. And I think it's a good discussion to have
8 about possibly finding ways to make sure that those aren't
9 turned into profit and those are turned into meaningful,
10 environmental, and safety changes for the workers in those
11 facilities. Thank you very much.

12 CHAIRPERSON NICHOLS: Thank you.

13 BOARD MEMBER BERG: Madam Chair, may I ask him a
14 question?

15 Mr. Clark, could I just ask a question quickly?

16 I've been working on this ten percent quite a
17 bit, even from when we voted in December.

18 But as I've learned, we're looking at a range
19 here of companies that, of the ones that you mentioned,
20 some that will actually do very well and have some
21 allowances to sell to some that are short. And it's
22 causing a problem. So if we eliminate the ten percent,
23 just for sake of argument, we're not going to eliminate
24 the problem that you're talking about, because those that
25 are doing well will do better and those that are having

1 problems will just have a little less problems.

2 MR. CLARK: I agree.

3 BOARD MEMBER BERG: So don't you think part of
4 the problem is addressing the gap? And maybe I -- I mean,
5 I'm sure we're going to have a lot of discussion about
6 this. But it really isn't the ten percent itself. It's
7 really the gap between those that came out well in the
8 formula versus those that are really short in the formula.

9 MR. CLARK: Correct. I think that's why you
10 don't see those that came out well in the formula in the
11 room today. We would encourage --

12 BOARD MEMBER BERG: But again, time after time,
13 we've heard let's just reduce -- let's just get rid of the
14 ten percent.

15 I would submit to you that this group up here if
16 we were to vote to get rid of the ten percent, these
17 members would go home happy, but the problem wouldn't be
18 resolved. So that's all I'm trying to say.

19 MR. CLARK: I agree with you. And we would
20 strongly encourage you to reconsider this whole ten
21 percent issue and the whole disparity you're talking
22 about. We would love for you guys to take more additional
23 time to consider this. And we'd be happy to continue to
24 be part of the process.

25 I know the steelworkers have been. We have a

1 good history of working with Blue Green Alliance. And
2 we'd love to be part of an ongoing discussion of this
3 issue in particular as it relates to refineries.

4 BOARD MEMBER BERG: I understand what you're
5 saying, and I don't want to belabor the point.

6 But again, it isn't just the ten percent. I
7 think we're just looking at the gap. And I'm sure the
8 Board will have lots of discussion about it. But I just
9 want to make sure that I understood the issue. Thank you.

10 CHAIRPERSON NICHOLS: Okay. Mike Rogge.

11 MR. ROGGE: Mike Rogge with California
12 Manufacturers and Technology Association. We are members
13 of the AB 32 Implementation Group and endorse their
14 comments regarding the elements of the rule that would
15 unnecessarily raise costs on manufacturers, put them at a
16 competitive disadvantage, and lead to economic and
17 environmental leakage.

18 I especially want to highlight how those new
19 costs will impact the future of California manufacturing.

20 We have already difficulty attracting
21 manufacturing investment into the state. We have data
22 from a national survey firm that tracks level of
23 investments in new or expanded manufacturing facilities
24 across the country. Between 2007 and 2009, the average
25 rate of investment across the country was \$1,335 per

1 resident. But in California, we were only able to track
2 \$235 per resident.

3 This is far less than our fair share. We have 11
4 percent of the U.S. manufacturing force, but we attract
5 only 1.3 percent of new U.S. manufacturing investment.
6 If we want to retain manufacturing jobs, we need to
7 improve this rate of investment. We can't count on
8 venture capital investment to make up the difference.

9 Since 1995, we have been getting more than 45
10 percent of the country's venture capital. But this has
11 not been translating into manufacturing jobs and
12 investment in California. We believe that the high cost
13 and the difficult business climate is the reason for the
14 low rates of manufacturing investment. Additional
15 burdensome costs from an overly expensive cap and trade
16 will further discourage new investment just when we should
17 be sending a strong signal that California wants
18 manufacturing jobs and investment.

19 We recommend that CARB not approve the rule until
20 issues that would raise costs on state manufacturers are
21 resolved. Thank you for the opportunity to speak today.

22 CHAIRPERSON NICHOLS: Thank you.

23 Berman Obaldia.

24 MR. OBALDIA: Good afternoon, Madam Chairwoman,
25 members, Mr. Goldstene. Good to see you.

1 Berman Obaldia representing the California
2 Hispanic Chamber of Commerce.

3 You've heard testimony from some of the other
4 members of the Chamber earlier just a few minutes ago.

5 What I'm here to do is echo the sentiments of what
6 my colleagues have said, but also enter into the record a
7 statement by David Lizárraga, one of the preeminent
8 hispanic business leaders in the only in California but
9 throughout the country. He was unable to attend due to
10 keeping his business in shape, but wanted me to convey his
11 thoughts via his letter that will hopefully be entered
12 into the record.

13 I'm speaking on behalf of the David Lizárraga,
14 past president of -- he's the President of TELACU, also
15 the immediate past Chairman of the United States Hispanic
16 Chamber of Commerce.

17 "First, I'd like to commend and your
18 staff on your efforts with respect to
19 implementing AB 32. This is a monumental task,
20 and your actions will have far ranging impacts
21 throughout the California economy. That is why
22 extreme care must be taken to ensure that the Cap
23 and Trade Program you adopt does not have a price
24 tag that will make California dire economic
25 situation worse and ultimately doom the policy to

1 failure.

2 "As you know, other U.S. states in the
3 Western Climate Initiative, as well as the
4 federal government, have decided to postpone
5 action on cap and trade because the cost to
6 businesses and consumers would be too high.

7 "There seems to be a significant
8 disconnect between this conclusion and the
9 direction of the California-only cap and trade
10 proposal.

11 "Since California is going it alone, we
12 should do everything we can to make cap and trade
13 as affordable as possible.

14 "With all respect, the proposed
15 emissions allowance fees would do the opposite by
16 adding the arbitrary costs that does nothing to
17 directly take into account the investment that
18 providers and users of that energy would have to
19 make in order to comply with the cap and pass
20 along to their consumers along with the emissions
21 allowance fee.

22 "As is the case with any regressive tax,
23 the emissions fee will hit hardest those least
24 able to afford it.

25 "As I said earlier, I wear two hats:

1 The business hat of the Chamber and the business
2 and nonprofit hat of TELACU. In both situations,
3 I represent a significant segment of the
4 community that suffers from disproportionately
5 high unemployment and faces unique economic
6 challenges.

7 "With the state budget growing by the
8 hour, there is no pressure -- there is more
9 pressure for higher taxes, while at the same time
10 there are fewer and fewer resources available in
11 the social safety net, which is increasingly
12 strained. This is not the time to impose
13 dramatically higher energy costs. As proposed,
14 that is what this cap and trade regulation will
15 do.

16 "We hope you will seriously consider
17 doing away with the emission allowance fee to
18 create a fair less costly policy.

19 "Thank you for your consideration."

20 CHAIRPERSON NICHOLS: Thank you. I'm not quite
21 sure what the emission allowance fee you're referring to.
22 Does anybody? No. There's an AB 32 fee, which is a
23 separate item we're going to be considering.

24 Lori Bateman.

25 MS. BATEMAN: Hi there. My name is Lori Bateman.

1 I work for Valero, but I'm not actually representing
2 Valero.

3 I've been at the refinery in Benecia for 23 years
4 in operations as an operator. I support continuous
5 improvement of our state as an environmental world leader
6 in emissions reduction. I have even put solar panels on
7 my house. However, I don't support jeopardizing my jobs
8 for what will likely be a net negative effect on climate
9 change.

10 In calculating the effectiveness of AB 32, the
11 agency cannot take credit for the emissions improvement as
12 a result of a California refinery getting shut down. The
13 loss of production means that we need to make up the
14 difference with foreign fuel from other states and
15 countries that don't have our strict environmental
16 regulations.

17 That's what I mean by negative effect on climate
18 change. A refinery with some of the lowest emissions in
19 the world gets shut down and its production gets replaced
20 by gross polluters elsewhere in the planet. A loss of a
21 refinery in California due to AB 32 must reflect as a
22 black eye on the agency and in no way a victory due to the
23 calculated emission reductions from the refinery being
24 shut down.

25 Proposition 23 didn't pass because environmental

1 groups slandered us by saying that we're Texas big oil
2 showing pictures of big black smoke billowing from the
3 refinery. You know we don't operate our refineries like
4 that.

5 We're just California citizens desperate to keep
6 our jobs in a collapsing economy. I'm a single mom, and
7 know jobs like mine just aren't out there. If AB 32 is so
8 onerous it causes California refineries to leave, it is a
9 negative impact on the environment and the California
10 economy. I, like my co-workers, am scared. I wish that
11 more of the USW was here. We're scared you're going to
12 regulate our employers right out of business and our
13 families and communities dependent on our industry will
14 suffer for nothing.

15 Regarding the comment ConocoPhillips made \$14
16 billion last year, why can't it invest some in reducing
17 emission and saving jobs? My reply: I'll -- just at the
18 Benecia refinery, we've put in more than a billion dollars
19 just to invest to get in compliance with CARB regulations.

20 Refineries in California are money pits.
21 Companies can keep dumping their profits in these money
22 pits as they already have to comply with California
23 environmental regulations, or they can pull out of
24 California and invest in refineries elsewhere where
25 they're not penalized and are more profitable. That's

1 what we're all afraid of. Thank you.

2 CHAIRPERSON NICHOLS: Gary Gero.

3 MR. GERO: Good afternoon, Madam Chair, members
4 of the Board. Thank you very much for this opportunity.
5 I take note of its historic nature.

6 I'm Gary Gero, the President of the Climate
7 Action Reserve. We are a greenhouse gas registry with
8 over ten years of experience and nearly 500 offset
9 projects in our system, having certified some nearly 20
10 million emission reductions at this point. We talk from
11 real experience about the role of offsets.

12 And I think the important thing -- we've heard a
13 lot about offsets today. I think one of the most
14 important things is not, in fact, the cost containment
15 mechanism, although that is very important. But these are
16 real emission reductions that occur at unregulated sources
17 throughout the economy. And offsets give you that
18 opportunity to go after those places where you're not
19 going to regulate or simply cannot regulate and actually
20 achieve real emission reductions. I think that's an
21 important point to always remember.

22 We've also heard some comments about offsets
23 supply and we have some experience in this regard. We've
24 done our own projections based on the projects in our
25 system. I can tell you from our projections we believe

1 that the four protocols alone are sufficient to meet
2 demand in the first compliance period.

3 Now, that said, I think for robust supply and for
4 varied supply, we certainly urge you to adopt additional
5 high quality standardized performance-based protocols that
6 have gone through a public process.

7 One of the key things I really want to talk about
8 today is program integrity. And we talk a lot about the
9 importance of integrity of emission reductions. We view
10 ourselves as an environmental organization. And I make
11 these comments jointly with the verified carbon standard
12 association with whom we've had some relationship.

13 Offset registries provide the on-the-ground
14 experience to oversee and review both projects and
15 verifiers. It's our job to actually make sure that what
16 is occurring is real.

17 And in that regard, we believe that registries
18 should held to a very high standard. In fact, as high a
19 standard as verification bodies themselves, if not higher.
20 In particular, we think that ARB can and should actually
21 improve the regulation, strengthen the regulation to
22 ensure that registries meet very high financial,
23 competency and conflict of interest standards.

24 Finally, let me just say this is -- and started
25 with this -- historic moment, not only for California. We

1 are building the new green economy. And this is going to
2 create new jobs and new opportunity here in California.
3 We will be a leader. But also around the world. We spend
4 a lot of time talking about people around the world. And
5 every day, we hear about the California experience.
6 People want to know what we are doing. They are looking
7 to us leadership and saying if California can do it and
8 demonstrate it's doing it correctly and actually getting
9 the job done, they, too, will emulate. I think we will
10 see California's leadership here drive regional action,
11 national action, and international action.

12 CHAIRPERSON NICHOLS: We have one more witness
13 who's not on the board but he signed up with the Clerk,
14 Eric Emblem.

15 MR. EMBLEM: Good afternoon, Board.

16 My name is Eric Emblem. I'm here representing
17 the Joint Committee on Energy and Environmental Policy.
18 This was a Committee put together by the California locals
19 unions of the Sheet Metal Workers National Association.
20 We represent 25,000 workers who work for 600 employers
21 throughout the state. We have 15 training facilities
22 located geographically throughout the state. And we are
23 here today to testify in favor of the cap and trade
24 regulation as you proposed it and suggest you pass it.

25 We also realize that any regulation and anything

1 we put in place can be improved upon. There is no such
2 thing as the perfect regulation. And moving forward, you
3 know, we want to work with you on improving that.

4 Our stake in this -- and we believe very strongly
5 this is a job creator and not a job taker, is going to be
6 in the efficiency field and in transforming these
7 industries that are going to be challenged at first, but
8 forced to become efficient in the second stage to create
9 jobs. Those jobs are going to effect all of the workers
10 whether it's manufacturing or construction or efficiency.
11 We feel strong that by implementing this now that we're
12 going to send a message.

13 I agree with a lot that's been said here. The
14 automobile emission standards started in California. They
15 rolled out across the country and across the world. The
16 Title 26 and the building energy efficiency standard
17 started here in California and they moved out across the
18 country.

19 I, too, believe this cap and trade, as you're
20 going to vote on, will do the same. It's going to be a
21 job creator. It's going to be good for the economy, good
22 for the environment. It's going to take a while. We're
23 here to support you. Thank you very much for all your
24 hard work.

25 CHAIRPERSON NICHOLS: Thank you. That is the

1 last witness as far as the list I have is concerned. Does
2 anybody know of any others?

3 If not, I think we're going to close the hearing,
4 and I will ask if you have any final comments. I'm sure
5 the Board members are going to ask a lot of questions and
6 we'll be engaging in some interaction. If you want to add
7 any concluding remarks at this stage, you're welcome to.

8 EXECUTIVE OFFICER GOLDSTONE: Only to say we've
9 been listening carefully and look forward to Board
10 discussion and will do our best to respond to any
11 questions.

12 CHAIRPERSON NICHOLS: I'm going to close the
13 record as far as this agenda item is concerned and let
14 people know this is it as far as documents or testimony
15 for the record.

16 I think what we should do is actually turn to the
17 Resolution then. I believe everyone has copies in front
18 of them. And we should probably just to keep this formal
19 process have a motion and a second, and then we can start
20 looking at amendments that people may want to add to the
21 Resolution, if that's okay.

22 Dr. Balmes.

23 BOARD MEMBER BALMES: Do we do the main
24 Resolution first?

25 CHAIRPERSON NICHOLS: We do have the approve the

1 Resolutions in order I believe. Correct.

2 CHIEF COUNSEL PETER: We're going to do the
3 environmental evaluation first before we can start talking
4 about approving the project.

5 CHAIRPERSON NICHOLS: Correct. Okay.

6 BOARD MEMBER BALMES: How about ex partes?

7 CHAIRPERSON NICHOLS: Yes. Good point. At this
8 point, do we have ex partes people want to or need to
9 disclose? All right. We can start down at the far end.
10 No.

11 BOARD MEMBER BERG: Yes. I'll go ahead, Board
12 Member Berg.

13 On October 13th, I had a call with WSPA. And I
14 will turn in the names for you.

15 On October 17th, I met at Ellis Paint Company
16 with Calpine.

17 On October 18th, I met with ConocoPhillips, PG&E,
18 and I had a call with CCEEB.

19 On October 19th, I had a call with the State
20 Water Contractors, with the independent energy producers,
21 and with NRDC, the Union of Concerned Scientists. Thank
22 you.

23 CHAIRPERSON NICHOLS: Dr. Balmes.

24 BOARD MEMBER BALMES: Yes.

25 On September 29th, I met with Gary Gero, Climate

1 Action Reserve. And we talked about pretty much what he
2 just testified about.

3 On October 14th, I had a call with CCEEB.
4 Participants were Bob Lucas, Mik Skvaria, and Lisa
5 Rodriguez.

6 I also had a call that day with WSPA.
7 Participants were Mike Wang, David Arrieta, Lloyd Garcia,
8 and Barbara Cornio.

9 October 17th, I met with Stephanie Williams of
10 ConocoPhillips and also that day with PG&E. Participants
11 were Dean Kato, Kate Beardsley, and Mark Krausse.

12 CHAIRPERSON NICHOLS: Okay.

13 BOARD MEMBER D'ADAMO: October 5th, meeting with
14 State Water Contractors. Participants were Curtis Creel,
15 Tim Haines.

16 October 11th, call with Gary Gero from CAR.

17 Same day, Stephanie Williams with Conoco.

18 October 13th, call with WSPA. Participants were
19 Kathy Reheis-Boyd, Mike Wang, Barbara Corinalio.

20 Same date October 13th, call with LS Power,
21 Jennifer Chamberline and Lisa Rodriguez.

22 October 14th, meeting with Calpine, Kassandra
23 Gough and Barbara LeVake.

24 October 14th, call with CCEEB, Bob Lucas, Mik
25 Skvaria and Lisa Rodriguez.

1 October 18th, I testified before the Rural Caucus
2 Committee in Fresno. And at that meeting, the Ag Council
3 and California League of Food processors, a number of
4 others from the public where we had a dialogue about the
5 food processing provisions.

6 October 18th, call with PG&E, Dean Kato, Kate
7 Beardsley.

8 October 19th, call with Independent Energy
9 Producers, Steven Kelly, Jan Smutny-Jones.

10 And then October 20th, University of California
11 Tony Garvin.

12 CHAIRPERSON NICHOLS: Supervisor Roberts?

13 BOARD MEMBER ROBERTS: I have a few to report.

14 On October 6th, I had a meeting with Stephanie
15 Williams and Chris Connors representing Conoco Phillips.

16 October 7th, I met with State Water Contractors,
17 including Curtis Creel, Tim Haines.

18 And on October 12th, I met with Brian Prusnick,
19 San Diego Gas and Electric; Frank Harris, Southern
20 California Edison; and Kate Beardsley, PG&E.

21 CHAIRPERSON NICHOLS: Ms. Kennard, none.

22 Dr. Sperling.

23 BOARD MEMBER SPERLING: October 13th, a call with
24 Calpine. Number of people there that included actually
25 someone from Lockheed, Cassie Gillson, I guess.

1 October 14th, a call with CCEEB, Bob Lucas, Lisa
2 Rodriguez, Mik Skvaria.

3 October 19th, a meeting with PG&E at U.C. Davis,
4 Dean Kato, and Kate Beardsley.

5 And a phone call on the 19th with WSPA. And I
6 forgot to write down who was on that phone call.

7 CHAIRPERSON NICHOLS: Well, as the only full-time
8 member of this Board, you can appreciate that I have met
9 with the vast majority of the people that spoke before us
10 today. In fact, if you didn't meet with me, there's
11 something wrong and we should have had a meeting before
12 today.

13 But in all seriousness, my calendar is public
14 record and it will be part of the record if anyone wants
15 to look at it. But I did have extensive discussions with
16 really all the groups that are affected in one place or at
17 one time or another. And I think I have a pretty good
18 sense of both the hopes and the fears and concerns and
19 where we are today. And I appreciate all the people who
20 educated me about some of the very thorny details that
21 we've worked our way through.

22 So with that, I think we can probably deal with
23 the responses to comments and the -- on the functional
24 equivalent document proposed findings and so forth. Do
25 that all at once.

1 BOARD MEMBER D'ADAMO: I make a motion that we
2 adopt that Resolution.

3 BOARD MEMBER D'ADAMO: Second.

4 CHAIRPERSON NICHOLS: Second.

5 Any further discussion on that piece of this?

6 If not, all in favor say aye.

7 (Ayes)

8 CHAIRPERSON NICHOLS: And then we can move to the
9 major piece here, which is the Resolution, which will
10 direct staff as to what we want to see them do next with
11 respect to this program.

12 So if you would like to begin, anybody? I have a
13 couple of things, but Sandy, you look like you're ready to
14 jump in.

15 A couple of areas where it seems as though we
16 have continuing concerns. One I know Supervisor Yeager
17 raised with me during the break is about the need to
18 harmonize our State and local programs. I don't know if
19 you had any specific language on that that you wanted to
20 propose.

21 What was recommended by the air districts I think
22 was mainly that we tell you to keep talking with them, but
23 also that we direct you to come back and report. Maybe we
24 should park that along with some other issues in the come
25 back and report category where you know people are seeking

1 more than just a statement of good intentions on our part
2 to keep communicating or keep working on something, but
3 actually want to have the Board set deadlines for things
4 to be completed.

5 And I think -- although I'm sure if I were in
6 your choose, staff, I would not like that. I think it's
7 probably healthy that we do that just to keep all of us on
8 our toes. So you could be thinking about whether it was
9 April they were proposing that we get a progress report on
10 how we're doing with the districts. I believe that was
11 the language that was presented.

12 EXECUTIVE OFFICER GOLDSTONE: I think they wanted
13 actually February. I think in their proposed language it
14 said first quarter.

15 CHAIRPERSON NICHOLS: First quarter. You're
16 right. Sorry.

17 EXECUTIVE OFFICER GOLDSTONE: I'll just read the
18 language that they proposed.

19 "The Board further directs the Executive Officer
20 to report back periodically to the Board on the nature and
21 extent of this partnership, with the first report due in
22 the first quarter of calendar year 2012."

23 I don't know if you want to go --

24 CHAIRPERSON NICHOLS: Is that acceptable?

25 EXECUTIVE OFFICER GOLDSTONE: I'm not sure what

1 they mean by nature and extent of the partnership. We'd
2 like to report on the work we are doing.

3 CHAIRPERSON NICHOLS: You could say the state of
4 the partnership is great.

5 EXECUTIVE OFFICER GOLDSTENE: There is no issue.
6 We're planning on keeping the Board involved.

7 CHAIRPERSON NICHOLS: I think the concerns now
8 are down to some pretty basic issues that will affect
9 people who are participants in the market as far as
10 permits and what's going to be in the permits and what's
11 going to come to ARB. I think that's what I understood
12 they were primarily concerned about.

13 EXECUTIVE OFFICER GOLDSTENE: Both on the
14 permitting and adaptive management.

15 CHAIRPERSON NICHOLS: And implementing the
16 adaptive management.

17 EXECUTIVE OFFICER GOLDSTENE: We committed to
18 working with each other very closely.

19 CHAIRPERSON NICHOLS: I'm sure it's going to
20 affect the resource allocations.

21 EXECUTIVE OFFICER GOLDSTENE: Right. That's what
22 we would report back to you on.

23 BOARD MEMBER D'ADAMO: I think this goes without
24 saying, but my interest there is streamlining the process,
25 one-stop shop. Local air districts that are dealing with

1 them on permitting anyway, that's the whole point behind
2 it.

3 I hope this doesn't go to the local districts and
4 then they have one division over here and they're not
5 talking to each other. So the whole idea is to facilitate
6 this for those that are getting the permits.

7 EXECUTIVE OFFICER GOLDSTONE: Well, we'll do the
8 best we can. We're not involved in the permitting
9 process, but we want to make sure that the Title 5 permits
10 reflect a particular entity might have to comply under the
11 Cap and Trade Program.

12 And we also wanted to make sure that the
13 districts are able to work with us on the adaptive
14 management commitments we're making to monitor this.

15 CHAIRPERSON NICHOLS: I think it's a good idea to
16 just put this in as a quarterly report on specific
17 progress that's being made on issues. And that will give
18 everybody the incentive to keep moving on it.

19 There is another --

20 BOARD MEMBER ROBERTS: Chairman, I don't know who
21 authored this strike-out Resolution, but there is a lot in
22 it that I thought --

23 CHAIRPERSON NICHOLS: I'm not sure.

24 BOARD MEMBER BALMES: I think that's WSPA.

25 That's who gave it to me.

1 CHAIRPERSON NICHOLS: I don't know.

2 BOARD MEMBER ROBERTS: I gave reference to the
3 surveillance and marketing or monitoring --

4 BOARD MEMBER BALMES: That's a whole other set of
5 issues that Dr. Sperling raised about reporting back to
6 the Board about the economic situation, monitoring the
7 market. He brought that up in the context of the adaptive
8 management bifurcation Ms. Chang mentioned.

9 BOARD MEMBER ROBERTS: I didn't mean to
10 interrupt, if you want to keep the flow going. But I
11 thought we want to pick up on some of those things or at
12 least discuss them.

13 BOARD MEMBER BALMES: We definitely need to
14 discuss those.

15 CHAIRPERSON NICHOLS: Okay. I just started
16 because -- if you all would like to take a break for a few
17 minutes before putting your thoughts in order, that would
18 be okay, too.

19 BOARD MEMBER BALMES: It's actually PG&E, not
20 WSPA. Sorry. Both on the same day.

21 CHAIRPERSON NICHOLS: I don't have that document.
22 Somebody else is going to have to put it in front of me.

23 I had another one on page 11 where we have "be it
24 further resolved" with regard to the waste to energy
25 situation. And on that one, I believe they were looking

1 for a time deadline for the additional information to come
2 back to the Board to deal with their issue. And also
3 they're looking for assurances that we're going to be
4 reviewing all the best science that's available. And I
5 think that would be something that I would recommend that
6 we try to accommodate. It's not -- I know that they were
7 looking for some very restrictive language about peer
8 reviewed science and so forth. I don't think that's
9 necessarily a good idea. But I do think that we should
10 make sure that they understand that we are going to be
11 studying these issues. And we are going to be looking to
12 use the best science that's out there.

13 BOARD MEMBER D'ADAMO: I have a comment on that
14 one as well.

15 CHAIRPERSON NICHOLS: Sure.

16 BOARD MEMBER D'ADAMO: Just to reference life
17 cycle emissions, I think that's what they're looking to
18 do. And for whatever reason, that term of art is not in
19 the Resolution. Staff have any --

20 BOARD MEMBER BERG: Madam Chair, on that issue,
21 it does appear to me that some of the things that we are
22 talking about that there might be some philosophical
23 differences between the way we see them fitting into cap
24 and trade and the way they see themselves either not
25 fitting in.

1 So maybe the staff needs to come back to us on
2 specific areas and with our rationale for how we are
3 including them and how we see it fitting into the broader
4 picture and how we're either going to help them bridge the
5 gap they seem to have or come back to say that in studying
6 the issue and looking at the life cycle analysis that
7 there is a case that is credible not to include them.
8 Because what I keep hearing from the waste to energy
9 people is they shouldn't be included or they should be
10 given free allowances.

11 And I think one of the things that we need to all
12 understand, there is only 100 percent of the allowances
13 available. And they've all been allocated. So when we
14 talk about giving a little here or giving a little there,
15 we then have to talk about who we're going to take them
16 away from. So not that that isn't an appropriate
17 discussion. It's just we can't forget that.

18 CHAIRPERSON NICHOLS: No. I appreciate that. I
19 liked the language that was in here before. And I've had
20 some discussions about this in the past I know with some
21 of you about the need to work with CalRecycle and others
22 to have a broader view of emissions reduction
23 opportunities in that area. And that moves over to the ag
24 sector. It's a much bigger issue than just these
25 municipal waste burners.

1 Re-litigating the issue about how good they are
2 versus other options just continues an old fight, which we
3 probably can't do anything to resolve anyway.

4 I'm not intent on making changes to this
5 language, other than I think that we should add something
6 about using good science while we're doing it and probably
7 setting a deadline for ourselves to bring this back to the
8 Board again. But may be the second quarter. Summer.
9 June.

10 DEPUTY EXECUTIVE OFFICER FLETCHER: Yeah. I
11 think the language is fine that's being proposed, and we
12 would propose to change that both in there is a whereas
13 clause as well as a be it further resolved clause. So we
14 would make the appropriate changes in both of those.

15 And it is a broader issue looking at not just the
16 waste to energy, but also the competitive issues
17 associated with what's creating their problem, which is
18 landfills are not necessarily in the program either. So
19 the solution to this may be part of this comprehensive
20 evaluation.

21 So it is a complicated issue. We have responded.
22 I think the comment was made that we didn't do the
23 analysis that the Board had asked us to do originally on
24 this issue. And in fact, we did, which led us to the
25 conclusion that we came to.

1 But that is the analysis they would like to have
2 re-evaluated. We're willing to do that. And I think
3 using the best available information is the key there and
4 working as well closely with both the stakeholders and
5 CalRecycle. And I think we can come back with a
6 recommendation in the summer.

7 CHAIRPERSON NICHOLS: That sounds good.

8 BOARD MEMBER BERG: But just to clarify my point,
9 Madam Chairman, I'm not asking for things to be
10 re-reviewed or the old arguments to be rehashed.

11 But what I am asking for is that we can kind of
12 draw a line in the sand so as a Board member I recognize
13 what has been resolved and what we're looking at going
14 forward.

15 CHAIRPERSON NICHOLS: Right. I just had one
16 other thing that I needed to raise as a resident of Los
17 Angeles and customer of L.A. DWP. And that is, I still
18 don't understand this issue about the point of regulation
19 that was brought up here today. And I don't know where we
20 are or why. But I really appreciate an explanation on
21 that one.

22 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

23 CLIFF: So the issue that PG&E is raising -- L.A. DWP is
24 raising is regarding who is the point of regulation for
25 imported power.

1 In the regulation, we removed the term "title"
2 specifically because it's not our concern who owns the
3 electricity, but who's actually the first deliverer. So
4 we, in fact, did workshop this. We had talked to L.A. DWP
5 after we put out the 15-day language and said well, we did
6 workshop this. And they said, fair enough. We understand
7 that. But this presents a problem for us, and we didn't
8 realize it at the time of the workshop.

9 The issue that comes about is that L.A. DWP would
10 have to be on the hook for power that they deliver to
11 Glendale and Burbank. And that essentially means that
12 somehow they have to figure out how they are paid back for
13 complying with the regulation on behalf of the electricity
14 they serve to Glendale and Burbank.

15 We believe that the POUs have a lot of
16 opportunities in the regulation for flexibility. There is
17 potentially the ability for Glendale and Burbank to cosign
18 their allowances at auction and use that to pay back L.A.
19 DWP. And potentially there's other options.

20 But we're certainly committed to moving forward
21 and looking at how our definitions affect the electricity
22 market. We need to be cognizant of how this is going to
23 impact markets moving forward. And in fact looking at
24 what's happened in the past isn't always the best
25 indicator of what we're moving forward since we're adding

1 cap and trade.

2 So we'll continue to work with them and try to
3 determine if there are solutions that allow them to
4 comply. And if not, then we have to come back and make
5 recommendations.

6 CHAIRPERSON NICHOLS: So if there is a need to
7 attend the actual regulation, what was the reason for the
8 change in the first place, I guess?

9 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
10 CLIFF: The problem with defining the importer as who owns
11 the power, means it's not exactly obvious to individuals
12 who the owner of the power is when a transaction happens
13 at what they call trading node which is physically located
14 outside of the state. But that power comes into the state
15 where we have jurisdiction.

16 CHAIRPERSON NICHOLS: All along, their attitude
17 has been we want to deal with it when it crosses our
18 border.

19 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
20 CLIFF: That's right. There is ambiguity between who owns
21 the power between that where the trading occurs at some
22 trading hub and when it's actually delivered to the
23 California grid. So instead of relying on who owns the
24 power, we rely on another mechanism, which is, the first
25 deliverer is who is listed on the ETAAC when it crosses

1 state boundaries. That's the purchasing and selling
2 entity as listed on this document that's generated when it
3 crosses balancing authorities. For L.A., they're the
4 scheduling coordinator. By default, that puts them on the
5 hook for the emissions associated.

6 CHAIRPERSON NICHOLS: So what's the mechanism for
7 them to get compensated by Glendale or Burbank or anybody
8 else?

9 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
10 CLIFF: Presumably, they have a contract as a scheduling
11 coordinator. And that contract is to provide services.
12 That could also include the cost of compliance for cap and
13 trade. Burbank and Glendale are receiving free allowances
14 for the electricity they serve their rate payers.

15 CHAIRPERSON NICHOLS: So they have the ability to
16 do that.

17 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
18 CLIFF: Right. It's not a cost impact issue. It's simply
19 they need to consign the allowances.

20 CHAIRPERSON NICHOLS: The mechanism needs to be
21 created?

22 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF
23 CLIFF: That's right.

24 CHAIRPERSON NICHOLS: I think we need to stay on
25 top of this, because anything that changes the way the

1 electricity market works is something we need to be
2 worried about.

3 I agree we don't have the answer to it right at
4 this moment. But hopefully we can direct you to report
5 back on how we're doing on that issue as well. Certainly
6 before the program launches at the end of next year, this
7 is something you need to have squared away.

8 I know there are other big issues that have been
9 presented, but I think other people had things they wanted
10 to bring up. So I don't need to continue to go on here.
11 I'm open for further changes.

12 Ron.

13 BOARD MEMBER ROBERTS: I'll start. You won't be
14 surprised what I'm going to start with.

15 I understand the time constraints we're on. But
16 I remain very apprehensive over this water issue. I know
17 staff has done a good job.

18 We have a situation that they're saying here
19 we're going to have a fee here, and we're going to give a
20 rebate there. Okay. It's like saying, okay, we're going
21 to tax the number of kids you have and we're going to give
22 you a rebate on the number of pets you have because we
23 think there's some correlation. It doesn't necessarily
24 line up at the end of the day. In this case, I don't
25 think it's really lining up regionally, nor is it when it

1 breaks down.

2 And I want to see a different solution. I said
3 that last December. And you know, I know there is a lot
4 of work being done on this. I don't think this is such a
5 good solution that we couldn't come up with some other
6 ideas. And virtually has been offered since then.

7 I'd like to see some very strong language in the
8 Resolution that is going to direct a lot of -- not just
9 energy. It's going to give us the opportunity to craft
10 something that is going to work.

11 You've heard testimony from virtually all of
12 southern California here today. To hear from the San
13 Diego County Water Authority and MWD, both on the same
14 sides of an issue hasn't happened in about a century. I
15 think there is a message in that.

16 And I'm concerned. I don't want to throw a
17 wrench in everything today. And I want to be able to vote
18 for this, because I really believe in the bigger picture.

19 But as I said, the devil is in the details. So
20 that's one of my concerns.

21 I'm concerned about the cogen issue, especially
22 with respect to the universities. DeeDee has got some
23 ideas on that. CAPCOA has expressed some interest in some
24 language, and I want to see if there is a way to
25 accommodate that.

1 CHAIRPERSON NICHOLS: I think that was --

2 EXECUTIVE OFFICER GOLDSTENE: We're going to take
3 the CAPCOA language on the --

4 CHAIRPERSON NICHOLS: I think we're okay on that
5 one.

6 EXECUTIVE OFFICER GOLDSTENE: The periodic
7 reporting and the first --

8 BOARD MEMBER ROBERTS: I think we're all aboard
9 on the Market Monitoring Board and the Market Surveillance
10 Committees. I don't know if that's reflected in the
11 Resolution right now. But to have those done and a
12 commitment to the market simulations I think is extremely
13 important. And I think there needs to be some reference
14 to those things.

15 So those are some of the openers that I'm
16 concerned with.

17 Let me, if I can, make a statement. The last few
18 weeks I've been at a couple national conferences, and it
19 was really an eye opener. I'm concerned a little bit
20 about what I hear that there seems to be in some quarters
21 a belief that you just set regulations and it's going to
22 make your economy better. I don't believe that for a
23 minute.

24 And I would also tell you that having been to a
25 conference, one on intelligent highway design and public

1 transit just the last few weeks, the enormous amount of
2 work that is going on directly effecting this issue. I
3 was thinking back to our SB 375 hearings and some of the
4 comments that were being made. And it's in the absence of
5 seeing where the world is going, I have a feeling there is
6 going to be a lot of others bringing solutions. Maybe
7 it's going to make this heavy lifting not so heavy and the
8 final analysis to reach those goals because of other
9 changes going to be made.

10 But I do think we need to -- even in the absence
11 of the western states -- step up and do some things. But
12 I wouldn't just assume that because we have a regulation
13 that's going to mean a robust economy.

14 In fact, the one thing I would tell you I think
15 as compared to maybe when we were in the air pollution
16 infancy, the issue that we're on here today, I would say a
17 disproportionate amount of the research is going
18 elsewhere. A lot of the creative thinking is going
19 elsewhere. And the University of California maybe because
20 of some of the changes and challenges they've been faced
21 with might not be the Citadel of all knowledge as he once
22 was. I would like to see that change, all due respect.

23 BOARD MEMBER SPERLING: Blasphemy.

24 BOARD MEMBER ROBERTS: Just a lot of the papers
25 that we were seeing, a lot of things that are being done,

1 the focus is not California, irrespective of if you adopt
2 this or not in terms of things that are going on.

3 I'm a little concerned. I'm concerned when I
4 hear people are worried about their jobs. We went through
5 an energy deregulation once. And what we found out it was
6 like a wildfire of California crisis. It just didn't
7 work.

8 I want to make sure that we have braking
9 mechanisms inside of this internally in those reviews that
10 are happening often enough. And we're able to respond
11 quickly enough, but we don't want that to happen again.

12 Early on, we had somebody from the PUC testifying
13 that we can remedy things. Well, they weren't able to
14 remedy anything when we went through that particular
15 crisis. And they may have forgotten, but I'll tell you,
16 in San Diego, we haven't forgotten. There's things of
17 that nature.

18 And I think maybe with the periodic review and
19 the review being often enough and we're really taking a
20 look at what is it doing to the average guy and the
21 average business out there that hopefully we can make
22 adjustments if they are needed. But not to be blind to
23 them and just be the brightness of this bigger picture
24 obscuring the fact there may be people on the ground who
25 are being effected in a significant way.

1 So I don't know how to roll all this into a
2 concern, but I thought I'd list some of the things.

3 CHAIRPERSON NICHOLS: Sure. I think you've
4 raised a number of the issues that everybody is concerned
5 about and done it in a very cogent way.

6 We are on the cusp of doing something that's very
7 important. Every time you make change or do something,
8 you always run a risk, because there's always going to be
9 some unintended consequence that you could not possibly
10 foresee. And the question is are we smart enough and have
11 we designed a system well enough so that if those
12 consequences turn out to be not good because some of the
13 things we don't foresee are going to turn out to be better
14 than what we thought they were able, then we have the
15 ability to take action. I don't think that's something
16 that should be assumed, because I, too, lived through the
17 California electricity crisis and saw what it took when
18 people were desperately trying to deal with it.

19 It's actually kind of ironic that some of these
20 power contracts that we're dealing with here that people
21 came in to talk about are ones that they have because of
22 that situation. And now we're at a point where they're
23 going to have to be changed and re-negotiated if we are
24 going to do justice going forward.

25 So there is that constant tension between sending

1 a clear enough signal to the market that people can and
2 will continue to invest versus being able to be flexible
3 when you actually need to be flexible. That's sort of the
4 high art of policy design here. And we're definitely at a
5 very high stage when it comes to that. So all we can do
6 is just kind of keep working at it until we get it as
7 polished as it can be.

8 I do want to say that I know it's sort of easy to
9 draw a contrast. But this really is a situation where the
10 people who have the inventions, who have the ideas, and
11 who have the businesses that want to find ways to succeed
12 in terms of efficiency and renewable energy and clean tech
13 are waiting to be told this can happen, because California
14 is going to be open for business. And those who are
15 apprehensive, what that means is it's going to take
16 something away from them.

17 And it's true in a way that if there are costs to
18 emitting carbon, those are going to initially be seen by
19 the people who have the carbon that has to be controlled.

20 But what we're trying to do with this program is
21 to swiftly move the point to where those funds are going
22 in the direction of the benefit of the consumers and the
23 businesses themselves who are able and willing to invest
24 in the new.

25 And I, by the way -- this is not a bash -- not

1 bashing the petroleum industry, because you know, oil
2 companies are investing in renewable energy companies.
3 They're investing in new technologies. They are giving
4 money to institutes and universities so they can stay on
5 top of what's new out there in the world of technology,
6 because they're as smart as anybody in the world about how
7 to go about using chemicals or microbes or algae or
8 anything else to generate fuels that don't require
9 petroleum resources or that don't use carbon.

10 So this is not about winners and losers in that
11 sense. It's only about trying to construct a system in
12 which the technologies that have the most promise for the
13 future have an opportunity to compete and get on board and
14 giving enough time for that to happen. And that's what
15 we've been working with here.

16 Hopefully, because this program does ramp up
17 slowly over a period of time, and we have time before we
18 start it to deal with some of the specific issues that
19 have been raised here, I think we have can be in a pretty
20 good comfortable position that we've gotten as much done
21 that needs to be done to compete this stage of the
22 rulemaking process.

23 But I still want to hear from people about
24 specifics they want to have in the Resolution.

25 BOARD MEMBER SPERLING: To bring it back to that

1 suggestion by PG&E where they went through very carefully
2 through the Resolution and marked it up, I'm not sure I
3 agree with all of it because they added a lot more
4 specificity to it. But I think some of that is a good
5 idea.

6 I think -- so any way, I'm bringing it up more.
7 I don't have a strong view, except that I think that more
8 oversight is a good idea and more mechanisms of oversight
9 that are more -- a little more formal and a little more
10 transparent is a good idea.

11 BOARD MEMBER BALMES: If I might just add a brief
12 comment here and then turn it over to someone else.

13 Virtually every stakeholder that met with me in
14 the last couple weeks brought up that they wanted more
15 Board oversight as this was being rolled out, because it's
16 so tricky, so new, and so scary to some. And I told them
17 all the same line as a professor in the U.C. system I'm
18 not afraid of information. I mean, we can get information
19 overload sometimes. But as long as it's quality
20 information, I think we should be looking at the economic
21 impacts. We should be looking at how the market is
22 operating.

23 And I think the Board should be involved.
24 Because this is -- as we've heard today, this is a very
25 important issue to various sectors of the California

1 population. People are worried about their jobs.
2 Companies are worried about their businesses. So I think
3 it's our duty as Board members to stay on top of this.
4 There is a political responsibility for us to do that.

5 CHAIRPERSON NICHOLS: I agree.

6 We've already talked about having quarterly
7 reports back from staff before we even get the program
8 launched. And I think that will probably need to
9 continue, you know, on a regular basis going forward.

10 BOARD MEMBER SPERLING: Chairman Nichols, on that
11 point --

12 CHAIRPERSON NICHOLS: Yes.

13 BOARD MEMBER SPERLING: I think that instead of
14 quarterly reports overall, I think what would be valuable
15 to the Board and most useful is reports on specific issues
16 and topics. Because every time we get a general one, it's
17 superficial about everything. And it would be I think
18 much more useful.

19 So there would be one -- it could be one on
20 market oversight or could be one on offsets. So it could
21 be one on some aspect of the electric utilities.

22 But this is going to be a long process. Many
23 year process that we're going through. And I think of
24 that as it's part of the educational. It's partly being
25 transparent. But that would be a more effective way than

1 just a general briefing every now and then.

2 CHAIRPERSON NICHOLS: Yes. Oh, I agree. I
3 didn't mean general briefing. Sorry. I assumed we'd have
4 assigned topics. But that's a good amendment to my
5 suggestion. Absolutely.

6 DeeDee.

7 BOARD MEMBER D'ADAMO: I was going to say just
8 that. So I marked up my Resolution. On any comment where
9 it had to do with a report back, I just put T for time.
10 You know, we've got to come back in a certain amount of
11 time.

12 And one of the things that I'd like to find out
13 more about. I know this is going to create a lot of
14 workload for staff. I like your suggestion, Dan, about
15 coming back in subsections. But during the 2012 time
16 period, there's going to be some simulating going on;
17 right? And staff will be developing even more information
18 as they run these models through. And I just think that,
19 getting back to what you said, Madam Chair, about this
20 sort of tension between trying to guard against unintended
21 consequences but then also providing for certainty. I
22 don't mean to upset certainty as we go forward. But if
23 you have information, why wait until the second compliance
24 period.

25 Because that's what I kept hearing from a lot of

1 stakeholders. They don't want to wait until the second
2 compliance period if we have information say, for example,
3 on holding limits, purchase limits or the various
4 mechanisms that we have there. So I think if we can get
5 that information back to us sooner, with the idea as we go
6 through to develop additional mechanisms for flexibility
7 and also to address some of the inequities that have been
8 raised. Because that's another common theme. Inequities
9 not intentional, but just as the program works out.

10 And one example that comes to mind is the
11 situation with Calpine. In an effort to prevent market
12 manipulation, you have a company that has a large
13 compliance responsibility. And maybe there is a little
14 bit of inequity there because what they need for
15 compliance may push up against what the purchasing limits
16 are or holding limits. And that's just one example.

17 And now that I'm here, I'm going to quickly go
18 through, because I don't want to have to take up a lot of
19 time later.

20 I absolutely concur with Supervisor Roberts about
21 the State Water Project. I think we need to deal with
22 that and come back in a time certain.

23 And with respect to the University of California,
24 I know we've talked a lot about this. But I really like
25 what they've proposed in terms of creative solution, 125

1 percent. Maybe if we keep negotiating with them we could
2 get a little bit more. And I would like to see if we
3 could explore that further to come up with a creative
4 solution.

5 I can't help but to think of just the university
6 in my own backyard, University of California Merced.
7 There is no cogen. It is LEED certified, gold certified,
8 and it is setting the tone for the entire valley. Why not
9 get the universities to push up their commitment even
10 further in terms of reducing emissions and also doing
11 additional research and state-of-the-art things on campus.
12 That just really I think helps to spread what we're trying
13 to do here. So I'd like to continue discussions about
14 creative ways of getting them in compliance, but also
15 dealing with some of the challenges they've had.

16 And then just want to quickly mention food
17 processing. I think we had a good outcome in the
18 Resolution. I'm very comfortable with it. And just
19 wanted to make my commitment to continue to work with that
20 group. And as I talk with food processors, it's just one
21 other example, like with all the covered entities, about
22 the challenge we're going to have with compliance. And if
23 the technology is not there, then we have to have offsets.

24 And that brings up the other point, and that is I
25 really would like to see us come back time certain to talk

1 about offsets, new protocols, what's the status, what's in
2 the cue.

3 And then also want to continue to do some work on
4 the forestry protocol now that we have some additional
5 information, white paper that CAR has put out. I think
6 offsets -- if we had more offsets and, of course, we need
7 to have offsets with integrity, if we had more offsets, I
8 think we wouldn't be hearing as much or as loud from some
9 of the sectors that are going to have to comply.

10 CHAIRPERSON NICHOLS: Okay. Additional, Sandy?
11 John?

12 BOARD MEMBER BALMES: So I'm surprised that
13 Supervisor Roberts didn't bring this up again, because I
14 thought his idea this morning about how to deal with the
15 differences in impacts on different size refineries was
16 something he was going to bring up again. I thought it
17 was a good idea.

18 BOARD MEMBER ROBERTS: I was looking back at my
19 notes, there was a couple things I missed.

20 BOARD MEMBER BALMES: I was very impressed with
21 the testimony from the steelworkers. And I'm sensitive to
22 the fact that we don't want to see a refinery or several
23 refineries close down was a result of this program.

24 And you know, I'm not here to debate about
25 whether ConocoPhillips can afford to use some of their

1 profits to fix the refineries or pay the allowances.

2 But I do think that Supervisor Roberts' ideas of
3 using some of the revenue generated from the current
4 allowance mechanism, allowing that money to go back to
5 ConocoPhillips and other small refinery -- medium to small
6 refineries.

7 CHAIRPERSON NICHOLS: They're not a small
8 refineries.

9 BOARD MEMBER BALMES: When they lobbied me, they
10 said they were a boutique refinery. I thought that was
11 pushing it a little bit. Smaller than Chevron.

12 And you know, I do think that the idea of having
13 some of the allowance revenue go back to the refineries so
14 it can make improvements to reduce greenhouse gas
15 emissions is a good idea. And I realize that we probably
16 can't put that into the Resolution precisely today because
17 we want to move forward with the cap and trade.

18 But I strongly think we should look at this,
19 because I think it would be a mistake for this program to
20 be associated with refinery closings at its start.
21 Whether that would be true or not, I think there would be
22 other factors aside from cap and trade costs, I don't
23 think it would be good for the program. We need public
24 support for the program. And we need a group like the
25 steelworkers that has been involved with the Blue and

1 Green Alliance, has been there trying to support AB 32 not
2 be as impacted as what I'm hearing.

3 So there is a second for Supervisor Roberts.

4 BOARD MEMBER ROBERTS: Thank you.

5 CHAIRPERSON NICHOLS: Okay. Great.

6 Sandy.

7 BOARD MEMBER BERG: I have three issues other
8 than the ones that my fellow Board members have brought
9 up. And I'm supportive of all of them. But I think all
10 of the things I'm bringing up could be resolved under the
11 market simulation project. And that is I'm concerned like
12 Board Member D'Adamo about the holding limits and the
13 purchase limits. I'm hoping during those market
14 simulations they will hopefully be looking at those very
15 large obligated entities. And as they go through the
16 auctions, at each auction what they're going to need and
17 how they're going to be moving their allowances through
18 their accounts and what does that mean for the market and
19 the price. And so that would be one issue.

20 The only thing I'd like to say on the long-term
21 contracts, it seems to me that any utility that we're
22 giving free allowances that have contracts that deal with
23 people that are purchasing allowances on long-term
24 contracts, that we should have some sort of negotiation
25 ability to help them and strongly encourage them to

1 resolve that. So if you're getting free allowances, that
2 should be something we should be able to do.

3 If it is with a utility that's buying auction,
4 buying their allowances and the other people are buying
5 their allowances, they got to work that out. But the ones
6 with the free allowances, I think we should be able to
7 really help out that along.

8 I'm comfortable with language in the Resolution.
9 I'm not asking for anything more. I'm asking for you to
10 be strong with those that we're giving free allowances to.

11 And then, you know, on the industrial side, I'm
12 really hoping that the simulation will also -- you'll be
13 able to look at the gap. I think the gap in between those
14 that are very efficient and are for all intents and
15 purposes except for the cap reduction are made whole
16 versus those that are far below and have a large shortfall
17 in the first compliance period could be problematic. It
18 could be problematic in the pricing of goods, the
19 competitiveness. It certainly is problematic with a
20 perception.

21 So I'm hoping that through the next six months as
22 you're really looking at scenarios in this that you can
23 really determine if we have the gap right.

24 I don't think sitting up here and suggesting we
25 go eight percent or five percent or some other formula is

1 going to be helpful at all from my perspective as a Board
2 member. But I'm concerned about whether we have the gap
3 correct. And I would really appreciate if staff would
4 continue to look at that and continue to make sure that we
5 aren't disadvantaging within an industrial sector the
6 haves and the have-nots or the needs to improve more and
7 the good guys, the guys that have improved all along.

8 I also would appreciate the reporting back on a
9 more regular basis. And I support my colleagues in very
10 specific reporting topics, so that my head doesn't swim
11 with trying to remember which topic we're talking about.
12 Thank you very much.

13 BOARD MEMBER YEAGER: Just a few comments.

14 I appreciated what Chair Nichols was saying about
15 working closely as we do with the air district partners.
16 And I know she had mentioned including the language that
17 they had proposed and would certainly support that.

18 Also appreciated what Board Member D'Adamo said
19 about the regular updates. And I'm particularly concerned
20 about leakage. And if it looks like some businesses will
21 begin leaving California. And I think with the periodic
22 updates and not waiting until we're further out to try to
23 get an understanding what's happening it's going to be
24 important.

25 I guess it's going to be hard to know how fast we

1 can actually shift policies when we need to if we're
2 finding out that businesses are leaving, how fast can we
3 adapt? Is that information you would try to get back to
4 us as soon as possible? Or how do we know it's being
5 monitored as closely as we believe it should be?

6 EXECUTIVE OFFICER GOLDSTONE: We're going to do
7 all we can to track economic trends and data and do what
8 we can to be very alert to and aware of any
9 disproportionate impacts that this regulation or any of
10 our other regulations has on businesses. There's always a
11 tension between regulating and going for the environmental
12 benefit again and the cost.

13 So we will do our best to keep you posted about
14 what's going on, just like we did with the truck rule. So
15 we're planning on providing updates to you regularly, even
16 if you didn't want us to. But I'm glad you all want us
17 to. Because this is so large and so important. And
18 particularly as we get the program rolling, what we had
19 envisioned is regular updates about where we are in the
20 process. And then maybe to Professor Sperling's point,
21 also picking out certain areas that we can highlight to
22 give you longer, more in-depth updates as we go through
23 the years.

24 So I think you'll be hearing back from us quite
25 regularly in 2012, because that's where the bulk of the

1 work is going to be done immediately to get the program up
2 and running.

3 BOARD MEMBER YEAGER: Thank you.

4 BOARD MEMBER SPERLING: Since we're leaderless
5 here, let me fill the vacuum here.

6 One big idea that just occurs to me is that
7 everything we're talking about are unintended
8 consequences, equity impacts, economic impacts,
9 environmental impacts. It tends to be it's either impacts
10 or kind of negative things that might happen. And a lot
11 of this comes back around because we're thinking of this
12 from a regulatory mind-set.

13 What we need to also be thinking about is how are
14 we stimulating innovation? Because that's the real point
15 of all this. This is a market instrument we're talking
16 about with cap and trade. And I'm not quite sure exactly
17 where I'm going with this yet.

18 I can imagine there should be someone at ARB kind
19 of like a Chief Technology Officer, Chief Innovation
20 Officer that is overlooking this and saying, okay, is this
21 really working in terms of stimulating innovation and new
22 technology and new ways of doing things that reduce the
23 emissions in a cost effective way? And we haven't talked
24 about that. That's not the language we've been using.
25 But that is what cap and trade is all about.

1 So I mean, I don't want to propose a new position
2 or a new report necessarily, but I think I guess I'd like
3 to ask the staff to think about that a little bit about
4 how we might look at this in a more positive way that, you
5 know, that really is market-oriented that really is
6 innovated-oriented.

7 EXECUTIVE OFFICER GOLDSTENE: Most of the time,
8 we do have that view. The work we're doing will lead to
9 innovations that we have not even thought of yet and that
10 we'll need to track and pay attention to. Similar so what
11 we're doing, for instance, on the low-carbon fuel
12 standard, for instance, because we are going to be coming
13 back in December to give you an update and make some
14 changes to the rule. That rule has had an effect on how
15 companies are thinking about creating, inventing, blending
16 their fuels. We expect something very similar and broader
17 under this program as well.

18 STATIONARY SOURCE DIVISION CHIEF COREY: This is
19 Richard Corey.

20 I just wanted to add a little bit to James'
21 comments as well. I was actually thinking along the same
22 lines with the discussions with the Advisory Panel and the
23 low-carbon fuel standard. One of the things we're looking
24 at is the flow of venture capital and the responses in
25 terms of investment in biofuel and trying to understand

1 what's going on, what the direction of industry is. I
2 think that kind of look as we move forward and is useful
3 in the form in the long view.

4 And I think also something will play into this.
5 Another piece of the puzzle in terms of the kind of
6 encouraging innovation is looking at the energy audit and
7 co-benefit regulation. And the specific actions that the
8 industry -- some of the largest industries in the state
9 actions they're planning over the next several years, many
10 to reduce GHGs and other co-pollutants as well and looking
11 at those specific actions and seeing if there are some
12 relationships with the signals with the relationships
13 here.

14 EXECUTIVE OFFICER GOLDSTENE: Professor Sperling,
15 you want to direct us to report back to the Board about
16 the effectiveness of the program and innovations or other
17 things that come out? Because we don't have anything in
18 the Resolution on it.

19 BOARD MEMBER SPERLING: I would suggest that.
20 But it would be in the language of how is this simulating
21 investment and innovation, is the way, you know, to
22 express it.

23 BOARD MEMBER KENNARD: If I could, thank you.

24 I just want us to kind of step back a bit,
25 because we are really charting new ground here. And it's

1 never been done before. And the world, the country, and
2 the world is looking at what we're doing. And I want us
3 to be very clear that we do not have all the answers.
4 There will be missed steps. As hard as the staff has
5 worked, there will be unintended consequences, as Chairman
6 Nichols said.

7 And I think the role of the Board is to be at
8 that 50,000 foot level and leave it up to the staff and
9 the communities who will be very engaged, as they have at
10 this point.

11 But I'm worried about our Board being so engaged
12 that there is just too much to be done and we're not
13 seeing the forest through the trees.

14 So you know, all this is fantastic. But I'd like
15 us to really focus on these initial stages and get them
16 right before we layer on all these other requirements and
17 thoughts. It's all good. But we're just at the initial
18 stages. And I think, as a Board, we have to be very
19 conscious of the burdens that we're all putting on the
20 staff to get this right.

21 BOARD MEMBER BALMES: I don't disagree with
22 trying not to overburden the staff and us and having to
23 digest multiple reports.

24 On the other hand, as I said, the stakeholders
25 that came to talk to me wanted us to be involved in the

1 process. I don't think it's because they distrust the
2 staff. But because this is such a new program, it's so
3 important, as you just alluded to, they want to make sure
4 that we get it right.

5 And so I think there is a balance between
6 micromanagement from the Board, which we don't want, and
7 having the Board stay appropriately involved so that we
8 can provide stewardship to launch this important program.

9 EXECUTIVE OFFICER GOLDSTONE: We will strive to
10 find the right balance.

11 BOARD MEMBER D'ADAMO: And I will say, since
12 we're kind of killing time here. I don't know where our
13 Chair went.

14 I'll just say -- I was just going to wrap -- I
15 agree with Dr. Balmes. I heard from a lot of stakeholders
16 and just want to extend that as we go forward for folks to
17 feel comfortable to contact us. I would only ask it not
18 be the week before an item. It's good to get involved
19 early on. And if that helps, as far as the stakeholders
20 are concerned, you know, just having additional access
21 points. I think a lot of us want to be there for you.

22 CHAIRPERSON NICHOLS: I think it's definitely
23 going to help. I think that when this whole program
24 started, the Air Board had no experience working with
25 these kind of issues at all. It was a pretty steep

1 learning curve.

2 But people came up very quickly. And in
3 particular, you know, with some of these big regulations
4 that we got involved with, people have really gotten the
5 whole picture of it all.

6 Do we need to take a brief break for the staff to
7 actually write up language to deal with these specific
8 points that have been made, or are you -- would you like
9 to do that, to take 15 or 20 minutes to work through this
10 are you ready now? What do you want to do?

11 DEPUTY EXECUTIVE OFFICER FLETCHER: I can attempt
12 to summarize what I think I've heard on conditions to the
13 Resolution.

14 CHAIRPERSON NICHOLS: There's only one that --
15 I'm sorry. I stepped out of the room. I was in a place
16 where I could listen. I didn't hear whether this came up
17 with respect to the PG&E. I did not see. Was that
18 discussed?

19 DEPUTY EXECUTIVE OFFICER FLETCHER: No, but I can
20 address that.

21 CHAIRPERSON NICHOLS: Okay. Because there's
22 parts of it I like and there's parts that I think they're
23 just out of line. We're all in agreement.

24 DEPUTY EXECUTIVE OFFICER FLETCHER: You can start
25 by telling us what you like and then --

1 CHAIRPERSON NICHOLS: Well, I could do that.

2 What I liked was the language about the market
3 monitor and the language about market simulations. And I
4 guess the further be it further resolved and on page 2 and
5 the be it further resolved, the Market Surveillance
6 Committee. I like those, too.

7 What I did not like was the specificity on the
8 allowance price containment reserve. I just don't think
9 we should have to do that now. We might at some point in
10 the future. I don't like all the specific language about
11 what's to be in the annual report, because we've just said
12 we want to be monitoring all these things more frequently
13 than that anyway. So you don't need an annual report if
14 we're going to do it on an ongoing basis.

15 I particularly don't like the injunction to have
16 all the issues about natural gas solved before March of
17 2012. I don't think that's necessary either.

18 BOARD MEMBER BERG: How about the specificity on
19 the actual make-up of the Committee?

20 CHAIRPERSON NICHOLS: Yeah. We probably should
21 allow the discretion to make up the Committee as we see
22 fit. I don't think the Governor would appreciate that.

23 EXECUTIVE OFFICER GOLDSTONE: Chairman Nichols,
24 maybe at the break is go through and make sure we capture
25 this properly.

1 CHAIRPERSON NICHOLS: I think that would be smart
2 actually.

3 EXECUTIVE OFFICER GOLDSTENE: We also have some
4 rough draft language for the water issue which we need
5 to --

6 BOARD MEMBER ROBERTS: Actually, I had some, too.

7 CHAIRPERSON NICHOLS: Well, the two of you ought
8 to talk.

9 BOARD MEMBER ROBERTS: Maybe if we just took a
10 couple minutes.

11 CHAIRPERSON NICHOLS: Why don't we give ourselves
12 a 15-minute break. Let's just make it 4:20 when we come
13 back. Okay.

14 (Whereupon a recess was taken.)

15 CHAIRPERSON NICHOLS: We're ready to resume, if
16 you can take your seats.

17 During the break, the staff was doing a lot of
18 writing and having their shoulders looked over at various
19 points by some of us. But I think it's time now that we
20 go back and ask Bob Fletcher to run through the changes
21 that they would propose to make to the Resolution in
22 response to what we heard here today. And also highlight
23 other features of the Resolution that we may not have
24 focus on that respond to some of the things here, also.

25 DEPUTY EXECUTIVE OFFICER FLETCHER: Every one of

1 the "be it further resolved" is lovely, but I don't think
2 I'll go through all of those.

3 I'm going to start, and I'm going to follow the
4 order of the Resolution. And I will give you the
5 suggested changes that staff has come up with on each of
6 those.

7 So we start with on page 10, you'll see in the
8 middle of the page there is a one and a two and a three.
9 And essentially these are directing the Executive Officer
10 to continue discussions and then identify and propose
11 potential amendments to the regulation, including but not
12 limited to the follows areas:

13 We're proposing to add a new number four that
14 deals with water. And it would read, "Distribution of
15 allowance value associated with cap and trade compliance
16 costs from using electricity to supply water and the
17 expected ability of the allowance allocation and other
18 measures to adequately address the incidents of these
19 costs equitably across regions of the state."

20 BOARD MEMBER ROBERTS: Would you read that one
21 more time?

22 DEPUTY EXECUTIVE OFFICER FLETCHER: Sure. And
23 I'll try to be clear.

24 BOARD MEMBER ROBERTS: For the benefit of the
25 court reporter.

1 DEPUTY EXECUTIVE OFFICER FLETCHER: This would be
2 a new number four, and it would read, "Distribution of
3 allowance value associated with cap and trade compliance
4 costs from using electricity to supply water and the
5 expected ability of the allowance allocation and other
6 measures to adequately address the incidents of these
7 costs equitably across regions of the state."

8 BOARD MEMBER SPERLING: Is that really --
9 equitably across the state. I mean, that depends how you
10 define equitably. But I think it's more tying it to -- I
11 mean, is that equally? I think it's tying it more toward
12 to the cost and the energy cost, isn't it?

13 CHAIRPERSON NICHOLS: Those are equitable issues,
14 too.

15 DEPUTY EXECUTIVE OFFICER FLETCHER: Yes. And I
16 think one of the issues that had been raised by the State
17 Water Contractors was the potential wealth distribution
18 because of how the allowances are allocated versus how the
19 water is allocated. It's in part going to addressing that
20 issue and providing clarity on what that is, basically the
21 analysis of that impact.

22 BOARD MEMBER ROBERTS: I'm pleased with it.

23 CHAIRPERSON NICHOLS: We're good.

24 DEPUTY EXECUTIVE OFFICER FLETCHER: The next one
25 has to do with the issue of -- issues related to the

1 in-state competition questions. So the be it further
2 resolved directly under the one I was just discussing,
3 it's at the bottom of page 10. And it reads, "Be it
4 further resolved" -- that we will amend it to read, "Be it
5 further resolved, the Board directs the Executive Officer
6 to continue to review information concerning the emissions
7 intensity, trade exposure, and in-state composition of
8 industries in California." So the add is the in-state
9 competition.

10 Questions?

11 CHAIRPERSON NICHOLS: This is the intended to
12 deal with some of the issues raised about of the refining
13 sector?

14 BOARD MEMBER BERG: Doesn't that also just say
15 that we're going to do that in the second compliance
16 period started with 2015?

17 DEPUTY EXECUTIVE OFFICER FLETCHER: It says,
18 "prior to the initial allocation of allowances for the
19 second compliance period." So you're right, actually.
20 That does cover that. So we probably need to fix that.

21 CHAIRPERSON NICHOLS: Take out that "prior to."

22 DEPUTY EXECUTIVE OFFICER FLETCHER: What we can
23 say is "prior to initial allocations of allowances for the
24 first or second compliance period as appropriate."

25 BOARD MEMBER BERG: I'm comfortable with that.

1 DEPUTY EXECUTIVE OFFICER FLETCHER: So the next
2 one has to do with the issues that I believe L.A. DWP
3 raised on jurisdictional deliveries of electricity. So it
4 would read -- I'm still at the bottom of page 10. This is
5 a new one. And I think that is probably the right place
6 for this to go. But we may want to move it around
7 someplace in the Resolution to make more sense. But for
8 now, it's at the bottom of page ten. It would read, "Be
9 it further resolved, that the Board direct the Executive
10 Officer to work with California Public Utilities
11 Commission, California Energy Commission, and the
12 California Independent System Operator and stakeholders to
13 evaluate requirements for first jurisdictional deliverers
14 of electricity and report back to the Board in the summer
15 of 2012." Okay?

16 The next one is actually just a technical edit.
17 There is on the fifth be it further resolved on page 11,
18 the last word reads "additionally." And it really should
19 read "additionality." So that's just a correction there.

20 The next one is directly below that. It's the
21 one that has to do with the waste management issues. So
22 we're making a couple changes here. And it should read
23 now, "Be it further resolved, the Board directs the
24 Executive Officer to continue to work with CalRecycle and
25 other stakeholders to characterize life cycle emission

1 reduction opportunities." And then there is no other
2 changes until the last sentence which reads, "The
3 Executive Officer shall identify and propose regulatory
4 amendments as appropriate so that AB 32 implementation,
5 including the cap and trade regulation, aligns with
6 statewide waste management goals, provides equitable
7 treatment to all sectors involved in waste handling, and
8 considers the best available information. The Executive
9 Officer shall report on progress in the summer of 2012."

10 BOARD MEMBER SPERLING: One tiny, I would say
11 instead of life cycle, it's really systems level is what
12 is the real issue here. You're comparing it to recycling
13 and so on. And I think that's what the real concern is.
14 It's not life cycle so much.

15 CHAIRPERSON NICHOLS: It's their word. It's what
16 they want.

17 BOARD MEMBER SPERLING: Well, they're wrong.

18 (Laughter)

19 CHAIRPERSON NICHOLS: That could well be true.
20 Unfortunately, we are in a process here where we're trying
21 to address stakeholder concerns. I think we should give
22 them that word.

23 DEPUTY EXECUTIVE OFFICER FLETCHER: I will defer
24 to the Board.

25 The next one I put at the bottom of page 11.

1 Again, it may be something that gets moved elsewhere.
2 This one has to do with the State Universities, and it
3 will now read, "Be it further resolved, that the Board
4 directs the Executive Officer to coordinate with State
5 universities and stakeholders to evaluate options for
6 compliance, including options on the use of auction
7 revenue, and report back to the Board in the summer of
8 2012." And I need to work in there, "including amendments
9 to the reg as appropriate."

10 But I want to separate out back to the Board in
11 June 2012 from the amendments, as appropriate. Because
12 I'm not sure we can do the amendments as appropriate by
13 2012.

14 CHAIRPERSON NICHOLS: All right. That would be
15 creating a false expectation.

16 DEPUTY EXECUTIVE OFFICER FLETCHER: The next are
17 on the middle of page 12, and there are actually two be it
18 further resolved there.

19 One in that begins, "be it further resolved the
20 Board directs you to coordinate with the Market
21 Surveillance Committee." That's the forth one down and
22 the fifth one down.

23 We're actually not proposing to make any changes
24 to those two. But I wanted to indicate that those all in
25 combination with the Resolution provisions that are in the

1 previous Resolution all go towards the concept of market
2 monitoring, market simulation, market oversight, and
3 market surveillance. And we are not proposing to make
4 changes. We have incorporated some of the PG&E changes
5 into these. But they are pretty much working in
6 combination.

7 To date, we actually have three RFPs out on the
8 street, one of them dealing with auction services. One of
9 them dealing with financial services, and one of them
10 dealing with market monitoring.

11 We also have an interagency agreement that we are
12 working on with the University of California to provide
13 simulation activities as well as working on a Market
14 Surveillance Committee. So we think we've addressed the
15 concerns that PG&E was raising in theirs.

16 I would note that in the fifth bullet there where
17 we talk about the allowance price containment reserve and
18 other key design features, this gets to the issue of
19 holding limits and purchasing limits. We know we need to
20 re-evaluate those anyway in the context of linkage with
21 the Western Climate Initiative, because those are not all
22 necessarily on the same basis. That is a harmonization
23 issue that we need to make sure that we are in sync with
24 those jurisdictions prior to linkage. So we think we've
25 adequately covered the issues associated with markets.

1 Any comments on that?

2 CHAIRPERSON NICHOLS: No.

3 DEPUTY EXECUTIVE OFFICER FLETCHER: At the bottom
4 of page 12, we have an edit on the last be it further
5 resolved. Since we created a new be it further resolved
6 for the State Universities, we will strike the last part
7 of that sentence, the last sentence there, and put a
8 period after Resolution 10-42.

9 The next one is at the top of page 13. We've
10 already talked about this one. We will simply include the
11 language -- the CAPCOA language where the Board directs
12 the EO to report back periodically with the first report
13 due in the first quarter of calendar year 2012.

14 And last, but certainly not least, we want to add
15 in the very last bullet where we do the annual updates,
16 two additional provision, one of them being on the
17 effectiveness of the Cap and Trade Program, which seems
18 like it would be a good thing to know. And the second is
19 how the cap and trade program is stimulating investment
20 and innovation. I think that's a really interesting
21 provision to add. And I think that captures it from our
22 perspective.

23 CHAIRPERSON NICHOLS: Okay. Given the amount of
24 emphasis there has been on transportation and fuel today,
25 I think it is important that we indicate that we intend to

1 actually initiate a dialogue with our partners at the CEC
2 on how to do this kind of an evaluation on the impacts on
3 California's gasoline supply. This isn't something that
4 we have the sole responsibility for accessing. We have a
5 lot of experience and we don't always agree with each
6 other, all least going in. But we've always managed to
7 find ways to come up with some pretty good information and
8 has a lot of durability to it.

9 So you don't have to write this down. I just
10 want to indicate this is part of the thinking of how we're
11 going to do it. Just saying ARB is going to do it. I
12 think this is a broad-based issue of concern.

13 BOARD MEMBER ROBERTS: Is the staff done?

14 DEPUTY EXECUTIVE OFFICER FLETCHER: Oh, yes.

15 BOARD MEMBER ROBERTS: Are we ready?

16 CHAIRPERSON NICHOLS: Yeah, I think we're ready.
17 Yeah.

18 BOARD MEMBER ROBERTS: I would -- first of all, I
19 appreciate the efforts of putting these things together.
20 And I think as the Chair is saying, sometimes we don't see
21 eye to eye. But I think it's good when we're listening
22 and maybe work these things out. It's clear to me we
23 really do have to move to a low carbon economy. And I
24 hope California will be a leader in that. And I hope
25 there is economic investment and economic return along

1 with the environmental benefits.

2 And with that, I will move the amended
3 Resolution.

4 CHAIRPERSON NICHOLS: Thank you.

5 Who would like to second? Ms. Berg.

6 BOARD MEMBER BERG: Second.

7 CHAIRPERSON NICHOLS: All right. Any additional
8 comments before I call for the vote?

9 If not, I'm ready to call for a vote. Would all
10 in favor of adopting this Resolution please indicate by
11 saying aye.

12 (Ayes)

13 CHAIRPERSON NICHOLS: Any opposed?

14 Very good. Thank you, all.

15 (Applause)

16 CHAIRPERSON NICHOLS: We have a come of
17 additional things to do. I trust that you know this, but
18 I'm going to say it anyway just to make it clear for the
19 record. The Resolution includes or incorporates the
20 Adaptive Management Plan that was put before you as a
21 separate document. And although I have to say it didn't
22 garner a lot of comment except perhaps from those we would
23 have hoped and appreciated it and didn't, I'd like to say
24 that the Adaptive Management Plan is actually a first of
25 its kind ever for this or any other agency.

1 CHIEF COUNSEL PETER: State agency.

2 CHAIRPERSON NICHOLS: And it's something that I
3 think will turn out to be a landmark in its own right.
4 I'm proud of that, as well as of the action we've taken
5 here today. I think that we will look back on this as an
6 important day in California's transition to the clean
7 energy economy. So I really want to thank everybody who
8 participated.

9 We, believe it or not, have one more agenda item
10 today, although it's very short. But it's related to AB
11 32. And that's about the cost of implementation fee
12 regulation. So if there's anybody that doesn't want to
13 listen to that, you're welcome to take your leave. But we
14 need to stay here and work this one through.

15 EXECUTIVE OFFICER GOLDSTONE: We're going to hear
16 a proposal now to amend the AB 32 cost of implementation
17 fee regulation. As you'll recall, the AB 32 fee
18 regulation funds the AB 32 climate change program.
19 Without this fee, we would not be able to meet the
20 ambitious goals of the greenhouse gas emission reductions
21 set forth in AB 32.

22 Staff is proposing to amend the fee regulation
23 primarily to conform the regulatory language with recent
24 proposed amendments to the regulation for mandatory
25 reporting. Other amendments clarify various provisions to

1 improve implementation of the fee regulation.

2 Bill Blackburn from our staff is going to provide
3 a short presentation on these amendments. Bill.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 AIR POLLUTION SPECIALIST BLACKBURN: Thank you,
7 Mr. Goldstene.

8 Good afternoon, Chairman Nichols and members of
9 the Board.

10 Today, I will provide background on the AB 32
11 cost of implementation fee regulation, fee revenue, and
12 regulation details, proposed amendments, potential
13 impacts, suggested modifications, and staff's
14 recommendation.

15 --o0o--

16 AIR POLLUTION SPECIALIST BLACKBURN: First, I
17 will give a quick introduction.

18 As you know, AB 32, the California Global Warming
19 Solutions Act of 2006 established a comprehensive
20 multi-year program to reduce greenhouse gas emissions in
21 California. To pay for the cost of implementation, AB 32
22 authorizes ARB to adopt a fee schedule to be paid by
23 sources of greenhouse gas emissions. The fee regulation
24 was endorsed by this Board in September 2009 and became
25 effective July 17th, 2010.

1 --o0o--

2 AIR POLLUTION SPECIALIST BLACKBURN: I will next
3 discuss the AB 32 fee revenue.

4 The fee is used for two purposes: One, to cover
5 the State's annual AB 32 implementation costs. And two,
6 to repay loans, with accrued interest that were used to
7 fund the first three years of the program.

8 The fee is applied to approximately 80 percent of
9 the statewide greenhouse gas emissions. There are
10 approximately 300 fee payers, such as oil refineries,
11 utilities, cement producers.

12 During the first four years of collecting the
13 fee, a portion of the revenue will be used to repay loans
14 which funded the early years of the program. We will
15 fully repay the loans in the next two years, which will
16 significantly decrease the revenue we need to collect. If
17 program costs remain at today's levels, the revenue needs
18 will drop by more than 40 percent. Implementation costs
19 which make up the total required revenue, are approved
20 each year by the Legislature in the State budget.

21 Currently, the agencies that have the programs
22 funded by the fee include those shown in the slide. The
23 column on the right shows approximately how much each of
24 these agencies received for fiscal year 2011-2012. This
25 includes staff, contract, and program-related costs. As

1 you can see, ARB accounts for the majority of the funded
2 programs.

3 For the first fiscal year the fee was in effect,
4 2010-2011, ARB sent out invoices to collect \$62.1 million.
5 Of the total required revenue, 35.2 million is in program
6 costs and 26.9 million is in loan repayment.

7 To provide some perspective, the top ten fee
8 paying entities make up about 75 percent of the fees
9 collected, where invoices range from about \$100 to just
10 over \$7 million.

11 For 2010-2011 fiscal year, we were able to
12 collect more than 99.9 percent of the revenue invoiced.
13 We recently mailed fiscal year 2011-2012 invoices, which
14 were based on \$61 million in total required revenue.

15 --o0o--

16 AIR POLLUTION SPECIALIST BLACKBURN: Now let me
17 discuss some details of the fee regulation.

18 AB 32 fees for greenhouse gas emissions are
19 assessed in three primary ways, upstream from the
20 combustion of fossil fuels, including those shown here on
21 this slide. The fee is also assessed on non-combustion
22 greenhouse gas process emissions from refineries and
23 cement manufacturers.

24 Finally, a fee is imposed on the greenhouse gas
25 emissions associated with the generation of both in-state

1 and imported electricity generation.

2 Fees are based on annual fuel and greenhouse gas
3 emission data. Data is reported using ARB's on line
4 greenhouse gas reporting tool. The fee liability is
5 determined as follows: Adding the annual loan repayment
6 to the annual program costs, then dividing that by the sum
7 of the reported emissions and fuel data.

8 Currently, the fee rate is about 17 cents per
9 metric ton of CO2. Each invoice is calculated by
10 multiplying the fee rate by an entity's reported emissions
11 and fuel data.

12 --o0o--

13 AIR POLLUTION SPECIALIST BLACKBURN: Next, I will
14 discuss the proposed amendments. Because emissions data
15 is used to determine fees, we must conform, where
16 possible, to the mandatory reporting regulation. Staff
17 consulted with the public and regulated entities on
18 potential amendments, including a public workshop on
19 January 21st, 2011.

20 The amendments are mainly technical in nature and
21 do not significantly change applicability or the fee
22 calculation. Several proposed changes are clarifications,
23 such as when payment is due. As a result, the overall
24 program framework is unaffected. In the following slides,
25 I will summarize the proposed amendments.

1 --o0o--

2 AIR POLLUTION SPECIALIST BLACKBURN: To conform
3 with the mandatory reporting regulation, we proposed to
4 modify the threshold for electricity-generating facilities
5 by raising the minimum applicability from 2,500 metric
6 tons of CO2 to 10,000 metric tons of CO2 equivalent. The
7 change to CO2 equivalent mirrors the changes made to
8 mandatory reporting regulation and allows the fee to more
9 completely cover emissions of greenhouse gases.

10 Staff anticipates because of this between 20 and
11 25 electricity-generating facilities will no longer be
12 subject to the fee. Other changes include: Definitions,
13 minor adjustments to the calculation of fees, and minor
14 changes to reporting requirements.

15 Again, these changes are proposed to better
16 conform with the mandatory reporting regulation and
17 improve clarity. Next, I will discuss potential impacts.

18 We anticipate no significant environmental
19 impacts as a result of amendments to the fee regulation.
20 We also anticipate no significant economic impacts.

21 This includes: No net change in collected
22 revenue, between 20 and 25 facilities, the ones that I
23 previously mentioned, will no longer pay fees on
24 electricity generation. Several factors contribute to
25 slight variations in fees assessed for 2011 and subsequent

1 report years.

2 Since the release of the Initial Statement of
3 Reasons staff report, we have updated our economic
4 analysis on the proposed amendments to the fee regulation.
5 Overall, the impact of the fee collection will not change,
6 but some entity's fees will be reduced while others may
7 increase. Assuming minimal variation in fuel use from
8 year to year, on average, we don't expect entities to see
9 more than a one percent increase in fees that would result
10 from these changes.

11 --o0o--

12 AIR POLLUTION SPECIALIST BLACKBURN: I will
13 discuss staff's suggested modifications of the initial
14 proposal that we are recommending be addressed through the
15 15-day change process.

16 Because of recent 15-day changes to the mandatory
17 reporting regulation and the cap and trade regulation, we
18 propose to make conforming modifications to the fee
19 regulation. These include definitions and aligning
20 calculation of fees for electricity delivered into
21 California.

22 We will also be clarifying reporting requirements
23 for natural gas deliveries in response to public comments.

24 --o0o--

25 AIR POLLUTION SPECIALIST BLACKBURN: I will close

1 with staff's recommendation.

2 Staff recommends that the Board approve the
3 proposed amendments and suggested modifications to the AB
4 32 cost of implementation fee regulation.

5 That concludes my presentation. We would be
6 happy to answer any questions you may have.

7 CHAIRPERSON NICHOLS: I don't think we have any
8 questions.

9 We have four witnesses who want to speak on this
10 item. Why don't we just hear from them quickly. If it's
11 an indication of a fine job that you've done we only have
12 four people who want to speak. And they all claim to be
13 neutral, whatever that means. So let's hear Mr. Kate
14 Beardsley, Lily Mitchell, and Frank Harris.

15 MS. BEARDSLEY: Good afternoon. Hi, again. I
16 will be really, really brief. I'm sure you're all quite
17 brain dead.

18 (Laughter)

19 MS. BEARDLSEY: So we participated -- as I am.
20 Maybe you're. Sorry.

21 CHAIRPERSON NICHOLS: We are actually sitting
22 here eager for more and actually upset so few people
23 signed up.

24 MS. BEARDSLEY: I apologize. I'm going to start
25 over, if that's okay.

1 So just very briefly, we participated in the fee,
2 the development of the initial fee regulation back in '08.
3 We were supportive of it. You absolutely have the right
4 to collect this fee.

5 One of the key design features of the regulation
6 was to collect it from upstream sources with the
7 assumption they can pass the cost on downstream to the
8 actual sources of greenhouse gas emissions. That totally
9 makes sense. It's a much easier approach. And I'm just
10 here to as an FYI. We've been trying to move that ball
11 forward on passing the costs along to our customers. We
12 haven't been able to. So we're just in kind of an awkward
13 situation. We appreciate any further coordination between
14 ARB and the PUC on this issue.

15 CHAIRPERSON NICHOLS: Yes. I understand there is
16 this pending at the PUC. And we're all waiting for
17 action. I keep meaning to find some legally permissible
18 way to intervene in the proceeding and say hurry along.
19 But I believe the message has been heard this is something
20 important for them to decide.

21 MS. BEARDSLEY: Okay. Great. I appreciate that.
22 That can.

23 CHAIRPERSON NICHOLS: Lily Mitchell.

24 MS. MITCHELL: Good afternoon. I'm speaking for
25 the Southern California Public Power Authority.

1 I'll make brief comments because we've already
2 submitted written comments on these changes.

3 We support the changes to increase the
4 consistency of the fee regulations and commend the
5 comments in the Initial Statement of Reasons and the
6 Resolution that further changes will be needed to reflect
7 the even more recent changes to the mandatory reporting
8 regulation that's quite significant in terms of
9 calculation of the fee for electricity sector entities.

10 Just a couple points in particular, that we
11 request the fee regulation be amended in 15-day changes to
12 clarify that those fees imposed on electricity that's
13 imported from either specified or unspecified sources in
14 linked jurisdictions -- linked in the cap and trade
15 program, that no fees imposed on qualified exports again
16 either from specified or unspecified sources. And that
17 there is a deduction for what was previously called the
18 replacement of electricity and is now called the RPS
19 adjustment in the management reporting regulation. That
20 has complications for the fee regulation that need to be
21 followed through in the calculation of the common carbon
22 cost and in the fee liability calculation.

23 And as a final point, we just noticed in today's
24 changes the fee for the electricity sector entities is
25 calculated on carbon dioxide equivalent emissions,

1 including greenhouse gases with a fee for other entities,
2 other sectors calculated on carbon dioxide without
3 including greenhouse gases. We request they be consistent
4 treatment or consistent calculation of the fee for all
5 sectors in that record. Thank you.

6 CHAIRPERSON NICHOLS: Okay. Cindy Parsons.

7 MS. PARSONS: Good afternoon again. I'd actually
8 like to take the opportunity to thank the Board and staff
9 for addressing our concern about the point of regulation.
10 This is something that is definitely near and dear to our
11 hearts, because we are going to great efforts to try to
12 reduce our emissions. And having to take responsibility
13 for other utility's emissions is definitely not something
14 that we relish. And we definitely hope that ARB is able
15 to resolve this in a positive manner and that the point of
16 regulation is not shifted away from the owner of the
17 electricity.

18 That being said, we did submit written comments
19 on the fee regulation. The point of regulation, of
20 course, would be an issue under this regulation as well.
21 So if L.A. DWP is required to report imported electricity
22 that belongs to other utilities, we would have to pay fees
23 on that electricity as well. So, of course, we're hoping
24 that that will be resolved appropriately.

25 The second item I just wanted to highlight very

1 briefly, which Lily Mitchell actually touched upon as
2 well, was the basis for assessing the fees for the
3 electric sector is CO2 equivalent, which includes CO2,
4 CH4, and N2O. For the fuels, it is only CO2 emissions.
5 It's just a matter of fairness that if you're dividing up
6 the pie of the fee amongst all the emissions, that the
7 basis should be consistent across all the sectors.

8 And lastly, on the qualified exports, we actually
9 talked to staff about it. The way it was described would
10 limited the qualified exports only to the specified
11 sources, which that is inconsistent with the definition.
12 And so we're hoping that staff will be able to make the
13 definition in the equation consistent with the definition
14 for qualified exports so that all qualified exports can be
15 deducted and fees will apply to those. Thank you very
16 much.

17 CHAIRPERSON NICHOLS: Thank you.

18 Mr. Harris. This time, you're hearing your own
19 name.

20 MR. HARRIS: We thought about sending Mike up
21 here just to kind of play a late afternoon trick, but
22 everybody is a little bit too tired.

23 Frank Harris with Southern California Edison.

24 Aside from her opening statement, I agree with
25 precisely everything that Ms. Grant said.

1 And Pacific Gas and Electric and San Diego Gas
2 and Electric submitted a joint letter on this issue, and
3 we at Southern California Edison had an opportunity to
4 sign on to that letter. We chose not to, simply because
5 there was a significant element of the fact they referred
6 to the natural gas sector. And of course, we don't have
7 that. We don't think it was really appropriate.

8 Having said that, the elements of their letter
9 that are addressed to the electricity sector, like the
10 Board to recognize that Southern California Edison is in
11 complete agreement with that. Recognizing the barriers
12 that exist and the appropriate jurisdictional concerns
13 that exist between the ARB and the Public Utilities
14 Commission, we also share the hope that there will be some
15 way of coordinating some of that. This upstream
16 disposition of key can actually be recognized in the PUC
17 process and passed to the downstream users.

18 Thank you very much.

19 CHAIRPERSON NICHOLS: Okay. Thank you. Staff
20 have any response to the specific points that were raised
21 about the inclusion of non-CO2 gases or we've heard the
22 point of regulation issue.

23 CLIMATE CHANGE POLICY SECTION MANAGER MALLORY:
24 This is David Mallory of the staff.

25 That change was made consistent with the MRR and

1 it is something we'll need to look at in terms of being
2 consistent across all sectors.

3 CHAIRPERSON NICHOLS: We do. Yes, we do. So
4 that's you're thinking about it possibly addressing that.

5 CLIMATE CHANGE POLICY SECTION MANAGER MALLORY:
6 Yeah. That's our intent is to deal with that in the
7 15-day changes.

8 CHAIRPERSON NICHOLS: So the intent is to take
9 care of that in the 15-day changes. Great.

10 And on the qualified exports?

11 CLIMATE CHANGE POLICY SECTION MANAGER MALLORY:
12 Again, those changes were made consistent with the MMR,
13 and I believe the 15-day changes that we posted would
14 reflect that consistency.

15 CHAIRPERSON NICHOLS: Okay. Good. All right.
16 Anything else we need to do other than to take this up to
17 a vote? All right.

18 Is there a motion, please?

19 BOARD MEMBER D'ADAMO: So moved.

20 BOARD MEMBER ROBERTS: Second.

21 CHAIRPERSON NICHOLS: All in favor, please say
22 aye.

23 (Ayes)

24 CHAIRPERSON NICHOLS: We have one more thing to
25 do before we adjourn for the day. And this is a somewhat

1 sad occasion as all changes are, as we've been talking
2 about changes a lot today. But this is involves a change
3 in this Board.

4 Tomorrow, we'll be welcoming a new Board member,
5 which we're very excited about. But today, we're saying
6 goodbye to someone who's been with us since August of
7 2004. Lydia Kennard indicated that she wished to step
8 down. She seems to think that she has a life other than
9 working for the Air Resources Board. We don't understand
10 this, but it appears to be the case.

11 Actually, we're very grateful to her for her
12 faithful service and really just excellent contributions,
13 her common sense, level-headed sensible approach has
14 proven very useful in many situations, not to mention her
15 overall good cheer.

16 But there is some specific things I want to call
17 out that have been accomplished during the time that Lydia
18 has been a member of this Board and she has contributed
19 to, because I think it's worth just repeating.

20 So during your time on the Board, Ms. Kennard,
21 the Air Resources Board adopted the first ever low-carbon
22 fuel standard. The Board adopted regulations to implement
23 the Climate Change Scoping Plan, of course, the plan
24 itself and then today's action on cap and trade. But in
25 addition to that, there was the mandatory reporting rule.

1 There was the adoption of the first ever in the world
2 emission standards for greenhouse gases from passenger
3 vehicles, as well as actions to improve the efficiency of
4 long-haul tractors/trailers through aerodynamics.

5 The Board implemented the Goods Movement Emission
6 Reduction Plan, which has set emissions limits for new and
7 in-use commercial harbor craft. We required cleaner fuel
8 for ships that operate off the California coast and harbor
9 craft. We limited idling by heavy-duty sleeper trucks and
10 required control technologies on new and in-use diesel
11 cargo handling equipment.

12 We also implemented the Diesel Risk Reduction
13 Program, some of which also related to goods movement, of
14 course. And this is something that's near and dear to the
15 hearts of those of us who live in places with harbors,
16 including reducing diesel particulate matter from
17 heavy-duty trucks and buses, reducing diesel particulate
18 matter from off-road diesel equipment and forklifts.

19 We also set VOC limits for over 31 categories of
20 consumer products and reduced toxic emissions, limiting
21 formaldehyde from composite wood products and required
22 best available control technology to be used on chrome
23 plating facilities.

24 It's no wonder that we feel like a lot has been
25 accomplished during that time. That is an impressive body

1 of work for any group of people. And you were a part of
2 it all.

3 We want to thank you for your dedication and tell
4 you that we're really going to miss you and wish you well
5 in the future.

6 BOARD MEMBER KENNARD: I'm going to put all of
7 that on my resume.

8 Well, thank you, all. I'm very grateful to have
9 the opportunity to have sat on this Board for seven years.
10 It doesn't seem that long. And I really thank you for
11 that list of our accomplishments that occurred during that
12 period of time.

13 Unfortunately, my business activities have
14 accelerated, and I can no longer serve.

15 I've really sincerely appreciated the opportunity
16 working with the amazingly talented staff. And James,
17 thank you for your leadership. And a very thoughtful and
18 dedicated Board.

19 I wish you all the best as you continue to make
20 more and more strides toward improving the quality of life
21 for Californians. And today, as we saw, I'm proud to have
22 been participating today. Really creating the template
23 for people around -- communities around the country and
24 the world to do the same. And so I'm very grateful to
25 have this opportunity. And I hope that our paths cross

1 again in some context in the future.

2 (Applause)

3 CHAIRPERSON NICHOLS: Thank you so much.

4 EXECUTIVE OFFICER GOLDSTENE: Other than to say
5 staff will miss Lydia because she always understood our
6 perspective.

7 But no, there's nothing else.

8 BOARD MEMBER KENNARD: You're on your own now.

9 EXECUTIVE OFFICER GOLDSTENE: I'd like to remind
10 everybody we start at 8:30 tomorrow morning.

11 CHAIRPERSON NICHOLS: Thanks, everybody.

12 EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols, I
13 don't know if there is any public comment.

14 CHAIRPERSON NICHOLS: I didn't call for any. We
15 hadn't heard from anybody. No one is signed up. Okay.
16 Thank you. We are adjourned.

17 (Whereupon the Air Resources Board meeting
18 adjourned at 5:22 PM)

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