

MEETING  
STATE OF CALIFORNIA  
AIR RESOURCES BOARD

BYRON SHER AUDITORIUM  
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Mrs. Barbara Riordan

Supervisor Phil Serna

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Ms. Edie Chang, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

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Mr. Steve Cliff, Assistant Chief, SSD

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Ms. Sara Nichols, Air Pollution Specialist, SSD

Ms. Raginder Sahota, Chief, Climate Change Program  
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Mr. Kirk Oliver, Senior Attorney, Legal Office

Mr. Todd Sax, Assistant Chief, MCSD

Mr. Bruce Tutler, Manager, Mobile Source Compliance  
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Ms. Beth White, Manager, On-Road Compliance Assistance  
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Mr. Erik White, Chief, MSCD

Ms. Liz Yura, Manager, Goods Movement Program Section,  
Stationary Source Division

ALSO PRESENT

Mr. Greg Arnold, CE2 Carbon Capital

Mr. Jake Belin, Kern Oil

Ms. Susie Berlin, Northern California Power Agency & MSR  
Public Power

Mr. K.C. Bishop, Chevron

Mr. Tony Brunello, California Strategies

Ms. Kathleen Cole, Metropolitan Water District of Southern  
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APPEARANCES (CONTINUED)

Mr. Jon Costantino, Coalition for Fair & Equitable Allocation

Mr. Michael Cote, Ruby Canyon Engineering

Mr. Danny Cullenward

Mr. Gary Grimes, Paramount Petroleum

Ms. Emily Grubert

Mr. Jerry Gureghian, Green Holdings

Ms. Claire Halbrosk

Ms. Barbara Haya, Stanford University

Mr. Miles Heller, Tesoro

Ms. Jerilyn Lopez Mendoza, Southern Californai Gas/SDPGE

Mr. Bob Lucas, California Coalition for Environmental and Economic Balance

Mr. Dell Majure, Kimberly-Clark Corporation

Ms. Teresa Makarewicz, Shell Oil Company

Ms. Marcie Milner, Shell Energy North America

Mr. Ralph Moran, BP America

Mr. Tim O'Connor, EDF

Ms. Barbara Toole O'Neil

Mr. Steve Piateck, Alon Petroleum

Ms. Kara Roeder, Procter & Gamble

Mr. Paul Shepard, Wildflower Energy

Mr. Adam R. Smith, Southern California Edison

Mr. Tom Vessesl, Vessels Coal Gas, Inc.

APPEARANCES (CONTINUED)

Mr. Michael Wang, WSPA

Mr. Peter Weiner, Paul Hastings, LLP

Mr. Daniel Witt, Tesla

Ms. Katy Young, Climate Action Reserve

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1 jumping the gun. I'm ready to go.

2 BOARD MEMBER SHERRIFFS: Here.

3 BOARD CLERK JENSEN: Professor Sperling?

4 BOARD MEMBER SPERLING: Here.

5 BOARD CLERK JENSEN: Chairman Nichols?

6 CHAIRPERSON NICHOLS: Here

7 BOARD CLERK JENSEN: We have a quorum.

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

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

16 I'm also anxious to make a slight change in our  
17 agenda for today to move the item relating to expanding  
18 the list for people who are interested in purchasing  
19 electric vehicles for the rebate program. It's a very  
20 small item and it doesn't take much work. I'm afraid if  
21 it comes at the end of the day, we're going to run into  
22 quorum problems and we do have to take a vote on that one.  
23 I'd like to do that right after we finish with truck and  
24 bus and then we can move on to the cap and trade issue.  
25 So AQIP will come right after this first item on truck and

1 bus.

2 Before we get back to the discussion that we  
3 started yesterday, I would like to also, however, just for  
4 the record, do something else which I neglected to do  
5 yesterday, which was to report back on the results of our  
6 closed session that we had at lunch during our Board  
7 meeting yesterday. As I think it was announced, we were  
8 planning on having an executive session. The Board did  
9 meet briefly in closed session, and we appointed a  
10 subcommittee of two Board members to do a performance  
11 review, as requested, an annual performance review by  
12 our -- of our Executive Officer. And they will then  
13 report back to the full Board and the full Board will  
14 consider with Mr. Corey and give him the results of his  
15 review, which I think is not going to be an unhappy  
16 experience. But hopefully it will set the mark for a good  
17 practice with the Board operations. So that's what we did  
18 in our executive session and that's all we did. So I  
19 think that closes that piece of it. And we can get back  
20 to the work that we need to get completed today on  
21 amending the truck and bus rule.

22 When we left yesterday, the Board members had all  
23 given the staff a list of questions or issues that we  
24 wanted them to address. And they've worked through the  
25 night and into the early morning I understand to come up

1 with responses to all of those issues and they're prepared  
2 to go through them.

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

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

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

1 members a little bit of context on this regulation.

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

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

23 I think when we came back in 2010, we were truly  
24 driven by the deep, deep recession that quite frankly even  
25 in 2008 nobody really understood how much that was going

1 to hit us and what a dramatic impact it would have for a  
2 short period of time on emissions. And people talk about,  
3 well, is the Board backsliding. I don't consider it  
4 backsliding when we can re-evaluate actual emissions and  
5 then hold industry accountable for actual emissions.  
6 That's not backsliding. That's allowing industry to  
7 participate at the level that the economy is currently  
8 performing at.

9           So when we look at today's amendments, we are  
10 back here because there is 50 percent of the inventory of  
11 trucks out there that are now due. And in looking at  
12 that, I'm really thankful that staff will be looking at  
13 each individual concern that we have. But I was struck  
14 when I went over my notes that on the small fleets, the  
15 first truck we're looking at a six-month delay that in  
16 effect they are going to have to be in compliance by June  
17 of this year. That's truck number one. And I'm hoping  
18 that staff will be able to share with us what the  
19 inventory percentage is and that the other delay is really  
20 about truck number two and three. And it will be -- I'll  
21 be interested in also hearing what we were going to --  
22 what the current rule is versus what the delay is. And  
23 also, of course, all is for not if we truly can't enforce  
24 and make sure that people are playing by the rules that we  
25 have in front of us.

1           So this is very complicated. We're talking about  
2 for-hire and vocational. And within the vocational, there  
3 is such a wide breadth. I think if we were to in  
4 hindsight have bifurcated this rule into two parts, it  
5 still would have been complicated just over the vocational  
6 issues. And so we do have a yoman's job in front of us.

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

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

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

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

24           With that, Erik will tee up the range of issues  
25 we're going to go through and begin.

1 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:

2 Thank you Mr. Corey.

3 (Thereupon an overhead presentation was  
4 presented as follows.)

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

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

13 I want to say that we certainly appreciate the  
14 challenges and struggles that you all are facing. They're  
15 the same struggles that we face as we drafted these  
16 regulations. I would say the testimony yesterday is  
17 entirely consistent with the comments and the feedback we  
18 got through the public process that we went through,  
19 concerns about balancing small fleets versus large,  
20 compliant versus future compliant, the roll of incentives,  
21 how to address rural versus urban issues. Very difficult  
22 challenges that we spent a lot of time and a lot of  
23 thought trying to find an appropriate balance and we want  
24 to share our thoughts and our efforts on that with you  
25 this morning.

1           So we'll start. I'll go through the list of  
2 things that we had to walk through with you. The first  
3 was around the loan denial issues. How to address  
4 compliance challenges that fleets are facing when they  
5 cannot obtain the means to come into compliance, some  
6 options around that for you.

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

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

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

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

23           What options do we have on water trucks?

24           And I think finishing up with enforcement. I  
25 think what we have laid out for you today really bookends

1 the comments that Ms. Burg just made in terms of how do we  
2 address those that are struggling and looking for ways to  
3 come into compliance and how can we enhance our  
4 enforcement efforts to make sure we have a robust program  
5 that has a level playing field for all that are needing to  
6 comply with the rule.

7 Next slide.

8 --o0o--

9 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:

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

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

23 We certainly heard the concerns from industry and  
24 other stakeholders that the current proposal that we had  
25 in the 45-day notice was not sufficient to ensure that we

1 truly were capturing those mostly in need and we weren't  
2 simply providing an opportunity for those who are looking  
3 for ways around the cleanup requirements to simply get  
4 themselves some additional time.

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

20           We've looked at some other options that have been  
21 suggested in terms of can we reduce the time period in  
22 which fleets have access to that. So the current proposal  
23 would have that -- would provide a up to four-year  
24 extension until 2018 for such fleets before they would  
25 need to go to a 2012 truck. We could look at reducing

1 that period. That's certainly an option the Board could  
2 consider.

3 One thing that the Board should also keep in mind  
4 is that by reducing the amount of time, the challenge some  
5 some of these fleets are going to face to go directly to a  
6 2010 truck will be hard. We may need to look at whether  
7 or not the next step for these fleets is a 2010 truck or  
8 simply getting a retrofit or other types of PM control on  
9 the truck.

10 Next slide.

11 --o0o--

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

18 So we already have a program in place where when  
19 we have fleets that are not able to comply with an ARB  
20 regulation, not necessarily the truck and bus regulation,  
21 we bring them in. We work with them. We put them into  
22 the settlement process where we can work out a time line  
23 for that fleet to come into compliance. This is something  
24 that's already allowed and afforded ARB in statute. It's  
25 something that we have a process in place to handle. It

1 allows us to consider a number of relevant factors which I  
2 think are germane to what we're talking about today. The  
3 types of steps that fleets have taken already to come into  
4 compliance, the financial ability of fleets to comply,  
5 whether fleets self-reported and came to us with their  
6 challenges versus finding them out in the field on their  
7 own.

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

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

16 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I  
17 believe so.

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

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

23 But I'm looking for -- we have an example of a  
24 situation where we sort of narrowed the bins in a very  
25 progressive way. It got us down at last to the people

1 that weren't able to comply or wouldn't comply. And then  
2 there was some people at the very end who didn't and  
3 couldn't and they still weren't happy. But we at least  
4 had done everything we could to help those who wanted to.  
5 So I'm looking for whether this is a similar kind of a  
6 process.

7 SSD CHIEF MARVIN: This is Cynthia Marvin.

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

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

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

24 SSD CHIEF MARVIN: It was a much smaller  
25 population.

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

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

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

25           Next slide.



1           But as we heard yesterday, and I think it's  
2 critically important, the staff proposal -- there are a  
3 lot of concerns that the potential for abuse is there.  
4 There's substantial potential for abuse versus what we  
5 would be able to be a much lower likelihood of abuse  
6 through the enforcement settlement process we would go  
7 with if we didn't have this provision in the rule.

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

19           The amended proposal provides more time. There  
20 is a greater loss of benefits because we're not going to  
21 see those PM benefits for four years versus the typical  
22 one year. And I would say this might need to go out a  
23 little further than that with some of the fleets we'll  
24 likely see. But certainly a smaller period of time --  
25 less than the four years in the current proposal.

1 I've touched a little bit about the resources.  
2 It would require what we have, what we've proposed in the  
3 staff presentation. We think we can accommodate within  
4 the existing program that we have for reporting. We would  
5 have enforcement follow-up, but that would be part of our  
6 normal course of action versus the alternative, which  
7 would be very resource intensive on behalf of ARB staff  
8 that would require redirection of resources and  
9 prioritizing how we staff overall the truck and bus  
10 efforts we have underway.

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

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

18 --o0o--

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

23 And our focus and his question was specifically  
24 about both commercial financing and public incentives. In  
25 our response, we're going to focus on the programs and the

1 funds that are currently under the authority of both this  
2 Board and of our partners at the local air districts.  
3 That's roughly two to \$300 million over the next several  
4 years potentially available to assist truck fleets come  
5 into compliance.

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

13 There are smaller amounts of funding available on  
14 an ongoing basis through the Moyer program, through AB  
15 923, and through other district revenue sources.  
16 Certainly for the larger districts, there are some  
17 significant funding totals that come into under these  
18 programs, but each district must make its own hard choices  
19 about how to allocate among many different important  
20 project types.

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

1 making that could augment that truck funding pot. And  
2 there is two mechanisms.

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

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

18 But your ability to pre-commit those dollars is  
19 limited by statute, which requires us to go through a very  
20 specific public process. So we think the net result can  
21 be the same, but we don't believe that the Board has the  
22 ability today to make funding awards without allowing that  
23 public process to be completed. So we'll be back to you  
24 later this year or early next year having completed that  
25 public process with recommendations based on each local

1 air district's proposals, of course, including San  
2 Joaquin.

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

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

21 With that, it opens up funding opportunities  
22 under all of the ARB and the district programs. Without  
23 that change in the regulation, current state law does not  
24 let us fund the majority of those trucks. A few of them  
25 could be funded in the first year. But by and large, we

1 are precluded from funding those. So that is really in  
2 your hands today.

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

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

18 This is not a situation that we would like to be  
19 in. But it reflects a philosophy that was present from  
20 the very beginning of these programs that government  
21 doesn't pay people to comply with regulations. We would  
22 only allow them incentives if they were doing something  
23 above and beyond the regulations. That's a good principle  
24 in general, except when you run up against the results of  
25 it in a situation like this.

1 I think this is something we're going to have to  
2 grapple with soon, if not right this minute, because it's  
3 increasingly an issue for all kinds of regulations that we  
4 get into that if there is some way to give financial  
5 incentive for people to comply, it makes it easier to  
6 develop a more effective, fast tough rule.

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

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

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

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

25 SSD CHIEF MARVIN: So the last component of our

1 response is to acknowledge a couple of decisions that will  
2 ultimately be before you in the context of those guideline  
3 revisions that would allow you to really prioritize where  
4 this fixed pot of funding goes.

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

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

21 Right now, in Prop. 1B, the priority is funding  
22 any zero emission truck applications. But then small  
23 fleets and large fleets generally compete against each  
24 other on a per truck basis so there is no net advantage,  
25 whether you're replacing one truck or you're placing ten

1 trucks. That's a policy call that will be before you  
2 later this year.

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

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

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

22 So our suggestion would be that we work with the  
23 districts and stakeholders to explore all of these options  
24 and any others that you suggest and bring to you in those  
25 guideline revisions some policy choices to make.

1           If you look at this combination of potential  
2 actions, the rule amendment, and the revisions to the  
3 guidelines, we think that these sorts of ideas could make  
4 grant funding available to roughly half of the small  
5 fleets to bring their second and their third trucks into  
6 compliance. That's our end statistic about the balance or  
7 the ratio of small fleets needing to come into compliance  
8 versus the amount of dollars that may be available.

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

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

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

25           BOARD MEMBER BERG: Is there a way to give

1 priority to that first truck that was in compliance by  
2 January 1st, 2014, so those trucks that have check speaker  
3 before in compliance and have a second and third truck,  
4 would there be a way to give them credit or reward them in  
5 a priority list for funding?

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

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

23 SSD CHIEF MARVIN: Yes. That completes our  
24 response.

25 CHAIRPERSON NICHOLS: There is another issue that

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

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

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

1 Legislature passing it and the Governor ultimately signing  
2 it.

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

16           So I hate to close another door on this, but I  
17 guess I'm going to go in the direction of being  
18 pessimistic here, if only because I'm the person who was  
19 quoted yesterday and rightfully so as having said these  
20 are problems we can solve with money. And of course, they  
21 can be solved with money if there is enough. But there  
22 isn't quite enough. So let's be as careful as we can and  
23 not open any ideas that we can't really follow through on.  
24 I think this is one that we're not going to be able to  
25 follow through on, at least not in the near term.

1 BOARD MEMBER SPERLING: What is the time frame of  
2 the investment plan?

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

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

13 CHAIRPERSON NICHOLS: We'll be working on it in  
14 2015. And we're supposed to be sort of complying with it  
15 up until then. So there isn't a formal annual update.  
16 But my guess is it could be amended or modified I suppose,  
17 if it needed to be.

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

20 CHAIRPERSON NICHOLS: Right. It's intended for  
21 that, to be guidance. I think everybody will recall we  
22 did a presentation on it. It's pretty broad. It had the  
23 three major categories: Transportation, energy,  
24 efficiency, and renewables and natural resources, and some  
25 priorities within those areas.

1           The one thing it did not do, which I think, you  
2 know, many people had hoped for, was to create new  
3 programs. So this year's budget is only reflecting  
4 programs that currently are authorized by statute that  
5 money could be allocated to in ways that fit those  
6 priorities. We didn't sit down and go back and try to  
7 invent whole new kinds of programs. Many people have good  
8 ideas for things that you could do in all three of those  
9 categories. So I think it's not really a static process.  
10 But in terms of the issue that is facing us today, it's  
11 not well suited for what we're trying to accomplish.  
12 Thank you.

13           BOARD MEMBER SHERRIFFS: I have a question or  
14 comment.

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

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

25           CHAIRPERSON NICHOLS: Cattle trucks are coming.

1 BOARD MEMBER SHERRIFFS: Before we moo-ve on --

2 (Laughter)

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

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

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

18 CHAIRPERSON NICHOLS: Yes. Absolutely.

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

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

1 Next.

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

5 --o0o--

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

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

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

18 This slide is already dated because there has  
19 been a lot of discussions between various stakeholders on  
20 this issue. We weren't the only ones burning the midnight  
21 oil last night, it would seem. What we would like to  
22 recommend is we keep the current proposal as is and allow  
23 that process to move forward. We can address this as a  
24 15-day change once we have -- if a compromise is able to  
25 be worked out that's mutually agreeable to all involved.

1 Next slide.

2 --o0o--

3  
4 CHAIRPERSON NICHOLS: We're not opening it to any  
5 other kinds of livestock.

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

9 CHAIRPERSON NICHOLS: All right.

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

23 The way that we were able to try to bridge this  
24 gap is to look at some of the credit provisions that are  
25 in the regulation. And we extended those a number of

1 years, anywhere from two to four years, beyond what the  
2 current regulation would provide for.

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

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

15 What the practical effect of this would be though  
16 would be to delay the final cleanup on a number of fleets  
17 and larger fleets that are probably high mileage until  
18 2020 and will defer much of the PM benefits we expect to  
19 receive from those vehicles in the 2016-2018 time frame  
20 all the way out to 2020.

21 And our back-of-the-envelope estimate of the  
22 emission impact of that would be that that would probably  
23 double the loss of PM benefits we would expect from the  
24 package of amendments that are before you today. So  
25 instead of losing 7 percent or achieving 93 percent of the

1 emission benefits, we would probably hit around 86  
2 percent. So it is a substantial loss of benefits to  
3 extend these out fully through 2020. So it is an option,  
4 but it comes with significant environmental disbenefit.

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

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

11 BOARD MEMBER MITCHELL: Chairman Nichols?

12 CHAIRPERSON NICHOLS: Yes

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

17 ASSISTANT DIVISION CHIEF SAX: So, for example,  
18 for NOx when we say we would -- under the 93 percent  
19 cumulative benefits retained, under the current proposal,  
20 that represents a loss of 54 tons per day of NOx  
21 cumulative over the remaining life of the regulation from  
22 2014 to 2023. For NOx, it would be much larger. It would  
23 be potentially up to 188 tons lost. Over that same period  
24 and for PM, it would go from four tons lost to about seven  
25 tons lost. So we would actually -- we're projecting we

1 would lose more NOx than we would lose PM.

2 BOARD MEMBER MITCHELL: Thank you.

3 CHAIRPERSON NICHOLS: Yes, Dr. Sherriffs.

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

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

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

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

17 CHAIRPERSON NICHOLS: It seems to me that there  
18 are a couple of areas that we've identified that would  
19 call for additional legislation and the one about linking  
20 registration authority seems to me to be one that we ought  
21 to be seeking, if we can. It has to go through a process  
22 within the administration to get approval to do that. But  
23 I certainly would think that would be something that would  
24 be a very useful tool to have. I see head nodding here  
25 so --

1           MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Yes.  
2 It's something that, you know, it's been discussed for a  
3 number of years. I believe the California Trucking  
4 Association has pursued legislation on this a number of  
5 times, has not been successful in getting that through  
6 onto the books. But I think anything that would help  
7 improve the tools that we have available to us on our  
8 enforcement efforts would be useful.

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

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

23           All right. Well, how to proceed.

24           MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:  
25 Would it best serve to just kind of talk about enforcement

1 first and then we can touch -- loop back on the last  
2 couple of questions that you had?

3 CHAIRPERSON NICHOLS: Yeah.

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

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

11 BOARD MEMBER SHERRIFFS: We do not want --

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

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

16 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I  
17 think tracking would be very difficult. And what we have  
18 in the regulation right now is a fairly simplistic way for  
19 a fleet to manage themselves themselves. It didn't take  
20 into account different emissions rates of different  
21 vehicles within the same fleet. If put a filter on a  
22 truck that drives 10,000 miles, I could presumably not  
23 have to clean up a truck that drives 60,000 miles down the  
24 road. We've kind of accepted that to make this workable  
25 for fleets, we would have to set this up that way. If you

1 wanted to talk about trading or exchanging credits between  
2 fleets, I think those types of considerations then need to  
3 be accounted for as well as what are the emissions  
4 occurring, because you have different requirements for  
5 areas that are NOx exempt areas versus in the San Joaquin  
6 Valley. I think it would provide a lot of complications  
7 that are probably less helpful to the overall structure of  
8 the regulation than we might like.

9 BOARD MEMBER SHERRIFFS: Just like a truck is not  
10 a truck, a credit is not a credit.

11 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: A  
12 truck is not a truck -- that's right.

13 So let me talk a little bit about --

14 --oOo--

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

19 What do we do today? What are our current  
20 activities? What are the current tools that we utilize?  
21 How do we ensure as high a level of compliance as we can?  
22 As you heard from staff yesterday, we believe that about  
23 80 percent of the fleets are compliant that are on the  
24 road today.

25 We believe this for a number of reasons.

1 BOARD MEMBER BALMES: Erik, sorry. Because  
2 people questioned that number vigorously yesterday, can  
3 you restate your confidence in this 80 percent?

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

7 BOARD MEMBER BALMES: Sorry to interrupt.

8 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: No  
9 problem.

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

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

1 regulation.

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

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

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

24 And then we did an assessment of whether or not  
25 that fleet was compliant based on what the age of the

1 vehicle was in each fleet, whether or not it had a  
2 retrofit, and whether or not it was taking advantage of  
3 flexibility options, whether or not it could be following  
4 the BACT schedule and whether or not it was a light or  
5 heavy truck.

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

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

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

22           One of things we said during the presentation was  
23 that of those 600 trucks, those are trucks that are in  
24 fleets that report mileage in California and are cleared  
25 to operate here. But many of those fleets report only a

1 small fraction of their total miles in California, which  
2 to us indicates that relatively few of those trucks  
3 actually operate in California. So when we've set up  
4 inspections along border crossings in California, what  
5 we've seen is an 80 percent compliance rate in those  
6 600,000 trucks as well.

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

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

14 BOARD MEMBER BALMES: I'm not bragging about the  
15 80 percent. The foundation of the numbers --

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

25 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE:

1 That's exactly right. As we've looked at that number,  
2 while it is high, it can be improved upon. I think that  
3 the next slide will talk about some of the things that  
4 we're doing.

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

21 So we are working with the Legislature to try to  
22 ensure those make their way into the final budget. But it  
23 is encouraging that those resources are there. And it's  
24 very timely I think relative to what we heard yesterday  
25 and what we have going on today.

1           CHAIRPERSON NICHOLS: And just to sort of further  
2 explain the thought about the 80 percent, there is a lot  
3 of literature out there in the social science literature  
4 and law enforcement literature about how people react to  
5 violations and how they perceive violations going on in  
6 their communities.

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

16           John.

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

25           So is the 80 percent -- Question A, Part A is:

1 Where is the other 25,000? And how do we account for  
2 them?

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

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

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

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

23 The 177,000 that I mentioned which applies -- is  
24 heavy trucks, light trucks, everything in our truckers  
25 compliance reporting database, we ended up

1 cross-referencing those with the DMV database. All of  
2 those are accounted for if they're registered in  
3 California. We also have access to DMV registration data  
4 for all of the fleets and all of the trucks that report  
5 operation in California. And we can cross-reference those  
6 by vehicle identification number as well.

7 CHAIRPERSON NICHOLS: Let's move on.

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

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

24 CHAIRPERSON NICHOLS: Okay.

25 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: The

1 last thing I just want to touch on is there was some  
2 number of comments about could I&M, inspection and  
3 maintenance, be a useful tool?

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

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

23 BOARD MEMBER SPERLING: That sounds like this is  
24 years in the future if we do this. Is that the  
25 implication of what you just said?

1           MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: I  
2 think some like opacity have an opportunity to be done  
3 fairly quickly. It's modifying existing programs.  
4 Others, like OBD integration, would require more time. We  
5 need a greater pot penetration of these vehicles.

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

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

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

25           About 75 percent or so of the school buses

1 operating in the state already have filters, and we are  
2 working with districts to -- local air districts to make  
3 money available to complete that cleanup. We don't think  
4 that it's necessary to include those at this time.

5 The other question that came up regarding water  
6 trucks and whether the additional miles were going to be  
7 needed for water trucks recognizing conditions of the  
8 drought. If you remember, one of the proposals that staff  
9 made is to increase the work truck mileage from 15,000 to  
10 20,000 miles. Work trucks have already -- are already  
11 eligible and were already eligible for the 15,000 mile  
12 exemption that was in the existing regulation. Work  
13 trucks certainly were part of that.

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

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

25 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: So

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

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

14 BOARD MEMBER BERG: I so move Resolution 14-3.

15 BOARD MEMBER EISENHUT: Second.

16 CHAIRPERSON NICHOLS: It's been seconded by Board  
17 Member Eisenhut. So good.

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

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

25 I would like to say, by the way, with respect to

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

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

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

11 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: That  
12 is correct.

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

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

23 Does anybody have any thoughts about what they  
24 would like to do? I mean, I'm still quite concerned about  
25 our ability to handle this loan information without a huge

1 expenditure of staff time and effort. But I do understand  
2 that it's vital to people's ability to comply. So I'm  
3 willing to accept the original staff proposal on this one,  
4 but I'm certainly open to a change if anybody wants to  
5 move that.

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

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

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

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

1 something we want to consider.

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

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

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

24 BOARD MEMBER EISENHUT: Question.

25 CHAIRPERSON NICHOLS: Yes.

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

6           CHAIRPERSON NICHOLS: Understand.

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

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

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

25           MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: On

1 the small fleet side for on the second and third trucks as  
2 we discussed earlier, yes.

3 CHAIRPERSON NICHOLS: Dr. Serna.

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

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

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

24 The loan denial provision, even with the  
25 adjustments that are being discussed, moving it to 2016,

1 allowing for the PM filter is from a resource ARB  
2 implementation standpoint much more resource efficient  
3 than the enforcement route that would be significant for  
4 the resource standpoint if we go the enforcement route,  
5 because it's one off negotiations with potentially  
6 hundreds of thousands of trucks.

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

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

17 CHAIRPERSON NICHOLS: John.

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

1 that this is not an either/or here?

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

11 CHAIRPERSON NICHOLS: Yes, Dr. Sherriffs.

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

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

22 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: We  
23 can certainly look at additional elements to this proposal  
24 as we have -- as we do the 15-day changes, as we discussed  
25 yesterday and this morning, additional elements that could

1 be added to that to make sure. It's our expectation  
2 fleets will simply sit on their laurels for two years. If  
3 this do, they'll find themselves in a no compliance  
4 situation. There is no way to become compliant.

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

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

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

19 CHAIRPERSON NICHOLS: I agree.

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

24 The only amendment actually is the amendment to  
25 shorten the time frame for the loan denial provision and

1 make that only available through December 2016.

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

3 MOBILE SOURCE CONTROL DIVISION CHIEF WHITE: Can  
4 I ask one clarifying question? Is it the intent of the  
5 Board that the provision also require that at the end of  
6 2016 they only have a particular filter installed as  
7 opposed to having the 2010 compliant truck? That will be  
8 another change that we'll need to -- it would be helpful  
9 to understand if that's what the Board is requesting.

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

12 CHAIRPERSON NICHOLS: Is it either/or? Either  
13 2010 or a filter?

14 BOARD MEMBER BERG: Yes.

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

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

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

22 (Ayes) (10)

23 CHAIRPERSON NICHOLS: Opposed?

24 Do you want to oppose? Would you like to speak  
25 to your opposition?

1 BOARD MEMBER DE LA TORRE: I've struggled with  
2 this one more than anything I think I've had since I've  
3 been on this Board. And I think I alluded to it yesterday  
4 in my comments. I really have a hard time, and I wasn't  
5 on this Board when the original rules were done. I wasn't  
6 here when the extension was granted in 2010, which I  
7 thought was completely appropriate at that time because it  
8 was in the future. And there was a dramatic circumstance  
9 with the economy the way it was that deserved that  
10 consideration.

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

17 And I remember the words of one of the folks that  
18 spoke yesterday. "Ignorance and defiance." And the  
19 deadline was January 1st, 2014. And they did not comply.

20 I was okay and I am okay with staff working with  
21 folks on an ad hoc basis. I know it's labor intensive,  
22 all those things. But working with them to get them  
23 there. But we set a deadline, and we have 80 percent  
24 compliance. I think it's working. And I understand how  
25 difficult it is. But at the end of the day, we are a

1 regulatory agency that has to set targets and follow  
2 through on them. And I know how tough this one is because  
3 it effects folks out there who are just trying to do their  
4 business. But it's been years and years and years in  
5 coming and we're now at the end of April, 2014. And  
6 folks, I saw a lot of defiance yesterday. I saw a lot of  
7 folks pretending they didn't know. I find it impossible  
8 to believe that they didn't know. And so that's what --

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

11 (Nays) (1)

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

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

24 This item is not going to be an extensive  
25 discussion of the CVRP program, which is our Clean Vehicle

1 Rebate Project. We can just state for the record here  
2 that the program is a part of AB 118, now AB 8, Air  
3 Quality Improvement Program, which provides critical  
4 incentives for the state's cleanest cars and truck as well  
5 as for advanced technology demonstrations and loan  
6 assistance for diesel trucks.

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

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

18 So the staff is here today requesting authority  
19 for the Executive Officer to expand the waiting list by an  
20 additional \$25 million to carry the program through June  
21 2014 when the new fiscal year funding will be in place.

22 And I just want to emphasize that we are not here  
23 today to talk about any other projected changes to our  
24 incentive program for clean vehicles because that's going  
25 to be on the agenda in June. There is a paper out for

1 discussion that many people have seen. There's lots of  
2 ideas, issues, concerns about those ideas for how to make  
3 this program sustainable and even more effective in years  
4 to come. But for the moment, all we need to do is to give  
5 the authority to extend the waiting list.

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

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

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

14 BOARD MEMBER SHERRIFFS: So moved.

15 BOARD MEMBER RIORDAN: Second.

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

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

23 BOARD CLERK JENSEN: Daniel Witt was the first  
24 witness.

25 CHAIRPERSON NICHOLS: I'm sorry?

1 BOARD CLERK JENSEN: Daniel Witt.

2 CHAIRPERSON NICHOLS: Hi.

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

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

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

21 We'd like to support and frankly speak for  
22 everyone else who is in support of this proposal. And I  
23 won't go into many details on it, other than to suggest we  
24 support the staff recommendation to increase the rebate  
25 reservation list amount to 30 million in order to fulfill

1 the consumer interest for the remainder of the current  
2 fiscal year. And we also support the staff recommendation  
3 to access these consumers according to the current fiscal  
4 year program and funding criteria. This will reduce the  
5 ambiguity and uncertainty about rebate value and program  
6 qualifications for any additional rebate applicants during  
7 this period.

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

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

25 BOARD MEMBER SPERLING: Can I get a clarification

1 on what you just said? That the money that's coming is  
2 going to be used to backfill for this fiscal year?

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

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

13 CHAIRPERSON NICHOLS: We already spent it.

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

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

24 BOARD MEMBER SPERLING: The money set aside from  
25 cap and trade for --

1           CHAIRPERSON NICHOLS: This is not cap and trade  
2 money that we're talking about here. It's AB 118 or AB 8  
3 money.

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

7           BOARD MEMBER SPERLING: Okay.

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

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

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

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

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

23          CHAIRPERSON NICHOLS: Steve does not wish to  
24 speak. Either did Eileen. She left the room so you  
25 wouldn't call on her. Oh, no. There she is. But we know

1 that she would have supported us, and we appreciate her  
2 giving us time.

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

6 (Ayes) (10)

7 CHAIRPERSON NICHOLS: Any opposed?

8 Great. Thank you so much.

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

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

20 (Abstentions) (1)

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

24 (Whereupon a recess was taken.)

25 CHAIRPERSON NICHOLS: We have one item before us

1 today, now that we've dispensed with yesterday and our  
2 short item, and that is amendments to our cap and trade  
3 regulation.

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

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

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

1 further.

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

9 The Cap and Trade Program, as I think everyone  
10 knows, is a part and an important part of the suite of  
11 strategies that are outlined in our initial AB 32  
12 Greenhouse Gas Scoping Plan under AB 32 that are putting  
13 us on track to reduce our greenhouse gas emissions to 1990  
14 levels by 2020, to maintain and continue reductions beyond  
15 2020 as well as to create the framework for ongoing and  
16 additional actions to cut emissions beyond 2020.

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

1 continue to run smoothly.

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

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

23 The proposed amendments will allow us to continue  
24 to develop a comprehensive program to reduce dependence on  
25 fossil fuels, stimulate investment in clean and

1 energy-efficient technologies, and greatly improve air  
2 quality and public health within our state.

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

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

10           EXECUTIVE OFFICER COREY: Yes, thank you Chairman  
11 Nichols.

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

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

23           And in total, three Board Resolutions have  
24 directed staff to propose modifications to the cap and  
25 trade regulation to address resource shuffling, legacy

1 contracts, combined heat and power, emissions leakage,  
2 allowance allocation universities, cost containment,  
3 product-based benchmarks, and waste-to-energy facilities.

4 And in response to this direction, at the October  
5 2013 Board hearing, staff presented a set of proposed  
6 amendments that achieve the goals outlined in each of the  
7 Board resolutions.

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

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

19 (Thereupon an overhead presentation was  
20 presented as follows.)

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

23 Good morning, Chairman Nichols and members of the  
24 Board.

25 This presentation will focus on proposed

1 amendments to the California cap on greenhouse gas  
2 emissions and market-based compliance mechanisms  
3 regulation, otherwise known as the cap and trade  
4 regulation.

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

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

13                           --o0o--

14           AIR POLLUTION SPECIALIST NICHOLS: For this  
15 presentation, I will begin by providing background on AB  
16 32 and the goals of the Cap and Trade Program. I will  
17 also discuss program milestones and updates.

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

24           Next I will present an overview of the  
25 environmental analysis prepared for the proposed

1 amendments and Mine Methane Capture Protocol in accordance  
2 with the California Environmental Quality act, or CEQA.

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

6 --o0o--

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

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

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

1 goals.

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

7 --o0o--

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

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

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

23 --o0o--

24 AIR POLLUTION SPECIALIST NICHOLS: ARB places an  
25 aggregate limit, or cap, on the emissions from all covered

1 sources for the years 2013 through 2020. Unlike  
2 traditional air permitting programs, there are neither  
3 specific caps for individual facilities, nor facility  
4 level reduction targets. The cap covers approximately 85  
5 percent of California's greenhouse gas emissions. The  
6 program begins with a narrow scope, which includes  
7 emissions from large stationary sources that emit equal to  
8 or greater than 25,000 metric tons of CO2 equivalent per  
9 year, including electricity generation and imports.

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

14 --oOo--

15 AIR POLLUTION SPECIALIST NICHOLS: The cap and  
16 trade regulation was developed over a three-year period  
17 through an extensive consultation process. The Board  
18 initially considered the proposed regulation in December  
19 2010, and the Board officially adopted the final  
20 regulation order in October 2011.

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

25 --oOo--

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

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

8           In September 2013, ARB issued the first  
9 compliance grade offset credits, marking another important  
10 step forward. To date, ARB has issued more than 7.5  
11 million carbon offset credits. The amendments related to  
12 will linkage with Quebec took effect in this October 2013  
13 and linkage between the two programs occurred on January  
14 1st, 2014.

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

21                           --o0o--

22           AIR POLLUTION SPECIALIST NICHOLS: Prior to the  
23 beginning of this rulemaking process, the Board issued a  
24 total of three Resolutions in 2012 and 2013 directing  
25 staff to review items and propose changes to the

1 regulation as needed. The Board direction from these  
2 Resolutions is summarized on this slide. Many of these  
3 topics are the subject of the proposed amendments before  
4 you today.

5 --o0o--

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

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

22 In response, on March 21, 2014, staff posted the  
23 15-day proposed modifications to the regulation and the  
24 Mine Methane Capture Protocol and placed the Mine Methane  
25 Capture Protocol and mining economics analysis into the

1 record for public consideration. The comment period for  
2 the 15 day regulatory package ended on April 5th, 2014.

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

10 --o0o--

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

19 --o0o--

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

25 Staff held four technical working group meetings

1 throughout the spring and summer of 2013 to ensure public  
2 involvement in the protocol development process.

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

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

17 --o0o--

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

24 Staff is proposing new and modified product  
25 benchmarks. Product-based benchmarks allow business to

1 grow and receive allowances based their efficiency  
2 relative to other facilities in the same sector. Changes  
3 to the refinery sector benchmark are discussed on the next  
4 slide. Many of the 15-day changes are related to these  
5 benchmarks.

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

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

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

24 --o0o--

25 AIR POLLUTION SPECIALIST NICHOLS: We are

1 proposing to change the refinery allocation benchmark from  
2 the carbon-weighted tonne which was the metric used for  
3 allocation in the European Union's emission trading system  
4 to the complexity-weighted barrel. Staff calculated a  
5 benchmark using the emissions and complexity-weighted  
6 barrel throughput of California refineries. The switch to  
7 CWB was in response to a consensus from the refinery  
8 sector that this is the preferred approach.

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

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

21 In developing this benchmark, staff worked  
22 closely with refineries to understand their data and  
23 propose a benchmark that reflects a sound technical  
24 approach. Staff is proposing that gaseous and liquid  
25 hydrogen production and calcined coke production be

1 allocated under separate benchmarks, not as part of CWB.

2 --o0o--

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

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

17 --o0o--

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

24 Although some parties have renegotiated, staff is  
25 proposing to allocate allowances to the remaining

1 contracts. For those with an industrial counterparty that  
2 receives allocation, this methodology would redistribute  
3 an allocation from the industrial counterparty to the  
4 generator for the life of the contract.

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

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

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

23 --o0o--

24 AIR POLLUTION SPECIALIST NICHOLS: Staff is  
25 proposing amendments to covered entities to include new

1 sectors not previously covered, including lead acid  
2 battery recyclers, and producers and importers of  
3 liquefied natural gas.

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

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

12 Staff is also proposing to exempt national  
13 security facilities from a compliance obligation through  
14 2020 as these facilities already have a variety of  
15 greenhouse gas mitigation programs in place.

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

25 Finally, staff is proposing amendments to specify

1 the steps that must be taken by a covered entity if they  
2 cease operations or shut down, including the requirements  
3 for the return of allowances. Returned allowances would  
4 be auctioned on behalf of the state.

5 --o0o--

6 AIR POLLUTION SPECIALIST NICHOLS: Staff is  
7 proposing to exempt waste-to-energy facilities from a  
8 compliance obligation under the program until January 1st,  
9 2016, and will retire allowances equal to the amount of  
10 these exempt emissions. This particular amendment is in  
11 recognition of a continued work ARB is doing with  
12 CalRecycle to analyze maximum GHG emission reduction  
13 opportunities for various solid waste streams in the  
14 state.

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

19 The Board also directed ARB to direct a  
20 comprehensive approach for the most appropriate treatment  
21 of the waste sector under the Cap and Trade Program based  
22 upon this analysis. In addition, the draft Scoping Plan  
23 update also recommends that ARB develop a comprehensive  
24 strategy for mitigation of short-lived climate pollutants,  
25 including methane, by the end of 2015. This will help ARB

1 to continue to develop strategies that address methane  
2 emissions from the waste sector, identify opportunities  
3 for additional methane control at new and existing  
4 landfills, and identify important compliments to ARB's  
5 efforts to reduce emissions of carbon dioxide.

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

15 --o0o--

16 AIR POLLUTION SPECIALIST NICHOLS: Staff is  
17 proposing language to clarify the resource shuffling  
18 provisions based on the guidance issued in November 2012,  
19 which was developed jointly by ARB and the State  
20 utilities. The proposed amendments specify activities  
21 that are not considered resource shuffling referred to as  
22 safe harbors, as well as activities that are considered  
23 resource shuffling. Staff is also proposing to remove the  
24 regulation's attestation requirement that no resource  
25 shuffling has occurred.

1           Staff is proposing some technical amendments  
2 related to the retirement of RECs to avoid double counting  
3 under the Voluntary Renewable Energy Program. Staff is  
4 also proposing modifications to ensure that the REC  
5 retirement requirements are consistently applied to both  
6 in-state generation facilities and facilities that import  
7 electricity.

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

11                           --o0o--

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

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

23           Finally, in the event of invalidation, staff is  
24 proposing changes to ensure that liability is consistent  
25 for all project types. This change corrects a loophole

1 which previously did not apply buyer liability to forestry  
2 offsets, and ensures that covered entities do their due  
3 diligence when purchasing compliance offset credits.

4 --o0o--

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

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

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

22 Last year, staff discussed with stakeholders the  
23 possibility that an entity could inadvertently retire too  
24 many offsets during their annual compliance that would not  
25 be eligible for compliance at the triennial compliance

1 event because the offsets would exceed the eight percent  
2 limit.

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

10 --o0o--

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

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

21 To ensure that staff and the market monitor  
22 understand all of these relationships, staff is proposing  
23 amendments related to information disclosure about auction  
24 advisors and contractors. Nothing in the proposed changes  
25 would result in the compromise of attorney/client

1 privilege. All disclosures are treated as confidential  
2 information.

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

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

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

20 --oOo--

21 AIR POLLUTION SPECIALIST NICHOLS: Staff is  
22 proposing an additional cost containment mechanism that  
23 increases the availability of allowances at the highest  
24 price tier of the price containment reserve. Maintaining  
25 the availability of a sufficient supply of allowances to

1 satisfy demand at the reserve sale will be effective in  
2 ensuring that allowance prices do not exceed the highest  
3 priced tier, while also maintaining the environmental  
4 integrity of the cap.

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

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

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

17 --o0o--

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

23 The limited use of offsets is an important cost  
24 containment mechanisms in the Cap and Trade Program.  
25 Offsets also provide incentive for GHG emission reductions

1 in uncapped sectors. If adopted, this protocol will allow  
2 for the issuance of offset credits for emissions that  
3 would otherwise be released into the atmosphere as a  
4 result of mining activities at active and abandoned mines.  
5 These offsets represent real, rigorously quantified  
6 greenhouse gas emissions reductions. If adopted, each  
7 project completed under this protocol would be subject to  
8 rigorous program requirements such as reporting,  
9 verification, and auditing.

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

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

21 In the analysis, staff found that the protocol  
22 would not encourage existing mines to produce more coal or  
23 encourage new coal mines to begin production. The results  
24 of the analysis show that while the protocol provides an  
25 incentive to capture and destroy coal mine methane that

1 would otherwise be vented into the atmosphere, the value  
2 of the offset does not change coal production decisions,  
3 does not shift the demand for coal, and does not affect  
4 the price of coal. Based on this assessment, we do not  
5 believe this offset protocol will encourage or prolong the  
6 lives of existing mines.

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

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

14 --o0o--

15 AIR POLLUTION SPECIALIST NICHOLS: ARB prepared  
16 an environmental analysis for the amendments and Mine  
17 Methane Capture Protocol as part of the staff report. The  
18 environmental analysis concluded that compliance responses  
19 to the proposed amendments would result in no adverse  
20 environmental impacts. It also concluded that  
21 implementation of the mine methane capture projects could  
22 result in potentially significant impacts to biological  
23 and cultural resources caused by construction of  
24 facilities and infrastructure. Project-specific impacts  
25 and mitigation would be identified during the

1 environmental review by agencies with regulatory authority  
2 over the specific projects.

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

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

18 --o0o--

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

25 During 2014, ARB will continue to establish both

1 components of the adaptive management program, including  
2 defining procedures to collect and evaluate relevant data,  
3 and a public process to share results and findings. If  
4 potential adverse impacts are found, ARB staff will  
5 recommend appropriate responses to the Board, as  
6 necessary.

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

14 --oOo--

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

22 In February of this year, staff held a workshop  
23 to begin the public process to consider regulatory  
24 amendments that would include the emissions from cement  
25 consumed but not produced in California into the program

1 starting with the second compliance period. Staff is  
2 considering using a border carbon adjustment mechanism or  
3 a mechanism that would create an emissions obligation for  
4 imported cement similar to the obligation faced by the  
5 same industry within California.

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

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

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

24 Finally, staff is actively working to prepare for  
25 the first joint auction between the California and Quebec

1 Cap and Trade Programs, which we expect to occur later  
2 this year.

3 --o0o--

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

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

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

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

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

25 CHAIRPERSON NICHOLS: Okay. That would be fine.

1 Thank you.

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

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

13 And Peter Weiner, you are witness number one.

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

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

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

23 I've been working mostly on the issue of legacy  
24 contracts with staff and Board members. I want to thank  
25 both Board members and staff, specifically Steve Cliff and

1 Rajinder Sahota and Richard Corey, for not only having  
2 public workshops, but really following through and meeting  
3 with stakeholders and listening to their concerns. We  
4 didn't get everything we wanted, but it's been a very good  
5 process. And we believe that the results are worth  
6 adopting.

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

22 All of these are dependant on certainty. This  
23 goes upstream from the plant to investors and lenders and  
24 credit rating. So from our point of view, it is  
25 imperative that this order be adopted today. And we urge

1 your aye vote. Thank you very much.

2 CHAIRPERSON NICHOLS: Thank you.

3 Barbara Haya.

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

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

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

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

25 Our underlining concern is that the full range of

1 incentives created by the protocol must be carefully and  
2 conservatively considered when protocols are developed.

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

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

25           Second, we believe ARB has opportunity to allow

1 offset revenues to incentivize the capture of drainage  
2 methane for use, such as electricity generation, rather  
3 than incentivizing the waste of that natural resource  
4 through flaring. Since flaring technology is less  
5 expensive to implement than systems that use methane,  
6 we're concerned that the protocol might result in the  
7 flaring of methane that would be put to use if flaring  
8 were not included in the protocol.

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

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

16 CHAIRPERSON NICHOLS: Thank you very much.

17 Greg Arnold.

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

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

25 I just want to make a few points. There's been a

1 lot of discussion so far about this Mine Methane Capture  
2 Protocol would be a boon to coal miners. I would point  
3 out to the Board that at least to this point and to my  
4 knowledge there have been no coal mine operators that have  
5 testified at any of these hearings. And there have been  
6 no coal mine operators that have submitted any comments.  
7 I would suspect if this were such a boon to the coal  
8 miners and their industry, they would be lining up in  
9 support of this protocol. And yet, they don't seem to be  
10 found anywhere in this process.

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

23 With respect to the models that have been  
24 presented in opposition to this, I would just point the  
25 Board's attention to the fact that, in our view, and I

1 think the view of others, these models don't present an  
2 accurate picture upon which either a coal mine operator or  
3 an investor would make a financial decision. Their  
4 analyses which don't consider the initial capital costs of  
5 the project, the ongoing capital costs of the project, the  
6 ongoing operating costs of the project. And basically  
7 they just take revenues and apply it to the bottom line of  
8 a coal mine and distort the actual economics of these  
9 projects with respect to a mine's operations.

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

17 If you look at quarter on quarter tonnes mined in  
18 the United States, as of Q4 2014 tonnes mined were down  
19 6.8 percent. It shows if you look at coal tonnes mined  
20 over time, it's actually an industry that's already in  
21 steep decline.

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

1 Protocol. Thank you.

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

4 Mr. O'Connor.

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

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

15 The rule today -- I stand up in front of you in  
16 had support of adopting the regulatory changes. You know,  
17 in our context, we evaluate it as an environmental group  
18 through the environmental integrity lens, and we think  
19 these changes -- they preserve the environmental integrity  
20 of the regulation, which for us is of utmost importance,  
21 is the paramount concern. At the same time, they  
22 recognize some important issues and expand the role and  
23 ability of the staff and the Board to look at things such  
24 as market oversight, improve some clarity around the rules  
25 and the regulatory provisions, and also do recognize some

1 important cost considerations associated with how various  
2 businesses are treated in the program.

3           And with that, I would like to call the Board's  
4 attention to one particular area of the rule that, while  
5 we think many businesses are in need of some transition  
6 assistance, there is the largest sector of polluters in  
7 California, the refining sector, which really are unsure  
8 and actually don't think need such transition assistance.  
9 We understand that the regulation today, of course, does  
10 have that in there. But we would ask for commitment on  
11 the part of the Board as we do engage in this analysis of  
12 the appropriateness of transition assistance that really  
13 specific emphasis be placed on whether it continues to be  
14 appropriate for that particular sector, which year over  
15 year, of course, records record profits. And as gas  
16 prices are going up, we really take care of understanding  
17 what are the economic drivers of those decisions.

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

1 set the pace and is setting the pace for regulatory  
2 achievements in the US.

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

13 CHAIRPERSON NICHOLS: Thank you.

14 Adam Smith.

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

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

21 I'd like to highlight here two items. First off  
22 all, a few points on offsets. Southern California Edison  
23 feels strongly that mine methane protocol is a great thing  
24 for you guys to include here. I think ARB staff has  
25 proposed a protocol that can provide two clear benefits to

1 us. One is significant supply of offsets to the  
2 California Cap and Trade Program, while two, we're  
3 incentivizing here the reduction of emissions currently  
4 being neglected.

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

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

25 Stakeholders for many industries have voiced

1 their concern on this point and the ARB has responded by  
2 narrowing the scope in some instances. We thank you for  
3 that.

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

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

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

20 When the ARB opens the regulations this fall  
21 hopefully to include the rice offset protocol and others  
22 changes, Southern California Edison requests this agency  
23 update this information disclosure requirements to add  
24 clarity to their scope and reduce the serious  
25 administrative efforts necessary to comply.

1           In closing, I'd like to thank you, again, the ARB  
2 staff for all their dedicated work on this and for the  
3 opportunity to comment here. You know, we look forward to  
4 working together to find solutions that will protect the  
5 integrity of this market. Thank you very much.

6           CHAIRPERSON NICHOLS: Thank you, Mr. Smith.

7           Miles Heller.

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

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

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

22           As you may be aware, Tesoro purchased the BP  
23 refinery and distribution network in Southern California  
24 last year, substantially increasing our investment in  
25 California, a contrast to what many newspaper headlines

1 suggest about businesses leaving California.

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

7 While we support adoption of the package today,  
8 we do hope for continued dialogue with staff on some  
9 provisions that can be modified in future rule makings.  
10 I'll mention just two of those today. We would like to  
11 see less complicated administrative reporting and  
12 recordkeeping requirements related to corporate  
13 association. Companies like ours maintain hundreds of  
14 corporate associations, most of which have no bearing on  
15 the Cap and Trade Program. It is not just the  
16 administrative burden of maintaining these records, but it  
17 is more about the enforcement risk it brings if the  
18 records are not updated within the time requirements of  
19 the regulation.

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

1 Thank you for your time.

2 CHAIRPERSON NICHOLS: Thank you.

3 Mr. Moran and then Claire Halbbrook.

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

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

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

17 Disclosure of this information comes at a big  
18 price, a big price in terms of manpower, assembling it,  
19 compliance risk, as you heard from being able to keep up  
20 with all the changes. And business risks from disclosing  
21 a lot of relationship that we haven't in this way any time  
22 before. I checked on the number of these sort of  
23 relationships that we have in BP just in the US, it's  
24 about 500. And we do business in about 70 countries. So  
25 you can do the math on that.

1           The regulation also requires that we update these  
2 relationships regularly. And worse, that we are able to  
3 attest about any investigations that have gone on in any  
4 of these entities anywhere in the world in relation to a  
5 commodity market. That's not only a lot of work, but as  
6 has been said before, brings about a lot of compliance  
7 risk if we don't get this information right.

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

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

24           So we ask that the Board direct the staff to go  
25 back to the previous language it had in the original

1 regulation that requires this sort of reporting only when  
2 these related entities have the connection to the  
3 California program. Thank you.

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

6 Claire Halbrook and then Emily Grubert.

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

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

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

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

23 First, I'd like to reiterate what was said at the  
24 October Board hearing regarding the transition of but-for  
25 CHP compliance upstream to the natural gas supplier. We

1 were surprised to learn of this for the first time at the  
2 hearing, but appreciated staff's acknowledgement that  
3 additional allocation would be provided to cover this  
4 obligation.

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

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

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

23           We were working very closely with our gas  
24 operations team to achieve the ultimate goal of reducing  
25 our emissions. However, we feel that effective public

1 policy would apply changes to regulated emission sources  
2 on January 1 of the year following the change. In this  
3 case, January 1, 2015.

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

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

14 ACTING CHAIRPERSON RIORDAN: Thank you.

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

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

22 What we had discussed with PG&E and the other  
23 utilities that supply natural gas is when we determined  
24 who was a but-for CHP, that allocation would be provided  
25 as part of the natural gas allocation. That language for

1 the allocation is not included in this set of amendments.

2 ACTING CHAIRPERSON RIORDAN: But it does need to  
3 be.

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

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

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

15 ACTING CHAIRPERSON RIORDAN: Thank you.

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

18 ACTING CHAIRPERSON RIORDAN: Thank you.

19 Emily Grubert and then Jerry Gureghian.

20 MS. GRUBERT: Hi. I'm Emily Grubert. I'm a  
21 Ph.D. Student at Stanford University. I'm speaking in  
22 opposition to the adoption of the Mine Methane Capture  
23 Protocol in its current form, because of two situations  
24 where the protocol could have an outsized impact on future  
25 federal regulation if it proceeds.

1           ACTING CHAIRPERSON RIORDAN: Could you move the  
2 mike a little closer?

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

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

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

22           Secondly, concerning the Clean Air Act, which my  
23 colleague, Barbara Haya, alluded to earlier, we are  
24 concerned if the protocol allows new mines and major mine  
25 expansions to generate offsets, it could Clean Air Act

1 methane regulation in the future. As detailed in written  
2 comments, we recommend excluding new mines and major mine  
3 expansion gassy enough to trigger Clean Air Act permitting  
4 from the protocol.

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

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

24 We recommend excluding these permits requiring  
25 mines from the protocol for two years to allow opportunity

1 for precedents to be set. These two cases illustrate our  
2 concern that the offset protocol has a high potential to  
3 weaken developing federal regulations on mine methane.  
4 And specifically the value of an offset will impose an  
5 additional financial barrier to federal regulation as  
6 regulators will have to consider the cost of removing the  
7 opportunity for offset revenue. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 Jerry Gureghian and then Michael Cote.

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

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

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

23 I'd like to clarify once and for all some points  
24 on this argument. First of all, a model that shows a  
25 windfall to coal mine operators is flawed, because first

1 and foremost, the argument "does not use a model which is  
2 economic analysis." And number two, why? Because it  
3 doesn't take into account any up-front capital cost which  
4 the EPA placed conservatively at \$10 million per project.  
5 It overstates capture of the mine. And last but not  
6 least, it doesn't take into account the cost of keeping  
7 these projects going, which is quite costly.

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

14           Which brings me to my second point, which I think  
15 was covered by Greg Arnold from CE2 Capital earlier. When  
16 was the last time a representative of the coal industry  
17 bothered to call you, make a public comment, or show up at  
18 a hearing? You'd think if the MMC protocol was going to  
19 generate an additional \$600 million, at least one of them  
20 would be up here advocating for the protocol or singing  
21 the Board's praises. No. Why? Because, on average, in a  
22 coal mine the generates about a billion dollars a year in  
23 revenue, electrical power costs account for about \$20  
24 million. Whereas, the annual revenue from an MMC project  
25 is going to be about \$2 million. That's not even ten

1 percent of a mine's electrical utility bill. After we  
2 deduct our operating costs and capital costs and our share  
3 of the project, the mine only receives a fraction of that  
4 revenue.

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

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

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

23 CHAIRPERSON NICHOLS: Thank you.

24 Mr. Cote and then Ms. Makarewicz.

25 MR. COTE: Good morning, Board.

1 My name is Michael Cote, President of Ruby Canyon  
2 Engineering. We've been working as a subcontractor to  
3 U.S. EPA's Coalbed Methane Outreach Program for the past  
4 16 years. And the Coalbed Methane Outreach Program is a  
5 voluntary program under the Climate Change Division to  
6 encourage coal mines to economically find ways to methane  
7 mitigation. And I can say unequivocally these projects  
8 that are included in the mine methane protocol do need  
9 incentives in order to see them deployed.

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

17 That leaves underground coal mines where there is  
18 a vehicle in place called the tailoring rule, which is  
19 expected to address the reviews of ways of mitigating  
20 methane at coal mines. The process will involve PSD  
21 reviews and BACT determination. And if you look at the  
22 lion's share of coal mine methane is coming from the  
23 ventilation fans, these thermal oxidation projects,  
24 there's only seven or eight of these that have been  
25 deployed worldwide over the past decade. We consider that

1 the technology is still -- while not in its infancy, is  
2 not ready for prime time to be considered for BACT.

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

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

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

20 CHAIRPERSON NICHOLS: Thank you.

21 Ms. Makarewicz.

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

24 My name is Teresa Makarewicz. I'm representing  
25 Shell Oil Company. We support the comments that are going

1 to be made today by our trade associations, WSPA and  
2 CCEEB, but I would like to highlight two specific issues  
3 that continue to be concerns to Shell Oil Company.

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

11 However, an additional concern is the regulatory  
12 language that's being proposed that expands the definition  
13 of a direct corporate association to include an LLC.  
14 Shell maintains the position that an LLC is a specific  
15 legal entity having its own operating agreements and  
16 governance structure and that ownership of more than  
17 50 percent is not a sufficient means to prove control.

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

1 at this point.

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

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

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

23 CHAIRPERSON NICHOLS: Thank you.

24 Dell Majure.

25 I was already asked this question by one of my

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

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

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

13 Let me be very clear that KC supports AB 32 and  
14 its objectives. As a company, KC has invested heavily in  
15 California and globally to improve energy efficiency and  
16 reduce carbon intensity. We have already exceeded our  
17 2015 enterprise-wide greenhouse gas target. We're on  
18 track to double it. And we're doing that at the same time  
19 while we're growing a business. We're very much committed  
20 to climate change.

21 However, while we support these objectives of the  
22 regulation now before the Board, we have very serious  
23 objections to the emissions benchmarks proposed for the  
24 tissue industry sector. We ask in the strongest terms  
25 possible that the Board direct the staff to reconsider the

1 proposed benchmarks and prepare a new 15-day set of  
2 changes to establish the benchmark based on the normal 90  
3 percent of the average standard.

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

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

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

23 ARB's proposal sets the individual benchmark for  
24 each type of tissue which are paper towel, tissue, facial,  
25 wiper and bath, based upon the facility level emissions

1 data, rather than emission data that's for each type of  
2 tissue which you need in order to set an individual  
3 benchmark. As a result, the individual benchmarks are  
4 inaccurate and do not reflect the actual greenhouse gas  
5 emissions.

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

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

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

24 Thank you again for the opportunities to speak  
25 directly with you. And if you have any questions, I'll be

1 welcome to answer them at this time.

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

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

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

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

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

18 Thank you very much.

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

21 Danny Cullenward and Kara Roeder.

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

24 My name is Danny Cullenward. I'm a Research  
25 Fellow at the University of California Berkeley. I'm here

1 today in my personal capacity.

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

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

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

17           You already have these arguments in the analysis  
18 before you in written comments, so I won't repeat them  
19 here. But I will say I'm deeply disappointed. Over the  
20 last year I worked to develop feasible solutions to the  
21 resource shuffling problem. All the while, I've  
22 recognized the utilities legitimate interest in clarifying  
23 the complexities of the original rule. Never the less,  
24 neither the Board nor any industry stakeholder has  
25 indicated a willingness to confront the environmental

1 trade offs in this politically expedient by substantially  
2 flawed decision.

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

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

22           Never the less, the political compromise on  
23 resource shuffling represents a failure to take climate  
24 policy seriously. But if the outcome is disappointing,  
25 the process has been even worse. After more than a year

1 of discussion, the Board has not publicly contemplated the  
2 leakage implications of safe harbors, let alone considered  
3 alternative approaches. That failure is all the more  
4 significant given that the investor-owned utilities are  
5 the ones who wrote the safe harbors in late 2012.

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

12 Thank you.

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

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

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

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

23 I wanted to come before you today to express our  
24 support for the latest amendment to the regulation for the  
25 tissue manufacturing product benchmark. We absolutely

1 believe that this proposal recognizes the functional  
2 difference that was mentioned earlier between bath tissue,  
3 facial tissue, paper towels, and delicate task wipers. We  
4 recognize that this proposal demonstrates the scientific  
5 relationship for these functional requirements as can be  
6 supported by a globally recognized technical standard.

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

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

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

21 CHAIRPERSON NICHOLS: Thank you.

22 Jon Costantino.

23 MR. COSTANTINO: Good morning, everybody.

24 I will agree with staff before I disagree with  
25 staff or say something they probably agree with that

1 refinery benchmarking is complicated, difficult, and taken  
2 a long time to get where we're at.

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

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

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

23 In fact, if you look at the amendments -- the  
24 attachments to the resolution in October, it says "direct  
25 staff to make conforming changes based on comments

1 received." There were only comments in support of  
2 atypical benchmark. In fact, besides coalition members,  
3 the steel workers, and environmental groups supported  
4 atypical separate benchmarking. There was no opposition  
5 and no reason to change the process at the last moment.

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

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

22 And so in closing, I would just like to say that  
23 there is more work to be done. This process got truncated  
24 at the very end. And we ask that the Board direct staff  
25 to revisit the refining benchmark as it has serious

1 consequences on existing facilities. Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

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

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

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

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

23 Now, we're still able to make adjustments, and we  
24 will discuss what kinds of adjustments need to be made  
25 based on the facts and based on the evidence. But I

1 believe that we're not talking about a negotiating process  
2 where you get more points for the amount of time you spent  
3 chewing on the issue. We're dealing with a situation  
4 where we have to make a decision based on the actual facts  
5 and information that are in front of us.

6 And you're entitled to represent your clients and  
7 to advocate for them. But this whole issue would not be  
8 where it is today but for the fact that any allocation  
9 scheme that we come up with is open to some question or  
10 manipulation by some dissatisfied individual refinery.

11 Someone who said yesterday this is true of  
12 refineries as it is of truckers or with families that  
13 fairness and exact equality are not the same thing. So  
14 we're trying to do our best to do what is fair. But we  
15 have to also do what's right based on actual information.  
16 We further discussion about it.

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

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

21 MR. COSTANTINO: And you're right. This issue  
22 was headed down a path of two benchmarks. And that's what  
23 Kern and Alon who will be commenting spoke to. And I'm  
24 all for looking at the data and finding out what is the  
25 final answer.

1           And I think that's my point here today in  
2 speaking on behalf of the coalition. And the coalition  
3 has committed to trying to figure this out. And two  
4 benchmarks, atypical, was the topic of seven months of  
5 discussion. And at no point was it ever off the table.  
6 And so the fact that one refiner who happens to be stuck  
7 in the middle and was trying obviously to get in a  
8 position that benefited them should not cause the whole  
9 process to collapse on itself because the Board acted in  
10 the good faith. People commented in good faith in  
11 October. The discussions between October and February and  
12 March and the end of March were all in good faith. And  
13 the point today is that we shouldn't be frozen in time.

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

17           MR. COSTANTINO: Okay. Thank you.

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

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

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

25           Today, none of these plants is refining cruel oil

1 because of economic reasons. But our plants have operated  
2 since the 1920s and we expect when economics returns to  
3 restart and operate again for many years into the future.

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

9 Next slide, please.

10 --o0o--

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

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

23 Since the large refineries in California use much  
24 more energy intensive-processes to convert the heavy part  
25 of the barrel into fuel, their operators do not like this

1 product-based metric and pushed for alternative artificial  
2 process-based metrics, such as complexity-weighted barrels  
3 which obscure and hides product efficiencies.

4 Next slide, please.

5 --o0o--

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

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

25 Shouldn't the proper policy reward encourage

1 efficiency by this ultimate measure, rather than punish  
2 these manufactures? We have never manufactured a barrel  
3 of CWB, nor has anyone else. We'd like to make real  
4 barrels of gasoline, jet fuel, diesel and asphalt again  
5 for California in the near future and our efficiency by  
6 that measure is what we think is the fairest to judge us  
7 on. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 Steve Piatek.

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

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

20 Next slide.

21 --o0o--

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

25 Paramount is happy to do its share to reduce

1 greenhouse gas emissions. We are the second bubble to the  
2 left-hand side. Smallest bubbles.

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

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

16 Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 Mr. Belin.

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

21 I'm here this morning -- or this afternoon to  
22 speak to you specifically regarding refinery benchmarking  
23 and to specifically ask the Board to separately benchmark  
24 atypical transportation fuel producing refineries. Those  
25 refineries that produce CARB reformulated gasoline and

1 those refineries that produce CARB number two ultra low  
2 sulfur diesel fuel.

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

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

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

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

25 In the big picture, let me speak particularly and

1 quickly to Kern. Our emissions account for only .6 of one  
2 percent of the refinery sector's emissions, while the  
3 three largest refinery sector emitters in California  
4 account for more than 50 percent. If -- and you can't do  
5 this, as I stated earlier. If you were to lower Kern's  
6 emission by 40 percent, it would reduce the refinery  
7 sector's overall total emissions by only one quarter of  
8 one percent.

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

13 So in closing, let me state three times.

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

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

20 And to conclude, I will simply ask this to be  
21 specific. We would ask that the Board clearly direct  
22 staff to provide a separate, a fair, and equitable  
23 benchmark for atypical transportation producing,  
24 transportation fuels, gasoline diesel producing refineries  
25 to be defined as, one, a refiner that produces CARB

1 reformulated gasoline; CARB number two ultra low sulfur  
2 diesel fuel; possesses operates twelve -- less than twelve  
3 units in its refinery; and processes less than 20 million  
4 barrels of crude oil per year.

5 Thank you.

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

9 Bob Lucas.

10 MR. LUCAS: Thank you.

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

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

23 It's been quite impressive from our perspective  
24 of the willingness of themselves to go out of their way at  
25 times to help us better understand some of their positions

1 at times and to listen to our concerns.

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

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

21 So with that said, we support the adoption of the  
22 15-day language. And we thank you very much for your  
23 attention.

24 CHAIRPERSON NICHOLS: Thank you.

25 Ms. Mendoza and then Paul Shepard.

1 MS. MENDOZA: Good afternoon. My name is Jerilyn  
2 Lopez Mendoza.

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

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

15 However, we want to underscore the importance of  
16 our concerns with two key issues and request additional  
17 direction on these two points. Number one is the transfer  
18 of allocation allowances to natural gas supplier accounts.  
19 And number two, we ask that provisions be made for the  
20 natural gas utility responsibility to cover the exemption  
21 for qualifying but-for combined heat and power facilities,  
22 also known as CHP facilities. These two points were  
23 actually addressed in your slide presentation this  
24 morning, slides number 13 and 14, and were also discussed  
25 earlier by PG&E.

1           First, SoCal Gas and SDG&E strongly support the  
2 allocation of allowances to natural gas suppliers for the  
3 protection of natural gas rate payers. The proposed  
4 methodology allocates allowances to suppliers for most of  
5 their emission and requires suppliers to cosign a portion  
6 of those allowances to the auction. The revenue generated  
7 from the cosigned allowances is required to be used on  
8 behalf of the rate payers.

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

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

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

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

1 consignment percentages.

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

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

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

16 CHAIRPERSON NICHOLS: Thanks.

17 Mr. Shepard and then Tom Vessels.

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

22 I'm here today to express our support for the  
23 proposed revisions to Section 95894 and 95891. We urge  
24 the Board to adopt these amendments as is it is today.

25 Wildflower appreciates the Board's policy that

1 renegotiation is a preferred solution to the legacy  
2 contracts issue. In many cases, counterparties have been  
3 unwilling to renegotiate to reach negotiated solution.  
4 And we believe that the Board's actions today will  
5 encourage counterparties to come forward with a fair and  
6 balanced proposal for the pasture greenhouse gas costs in  
7 the legacy contracts to the ultimate end users.

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

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

22 It has also been argued since staff's proposed  
23 legacy contract language, legacy contract holders now have  
24 no incentive to renegotiate. We do not agree with this  
25 assertion. If adopted, the staff proposal will leave an

1 increasing proportion of compliance obligations  
2 uncompensated for by the reallocated allowances. And  
3 thus, holders of legacy contracts will be able to  
4 renegotiate with the counterparty to obtain a more  
5 complete solution.

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

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

15 CHAIRPERSON NICHOLS: Thank you.

16 Tom Vessels and then Michael Wang.

17 MR. VESSELS: Thank you, Chairman Nichols and the  
18 Board for allowing me to testify in favor of the  
19 amendment, specifically the Mine Methane Capture Protocol.

20 I want to thank the staff for allowing me to  
21 participate in the stakeholders process. It was very  
22 thorough and rewarding.

23 I want to give you all an example of the effect  
24 that the Mine Methane Capture Protocol could have. A few  
25 months ago, I was hunting methane seeps and a truck with a

1 specialist with a special methane detector. We were  
2 driving along a public paved road. We knew underneath off  
3 to the side of the road off one location there was a mine  
4 complex more than 200 feet deep.

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

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

1 Thank you very much.

2 CHAIRPERSON NICHOLS: Thank you. Thanks for the  
3 story.

4 Michael Wang and then Loren Hutnick.

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

7 My name is Michael Wang, and I'm with the Western  
8 States Petroleum Association. As you know, we represent  
9 27 companies that explore for, develop, refine, market,  
10 transport petroleum and petroleum products. We have  
11 supported market-based approaches in the past, and we  
12 continue to support cap and trade as a market-based  
13 approach.

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

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

24 We strongly support the industry assistance  
25 factor. We supported the ARB proposal to increase the

1 industry assistance factor to 100 percent during the  
2 second compliance period for moderately trade-exposed  
3 sources. The proposed change in the second compliance  
4 period recognizes the risk of emission leakage as the  
5 potential harm to domestic within California facilities.

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

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

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

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

1 reporting guidance provided earlier this year.

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

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

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

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

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

20 CHAIRPERSON NICHOLS: Thank you.

21 Loren Hutnick and Susie Berlin.

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

25 My name is Susie Berlin. I'm representing the

1 Northern California Power Agency and MSR Public Power.  
2 NCPA and MSR are both joint powers agencies comprised of  
3 municipal utilities that have their own electric  
4 generation.

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

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

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

24 We also question whether these disclosure  
25 requirements are necessary at all if proposed revisions

1 are adopted that impose an absolute prohibition on  
2 employees registering as voluntarily associated entities.

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

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

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

22 We also support the cost containment provisions,  
23 but we ask that CARB further explore a suite of measures  
24 that can be adopted and that the Board direct that further  
25 work on transitioning to a post-2020 cap and trade begin

1 sooner rather than later.

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

13 CHAIRPERSON NICHOLS: Thank you.

14 Tony Brunello.

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

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

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

25 And second is just the federal and national

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

7 CHAIRPERSON NICHOLS: Thank you.

8 Brian Shillinglaw.

9 MR. SHILLINGLAW: Yield my time.

10 CHAIRPERSON NICHOLS: Okay. K.C. Bishop.

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

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

14 MR. BISHOP: Point well taken.

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

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

25 Finally, like many people before me that work for

1 large companies who are concerned about the requirement to  
2 report all of our corporate entities, Chevron has over  
3 1,600 entities. Like Ralph who spoke about Azerbaijan,  
4 we're from Azerbaijan all the way to Ziere. And it  
5 certain isn't necessary to have all of those reports to  
6 have this function in a safe manner. So please fix that.

7 Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 Marcie Milner.

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

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

19 And also thank you for directing staff to work  
20 with us on the legacy contract issue. We've been actively  
21 attempting to renegotiate that contract. As we noted in  
22 our written comments as well the comments that Teresa  
23 Makarewicz made earlier, we believe there is a provision  
24 in the language that is currently discriminatory to the  
25 Shell contract specifically.

1           And the reason that I say that is that generators  
2 that are similarly situated are receiving transition  
3 assistance in the form of free allowances from the market.  
4 And in this case, the language takes allowances from the  
5 refinery from Martinez, who is our affiliate, and gives us  
6 allowances to the generator under our contract. Martinez  
7 is not a party to the contract. They don't have any  
8 operational control or dispatch ability over the  
9 generator. And so we would urge you to try to fix this  
10 discriminatory language either through some sort of  
11 regulatory guidance or other means in order to create a  
12 level playing field.

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

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

25           I ask that you look at the EMAC recommendations,

1 which state that the holding and procurement limits should  
2 be set at an entity's net obligation.

3 Thank you for your time.

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

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

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

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

19 This year illustrates the strong relationship  
20 between the availability of water from the State Water  
21 Project and the energy requirements of Metropolitan's own  
22 Colorado River aqueduct system. Due to the severity of  
23 the current drought, Metropolitan will receive only a five  
24 percent allocation from the State Water Project in 2014.  
25 This lack of water from the State Water Project will

1 require Metropolitan to operate its Colorado River system  
2 at peak capacity and load from March through the end of  
3 this year to meet the water demands in Southern  
4 California.

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

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

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

22           We thank you for your consideration.

23           CHAIRPERSON NICHOLS: Thank you.

24           Barbara O'Neil. That is the last witness.

25           MS. O'NEIL: Good afternoon. My name is Barbara

1 Toole O'Neil. And I'm between you and more discussion.  
2 Not lunch, sadly.

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

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

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

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

23 Methane seeps everywhere. In Central  
24 Pennsylvania, there is a coal seam that's been on fire for  
25 50 years. Imagine 50 people. If people wanted to put

1 that out, you can imagine all the excitement that they  
2 have had over and over again. Little towns have had to  
3 move because the coal mine -- the gases are noxious. And  
4 they creep into people's homes and other things.

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

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

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

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

22 As you know, we were looking at this protocol  
23 last time we visited amendments to the Cap and Trade  
24 Program, and I think we were very close to adopting it at  
25 that point. But issues were raised that we felt very

1 strongly needed to be addressed and they have been  
2 addressed. And maybe also a result of taking more time,  
3 we have been able to hear more from folks such as your  
4 company who are out there attempting to find a way to  
5 capture some of this methane and make some money doing it.  
6 And we commend you for that. So thanks for coming.

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

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

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

22 SSD MANAGER COOMBS: So over the past couple of  
23 years, staff had heard concerns from one company within  
24 the tissue sector that the previous benchmark or the  
25 currently in place benchmark was not appropriate to the

1 industry, that it didn't take into account the  
2 functionality of tissue. And specifically today, we're  
3 talking about bathroom tissue.

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

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

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

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

23 CHAIRPERSON NICHOLS: Who said that air  
24 regulation was dry and boring, right? Okay. Thank you.  
25 Got that out.

1           SSD MANAGER COOMBS: So that is why staff  
2 proposed a benchmark that takes into account the water  
3 absorbancy of the bathroom tissue.

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

11          BOARD MEMBER BALMES: Too much information.

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

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

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

25          CHAIRPERSON NICHOLS: But when we go about doing

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

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

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

18 SSD MANAGER COOMBS: No.

19 CHAIRPERSON NICHOLS: Okay. All right. Well,  
20 that's -- we need to understand what the deal is there.

21 I don't know that further discussion is going to  
22 solve this problem, but I would appreciate it if you could  
23 at least attempt to see if there is any way to deal with  
24 this particular individual concern here.

25 As far as other requests for us to consider

1 working on things, I think there are a couple of them. I  
2 know the refinery issue is obviously the biggest one. So  
3 do you want to raise that issue then?

4 BOARD MEMBER BERG: Yes.

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

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

1 switched to a more complex model, which then disadvantaged  
2 the small fuel refiners.

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

12 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

13 CLIFF: Well, thank you. Appreciate your comments.

14 As you say, we've worked very closely together in  
15 trying to understand this issue. And we've also at the  
16 staff level spent a lot of time digging into the data that  
17 the refineries have provided. I think it's been a very  
18 collaborative process with the refiners as well. They've  
19 been very open about providing us data and we appreciate  
20 the effort they've gone to to go back and look into issues  
21 we identified and come back to us with either revised data  
22 or a better understanding of the data that they have  
23 supplied. So I appreciate all that effort. It has taken  
24 the better part of a year, in fact, to -- possibly a  
25 little more than a year at this point.

1           You mentioned that in the refining sector there's  
2 some products that are less carbon intensive. That's  
3 certainly true. It takes less energy to makes certain  
4 types of products than other. That became the challenge  
5 in identifying a one-product, one-benchmark sort of  
6 approach for the refinery sector. And ultimately, we came  
7 up with this complexity-weighted or carbon dioxide or  
8 complexity-weighted barrel approach that was a proxy for  
9 products. Rather than trying to identify a carbon dioxide  
10 amount per unit of saleable product in California, which  
11 could have unintended consequences, we came up with a  
12 proxy for how efficiently each of those products is  
13 produced based on looking at the through-put of the  
14 various processes that refineries use. So that's the idea  
15 of this complexity-weighted barrel. It's a proxy for the  
16 ultimate product.

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

25           So as you put product through a distillation

1 column or through a cat cracker, we're looking at the  
2 efficiency of that process on a greenhouse gas basis. So  
3 that's the approach that we were trying to address here.

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

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

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

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

1 this sector.

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

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

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

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

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

24 CHAIRPERSON NICHOLS: It should be normalized,  
25 that output.

1 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

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

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

21 CHAIRPERSON NICHOLS: Should be more efficient.

22 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF

23 CLIFF: Can be, certainly.

24 CHAIRPERSON NICHOLS: Supervisor Gioia, you had a  
25 question.

1 BOARD MEMBER GIOIA: It's an interesting issue.  
2 And dealing with four refineries in my own county, I  
3 realize how complicated the refining business is. They  
4 tend to be the larger, including one very complex  
5 refinery, the Chevron refinery.

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

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

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

22 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF  
23 CLIFF: We do. I think at the staff level we're  
24 comfortable there is sufficient complexity-weighted barrel  
25 factors to incorporate all of the possible iterations of

1 the refineries in California and in fact worldwide.  
2 This's how it was developed.

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

7 BOARD MEMBER GIOIA: Someone did say that  
8 yesterday.

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

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

21 Primarily, we're talking about transportation  
22 fuels. And if you look at transportation fuel sales into  
23 market, the range of cost pass through that would be  
24 expected from cap and trade is very small from the  
25 refining perspective. It's on the order of half cent a

1 gallon or less. And even those who are fairly inefficient  
2 on this scale that don't get as many allowances per units  
3 of CWB because their emissions per barrel of product are  
4 inherently lower, they actually fair quite well. So if  
5 the average is about say a half cent a gallon or less,  
6 these are half of that.

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

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

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

1 me.

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

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

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

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

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

1 program that we're implementing.

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

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

22 I don't think that Kern has to be a loser. I'm  
23 impressed by the caliber of the people and what they've  
24 been able to do with that facility that they have. So I  
25 just don't want to have us be in the position of having to

1 then put a thumb on the scale that, you know, takes a  
2 little bit away from everybody else or whatever. Just in  
3 order to satisfy ourselves that we've been as fair as we  
4 could be.

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

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

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

1 to the Board with.

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

6 But it certainly -- I feel very compelled that  
7 when you start looking at facilities that are 40 and  
8 50 percent off the benchmark, and there are the smallest  
9 of the small, I don't think we got it right yet. And  
10 especially given the other sectors, I think this might be  
11 one of the largest gaps. Am I correct on that?

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

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

17 CHAIRPERSON NICHOLS: Okay. Dr. Balmes.

18 BOARD MEMBER BALMES: I just want to follow up on  
19 the comments of Ms. Berg and our Chairman.

20 I think the Chairman has it right in terms of the  
21 big picture. We shouldn't be, you know, micro-managing,  
22 carving out something here, and putting in something  
23 there.

24 But on the other hand, when we try to have  
25 one-size-fits-all, it's not necessarily that we're going

1 to get it right the first time. And I appreciate staff's  
2 effort in terms of benchmarking the complex field of --  
3 complex sector of refining.

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

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

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

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

24 And when I speak of uniqueness, this is an area  
25 that really supports a number of businesses in that

1 Central Valley. I'm sure that they don't have big  
2 refineries. We who live in the more urbanized areas have  
3 these big refineries that produce and we use their  
4 product.

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

8 CHAIRPERSON NICHOLS: Okay. Any other speakers?

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

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

21 CHAIRPERSON NICHOLS: I feel we have discussed  
22 this issue adequately. I'm going to only take the last  
23 word to say this is why the Waxman-Marky bill, which  
24 started out to put a price on carbon, ended up as a  
25 document of some 3,000 pages because by the time you deal

1 with every single sector and every single issue and try to  
2 adjust it in the context of a market-based program, that's  
3 what you come out with. We're not there yet. We're  
4 definitely still on the side of making a market that will  
5 work. I'm not suggesting that's what's happening. I'm  
6 saying that we need to keep the issue in mind that what  
7 we're doing here is pricing carbon and that will have an  
8 effect.

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

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

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

22           But anyway, back to the coal mine, a thought I  
23 had on that was it was -- the way it's structured is it  
24 talks about destruction of gas. And that troubles me a  
25 little because what it really means is it can be either

1 flared or it can be injected into a pipeline. If it's  
2 injected in a pipeline, it has much more value. It's much  
3 better.

4 CHAIRPERSON NICHOLS: Both environmental and  
5 economic value.

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

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

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

1 same time.

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

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

16 Okay. Other issues that people were  
17 interested --

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

24 And again, staff did a Suburb job. I've been  
25 educated both by staff and by the methane capture

1 equipment companies about the process. And I feel very  
2 comfortable in what was stated today in testimony that  
3 it's not the coal mines that are going to make money off  
4 of this. It's really hopefully the entrepreneurs that are  
5 investing in the technology, several of whom are located  
6 in California. So I'm actually much more positive about  
7 this protocol, because I think it actually is rewarding  
8 California entrepreneurs and taking care of an important  
9 short-lived greenhouse gas.

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

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

23 So basically I wanted to say that I'm in support  
24 of the protocol. I was willing to vote for it in October,  
25 but holding my nose, I no longer need to hold my nose.

1 CHAIRPERSON NICHOLS: All right.

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

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

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

22 On the Issue of the BLM news release yesterday,  
23 they're actually taking comments on partnerships,  
24 preferred technologies. It's not direct regulation at  
25 this time. And so there's still ample opportunity to get

1 these emission reductions prior to any regulatory  
2 activity. And if regulations did come into place, those  
3 projects would no longer be eligible because those  
4 emission reductions would then be required by regulation  
5 and all voluntary.

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

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

24 So Dr. Sherriffs.

25 BOARD MEMBER SHERRIFFS: Couple methane issues.

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

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

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

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

25 Certainly, having something like the mine methane

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

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

20 BOARD MEMBER SHERRIFFS: Thank you.

21 CHAIRPERSON NICHOLS: Yes, Mr. Eisenhut.

22 BOARD MEMBER EISENHUT: Since it was initially --  
23 since it was introduced, I would like to acknowledge Tim  
24 O'Connor's mention of the rice protocol. I appreciate  
25 that. I understand that it's not linked to the mine

1 methane, but it necessarily follows the mine methane. And  
2 so I just indicated its importance.

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

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

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

19 CHAIRPERSON NICHOLS: Yes. Correct.

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

1 had to report.

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

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

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

22 There was another section about reporting  
23 requirements for staff on board that have access to  
24 market-sensitive information. That requires knowing three  
25 pieces of information: Your emissions; your account

1 balances in the kit system; and your procurement strategy  
2 for future instruments. We worked with industry to make  
3 sure we were able to define that in a very narrow scope  
4 and felt we came to a reasonable area there.

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

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

19 So I would strongly suggest that before you issue  
20 any guidance and as soon as you can after today that you  
21 open up a dialogue, invite people in for a discussion, and  
22 just kind of walk through this issue. And if it's at all  
23 possible to have a template or an example of what we're  
24 looking for by way of a report that would make this less  
25 imposing -- as unimposing and practical as possible, I

1 think that's what we want.

2 Because I do understand there is always this  
3 tension and it just is inevitable between enforcers  
4 wanting to be able to have every possible piece of  
5 information they can get their hands on and the need to  
6 run a reasonable program would be people can know what  
7 they need to submit and do it in a way that doesn't add  
8 greatly to the cost of actual implementing this program.

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

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

22 CHAIRPERSON NICHOLS: Well, I would invite people  
23 who have serious suggestions if they have alternatives  
24 they think would be equally effective or experts we should  
25 be talking to outside of this program that we can look to

1 for guidance, we should be open to that as well.

2 Dr. Sperling.

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

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

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

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

16 BOARD MEMBER SPERLING: I'm curious.

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

20 Holding limits are the maximum amount of  
21 allowances an entity can hold in its account so it isn't  
22 able to exert market power. If you have related entities  
23 in the Cap and Trade Program, then in that particular  
24 instance, having two entities with two separate accounts  
25 not sharing the holding limit gives them twice the access

1 to compliance instruments as would be a single entity in  
2 the program. It goes back to be able to map that  
3 relationship directly in the program for the holding  
4 limits and also for the purchase limits at the auction.

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

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

20 And then, of course, going back to related energy  
21 markets, we've had examples in the past where one energy  
22 market has been used to impact the electricity market here  
23 in California. And so it's important to know if one  
24 market is being used to somehow benefit a related entity  
25 in another market or vice versa in the program. And that

1 information is shared with federal regulators if questions  
2 come up about, you know, we see some issue here, what can  
3 you tell us about what's going on with these entities in  
4 your program. So it helps us coordinate that oversight  
5 with our federal regulating entities and helps us monitor  
6 the primary market.

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

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

1 committed not to do. We don't want to do it.

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

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

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

22 CHAIRPERSON NICHOLS: Thank you for raising that.

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

25 CHAIRPERSON NICHOLS: I think had staff has had

1 further conversations with Metropolitan and I believe they  
2 had come up with a proposal that seemed as though it was  
3 fair, to use that word. Do you want to describe what that  
4 is?

5 EXECUTIVE OFFICER COREY: It's correct that we've  
6 continued the conversations. We recognize the drought  
7 situation and increased pumping of the Colorado and are  
8 working with them on a revised approach we anticipate  
9 bringing back to the Board. The commitment is there.  
10 We're working through the details and expect it to return  
11 to the Board.

12 CHAIRPERSON NICHOLS: It's not quite a proposal  
13 yet, but you're hoping it will be soon. Thank you.

14 Any more? Yes, Ms. Berg.

15 BOARD MEMBER BERG: This is also just a follow  
16 up. And that was when Shell North America talked about  
17 further holding and purchasing limits with the fuels  
18 coming on board and we've heard that from some of the very  
19 large emitters from the beginning of cap and trade and  
20 their concern about that. And so maybe we can just put  
21 that on our follow-up list to continue to take a look at.  
22 Thank you.

23 CHAIRPERSON NICHOLS: I was a little bit  
24 surprised -- I'm not saying I'm unhappy -- that we did not  
25 hear from the military. They were satisfied with our

1 treatment of them under this rule. They decided not to  
2 come.

3 BOARD MEMBER SHERRIFFS: You had mentioned the  
4 shuffling, and I had just a general question about that.  
5 It looked like staff might have some something they wanted  
6 to say about that. I'll look forward to more detail. I  
7 would appreciate a little response to that, because the  
8 question does come up.

9 CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF  
10 SAHOTA: Resource shuffling is currently prohibited. In  
11 the proposed amendments, it remains prohibited.

12 I think the speaker identified that they thought  
13 they had three instances had already occurred. We looked  
14 into those. At least two of those are completed  
15 transaction and we believe they are not resource  
16 shuffling. One of them was set to happen prior to cap and  
17 trade even coming into effect, which was a divestiture of  
18 a high-emitting force. Another one was related to being  
19 in compliance with other State policies about moving to  
20 low carbon energy sources, such as the RPS. There's one  
21 that was sited that we're still continuing to look at  
22 because that process hasn't completed and there's still  
23 ongoing discussions. So we're looking in that instance to  
24 determine what's the rational and the underlying thing  
25 that's driving this activity.

1           And I'm purposely not calling out names here in  
2 my response, just because I don't want to bring attention  
3 to these specific companies.

4           And you know, but in cases where resource  
5 shuffling is somehow expected, we encourage our  
6 stakeholders to reach out to us. It's encouraging that  
7 somebody who doesn't have a vested interest in the outcome  
8 of the regulation right now in terms of allowances or  
9 compliance was able to actually pull together some  
10 information and share it with us. That's encouraging that  
11 the public is paying attention and they care enough to  
12 provide those comments and pull that information together.

13           Moving forward, if we did find instances of  
14 resource shuffling, we would investigate and take  
15 appropriate action.

16           CLIMATE CHANGE PROGRAM EVALUATION BRANCH CHIEF  
17 CLIFF: I just want to add on the resource shuffling,  
18 specifically one of the ones that's called out is the  
19 divestiture of Reed Gardener Power Plant by DWR. This not  
20 only is not resource shuffling. It was called out in 2008  
21 Scoping Plan as part of the state's commitment to get out  
22 of coal. So it's not resource shuffling. We divested of  
23 that plant in order to lessen our impact on the  
24 environment by one million metric tonnes, a little more  
25 than one million metric tonnes. As a state, that was a

1 very important commitment.

2 CHAIRPERSON NICHOLS: You saw the story this  
3 morning in one of the trade publications. I think a lot  
4 of the attention was devoted to Los Angeles Department of  
5 Water and Power and what's happening with their coal  
6 contracts. It appears that they either or the reporter or  
7 we are confused about what exactly they're doing and how  
8 they intend to treat it under our regulations. So that  
9 may be worthy of the some more investigation.

10 But in any event, I don't think one has to react  
11 to every story. But do think in this case it's an  
12 important enough issue that we just need to prepare  
13 something a little more formal than what you've just  
14 expressed because it will continue to raise questions  
15 among people that are looking for excuses for why they  
16 hate cap and trade. In fact, I think I hear Kip Lipper  
17 calling right now.

18 So it's time.

19 SENIOR ATTORNEY STOUT: Excuse me, Chairman  
20 Nichols. It's Holly Stout.

21 One thing I need to say before you take a vote is  
22 that the comments today did not raise any new  
23 environmental issue for the purposes of CEQA.

24 CHAIRPERSON NICHOLS: Okay. Thank you. So we  
25 responded to all the comments that were made during the

1 time that this item was out for public comment, and you're  
2 satisfied we're in compliance. All right.

3 So we're ready to have a motion and take a vote  
4 here. Can we do this all at once? I mean, I know we can  
5 vote on the regulation. But on the CEQA document as well?

6 SENIOR ATTORNEY STOUT: Correct.

7 CHAIRPERSON NICHOLS: All right then. I need a  
8 motion and a second.

9 BOARD MEMBER GIOIA: So moved.

10 BOARD MEMBER DE LA TORRE: Second.

11 CHAIRPERSON NICHOLS: All those in favor, please  
12 say aye.

13 (Unanimous vote)

14 CHAIRPERSON NICHOLS: Any opposed?

15 Any abstentions?

16 Very good. We are done. Thank you very much.

17 Do we have any request for public comment? None.  
18 Okay. Then we will be adjourned. Thank you, everybody.

19 (Whereupon Item 14-3-3 concluded at 1:29 p.m.)  
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