BEFORE THE

STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )
 )
Board Meeting )
 )

CA EPA BUILDING, 2nd Floor
COASTAL HEARING ROOM
1001 I Street
Sacramento, California

TUESDAY, MAY 4, 2010

9:00 A.M.

Reported by:
Peter Petty
BOARD MEMBERS PRESENT

Charles R. Hoppin, Chairman
Frances Spivey-Weber, Vice Chair
Arthur G. Baggett, Jr.
Tam M. Doduc
Walter G. Pettit

Staff Present

Dorothy Rice, Executive Director
Michael A.M. Lauffer
Jonathan Bishop, Chief Deputy Director
Thomas Howard
Darren Polhemus
Scott Couch
Jim Maughan
Larry Lindsey
Paul Murphy
David Rose
Dominic Gregorio
Marleigh Wood
Joanne Jensen
Jeanine Townsend

Also Present

Sarah Hanson, Sacramento Redevelopment and Housing Agency
Colin Pearce, City of Bakersfield
Nick Jacobs, Kern County Water Agency

Public Comment

John Kemmerer, US EPA Region 9
Marlon Cuellar, for State Assembly Member Mary Salas
Alfred Wanger, California Coastal Commission
Dennis Peters, CAISO
Andrew Ulmer, CAISO
Mike Jaske, CEC
Robert Strauss, CPUC
Linda Sheehan, California Coast Keeper Alliance (CCKA)
Sarah Sikich, Heal the Bay
Dr. Michael Hertel, Southern California Edison Co. (SCE)
Dr. David Sunting, UC Berkeley
Eric Lu, ENVIRON
Paul Singarella, Latham Watkins
Robert Donlan, Ellison, Schneider & Harris for RRI Energy
Eric Pendergraft, AES Southland
Public Comment (continued)

Robert Lucas, California Council for Environmental and Economic Balance (CCEFB)
Chris Ellison, Ellison, Schneider & Harris for Dynergy
Katherine Rubin, Los Angeles Department of Water and Power (LADWP)
Mark Krausse, Pacific Gas and Electric (PG&E)
Noah Long, Natural Resources Defense Council (NRDC)
Jill Wirkowski, San Diego Coast Keeper
Joe Geever, Surfrider Foundation
John Steinbeck, Tenera Environmental
David Nelson, Coastal Alliance on Plant Expansion (CAPE)
Dr. Shelley Luce, Santa Monica Bay Restoration Commission
Steve Peace, Self
Jow Dillon, National Marine Fisheries Service
Ian Wren, San Francisco Baykeeper
Robb Kapla, Voices of the Wetlands
Jim Metropulis, Sierra Club California
Sean Beatty, Mirant
## INDEX

<table>
<thead>
<tr>
<th>Items</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I Public Forum</td>
<td>7</td>
</tr>
<tr>
<td>II Minutes</td>
<td>8</td>
</tr>
<tr>
<td>III Uncontested Item 3</td>
<td>8</td>
</tr>
<tr>
<td>IV Proposed Resolution to Allocate Funds From the Clean-Up and Abatement Account to Fund a Soil Vapor Extraction System for the Barstow Street El Monte Triangle</td>
<td>8</td>
</tr>
<tr>
<td>V Consideration of a Proposed Resolution to Adopt the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling and the Associated Certified Regulatory Program Environmental Analysis</td>
<td>16</td>
</tr>
<tr>
<td>VI Petition for Reconsideration of a Water Right Order Removing the Kern River in Kern County from the Declaration Of Fully Appropriated Streams.</td>
<td>10</td>
</tr>
</tbody>
</table>

**Public Comment**

- John Kemmerer, US EPA Region 9                                      29
- Marlon Cuellar, for State Assembly Member Mary Salas                33
- Alfred Wanger, California Coastal Commission                       35
- Dennis Peters, CAISO                                               39
- Andrew Ulmer, CAISO                                                40
- Mike Jaske, CEC                                                    47
- Robert Strauss, CPUC                                                56
- Linda Sheehan, California Coast Keeper Alliance (CCKA)              59
- Sarah Sikich, Heal the Bay                                         69
- Dr. Michael Hertel, Southern California Edison Co. (SCE)           101
- Dr. David Sunding, UC Berkeley                                     104
- Eric Lu, ENVIRO                                                    107
- Paul Singarellia, Latham Watkins                                   109
- Robert Donlan, Ellison, Schneider & Harris, RRI Energy             128
- Eric Pendergraft, AES Southland                                    131
### INDEX (Continued)

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Lucas, California Council for Environmental and Economic Balance (CCEFB)</td>
<td>140</td>
</tr>
<tr>
<td>Chris Ellison, Ellison, Schneider &amp; Harris for Dynergy</td>
<td>143</td>
</tr>
<tr>
<td>Katherine Rubin, Los Angeles Department of Water</td>
<td>153</td>
</tr>
<tr>
<td>Mark Krausse, Pacific Gas and Electric (PG&amp;E)</td>
<td>158</td>
</tr>
<tr>
<td>Noah Long, Natural Resources Defense Council (NRDC)</td>
<td>164</td>
</tr>
<tr>
<td>Jill Wirkowski, San Diego Coast Keeper</td>
<td>167</td>
</tr>
<tr>
<td>Joe Geever, Surfrider Foundation</td>
<td>173</td>
</tr>
<tr>
<td>John Steinbeck, Tenera Environmental</td>
<td>175</td>
</tr>
<tr>
<td>David Nelson, Coastal Alliance on Plant Expansion (CAPE)</td>
<td>178</td>
</tr>
<tr>
<td>Dr. Shelley Luce, Santa Monica Bay</td>
<td>182</td>
</tr>
<tr>
<td>Steve Peace, Self</td>
<td>185</td>
</tr>
<tr>
<td>Jow Dillon, National Marine Fisheries Service</td>
<td>190</td>
</tr>
<tr>
<td>Ian Wren, San Francisco Baykeeper</td>
<td>194</td>
</tr>
<tr>
<td>Robb Kapla, Voices of the Wetlands</td>
<td>196</td>
</tr>
<tr>
<td>Jim Metropulis, Sierra Club California</td>
<td>197</td>
</tr>
<tr>
<td>Sean Beatty, Mirant</td>
<td>273</td>
</tr>
</tbody>
</table>
CHAIR HOPPIN: Good morning, ladies and gentlemen. If you would take your seat now, for real? Our second Board Meeting of the day. Today, Tuesday, May 4th, I would like to call this meeting to order. I will begin by introducing my staff – my Board, excuse me – to my left – I hope that is not indicative of the way my day is going to go.

MS. SPIVEY-WEBER: Ah, now the truth comes out.

CHAIR HOPPIN: To my left, Vice Chair Frances Spivey-Weber; to her left, member Tam Doduc; to my right, Board member Baggett; and to Art’s right, Mr. Walt Pettit. Now, Ms. Rice, would you please introduce your staff?

MS. RICE: Dorothy Rice, Executive Director. To my left, Michael Lauffer, Chief Counsel; to my right, John Bishop, Chief Deputy Director; to his right, Tom Howard, Chief Deputy Director; assisting us, Jeanine Townsend, Clerk to the Board; and Darren Polhemus will be assisting with the once-through cooling item; and staff, seated for a future Board item.

CHAIR HOPPIN: Thank you, Ms. Rice. I know all of you that are here for today’s hearing are veterans of Water Board meetings and wars, but it is important that you all note, in the back of the room there are two exit signs. In the event of a fire alarm, which I may set off at my
discretion if things get out of hand later in the day, we will all evacuate down the stairs and across the street to Chavez Park.

I would also like to let you know that this meeting is being webcast and recorded, so when you come to the podium, please identify yourself clearly and whom you represent. If I inadvertently mispronounce your name, I apologize, it is not intention. And most importantly, anything that chirps, tweets, beeps, or otherwise distracts you, if you would make sure they are turned off, I would appreciate that and I will do the same. And we may be approaching capacity of this room during the course of the day, there is an overflow in the Sierra Hearing Room next door, so if anyone is outside, cannot get in, there is room next door.

Item 1. PUBLIC FORUM.

CHAIR HOPPIN: With that, in every Board meeting we have time for a public forum, any person wishing to speak to the Board on any matter not pending before the Board, if you have submitted a blue card, it is your time to come forward.

MS. TOWNSEND: I have no cards.

CHAIR HOPPIN: Good. Four minutes, Ms. Townsend, do you have Board Minutes?

MS. TOWNSEND: Yes, I do, sir.
CHAIR HOPPIN: I know you do, you always do.

Item 2. MINUTES.

MS. SPIVEY-WEBER: I will move for adoption.

MR. BAGGETT: Second.

CHAIR HOPPIN: All those in favor?

(Ayes.)

Do any Board members want to report about anything other than wanting to leave as soon as they can today?

Item 3. UNCONTESTED ITEMS.

CHAIR HOPPIN: Hearing none, we have one uncontested item, Item 3, there is no one here to speak on that. I will entertain a motion –

MR. LAUFFER: One item to clarify for the record before voting on the Consent item, there was the staff change sheet that had been circulated.

MS. SPIVEY-WEBER: I move adoption of Item 3 with the changed sheet as noted.

MR. BAGGETT: I will second that.

CHAIR HOPPIN: All those in favor?

(Ayes.)

Thank you.

Item 4. PROPOSED RESOLUTION TO ALLOCATE FUNDS FROM THE CLEAN-UP AND ABATEMENT ACCOUNT TO FUND A SOIL VAPOR EXTRACTION SYSTEM FOR THE BARSTOW STREET EL MONTE TRIANGLE.

CHAIR HOPPIN: Ms. Rice, would you please
MS. RICE: Item 6?

CHAIR HOPPIN: No, Item 4.

MS. RICE: The folks for Item 6 were a little anxious because they were already seated, but I will move to Item 4. Item 4, Mr. Chairman and members, is for your consideration of a proposed resolution to allocate funds from the Clean-Up and Abatement Account to fund a soil vapor extraction system for the Barstow Street El Monte Triangle. Presenting the item are Scott Couch, assisted by Jim Maughan from our Division of Financial Assistance. Thank you.

CHAIR HOPPIN: In the interest of time, Mr. Maughan, considering that we have a very full agenda today, rather than have you give a report that I believe you have given to all of us with the follow-up sheet from Mr. Couch, unless any of the Board members have any questions about this, I am going to spare you your presentation. It is my understanding that someone from the City wanted to speak to this issue. Is that correct? Are you asking to speak about the vapor clean-up, or the other portion of this project?

MS. HANSON: I was going to speak on both items. I am Sarah Hanson with the Sacramento Redevelopment Agency. And at the March meeting, you had asked for more of an overview as it relates to redevelopment, as well as the SVE unit and the second piece. And so we are respectfully
asking for a few minutes to show you a quick PowerPoint.

CHAIR HOPPIN: I believe -- I know I have reviewed the second portion of this, and I never agreed with it and still do not. I am in favor of the vapor recovery portion of it, as proposed. But unless any of my colleagues want to hear about the soil studies and all, I do not know that it is the best use of your time. Does anyone –

MS. HANSON: I concur with the Chair.

MS. SPIVEY-WEBER: I move we adopt the resolution to allocate the funds from the Clean-Up and Abatement Account to fund the soil vapor extraction system.

CHAIR HOPPIN: And I have a second by Mr. Baggett, Jeanine?

MS. TOWNSEND: Yes, I know.

CHAIR HOPPIN: All those in favor, signify by saying aye.

(Ayes.) Any opposed? Thank you.

MS. HANSON: Thank you.

CHAIR HOPPIN: We will go to Item 6, please, Ms. Townsend – Ms. Rice – it is going to be a long day. I am looking forward to being sucked through a giant once-through cooling facility and turned into fish food here, I just can hardly wait.

Item 6. PETITION FOR RECONSIDERATION OF A WATER RIGHT ORDER REMOVING THE KERN RIVER IN KERN COUNTY FROM THE DECLARATION
OF FULLY APPROPRIATED STREAMS.

MS. RICE: Item 6 is for your consideration of a proposed order to deny the Petition for Reconsideration of a Water Right Order removing the Kern River in Kern County from the Declaration of Fully Appropriated Streams. Larry Lindsey, Chief of the Hearings Unit in the Division of Water Rights will lead off the presentation.

MR. LINDSEY: Good morning. Joining me this morning are Staff Counsel David Rose, who is the attorney on the Hearings Team, and Engineering Geologist Paul Murphy, who is the Hearings Unit Staff Lead for this item. And Paul will give a brief intro.

MR. MURPHY: Good morning, Chair Hoppin and Board members. The order before you is a response to a Petition for Reconsideration that was jointly filed by the North Kern Water Storage District, City and Chapter Buena Vista Water Storage District, Kern Water Bank Authority, and the Kern County Water Agency. The Joint Petitioners offer six reasons why they believe Order 22010-10 which would remove the Fully Appropriated Stream status for the Kern River is inappropriate and improper. In the Draft Order before you, staff responds to these six reasons and recommends denying the petition for reconsideration. We released the Draft Order for public review on April 20th, and comments were due last Tuesday, the 27th. We received one timely comment that
was from the City of Bakersfield. Staff has no changes to
the Draft Order and we recommend that you adopt the Order as
written. David and I are here for any further questions you
may have.

CHAIR HOPPIN: Thank you. I have two speakers,

Colin Pearce.

MR. PEARCE: Thank you. Good morning, Board
members and staff. Colin Pearce representing Petitioner,
City of Bakersfield. We submitted comments last Tuesday in
support of the Draft Order. I am here today to again urge
you to adopt the Draft Order, and we do appreciate the
additional information and direction that is in the Draft
Order. I think there is some very good clarifications in
there about the next steps and the process of dealing with
the Kern River. In the prior Order, the original Order on
the Kern River, there was an indication that, at this point
in the process, staff would start to process the
applications to appropriate. We look forward to working
with staff in that regard. I do want to point out that, in
response to some of the issues raised in the prior Order on
the Kern River, and also discussed in the Draft Order. We
are working, Petitioner of the City of Bakersfield, is
working on preparing some supplemental information to submit
with their Application to Appropriate which should clarify
two important issues, one is how much water is available and
how much water is unappropriated on the Kern River, and
second, what to do with that water with a focus on multiple
reasonable and beneficial uses, primarily water in the Kern
River to restore the natural flow of the Kern River. We
also urge, as we have mentioned several times, we urge staff
and Board members, if possible, to come down to Bakersfield
to tour the Kern River, to meet with City staff as part of
the process of adjudicating the unappropriated water on the
Kern River. Finally, I will ask and urge that the Board not
delay this process any further. We expect this will be a
fairly lengthy process, there are multiple applications to
appropriate, and we expect there will be protests, and for
the hearings we anticipate that there may be a Petition for
Writ of Mandate filed by the North Kern parties against the
Board. We would urge the Board to not delay the processing
of the Applications to Appropriate while the petition is
pending. There has also been some very preliminary
settlement talks among the parties, but we also do not
believe that that should delay the processing further
because, frankly, any settlement would probably put us
exactly where we are now, which is urging the Board to
restore the flow of the Kern River, that is really, I think,
first and foremost the City’s goal and policy no matter what
happens on the River. And we thank you again for your
consideration of this matter and we urge you once again to
approve the Draft Order. Thank you.

CHAIR HOPPIN: Thank you, Mr. Pearce. Nick Jacobs. I notice how you two did not pass in the aisle there.

MR. JACOBS: Oh. Good morning, my name is Nick Jacobs. I am with Somach Simmons & Dunn, representing Kern County Water Agency. I have a cold, excuse me. I am not going to make further substantive comments on the Draft Order; we submitted a fairly lengthy brief in that respect. I do have one procedural request, and that is that the Board amend the Draft Order on the Petition for Reconsideration to stay processing of any applications in this matter until either the 30-day period to file a Petition for Writ has expired, and no litigation has ensured, or, if there is a writ, litigation pursued, to wait until that is resolved. Doing so makes sense for a couple of reasons. Once we get into the application processing, there will be significant resources expended by the Board staff and by all the parties. The issues that will go up, if they do, to a Superior Court, you know, are absolutely central to the processing of those applications, the water involved, what water, where, all those issues that we talked about before. And so it makes sense to wait until that process plays out before processing these applications, otherwise we are going to have parallel processes going on at significant expense.
The second reason, as Mr. Pearce mentioned, is that there are some discussions right now between the parties that could result in a favorable settlement that would benefit everyone involved, and substantively, I cannot go into what is being talked about, but my client holds out promise that those discussions could reach a good resolution. So thank you for your consideration.

CHAIR HOPPIN: Mr. Baggett, you were the Hearing Officer on this matter. Would you like to comment on Mr. Jacobs’ requests?

MR. BAGGETT: Yeah, I would move the adoption. If you make progress in settlement, you can bring it back to the Board and we can delay it. I think if we delay this now, we have all been involved in settlements, you need a deadline, and we have a deadline, and I think this Board has shown over the years that it is very amicable to extending deadlines if there are true settlement efforts, and some product is coming back, we have done that more than once since I have been here, and I think that my colleagues share that belief in settlements. But I think we should stay firm at this point and come back once you have got something to come back with, and we can discuss it. I would be glad to move the Order.

MR. JACOBS: The settlement is one component, but the potential litigation is another. We could be spending -
the Board staff could be spending considerable time working out complex engineering issues to have a court say something different.

MR. BAGGETT: Well, we are in court right now on another issue which is before us tomorrow, I mean, I think that is just the way we live. We are always in court on issues. I would move that.

MS. SPIVEY-WEBER: I second.

CHAIR HOPPIN: Thank you, Mr. Jacobs. We have a motion and a second before us. All those in favor, signify by saying aye.

(Ayes.) Any opposed? Thank you.

Item 5. CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT THE WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING AND THE ASSOCIATED CERTIFIED REGULATORY PROGRAM ENVIRONMENTAL ANALYSIS.

CHAIR HOPPIN: Mr. Lauffer, I have no cards on Item 5. Can I move that back to the Consent Calendar? Would that be all right? No one has any objections to that, do you? What are you smiling about? Any of you that intend to speak on the once-through cooling issue, which I am sure there are many of you, if you would submit your cards if you can? The sooner the better. That will help us collate. I know we have some panels that have requested coming forward, and I assume – am I entertaining you there, or did I say...
something that was funny that I did not realize?

MR. BISHOP: Jeanine has the cards and is collating them as we speak.

CHAIR HOPPIN: So we are not on consent, right?

MR. BISHOP: No, I do not think so.

CHAIR HOPPIN: I thought maybe you had done such a good job that —

MR. BISHOP: Never.

MS. RICE: He has done just a good job that the cards are being organized. Dominic Gregorio will —

CHAIR HOPPIN: If I knew you were going to wear a tie, I would have thought about doing the same, we would really be throwing them off base, wouldn’t we? By the end of the day, I am going to need a fresh shirt, I do not know about the tie. Ms. Rice, would you please introduce this item.

MS. RICE: As you know, Mr. Chairman and members, Item 5 is for your consideration of a Proposed Resolution to Adopt the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling and the Associated Certified Regulatory Program Environmental Analysis. Dominic Gregorio with the Division of Water Quality will lead off the staff presentation for you this morning.

CHAIR HOPPIN: Thank you.
MR. GREGORIO: Good morning, Chair Hoppin and members of the Board. Again, my name is Dominic Gregorio. I work in the Division of Water Quality. Also here with me today is Marleigh Wood from Office of Chief Counsel and Joanna Jensen of the Division of Water Quality. And we are here to present the Final Draft Policy on Once-Through Cooling. So what you see on the screen is our goal to develop a statewide policy to protect marine life from the adverse impacts of once-through cooling in compliance with Clean Water Act Section 316(B), while ensuring the continuity of the State’s energy grid.

So just as a reminder, you have seen this slide before, but there are substantial impacts to marine life as a result of once-through cooling, impingement, and this is just for fish only, is over 2.6 million annually, and that is based on data that we have from 2000 through 2005. The entrainment mortality is over 19 billion fish larvae annually and, again, I will point out that that is just fish larvae, that does not include the invertebrates that are also entrained. For the Delta plants, specifically, there are two plants in the Delta, it is estimated that they entrain about 62,000 Delta Smelt, and that is on an annual basis, along with other things. And in terms of marine wildlife, about 57 annually are entrapped, and those include seals, sea lions, and sea turtles.
And just to review what the law tells us, the Clean Water Act, Section 316(B) states that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. There is a section of the California Water Code, as well, that requires newer expanded coastal power plants to use the best available site design, technology, and mitigation measures feasible to minimize the intake and mortality of marine life.

So just to review how we got to this point, we held two public workshops back in 2005, that is how we kicked off the process, we also had two different scoping phases, the first scoping phase was under the EPA Phase 2 Rules. Those underwent a court case, the result of that court case is what we refer to as Riverkeeper II, there were substantial changes to the EPA rules, most of them were basically removed for the existing power plants, and so we kind of had to go back to the drawing board and we had a second scoping phase that was in 2008. We also impaneled a group of experts to go over some of the scientific information that became the basis for our CEQA document. A draft policy was released last year on June 30th, 2009, and the supporting document for CEQA, the Substitute Environmental Document, was released shortly afterwards on July 15th. That initiated a public comment period. A public
A hearing was held on September 16th. The deadline for submitting comments was September 30th, we got quite a few comments from that process. A public workshop was again held on December 1st to present some of the staff proposed, what we call, “clarifying changes” to the draft policy. Those were based on a lot of those comments. We then opened it up again based on those changes that we presented on December 1st for a second comment period which ended on December 8th. We went to work, working on all of those comments that we received. A final draft policy and the substitute environmental document were released on March 22nd, and the policy included certain changes from the previous version that were shown in strikeout underline for public use. The deadline for submitting comments on those recent changes was April 13th; we have received approximately 9,000 comment letters, and 66 comment letters were unique, so we completed our draft response to comments. We got those to you, the Board members, and then we shortly afterwards released those to the public on April 27th.

So what I would like to do now is very briefly just go over those changes that you see in the draft policy, or the Draft Final Policy since December 1st. We clarified and added some findings to the beginning of the policy. We added a section or a statement in the Track 1 BTA Provisions that basically said that the dry cooling, air cooling at a
power plant would meet the intent of best technology available under Track 1. For Track 2, we removed the feasibility test. Previously, there had been a feasibility test if it was infeasible to do Track 1, then they would go to Track 2, well, we removed that. The impingement reductions met by the reductions in velocity, that change had to do with we added a statement in there that, if you had impingement reductions, that they had to be comparable with the other technology in Track 1. And for entrainment, we included a provision that basically required that there be a 93 percent reduction in flow measured monthly, or other control technology that is comparable. For the Track 2 combined cycle plants, we included a section that stated that there would be reduction of entrainment based on reduction in intake flows for the entire plant, or for each combined cycle unit, by reductions in intake velocity and meeting the interim measures. There were provisions added for temporary suspension of the final compliance date if there was an issue with grid reliability. We added some provisions, and they were fairly minor, to the immediate and interim measures with regard to whether the Regional Board or the State Board would approve matters concerning the interim measures. So we changed it from Regional Board to State Board. We added a provision that allowed compliance through funding the Coastal Conservancy and the Ocean.
Protection Council, the Coastal Conservancy being the fiscal agent for the Ocean Protection Council. And there was a preference that was stated toward funding projects associated with marine protected areas. And we also included a provision that operator-funded mitigation projects must be overseen by an expert panel. There were some clarifying edits to the SACCWIS procedures. There were also some procedures added with regard to Los Angeles Department of Water and Power. And there was a requirement that an annual grid reliability study was to be required. We added an allowance for suspension of compliance dates due to permitting delays. There was clarification that the Regional Board NPDES Permits should include appropriate provisions to implement suspensions and final compliance dates without re-opening the permits. With regard to the nuclear special studies, we provided factors to be considered, and those included costs of compliance, engineering space, permitting, and safety constraints, and potential environmental impacts. There was a section added that allowed a cost/cost consideration; in other words, for those nuclear plants, if the cost of compliance was to be compared to the cost that we considered in the Substitute Environmental Document, and if alternate requirements are established by the Board for nuclear plants, then the difference was to be fully mitigated by funding marine
protected areas. There were some changes to the compliance schedule. A lot of those changes had to do with more frequent reporting to the Board by the SACCWIS. The Harbor, Scattergood, and Haynes plants, that were all Los Angeles DWP plants, the dates were changed for those. And the Diablo Canyon final compliance date was extended to 2024; that was to line up with the relicensing period. There were some changes to the monitoring. Prior entrainment studies using the 333 micron screen may be allowed for baseline if the Regional Board determined that those were adequate. If new baseline entrainment studies were required, sampling should be for both the 333 micron and the 200 micron fractions, and sampling must be conducted during different seasons and periods of peak use. And for post-implementation, remember, this is just relative to Track 2, new studies, the sampling should be for both 333 micron and 200 micron fractions. Then, finally, we had some minor additions and changes to the definitions.

CHAIR HOPPIN: Dominic, could you go back to the previous slide? On the compliance - the changes to the compliance schedule - would you talk a bit about how the SACCWIS can influence the proposed dates that we have in our schedule? How they can potentially modify the dates we have before us.

MR. GREGORIO: So the SACCWIS does not have the
authority to modify the dates, that is up to the Board.

Only the Board can modify the compliance schedule.

CHAIR HOPPIN: They would make recommendations to this?

MR. GREGORIO: They would make recommendations if it was something that they felt was needed. After meeting and discussing this with the full SACCWIS, that could be a recommendation that was made. There also could be a recommendation by some of the agencies in SACCWIS, and then you would get maybe an opposing recommendation from other members. So various things could happen at those annual reporting sessions and, you know, it is kind of impossible to speculate on all of them.

MR. BISHOP: In addition, Chairman Hoppin, there was an addition for suspension language based on the grid reliability, a short-term, less than 90-day suspension shown by the CAISO, and then for a longer than 90-day suspensions or amendments after a hearing by this Board.

CHAIR HOPPIN: Fran.

MS. SPIVEY-WEBER: And when will the SACCWIS next meet?

MR. GREGORIO: We do not have a date. The SACCWIS has to be officially impaneled. We have an interagency working group now and my guess is that the same members of that working group will be on the official SACCWIS, but the
SACCWIS does not actually get started until the policy gets adopted and we get it approved by OAL, and that would be no later than three months after the effective date of this policy.

MS. DODUC: And, Dominic, the factors that the SACCWIS will consider in recommending any changes to the compliance schedule, would those factors include grid reliability?

MR. BISHOP: Yes.

MR. GREGORIO: Yes, absolutely. That is a major issue with the SACCWIS, especially because of the energy agencies’ involvement with SACCWIS.

MS. DODUC: And SACCWIS includes not only the energy agencies but also CAISO?

MR. GREGORIO: CAISO, as well as the Coastal Commission, State Lands Commission, and the Air Resources Board.

MS. DODUC: Thank you.

CHAIR HOPPIN: Go ahead.

MR. GREGORIO: I am all done – with the presentation.

MR. BISHOP: Chairman Hoppin, if I could just take a moment to kind of put where we are in context? This has been a long road that we followed, and along that road we have learned a lot about how our grid works, our electrical
systems operation, and we have also created new and significant relationships with our sister agencies that will continue forward through the implementation process. This proposed policy has gone through many changes over the last few years and what you are charged today is to balance between our requirements under the Clean Water Act to protect the beneficial uses, including the marine environment, and to maintain the essential services of electrical reliability for everyone in the state. As you go forward today, you will hear from a number of applicants asking you to either make it easier for the power companies to move forward, making it more protective for the environment, what staff would ask you is, as you hear each of these comments, you keep that balance that we are trying to maintain in mind of both protection of the environment and maintaining of that electrical system. And now, I would turn it over to a small number of folks that want to talk to you.

CHAIR HOPPIN: Mr. Bishop, would either you or Mr. Lauffer please address our procedures as we go forward? We are going to have, I am sure, recommendations to amend the Draft Policy as we go forward. Given the magnitude of this, I do not want some last minute scribbling, and "I thought you said that," "No, I said that," kind of a situation. So it is my understanding that the proposal is, when we hear
all of the comments for modifications to the draft, staff, after a brief recess, will compile those, and we will take essentially a straw vote of some sort on the changes individually, rather than to lump them into some undefined clump.

MS. DODUC: If I may, actually, before you carry out the Chair’s request, if I may make a quick response to Mr. Bishop’s comment. I appreciate your comment, I appreciate the work that staff has done, and appreciate that the Board, I think, individually as members and as a Board, feel a responsibility for considering the various factors and balancing needs. But I just want to make it clear, although I am not sure and I will look to Mr. Lauffer for this, if there is any specific charge to the Board in Porter Cologne or in the Clean Water Act for us to ensure grid reliability.

MR. LAUFFER: Ms. Doduc, I mean, obviously the Board – its name conveys what its primary charge is as the State Water Resources Control Board; however, there are umbrella policy elements embedded within Porter Cologne that allow us to ensure that there is a reasonableness to our approach to regulation, we have to implement our federal requirements, but there is a fair bit of flexibility. And I think what your staff have done over the last three years, they have really strived to find the balance that Porter
Cologne expects us to carry out, recognizing that we do have a responsibility under the Federal Clean Water Act to ensure that these specific facilities reflect the best technology available, and I think your staff have done a tremendous job, as John indicated, there has been a lot of education that has gone in, and that has helped that balance, if you will, the implementation of the Draft Policy that staff anticipate. With respect to Chair Hoppin’s question, I think our recommendation would be for the Board to hear public comment, if there are specific questions at that point that you have of staff, I would encourage you to ask them, and then I think what would be very helpful is for the Chair to go through the Board members serially, asking for issues that they would like to see staff address, and so that we have a sense of where the Board members are coming from, a broad sense of the Board, I would not recommend a vote at that time on any of the specific issues, but it will at least provide staff direction and, then, perhaps if we are very fortunate, that will be around the lunch break and we could take a longer lunch break, staff could come back, having thoughtfully considered what you have requested collectively, and then we will present language up to you. And then, at that point in time, if there are specific items of that language that there may be some tension or dissention amongst the Board members that we would consider...
motions on the individual amendments that staff will have
put together after hearing from the Board, and then, at the
end, the Board collectively vote on the entire package. So,
most importantly, public comment, and then providing
directions to the staff so that the staff can take advantage
of the lunch break or a longer break to actually reflect the
changes that the Board wants.

CHAIR HOPPIN: Thank you, Mr. Lauffer. Our first
card of the day, John Kemmerer. As I said, when you come
forward, if you would please state your name for the record
and state whom you represent, it would be very helpful for
the record.

MR. KEMMERER: Good morning, Board members. My
name is John Kemmerer. I am the Associate Director of the
EPA Region 9 Water Division and representing EPA Region 9
here today. I appreciate the opportunity to speak to you
about this important policy to minimize the environmental
impacts from cooling water intake structures at California’s
coastal power plants. I would first like to commend your
staff for their work addressing this complex and challenging
issue. EPA’s difficulties developing a natural role under
Section 316(B) of the Clean Water Act are well known, and we
appreciate the challenge California is taking on here. Your
staff have effectively consulted with involved stakeholders
to take into account the myriad issues at stake, including
the vast damage to aquatic life caused by these intake
structures, the significant costs involved in retrofitting
covered facilities, and the potential ramifications for the
State’s energy supply network. It is our view that, with a
few revisions to the current draft, this policy can provide
valuable direction to address all of these issues.

I am going to focus my testimony on five suggested
revisions to the current Draft Policy. Our first three
recommendations concern the Track 2 Compliance Alternatives.
We understand that under Track 2, the Policy’s intent is to
provide an alternative means of compliance under which
facilities may reduce the damaging impacts of cooling water
intakes to a level comparable to the closed circuit cooling
under Track 1. Unfortunately, as the policy is currently
drafted, there are no assurances that Track 2 will, in fact,
be comparable to Track 1. We believe this can be largely
remedied by three revisions: first, in order for Track 2
provisions to be comparable to Track 1, the reduction in
impacts under Track 2 should be calculated on a unit
specific basis, rather than for the facility as a whole.
This would be consistent with Track 1, which calls for
facilities to achieve flow reductions at each unit. Second,
the Track 2 provisions define effectiveness that is [quote]“comparable to Track 1 as reducing impingement mortality and
entrainment by at least 90 percent of the protection
achieved under Track 1." We suggest deleting this 90 percent allowance and, instead, requiring that the reductions achieved under Track 2 be equivalent to those under Track 1, without allowing for a lesser protection of aquatic life. Third, Track 2 allows for compliance with respect to entrainment impacts by flow reductions measured relative to a facility’s design flow. The tables in the draft substitute environmental document illustrate the often significant differences between the design flows and the average flows at these facilities. In order for Track 2 to truly achieve reduced entrainment impacts comparable to Track 1, these flow reductions must be based on a comparison to actual flows, not design flows.

In addition to the three recommendations regarding Track 2 compliance, we have two additional suggestions. The fact that the policy, as has been mentioned earlier, contains really valuable provisions for consultation with a wide range of affected entities, including the California Energy Commission, Independent System Operator, Coastal Commission, Air Resources Board, and others, and while we agree that it is very important to have this consultation, we disagree with the policy’s provisions in Section 2.B.2 and Section 3.B.5, describing suspending compliance dates at the recommendations of the California Independent System Operator and SACCWIS. In our view, as currently drafted,
the policy places an unreasonable standard on you at the 
State Water Board in requiring that the Board make a 
“finding of overriding considerations based on ‘compelling 
evidence’ in order for the Board to choose not to follow a 
CAISO or SACCWIS recommendation.” We believe that the 
provision should be revised to allow the State Board to 
evaluate these recommendations from CAISO and SACCWIS on 
their merits, and make decisions accordingly, rather than 
setting a new standard by which the Board must evaluate 
these recommendations and make conclusions. And fifth, and 
last, we have concerns with the Draft Policy’s provisions 
regarding combined cycle units. Specifically, we would 
recommend deleting Section 2.A.2.D.2 of the Draft Policy, 
which establishes a separate means for compliance for 
combined cycle units. This is inconsistent with the rest of 
the policy and is not protective, as it allows for 
compliance without reducing impacts as required for all 
other facilities which do not have combined cycle units. 

Thank you for the opportunity to speak to you this 
morning, and thank you very much for your valuable efforts 
to protect the environment from the impacts of cooling water 
intakes.

CHAIR HOPPIN: Any questions of Mr. Kemmerer?

Thank you. Next, we have staff on behalf of Assembly Member 
Mary Salas, Marlon Cuellar.
MR. CUELLAR: Thank you. I am here on behalf of Assemblywoman Mary Salas. I am going to read her statement now. "Assembly member Mary Salas, on behalf of her constituents in the 79th District, strongly opposes the State Water Board’s Once-Through Cooling Policy, as proposed. This policy will negatively impact the community and the environment in South San Diego Bay, and threatens to undermine our system of regulation by taking away the decision-making power about the plant from the Regional Boards. The South Bay plant is causing significant damaging and avoidable impacts to the ecosystem in the South Bay. Beyond the environmental impacts, the economic blight and the toll that the power plant has taken on the lives of the residents of the South Bay cannot be overstated. The City of Chula Vista, many local, state and federal elected and elected leaders, and a coalition of interested groups, are working to shut down the South Bay plant to end, once and for all, the plant’s devastating impacts on the community and the environment."

I would like to submit the most recent letter opposing the plants, signed by eight elected officials representing Districts in the South Bay. "The amendments to the Once-Through Cooling Policy would take away local control and decision-making about the significant local impacts the plant has and give it to a non-governmental
entity that has no environmental mission or accountability to the local community. Also, the Regional Board must retain the ability to shut down existing plants like the South Bay Power Plant to protect the community and the environment. I urge that the policy be changed to explicitly allow the Regional Boards to terminate permits or deny renewal permits for existing plants when they are determined that it is the required action to protect water quality and designated beneficial uses. Again, I reiterate our request that the compliance deadline for the South Bay Power Plant be moved to the end of 2010. I also ask that you remove CAISO’s power to extend the plant’s compliance date and restore to the Regional Boards their rightful control over the permitting process. It is crucial that the ultimate decision-making power remain at the Regional Board level where they can best understand and respond to local concerns, and be held accountable for their decisions. I have a long history with the South Bay Power Plant. I was living in the South Bay when the power plant was originally, and I have seen my community suffer ever since. It has blighted our community and our Bay for 50 years. As a community working with our local utility, we have permitted and constructed adequate energy to replace the power plant. We have done our part, now we are asking you to do yours and pass a policy that will allow us to ensure that our
community and our environment is protected.” Thank you for your time. I appreciate it.

CHAIR HOPPIN: Thanks for your comments. Alfred Wanger.

MR. WANGER: Good morning, Chair Hoppin and Board members. My name is Alfred Wanger. I am with the California Coastal Commission. I am the Deputy Director that oversees the water quality programs at Coastal Commission. I have been fortunate enough to be involved in the interagency discussions that was mentioned earlier, working with State Water Board staff, CAISO, the PUC staff, Energy Commission, and others, on developing the policy recommendations that came forward. And I want to especially recognize the efforts of the energy agencies to come up with a pathway from the energy and grid reliability perspective that would allow California to achieve the objectives of the stated objectives of this policy and still maintain a reliable grid that meets our needs here, using the purchasing authorities to contracting processes and others, laying out a timeframe that takes into account the complexities that are faced. We think the energy agencies did an excellent job in coming up with a path that supports implementation.

We previously submitted a letter with some comments regarding this, and I will just touch briefly on a
few key points with this. I want to echo the comments of
John Kemmerer from EPA regarding the Track 1 and Track 2
implementation, I will not repeat those, I will just say
that generally we support the recommendations that he made.
We think that the removal of the feasibility test that was
originally in the November draft policy opens up
complications in achieving the objectives under Track 2. As
John was discussing, we think that it opens up the
opportunity for dispute and disagreement over what achieving
these objectives are, likely leading to rather than money
being spent on best technology available, leading to a lot
of best attorneys available, arguing over whether objectives
were actually achieved or not. We also support the idea of
looking at actual flows, rather than design flows and
calculating reduction, as well, and would also like to see
the mitigation requirements that might be enacted, resulting
in actual mitigation, rather than funding of alternative
means of compliance as proposed under 2C that would allow
funding under support for marine protected areas and others;
while that is a worthy goal, we think that the primary
mission should be to mitigate the damage done by any
particular plant in the local area.

We also share the concerns that Mr. Kemmerer
mentioned regarding the combined cycle systems. We think
that represents kind of a carve-out, it does not achieve the
objectives of the policy. We would like to see that removed, as well. And also, finally, the new language in Section 5 allowing for a two-year suspension of the final timelines for achieving the compliance dates based on difficulties in achieving permits. We think that creates an incentive for the plant operators to drag this process out. We think the permitting process that all of the agencies pursue is done in an expeditious manner. And if there are particular issues that come up, I think the policy and the work of the agencies is flexible enough to accommodate that. Granting kind of a blanket two-year exemption to a compliance date, we do not think, will be helpful in the long term. So I will leave my comments there and if you have any questions, I would be happy to answer them. Thank you.

CHAIR HOPPIN: Do you feel that things at the Coastal Commission are always done in an expeditious manner?

MR. WANGER: I think we strive to meet our objectives and our requirements under the Permit Streamlining Act to the best of our abilities; however, what we cannot control is what the project proponents do on their end in submitting information. We try to work with applicants as quickly as we can to get the project through as quickly as we can, but I will not say that there are not delays. But I would say that the staff works very hard to
make sure that we resolve any issues bringing permits forward as quickly as we can.

CHAIR HOPPIN: Thank you, sir. Fran?

MS. SPIVEY-WEBER: You do not think that the interim measures to fund marine protected areas is a particularly good idea. In my thinking about this, it seemed like perhaps we need to add some additional language that it would be marine protected areas in the areas near the plant because the marine protected areas are supposed to be actually providing space for restoring fisheries that are being hurt by the plant, the once-through cooling process. So I saw a nexus between marine protected areas and the plants, but maybe we have not made it clear enough as to that nexus.

MR. WANGER: I think there is a nexus, but I think what we would recommend, at least staff is recommending, that there be more explicit nexus established for a particular plant and a particularly protected area, instead of broadly speaking that the MLPA, or Marine Protected Area process, which we support also, for a particular plant should be mitigating for any damage done in its area, and if that could be done in a Local Marine Protected Area, all the better.

CHAIR HOPPIN: Thank you.

MR. WANGER: Thank you very much.
CHAIR HOPPIN: Mr. Ulmer and Mr. Peters, do you want to come together, or do you want to speak separately? Or what is your plan?

MR. PETERS: Good morning, Chair Hoppin and members of the Board. My name is Dennis Peters. I am the External Affairs Manager for the California Independent System Operator Corporation, or ISO. I am joined here by my colleague, Andrew Ulmer, Senior Counsel at the ISO. We appreciate the opportunity to provide comments on the proposed statewide water quality policy for the use of coastal and estuarine waters for power plant cooling issued on March 22nd of 2010. And, first, let me say that the ISO is fully committed to working with the State Water Resources Control Board and your staff to ensure that you accomplish your obligations concerning use and quality of water resources, while ensuring the reliability of electric service for citizens of California. The ISO, along with the CPUC and CEC, have worked extensively with the Water Board staff and we acknowledge that revisions to this most recent draft of the policy provide for greater recognition, that the ISO’s role to ensure electric system reliability by allowing continued operation of existing plants using once-through cooling, until replacement infrastructure – and that could be generation or transmission – obviates the need for such plants for reliability. And we applaud your
willingness to engage this issue. The ISO also appreciates
that the Water Board continues to rely upon an [inaudible]
process developed by the energy agencies to ensure
reliability. Adoption of this policy will create a long
term relationship between the Water Board and the CEC, CPUC,
and ISO, as we identify necessary infrastructure to allow
for implementation of the policy. Implementation of the
policy will require maintaining a close working relationship
through the proposed SACCWIS and other mechanisms, and we
are committed to that relationship to allow the Water Board
to satisfy its objectives, while not jeopardizing the
reliability of California’s electricity grid. And I will
turn the mic over to Andrew Ulmer.

MR. ULMER: Good morning. My name is Andrew
Ulmer. I am an attorney with the California ISO. Chair
Hoppin, Honorable Board members, I simply want to augment
Mr. Peters’ comments with three points. Mr. Peters
mentioned the policy appropriately identifies the need for
replacement energy infrastructure, and we think that is a
bedrock of going forward. The adoption of final compliance
dates associated with the once-through cooling policy, we
have tried to be clear and to emphasize that we see that as
an exercise of this Board’s discretion. That discretion
should not override specific Federal requirements for the
ISO to plan and manage the reliable operation of the grid.
The commenting parties already have and will invite you to adjudicate electric reliability determinations, do not accept that invitation. It is a recipe for potential rejection at OAL, it is a recipe for potential legal challenges as this Board applies the policy going forward.

Those commenting parties can participate in the ISO’s public processes that look at electric reliability determinations and ultimately, if necessary, go before the Federal Energy Regulatory Commission. The draft policy as written identifies procedures to address the need for replacement infrastructure, but do not seek this Board’s authority over water use and quality. Those procedures also appropriately recognize the division of responsibility among other state agencies and the ISO, and we urge their adoption in connection with the once-through cooling policy.

I just want to conclude also by certainly recognizing from the ISO’s perspective the huge effort from Joanne, from Marleigh, from Dominic, from Jonathan, and the productive relationship that we have developed with them. And, again, to underscore what Mr. Peters said, the ISO is committed to embark on this relationship with the Water Board over the next decade. Thank you.

CHAIR HOPPIN: Thank you, gentlemen. Question.

MS. SPIVEY-WEBER: To the attorney, do you see the phrase “a finding of overriding consideration” that was
referred to in some of the earlier testimony as setting up a
brand new standard for us to have to meet, whereas, if we
commit to looking at the recommendations from CAISO on the
merits, or on, you know, giving significant deference, I
guess, to your recommendations, that would not be a
significant new standard? And I am questioning whether we
really should be setting up a new standard just for you?

MR. ULMER: It is a fair question. The way I
think about it categorically is that this Water Board should
focus on water quality and use issues. It should not open a
hearing into whether or not a specific power plant is needed
for electric reliability purposes. The comments of an
earlier speaker with respect to the South Bay Power Plant
may provide a good example. This year, the ISO has
identified that power plant as necessary to support the
operation of the electricity grid. The last time I checked
the data, and the more recent data, perhaps, but I think
during the months of January and February, that power plant,
I think, was started once. The units there were each
started once. The discharges in that power plant have been
minimal. There is a staff report from the Regional Board
that finds that continued operation of that power plant for
the remainder of 2010 does not threaten the South Bay in any
significant way. Now, the Water Boards look into overriding
considerations; maybe one that looks at how a power plant is
affecting a certain water body in terms of its quality or use, and that should be the inquiry. It should not be, were the ISO’s determinations with respect to how it plans to operate the electricity system reasonable. They should be, are the consequential impacts on water such that potentially the Water Board needs to make a determination that would run contrary to maintaining that permit.

MS. SPIVEY-WEBER: Thank you.

MR. ULMER: Thank you very much.

CHAIR HOPPIN: One more question, I believe.

MS. DODUC: You mentioned about the CAISO’s public processes. Could you describe some of those processes for me?

MR. ULMER: Absolutely.

MS. DODUC: In particular - I am sorry - in particular, in your Environmental Justice policies.

MR. ULMER: The ISO’s public processes are run - they are referred to often as stakeholder processes. They are publicly noticed. They are open to public participation. They often involve public meetings. They certainly involve public comments. And they culminate with respect to these two plant specific determinations, with presentations before an independent Board of Governors that are approved. We do not have per se an environmental justice program. We do have a statutory directive from the
California Legislature to consider California’s environmental laws as we proceed to run our business and operate the electricity grid. So that is a direct charge. And certainly in the stakeholder processes, those concerns have been raised and are considered by the ISO’s Board of Governors.

MS. DODUC: A follow-up question with respect to the South Bay Plant. The Environmental Health Coalition submitted comments, letters, to this Board, in particular they reference comments that they made with respect to CAISO’s determination whether there is a gap in the peak demand after the Otay Mesa Plant has been online, and they have made some argument that, given the Energy Commission’s finalization of its demand estimate, that gap may no longer exist, and the South Bay Plant can be closed by the end of this year. In my staff’s responses to comment, they simply defer this item to you because the deadline that is proposed in the policy is based on recommendations from the Joint Energy Agency. So given your stakeholder process, I assume that you have analyzed the detailed report that was submitted by the Environmental Health Coalition called “Filling the Reliability Gap,” and have responded to that concern. Could you quickly summarize that response?

MR. ULMER: I can try. The reliability determination made with respect to South Bay for this...
calendar year 2010 was made last year at a time when the
load forecast numbers for that area were different, they
were higher. They have been reduced. Those new numbers are
going through our process right now with respect to an
assessment for 2011. If that is part of the record, the
report you mentioned, it will be reviewed, it will be
considered. We get into detail very quickly, but the
concept of a gap or a capacity gap, we do not have enough
capacity within the San Diego area, is but one issue.
Certainly, we need enough capacity, but we also need the
right kind of capacity. The electric system, for better or
worse, was built in a certain way and power plants provide
certain attributes to the electric system that other
resources may not. The South Bay Power Plant is one such
resource, it is a big resource. When you turn it on, it has
the impact of being able to balance certain electricity
requirements. There is a lot of power that is brought into
the San Diego area that is imported. In order to continue
those imports, there is a need for in-area local generation.
South Bay Power Plant is one of those units, and in the
event that a major transmission line is lost, or there is an
outage of a unit, and we have a lot of heat in San Diego, or
we have a fire, it may well be that that power plant is
going to need to operate for several days. And that is one
of the considerations that goes into looking at whether or
not a power plant is needed. It is not just, to use the
reference to simple math, we just do not add up the load and
the capacity, it is also the characteristics of that
generating capacity.

MS. DODUC: I appreciate the complexity. One
final question. In making that determination, how do you
balance, to use the word of the day, how do you balance
between the need for grid reliability across the San Diego
Region, vs. the needs and concerns of the local
environmental justice community?

MR. ULMER: Well, we do balance them. I think it
is a very big challenge because our fundamental charge is to
make sure that the electricity supply and load are balanced
and that we have sufficient capacity, but we hear them,
certainly. We have heard the people of San Diego. We have
heard local politicians from San Diego. A similar instance
has occurred in San Francisco where we have engaged in
significant discussions with respect to the Potrero Power
Plant, and we understand those perspectives, and we have
been planning to address them. And hopefully that is going
to end up in a very good outcome. We hope for the same with
the South Bay Power Plant in the relative near term.

MS. DODUC: Well, I wish you much success because
the community does seem to – let us just say – doubt your
intention. I think in the letter they sent us, they write,
“What we have learned in our 10 years of experience with ISO is that their positions are subject to radical changes and their accounting is not transparent or objective.” I would encourage you to strengthen that cooperation and coordination with the community, however we go forth on this policy with respect to the South Bay Plant.

MR. ULMER: And thank you for those comments. We will work to do so, certainly, and we would invite those interests to participate in our processes.

CHAIR HOPPIN: Gentlemen, I have one more question from my Vice Chair.

MS. SPIVEY-WEBER: When is the Board of Governors going to be considering the South Bay Plant, the new 2011 schedule for the South Bay Plant?

MR. UMLER: I believe that item is likely to be considered in September of this year at an ISO Board of Governors Meeting.

MS. SPIVEY-WEBER: Okay.

CHAIR HOPPIN: Thank you, gentlemen.

MR. ULMER: Thank you.

CHAIR HOPPIN: Mike Jaske.

DR. JASKE: Good morning, Mr. Hoppin, members of the Board. Mike Jaske representing the California Energy Commission. As you know, the energy agencies submitted a letter jointly on April 13th, along with many other folks.
We proposed minor clarifying changes to the text of the March 22\textsuperscript{nd} or 23\textsuperscript{rd} version of the policy. I am not going to go through each of those items, you have them with you. In addition to the points there, the Energy Commission itself wants to make a few specific points. The clarifications, how I think of much of what was involved in the changes between the late November and March versions, on the whole are extremely helpful. There were ambiguities in the November language that we talked with staff about, wrestled with trying to understand its intent, and that is not a reasonable basis for policy of this magnitude. So the clarifications, for good or bad, you know, make it much more clearer where they were going. The Energy Commission supports an OTC policy. We are not going to get into many of the details of the stringency to want to impose upon individual power plants. We have long supported the retirement or repowering of these plants, that has been the official policy of the Energy Commission since the biennial 2005 IEPR report. We were somewhat naive, I would say, in our espousing of this goal because it did not effectively have the coordination with all the other agencies. The effort that has been put forward in developing this policy has brought together the energy agencies with your Board, and I think we have the means by which the majority of these plants are likely to actually be repowered or retired,
hence, they will have OTC impacts whatsoever once they are removed from service, new prime mover installed.

A lot of the commenters submitting their views on April 13\textsuperscript{th} do not understand the basic thrust of the proposal that the energy agencies put forward. Some commenters think that it is a simple matter of high energy efficiency renewable and let’s go do all those things and in five years we can shut down all these plants. On the other hand, the generator community, a number of them, talk about the impossibility of phasing out their facilities in the year 2020, and it needs to be spread out over more time. None of those commenters understand the core of what is behind the energy agency proposal that is included in your document. We are folding the replacement of these plants into the entire electricity infrastructure planning and procurement process. That process is being driven by major environmental and global warning concerns, we are taking energy efficiency, distributed generation, renewables, into account in those planning and procurement processes. What will come out in the end is a balance between what can be relied upon from those forces, the residual amount of fossil power plant, almost surely likely to be some repowering of some of those affected sites, perhaps the continued use of these combined cycles that are new and modern, but the overall reliance upon fossil plants, particularly these old
OTC designed units, is going to radically diminish. What you need to do is to embrace the proposal that your staff has put together, allow that process to move itself forward. There are many ambiguities about the specific fates of any one of these plants, the schedule that was included in the energy agency joint proposal, and now embodied in compliance dates in this policy, are best guesstimate as to what can be accomplished. We are working intensively through our normal planning processes to evaluate the options, to identify the ones that are most feasible, most cost-effective, and when that process works itself through, an iteration or two, we will have a much clearer idea about the likely fate of many of these individual facilities.

CHAIR HOPPIN: Mr. Jaske, before you go on, do you feel the policy, the way it is written in the draft, allows you to go through those iterations and examine the likelihood of replacement on the dates that are in the initial schedule?

DR. JASKE: Yes, and there are two ways in which this works. Although we have the general belief that the majority of these plants will repower or retire, we very much can benefit from the compliance plans that they are obligated to turn in six months after the effective date of this policy. There is nothing like a real live requirement on these generators, as opposed to the loose talk that they
can make in processes like this, about what their plans are. We may have well learned some things about their intentions about what they think is feasible for their facility that we do not know today. Secondly, there are processes that are just at the beginning stage, the AB 1318 legislation that requires ARB, with the coordination of these same energy agencies and your Board staff to develop an Electrical Reliability Plan for South Coast, and to in effect develop a new mechanism whereby air credits that new power plants require can be made available to those plants. We do not have that today, that entire system of air credits for new power plants in the South Coast Air Basin is suspended, nothing is being constructed, nothing is going to be constructed for a couple years, except for, by legislative fiat, handing out air credits to specific plants, that is not the way that we need to bring together all these regulatory and planning processes. When all of that settles down, we will have a much clearer idea about what can be built new, what can be repowered, what does not need to be relied upon at all because we can reduce load further, we can rely upon renewables, but to do so may well require that we upgrade the transmission system, and as you well understand, all of those things take time. So, as several of the other speakers have said, we are in a long run endeavor together. When I was here in December, I think I
said it would take 10, 12, 15 years for this to play itself out fully. I still think that is the case. The marrying together of the interests of electric reliability and your interests in water quality will just necessitate that it take that long, and we need to sort of get on with the job. Thank you.

CHAIR HOPPIN: I have one more question for Mr. Jaske. From the standpoint of attrition, do you feel in your conversations with some of these providers that, given the additional costs and burdens of this regulatory process, that they may just say, “We’re going to close down and not pursue repowering” at what would be considered a valuable site at the end of the transmission line, or at the beginning of a transmission line? Is that a potential play that will come into the long term effects of this policy?

DR. JASKE: I believe that is the case. The Potrero plants in San Francisco give you the idea that, if the transmission system can be changed in major ways, such as building a cable under the Bay, that having particular local generation to service reliability needs is not required. So, while I fully agree with what Mr. Ulmer said, the transmission system, you know, creates significant impediments, it is not an immutable fixed thing, it can itself be changed, and it is not necessary that all of the capacity in the Southern California Coast continue
permanently into the future. We can devise options that will remove some of that capacity from service.

CHAIR HOPPIN: Thank you. Any comments? Tam.

MS. DODUC: I have a question. Since you brought up the Potrero plant, my question for you is with respect, and I do appreciate the complexity and the need for additional planning and coordination, would you say that the same level of planning and coordination, the 10-year period that you spoke about, applies to the Potrero, as well as the Humboldt Bay Plant? My understanding is that the Humboldt Bay Plant has already accomplished what it needs to do, and based on the comment from the Environmental Law and Justice Clinic at Golden Gate University, they are asserting that, under the Settlement Agreement, the Potrero Power Plant will be closed by the end of this year. So given that, what is your understanding of the need, at least in the policy, to extend their compliance date to one year after the effective date of this policy?

DR. JASKE: Let me give a two-part response; first, when we start engaging with your staff about the idea of marrying the procurement process into the compliance for these plants, their reaction was, “Aren’t some of those plants further along? Aren’t preexisting analyses studies even commitments such that we can take advantage, and therefore have differential schedule?” And clearly the June
30th version buys into that concept. So Potrero has, for example, been planned to retire for a long time, but it is conditional. It is conditional upon the successful operation of the Transbay Cable. Everything is going along, the Transbay Cable is nearly completed, it is in testing, it has now encountered problems we do not yet know for sure how long it will take for the Transbay Cable to be fixed and deliver the product, so to speak, that it was designed to deliver, it is contractually obligated to do that, it will ultimately do that, you know, whether it takes a few more months than the original schedule, and therefore Potrero has to operate a few more months. You know, those are the kind of give and takes about playing around with compliance date that are likely to happen along the way. We plan for something to happen, everything is moving along, and to make that expectation happen, suddenly, you know, something happens, there is a few months’ delay. That is, I think, going to be the unfortunate reality that will be encountered from time to time.

CHAIR HOPPIN: One more.

MS. DODUC: I am sorry. And Humboldt Bay?

DR. JASKE: Humboldt is under construction. It will very quickly supersede the old plant. And what opportunities should be provided to old plants to clean themselves up and continue in service without the kind of
environmental harm that they have been producing, you know, that is an opportunity I believe this policy leaves to the plant owner; they do not have to shut down, if they are not needed for reliability, they can, they are being given a little bit of slack to bring themselves into compliance with the water quality aspects of your rule.

CHAIR HOPPIN: Fran.

MS. SPIVEY-WEBER: I had one question. In the policy B.2.A, it says that if the Executive Directors of the CEC and CPUC do not object in writing within 10 days to CAISO’s written notification, the notification provided pursuant to this permit shall be suspended, blah, blah, blah. Instead of it being an affirmative joint decision between CEC and CPUC with CAISO, this is a “if you don’t object,” things move forward. Is that something that you have given thought to, as to the difference between those two? Does the way it is written now put up a particular barrier, do you feel?

DR. JASKE: The way we reconcile ourselves to the difference between this suspension language and the language that was cited earlier today about planning is that, in the near term short run operation of the system, ISO is monitoring the facts on a much closer basis than ourselves or the PUC. It is sensible to give them the discretion to move first. And, you know, if for some reason one or the
two agencies think that they did something wrong, we have an opportunity to put our hand up and say no, and then it goes into a more deliberative process. In the basic compliance scheduling part of the policy where we come back to you every year now with a re-visitation of those dates, it gives deference to the unanimous position of the energy agencies, while we have the luxury of looking ahead multiple years, there is no reason why we should not be bringing forward a unanimous recommendation to you. And so, given the sort of immediacy on the one hand vs. the deliberative planning, there is a rationale for different language.

CHAIR HOPPIN: Thank you, Mr. Jaske.

DR. JASKE: Thank you.

CHAIR HOPPIN: Robert Strauss.

MR. STRAUSS: Good morning. My name is Robert Strauss. I represent the Energy Division of the California Public Utilities Commission. Thank you for allowing me to speak here today. The Water Board staff has done an excellent job of balancing the competing concerns in this case. Clearly, some groups want the plants using OTC closed immediately; others want the environmental harm to cease, regardless of the impacts on the electric plants. Conversely, some plant owners want to continue operations without any significant changes. Through this process, I believe the Water Board staff’s bias has been to eliminate
environmental harm at any cost, but has reached a workable compromise to prevent the huge economic and environmental harm that would result from a shortage of electric power.

The CPUC’s policies are directed toward reducing the need for natural gas-fueled power plants. The California Solar Initiative provides $3.3 billion of subsidies to build photovoltaics. There is over $3.1 billion that the Commission is authorized for energy efficiency measures, this is in addition to the Demand Response Programs that provide incentives to reduce power at peak, and other similar programs. The PUC and CEC and ISO are working hard to increase the amount of renewable energy resources in the California Power Grid to reduce the need for fossil fuel plants. Studies are currently underway to determine the equipment and software needs to integrate up to 33 percent renewable power. This includes determining the need for new transmission lines, increased substation infrastructure, and increasing the amount of resources capable of filling in when the wind and solar resources are not available. Replacing coaling systems is expensive. Replacing older power plants with new power plants can cost billions of dollars. New transmission lines cost billions of dollars. But power outages cost tens of billions of dollars. The PUC is focused on reducing and eliminating the environmental harm caused by OTC with the least amount of
economic and environmental harm to California. We should not forget that closing power plants without ensuring adequate reliability can result in black-outs and rotating outages that have significant environmental consequences. Environmental effects of a power outage include operation of diesel generators that result in increased storm water pollution from fuel spills and exhaust reaching the water system. These diesel generators also result in increased air pollution, increased potential for wastewater discharge without full treatment, increased potential for untreated or not fully treated industrial water discharge, increased air pollution from less efficient power plants operating longer hours, increased solid waste from accelerated food spoilage from lack of refrigeration, increased solid waste from interrupted industrial processes, increased air and water pollution from shipping increased waste to landfill and recycling centers, and the list goes on.

To protect against black-outs, the PUC has authorized three large investor-owned utilities to enter into contracts that will finance the construction of new power plants, both natural gas fueled and renewable. We cannot in good conscience close the plants using OTC until reliability has been protected by increased energy efficiency, demand response, new renewable generation, new combined heat and power, new efficient natural gas-fueled
power plants, and the revision of water cooling systems so existing plants no longer use OTC.

Some of the projects have encountered significant delays; for example, in the South Coast Air District, three plants to be built under contract with Southern California Edison are delayed because of the Air Permit problems tied to the priority reserve issues, that Mike Jaske just discussed. These plants, if built, would improve the reliability that will allow some plants using OTC to close either permanently, or to replace their cooling systems. I believe the Draft Policy before the Board recognizes the costs related to reliability and establishes a flexible and nuanced policy that ensures the environmental harm from OTC is eliminated, while protecting California from other harms.

Thank you.

CHAIR HOPPIN: Thank you, sir. Any questions? Dominic, I have two panels of four. Do we have adequate microphones there in front of you for these panels?

MR. GREGORIO: Yeah, I believe we do.

CHAIR HOPPIN: Ms. Sheehan, your group, please, Linda Sheehan, Sarah Sikich, Steve Fleischli, Jacob Russell, I did not count right, we have got five, and Dr. Gold. You can come up to the front. Linda, since you like to be in control, I will let you direct your panel, how is that?

MS. SHEEHAN: Good morning, Chair Hoppin and
members of the Board.

CHAIR HOPPIN: Linda, one second. Darren, would you set the clock for 45 minutes?

MS. SHEEHAN: We will try to go faster.

CHAIR HOPPIN: I will let you do that.

MS. SHEEHAN: Good morning, Chair Hoppin and Board members. Thank you very much for allowing us to present our concerns and suggested modifications in a PowerPoint format. We are very cognizant of the work that is before you today to try to develop a policy that complies with your Federal mandate under 316(B), and we are here to be as helpful as possible to that process. So, thank you.

I am very pleased, actually, to be speaking to you today because it has been five years that we have been very actively involved in this issue, our organizations, your staff, and many of the folks in the room, and so we are very hopeful that we can come to a resolution that ensures that your Federal mandates are met. Unfortunately, as you have read in our comment letters, we have some very grave concerns about where the policy has gone. We thought we had a workable document that would help move the State forward last fall, and we are very surprised and concerned about some of the amendments that have been made to date, and so we will go through some of those points in as useful detail as we possibly can today.
Mr. Gregorio did a very nice job going through the law, and so I will not read, but I will highlight a couple of points. I want to make sure that we come back to the mandate and the role before us today. As your staff repeatedly said in the Responses to Comments, the State Water Board is not making energy policy, that is not the Water Board’s job. The State Water Board’s job is to implement its Federal mandate under Section 316(B), and this is with regard to the very significant and often proven with much scientific peer review impacts of cooling systems around the country and in California, which is the largest user of cooling water in the nation. This mandate came into place in 1972, so it is no surprise that we are here today. There has been litigation for at least a decade over this particular provision, ensuring that it is going to come to fruition. And so we are very grateful that we are here today talking about it and want to assure you that this is your mandate, and you have a responsibility to implement it, not underneath the responsibility of anybody else, but in balance and concert. And right now, we are very concerned about the fact that this policy minimizes and basically eviscerates your power to implement your mandates.

Very quickly, Dominic Gregorio went through some of this earlier, but the Riverkeeper I Decision addressed new plants that were to be constructed, and two of the
points that we wanted to highlight is that, 1) restoration measures in lieu of BTA, Best Technology Available, are illegal, and the facility needs to aim for the best, 100 percent. In Riverkeeper 2, of course, was with regard to existing plants and, again, highlighted that restoration measures are illegal, and that the Clean Water Act is a technology forcing statute, so it is not a matter of status quo, or what is okay with people, it is pushing us to do better all the time. Another point in Riverkeeper 2 is with regard to, again, second best is not best, we need to be aiming for the Best Technology Available. These issues were, of course, litigated at the Supreme Court, but they only took up the issue of cost benefit analysis, they did not take up the issue of whether restoration or mitigation is okay to use in place of Best Technology Available. That is still clearly illegal. The Court did discuss cost benefit analysis and that was discussed in your SED document and your Responses to Comments, and we are pleased that you did not take that up for the many reasons that were articulated in your analysis. And I did want to emphasize that the court, as we have heard in some of the prior comments, the Court did not say that, you know, if costs are more than benefits, then that is an issue. When we say “some cost benefit analysis,” the Court was focusing on cost benefit analysis that showed absurd results, so something
that was completely out of the ordinary. And so, just
simply looking at costs greater than benefits is not what
the Supreme Court was thinking about.

And then, finally, other states have been moving
forward on this issue. California is a leader, but is not
necessarily the only one out in front, and I think it is
important for us to make sure that, as US EPA was saying
earlier, that we are on a path to meet and comply with the
Phase 2 rules that EPA is drafting right now, or is in the
process of drafting for release hopefully this fall. New
York State just recently, I am sure you read in the news,
denied a 401 certification for Indian Point Power Plant,
which has very significant impacts, certainly not quite so
significant based on our research as the two nuclear
facilities in California, but very significant, and they
went ahead and they moved forward with that water quality
certification denial. And we have very grave concerns with
regard to the Water Board’s ability to do the same here in
California, should that be necessary. And the Water Board
here should certainly be in the same position as another
state to implement 316(B) in compliance with the law.

Again, you are well familiar and well aware of the
significant impacts and most of these are from your
documents with regard to once-through cooling, the sheer
volume of the water is enormous. And it kills everything
that goes through the power plants, so it is not something
to be taken lightly. The amount of fish that we are trying
to protect right now in the Southern California bite under
the Marine Life Protection Act is very significantly
threatened by once-through cooling, as you can see from the
facts on the slide. And, in fact, in your documents, it
talks about the Marine Life Protection Act and the amount of
time and energy the State has put to that very high priority
of the Governor’s Office, and that Marine Life Protection
Act Scientific Advisory Panel down in Southern California
found that once-through cooling is the number one threat to
the designation of marine protected areas in the Southern
California bite. So it is something that the scientists
down there are recognizing as extremely important. And, in
fact, it is the reason, these impacts, these types of
impacts and more, especially in local communities, is the
reason that our organizations, and others that you will hear
from today, and the folks that signed on to the comment
letters over the years and worked together to help work on
this process with you and your staff, it is the reason that
we are here, are these impacts, and to make sure that the
Water Board moves forward consistently in exercising its
responsibilities under the Federal Clean Water Act and under
316(B), to end these impacts in a way that is balanced in
consideration of other agencies’ Federal responsibilities.
The Response to Comments on our April 13th letter said that the changes in the current policy are minor, and we would respectfully and very strongly disagree with that characterization, these are major changes that move the state very far back from where we were and in a path, actually, that moves us away from compliance with the Federal Clean Water Act.

So we have worked out a system for us to go through these slides and these proposed suggestions to you, and highlight some of the concerns that we have. Again, I want to emphasize that we do not want to lose sight of your Federal mandate under the Federal Clean Water Act, Section 316(B), you are not making energy policy, you are deciding on cooling systems and how we can protect the ecosystems that are very clearly being impacted. And the changes to the policy do not allow you to do your job, and we are going to talk about some of these changes. You have handouts in front of you that outline these, and we will not go through them and read them to you because I am sure that you can do that, but we will talk about our thought process and how we can work together to come up with something that does implement your mandate successfully.

So the main points that we will make in order, and I will talk first about one or two of these, and then Sarah Sikich will go next. The main points are that the current
policy eliminates this preference for Best Technology Available, what the Second Circuit said, “Best is best, second Best is not best.” And it replaces it with an alternative that is not comparable to the Best Technology Available, and many of these have the same points that US EPA raised earlier, and we would like to echo their points, as well. This Track 2 alternative, which is now a voluntary alternative that can be chosen without a feasibility test is simply not comparable to Track 1, it is not Best Technology, it is not even close to Best Technology. And Sarah Sikich will talk a little bit more about that in detail. The new policy allows the use of restoration and mitigation in lieu of Best Technology Available, which is clearly illegal, and it was not taken up at the Supreme Court level, so it is still illegal. It lifts any semblance of rigorous deadlines, and those rigorous deadlines are important for two reasons, 1) your authority does not mean anything if you do not have a deadline you can enforce. The way the policy is worded right now is the deadlines are suspended, not even amended, simply suspended, and that does not allow you to have the type of enforcement authority and compliance authority consistent with your compliance schedule policy that you need to be able to do in compliance with your Clean Water Act responsibilities. The second reason deadlines are important is it allows power plants to plan ahead of time,
and if they cannot know what deadlines are, not just for themselves, but other power plants, they may be caught in a bind when they need to give some sort of replacement power for someone who is retrofitting off schedule, etc. Very important for planning purposes to actually know where everybody else is going down the line. And then back to another main issue is back to this balancing issue. The current policy eviscerates your authority, it puts this special showing and burden on your part for one particular entity’s Federal mandates when your Federal mandates are also very important. And it is completely unprecedented in my opinion, and in my experience, and I think that it is something that you should take a very careful look at it and not simply give away your authority, which has been delegated to you by US EPA, and which you must uphold.

So with that, we will just jump right in and just go through some of the changes that we are recommending. Again, this is to help move the process along, and our concerns have been, and I am sure you have reviewed them, have been articulated in much more detail in our comment letter, and this is a way to help explain those in further details to help move this process today. The first point is with respect to the feasibility, showing in Track 1, again, Best Technology Available is the 316(B) mandate, and Best means Best and we need to make sure that, where if we are
allowing anything a little bit less than best, or a little bit off of best, that there is a very clear reason, that the Supreme Court allowed for that little bit of wiggle room for the cost benefit analysis, but this goes far beyond that, it simply allows a facility to just go a different route, and this different route is much less than Best Technology Available, which Ms. Sikich will talk about in a moment. So we have suggested some edits that could be used to bring the policy back into compliance with the Federal Clean Water Act, so that you can show in some fashion that feasibility is an issue that should be considered and can be considered at the Regional Board level. And as we talked about in our comments, there are lots of ways that you could define this, and your Regional Water Boards look at different options all the time, for example, when they are setting penalties, they have a wide range of authority to consider many different factors, and they do that quite frequently. The amount of effort that they are going to need to determine feasibility for a very circumscribed number of plants is not something that they cannot handle, they can do this, especially if you define feasibility more clearly than what was in the policy. And rather than defining feasibility, the policy unfortunately just sort of through the baby out with the bathwater and to say, “Well, we’re not going to define it, we’re just going to assume that it is not there.”
2 was BTA, that may or may not have been such a big
difference, but Track 2 simply is not, and so it is a very
significant difference. We took a stab and it is underline
here because we just simply rewrote it, redefining Not
Feasible to be more specific, and define more clearly the
circumstances in which an owner or operator could say this
just simply is not feasible, and then allow the Regional
Water Board to request the information needed to make an
accurate decision, again, a decision they do not need to
make very often. There is a very limited number of
feasibility decisions that they need to make. And, again,
there are other ways of doing this, but we felt that this
was a good way to start defining the narrowness and the
clearness that the Regional Water Boards and the
owner/operators, and the public need to move forward and
ensure that the 316(B) mandate is implemented. And I would
like to move on to Track 2, since this feasibility test
moves us there, and continue, and feel free to ask questions
as we go. Thank you.

MS. SIKICH: Thank you. My name is Sarah Sikich.
I am the Director of Coastal Resources for Heal The Bay.
And my comments will be based on deficiencies in Track 2 and
basically address the three main issues that were raised in
US EPA’s comments earlier today, which we support.

While Track 1 applies to each unit of a facility,
Track 2 currently allows for measures of entrainment and impingement reduction to be applied to the plant as a whole. Not only does this create an inconsistency between compliance track, but it also creates a scenario where Track 2 may be viewed as the preferred compliance track. Additionally, it creates a loophole where a facility could convert some of its units away from once-through cooling, yet still run on once-through cooling on the remaining units as long as the entrainment and impingement reductions sum across all units is in compliance with the policy. This loophole is significant because peaker plants only run as needed, and often only certain units within a peaker plant are used. It is inconsistent with the actual use of these plants to base Track 2 compliance on the facility as a whole, as the rare use of a facility at full capacity may create a scenario where the flow volume calculations can be fixed to achieve compliance without actually minimizing marine life mortality. This is especially of concern with the policy’s basis on design instead of actual flow because there is more room to play with the numbers. Entrainment and impingement reductions need to be calculated on a unit by unit basis to truly achieve a reduction in marine life mortality at a comparable level to that which would be achieved under Track 1, which is called for in Track 2 of the policy since the intake flow rate reductions under Track
are determined on an individual basis. So we have some suggested language here on Slide 13 to improve the policy and create that stronger consistency.

One of the most disturbing elements of the policy is the new compliance determination for Track 2 entrainment reductions in Section 2.A.2.B.1, which base compliance on a reduction in design flow averaged over the entire plant, rather than actual or generational flow. Although we support a flow-based entrainment reduction requirement because of simplicity for monitoring and compliance, designating design flow as the baseline is one of the most serious flaws in the policy and could result in a scenario where no real reductions in entrainment are achieved under Track 2. Instead, the policy should be based on monthly reductions from actual flow, which was supported by EPA and the Coastal Commission in their comments, as well. Most facilities operate well below their design flow and none of the peaker plants are operating according to their design flow. Some plants that operate regularly, such as Haynes and Huntington Beach Generating Stations, currently draw less sea water than their design flow; for example, according to the 2000 to 2005 five-year average flow volumes provided in Table 13 of the SED, Haynes operates more than 73 percent below its design flow, while Huntington Beach and Redondo Beach operate more than 65 percent below their
original design flows. As a result, some facilities may have to take little to no action to actually comply with the policy on paper, and this is a grave concern to us. The State Board’s choice to base entrainment reduction on design flow is not justified in the SED, which confirms that once-through cooling intake is decreasing for more plants and very few plants operate at design flow. Instead, the policy may end up rewarding owners and operators for maintaining inefficient power generating activities well past their initial design function. Although we prefer the use of generational flow as the basis of this policy, at a minimum, the State Board should base the Track 2 flow reduction requirements on actual flow at facilities over the past five years, as reflected in the adjusted language on this slide. It is also critical that the flow reduction calculations be based on a monthly basis to account for seasonal variability. In Southern California, peak level periods also occur during times of peak energy demand.

We have reviewed comments from some members of industry that request Track 2 requirements be based on average annual flow reductions, however, this could create another scenario where low flow months from October to May dilute the high entrainment numbers that occur during the summer months, leading to false compliance. For example, calculations based on flow volumes provided in SEC Tables 4
and 5 show that Morro Bay Generating Station achieved more than 97 percent reduction from design flow during the winter months, October through May, so that would already be a compliance based on the 2005 monthly median flows, but that is just for the winter. Redondo Beach and Pittsburgh Generating Stations also achieve more than the 93 percent reduction from design flow during the winter months, so it is critical that the summer and winter months are taken into account on a monthly basis. To achieve real entrainment mortality reductions, Section 2A to B1 must continue to be based on monthly flow, and Sections 2A to B2 must also be clarified to be based on monthly entrainment mortality reductions.

Furthermore, Track 2 should be improved to lead to impingement and entrainment reductions consistent with Best Technology Available. As discussed in our written comments, the policy suggests in Section 2.A.2 that plants that fall under Track 2 will have to achieve a 90 percent reduction of the reduction that would be achieved under Track 1; in other words, Track 2 requires a 90 percent reduction of Track 1, which requires a 93 percent reduction of intake flow rate, therefore, you would only have an overall entrainment and impingement reduction of 83 percent for each facility, you can see the little equation up there. The reality is that the policy not only removes the preference for Track 1, but
creates a major preference for Track 2 by creating a 10 percent lower performance standard and providing an artificially inflated baseline of design flow, rather than the actual operations of the plant. So we suggest language here that removes that 90 percent of the reduction in Part 2 of Track 2. Thank you. I will turn it over to Steve Fleischli now to discuss combined cycle plants.

MR. FLEISCHLI: Thank you. Good morning, Chair Hoppin, members of the Board. My name is Steve Fleischli and I am here today as an attorney representing Santa Monica Baykeeper, and I was going to talk about combined cycle units, and this is a very troubling portion of the policy where essentially you have given a very broad exception from both Track 1 and Track 2 for existing combined cycle generating units. And I would suggest, contrary to the comments you heard from the PUC representative, that in this particular section, the bias is clearly in favor of the energy industry and not in favor of the environment, and we have significant concerns with this. The first slides simply lay out what this policy is and, again, you are essentially creating an exception for combined cycle, existing combined cycle units. These first slides go to the issue that we would like to see, again, a consistency for combined cycle units to be given credit on a unit by unit basis, as opposed to an across the facility as a whole. I
am not going to go through these edits, but you can see them there on the screen. We are just trying to be consistent with our other comments.

Ostensibly, from what we can tell, this section was inserted in order to give a credit for past conduct. We think that that is already captured in the policy under 2.A.2.C, which the environmental community has not opposed, which is technology-based improvements that are specifically designed to reduce impingements and entrainment mortality may be counted as credit and towards meeting the requirements of Track 2. Instead, this policy now for combined cycle units goes much much further, and the credit is completely misplaced. Repowering is not specifically designed to reduce impingement or entrainment, as you know, it is designed to make the facilities more energy efficient from a generational standpoint. In the first part, 2.A.2.D.1, we would request that the last paragraph there be deleted. We do not think that it has any relevance whatsoever to rewarding prior conduct, and we do think it is illegal. Essentially what you are doing there is you are trying to give them credit towards achieving BTA, Best Technology Available, by allowing them to count prior mitigation that was determined in a different BTA context, and we very strongly feel that mitigation cannot be counted towards BTA. Now, if you wanted to give them credit towards
meeting the interim requirements in the policy, later on in
the policy, I think you could do that because that is
mitigation with mitigation. Here, you are saying we want
mitigation to be counted towards BTA. Now, I know some
folks in industry are going to argue that BTA was determined
at the Regional Board level, we would disagree with that.
Also, I would assert that the Regional Boards did not
determine BTA the same as the State Board has determined BTA
in this Draft Policy. BTA in the Draft Policy is very very
clearly stated as being the equivalent reduction that would
be achieved through wet closed cycle cooling; that has not
been determined at these other facilities, the existing
combined cycle facilities, so why should they be given
credit for BTA when they have never met BTA as being defined
as is defined under this policy, which is the closed cycle
cooling?

The second significant issue with regard to this
particular section for combined cycle units is 2.A.2.D.2.
Now, this whole section, I do not understand the basis for
it, it is not explained in the SED, there is no factual
basis for it, and there is no legal basis for it. And I
have enormous respect for your counsel, Mr. Lauffer, I have
known him for a long time, I have been against him on many
occasions, but I have always respected his opinion, and I
cannot for the life of me figure out how you all could
1. determine that this provision is legal, and I would agree
2. with the comments of EPA that this should be stricken.
3. There is no basis for it.
4. In addition, with the limited justification that
5. is given in the SEC, LADWP’s Harbor facility does not even
6. meet those provisions with regard to heat rates or cost
7. issues that could be considered for this type of exception.
8. So we ask that it be stricken. For the record,
9. 2.A.2.D.2.2’s use of interim mitigation measures for the
10. life of the combined cycle power generating units is
11. completely illegal and inconsistent with Riverkeeper 2. So
12. we would ask that that be stricken. I am now going to turn
13. it over to Jacob Russell so he can talk specifically about
14. combined cycle in the context of Moss Landing.

MR. RUSSELL: Thanks, Steve. Good morning, Chair
Hoppin and members of the Board. My name is Jacob Russell
and I am with the Stanford Environmental Law Clinic. We
have been involved in the permitting process for a number of
these plants and today I particularly want to focus on some
of our experiences with the Moss Landing Power Plant because
I think it provides a perfect example of what Steve was
referring to with the problems with the apparent exemptions
this policy would give to combined cycle power plants.
These exemptions are not – they would permanently
grandfather in combined cycle power plants, as SBTA, that is
not something that the Clean Water Act allows you to do, and it subverts the entire purpose of the Clean Water Act as a technology forcing statute. Again, I want to stress that combined cycle power technology may improve the generating efficiency of the plant, but it has little or nothing to do with the cooling system that the plant uses. And the current policy as it is written, particularly Section 2.A.2.D, seems to almost inflate a power generating technology with the cooling technology, and it is the latter that the Board needs to consider in its policy today.

Moss Landing provides a pretty good example of why this is. As you know, Moss Landing is located at the Elk Horn Slough, it is one of California’s last remaining coastal estuaries, it is the main nursery for Monterey Bay, and the power plant there, which has combined cycle units, still cycles in an amazing 28 percent of the water in the Slough on a continuous basis, that is 1.2 gallons every day, and that cooling technology is estimated to reduce the biological productivity of the slough by 40 percent. In short, Moss Landing’s switch to combined cycle may have improved its generating capacity, but it did little to improve its effects on marine life. The design flow intake of the new combined cycle units is 361 million gallons under the old, non-combined cycle units, it was 380 million gallons. So, just for a 5 percent drop in the water intake,
and that is the key statistic in what determines entrainment impacts, for just that 5 percent drop in that the policy would give them a complete pass on the Clean Water Act in California’s State Law’s Best Technology Available requirements. Again, that lower threshold is not just a violation of the Clean Water Act, it is also bad public policy. The way the policy is written through Section 2.A.2.D gives an extreme preference to plants that have already implemented or installed a combined cycle generating unit prior to this policy, and there is really no good public policy basis for that kind of preference. Nearly all of California’s aging Coastal power plants at some point will choose to repower for economic reasons because they want to take advantage of more efficient generation, this has nothing to do with cooling water technology, and that does not constitute Best Technology Available for cooling water. So, again, combined cycle does not constitute Best Technology Available for cooling, and yet this policy would attempt to grandfather that in, that would undermine the Clean Water Act, and set back years of work on this policy and violate both federal and state law. So we urge you to undo those changes. Thanks.

MS. SHEEHAN: Thank you. I am going to take you on a whirlwind tour of the CAISO-LADWP SACCWIS provisions, as well as the Interim Mitigation Provisions, with an over-
arching theme of firm compliance deadlines that we talked about before, and three concerns that US EPA brought up, 1) suspension of deadlines vs. amending them to something clearer, 2) the demonstration or showing the burden on you to make a showing vs. the demonstration by the other agencies requesting the deadline extension, and then just integrity of your own authority. Compliance deadlines cannot be indefinite, we talked about that earlier, about the importance of having clear compliance deadlines for both your purposes and for grid planning purposes. For this reason, we cannot simply suspend deadlines, we must at least amend them to something that is relatively firm for planning purposes. Again, with respect to something less than 90 days, there needs to be some weigh-in by the State Water Board, right now there is no ability for the State Water Board to weigh-in at all. You have authority and responsibilities you need to be able to weigh-in. And there needs to be some sort of demonstration that this is necessary. It is bad policy-making to simply assert that something is so without any demonstration, and there needs to be some thought behind it that the public can at least look at. Another thing with respect to the less than 90-day suspension is that it could be used serially the way that this is phrased right now, and these proposed edits are to cure that, that you could have 90-day, 90-day, 90-day, 90-
day without any hearing. And so I am sure that was not what your intent was.

Again, this gets to the balance question, and you know, whose Federal mandate trumps somebody else’s, I do not want to get into that discussion, I am sure nobody here does, we want to balance our Federal mandates and make sure that everybody is meeting what they need to meet. Right now, the policy does not do that, and these suggested edits require CAISO and then LADWP, as well, to make some demonstration that could be used in a hearing, and then allow for the State Water Board to consider that. And, again, it has to be an amendment, rather than a suspension of the deadlines. We cannot allow them to continue indefinitely. Again, the same is true for LADWP, as it is for CA ISO, in terms of being clear and working with the State Water Board. There was a lot of approval, general approval of the policy as it was last fall, with some modifications by most of the energy agencies, as far as I read in their comment letters, and it is of great concern that they are coming today and saying that, “Our mandate needs to trump yours,” and I do not think that is the case here.

Finally, the burden on you, this overriding consideration, the compelling evidence, is unnecessary and needs to be revised clearly in order to make sure that you
are meeting your 316(B) mandate and also considering with
great seriousness the grid reliability questions that have
been raised, that they are very important issues. But they
cannot trump your 316(B) authority.

Again, with respect to mitigation, just touching
on this, if the deadlines continue to be suspended or
unclear, and mitigation is in the interim, at what point
will interim mitigation become mitigation in lieu of Best
Technology Available? We think mitigation needs to start
right away with clear compliance deadlines. And the same is
true, again, for SACCWIS. The SACCWIS cannot just simply
come in and say, “The Water Board needs to do our
recommendations,” unless you, the Water Board, can make
overriding considerations and findings based on
demonstrations that we have now provided to you. The policy
is not phrased in a way that the State Water Board can do
its job. And we would also recommend deleting the last two
sentences with respect to this extension which the Coastal
Commission called as sort of an excuse to continue to delay
implementation of the policy for reasons other than grid
reliability. Again, this mandate has been in place since
1972, we have been working on this extensively for five
years, this is no surprise. So, with that, I would like to
turn it over to Mr. Fleischli.

MR. FLEISCHLI: The last issue, I am going to
address and then I will turn it over to Mark Gold, is the
issue of nuclear facilities. In Section 2D, this section
was changed only slightly, but I think there is an important
change that was made and we should go back to what it had
before, which was that this was based on safety, it was an
exception for nuclear facilities based on safety, and I
think you have heard from the environmental community that
both grid reliability, as well as safety from nuclear
incidents is very important to the environmental community,
but this change was made, and the SED, the Substitute
Environmental Document, does not explain why the change was
made, it still justifies these provisions based on safety
requirements, so we think that this provision should be
clearer, that it is specifically for any safety requirements
for these facilities. We also have requested at the end
there that we make it clear that the other exceptions in 3D
are related to the requirements of implementing the Clean
Water Act and Porter Cologne, a fairly minor change.

The other section with regard to nuclear
facilities is in Section 3D, and we do have a number of
suggestions there. Mostly, again, just because nuclear
facilities are inherently dangerous does not mean they
should be exempted from Track 1 and Track 2, and in
particular, in this context, there is really no basis in the
Substitute Environmental Document for why compliance with
Track 2 could not be achieved. The Substitute Environmental Document does talk about issues with regard to Track 1, and I understand and appreciate what staff is trying to do there, but with regard to Track 2, there is really no rational basis in the Substitute Environmental Document for including exemptions for nuclear facilities from Track 2, and so we would ask that you strike those from the exceptions in 3D.

And you can see there are a number of places where Track 2 is included in there. We also would ask that line D, 7D, be excluded, any other relevant information. The problem I see with this exception as a whole is, you have been very clear in your Substitute Environmental Document that the best professional judgment approach for the last 30 years has not worked, and essentially what you are doing for the nuclear facilities, and on page 51 of the SED it says “there is no basis to assume the case-by-case BPJ approach that has been in effect for 30 years will yield any better results now than it has in the past.” And yet, essentially what you are doing with nuclear facilities is you are buying into a Best Professional Judgment approach for these two facilities, where you have acknowledged that for the last 30 years that approach has not worked, so it is not supported. These exceptions are not supported in the record.

MS. DODUC: Steve, before you move on, I can
appreciate your concerns with respect to inclusion of Track 2 as currently proposed in the Draft Policy. Would your concerns remain if Track 2 were to be amended per your earlier recommendations?

MR. FLEISCHLI: I think it goes a long way to addressing my concerns. It is hard for me to say that any facility should be given special treatment under this, whether or not it is a combined cycle facility or a nuclear facility. I think that would go a long way toward addressing our concerns. That is all I can say at this point.

MS. DODUC: Thank you.

MR. FLEISCHLI: You will see other places where we have Track 2 changes, as well. The last change on this slide, it really, the language that staff had proposed really does not make any sense. To consider wholly out of proportion costs and wholly out of proportion other factors of paragraph 7, it really did not make sense to have both of those in there. We understand why you are doing the cost-cost approach, we strongly prefer cost-cost to cost benefit, we do not think there is a basis for you to do a cost benefit analysis. Your prior comments to EPA in the Phase 2 Regs demonstrated that you did not feel comfortable with doing the cost benefit analysis, and so we are more comfortable with the cost-cost approach if you are going to
take economics into consideration.

And I think that is the extent of my comments. I think you might have seen another slide that talks about mitigation in 3D9, we withdraw that suggestion because we recognize that it might be internally inconsistent to condone a practice that we deem illegal, and we do not want to do that.

DR. GOLD: All right, my name is Mark Gold, representing Heal The Bay. The current policy requires a baseline impingement and entrainment study of a year. Scientifically this is a joke. It ignores year to year variability and ocean conditions and fish populations. For example, if the study year is an El Niño year, the results will be substantially different than an average year, or a La Niña year. We recommend that the study period gets expanded to at least 36 months, and ideally 60 months from the standpoint of being scientifically valid.

The policy contains no clear requirements for ongoing impingement and entrainment monitoring after the critical baseline studies are completed. This is completely inconsistent with all the rest of your permitting schemes, so it is quite a surprise. We recommend that basic impingement and entrainment permit monitoring requirements are added -- ideally monthly -- but under no circumstances less than quarterly, and even then, and only then, if the
three to five-year baseline impingement and entrainment studies demonstrate that the between month variability is not significantly different than quarterly variability, that is the only time that there should be a reduction of monitoring requirements; currently, there is no monitoring requirements.

So the first issue is, after almost five years of significant effort, the latest proposed changes move the State further from compliance with Section 316(B), protection of the environment, and a reliable implementation process that maintains grid integrity, and you have heard that from everyone so far. The most important change that you can make today to provide some teeth in the policy is to develop baselines based on actual monthly flow, rather than design monthly flow. This change will regulate the real impacts to coastal resources instead of a design flow regulatory approach that is not based on science, and is not protective. It would be best to use the average actual monthly flow from the last five years of data, but reliance on the 2000 to 2005 data in the SED would be a vast improvement over the current policy.

For nearly 40 years, Coastal power plants in California have failed to meet the requirements of 316(B) of the Clean Water Act. During that time, the industry has saved billions of dollars in compliance costs. Many of
these same companies are some of the most innovative green
power companies in the nation. They are moving forward on
increasing their renewable portfolios in order to comply
with AB 32, by reducing greenhouse gas emissions. But now
the time has come to upgrade our coastal power plants to
move towards energy efficient, modern power plants.
California needs to stop providing power at the expense of
marine life. California must move towards a statewide
network of MPAs, and a strong once-through cooling policy
that protects marine life is the next logical step towards
protecting California’s precious coastal resources. Please
modify this policy as stated in order to meet these goals.
Too much time has passed already. Thank you.

CHAIR HOPPIN: You kept your word, didn’t you.
Are you done? Question from the Board members? Fran.

MS. SPIVEY-WEBER: I actually have a question for
Dominic. We heard about the actual monthly flow, a five-
year period, what period do we have data for that could be
used if we did this?

MR. GREGORIO: We have data currently for the
cfive-year period for the first part of this decade, 2000 to
2005, I believe. It was very difficult to get all that data
together, it took us months. We had to gather it ourselves,
and that was also very helpful when we got to the expert
review panel so that we could use that same basic dataset on
the flows. So, as far as the time period that we know
about, for sure, it is that period of 2000 to – is it 2004
or 2005? It is 2005. So that is the current period.

MS. SPIVEY-WEBER: Okay.

MS. DODUC: Following up on that, was there a
particular reason why you recommended the five-year period
prior to the effective date of this policy instead of 2000
to 2005?

DR. GOLD: Just the most current data.

MS. DODUC: Which apparently we do not have and
would have to collect. According to what Dominic just said,
and he is nodding his head.

MS. SIKICH: We were just trying to reflect the
most recent actual operations of the plants, but, as Mark
said in his comments, I think, you know, it would be a vast
improvement to rely on even that 2000 to 2005 actual flow
data on a monthly basis.

MS. DODUC: Thank you. Actually, if I could, now
that the flow issue has been addressed, I think I will
direct this question at Ms. Sheehan because you raised the
issue of feasibility determination with respect to Track 2.
I think, well, I know I at least did, raise concern I think
in December or even previously about how do we ensure
consistency interpretation, especially at the Regional Board
level, with respect to feasibility. And I actually am
comfortable with removing the feasibility criteria if Track 2 were strengthened a bit more, and so my question to you, I know that you proposed some language with respect to feasibility, but did you give any consideration into the implementation of that and how that consistency in interpretation and application would be achieved?

MS. SHEEHAN: Yes, thank you. Of course, if BTA1 equals BTA2, then it does not really matter. The determination of feasibility does not really matter. So the question is whether Track 2 is the same as Track 1, of course. But in our letter, we did go into a number of other scenarios in which the Regional Water Boards do evaluate different variables. And in this case, you do have a statewide situation where you want the Regional Water Boards to be relatively consistent and certainly, you know, with SACWIS and the interagency groups that have been operating, there could be a way to make sure that there is that consistency in decision-making with respect to feasibility. I guess I am not as worried about that, just because the sheer number of decisions on feasibility is so low in comparison to the amount of decision-making that the Regional Water Boards have to do with that level of variability. So I think that working together and sitting down with these definitions, and considering it is only a few of the Regional Water Boards, not all of them, sitting...
down with the State Water Board and whoever else wants to be in the room, to make sure that there is an understanding of how those would be implemented, I think that is a doable thing given the number of players involved and the number of decisions that need to be made. And there is a lot of precedent for moving forward with something like that. We have suggested something that we thought was narrow enough to be implemented relatively consistency, but certainly are open to other suggestions in terms of ensuring that there is that level of consistency across the coast.

MS. DODUC: And my last question to this panel, and I will throw it out to anyone, do you have an opinion on should the State Board consider issuing the NPDES permits for these power plants at the state level instead of at the Regional Board level? I see I caught you by surprise with that question.

MS. SHEEHAN: I think, as you heard earlier today, there is a very significant local interest in these power plants. A lot of these power plants tend to have environmental justice issues, and the environmental justice community is not always as – the State Water Board’s processes are not always as readily accessible to those types of communities. In addition, some of the local issues are quite variable. I think that, if there were a process that allowed for Regional Water Board and State Water Board
cooperation on decision-making, that would be best to be able to have those decisions made at the local level, especially given the precedent of starting to take away local decision-making from the Regional Water Boards, and putting it at the State Water Board level. I would think there would need to be some type of thought given to how we would move forward with other permits that do have statewide impacts, as well. So I think it is just something to consider. I have some concerns about it, given the fact that the impacts of these plants tend to be very local. The statewide considerations can be considered in the context of all the other safeguards that have been created in the policy, but at some point, there needs to be a consideration of local opinions and thoughts and facts.

DR. GOLD: I would just add to that, you know, the importance of what Linda was saying in sharing the expertise and the directions so that there is consistency to some extent, and having the State Water Board involved at the Regional Board level, I think, is absolutely critical, on a policy this complicated.

CHAIR HOPPIN: Mr. Baggett.

MR. BAGGETT: Don’t we do that with construction permits? We do that with storm water, Caltrans, linear trenching, those are all statewide permits, and they are all incredibly variable. I mean, take Palm Desert and Eureka is
quite a different level of working, too.

MS. SHEEHAN: No, absolutely, and I have worked on all those permits, and Mr. Hoppin mentioned the recycled water permit and policy this morning, I heard on the intercom, and these are all things that we worked very heavily on, but these plants are bigger than a local construction site, or a local storm water drain. These have very significant impacts, individually, and again, there are not that many of them, and so I think that we can work out a system to make sure that we do get the statewide consistency, the reliability, the grid energy issues that need to be considered, but also to make sure that the local issues which are much more significant than the other issues, that we do work on locally, that those are considered.

MS. DODUC: Actually, I am sorry, a follow-up question to either Jonathan or Dominic. This policy focuses on once-through cooling, the intake structure. From my days writing NPDES permits, those also are considered a discharge component, which of course is outside of the scope of this policy, but also is it suffice it to say that these plans are also covered under different plans? I mean, they are not under just, you know, the Ocean Plan, they also have Basin Plan, Thermal Plan, what would be some of the considerations with respect to local regional impacts for
permitting from an NPDES perspective?

MR. BISHOP: This policy has dealt with the intake structures in the cooling water portions of an NPDES Permit. The permits themselves include much more than that, they include the discharge facilities, each one of these facilities has a different level of in-plant waste that goes into those, so they have very site-specific issues related to that. Depending on where they discharge, not all of them discharge into the ocean, so they are not all covered under the Ocean Plan, some of them are covered under Local Regional Board plans which then include the requirements for that plan, all of those issues need to be taken into account. This policy was designed with the idea that we would constrain the Regional Boards to timing and implementation of the cooling technology, not with the idea that we would supplement their permitting authority, which they have under our delegation. The other issue that should be kept in mind is that the regions under the scheme that we operate now, if there is a dispute over what the regions do, it can be petitioned to the State Board. If the State Board steps in, that eliminates that two-step process, and so there would be no petition authority and it would have to go directly to court.

CHAIR HOPPIN: Jonathan, I have one question and I am not questioning Linda’s intentions there because I do not
see her being naïve on any kind of a regular basis, this idea of having the Regional Boards come in and consult with us as far as what we think is consistent sounds good, but I am mindful of the wetland riparian policy we have got going on in two particular regional boards where they have not really asked us if it is consistent with anything else, so I appreciate the nuances, particularly the discharge authority, but I remain a little bit concerned that we are able to effectively constrain the structured component of this, and I realize we have a mechanism of taking it under our own motion, and I still struggle with whether that –

MR. BISHOP: You are stealing my thunder.

CHAIR HOPPIN: Go ahead and thunder, I will just sit here and –

MR. BISHOP: We have this dilemma any time the State Water Board does a policy, on the recycled water policy constraints, the regions – essentially, any policy that you make on a statewide basis is made to set bounds on the activity of a regional board and the ability of them to use their discretion, that is what you do. And when regional boards resist that, you have the authority to take that up on your own motion like you recently did with the San Francisco Bay Regional Board’s wet water discharges from – of course, that is an uncomfortable position to be in, but that is part of the structure that we have. The structure
is not designed for you, as the State Board, to make all
decisions around the state, it is to provide guidance for
the regions and policy level boundaries for them to make
their decisions within, and then to essentially oversee that
through the petition process, or through taking it up on
your own motion.

CHAIR HOPPIN: I heard the thunder, the lightning
bolt has not quite hit me yet, so I am going to speak before
I know it is on its way. Mr. Jaske, if I heard him
correctly remind us in our discussions of South Bay, that
that replacement power could in fact be coming in the future
from out of the area, and we would not need this degree of
local dependency that we have had in the past. And so more
than any other policy that I can envision, we potentially
are dealing with regional boards, although they are
constrained, making decisions that affect areas certainly
outside of their region. And that is still the portion I
struggle with.

MR. BISHOP: And I do not - I am not disagreeing.
We did try to develop this policy with that in mind, and so
that all decisions related to the schedule of replacement,
or coming into compliance with the policy rests with you,
and that is the way it is designed.

CHAIR HOPPIN: Fran.

MS. SPIVEY-WEBER: Can’t we just cut to the chase?
On Wednesday, no, on Thursday, anyway, soon, there is going
to be a meeting in San Diego where this issue is coming up
before the San Diego Regional Board. If, hypothetically, we
adopt this policy today, and I hope we do, so what should
we, the Board, be saying at that Board meeting? What
constraints is that Board going to be under, if any?

MR. LAUFFER: Michael Lauffer, Chief Counsel. As
a legal matter, that board would not be under any
constraints at this point in time, and I think that is part
of the challenge and the issue. Right now, the San Diego
Regional Water Quality Control Board, they can go about
looking at the permit for the South Bay facility, there is
no over-arching framework that guides them. And even if the
Board were to adopt this policy today, of course it is not
effective until it is approved by the Office of
Administrative Law, and that is months away. But, getting
back to the central point of this, I mean, the policy that
is before you today in many respects on the intake structure
issues, and as Jonathan has indicated, this is all about the
intake structures, there is a lot more that goes on in
permitting these facilities. On the intake structures, the
policy in many respects has been designed – and I say this
affectionately as a former Regional Board attorney – to
straightjacket the regions on this issue. I mean, they are
complied by law to adhere to state policy for water quality
control, the policy says they shall implement the schedules that are in the policy that you adopt. So, in terms of deadlines for them, once this policy is effective, it is designed to give that assurance. And, yes, there are outs provided in the policy that the State Board controls for purposes of grid reliability, but, again, the way that this is designed to work is proscriptively dictated to the Regional Boards and allow many of the sort of consistency issues that Ms. Sheehan has expressed concern about, and that some of the Board members have expressed concern about, to be made at the State Board level in terms of reviewing studies. And a great example of this is with respect to some of the nuclear facilities. So this is different than some of the policies that we have looked at, and it is certainly different than some of the general permits that we discussed earlier because there, you know, we are attempting to regulate literally thousands or tens of thousands of facilities under one permit to streamline the process. Here, you have all the coastal facilities that truly are unique and have the unique discharges and different Basin Plans that may apply to them.

CHAIR HOPPIN: Mr. Lauffer, I will remind the record, I am plagiarizing your verbiage, but can you give me an example where we, as the State Board, have effectively in the past straight-jacketed the Regional Boards as a whole?
Dr. Gold, I will give you your chance when he gets done.

MR. LAUFFER: In certain respects, there are a couple good examples. I mean, I think Dr. Gold may have some comments about this one because I know he has been frustrated with, at times, the state implementation policy for the California Toxics Rule, but it has a fairly mechanical process for going about and determining whether or not a toxics discharge is subject to effluent limitations under the California Toxics Rule, and then for calculating and implementing, and where there has been, if you will, ambiguity within the State Implementation Policy, this Board has resolved through the petition process that ambiguity. I do think that, when you look at this policy, that is nothing like the SIP in terms of how the ambiguity is resolved in many respects, or most of the key issues, by that table with the dates, and a requirement that the dates have to be in the NPDES permits. The other example, and it is one that I think is much more on point and relevant, has to do with landfill regulations. Those are incredibly proscriptive regulations that deal with the types of line requirements, there are regulations the State Board adopted jointly with the former California Integrated Waste Management Board, now CalRecycle, and those regulations are very proscriptive, in many respects much like this policy. And we have seen very few petitions on the Regional Boards’ implementation of this
language. And, again, as Jon indicated, the petition process is always there in the event that the Regions, if you will, go astray, but I also think it is very unfortunate if stakeholders are kind of backing the Board into a position where they feel already as if the Regional Boards will not implement the policy. I mean, your regions struggle mightily to implement and interpret and carry out your directives, and I think this policy has the benefit of being much clearer in that respect, with respect to the intake structures. And, of course, that is what this policy is about.

CHAIR HOPPIN: Thank you. Did that take care of you, Dr. Gold?

DR. GOLD: SIP was what I was going to say, and just - it is not limited to toxicity, it is literally the entire SIP, and one of the other great examples on this is the use of reasonable potential analysis on what numeric effluent limits should be in NPDES permits. So we are actually seeing POTWs, you know, that are discharging 30 million gallons a day, that only have four numeric effluent limits, so that shows you how much that the SIP has been constraining in that particular circumstance.

CHAIR HOPPIN: Thank you. Any other questions?

Thank you for your panel, Linda. Thank you for staying on time. The next group, I am sure, is just going to concur
with what you had to say, but we will give them an
opportunity to come forward anyhow. Dr. Michael Hertel,
Eric Lu, Dr. David Sundra, and Paul Singarella. Dr.
Hertel, I know you can talk for hours about the same thing.
How long do you need?

DR. HERTEL: I do not think we will take any more
than 15 minutes, certainly.
CHAIR HOPPIN: Thank you.
DR. HERTEL: Probably less.
CHAIR HOPPIN: Darren, would you set the clock for
15 minutes, please?
DR. HERTEL: Good morning. For the record, even
though we are acquainted, I am Michael Hertel, and I am
representing Southern California Edison Company. I want to
begin first with some thanks to the Board members and to the
staff for their diligent efforts on this policy, and for
being open to considering all of the concerns that we have
raised on behalf of our customers. We think it is an
important policy, we still have some obvious concerns with
it, and we want to discuss those with you today. We have
got presenters here. I am going to give a short policy
overview, very short, and then I am going to have David
Sunda, who is the Professor of Natural Resources at U.C.
Berkeley, talk about the uses of cost benefit analysis, the
methodology, and why it makes sense for the Board to embrace
that here in the context of the goals that you have in this policy, not to delete cost-cost, but to add cost benefit in. We have asked Eric Lu of ENVIRON Corporation to speak on the issues of the changes to the SEP, and our response to that, and that will be extremely brief, and then we are going to close with Paul Singarella from Latham & Watkins, our outside counsel, to discuss the legal issues which are so interwoven in most of this. So that is our game plan.

First of all, we have supported all along the Board’s intention to come up with a consistent OTC policy across the State. We think that is a valuable goal, and we understand that the purpose of it is to protect the marine environment. In our case, with the roughly $400 million that we have spent in furtherance of the mitigation and in-plant technology requirements that have been imposed on us by the Coastal Commission for exactly this purpose, namely entrainment and impingement, we think that we are at least close to what might be called the poster child of a power plant that really has done something to deal with the impacts.

We ask the Board to clarify its intent to consider alternate compliance requirements for the two nuclear plants, what we call the non-cost factors that you list in Section 3.D.7 of the policy on page 12, these are the issues surrounding permitting barriers, space constraints, public
safety concerns, and so forth. In our situation, and at San
Onofre, some of those who have visited the plant have seen
we are right next to the major Interstate 5 Freeway,
North/South link of the major rail lines, the towers would
have to be constructed literally on top of those facilities
or adjacent to them, and we are deeply concerned that some
of those non-cost factors, that our friends in the
environmental community have mentioned, need to be taken
into account. We understand that appears to be the intent
of the Board, and we have offered some language to counsel
to try to make that more clear, and involve it in Section
3.D.8, where you actually take the action to make a judgment
whether to give an alternate path or not.

We support the Board’s careful consideration of
the impact of the policy on reliability. We think you have
done a very good job on that. The Draft Policy, in our
opinion, takes that into account in a very responsible way.
We do believe that the provision to allow after public
hearing a judgment to be made by this Board with the test of
substantial evidence is an important thing for you to
include in the policy. We do not see that abrogating your
responsibility under either the Federal Clean Water Act or
Porter Cologne. We have mentioned to you the Executive
Director’s choice of the special studies contractor, we
think that person has to have nuclear power plant
engineering and experience. We would ask that you include
some language to that, and we have submitted that. And
finally, we support the draft’s provision to grant
mitigation when authoritative state agencies have looked at
this issue of entrainment and impingement imposed and after
consideration in most of the cases I have seen as kind of
weighing of advantages and disadvantages, cost benefits,
some alternate compliance method in the case of, for
example, Moss Landing, there is an instance of that. We
would like to see that extended, obviously, to the very
extensive mitigation that we have undertaken at San Onofre.
So now, with that, let me introduce David Sunding to make
some comments on the cost benefit methodology.

MR. SUNDING: Thank you very much. All right,
thank you. I have already submitted written comments, so I
will not go over that ground again; rather, what I would
like to do is use my time here to speak about primarily the
staff’s response to comments, which is a new bit of
information. And I have just three basic points I would
like to make about that. First, I was struck when I read
the Response to Comments, that they reveal what I would
classify as a misunderstanding of environmental benefits
estimation and the capabilities of modern environmental
economics; for example, in the Response to Comment 4.05,
staff equates the monetary benefits of regulating once-
through cooling with commercial values of fish, and I will quote: “The only monetary value associated with impacts to marine life is based on commercial values of fish, which is completely inadequate to characterize the ecological effects of OTC.” In the Response to Comment 29.2.9, staff argue that, again: “Ecologic benefits cannot be quantified monetarily by normal economic analysis of damage to market fish stocks.” In fact, environmental economists do not equate ecologic benefits to changes in commercial values of fish. Over the past several decades, economists have developed a whole array of tools to monetize non-use benefits that are associated with the mere existence of an environmental amenity, and have done so precisely because use values alone frequently underestimate the true value of improving environmental quality. Second, and I think this is the larger issue, the Response to Comments raises, to me, some sort of alarming questions about the staff’s view of cost benefit cost comparisons. And here I will quote again in the Response to Comment 4.05, staff argues that: “It is not appropriate to equate the substantial mortality of marine life associated with OTC to monetary costs of compliance.” And, again, the argument here is that comparing two sides of the ledger, comparing changes in survival of marine life to costs of compliance is like saying, “Is orange taller than blue?” That is the
implication of that statement, that those two things are simply not comparable by any reasonable metric, and I disagree with that strongly. By this reasoning, cost benefit analysis would seldom, if ever, be used to make environmental regulations. In reality, cost benefit analysis is used routinely to develop regulations concerning everything from drinking water standards to consumer product safety. And, in fact, it is a required element of many regulatory processes in these areas. A virtual rejection of the use of cost benefit comparisons in almost any circumstance, as that quotation implies, would place the Board, I would argue, far outside the mainstream of regulation in this country. Third, and this is my last comment, cost benefit analysis in the case of once-through cooling is no more complicated or difficult than in dozens of other applications. Economists routinely estimate the use and non-use benefits of changes in water quality and these estimates are deemed reliable enough to be used as the basis for agency decision-making. Agencies including the US EPA, Army Corps of Engineers, Bureau of Reclamation, and the Federal Energy Regulatory Commission, routinely consider information on use and non-use benefits. Indeed, this very Board, the State Water Resources Control Board, was instrumental in putting non-use value estimation on the map of environmental economics through its consideration of
these values in the landmark Mono Lake case. And I will
leave my remarks there.

MR. LU: Thank you, Chairman Hoppin and the Board
for listening to our comments today. My name is Eric Lu. I
am a Senior Manager at ENVIRON International Corporation.
We are a technical consultancy with approximately 1,100
employees throughout the United States and around the world,
Europe, Asia, Australia, and South America. We work in a
variety of technical areas, one of which includes conducting
technical analyses to comply with CEQA. We work with a wide
range of clients, as well, that include industrial
commercial entities, as well as local, government and state
agencies in that respect, too.

We were asked by Southern California Edison to
take a look at the Draft SED that was released last year, as
well as the revised version and the Response to Comments
that was recently released earlier this year. And the task
placed in front of us was to look at the environmental
analyses to evaluate if the bounds of all the environmental
issues were fairly evaluated and adequately and
appropriately analyzed in the context of CEQA. In that way,
we were hoping to explore and identify to ensure that all of
the environmental analyses were properly represented so that
you, the Board, can make an informed decision, as well as
the public could be informed adequately in understanding
what all the environmental issues were related to your policy. You have been provided the comment letter prepared by ENVIRON through Southern California Edison, so I am not going to run through all the specific details, but I would like to highlight a few issues to ensure that you guys are aware of the other environmental impacts, and these relate to potential air quality, climate change, and biological resources issues. With this policy, while there may be great benefits in terms of the coastline estuarine areas, there are potential meaningful and significant air quality impacts through the process of trying to comply with that policy. Our comments highlight all those issues as it relates to PM10, PM2.5 emissions, from the potential closed cycle cooling towers, as well as the implementation or the requirements to construct new power plant facilities. In the context of climate change, there is also potential effects because of the, again, the power penalty because of a closed-cycle cooling, which will require additional energy production to make up for those losses. And, of course, in terms of biological resources, while there may be marine life benefits, there also could be terrestrial downsides as power plants look to comply with their policy.

In the context of CEQA, we feel this is important to highlight so that you can make an informed decision, you being the State Water Board, you are focusing on water
issues, but we think it is also important that all other environmental impacts are fairly represented. The Response to Comments at this time have basically not fully responded to our original comments submitted last year, so at this point, we would still feel that, in terms of complying with CEQA, that there are areas where you could do further analyses in terms of air, climate change, and biological impacts, so that the full impact in those areas are represented.

CHAIR HOPPIN: Thank you.

MR. SINGARELLA: I guess I will have to say good afternoon. We just crested noon here, but I think we are making steady progress. My name is Paul Singarella. I am here on behalf of Edison, as Dr. Hertel said. First, let me just say how much I and the rest of us truly appreciate the open and frank and generous with your time dialogue that we have had with the Board and with staff over the last few years, truly appreciate that. Today, I make a plea to you that you add back a cost benefit test to compliment the cost test. This would bring the policy back within the fabric of 30 years of prior agency practice and, of course, the United States Supreme Court precedent from last year. Legally, it is clear that this would make the policy more robust and more defensible. We think the Responses to Comments issued last week illustrate a procedural problem caused by the
proposed departure from traditional 316(B) analysis. The responses assert that the policy is based on California Water Code Section 13140, in addition to the Clean Water Act, and you see that at page 5 of the Responses, Response 9.22. This is the first time we have seen staff clearly claim authority outside the Clean Water Act. The problem is that 13140 is subject to another section of the same article, 13142.5, which, as a matter of state law, when it is the Board’s authority over power plant intakes to only two situations, 1) when the power plant is being constructed in the first instance, and 2) when the power plant is being expanded. And since the policy applies to existing power plants, regardless of whether they are being expanded, we believe the policy cannot be based on Section 13140. So that takes you back to Chapter 5.5, in Section 13372 to look for the authority, but we do not believe that a cost-cost only policy is authorized under 13372. Why? Because 13372 authorizes you to take only those actions required by the Federal Act. A policy with cost-cost, but not cost benefit, is not required by the Federal Act, rather, it is more restrictive than the Federal Act. In what respects? Well, 1) it removes project level consideration; when you remove an important factor from consideration, you are by definition being more restrictive; 2) it eliminates a time honored variance that is more restrictive, too. So the
policy is neither authorized by Section 13140, which we saw for the first time last week, nor required by the Federal Act. We believe it therefore is without legal basis as it stands. Staff’s new reliance on 13140 also illustrates why we believe an Environmental Impact Report, EIR, not just an SED, is required in this instance. The Certified Regulatory Program that staff asserts is based on 13140. But 13140 does not authorize the issuance of the policy, so the Certified Regulatory Program applicable to 13140 cannot apply either. Reintroducing cost benefit is the more authoritative and safe way for this Board to proceed. It protects you and is the only way environmental benefit is going to be analyzed at the project level. One other thing from the responses that we wanted to bring to your attention, David mentioned it, it is on page 70, Response 4.05. There, staff announce a “general policy not to perform cost benefit analysis.” We are concerned that such a general policy may have prejudiced staff’s consideration of a cost benefit option. We also are concerned that this general policy itself has not been put through any public process. It strikes us as an underground regulation that should not have been announced a week before this five-year process concludes.

Now, in closing, I have got two documents for you. The first is simply our suggested edits to a section of the
policy. We are delighted to hear that you are going to break and ask the Chief Counsel and the staff to perhaps come back to you after the break with some suggested language responsive to your priorities, I would like to submit this to Mr. Lauffer and get this into the queue for consideration if it rises to the --

CHAIR HOPPIN: Mr. Singarella, you realize that -- you have been here before, so you realize that our period for comments has been closed, so I am not saying you cannot distribute the letter, but your written comments will be what goes onto the record, as you well know.

MR. SINGARELLA: Sure. This is not a letter, Mr. Hoppin, this is really something that we actually created this morning once we understood that the Board might be considering language changes, and it is simply a minor change to Section 3.D.8, minor in terms of language changes, this is surgical suggestion. But substantively, it is very important to us because what it would do is it would make the factors in Section 3.D.7, those factors that are so important to us, it would make it clear in 3.D.8 that those factors provide an independent basis in addition to cost-cost, to provide to seek relief. So as far as I am concerned, this does not even have to go into the record, I simply would like to submit it to your Chief Counsel and he can choose whether to take it up with you himself.
MR. LAUFFER: Mr. Singarella, for the benefit of
the Board members, because they are the ones that are going
to be providing direction to us, why don’t you go ahead and
read what you have so that they know what is being
contemplated?

MR. SINGARELLA: Okay, sure. I will be glad to do
that.

MR. LAUFFER: Because it appears that the redline
is pretty small.

MR. SINGARELLA: Okay. So this is in 3.D.8, and
the change is two-thirds of the way down.

CHAIR HOPPIN: Mr. Singarella, could you elevate
your microphone there just a little bit?

MR. SINGARELLA: Sure. And that is on page 12 for
the Board members. But the change does not come in for
purposes of listening to it until after the second reference
to Track 1, and so let me read the full 3.D.8, and I will
mark the insertion: “If the Board finds that the cost for
specific nuclear plant to implement Track 1 or 2,
considering all the factors set forth in paragraph 7 are
wholly out of proportion to the costs considered by the
State Board in establishing Track 1,” now here is the
insertion, “...or that compliance is wholly unreasonable
considering the factors set forth in paragraph 7,” that is
the end of the insertion, “...then the State Board shall
establish alternative requirements for that plant.” So thank you for letting me read it into the record. I will give Mr. Lauffer the page just in case he wants to look at it himself.

MR. BAGGETT: Well, in that same paragraph, since you are there, I think the NGO representatives propose – it has been proposed that we eliminate Track 2 from there, period, to implement Track 1. Do you have an opinion on that?

MR. SINGARELLA: Do I have a comment on that?

MR. BAGGETT: Yeah.

MR. SINGARELLA: Well, we would oppose that. The imposition of either Track 1 or Track 2 potentially could be extremely onerous to us and well beyond the costs that this Board has considered, and through the Tetra Tech analysis, so we would hope that you would allow us to make our cost-cost demonstration, at a minimum.

MR. BAGGETT: That is not what I asked. If you just struck the words Track 2?

MR. SINGARELLA: Oh, I struck the word Track 2?

MR. BAGGETT: That is what has been proposed.

MR. SINGARELLA: I did not mean to do so, Mr. Baggett.

MR. BAGGETT: No. Do you have a comment if we struck the word Track 2 in that paragraph 8, both – it says
to implement Track 1 or Track 2; what if we just compared it
to Track 1 and you did not have the option of “or Track 2?”

MR. SINGARELLA: I – well, Mike may have a

case, too.

DR. HERTEL: We have not considered that, Mr.
Baggett, but I think the problem is that the requested
changes, as I understand them, I have not seen them or heard
them before today, from our friends in the environmental
community, do not consistently remove Track 2 from the whole
process. In practical fact, Track 2 for the nuclear plants
will not make any difference. It is, you know, there is no
way to get to 90 percent of the level of Track 1 without
going to cooling towers. So, from a practical standpoint,
it makes no difference. If you were going to strike it, I
would strike it throughout.

CHAIR HOPPIN: Tam.

MS. DODUC: Since Mr. Singarella has had more
comment on the environmentalists’ suggestion for this item,
I would like to hear from one of the NGO representatives who
spoke earlier today on your thoughts, on the recommended
change Mr. Singarella just read to the Board. Were you
paying attention? This is a test.

MR. FLEISCHLI: Trust me, we did not fall asleep.

Maybe he can read it one more time, but I do have it as, “or
that –
CHAIR HOPPIN: Steve, I do not mean to be a nitpicker, but would you identify yourself?

MR. FLEISCHLI: Oh, I am sorry. Steve Fleischli.

CHAIR HOPPIN: And you might get an acting career out of this or something.

MR. FLEISCHLI: Yeah, I am often confused with Steven Weber. Anyway, we all need some lunch. No, from what I understand, the suggested language was, “or that compliance is wholly unreasonable considering the factors of paragraph 7.” Is that correct, Mr. Singarella?

MR. SINGARELLA: You have passed the test, yes.

MR. FLEISCHLI: You know, for me, we have always maintained the position that safety is the issue and that there should not be exceptions other than safety, so I cannot condone that language by any stretch. I would agree with, I think, both Edison, as well as PG&E that that language, with the factors being considered in a wholly disproportionate cost test, do not make any economic sense because those factors are not economic factors. So that is all I can say on that. We are willing to live with cost-cost. I would disagree with the cost benefit suggestions. I would ask everyone to look at Justice Breyer’s concurrence in the energy case, I think that is a better position on cost benefit where he says, “Look, you should not have to go through this monetization process.” It is very complex, it
is very cumbersome, and I respect the views of the speaker
with regard to the fact that there are contingent valuation
methodologies in these other sorts of provisions out there.
But we can live with cost-cost. We do not think you should
be considering anything else, other than safety in terms of
the nukes, it just does not make sense to us.

DR. HERTEL: If I could comment on that, please?
The problem we have is that we believe, given our 30 years
of experience with the Coastal Commission, our issues with
getting additional land from the U.S. Department of the Navy
and Marine Corps at the San Onofre site, the problems that
exist in just bringing the sea water up 100 feet in
elevation, constructing these massive cooling towers, that
it is highly likely that we would be in a position where we
could not get those permissions. If we are in such a
position, I realize we would have to make a proof to that
effect. I believe that it is only equitable for the Board
to consider in your judgment granting alternative
requirements for compliance in those situations; there is
really no way for us to comply in that instance, and all we
are asking for is that some language be adopted to make that
clarification clearer.

MR. SINGARELLA: Mr. Hoppin, may I have a minute
to return to my second document that you commented on, our
letter, I would simply like to explain what it is and ask
the Chair and the Board for an opportunity to make an offer
as to why it is, in fact, timely.

CHAIR HOPPIN: All right.

MR. SINGARELLA: Thank you, sir. The letter is
simply a roadmap of the CEQA and other problems raised by
this proposed non-traditional approach represented by the
policy before you. These problems are largely in response
to the responsiveness document that came out last week. We
request that you accept our letter into the record and, in
terms of the timeliness of it, I would refer you to pretty
clear CEQA authority that says that, under CEQA, you need to
keep the public comment period including written comments
open until the close of the hearing. Of course, this
hearing has not closed, and we actually cite to – I am
making my offer now, Chair – we actually cite to the
Bakersfield case in our short letter, and I would suggest
that you respectfully have your Chief Counsel take a look at
this. But the Bakersfield case is a Court of Appeal
decision that said that, if a public hearing is conducted on
project approval, which is what this is, then new
environmental objections can be made until close of this
hearing if the decision-making body elects to certify the
EIR – in your case, the SED – without considering comments
made at the public hearing, it does so at its own risk. We
think the comment letter is actually informative to you and
could be useful in your deliberations today. We also think that, because 13140 only came in clearly last week, and it raises significant procedural issues, and it concerns us from a notice perspective, that you ought to give us the opportunity to make a record of it, number one, but more importantly, present it to you in a form that will enable you to include it in your deliberations. So I would respectfully request the Board to accept our letter. And I think, at a minimum, you ought to take the letter, if you decide not to put it into the record, that is one thing, but I think you are going to want to have physically the document so you will not know what I am talking about, and so that your counsel can look at Roman VII in the letter. It simply goes to the timeliness of it. We are quite confident that it is timely under these circumstances that we have here today.

CHAIR HOPPIN: Mr. Singarella, I will defer to counsel. I do not know that I said we would not accept your letter, I just said it would not go into the written record.

MR. SINGARELLA: Thank you very much.

MR. LAUFFER: Chair Hoppin, Board members, both the CEQA and the Board’s regulations expect that you will go into a decision with eyes wide open on the environmental impacts of it. I guess the issue and problem that I have is that our regulations recognize that your staff will have an
obligation to respond to environmental issues raised at the proceeding, and we have just heard a little over 15 minutes of presentation from SCE where they have not actually, other than Mr. Lu’s presentation, identified the environmental issues, and now they want to put in a document that none of us will have the benefit of reading, that you will not have the benefit of reading, and I think Mr. Singarella and others familiar with the Board’s practice are well aware that issues can come up at the last minute, and the way that we handle these is we have a hearing, or, in this case, we are having a Board meeting where we are taking further testimony on it. If Mr. Singarella wants to go through the points quite quickly, and they address the issues in the letter, we could accept the letter, that is exactly what we did with the Assembly Member’s letter earlier today. But others have been expected to comply with the written submission deadline. Certainly, there has been nothing that has limited SCE from raising the environmental issues that they say are so important now, and that came out as a result of the Response to Comments, but, again, the environmental document has been on the street for a long time. The fact that the Board is adopting this as State policy for Water Quality Control only emanates from 13140, that is the vehicle, the process, the staff has never argued that substantively it is a matter of State law, that it is State
law that is driving this policy; instead, we use 13140 to
establish uniform requirements and expectations for our
Regional Boards. So I am not sure what is really new, but I
would encourage you to at least hear what the significant
points are that Mr. Singarella says that he has, and you
know, if he hits them, and it is what is in the letter, then
we can accept the letter in, but I do not want a blind
letter being accepted into the Board’s record. You will
have no idea what is in that letter, otherwise.

MR. SINGARELLA: Do you want me to proceed?
CHAIR HOPPIN: If you would like to hit your key
points, yes.

MR. SINGARELLA: Thank you very much. Well, what
I tried to do is, in my comment time, preview some of this
to begin with, so the letter actually is consistent in many
respects with what I have already said, so I will not have
to repeat a whole lot of it. The first point –

CHAIR HOPPIN: Mr. Singarella, for whatever
reason, I am having a difficult time hearing you.

MR. SINGARELLA: Really? Okay.

CHAIR HOPPIN: Yeah.

MR. SINGARELLA: Sorry, Mr. Hoppin. You really
have to get right up close to these mics. The first point
relates to Section 13140 that I described during my comment,
and the fact that 13140 provides the Board with broad
discretion to make water quality control policy, but the 
language of 13140 in and of itself is limited by the rest of 
the sections in Article 3 of Chapter 3, and those sections 
contain 13142.15B. I hate to be so technical here, but 
13142.15B says you have got authority to do water quality 
control policy over the new plants, intakes at new plants, 
and when they are being expanded, existing plants, and that 
is it. So it is very troubling that there be this claim of 
authority under 13170 for this policy, which we think 
pertains quite quite generally and specifically to existing 
power plants, regardless of whether they are being expanded. 
The second point is –

MS. SPIVEY-WEBER: Hold on just a second. Are you 
arguing that you would like for us to allow the regional 
boards to have their individual authority over the policy 
that we are going to adopt and not make some attempt to, as 
we referred earlier, to have some uniformity? Are you 
arguing for not being uniform at the regional level?

MR. SINGARELLA: No, no, I am sorry, and that is a 
great question. What I am saying is that you certainly have 
some significant authority under Section 316B of the Clean 
Water Act to create a BTA standard.

MS. SPIVEY-WEBER: Right.

MR. SINGARELLA: Right? But there is some 
question, because of this very significant non-traditional
approach that you are taking, this is really precedential
here what is in front of you today, this cost-cost for
existing power plants without cost benefit, no one has gone
there, you know, so that is brand new, so that creates some
significant question as to whether you can put it under a
316B as a BTA standard. And what we thought was happening,
and I appreciate Mr. Lauffer’s commentary there, but before
today, and before last week, we thought you were doing all
of this under 316B, that is what we understood you to be
doing. We think your Responses to Comments creates some
real fuzziness on that and, actually, more than fuzziness,
they say right there on page 5, “We are claiming 13170,” and
this runs you into the problem that this policy is about
existing power plants that are not being expanded. So it is
a question of authority. And where we would ask you to go
with all that is to avoid all this uncertainty and
procedural concern, and go where you are safe, which is a
policy fashioned after the old Phase 2 rule, EPA rule, that
has not only cost-cost, but compliments it with cost
benefit. Then, I do not think you would have this problem
because you would squarely be under 316B. And you would
squarely be under Chapter 5.5 of your Water Code. And the
13140 assertion creates a second issue for you, and that is
Roman II in the letter, and the second issue is that you
cannot rely on a Certified Regulatory Program if the
Certified Regulatory Program springs from a statute that does not give you the authority for this policy, and the Certified Regulatory Program that you are claiming here, that staff is claiming, you know, surrounds this and covers this policy, is the Certified Regulatory Program that springs from Section 13140 that I just explained does not allow policy for existing power plants that are not being expanded. So where that takes us is, if you want to be safe, then do not rely on your Certified Regulatory Program, and do what we have been asking you to do for some months, which is to do a full blown Environmental Impact Report. This is in essence a major construction program up and down the State of California, it would seem to me that this would be a perfectly appropriate situation to do a full blown EIR. And then, because we think this - the third ramification is that you need to go to a full blown EIR and you are not following a number of the requirements that would be required here if you were doing the EIR, so it is not a distinction without a difference, is the point, right? If you do an SED, that is - I would not call it CEQA-light, and I would like to think that it is significant, but it is not the body of law and practice and expectation for a full blown EIR. And the gravity of this action, an EIR, would give you a safe harbor. And then, the fourth point deals with the implementation schedule. It is becoming clear to
us that this is, in fact, a compliance date, you know, this is a hard and fast date, and we heard it again from Mr. Lauffer this morning that this Board is being proscriptive, they are saying you have got to do this, right? You have got to stick with this schedule. The problem with that, once again, is procedural. You are pointing to another section of Porter Cologne for this authority, as I understand it, and once again, it is not the Clean Water Act, so this is all new stuff to us, and it is section 13242 of the Water Code. In Section 342 – did I say 242? Section 342, yes, I am sorry – Section 242, I have got a lot of numbers in my head – Section 242 allows you to make recommendations as to actions. It does not allow you to specify a time schedule or a compliance date, you know, those things are really different than what you typically do in an informal process like this, so that schedule looks like an adjudication of an issue of fact, and it worries us that you would be setting a true compliance date, as opposed to making a recommendation on schedule through this process, and that is an issue that is really important to Edison because we are a nuclear plant, and we know that we have got these studies in front of us, right? So with the studies in front of us, you know, how can you today set a schedule when, by your own crafting of the policy, there is an acknowledgement that you need to get more information before
you can set that schedule? I think the cure for that would
be if you set the implementation schedule as provisional,
something of that nature, for the two nuclear plants.

MS. DODUC: Or the other cure is to remove the
special studies section, just a thought.

MR. SINGARELLA: Thank you, Ms. Doduc. The other
point is this cost benefit assertion that we, once again,
saw for the first time last Wednesday. This was an eye-
opener to us, to see the staff present their economic
theory, and it was not just economic theory, they said, “We
have got a general policy, and a general policy is against
cost benefit analysis.” When we read that, we feel like we
have really been banging our heads against the wall for
quite a while here because we did not understand that the
staff, at least, had a preordained policy that they were
operating under, and that greatly concerns us. I do not
think that is where you want to announce a general policy is
in response to comments after a five-year process, the week
before decision-making, and it concerns us that that is, you
know, to use that word “underground,” I do not mean to use
that pejoratively, but it is a policy that has not seen the
light of day. You know, if the Board truly wanted to
develop its set of economic regulations, it ought to do so.
It ought to have a hearing on that, itself. And then we
would know what we were getting into when we enter into a
Clean Water Act process in which we thought that we had a fair chance of convincing you of cost benefit. And that is the gist of it. That is my letter. Now, I would ask you to accept it and consider these points and deliberate on them, and make your own decisions.

CHAIR HOPPIN: We will consider it. It will not go into the written record.

MR. SINGARELLA: Thank you, Chair Hoppin.

DR. HERTEL: That is all we have.

CHAIR HOPPIN: Thank you. I have about, on a good schedule, an hour, an hour and 15 minutes worth of additional comments. We are going to break until ten after one, and we will resume at that time. I am sorry, Mr. Lauffer, we are not going to be able to offer you our suggested amendments and let you work on them while we are trying to gag down a salad in the cafeteria, so we will take a break at some point when we finish the comment cards, and allow you to huddle up with revisions, if there are any, of course. Thank you all. We will see you back here at about ten after one.

(Off the record at 12:30 p.m.)

(Back on the record at 1:15 p.m.)

CHAIR HOPPIN: If you will, we will resume our meeting. I believe one of my colleagues has a comment she would like to make before we begin.
MS. SPIVEY-WEBER: Yes, in response to at least one of the elements of the discussion that we had with SCE, the idea that we have a cost benefit policy, we simply do not. And there is plenty of evidence to show that we do not. We have used cost benefit from time to time. We put in wholly disproportionate cost in one of the earlier iterations of this policy, and discussed it, and chose to take it out in favor of a cost-cost approach. So we do not have a cost benefit policy. And to make it really clear for the future, when we do our resolution, I will be recommending that we put something in the policy that acknowledges that straight away because it is kind of a red herring. In fact, it is a red herring.

CHAIR HOPPIN: With that, Mr. Donlan, do you want to face the firing squad here? Either that, or you could pass.

MR. DONLAN: Good timing. Is this on? Robert Donlan, Ellison, Schneider & Harris on behalf of RRI Energy. My comments will be brief, but I would like to, consistent with the format of this meeting, to reserve time to comment on language edits when they are brought back to the Board later. I assume that that will be provided.

MS. DODUC: Could we have that discussion before the Chair makes a ruling on this issue at some point? Because I would suggest, with all respect to the Chair, that
at some point you close the public comment period for this
hearing so that the Board can go into our open deliberative
process. My concern is that we will recycle through the
list of commenters again this afternoon, quite possibly this
evening. Once the Board has heard all public comment, given
staff our directions, and then staff brings back changes for
us to then deliberate, my recommendation would be that the
Chair close the public comment portion of the hearing prior
to the Board giving staff our directions for any recommended
changes.

CHAIR HOPPIN: Mr. Donlan, I will concur with Ms.
Doduc’s comments, so it is probably better if you make your
comments now because, she is right, once we start our
deliberative process, we could start all of this all over
again and I do not know that we would come to any new
conclusion.

MR. DONLAN: And I understand that. We started
this morning finishing up a hearing that started last week
on a water quality policy, and I would propose that, if
there are material changes made to the language that was
circulated on March 22nd, that there be an opportunity to
review and comment. I will leave it at that.

I want to thank your staff and you, Board members,
for the hard work that went into this policy effort. In
particular, we appreciate the clarifications that were made
to Track 2 in the March 22\textsuperscript{nd} Draft Policy in the SED, and the
Response to Comments. We feel that those changes fairly
address the fact that the policy does not include the wholly
disproportionate or cost benefit standard, a low capacity
factor exclusion, or a case-by-case site specific analysis
for most facilities, and in that regard the clarifying
language in the Response to Comments document was very
helpful. We also appreciate that the clarification, the
design flow in Track 2 is the metric for measuring
compliance with Track 2, which makes Track 2 more consistent
with Track 1. Using actual flow or average flow at many low
capacity units like RRI’s facilities would actually require
greater flow reductions than are required in your Track 1,
making Track 2 infeasible. And finally, contrary to some of
the comments that were made earlier, we want to note that
the Track 2 standard of a 90 percent reduction to the BTA
Standard, as proposed in the policy, is a standard that was
upheld in Riverkeeper \textsuperscript{1}, and we feel that it is defensible
under law. These are important changes to the policy, they
make Track 2 feasible for a lot of low capacity units, Track
1 was not feasible in the prior draft in that regard. These
are important changes and we urge you to not make any
material modifications to the design flow capacity standard
or the 90 percent reduction in Track 2.

CHAIR HOPPIN: Ms. Spivey-Weber has a question.
MS. SPIVEY-WEBER: When you say that the current
draft makes Track 2 feasible, is what you are really saying
is we can do this without going to water cooling with closed
cycle water cooling or dry cooling? Is that what you are
actually saying?

MR. DONLAN: With respect to one unit, that is
ture. It was not economically feasible to comply with the
BTA Standard, and Track 2 was not feasible prior. With
respect to the other facility, the Mandalay facility, your
own SED found that to be technically unfeasible.

CHAIR HOPPIN: Thank you, Mr. Donlan. Eric
Pendergraft.

MR. PENDERGRAFT: Good afternoon, Mr. Chairman,
Members of the Board, my name is Eric Pendergraft. I am the
President of AES Southland which owns AES Alamitos, Redondo
Beach, and Huntington Beach, all located in L.A. Basin. In
total, it is about 4,200 megawatts, 14 units, and happy to
be the proud owner of the largest fleet of once-through
cooling units in California. I would like to acknowledge
the Board, the staff, and all the state agencies for the
hard work that went into getting us to this point, there are
many elements of the proposed policy that we support. We
have one significant remaining concern with respect to the
implementation schedule. The proposed policy clearly states
in Section 1J that, due to the number of plants affected,
efforts to replace or repower the OTC plants need to be phased. However, when you break down the proposed implementation schedule and you look at it by IOU, which I think is the right way to look at it, it is apparent that the schedule does not actually allow for the phasing of the replacement or repowering of the facilities in Southern California Edison’s territory. Our entire 4,200 megawatts and 14 units and RRI’s, four units, and 2,050 megawatts, are all in Edison’s territory and they all have the same target compliance date. In total, this represents about 90 percent, or more than 90 percent of the once-through cooled gas-fired capacity in SEC’s territory, and 25 percent of their peak demand. Further, the policy then goes on to state that this target date was determined based on the expectation that replacement resources would be identified and procured through the same 2012 long term procurement plan. Now, to put this in perspective, this combines 18 units and 6,200 megawatts of capacity into the same Southern California Edison procurement cycle, if you believe the assumptions in the Draft Policy. And this is not practical for several reasons, most significantly, you know, we intend to comply with the policy by doing exactly what I think most interested stakeholders want, and that is we intend to replace our existing portfolio with units that do not use once-through cooling. However, this is not possible unless
the compliance dates for our facilities are staggered over more than one procurement cycle. We cannot simultaneously replace or repower all 4,200 megawatts in 14 units, especially since the plants are concentrated over only three sites. The schedule is also inconsistent with staff’s assertion that the schedule should be phased due to the number of plants affected. And then, finally, it really concentrates a huge amount of risk on Southern California Edison because it combines such a huge portion of their supply base into the same procurement cycle. Now, we had originally planned on requesting a modification to the implementation schedule at today’s hearing, and requesting that it be extended for our facilities, or spread out from 2020 to 2024, not moved entirely to 2024, but phased so that it is spread out over those years. After appropriate consultation, we understand that the Statewide Advisory Committee is the entity that is best suited to evaluate implementation plans and make recommended changes to the schedule.

Now, we also want the record to show that we were advised and, in turn, understand that the implementation plan that we are required to submit in Section 3A does not necessarily need to comply with the dates in the implementation schedule proposed in Table E1. So, in other words, AES can submit an implementation plan that we believe
is feasible to implement, even if the compliance dates do not meet the proposed dates in the implementation schedule. Now, the Advisory Committee, as we understand it, would then have the ability to evaluate the submitted plan, and if it agrees, could recommend that changes be made to the implementation schedule. We certainly would prefer that the implementation schedule be modified prior to approval of the policy, however, we are sensitive to the Board’s concerns about making unilateral changes to the implementation schedule without appropriate consultation with the energy agencies. So, provided we are able to submit an implementation plan that includes compliance dates that go beyond the schedule outlined in E1, and the Advisory Committee has the ability to recommend acceptance of our proposed schedule, we have no significant remaining objections to the policy. So thank you for your consideration of our comments. I am available to answer any questions, should you have any.

CHAIR HOPPIN: Mr. Pendergraft -- Mr. Bishop, I believe that a conversation that Mr. Pedergraft, yourself, and I, and I believe Mr. Pettit had clarified the issue that he is discussing. So from a mechanical standpoint, would you respond before we get too far down the line because I think it is a legitimate request.

MR. BISHOP: Sure. He relayed the conversation
correctly, that the implementation schedules are for what
the plants plan to do and in the timeframe that they feel
they can do it. The piece that I would add that he did not
add is that the SACCWIS interagency group may recommend more
a sooner schedule –

CHAIR HOPPIN: More a sooner schedule?

MR. BISHOP: Yeah, I am trying to figure how the
best way to say that – it may request that some of the
plants come into compliance sooner than the policy dictates,
and they may request that we extend it for some of the
plants in the policy. We set out a generalized time
schedule for these plants, and we put the dates that we felt
as a group were doable, but we did recognize that there
would be this requirement from all the plants to put in a
schedule, and then we would look at all the schedules
statewide and work with each of the energy agencies, energy
companies, to fit a specific timeframe for those. I also
suggested that if their plan is to repower all of their
units and move away from once-through cooling, then laying
out a schedule that shows that and committing to that will
make a large impression on the SACCWIS and the Board that
they are committed to this. Laying out a schedule that
says, “We will decide what we are going to do in 2024” is
not likely to get a receptive audience with either the
statewide or with the Board. So in short, yes, we said we
would like people to try and meet the compliance dates in
this, but we are willing to look at other dates based on the
information. But the information I have today, I cannot
recommend an extension of the time because I have not seen
any of these plans yet.

CHAIR HOPPIN: And you realize it will be a some
process, potentially some will be earlier, some of them
could be delayed, but it is not necessarily mechanically a
delay.

MR. PENDERGRAFT: Yeah, correct. We just – we are
comfortable taking the risk that some of them may be
accelerated and we are prepared to demonstrate through our
actions our commitment to the repowering plan. So it will
be laid out very specifically in our implementation plan.

CHAIR HOPPIN: Thank you. Walt.

MR. PETTIT: Mr. Chairman, just to make sure I am
not further confused, I thought I heard Mr. Bishop early in
his comments say that the schedule that was in the draft was
the schedule that he thinks the utilities intend to follow,
and what I heard Mr. Pendergraft say is that they cannot
follow that schedule, and that would not be their intention,
to submit something that way. It may be a minor point with
the explanations you two have given, but was I correct in
hearing that your thought was that this is the schedule they
intend to follow?
MR. BISHOP: No. What I meant to say is that we put this schedule together and grouped these plants in anticipation of a schedule we thought was doable. We understand from discussions with plants that there may be issues with making those timeframes and that the place to make that argument is with the statewide SACCWIS organization so that we can look at the schedule of all the plants in coordination, and then come back to this body with revisions to the schedule, as needed.

MR. PETTIT: Yeah, I understood all that, the only thing I thought I heard was the two of you saying something different about their intentions. Thank you.

MS. DODUC: If I may?

CHAIR HOPPIN: Ms. Doduc, please.

MS. DODUC: Having not been privy to this prior discussion, this has come as a shock to me. I mean, we had a discussion earlier today about how important it was to have compliance dates, how important it was to have the Regional Boards adhere to these compliance dates with respect to the intake structure, and now I am hearing that it does not matter, power plants can submit implementation plans for whatever date they deem is appropriate. I am uncomfortable with that. I mean, obviously we all recognize that these dates are our best projections at this time, and obviously working with the power agencies like I have been
told numerous times that the dates are in the compliance plan or the ones that the energy agencies have recommended to us. To now hear at least our staff say, “Never mind these dates, submit your implementation and these dates will be reconsidered,” that is not an option that I am comfortable with. I think, in fact, the blanket statement that the Board should not be questioning the current dates is obviously something that I am not comfortable with, certainly the questions that I have asked today goes towards some of the dates in the plan with respect to the Humboldt Bay, Potrero, South Bay, and for Eric’s benefic, I was going to raise a yes, as well, because, having met, I appreciate the concerns you raised with respect to not phasing out the timing of your facility. I do not appreciate being told, I guess, if that is what you are intending, Jonathan, and that is the Board is not given the opportunity to make, or at least suggest some changes to those dates today, but also that these dates are all subject to whatever implementation plans that might be submitted by the particular power plants out there.

CHAIR HOPPIN: In Mr. Bishop’s defense, to a degree of what our discussion was, it was not that you were not privy to it, you just were not in our briefing. Mr. Pendergraft then offered what appeared to be an accelerated and very aggressive conversion period, so you are saying you
do not want him –

MS. DODUC: Actually, no, no –

CHAIR HOPPIN: -- to do it on an accelerated
basis? You want him to follow the schedule?

MS. DODUC: No, I supported it and I was going to
make the change that we incorporate his suggested dates.

MR. BISHOP: If I gave the impression that we do
not care about the dates, that is not what I meant to
convey. What I have always said is that we will be coming
back to the Board on a regular basis to adjust the schedule
on this, and the people to make that adjustment are a
statewide organization of energy agencies and our staff, to
evaluate these not on a site-by-site basis, but uniformly to
ensure that we replace these and take units down in an
appropriate manner to do statewide. We put up dates in the
policy that we think are doable, that we pushed - this is a
push on getting it. I did not want to, and I still do not
want to tell people that you have to turn in an
implementation schedule that you cannot meet, to meet the
requirement here. I want you to turn in your implementation
schedule as fast as you can, and that tells us what you are
going to do. If it is beyond the schedule that we have, we
will evaluate it. But I would be uncomfortable telling
folks that you must turn in an implementation schedule, even
though you know you cannot complete it to meet our
timeframe. As it stands, and without the policy today, as
it sits, these are the dates that we expect people to meet,
and we will expect them to meet that until this Board
changes those dates.

   MS. DODUC: And the way the current policy states
right now, the Board would have to make findings of
overriding concern before we not accept a recommendation
from either CAISO or SACCWIS. Because the draft right now
states a burden on the Board that, when SACCWIS or CAISO
comes back with their recommendation, that we would have to
make some definite finding in order to not implement them.

   MR. BISHOP: As long as you were clear that, for
the changing of the schedule on an ongoing basis, coming
back to the Board, if there is a unanimous decision of the
CEC, PUC and CAISO, yes, that is correct.

   MS. DODUC: Well, I think we will have plenty of
discussion on this later on.

   MR. PENDERGRAFT: Thanks.

   CHAIR HOPPIN: Thank you, Mr. Pendergraft. Mr.
Lucas. You sure you want to come up here, Bob?

   MR. LUCAS: Bob Lucas representing the California
Council for Environmental and Economic Balance. And, yes,
it has been a long time, and as others have said, we very
much appreciate the open process that you have shown here at
the Board, and also with the staff working through these
issues. And although we do acknowledge that this policy is much improved from where it was when we started, which I think should be obvious to everybody, I think there are still some areas that require some attention. One of those areas has to do with the consideration of costs and the conduct of cost studies. We very much appreciate the fact that the Board is now willing to consider cost, even if it is for the nuclear plants, even if it is on a cost vs. cost basis. We still believe that the more appropriate comparison is the benefit and I think we have pointed out in some of our member testimony, Edison testimony, that there are ways of doing that. We also think that it is important to not restrict consideration of cost just to the nuclear plants, that that should be available for all plants on a site specific, case-by-case basis. If, however, the Board does maintain its preference for a cost-cost comparison for the nuclear plants, we would urge the Board to clarify what cost is the comparative cost that is used in your deliberations. I think that point is still vague and needs to be clarified. We believe that it is probably the costs in the Tetra Tech study that was performed for the Ocean Protection Council in 2007, but we would like to nail that. We would urge the Board to affirm that the entity chosen to perform this analysis must have a nuclear power plant energy experience as requested by Edison, and then, finally, before
requiring a new study, we urge the Board to review all the
existing studies that have already been done so that we not
undertake work that may not necessarily be necessary at the
time. With regard to the second point, mitigation credits,
again, we appreciate the recognition of mitigation performed
under order for the combined cycle generating units. We
believe that recognition should be extended to all plants.
Edison, in particular, has expended a very large sum of
money for that purpose, and we think that it was done for
this purpose, and that it should be recognized. The third
point is that limiting the schedule extensions to two years
seems arbitrary to us. I mean, we appreciate the
willingness to extend schedules, but to arbitrarily pick a
time frame of two years, we think, does not fairly recognize
all the different considerations that might go into
permitting problems, and there might be other criteria that
you might want to establish, other than a two-year standard
for the extension of those schedules. Finally, I would like
to adopt by reference the comments of other CCEFB members
that have testified here today, that would include not only
Edison, I imagine PG&E is going to have some comments later
on. RRI has already commented, we would like to endorse
that. And with respect to the discussion you just had with
AES, I would like to suggest that, as you consider potential
changes to the Draft Policy, you consider changes to the
language in that section to clarify that point, so that it
is not floating as an interpretive item that is not
specified clearly in the policy itself. And with that, I
say thank you very much, we appreciate your time.

CHAIR HOPPIN: Thank you, Mr. Lucas. Any
questions? Chris Ellison.

MR. ELLISON: Good afternoon, Chris Ellison.

Ellison, Schneider & Harris on behalf of Dynegy. I want to,
first of all on behalf of Dynegy, thank the Board and the
staff for all the time and effort that has been put into
this proposed policy. It is certainly considerably improved
from its prior version, and Dynegy appreciates that very
much. I also want to second the comments of my colleague,
Mr. Donlan, particularly with respect to both the design
flow issue and also the request that, if there were material
changes made to the policy, that we be given an opportunity
to comment further on such changes. I want to talk to you,
really, about four things. First, I want to talk to you
about the combined cycle provisions, Section 2.A.2.D. and
why they are appropriate. And, secondly, I want to talk to
you about the design flow issue briefly. Thirdly, I want to
talk to you about the implications, the effect that the
policy, as proposed by staff, will have on Dynegy’s power
plants, it is certainly not a free ride for Dynegy, and
then, lastly, I want to speak to you very briefly about what
I think are some very important governance considerations
that I would urge you to keep in mind in making this
difficult decision with all the conflicting testimony that
you have before you.

So, first, with respect to the combined cycle
provisions, these provisions that are not in there to -- the
Board asked that these provisions be added at your December
hearing, and staff has done so, and they are not in there to
create some special treatment for the combined cycle
facilities, they are in there to recognize the fact that, at
least with respect to Dynegy’s facilities, and by the way, I
assume you all know that Dynegy is the owner of the Moss
Landing, Morro Bay, and the South Bay facilities, they are
in there to recognize that, with respect certainly to Moss
Landing, that the company has had very extensive hearings,
as extensive as these hearings have been, I would submit to
you, having sat through them, that the hearings on the Moss
Landing plant and the Morro Bay plant were much more
extensive than the hearings that you are conducting here.
They involve very trial-like proceedings with the same sort
of technical experts that you have, in fact, I would say
literally the same technical experts that you have on your
expert panel. They involved cross examination, witnesses
under oath, and all those sorts of things, and that went on
for well over a year. And they involved the local
community, they involved the Regional Water Board, they
involved the Coastal Commission, and they involved all the
affected agencies. And a decision was made as a result of
those proceedings that was a BTA decision, and that is
probably the most important point I want to make to you
today, the suggestion that the decision made by the Regional
Board with respect to Moss Landing and, for that matter,
Morro Bay, was based on anything other than the current
316(B), or that it is inconsistent with Riverkeeper 1 or
Riverkeeper 2, or that it did not make a BTA finding, is not
true. Now, you do not have to take my word for that, since
I know you have heard conflicting testimony on that. Two
California Courts have heard this issue and have decided
that what I am telling you is true, that those decisions by
the Regional Board, and by the California Energy Commission,
made specific BTA findings with respect to Moss Landing and
Morro Bay. Dynegy has relied upon those decisions, has
spent hundreds of millions of dollars on modernizing Moss
Landing, has spent many millions of those hundreds of
millions of dollars specifically on making improvements that
affect both impingement and entrainment. And it is that
issue, the reliance on a previous decision, but a relatively
recent decision, that in fact addresses the same issues that
you are looking at now, that is the basis for the combined
cycle exemption, and I want to return to that when I close.
But, again, I want you to understand that the Courts have looked at this issue, and if you have any doubt about that, I urge you to ask your counsel, Mr. Lauffer, who I know is very familiar with the record of those proceedings. Again, I also want to emphasize that these decisions that were made and that Dynegy has relied upon, were site specific hearings with tremendous amounts of evidence. I sat through hundreds of hours of proceedings on these cases and, believe me, the documents would stand several feet high that are specific to the impact, for example, on Elk Horn Slough. We heard earlier today that the Moss Landing Power Plant is reducing the productivity of Elk Horn Slough by 40 percent. I can tell you, having been focused on this issue for 15 years, I had never heard that figure before, I do not know where it comes from. I can tell you that, in reliance upon the decisions that we are talking about, the owners of the Moss Landing Power Plant moved the intake out of Elk Horn Slough for not just the new units 1 and 2, but for all the units at the plant, and also made very substantial investments in restoration and habitat investment at Elk Horn Slough, and that the Elk Horn Slough Foundation supported that decision that was made by the Water Board and by the Energy Commission to approve that modernization. So there are a number of those kinds of issues which were looked at in great depth by your Regional Board, by the Energy
Commission, by the Coastal Commission, and ultimately by the Courts. Secondly, I want to discuss, two very briefly, we have given revised language on the combined cycle exemptions to staff, although we support the exemption. There was one relatively minor amendment that we are asking for, which would recognize that the prior decisions did address impingement and not just entrainment, and staff has that. If you are going to keep the combined cycle provisions, and I strongly urge that you do that out of fairness, it should recognize that it did not just address entrainment, it also addressed impingement, and we have given Mr. Lauffer specific language on that. We have also given him language to narrow the combined cycle exemption. We have heard concerns that it applies to too many facilities in the State. Dynegy has provided language that would narrow it to those facilities that were fully reviewed by both the Energy Commission and the Regional Board. Now, I want to address briefly the use of design flow. I want to emphasize that I agree with the comments of Mr. Donlan on this issue. But I also want to let you know that this issue was looked at again, very specifically, by the Regional Board, by the Energy Commission, it was raised in those earlier proceedings discussed at great length, it has also been reviewed and litigated by Riverkeeper in New York State, and this very question of design flow, the very same challenges
that you are hearing here were brought up through the Courts
in New York State, all the way to the equivalent of their
Supreme Court, and the use of design flow was approved by
the Courts under 316(B) in New York State. It is also
important for you to understand that the use of design flow
is critical to the feasibility of these policies, as far as
Dynegy is concerned. It would make, without -- if you want
to some of the suggestions that were made this morning, the
policy would be entirely infeasible. Next, I want to
address very briefly this idea that somehow the combined
cycle provisions give Dynegy, or companies like Dynegy, some
sort of a free ride under the policy, and I want to tell you
very specifically what we think the effect of the policy, as
proposed by staff, with the combined cycle exemptions in it,
would have on Dynegy. We expect, based on current
technology, while Dynegy is continuing to look at all its
options, that the policy may force the retirement of Moss
Landing Unit 6 by the year 2017, and it will probably
require major structural modifications to the intake for
Unit 7. At Morro Bay, absent again some change in
technology that we currently do not anticipate, we expect
that Morro Bay will have to cease operations by the end of
the year 2015, and with respect to South Bay, we expect --
and by the way, South Bay is not subject to the combined
cycle exemptions, we are not seeking any sort of exemption
under that for South Bay, it was not reviewed by the
Regional Board recently in all those fairness issues that I
am talking about, do not apply to South Bay, and we
acknowledge that. With respect to South Bay, we would
expect that the plant will be closed permanently by December
31st, 2012, under this policy. So, having said those things,
let me just make a couple of closing observations about
governance, frankly, and about the difficult decision that
you all have to make with all those different interests that
you have before you, and all the different conflicting,
frankly, testimony you had about both law and fact. I would
very strongly urge you to recognize that, with respect to
some of these issues, both the Courts and other agencies
have looked at great depth at some of these questions, you
do not have to believe me, you do not have to believe other
advocates before you, you can look to the Courts for the
question of whether these provisions are legal, you can look
to the decisions that were made by the Energy Commission by
the Regional Board on laws for many of the issues that you
have in front of you. And I would urge you to do that, and
I would urge you to do that for two reasons, 1) to recognize
that these agencies and these Courts have the same public
interests in mind that you do, but secondly, also that they
were focused on very specific proceedings and very specific
power plants, and frankly took a much deeper dive because
they were focused on site specific considerations. And then
last, but not least, and most important point that I want to
make to you is this, if you choose not to respect those
decisions of Courts, those decisions of earlier agencies,
you will send a signal not just to the business community,
but I think to everyone that you regulate, that you cannot
rely on California’s decisions under 316(B) and under the
Porter Cologne Act, that they are subject to change when,
frankly, politics changes, when new Board members are
appointed, or something of that nature changes. The facts
have not changed, the law has not changed, those earlier
decisions deserve respect not only because of the effort
that was put into them, but in order to send the signal to
the people that you regulate, that when decisions of that
magnitude are made and tested in the Courts, that they will
be respected. Thank you very much.

CHAIR HOPPIN: Mr. Ellison, I have one question of
you. As it relates to Morro Bay, your client does not have
a schedule for closing that plant at this time, you
mentioned that if this policy was adopted, it would be
forced to close by 2017. Am I mistaken that there is
already a schedule in place there? Is that not the case?

MR. ELLISON: I believe it is 2015. Were you able
to hear that, that 2015 is the schedule for closure?

CHAIR HOPPIN: Thank you. Fran.
MS. SPIVEY-WEBER: You said that the facts had not changed, but the Riverkeeper case came after the decision for Best Technology Available, did it not, in the courts here in California? The New York case came afterwards, correct?

MR. ELLISON: The courts in California referred the Moss Landing decision back to the Regional Board for further findings and further taking of evidence on the specific question of BTA, and they have subsequently looked at the Regional Board’s decision following that remand with respect to all the applicable law as it exists now, and most importantly, they looked specifically at this question of whether the Regional Board imposed restoration requirements as a substitute for a BTA finding. And what they found, and they found it because it is true, is that the Board imposed restoration requirements in addition to making a BTA finding. And I could go on at great length about this. I wish we had a lot of time. I wish we had cross-examination and all those sorts of things that we had before, but I know that you do not have that kind of time. But I can assure you that the restoration and mitigation requirements imposed at both Moss Landing and Morro Bay were not substituted for a BTA finding, and the courts have agreed with that.

CHAIR HOPPIN: Tam.

MS. DODUC: I think, with all due respect, the
policy - this policy is before this Board not because the politics have changed, or that there are new Board members present, but the fact is that, under Porter Cologne, as well as the Clean Water Act, this Board and the Regional Water Boards have tremendous water responsibilities in the State, and while we would like to think that we can perform our duties and protect everything at once, that simply is not the case. And to my knowledge, this Board has never contemplated a once-through cooling policy, so it is not a matter of changing politics, or changing Board members, but our using our limited resources to work our way through the various water quality problems that we have, and address them as expeditiously as we can. So I think I would let it be known for the record that our considering of this policy is simply the fact that it is a significant policy, it is a significant water quality marine protection issue clause that we are charged under our obligations to tackle, and just not simply a matter of the faces that you see up here.

MR. ELLISON: Well, if I implied that the Board taking up this policy was just the result of a change in faces, let me clarify myself, I certainly did not mean to say that, and I agree with everything you just said, frankly. What I did mean to say, though, was that, although this Board has not adopted a statewide policy, that the Regional Board has adopted findings of fact and conclusions
of law with respect to 316(B), the Porter Cologne Act, and all these same issues, once-through cooling, the availability of closed cycle cooling, and all these questions, design flow, all these questions specifically to Morro Bay and to Moss Landing, and they did so at great length. And it is my hope that, in adopting a statewide policy, you will respect the decision that was made specifically to Moss Landing and to Morro Bay, and that is what the Board, I believe, had in mind when it asked staff to include the provisions that I have been speaking to.

Thank you.

CHAIR HOPPIN: Thank you, Mr. Ellison. Katherine Rubin.

MS. RUBIN: Good afternoon, Chairman Hoppin and members of the State Water Resources Control Board and staff. LADWP appreciates the effort that the State Board has made in developing the current draft statewide 316(B) policy and its associated Supplemental Environmental Document, and is thankful for the opportunity to provide the following testimony at this public hearing. LADWP commends the State Board on their efforts and appreciates the revisions made to the current Draft Policy, particularly as they pertain to the schedule of modifications for its three coastal power plants, and in providing a pivotal role for our Board of Water and Power Commissioners in advising the
State Board on its reliability status relative to those compliance dates. LADWP supports the State Board’s goals of minimizing the impacts from once-through cooling and wherever possible reducing the use of ocean water for cooling. Today I will be commenting on two areas, one is the role of the SACCWIS as it pertains to determining reliability for LADWP, and the other is going to be the implementation and reevaluation of the policy.

Relative to the role of LADWP, Commissioners, CAISO, and the SACCWIS, it was LADWP’s understanding that the recent revisions to the Draft Policy were intended to provide the CAISO and the LADWP Board of Water and Power Commissioners with the important role of assessing reliability relative to the policy compliance dates, and providing recommendations to the State Board with the appropriate checks and balances on whether those states needed to be altered. Alternatively, the SACCWIS would continue in its role to coordinate agencies and annually evaluate whether a recommendation to modify the compliance dates was necessary for reasons other than reliability.

This intent, namely the Division of Authority on the subject of reliability determinations, has not been translated well in the March revision to the policy; instead, the policy has created many conflicting and inconsistent statements when it comes to reliability determinations. For example, on page
11, Cl, I think - I am sorry, it is page 10 - no, it is page
11, sorry, Cl of the current Draft Policy, it states that
the State Board determines a longer compliance schedule
necessary to maintain reliability for the SACCWIS. And we
believe that that should be LADWP with CAISO making that
recommendation. LADWP believes it is critical to clear up
these inconsistencies so that there is no misunderstanding
on how to implement the policy. LADWP’s April 13th comment
letter on pages 2 and 3 identifies instances of
inconsistency and provides suggested wording to resolve
these problems.

The second comment that I would like to share with
you today pertains to the implementation and reevaluation of
the policy within the given timeframe. LADWP is committed
to following the adaptive management process set forth in
the policy, however, as pointed out in LADWP’s previous
comments, there are great uncertainties that lie ahead in
implementing the policy within the stated timeframes, most
notably in the timely completion of the CEQA process,
securing permits, and closing any Track 2 compliance gap.
As currently written, this adaptive management process is
not equipped to deal with these uncertainties. The SACCWIS
is given the responsibility to revisit the policy with
regard to the dates and implementation schedule, but not to
make recommendations to the Board on policy revisions for
other issues. The language needs to be less constraining to allow issues that are not date related to be brought to the SACCWIS, to the State Board for their consideration. For example, in a perfect world, LADWP could get through the CEQA process and obtain its permits, and possibly meet the dates stipulated in the policy. However, there is great uncertainty with the CEQA and permitting processes and delays in any or all of these processes will impact the ability to be able to meet the file compliance date. CEQA delays can push back schedules for several years. These delays, combined with permitting delays, can easily push back a schedule for more than two years currently provided for in the Policy. For this reason, the SACCWIS needs to be able to make recommendations to the State Board to revisit the policy and be able to extend compliance dates beyond the current two-year cap, or this cap needs to be removed from the policy.

In addition, the SACCWIS and the State Board need the ability to revisit the policy to address other issues such as a compliance gap. As noted in LADWP’s past comments, should a discharger have implemented all possible suites of alternative technologies and operational controls, and still not be able to attain the Track 2 compliance standard, the policy does not stipulate what resource a discharger or the SACCWIS has in recommending policy changes
to the State Board. The State Board needs to be able to
evaluate these situations to determine if compliance has
been achieved. Language needs to be inserted into the
policy, allowing for this contingency in the Adaptive
Management Process. In closing, LADWP appreciates the
ability to have worked with the State Board members and
staff, and looks forward to a successful implementation of
the policy. Thank you.

CHAIR HOPPIN: Thank you, Ms. Rubin. I have one
question for you, I believe.

MS. SPIVEY-WEBER: The policy – no one knows the
future, let’s just start there. But we are basing this
initial schedule based on the best available information
that we had at the time. We are going to have a discussion
later about how that schedule does get changed. I
personally am glad that there is a way to adjust the
schedule based on new information, or some challenge, so I
think we are never going to be able to give to DWP the
assurance that we know exactly what is going to happen. But
on the other hand, DWP cannot actually give us the assurance
that they, you know, cannot meet these dates for sure, that
they are going to get tied up in CEQA problems, you know,
there is a lot of unknown here. And I think if we use the
process for establishing the dates in as aggressive a way as
possible, which is the point here, we are pushing – this is
a technology pushing effort, and so we do want to see these changes made. You know, we will be addressing some of the issues that you have raised, undoubtedly, in the future - again, assuming that what you are doing is needed for the Grid, that is going to be a high priority, and that you are moving aggressively to make the changes that need to be made. So I do not think we are going to be able to accommodate all the recommendations that you have made, but I do think that the process does give you an opportunity to have this discussion, not on the policy itself, but on the compliance dates.

MS. RUBIN: All right, and Fran, you are right, it does, except that there is the two-year cap, and it is on page 10, paragraph 5, and I think we would like to see that removed because there is a possibility that we would need to extend it beyond that two-year timeframe, and we want you to be able to extend that date, if possible.

CHAIR HOPPIN: Thank you, Ms. Rubin. Mark Krausse. Are you up to speed on this yet?

MR. KRAUSSE: I hope so, Mr. Chairman. Mark Krausse on behalf of Pacific Gas & Electric, and I hope I can do this within five minutes. I have a brief PowerPoint Presentation because PG&E cannot go anywhere without a PowerPoint. Let me start off by thanking Board member Doduc for reminding the folks that we will by the end of this year
bring down the Humboldt Bay generating station and repower that with no water usage at all. So that is a different technology, neither dry cooling, nor closed cycle wet cooling.

The next slide is really somewhat perfunctory, but really not, this is the thank you that we have, and I know everybody in here has said it, but I want to point out that everybody on this list, Board members, Board staff, the PUC, environmental advocates, and the CAISO, obviously put a lot of time into this, but to give you some sense of the time, there is a five-hour round trip to Diablo Canyon that some representative from every one of these entities, and several from some of them, made. So to give some sense of the commitment that people are willing to spend that kind of time, spend a day of their lives to go down and see how this rule would apply, we really do appreciate that.

MR. HOPPIN: Mark, you have to realize that most of us do not have jets, either.

MR. KRAUSSE: Well, I understand. And I do not think any of those went down, at least - well, at any rate. Many folks drove. I want to say that we have come a long way, you know that better than anyone, but I will say that three years ago, we kept hearing that we know the nuclear plants are different, but nobody - we did not see it in the policy until about June of last year when we saw the cost
benefit language. There is a space here, as Jeanine knows, in the next slide where we have taken out our last ask for cost benefit, I am not going to make that pitch, but I want to focus today on those issues that we think would make this cost-cost approach more workable from our perspective.

So to begin with, I am skipping past the cost benefit slide, we would like to see the policy clarify which costs are to be considered, and I think that was mentioned earlier, maybe Mr. Lucas made the point, we are sort of leaping from the costs considered by the Board. We would like to not only see that say the Substitute Environmental Document, but since the SED only mentions an annualized cost at each facility, we would like to have it also incorporate by reference the Tetra Tech study because that does give the total annualized cost that we think you should be considering. We would like to see it strike the cost per megawatt hour amortized over 20 years, we are still not quite sure where that came from, and since it is difficult to compare it against any other number, we just do not know how that would be employed. We think that could be taken out so that only total costs would be considered.

Finally, to clarify how the non-cost factors are included in this evaluation, and this is where both Edison, I think Mr. Fleischli, we all have a little confusion. How do you take one factor of total cost to comply and mix it
along with three other factors, really one I will call 
"feasibility, permitability, footprint," those kinds of 
issues, the second factor being environmental impact from 
the retrofit, what we have always argued in terms of the 
negative air impacts, PM impacts and GHG, and finally there 
was that catchall clause which Mr. Fleischli said we should 
take out, we do not have any objection to that. Taking 
those non-cost factors, putting them together with cost, and 
somehow doing a cost-cost comparison, we never understood 
how that could work.

So on the next slide, if you flip, you will see 
language that we propose to solve each one of these problem. 
First, you consider the cost separately, either the costs 
developed in Tetra Tech’s February 28th Feasibility Report, 
referenced in the SEC and considered by the Board, or our 
wholly out of proportion, that the actual costs would be 
wholly out of proportion to that cost, or considering those 
non-cost factors, that compliance is not feasible in light 
of paragraph 7B, and that is the permitting or footprint 
issues, or that the benefits of compliance are outweighed by 
the potential environmental impacts. So, I mean, I do not 
think this changes what was really in the policy, the intent 
of the policy, we could just never quite understand how you 
lump those factors together. That is our suggestion. Mr. 
Hertel from Edison had some language about reasonable, that
is another approach, I just wanted to try to show you what
we thought might have been meant here.

And if we flip to the next slide -

MR. BAGGETT: Wait, while you are on that one,
Mark, I had a quick question, the same one I asked the
Edison folks, the slide before where it says Track 1 or
Track 2.

MR. KRAUSSE: And I covered that on the last
slide, but this will be a better rehash. I will not go over
the last slide. We have no problem with the reference to
Track 2 coming out, as Mr. Fleischli recommended, provided
you take it out so that it is clear that, if you have done
an analysis and said that Diablo Canyon or SONGS does not
have to comply with Track 1, there is not this negative
pregnant that you then still have to run them through Track
2. So if you make clear in the policy, not only by deleting
it here, but by saying Track 2 does not apply to the nuclear
units, something like that. As Mr. Hertel said, the nuclear
units do not have the ability long term to do any kind of
flow reduction, we do it on an emergency basis, but
otherwise we cannot cut flow on any long term basis. We do
not believe there is any Track 2 compliance option. All the
screening currently available is being used. You know our
impingement numbers are next to nothing. Our entrainment is
the issue. So we do not see a Track 2 approach for the
nukes, anyway. For that reason, we have no problem with it
taken out here, provided it does not look elsewhere in the
policy as if we have to comply with --

MR. BAGGETT: So it is consistent throughout the
policy and this other clarification of what cost is put in,
okay.

MR. KRAUSSE: Right.

MR. BAGGETT: Okay. Thanks.

MR. KRAUSSE: And if we flip to the next, then
these were some of the languages, the technical changes in
the nuclear study language, which I hope, Board member
Doduc, you really do not mean to take out, we believe it
worked quite well, and that is simply –

MS. DODUC: I was just offering another option.

MR. KRAUSSE: Very open thinking. But that the
expert entity being contracted with the independent third
party have some expertise in nuclear power plant engineering
operations. And then that, in the studies themselves, as
you know, Edison and PG&E have done substantial studies
already, you may not like those, but please at least look at
them, have the Nuclear Review Committee look at those before
they tell us to go pay for new studies, and we think that
will probably save some time and process, as well.

And the last slide is simply pointing out that,
with regard to those changes in the Coastkeeper
presentation, we have no problem with the deletion of that any other relevant information, the addition of public hearing and the comment process, we are absolutely open to that. And then the issue we do have here was simply the deletion of the other factors here gives those factors no meaning. We provided you language earlier, as you saw, that would give them meaning, and you may have another approach, but we think they should not just be stricken from here. And I just explained the Track 2 answer, so unless you have any questions, that is it for us.

CHAIR HOPPIN: You do not want to throw a rock at him, Tam?

MS. DODUC: I like him.

CHAIR HOPPIN: You like me, but you throw rocks at me.

MS. DODUC: Only ones covered in soft velvet.

CHAIR HOPPIN: I must have a low threshold of pain. Thank you, Mr. Krausse. Noah Long.

MR. LONG: Thank you, Chair Hoppin and Members of the Board. I would like to just first - I am sorry, first, my name is Noah Long, I represent the Natural Resources Defense Council here today, and thank you, Mr. Hoppin and members of the Board, as well as staff. I would also really like to thank the members of the other state energy agencies here that have been working so hard and committed even
further today to continuing to work to implement this policy fully. That said, I would like to just express our regret and dismay with some of the changes made to the most recent draft of the policy. We understood, based on the hearing in December that the Board was likely to make some changes in order to clarify and make possible amendments to the schedule, in order to guarantee and ensure grid reliability as is the responsibility of the ISO and in the case of Los Angeles, LADWP. We expected some of those amendments and saw that some narrow amendments would be possible to meet that requirement, however, it is our view that the amendments that have been made to this policy, go beyond in scope, as well as in depth in that area, further than was necessary to meet those changes.

The original schedule was based on the State agency recommendations, the CEC and ISO made clear that they wanted a little bit of additional flexibility, and the Board should allow for changes based on consensus views of the State agencies and ISO, and when L.A. is implicated, L.A., as well. But the current policy effectively defers the implementation of this policy to those agencies, particularly to ISO and L.A., and I think the testimony today from some of the power companies indicates just how that will make sticky some of the incentives with regard to the various power companies’ intentions to meet the
schedule, which was already an extended schedule for that very purpose of allowing time for the various procedural and substantive requirements to meet it.

I would just like to add a little bit further on some of the other changes, and I was quite impressed with both the recommendations of my other environmental colleagues, but also with the EPA today, and I will not go back to those in depth, but I would just like to express my agreement, particularly emphasizing the concise recommendations made today by EPA. They recommended, and I will just quickly restate, that Track 2 needs to be improved so that it makes actual substantive requirements, it needs to be based on generational or at least monthly average flows, needs to be based on unit specific requirements, rather than facility-wide, Track 2 should be based on actual 100 percent reductions, not just 90 percent of those reductions. And if you do not mind, I will just finish up for a couple seconds here. And then, furthermore –

CHAIR HOPPIN: There is a trap door right underneath. You will see how it goes here in a second.

MR. LONG: Right, I will take my chances. Remove requirements of overriding considerations, and this is the same issue that I related earlier, which is to say that the Board has a responsibility, an independent Federal responsibility to implement the Clean Water Act, and it
should take this just as seriously as the requirements of the other State agencies. And I think the previous plan, as demonstrated by the support of the State energy agencies, indicated that you had a path available to you, and I think this current draft of the policy undermines that path.

And I would just lastly say that I think there has been a lot of discussion, both today and previously, about the nuclear plants, and I think the Board has taken seriously the considerations with the nuclear plants, and to the extent that they are different, there are different requirements on implementation. And I think the fact that the Board allowed such a long implementation schedule for the nuclear plants, and also allowed for these separate independent studies, even in the previous policy, really showed that. And I am just surprised that, even with the additional modifications to the schedule, we are still seeing sort of kicking and screaming about what can be done, and whether or not it can be done under any kind of reasonable schedule. I mean, we are talking about 14 years from now. So I would just like to put a little perspective on that. And I thank you very much for your time.

CHAIR HOPPIN: Thank you, Mr. Long. Any questions of Mr. Long? Thank you, sir. Jill Wirkowski.

MS. WIRKOWSKI: Good afternoon. My name is Jill Wirkowski, I am a staff attorney with San Diego Coast
Keeper. I heard a comment at lunch today that said, "What is the big deal about South Bay? It sounds like they are closing in 2010." And I want to take my time today to talk to you about what the big deal is about South Bay and how this policy really impacts what is going on at South Bay and in Region 9. As the Vice Chair pointed out, on May 12th, the Regional Board will be having a hearing on South Bay to determine whether or not South Bay is endangering human health or the environment, which under federal regulations, is one way to terminate an NPDES Permit or not renew. The process of what has been going on at South Bay for the past year is a good example of the danger of giving CAISO the reins here to determine the compliance dates, and then forcing you as the State Board to come up with compelling evidence as to why not suspend. In Region 9, it has actually hindered the Regional Board’s ability to carry out its Clean Water Act duties. And also, I wanted to suggest some language to actually clarify this whole straight jacket issue about how this policy affects Regional Boards and how their powers remain, which powers remain.

In the Draft Policy, in Section 1N, you added language that nothing in the policy precludes the authority of the Regional Water Boards to regulate discharges through NPDES Permits, consistent with Water Quality Standards. We would suggest adding, "or to terminate NPDES Permits or deny
renewal permits where authorized under Federal law.” This keeps clear that the Regional Boards still have this power over the entire NPDES Permitting process, which, as explained earlier, is more than just intake, it is discharge, it is Basin Plan, it is Thermal Plan.

So let me explain to you a little bit the process of what has been going on with South Bay in the past year. South Bay’s NPDES Permit was due to expire in December of 2009, Dynegy applied in April of 2009 for a renewal permit, and then in November of 2009, sent letters to Regional Boards saying, “Hey, we’ve heard from CAISO that it looks like the plant is going to be able to terminate in 2010 because of new power coming online. So we don’t need a renewal permit, we only need one year.” That was consistent with conversations that CAISO had had with Environmental Health Coalition, I actually called Laura Hunter from EHC, who could not be here today, but I confirmed after hearing CAISO’s testimony today, and she said that, at that point, in August of 2009, CAISO said, “Hey, this is simple math. If you get more power online, if the load forecast goes down, South Bay is offline and we don’t have to worry about this.” So what the Regional Board did in reliance on Dynegy’s testimony is change the permit to, instead of expire in December of 2009, to expire at the earlier of when CAISO terminates the RMR, or December 31st, and that
terminates the permit and the discharge, that is the
language that is actually in the permit. And Dynegy in its
comments to you had actually supported this, or interpreted
this language to say [quote], “Given South Bay’s limited
remaining operating life, as explicitly set out in and made
enforceable through its current NPDES Permit, an accelerated
date is unwarranted.” That was on page 199 of Appendix G,
if you wanted to look at that. On the urging of the
environmental groups and other coalitions that want this
power plant shut down, the Regional Board took up this
process of determining whether there is endangering of human
health or the environment. In the mean time, additional
power is added to Otay Mesa, and as CAISO referred to
earlier, the load forecast has been reduced. And the RMR
Contract now between Dynegy and CAISO basically has a
provision in it that says, “We can terminate your RMR mid-
year if we need to.” Even though we brought that to CAISO’s
attention, they have not terminated the RMR, so we are going
through this process, we have raised evidence of significant
impacts that we believe lead to endangerment. The Regional
Board has looked at those impacts and said, “Well, if it is
only going until December, we are not sure if that is really
endangerment, so right now we are not making that
endangerment finding.” During that process, CAISO has now
changed its tune and said, “Oh, well, it’s not simple math
anymore, we want to wait until Sunrise Powerlink comes on, which we think is 2012.” 2012, actually, we think is a really optimistic timeline for Sunrise Powerlink to come on because that is a complicated project with litigation around it. So Dynegy has then come back and said, “Oh, you know how a year ago we said that we only needed until 2010? In June, we are going to do a renewal permit so we can get a whole new permit, and there is nothing you can do about it because our permit will terminate at the end, but not expire, you cannot terminate our discharge.” And so basically the Regional Board has been put in this position where it has been strung along by CAISO and Dynegy. And what concerns us most is that CAISO seems to keep changing its tune about what is required. As was stated earlier, the local community has done everything it can to try to generate power, to make sure that there is reliability. And so this year is a foreshadowing, we believe, of really what is going to happen if CAISO takes the reins, and then the impetus is on you to come back with compelling evidence that the suspension should not happen. So, again, we would echo everything that has been said already with the environmental panel. We urge you to make those changes, and especially with South Bay, the concern is with this CAISO having the power.

CHAIR HOPPIN: Thank you, Ms. Wirkowski.
MR. BAGGETT: One question. But didn’t you just say that it is because they did not permit the alternative, the other generation capacity that was going to take – is not likely to be permitted when you –

MS. WIRKOWSKI: No, the Otay Mesa did come on line, and other actual smaller generators have come online, and the load forecast was reduced, which should eliminate the need for South Bay. But now CAISO has changed its opinion of what is actually needed to remove South Bay and said, “Well, it is not simple math, now we think we need Sunrise Powerlink transmission line.” So it is basically kind of pulled a bait and switch on us of what it needs, it is not simple math anymore, you cannot just add more generation, now we need this transmission, as well. So we feel like, if you tell us what we need, we can work to have that done, but if the target keeps moving, how can the locals respond? And also, in that same vein, we really urge to keep the permitting process at the Regional Board level. I was the only one who was able to come up from San Diego for this process, even though this is very very important to the local community. It is hard enough getting people from Chula Vista to Carne Mesa to speak on these power plant issues or on these permitting issues, and bringing it up here, I think, would really harm the public participation aspect of permitting.
CHAIR HOPPIN: Thank you.

MS. WIRKOWSKI: Thank you.

CHAIR HOPPIN: Mr. Geever.

MR. GEEVER: Thank you, Mr. Chair, Commissioners.

My name is Joe Geever, I am a California Policy Coordinator for Surfrider Foundation and we were one of the co-signatories to the group that gave you the presentation this morning, so I will not repeat that. I do want to highlight some of the comments from US EPA that were pretty much consistent with the comments that we submitted in our letter, and a couple that I want to highlight is this notion of design flows, or boilerplate flows, vs. actual flows, as you are a baseline for entrainment reductions. I think it is important to remember that these performance standards were kind of set on the operation of closed-cycle cooling, and that is what reductions from actual flow, if you use actual flow as a baseline, would operate like. You know, cooling towers do this on a continuous basis, no matter how you are operating the power plant. If you do it on a boilerplate flow and the power plant does not operate on a boilerplate flow, then you are not regulating it, you are not regulating your flow like a cooling tower would, you are regulating it on some assumed volume that does not actually happen. So we do not think there is any rational basis for using boilerplate flow or permit flow as your baseline for
reductions.

We also agree with EPA that requiring the Board to override CAISO’s determinations, even without any findings, is really delegating your authority under the Clean Water Act, to an agency that has no authority under the Clean Water Act. There is no reason to do that. You should maintain your authority to enforce the Clean Water Act. And we also think that it is important to note that they did not find any reasonable basis for the combined cycle exemption, and I know Dynegy – apparently we find out just now that they have narrowed the description just so that it only fits their two plants, but you know, whatever reliance they may have put on those court decisions, they surely knew that that case was going to the Supreme Court, and they jumped the gun. They are responsible for their own decisions to invest that money prior to that litigation being completely resolved.

About the compliance schedule – I heard two different things going on here, actually. AES – it is interesting to me that AES is willing to put together a schedule for repowering all their facilities, and even willing to move up their compliance dates, just so that they can spread out the time it takes to do all that repowering. That is much different than DWP saying, “Oh, well we need these extensions indefinitely.” There is a problem with
DWP’s approach, which is that, when you take somebody out of the compliance schedule and move them to the back, you have power plants leapfrogging to the back of the line. You never get to the end of the compliance schedule, everybody leapfrogs towards the back. That is much different than what I heard AES propose. And I think it is interesting, I mean, it would have been more compelling if AES had walked in with an application to the CEC for a repower permit, or some kind of good faith showing that they really intended to do that, but we will take them at their word that that is their intention? And I think – I am not going to speak for the environmental community, but from my own personal perception, that is a much different way of adjusting and a much different, less offensive way of adjusting the compliance schedule to meet everybody’s needs. The end date stays in place, you are just moving one plant around with another. I have got a lot of notes and a lot of direction from my Scout Leader, but I have run out of time here, so I will quit there. Thank you very much.

CHAIR HOPPIN: Thank you, Joe.

MR. GEEVER: If you have got questions….

CHAIR HOPPIN: Linda, are you really the scout leader? Mr. Steinbeck.

MR. STEINBECK: Board members, my name is John Steinbeck, I am Vice President of Tenera Environmental, I
also served on the Expert Review Panel that helped Dominic
out on the SEP – or SED. Originally, I was just going to
comment on some of the monitoring requirements, but hearing
some of the statements made today, I just wanted to make the
statement that, despite some of those statements, I do not
really know of any strong evidence that I have seen in all
of the studies we have done that the limitations, the
reductions of impingement and entrainment through the
reduction or elimination of once-through cooling is going to
really benefit the coastal fish populations in the state.
There will be some benefits from the policy definitely that
will come as a result of the interim mitigation measures. I
think Chris Ellison brought up the example of Moss Landing,
and that has been recognized as a very successful mitigation
project not only by me, but also by the other scientists who
were on the Expert Review Panel. With that said, I did
submit comments on the monitoring requirements in the March
22\textsuperscript{nd} Draft Policy, but I just wanted to make sure that the
Board members were aware of some of the inconsistencies that
are in the current language, and I have submitted some
suggested changes, but just to get to the point, the
language at Section 282 presents the sampling required to
demonstrate compliance with the entrainment reductions under
the policy. So the organisms that are actually mentioned in
that section will all be sampled with the minimum 335 mesh
nets that are mentioned in the monitoring section in 4B, where details of the monitoring are presented. Section 4B also presents a requirement that additional samples be collected using 200 micron mesh nets to provide a broader characterization of other invertebrate larvae potentially subject to entrainment. While I question the need for this additional sampling, since Section 2A makes clear that the data would not be used for determining compliance, this is, if you are going to require something like this for characterization, this is the proper place in the policy for it because this is kind of looking at establishing a baseline and figuring out what else is out there in addition to fish larvae and these larger invertebrate larvae is appropriate. The problem is, in Section 4.B.2, where the 200 micron mesh net sampling is mentioned again, is being required to confirm the levels of entrainment reduction. So this conflicts with the compliance requirement in Section 2A, which is supposedly based on fish and these larger invertebrates. It also really does not have any value since there really is not any existing entrainment controls other than floor reduction that will result in the reduction of the entrainment of such small organisms. Since the staff has actually gone into such detail, and I have actually worked with Dominic on some of this, on the sampling requirements, it seems that removing this inconsistency
would assist the Regional Boards in implementing the policy.

And, like I said, I provided language in my comments that
might help in that regard. Thank you.

CHAIR HOPPIN: Thank you, sir. Any questions of

Mr. Steinbeck. David Nelson. I hope you were not planning
on being home by noon today.

MR. NELSON: You know, I am driving, so I am not
going to be home until real late. Hi, my name is David
Nelson and I am co-President of the Coastal Alliance on
Plant Expansion, and we are a citizens group out of Morro
Bay, formed in 1999, I was a Board member then and I am a
founding Board member. And I am here to just address a few
things. I am glad that I am up right next to Mr. Steinbeck,
I met him back in ’99 when we worked on a Moss Landing case.
And what he just said really shows how we discount the
environment. “Let’s not use 200 micron nets because we do
not care about abalone, we do not care about all these other
things, that we are not going to count anyway.” That is one
of the big problems here with once-through cooling. When we
figure out mitigation, we figure out 333 microns, which
eliminates huge portions of our environment that feed the
fish stock, you know? We handle invertebrates like they
are, you know, useless organisms. As a matter of fact, we
do not have any studies going on that even tell me what I
have in my estuary that is being sucked through the plant.
So that is one point. I would also make the point that we at CAPE agree with the points that EPA made, and we would support those wholeheartedly, the points they made today. We were co-signers on the Coast Keeper letters, we certainly support that.

Another point is with the best professional judgment. Now, you know, this is a really sticky one, and Mr. Ellison pointed that out. When he talks about Moss Landing and Morro Bay, that is what was used there, Best Professional Judgment. What he is not telling you, though, and you who remember, in 2000 we had a so-called energy crisis going on here, and my group was formed at that time and people thought we were just nuts because why would you want to stop a power plant? Well, there are a lot of good reasons, and the reasons are here now. You know, he says that Moss Landing shows Best Technology, but you know, on page 62 here, there is a scenario report that shows wet closed circuit cooling is feasible at Moss Landing, it is now, and it was then. Our group was a fledgling group and we were at the Moss Landing hearings, and we submitted, you know, studies – not only studies, but power plants that were using dry cooling in the desert, and there was no reason that the Moss Landing combined cycle plant did not use combined cycle other than we had an energy crisis and Duke Energy at the time said, "Well, we’re not going to build it
with it.” So, “Okay, well, we’ll make adjustments.” That is your best professional judgment.

As far as Regional Boards go, I feel for South Bay and I sure hope you give me another couple of seconds here, but we support the idea that the State Board take over here and let the Regional Boards do the work, but you guys make the decisions, because Moss Landing and Morro Bay are two great examples of how your Regional Board was bullied into doing this stuff, and it was not the right decisions, it is not the right decision, and Mr. Ellison just stood here and asked you to approve what happened at Morro Bay because it has been tried in the courts. Well, what they are asking you to do at Morro Bay is let them use once-through cooling in a brand new power plant in Morro Bay. Now, if that is not out of sight, I do not know what is. Another big point with Morro Bay is you just heard Dynegy say that, “Nah, we’re gonna close it in 2015,” well, the fact is that that power plant runs very little, 3 percent now. Your figures in here unfortunately - CAISO calls it a 1,000 megawatt power plant, two of those things are in mothballs and will never run again, it is running at 600 megawatts now. They cannot run - your studies show that 600 megawatts is the dependable output at that power plant, but in fact if you add the air into it, the air standards, that power plant cannot run at 600 megawatts. So none of these figures are
taken into consideration here, and that is where this
document is going to go wrong here, so if you do not use the
right numbers in your formulas, you are going to come up
with a wrong answer. It is really basic math. So, you
know, for those points alone, you know, CAPE is kind of
against this document the way it is written, and CAPE has
been represented at most of the workshops back to Laguna. I
have been at almost all of them, myself. So, you know, we
just ask that you, you know, push this because what you are
doing by cutting out this once-through cooling and this
profit that goes to the power plants, is you are pushing
this toward alternative energies. And the last point we
have to make is that I am asking directly that, on your
compliance data, and you just heard Dynegy say they are
going to close the plant in 2015, they have an outfall lease
that expires in 2012 with the City of Morro Bay. I ask you
put this plant out of business in 2012, because it is just
not worth killing. Even if they only run 3 percent, they
are running at the height of our season of productivity of
our estuaries, and that goes to the design flow, again. You
have got to judge these plants on actual flow and not
boilerplate flow. And thank you for the extra time, we
really appreciate it. If you have any questions, I would be
glad to answer them.

CHAIR HOPPIN: Thank you, sir. Dr. Luce.
DR. LUCE:  Good afternoon.  I am Dr. Shelley Luce.

I am the Director of the Santa Monica Bay Restoration Commission, and that is a State Commission and a National Estuary Program of the US EPA. The Bay Restoration Commission’s 35-member Governing Board includes the Mayor of the City of Los Angeles, State Senators Pavley and Oropeza, State Assembly Members Lieu and Brownley, and the Directors and Representatives from many marine-related state and federal agencies, including the Department of Fish & Game, NOAA, and the EPA, among others. This knowledgeable and diverse Board adopted a Bay Restoration Plan in 2008, and one of the first goals of that plan is to eliminate the biological impacts of water intakes and discharges from coastal power plants. Another goal is to establish a marine protected area network, and other regulations to protect fishery resources. And as Board member Spivey-Weber mentioned earlier, there is a nexus between these two goals. That is because the key, or one of the keys, to a successful marine protected network is that these areas are highly protective areas that seed the rest of our coastline with larval fish and shellfish, they grow up to be the abalones and lobsters and sheepshead and kelp bass.

The scientific data that were compiled for the marine protected area process in Southern California are stunning. They quantify larval transport and other
oceanographic processes, and using those data, the MLPA initiative established that coastal power plant intakes are having an enormous impact on our fisheries’ resources by killing off large portions of our larval fish and shellfish populations. So protecting MLPA’s from intakes, as you mentioned, is important, but even plants that are far from the marine protected area are sucking in the products of those marine protected areas, the billions of larvae that have been transported out of the protected area by ocean currents and that are seeding the rest of the coastline. So those intakes, wherever they are on the coastline, are really defeating the purpose of the marine protected area that has been such an important process in California in the last few years. This is illustrated by the statistic presented in the CEC study from 2005, that the three coastal power plants in the southern half of Santa Monica Bay alone suck in and sterilize 112 percent of the volume of the entire Bay every single year. And that includes the millions of larvae of those fish and shellfish that I mentioned earlier, that are coming from the most productive reef areas of the Bay and elsewhere.

Based on the goals of the Santa Monica Bay Restoration Commission, and our mission to restore and protect the benefits and values of Santa Monica Bay for the people who depend on them, we do not support the Draft
Policy that is before you today because it allows power plants to opt out of Best Technology Available without setting any criteria for doing so, and uses design, rather than operational flows to determine compliance, which in most cases will result in no substantial improvement in entrainment or impingement, and I will not elaborate on those technically because you have heard all about them.

I agree with Mr. Kemmerer’s statements earlier from the EPA, that opting out of BTA into Track 2 will not result in comparable protection of marine resources, and the SMBRC supports the recommendations Mr. Kemmerer made, that he made for this policy in his testimony earlier today. And we hope that you will incorporate them into your final policy.

CHAIR HOPPIN: One question for you, Dr. Luce.

MS. SPIVEY WEBER: In the numbers that you were citing as the amount of larvae and other species that are affected by once-through cooling, is that based on actual flow analyses? Or are you using design flow, you know, and essentially extrapolating a design flow to get to those numbers?

DR. LUCE: The numbers I am referring to of, when I say “millions of larvae,” I am referring to the same numbers that were in the slide presentation earlier, which are from monitoring.
MS. SPIVEY-WEBER: So they are actual flows?

DR. LUCE: Uh huh. And then when I say

“scientific data compiled for the MLPA,” in that case, I am
talking about ocean currents and other oceanographic
processes that we extrapolate from when we use models to
predict where larvae are moving throughout the Southern
California bite.

MS. SPIVEY-WEBER: Thank you.

DR. LUCE: Thank you.

CHAIR HOPPIN: Steve Peace.

MR. PEACE: Mr. Chairman, members, Steve Peace of
San Diego. I want to speak specifically to the suggestion
that the Board choose to essentially defer its policy
responsibility to CAISO with respect to certain
characteristic legacy power plants, in particular speak to
the issue of those fossil fueled power plants, which are
largely or wholly in the ownership of independent power
generators. ISO is a creature of over two years of Public
Utilities Commission hearings and then 257 hours of
televized legislative hearings that I chaired. CAISO is not
a state agency. It has no policy responsibilities, it has
no policy authority. But your proposed action here would
actually confer upon ISO a policy responsibility. Now, why
is that a bad thing to do? Well, first, it is your job, not
theirs, but more importantly you have to understand what is
ISO, why was it created? The independent energy producers, or then would-be independent energy producers, insisted that the two big public utilities, our publicly regulated utilities in the State, Edison and PG&E, disgorged themselves of their transmission capacity because they were concerned that, in an environment in which independent energy companies owned individual power plants, that in scheduling transmission, the utilities would act in their own interest and prevent companies like Dynegy or AES from being treated fairly in scheduling. The purpose of ISO was to create an Independent System Operator, not a California Independent Policy-Maker. It was to operate the grid. And it has two functions – scheduling, ordering up the power, and purchasing power when the market does not successfully produce enough power in a moment of crisis. So on a broad policy grounds, I think your proposed policy is not only inappropriate, I am not a lawyer, I do not know how it is legal for anybody other than a Legislature to confer your policy-making obligation and authority on, in this case, not another State agency, but, as you heard in ISO’s presentation, an Independent System Operator Corporation. It would be no different for you to do that than it would be for you to give a similar separate track or policy presumption that you had to overcome to Chevron, or to BP, or to Edison, or to – as you heard and requested just a
moment ago - a publicly operated power operation such as LA
Water and Power. Your responsibility is to confer the
permits as they relate to your area, to assure that these
entities, including publicly operated, or privately operated
entities, operate under your purview. And in the plain
reading of your proposed regulation, you instead appear to
be being asked to simply confer that authority over to ISO.
And Commissioner Baggett made a comment with respect to
South Bay, and I had not planned on commenting to South Bay,
but you asked a question about it, and I think it would help
bring some clarity in terms of how ISO has either been used,
or chosen to be used, by the power companies to confuse
every single public entity that comes in contact with the
power companies. Dynegy comes before you and gives you
their version of events with respect to South Bay. Now, in
addition to overseeing the creation of these entities, I
also not only oversaw the contract which was then between
Duke and the Port District and SDG&E, I wrote personally
with my hands on a yellow pad the language that makes
reference in that contract to RMR, which ISO has grossly
participated with Dynegy to misinterpret, in order to confer
years of additional economic benefit to Dynegy. That
contract allowed Duke, then Duke, to operate for seven
years, and my insistence, the language put into the
contract, to make sure that Duke met its responsibilities to
identify a substitute power plant in the event the Otay plant was not constructed. Now, there is an ironic history to that because this whole process started with a company called US Gen, then a subsidiary of PG&E, coming to us and saying, “We would like to build a power plant at Otay Mesa and take out the power plant at Chula Vista.” “Gee, that is a great idea, let’s go do that.” We then went to ISO and said we have a company, US Gen, a subsidiary of PG&E, that would like to build a power plant in Otay Mesa, and it will substitute the power for the power needed in Chula Vista. SDG&E then said, “Wait a minute, we need some distribution upgrades along that line,” actually small transmission, kind of in between transmission distribution level, “…in order to make sure we meet these in-power requirements.” You heard these references to load stabilization and voltage support. Because at that time, RMR meant only one thing, voltage support. And it was only after the energy crisis that the ISO chose to start broadening its use of RMR contracts, which is where the confusion comes from, where ISO changes its story every week about, “Well, now we want to do this, now we want to do that,” because suddenly they have a new definition of what RMR – which may be perfectly legitimate in the broader context of things, but as it relates to the contract, it is not legitimate because the terms of that contract that I wrote, literally, the letters RM&R, it was...
referencing to voltage support, specifically. So what did we do? We upgraded the distribution/transmission to make sure Otay would meet that requirement. So a power plant that is now operating in Otay, that was conceived at its very beginnings for one reason and one reason only, to get rid of this power plant, and was supposed to have been done after seven years, continues to operate to this day. I do not believe that the permit in front of the Regional Board is even legally before the legal Board, but why would that be? Because now you have a Port Commission that gets to make money despite the fact that Duke, remember, we backed into the number—seven years, how long would it take to recover your costs? Because of the energy crisis, Duke made seven times the projected economic return in the seven years. Nobody knows what Dynegy paid to get that power plant, I would guess about, oh, somewhere around zero, because Duke just wanted out of the State. And so every day they continue to keep that RMR contract in place, which incidentally, whether they run it day or night, they get paid. This is not about the environment, it is not about the need for power, that power plant is flat out not needed, has not been needed for quite some time, it was not even needed before Otay Mesa came on, it is a bunch of bunk, it is about making money. And your process has been abused, distorted, and mis— you have been consistently
misrepresented, facts have been misrepresented before you
and your Regional Board, by both the ISO and Dynegy, and I
toggle back and forth between feeling like Alice in
Wonderland and Frankenstein visiting his monster. But at
some juncture, somebody needs to come out of the fog of war,
from behind the energy crisis, and stop being afraid to
being accused of causing a black-out. Nobody is more
sympathetic than I that there are those of you who do not
want to be unjustly accused of being associated with such a
good thing. But, look, Dynegy, Sempra, Enron, very simple. They
did not fail to build power plants, they manipulated a
market. Supplies were tight –

CHAIR HOPPIN: Mr. Peace, you are starting to
repeat yourself long after your time.

MR. PEACE: I appreciate that. So I just ask you
to keep your responsibilities in your shop and do not confer
them on a corporation. Thank you.

CHAIR HOPPIN: Thank you. Joe Dillon.

MR. DILLON: Good afternoon. My name is Joe
Dillon. I am the Water Quality Coordinator for the National
Marine Fishery Service, Southwest Region, U.S. Department of
Commerce. We sent in a brief comment letter dated April 8th,
these comments are meant to supplement that letter.

Everything I had written down to say has pretty much been
said already, so I will try to keep it brief. We also
support what EPA said earlier, what the Coastal Commission said earlier, what the environmental groups said earlier. I would like to remind the Board, most of you were not here when this process started five years ago, that you have an administrative record, and if you go way back into the administrative record, you will find issues such as regulating unit by unit, rather than by the whole plant, and using actual generation flows instead of design flows. You will find a record of why those choices were made and why they are scientifically valid, and why they are superior from a regulatory point of view. I would also support the contention that there should not be an exemption made for the combined cycle units, and that is for one reason, the best technology available standard is not static. Section 316(B) of the Clean Water Act is meant to be a technology driving standard. So what was granted 10 years ago when it may have been considered Best Technology Available at that time by that Board, does not put a burden on you to make that – to keep with that decision now. Furthermore, US EPA at the national level is working on their 316(B) rule and it would not be surprising at all to find that it will not be the Best Technology Available on the national level, whenever they finally get around to getting that done. So, you know, those companies depending upon that regional board decision a decade ago should be planning to have to do
something else in the near future, whether the driver is
here where it should be, or from the national level.

We prefer the older version, the November-December
version, for a few simple reasons. There was less variation
in it, it was less confusing, it gave more regulatory
certainty to everybody involved in the process. I find it
hard to fathom a regulatory agency giving away so much of
its leverage, that it does not make a lot of sense to me,
somebody who has been doing regulation for 10 years now.
But that is the road that this version takes your agency
down. I would advise it to restore the language under
Section 2, Track 2, the not-feasible language. With respect
to Board member Doduc, I found the definition under the
older version very understandable. And I think that any
other problem that would have come up would have been
handled by your SACCWIS process, so if there was something
that came up that really was not feasible, that was not
already covered by the language of your policy, it would
come up in the SACCWIS. And, believe me, if the power
companies have a legitimate reason why something is not
reasonable, they will make sure that you are aware of it,
and they will present evidence clearly showing why it is not
feasible. I would hope that restoring that language which
had been in a couple previous versions would be a simple
administrative change that you could make at the conclusion.
of this process today. We also asked for some clarification on the interim mitigation requirements, the Response to Comments document, it was not clear. Board member Spivey-Weber mentioned this toward the beginning of the day. We would like it clarified that any monies gathered as part of the interim mitigation process are actually spent on projects because the way the language is written right now, it is very broad and if the money is diverted to the Coastal Conservancy, which is apparently the preference in these tough budgetary times, there is language in there that says they cannot interpret implementing the marine protected areas as meaning, “Hey, we need some new computers. We need some more vehicles. I cannot lose Sally to budget cuts, I’ve got to pay 50 percent of her time out of this funding.” The money needs to definitely say that it is there for projects. We also supported in our letter the 200 micron net size. The reason for that is because you need to go to a smaller net size to capture larvae from oysters and from abalone. We have the white abalone now listed under the Endangered Species Act, it is obviously an ocean species found in Southern California. The black abalone is somewhere in the listing process, and I regret to say that I did not look it up before I came here today, and I am not a PDA guy, so I cannot sit there and look it up, but the black abalone’s range goes the whole way up past San Francisco, so
with Humboldt Bay being upgraded, every coastal plant will
have the ability to entrain black abalone larvae. If we
discover a place, a facility that is entraining a
significant number of abalone larvae, we need to know that,
and then we can schedule studies to try and figure out what
kind of abalone is it, maybe it is just red, who knows? I
could go on for a while, but – it is close to Happy Hour, so
if you have any questions?

CHAIR HOPPIN: I did not know there was going to
be a happy hour. Mr. Dillon reminds me of the fact that I
have not been very diligent in our clock keeping, he got up
here and told us everything he had to say had been covered,
then used double his time, and I did not cut him off. But I
did not cut you off.

MR. DILLON: I appreciate that.

CHAIR HOPPIN: Thank you, Mr. Dillon.

MR. DILLON: Thank you.

CHAIR HOPPIN: Ian Wren. If you can get away from
your den mother back there, the mother keeper, you can come
on up.

MR. WREN: Good afternoon, Chairman and members of
the Board. My name is Ian Wren. I am a Staff Scientist for
the San Francisco Bay Keeper. I would just like to express
our support for the prior comments made by the NGO community
and express our opposition to the current draft of the
proposed policy. I would also like to address some of the
public comments made by Mirant Corporation, the owners of
the three OTC facilities currently in operation in the Delta
and San Francisco, as a means of highlighting some of the
Delta issues associated with this policy. In recent
comments, Mirant suggested that because their Delta plant
operated at very low capacity utilization rates, it would be
impracticable and unjustified to comply with the proposed
entrainment performance standards. As a result, they would
like for there to be an exemption for units operating at
less than 15 percent of peak operational capacity. However,
this would not only exempt Mirant operations, but would also
preclude 50 percent of the State’s OTC plants from
compliance and policy. Based on recent operation of the
Contra Costa and Pittsburg power plants, the results have
indicated that impingement and entrainment is occurring of
the Delta Smelt at the Pittsburg plant and entrainment is
occurring at Contra Costa. Based on continuing degradation
of the Delta ecosystem, associated declines in the
population of Delta Smelt, Salmon, and other species, a
significant proportion of the State has been asked to make
difficult sacrifices in terms of reduced water allocations,
however, Mirant believes that, despite the fact that their
operations result in direct take of endangered fish, they
should not be asked to make sacrifices in the form of
upgrading their facilities, which are over 50-years-old.

Under the current policy which pegs compliance in design
flows, rather than actual flows, there is a strong
possibility that the OTC power plants can operate as usual,
and continue to result in direct take. And we ask that you
reject this Draft Policy in favor of Clean Water Act
compliance standards for all existing OTC plants. It should
be done in consideration of fragile coastal and estuarine
ecosystems, while keeping in mind that OTC policy plays a
significant role in Salmon, Smelt, and water resource
issues. Thanks for your time.

CHAIR HOPPIN: Thank you, Mr. Wren. Do you
realize you did not go over your time?

MR. WREN: At least one person.

CHAIR HOPPIN: You get the teddy bear. Robb
Kapla. That does not mean, because the Teddy Bear is gone,
you need to go on for a half hour, though.

MR. KAPLA: If I leave more time on, do I get a
bigger Teddy Bear? Robb Kapla on behalf of Voices of the
Wetlands. I want to first thank the Board and the staff for
this opportunity to provide comments. We signed on and we
actually sent in a letter, Stanford Environmental Law
Clinic, on our behalf, but I also want to join in the
environmental panel’s comments that were made earlier.

First, I want to clarify that the issue of BTA compliance at
Moss Landing Power Plant is currently before the California Supreme Court. The Supreme Court accepted the Petition for Review of the BTA issues at that site, and our comment letter, filed by Stanford Environmental Law Clinic, highlights that the mitigation was used in the BTA findings at that site. But, again, that is an issue before the California Supreme Court. I also want to clarify that the 40 percent reduction in biologic productivity at Moss Landing in the Elk Horn Slough comes from the administrative record in that case, and it is also authored by CEQA in the final staff assessment report. Finally, I want to comment on some of the confusion over the Board’s authority to regulate existing power plants, in addition to new and expanding power plants. This authority clearly lies in Porter Cologne’s general authority over the State’s water resources. The Board is well within this authority and the Clean Water Act, Section 316(B) in extending these regulations to existing power plants. That is all I have.

CHAIR HOPPIN: Thank you, sir. Any questions?

Mr. Metropulis.

MR. METROPULIS: Good afternoon, Chair Hoppin, Board members. My name is Jim Metropulis. I represent the Sierra Club statewide on both water and energy issues. We are here today to express our disappointment with the Draft Policy that we are here discussing. You have received over
close to 10,000 letters in support of a strong OTC policy which is not before us today. The policy before you is not strong and, as you heard, does not even follow the requirements of Federal law. Once-through cooling is propping up antiquated energy inefficient plants, and now we are hearing today from the owners and operators that they are asking for more and more delays, which only extends the life of these inefficient methods of generation. Sierra Club is a part of the environmental coalition that presented presentation here today. Sierra Club also submitted a separate letter with Pacific Environment, talking about energy replacement for these once-through cooling plants. Now, we certainly heard that the Board is not here to set energy policy, but what the Board does does affect energy policy and production in the State of California, and we are operating under the goals of the Administration that wants to see 33 percent renewables by 2020. So in our letter with Pacific Environment, we talked about we should replace these old gas-fired power plants not with new fossil generation plants and natural gas, but rather look at replacement with renewables, look at peak reduction and peak demand reduction programs, and look at energy efficiency. If we are looking at current trends, the cost of conventional power plants is increasing while PV, solar, and other renewable power generation is decreasing in cost. So to replace old gas-
fired plants with new ones would not only be very expensive
to the utilities and the ratepayers, but also set the State
back with its 33 percent RPS goal by crowding out renewables
with new natural gas power plants. We feel that the
utilities can plan the timing of retiring and replacing OTC
plants to coincide with implementing energy efficiency,
renewable measures, and through properly planning, this
replacement can be easily implemented and cost-effective.
So we are certainly looking at the fact that the policy now
gives the power generators and owners all the wiggle room
that they could want, and today they are asking for more and
more time and delays. At some point, the Board is going to
have to implement this policy, so let’s follow the Clean
Water Act, let’s follow the requirements of Porter Cologne,
let’s get an implementation schedule here to replace these
inefficient power plants. Thank you.

CHAIR HOPPIN: Thank you. Any questions? That is
the last of our speakers cards. I am going to give our
Court Reporter and all of us a break until a quarter after.
I have a feeling we are going to be here for a while when we
come back, and that will give everybody a chance to start
with a fresh cooling tank, and our Court Reporter, without
having lockdown on his fingers. What? You do not like
that?

MS. DODUC: I love it. I just want a
clarification. Are you therefore closing the public comment portion of the hearing?

CHAIR HOPPIN: Yes, we are closing the public comment portion. We will see you all here in about ten minutes.

(Off the record at 3:05 p.m.)

(Back on the record at 3:16 p.m.)

CHAIR HOPPIN: We will resume. Before we get going with comments, I would like to ask staff, both Jonathan and Dominic and his crew, if you have any clarifications, any clean-up items, any comments you would like to make before we start with our commentary.

MR. GREGORIO: Thank you. I just wanted to respond to one item that we heard about, I believe it was during the Southern California Edison presentation. It had to do with a statement that we made in our Response to Comments that used the term "it is our general policy not to," you know, "...do cost benefit analysis." And I have to admit, that was my language from one of the many nights writing the Response to Comments, and I definitely meant that to be small "p" policy, not large "P" Policy. And so we discussed this, and it was not our intent to pretend or state that there was a formal policy of the Board, and this was a draft Response to Comments, and we can remove that one clause of that sentence and it still does not change the
meaning of the sentence. So that is the only thing I would
have to add right now.

MS. SPIVEY-WEBER: If you remove the whole
sentence, it reads fine without it.

MR. BISHOP: And I have one clarification that
staff reminded me, or told me, that I had insinuated that
the Board’s ability to make changes to the schedule were
limited to the section under the SACCWIS, and I clarify that
the Board has authority to amend their policy at any time
they see fit, in any way they see fit, and that I did not
mean to insinuate that you only had that option in the
future, so....

CHAIR HOPPIN: Mr. Lauffer, a suggestion, or a
question Mr. Baggett just raised that bears consideration,
we are going in a moment to give you any changes or thoughts
we might have, so those are in an order that is helpful to
you. Do you want to go through the sections of the policy
and ask us if we have changes we would like to make? Do you
want individual Board members, starting on one end, and
going through, to talk about any changes they may want to
make? Mechanically, what works the best for you?

MR. LAUFFER: Mr. Bishop and I had discussed this
the other day, and I think what will work for us is if we
just go through with the Board members one by one and have a
discussion. It does not necessarily need to be in order.
And the staff will take care of synthesizing the different comments during the break, and then we will present them back up to the extent the Board may have any changes they want us to make. We will present those up in an orderly way, and it will pull together the different comments.

Obviously, if a Board member feels a particular way, one way or another, on a specific point that is being made by another Board member, that is an opportunity to engage in discussion amongst you all.

CHAIR HOPPIN: All right. Before I begin, and I am going to begin with Mr. Pettit, there is a comment that I need to make, and it has to do with language regarding CAISO. It is eye-opening to me, a degree of dislike, or dissatisfaction, or discomfort, however you want to characterize it, amongst some before us, certainly credible people that have concerns about CAISO. I will take responsibility, certainly, without any apology about the language about overriding consideration based on compelling evidence, I will just explain to you how we got there. The last time we all gathered up, we had comments from Mr. Peters from CAISO, and at that point Mr. Peters essentially asked us to just defer to their judgment. And, you know, we do not need to go through the SACCWIS, we do not need to have an advisory panel, you know, “We will tell you when these plants are coming offline.” Mr. Peters, I may not
have paraphrased you, but in essence that is what I heard you say. And it sent me on my ear. And so I, as a single Board member, because as you know we cannot do things where we communicate with each other and go in groups of more than 1.5 and talk to anybody, or have anything other than totally independent thought, which is scary for somebody like myself, so I engaged Yakut, and I engaged the folks at CAISO about this theory, and I wanted to make sure that I had not misunderstood Mr. Peters, and I in fact had not. I was reminded of the fact that, although CAISO would not be considered a state agency, they do, along with LA Water and Power to a much lesser degree, have the responsibility for grid reliability. I spent a lot of time with legal counsel, making sure that the SACCWIS process was as strong as I hoped it would be, not because I have the innate distain, I will use the word, that is probably a tough word, but basically what I heard, for CAISO in its present form, I had concerns that went much further than that. I had concerns given the timeframe that we are looking at here, that we would have different faces on the Board, certainly this Board could have three different faces come next February, that is certainly not beyond the realm of possibility, it might please some folks, I do not know. But just as we have our personalities, strength and weakness, CAISO does, PUC does, the Energy Commission does, and I wanted to make sure
that, as we went forward, that what might be a strong and
dominant component of all this today might be a weak player
at some time in the future, and that we had the ability to,
you know, judge ourselves, make sure that statements that
were coming out of CAISO were in fact correct, and we were
not going back into this adage that I hear repeated ad
nauseum, that they have never met a megawatt that they did
not love, and they will never give one up. So I am, as
opposed to the comments that were made earlier by one of our
Board members, I do have concern about Grid reliability. I
have concern about other agencies interceding in our
authority under Porter Cologne and the Federal Clean Water
Act; by the same token, I realize that we are working on
issues where we cannot be disregarding the responsibilities
as they come to Grid reliability, I want to make sure we
hold people accountable for their decisions and that we are
not being duped. I think there will be some potential
amendments that are offered in a few moments that, you know,
will help tighten that up. But for all of you that have
concern about that language, you do not need to look at the
Board and say, “Hmm, I wonder which one of them it was,”
because it was me, and it was not because I thought I was
doing, and do not think that I was doing something that was
abdicating our power to anyone; I wanted to make sure that
we had checks and balances. So, with that being said, I am
going to start with Mr. Pettit, we will go down the list. If folks have things they want to change or amend, or if they want to agree with the existing policy, we will do that. Staff will compile what they have heard, and huddle up again in however long it takes us to do this, put them up on the screen, and it is my understanding we will have a straw vote on any changes or amendments, so we are not just trying to decide whether we like three of these and two of those, I am going to vote for it, or vice versa. We are going to try and winnow this out as to what goes forward and what does not. With that, Mr. Pettit.

MR. PETTIT: Thank you, Mr. Chairman. Just a couple of specific items, and then one much more general one, and I am not going to propose any amendments right now, and may not. The first specific item has been discussed a little bit today, but not very much, certainly not as much as some of the other items. Mr. Steinbeck and several of the other commenters have repeatedly questioned the – I will characterize their statements, I will use the word “usefulness” or “validity” of the additional monitoring with the 200 mesh screen. And those comments have come from some pretty technical – credible technical consultants, I believe. And Mr. Nelson and – who else was it – Mr. Dillon, both commented on the appropriateness of that, and the fact that in order to pick up potential white abalone
larvae and perhaps other things, that some monitoring with
those screens was useful. All I would ask staff to do
during the break is to comment on where they see this. I am
not particularly asking for any change or anything, I would
just like to hear them respond to those two divergent points
because Mr. Steinbeck and others have raised this concern
repeatedly, and I just would like to go over the response
once more.

The second thing has not been discussed at all
today, but, again, it is one that the technical consultants
have brought up several times, and that concerns the habitat
protection foregone method of looking at loss of habitat.
And several parties, in fact, I think a couple of the
environmental interests, too, at one of our past meetings,
have questioned whether that method was appropriate in all
cases, and the technical consultants have also made some
statements along the same lines, and I do not propose to get
into that discussion, nor even to change the fact that that
is the staff recommended alternative for proceeding with
those studies. They have provided an allowance for people
to propose an alternative. The only change I would ask the
Board to make would be that, if somebody proposes an
alternative to the use of that method, that it come back to
the State Board for review, instead of just going to the
Division for review. I think there has been enough
discussion about that and at least enough question in my mind that I would like to see the State Board weigh in on that issue if an alternative is proposed.

And the third and probably much more weighty and broad concern has been one that has been touched on today. In the relatively short time that I have been back here, I have often, or at least occasionally thought that the State Board has got its hands so deeply into this bucket of tar here in the last few years, that I am wondering how this transition of passing on this responsibility to the Regional Boards and assuming they are going to get any consistency in results and timely action is going to work. And several people have raised that same question today. Mr. Jaske raised the relationship to AB 1318 under which the Air Board in coordination with the State Board, among others, has to make some determinations with respect to the South Bay plants, or the Los Angeles Area plants. We had some real discussion about what the intent of the compliance schedule was, whether it is, to use my term, target dates that are amendable to some further suggestions by the operators, or whether, as I was given the impression a few months ago, they were intended to be pretty hard dates. And Mr. Nelson mentioned something to the effect that I took to be getting the Regional Boards off the hook on this particular issue. We talked about the two-year extension and people have
questioned whether that is enough time if we get a two-year extension, will that be sufficient in all cases. And somebody will have to make a determination on that. So all of those thoughts, and, again, I am not proposing anything at the moment, but I would suggest or hope that the other Board members would think about the implications of this and see if there is anything we want to do to make the implementation mechanisms more specific. Unless there are questions, I will quit there and thank the staff for looking at those particular - or the one issue. So, thank you.

CHAIR HOPPIN: Mr. Baggett.

MR. BAGGETT: I guess we could just go through it by sections, more or less, if you want it that specific. I think on the Track 1 preference, I support, I guess, the NGO’s comments that it should be a not feasible standard, it should be on each unit. But I strongly believe after today that the State Board has got to issue these permits. I know we have gone round and round with that, but I think that the buck should stop here. There are not that many of them, and if need be, the Board could even go to the Region to have the hearing. We are talking a permit every five years, they are phasing out over time. They can always be petitioned, we can always take them up on our motion. It is just more time, more money for everybody involved. I think the policies are so significant, we heard from both sides, from
some of the NGOs, as well as from the regulated community,
these are complicated issues, they do take some time, but we
do that with other permits, and there are not that many of
them, so I feel that would also, when we get to the ISO
language, which I think is too stringent, I think if the
State Board issued the permits, it would also – with a full-
time Board, you are much more aware of the bigger picture
around the State, and how Grid reliability, or how these
issues affect everything. I was a County Supervisor, I know
the pressure on local governments, local planning
commissions, that is why planning is chaotic in the State,
because of local planning commissions and local boards and
City Councils, because you are so susceptible to changes
based on the locale, which has some advantages, and I
believe in local government, but it also can create some
very inconsistent and chaotic effects. So that is the one
change, along with those changes on the first section.

On the combined cycle, you can figure out some way
- I understand the concerns and the litigation, I think,
fairly well from the NGOs’ perspective and agree with it, in
general. I still think there has got to be some mechanism
to at least not re-open everything because I also have
empathy for a plant like Moss Landing, which was fairly
recent and a rigorous – I think it was pointed out – a very
rigorous proceeding. It was fairly recent in time, it was
not like this was 10 years ago. And it was adapted based on subsequent court decisions, I think, as Chris pointed out. I do not know, I will leave that in the hands of our attorneys, if you can come up with any language that at least gives some benefit to people of projects that have actually gone through a process and paid, they should get some benefit, to say that mitigation automatically gets them out, I would agree that is a stretch on the combined cycle.

What is next?

On the CAISO language and the deference, I guess, to other agencies, I think the rebuttable assumption language which is in there is way too strong. I mean, this Board, and I think especially if this Board issued those permits, like I said, whatever Boards here, whatever Governor, whatever party they are, the points to this body are going to be well versed and have that big picture, I think, just by the nature of this job we all sit in, and I think we are quite capable of making those determinations on a case-by-case basis, in terms of good reliability, and taking in the CPUC and the CEC and the ISO’s testimony, and evidence, I think the Environ’s, they changed it to “demonstrates” continued operation, I like that better than “determine.” I think that is a better standard. I think if CAISO demonstrates that a plant is essential to maintain reliability to the electrical system, and they provide us
with that demonstration, this Board is going to take some
deferece to that, just like we would hope the PUC and other
agencies take some deference to our determinations on the
Clean Water Act in a proceeding before them.

The nuclear language, I think, is next, and there
is a lot of that. I agree with the edits the NGOs put
forward with the clarification that PG&E added. I think
that it is beneficial to say what study, and SED, to add the
language which I think Mark had up on his PowerPoint, I
think, clarifies it, as well as the language which, I think
it was Steve, who brought forward from the environmental
community. I think if you put those two together, it makes
sense. In the monitoring provisions, I agree with 36 months
instead of 12 months. I think that is it for now, and I am
sure there will be more later.

CHAIR HOPPIN: Okay. Are you ready, Mr. Lauffer?
I do not have big comments here, but as requested, on page
11, Section 3.D.2, I feel it is only a reasonable request to
have an independent third party as it pertains to the
nuclear plants, that does have experience with nuclear power
plants, and I would say engineering experience with nuclear
power plants. So I would propose insert “Special studies
shall be conducted by an independent third party with
engineering experience with nuclear power plants, selected
by the Executive Director.” Hopefully that is relatively
simple. I do agree or disagree with my colleague, Mr. Baggett, that we should give some deference to ISO, they do have the responsibility, as I said earlier, for grid reliability. I do not think making a rebuttable presumption, given the magnitude of some of these decisions, is something that goes too far, so I do disagree there, but I would say that I think it is important that we do not get ourselves into a situation where we have requests for serial 90-day extensions. I would think that it certainly is under some other administration, some other attitude, it would be potentially possible to abuse the intention of the system by filing serial extensions for 90 days. So I would like some language that made it sure that that provision was not, in fact, abused. But that is the only comments that I have, or changes. Fran. Well, it will be interesting to see how the conversation develops with the Regional Boards. I had somewhat mixed feelings about it after talking with Counsel. Mr. Baggett brought up an idea that certainly appealed to me, although one of his ideas did not appeal to me, that possibly the Board should go to the Regions for the hearings if we assumed that authority, because that does deal with the fact that people in a regional area have a much more difficult time getting to Sacramento than we might have ourselves getting to San Luis Obispo.

MR. BAGGETT: I think this Board, we used to have
hearings every once a year we would intentionally go to a
place and have a Board meeting, like the Fish and Game
Commission, a lot of Boards do that. Our former Waste
Board, maybe that is what –

CHAIR HOPPIN: Yeah, I think our former Chair did
that, and then when I came here, I wanted to make sure I got
home at night so I could say hello to my dog, Nellie, that I
quit doing it. So I will accept responsibility for that
one, as well. The former Chair was good about that. Ms.
Spivey-Weber.

MS. SPIVEY-WEBER: I agree with many of the things
that have been said, but not all. But I will say the things
that I would like for you to spend some time on. One is the
idea of the actual flow over a five-year period, the 2000 to
2005, as part of Track 2, as well as the unit-by-unit
approach. Secondly, I definitely agree with Charlie about
we absolutely do not want to have serial 90-day activities,
so that is important. On the issue of seeding our
authority, I actually have been convinced that we have gone
too far in this wording, and I would eliminate the idea of
having to come up with a finding of overriding
consideration. I think that is pretty strong, and I would
not support that. Let’s see, under the nuclear, deleting
the “any other relevant information” in terms of monitoring
moving to three years vs. one. And then, on the issue of
the interim mitigation, I think we should put in some specific language that ties any mitigation funding to actual fish protection projects in a marine protected area, that are near the power plant that is contributing. And as I say, there were other things that had been mentioned earlier, but I just wanted to underscore those, and I will keep looking through my notes, and if I find something else, I will get back to you.

CHAIR HOPPIN: Tam.

MS. DODUC: I only have a page and a half. Like Fran, I agree with most, but not all, of what my colleagues have suggested. Let me just go through my list. I concur with Fran with respect to Track 2. I would like to see the change from “whole facility” to “unit-by-unit.” I also would like to see inclusion of average actual flow from 2000 to 2005, instead of design flow. I would add to that deletion of the 90 percent in reduction, and make that equivalent to Track 1. Also, in Section 2.A.2.D.1, I think the accounting for prior reductions should be calculated based on the affected units that have been replaced with combined cycle units, instead of the entire power plant. So the credit should be based on those that actually have been replaced, if that makes sense. So, for example, where it reads, “Owner-Operator may count prior reductions in impingement or mortality entrainment result from the
replacement of steam turbine power generating units with combined cycle power generating units towards meeting Track 2 requirement,” then the next part says, “for the entire power plant where the units are located.” I would like that deleted and have “reductions be based on reductions for the units replaced with the combined cycle units.” I agree with Mr. Baggett with respect to the combined – well, actually, I am not sure I understood fully what Mr. Baggett said on this point, so let me withdraw that and say I agree with the enviro panel’s recommendation that we delete the credit from the prior entrainment reductions, that would be the last paragraph in 2.A.2.D.1, as well as the exemption in 2.A.2.D.2.

With respect to Section 2B, the compliance dates, I agree with Mr. Baggett and Ms. Spivey-Weber with respect to the deference language to CAISO. I think I would like to see the language of “afford significant weight” being there in place of “finding of overriding consideration.” I also agree with Mr. Hoppin and Ms. Spivey-Weber about taking care of the serial 90-day extension. I would like to see – I believe it was the Enviro Panel who suggested that, to Section 2.B.2.A, we add language that the CAISO suspension option may not be used more than one time in any 12 months, and not more than three times in total for each existing power plant.
With respect to the nuclear fueled power plants, I would like to see in Section 2D, replacing the word "any" with "safety" when referring to requirements established by the Nuclear Regulatory Commission.

In the implementation provisions of Section 3, again, with respect to SACCWIS, Section 3.B.5, I believe, I prefer to use the term "afford significant weight to," instead of the language that is currently in there, in terms of overriding consideration. And, of particular importance to me, is deletion of the language in 3.B.5, that would suspend the compliance date for a period not to exceed two years if the facility is unable to obtain permits. I think any question of reliability, any questions of implementation, can be addressed through the SACCWIS and through the recommendations, or to this Board for consideration, and I prefer that we not tie our hands and limit ourselves with respect to our flexibility on compliance dates by committing at this point to a cap on suspension of compliance date.

And then, finally, with respect to Table 1 in Section 3E, we have heard today about how well Humboldt Bay is operating in terms of their meeting the requirement, I would like to see their due date be reflected as December 31st of 2010, same with Potrero, and for South Bay, December 31st, 2011. I was going to recommend changing AES’
facilities to a phased compliance between 2020 and 2024, but
since Mr. Pendergraft did not make that suggestion today,
ever mind. And with that, that completes my most urgent
changes.

CHAIR HOPPIN: Mr. Baggett, I have confused at
least one of my colleagues here with my idea of how we are
going to let you know how we feel about these proposed
changes and amendments. We have all made something. It was
my understanding that you would come back on a section-by-
section basis, and we would go through them individually and
do essentially a straw poll, does that work?

MR. LAUFFER: Yeah, at this point in time, Chair
Hoppin, I did not hear anything that was actually
contradictory between the two, so we will do our best to
synthesize all those, and then the Board members will be
able to discuss each one of them altogether.

CHAIR HOPPIN: I am not sure when we had our
discussions, the only thing that I was not real clear on was
whether Mr. Baggett was making the proposal to change the
permitting authority to the State Board. Walt had referred
to it. I had commented on a provision that Mr. Baggett had
inserted that appealed to me, you know, if we did do that.

Is that --

MR. BAGGETT: Yeah, I would agree. I guess, for
me, it is coupled to the ISO language. If this body does
it, I feel we can relax some of the rebuttable presumption language. If it is this Board that is going to adopt those permits, I think that is the key. Otherwise, I would agree with the Chair that that language needs to be stronger. I think it does not if it is this Board, and secondly, I just want to clarify, I am still not - I have not been convinced this design vs. generational flow issue, I think, is going to be an incredible - I do not know if it is equitable for the small peakers that only work 8 percent of the time to say generational flow. Maybe I do not understand it well enough. So that one, I am not committed to going along with my two colleagues on the far end down there. On all those changes, I will, with the other parts on the unit-by-unit, and so on, but the design power, I think, is pretty critical. And the last one, just to clarify again on the nuclear language, I support the NGO draft coupled with the PG&E language, which I think both of them were very specific, and I do not think they contradicted at all, they actually clarify each other’s language, the way I read the two.

MS. DODUC: Sorry, could I ask Art to clarify if he had any recommendations or any suggestions to staff with respect to the credit for closed cycle units, so that would be -

MR. BAGGETT: I do not. I am struggling with that
one, like I said. I do not know if staff has got some
ideas, I know it has been talked about a lot. And you had
some specific language. I was not quite sure, what were you
changing? Something in there, weren’t you, Tam, in the
language that was written on page 6? Were you just deleting
that whole paragraph?

MS. DODUC: I was suggesting deleting, yes.
MR. BAGGETT: You were deleting the whole
paragraph, okay.

MS. DODUC: I think that was consistent with the
recommendations, not only from the environmental groups, but
also EPA and the Coastal Commission, as well.
MR. LAUFFER: So again, just to clarify for all
the Board members, what we will do is we have heard what all
the Board members have said, we will do our best, we will
take staff away into a room, my guess is probably 30-45
minutes, to work through and come up with the language.
None of this has actually been incorporated yet. What we
will then do is we will present it up and the Board members
will essentially, item by item, be able to have a discussion
amongst yourselves about the pros and the cons of amended
the staff proposal to incorporate that provision. We may
take up one item, the NPDES issue and having the permits
issued by the State Board first, because that happens to cut
across many elements of the policy, including removing
provisions that you had us insert back in December, because
this would be the NPDES Permit for the facility, there would
no longer be the Regional Boards regulating the discharge
element, which is language that the Board had requested last
December.

MS. DODUC: I am sure we will discuss it further,
but as we mentioned today, this policy only addresses
intake, not discharge, so if we were to assume the task of
issuing discharge NPDES permits, I think it needs to be made
clear that it would comprise more than just the
requirements, as reflected in this policy.

MR. LAUFFER: Yes. I mean, absolutely. It is a
national pollutant discharge elimination system permit. I
mean, if we issue the NPDES permit, we will be regulating
and implementing all of the other provisions of the NPDES
program, as well, including the requirements of Clean Water
Act Section 301(B)(1)(c), that requires compliance with
water quality standards, implementing whatever other Basin
Plan provisions there may be, and we will be regulating the
entire discharge through that NPDES permit, as well as
implementing the cooling water intake structures here. This
does not supplant any of the other requirements we have to
establish.

MR. BAGGETT: And the Regional Board staff is
still right to permit with the State Board, I mean, we have
done that more than once since I have been here.

MS. SPIVEY-WEBER: And I do think we will need to be prepared to have a discussion about doing the flow versus this design flow – actual flow vs. design flow.

CHAIR HOPPIN: Anything else?

MS. DODUC: 4:30?

CHAIR HOPPIN: Well, it is whenever they come back. It is like setting a time schedule when you do not know what the heck is going to happen. Do you want to set a time schedule of 4:30?

MS. DODUC: Yes.

MR. LAUFFER: We will do our best to be back by 4:30.

CHAIR HOPPIN: We will do our best to have this plant constructed by 4:30.

(Off the record at 3:52 p.m.)

(Back on the record at 4:58 p.m.)

CHAIR HOPPIN: Thank you all for waiting. Staff, thank you. Are you ready to proceed, Mr. Lauffer? Or would you like a few more moments?

MR. LAUFFER: We need to pull up a file.

MR. BISHOP: Okay, while they are bringing up the file, we have attempted to put together all of the concerns and comments. In a couple of instances, we had to weigh what we heard and come up with what we thought satisfied
both Board members when there were multiple Board members.

You will, of course, decide if that was adequate as we go through those. The first one we were going to talk about is the NPDES delegation to the Regional Board. Oh, yes, I am sorry, go ahead. Walt’s question on the mesh, first.

MR. GREGORIO: So, Board member Pettit, you asked to just give a brief explanation of the pros and cons of the 200 micron, using that in the monitoring provisions. So first off, the previous studies have almost uniformly focused on fish larvae, which are mostly in the size range that are greater than 333 microns. But most of the invertebrates, and most of the life stages of invertebrates are below that size. Two hundred microns would capture nearly all of the invertebrates. Invertebrates are important. The previous presentation from Joe Dillon mentioned the white abalone being endangered, well, actually the black abalone is endangered, as well. And that is stated in the SED. Those are examples of endangered invertebrates that are important in terms of their food resource value and their ecological value. But a lot of other invertebrates are important ecologically and, in some cases, as seafood resources, as well, bivalves, oysters, claims, and that sort of thing, urchins, sea cucumbers, so these are just some examples of what we would consider very important invertebrate species. And we really do not know
exactly the status of those species in terms of entrainment.

One other thing to bring out is, I mentioned fish larvae are
larger than 333 microns, but if a fish is swimming and the
net is attempting to catch that fish, if it is swimming and
it goes - it can go through a 333 micron mesh if it goes
through head-first, or tail-first, and we really do not know
how effective the 333 micron mesh size was in every study
because of that escape measure that can happen. And so, if
you had a subsample of the 200 micron, you would be able to
calculate how many fish are actually measuring or not. So
from the staff’s standpoint, we believe it is important to
know what the status of the 200 micron fraction is. We
believe we have a responsibility to understand the status of
the marine resources and the impacts of our regulated
facilities on those marine resources. It is more costly to
study the 200 micron fraction, but it does not prohibit the
use of the 333 micron fraction, it would just be an
additional thing that would be required. So, you know, sort
of the negative part about it is it costs more, it is more
difficult to identify some of the invertebrates to species
level, but the positive thing is that it would give us a
better handle on what invertebrates, and for that matter,
what fish were escaping the larger mesh size.

MR. PETTIT: So I presume, then, you would not
know how you were going to use that information until you
see what you get. Is that correct?

Mr. Gregorio: Well, I think in the baseline scenario, it would be very good to know going in what the effects are on the invertebrates, so I think in that sense, we would definitely know what to do. Depending on the kind of Track 2 control technology that is employed, there could be possible improvements, or at least a basic understanding of what the effects of that control technology are. So I think we are basing this primarily on being able to know and understand the status of these organisms.

Mr. Pettit: Okay, I will let that go. And I presume if it turns out that there are really feasibility questions that there is potential for relief, at some point later. And thank you.

Mr. Gregorio: You are welcome.

Chair Hoppin: Thank you. A couple housekeeping issues here. We are closed for public comment. Mr. Lauffer, how many proposed amendments or changes do you have? I want to make sure that we go through this straw poll concept in somewhat of an orderly fashion since -

Mr. Lauffer: The amendments are probably captured in four or five distinct categories, based on the input from the various Board members, and so Mr. Bishop is prepared to take the lead on presenting them up, and what we will try to do is we will to show - we will do it essentially issue by
issue, and so when we get to -- the first issue we are going
to see changes on will be the issue of the Regional Boards
issuing the NPDES permits, and Mr. Bishop will present that,
and he will show you the affected parts of the policy, or at
least describe it. Some of that is just more technical in
terms of word replacement. But I would guess there are five
large categories of changes.

CHAIR HOPPIN: And do you want us to vote on the
categories of changes, or the increments within them?

MR. LAUFFER: I think we would want to go on the
categories, and that would allow the Board to make notes.
For example, there were several different things thrown out
with regard to combined cycle by the various Board members,
and I think it makes sense to discuss all of the combined
cycle issues at once, and then vote on them. But, again,
combined cycle will be separate from the NPDES, will be
separate from the unit-by-unit. So we will walk it through
very systematically.

CHAIR HOPPIN: We will give that a try.

MR. BISHOP: Okay, the first thing that we wanted
to touch on was the delegation or having the State Board
take on the NPDES permitting for the Regional Boards. We
are going to walk you through in a minute what those changes
would look like to do that, but before we do, I want to
provide you with a little bit of information. First, we
have a lot of concerns about taking on that role, and so we
thought you should know that; two, we would see the Regional
Boards actually – their staff – writing the permits because
we do not have the staff to write the permits, and we do not
have the staff to go down there and learn everything about
those facilities. So what you would be doing would be
inserting yourself in the decision-making process, but the
permits themselves are going to look the same. So that
means that, if you have a concern about the permits being
different, it is going to start as a process of you telling
the staff to go back and re-try it again, that is very
similar to the petition and appeal process. So you may or
may not want to go into the practice of writing NPDES
Permits for what I would say is a marginal improvement in
time on this permitting. But, if you do, these are the
types of changes that you would need to do to get there.
And so we would modify the finding “N” which previously said
there was nothing in this policy that removed the Regional
Boards’ authority to issue NPDES permits. It would now say
something to the effect that, “In order to ensure a high
level of consistency, the State Board will take on this
action.” You can read it, I do not need to go through each
piece of that. So then we can go down through everywhere
that there was a Regional Board in this policy now changes
to State Board, so there are a number of issues, so we will
MR. LAUFFER: And let me be clear, actually if Darren can go back two pages, there are a couple of places within the policy where there are still references to the Regional Water Board, but it is not in a decision-making capacity, and we thought that it still made sense, that even if the State Board is issuing the permits for the notifications to go to the Regional Boards, since that is where the staff that will be actually doing a lot of the work on these permits will be. So you will see as we go through suspension that there are occurrences of Regional Water Board in here where it is simply a matter of providing notification to them. Any place that there is a decision-making step, where presently the Regional Water Board is, we have amended it to be the State Water Board. And so, Darren, if you could flip back down, now.

MR. BISHOP: Okay, so if you go to page 8, Darren, there you go, that is the first 2C, no, the next page, keep going, keep going, the page numbers are wrong, just keep going, there we go. So in the interim requirements, we would remove the Regional Board and put State Board. We do that repeatedly throughout the document. I do not know that we need to go through each one, do we?

MR. LAUFFER: The only place that I want to go, if Mr. Polhemus could go down one more page, keep going, it is
going to be the next C section, there we go. This is the operative provision of the Draft Policy where the NPDES permits were to be reissued and modified, and this is where you see the real substantive change from what we discussed, or what the Board members discussed before we went out and took the break. And this now has the State Water Board reissuing or, as appropriate, modifying the NPDES permits. And importantly, there was the concept thrown out that the hearings should be in the affected region. So this particular paragraph has been modified to reflect that the State Board would be limiting its discretion and saying that the State Board is going to reissue these permits, and when it does so, it is going to do so after a hearing in the affected region. And, as John said, we do not need to go through all the other Regional Water Board/State Water Board, it can pretty clean be encapsulated and wherever there is a decision-making step, that would now be up to the State Water Board as opposed to the Regional Water Boards. The Regional Boards may still receive some notification and, as John indicated, from a staff perspective, we do have some concerns about this, it is not a significant change because, I mean, it really is just mechanically inserting the State Board in place of the Regional Water Board for the decisions, you know, operatively, in terms of how people are regulated, the public participation process, all of that is
going to stay the same. Our concerns just flow from the
fact that you are going to end up with some management
difficulties because the regions are going to have the staff
that we would be using in order to prepare these permits,
and the paradigm of Porter Cologne is typically that the
Regional Boards issue these permits, and as you heard me say
earlier, we have tried very hard to kind of straight jacket
the decision-making process on the compliance schedule so
that, really, all those decisions are still occurring up
here at the State Water Board. And I think, with that, we
would turn it over to the State Board for discussion.

MR. BISHOP: There is one other option that was
raised in our discussion that you should at least consider,
is that, on this page there at the top, it says that the
State Water Board shall reissue these permits. The option
would be to change that shall to “amend,” then it would be
on a case-by-case basis. If you decided that would cause, I
think, a lot of confusion in the regulatory world, but, you
know, we have also heard many times that we do not like to
order ourselves to do something, the State Board does not
like to order a future Board to do something, which is what
you are doing here.

MR. BAGGETT: Wait a minute, but we do with
construction, linear construction -

MR. BISHOP: No, we do not. Those are not the
same, they are statewide general permits that are issued on a general basis, these are individual permits at a facility, so it is a different paradigm, it is not that we cannot do it, it is just a different paradigm.

CHAIR HOPPIN: You know, we have the advantage of the bartender’s view, if you will, so it is easier to read spatial inflections when things are suggested. And I appreciate what all of you are saying. My concern over this is that consistency throughout the state is as critical, if not more so, on this issue than anything else. And if we can help winnow that down and reinforce that consistency, I realize that we are talking about something that is a bit, you know, different, I realized that it will add certain complications, but I personally am not totally comfortable with the idea that we have the Regional Boards under this much control. So that is the only comment that I will make, but I should have turned it to my colleagues first, so with respect to the ladies now that I have spoken in front of them, Ms. Doduc?

MS. DODUC: Huh, okay.

CHAIR HOPPIN: Well, it is kind of an apology....

MS. DODUC: When I was, well, I am speechless on this item. I have actually written NPDES permits for two regional water boards, the San Diego and Santa Ana Regional Water Boards. And it is a very complicated process. I
share staff’s concern, as expressed through Jonathan, about
the level of resources, not to mention the level of
expertise, the familiarity with the local regional issues,
that would be involved in issuing these permits. And my
concern is, while I definitely – I see the difference
between issuing individual facility permits than a statewide
general permit, such as the one that we have done through
the Strong Bladder [phonetic] Program, as resource sensitive
as that permit was, I think to issue individual NPDES
permits for these plants will be even tremendously more
complicated. And I still go back to the issue that, while I
appreciate the need for consistency with respect to
implementation of this policy, this policy addresses the
intake component of the once-through component, it does not
address in any way, shape, form, the discharge component of
these power plants. And a NPDES permit would have to cover
both. And I certainly share the Chair, as well as Mr.
Baggett’s concern about consistency in application of this
policy, but I think to ensure that by assuming the NPDES
permit authority overall, is huge. There must be another
way, like directing staff to work very closely with the
Regional Boards as they are reissuing these permits to
ensure that the provisions of this policy are incorporated.
Perhaps we could go as far as to, you know, whether we wait
for the petition process, make some sort of pre, you know,
decision that the policy, that this once-through cooling
policy, the provisions there, must be incorporated or must
be consistent into these individual permits, or it is an
automatic remand. You know, something other than our taking
on the entire NPDES permits for these facilities, which is
different, and I think much more significant than ensuring
the consistency in applying just the intake component for
these facilities.

CHAIR HOPPIN: But we are not taking on, as
proposed, the entire responsibility, we have just been told
it will be the same staff doing it, we will just have more
oversight and the opportunity to preclude something being
taken up on our own motion when we do not like it. So, you
know, if this had come back with our staff writing all these
permits in-house, and having the hearing in the affected
regions, I can see why that would not work, but we are
utilizing the staff in the regions under our direct
supervision. So to me, that has tempered what I think the
original thought was, and that was to have - I will ask Mr.
Baggett and Mr. Pettit, but that was originally to have our
in-house staff writing this, the idea of having direct and
more direct oversight of staff in the regions doing it, to
your point.

MS. DODUC: I would agree that that does help
things a little bit. That does not ease my entire concern
because I think I support the process that is put in place with respect to deference to the Regional Board, picking to account local concerns and issuing local permits with the petition to the State Board. But, yes, I mean, the Chair is right in that it eases my concern a little.

CHAIR HOPPIN: Thank you.

MS. DODUC: Was that a soft rock I threw at you?

MR. BISHOP: I just have to jump in because you know that we do not actually have authority to manage the Regional Board staff. We would assume that they be willing to do that, but they do not work for you, and they do not work for me, they work for the Executive Officer, who is hired by their Board, who could tell them not to write those permits.

CHAIR HOPPIN: And who pays them? Who provides them with legal service?

MR. BAGGETT: You are making my point for me.

MR. BISHOP: I am just telling you what it is.

CHAIR HOPPIN: Fran. Again, I jokingly cut you off, but are you done?

MS. DODUC: I think I am done.

CHAIR HOPPIN: Okay, Fran.

MS. SPIVEY-WEBER: I would like to hear from Walt, in particular, because he has had a long history with this Board and knows the complexity of writing NPDES permits, I
assume, and yet you were one who, I think, first recommended this with Art. Why - what do you think you are getting by taking on this what everyone is describing as a big job?

What do we get for it?

MR. PETTIT: I guess, first off, this is a big jump, and I certainly appreciate the staff’s concern about the implications of it. And actually, it goes farther than what I was hoping to come up with because Ms. Doduc made a very good point. The only thing I was interested in with respect to this particular issue is that the State Board retain control over the implementation of this policy to make sure things happen consistently in the Regions. I did not envision taking over the entire NPDES permit process, although I think both Mr. Baggett and Mr. Hoppin have explained that that could be done, that is probably a bigger jump than what I had in mind at the time. I was reluctant to just rely on the fact that we would tell everybody to coordinate because my past experience has indicated that that does not work particularly well. We can insist on coordination forever and coordination frequently does not happen. And so I was hoping to get some kind of positive leverage and I do not know exactly how to word it, but I will repeat that the part that I was interested in was to make sure that those Regional Board actions insofar as their implementing - or the actions, whether they be Regional
Board actions or State Board actions – insofar as their implementing the provisions of this policy, be controlled by this Board. And the idea of taking over the entire NPDES Program, I certainly would be willing to hear other comments out it, that is probably more than I was thinking of biting off when I first mentioned this. So there are several options, I do not know if we could come up with wording to reduce the scope of this, to take care of that initial concern. We could always put language in there that says we really mean it. You know, that in my experience never works. But anyhow, that was the original intent, and I appreciate Tam’s comment about the fact that they are somewhat separable issues, and I was concerned about the one and not the other, so….

MS. SPIVEY-WEBER: What about the idea that Tam put forward of an automatic remand, or something in that vein?

MR. LAUFFER: That is certainly a good option, I think, for the Board to consider, to the extent there is tension amongst the Board members on this issue. As you know, whenever an item is petitioned or when the Board is considering own motion review, you know, there is a standard that we have established in our regulations that are substantial issues. And certainly, one possibility to kind of navigate this is, you can provide direction to the
Executive Director, who in turn will provide that direction to the Division of Water Quality and to the Office of Chief Counsel, that if we are reviewing any NPDES permits that are implementing this policy, that we should be reviewing it with a very fine tooth comb to ensure scrupulous compliance with the policy. And if there is any deviation, that would be something that this Board would take up immediately in an order. And so, essentially it would be this Board conveying to the Director that any deviation from this policy, even very minor, should be considered a substantial issue appropriate for review, and this Board will handle it in that way.

CHAIR HOPPIN: Michael, if that is to even be considered, though, the directive is not to our Director, it is a policy and a statement that will endure time, and different Boards, and different Directors. And without doubt have no wiggle room, or no latitude for interpretation by subsequent Executive Directors.

MR. BISHOP: So under this section, if we wanted to go down that direction and make this long-lasting, and ensure that it is – we could retain the Regional Board, but right after the Board adoption, we could put in that the State Board will review these permits for consistency with this policy. So we would essentially say that the Regional Board will adopt, and the State Board will review these to
determine consistency with this policy, and bring any -

CHAIR HOPPIN: You are suggesting that we review
them after they adopt them, not before?

MR. BISHOP: We can work with the regions before,
but there is nothing to review before, it is up in draft,
and you could direct us to do that, too, of course we will.

MS. SPIVEY-WEBER: And, Michael, you had a little
bit of additional language that it would be substantial,
that any deviation from this policy would be deemed a
substantial deviation.

MR. LAUFFER: Yes, and what I am trying to
envision is, I think John is proposing there be essentially
a fifth paragraph under this Paragraph C, John? That would
indicate State Water Board will review all NPDES permits
adopted under this policy to ensure consistency. And then
we would add in, in reviewing such permits, the State Water
Board, the Executive Director, will consider any deviation
from this policy to be a substantial issue, appropriate for
review.

CHAIR HOPPIN: I am still more comfortable with
your original version.

MR. BISHOP: So my suggestion would be that we
then hold a straw vote on the original proposal and then
determine if we want to look at the alternate, so that we
can keep moving forward.
CHAIR HOPPIN: Let’s do this with a show of hands.

Art, go ahead.

MR. BAGGETT: I feel very strongly about this. We do it with TMDL – we do it with a lot of things, where Regional Board staff does a lot of work that comes through this Board to approve. You can delegate to a Hearing Officer, the whole Board does not have to go down there, a Hearing Officer can hold a hearing and bring it back to the Board for a vote. I think there are a lot of side benefits that actually gets us to the regions, it is better for the regions to get to know the State Board a little better. I think there are a lot of other advantages here that go way beyond this policy. It will be tough at first, as Jonathan says, because we do not command and control, but I think over time it will change so, in the long term, it would make a stronger working relationship, and truly make it Water Board(s) plural, instead of still nine regional boards and the state board. And I think it has other benefits, and I think the buck ultimately stops here. On a policy of this magnitude, we have heard all this argument about the CAISO language and how important this is from both sides, so I think the buck should stop here.

CHAIR HOPPIN: Walt, actually you were asked a question by Fran, you really did not have a chance to comment on your own -
MR. BAGGETT: I have got one last comment. And I think we are kidding ourselves if we think that a future Board is not going to be back here within two or three years dealing with NPDES for discharges from these plants, and mainly because of desal. It has already become an issue in Region 9, it is going to be an issue statewide on discharges from any ocean discharge because the Ocean Plan Amendments – this Board is going to be squarely in the middle of dealing with all discharges to the ocean from these plants, you will not be able to avoid it, it is going to happen and we are going to have to have the same policy for discharges. I just predict it will – it is 316(A), as I recall, and the Clean Water Act will be back here, doing this whole thing over again on the other side, on the out-flow side, within three or four years, somebody will be. So we might as well start getting familiar with how these things work and bite the bullet.

CHAIR HOPPIN: Walt, do you have additional comments?

MR. PETTIT: Well, you mentioned that Fran may have had a question for me?

CHAIR HOPPIN: We did not really call on you for a comment, she asked you a direct question and that was –

MR. PETTIT: Well, I think I made the point I would like to have made, and that is that I would like to
see a mechanism to make sure that the State Board retains
some control over implementation of the policy. I am a lot
more open as to which option, you know, you all choose.

CHAIR HOPPIN: Well, like I said, I think if this
policy had come back with our staff being required to write
the permits, I do not think it would have functioned, and I
had reservations about that. I would agree with Art,
whether the regional boards, to Jonathan’s comment, like us
overseeing activities or not, I think in this case it is
important, we are not talking about 25 that are going to 58
in a couple of years, we are talking about 17 or 18 that
potentially could decline in a period of time. So with that
said, I think the way to do it, Mr. Lauffer, if you do not
have any objection, all those that are in favor –

MR. PETTIT: Mr. Chair, could I make one more
point, please? With regard to the staff’s concern, I think
there is a valid concern there, and one thing I would just
want to point out is, if we take over the issuance of those
permits, then I assume that would mean that we would be
looking at self-monitoring reports and everything else that
goes with the administration of those permits. And that
gets beyond just writing a permit, so –

CHAIR HOPPIN: But I think the monitoring, we
could delegate that to the regional boards.

MR. LAUFFER: If I can, obviously, as part of
reviewing or reissuing and modifying NPDES permits, the staff at the State Water Board, in terms of making recommendations and pulling up whatever preliminary work that is done by the regional board, we will have to look at those materials. However, the day to day enforcement of the permits, the policy does not modify that, I mean, the monitoring reports will still come into the regional water boards, they will be the ones responsible for ensuring enforcement of the NPDES permits. The way the language has been written, it is just the obligation to modify and reissue, and potentially revoke the permits that lies with the State Water Board.

MR. PETTIT: Thank you.

MR. BISHOP: What I would suggest is that we have two options that have been put out for this, in that we vote on the first one, which is the one that Art suggested and that we wrote up, and the second, if that fails, then we could vote on the option that would have the Executive Director look at, you know, more consistently look at those, and we can go through that. But so that we keep moving this forward.

MR. GREGORIO: Chair Hoppin? Could I just add one quick thing, just something for you all to think about? There are a lot of these permits, the majority of them that are past due, or that are just ending their permit cycle,
and one of the issues, in fact, one of the driving issues behind us taking on this policy was to try to solve that backlog. I just wanted to mention that –

CHAIR HOPPIN: The reason I understood we were doing this, and we delayed issuance, is because it was so critical to have consistency on this policy, and that is what we are talking about here. We are not talking about, “Gee, I have a new hat I want to wear,” we are talking about whatever we can do to ensure consistency, and I think that is critical. We have been accused of seeding our authority on other issues today to CAISO and the SACCWIS, and all this and that, and now all of a sudden we are making sure that we are doing everything in our power to have consistency, and that does not seem like a good idea.

MR. GREGORIO: Well, no, I just wanted to mention the backlog situation, that is all.

CHAIR HOPPIN: Good. That it?

MR. GREGORIO: No, I agree with you about the need for consistency, it is just that there are many of these permits that need to be reissued pretty quickly.

MR. LAUFFER: Pleasure of the Board at this point. As Jon indicated, you have language up before you, that was what the Board had asked us to work on when we broke. And I would suggest that somebody move that language, and then we will see how the votes fall.
MR. BAGGETT:  I would move.

CHAIR HOPPIN:  Second.  We will have a show of hands or an “aye,” I think a show of hands will be clearer since we could be into a one vote situation here.

MR. LAUFFER:  Just as long as, for the Reporter’s sake, that it is clear who is voting.  It may be just best to do a roll if we think it is going to be a close vote.

[Roll call]

CHAIR HOPPIN:  All those in favor of the proposal that has been presented by staff, Mr. Pettit?

MR. PETTIT:  Yes.

CHAIR HOPPIN:  Mr. Baggett?

MR. BAGGETT:  Aye.

CHAIR HOPPIN:  Aye.

MS. SPIVEY-WEBER:  No.

MS. DODUC:  No.

MR. BISHOP:  Okay, that amendment passes, so we will put that in the grouping of ones that we are looking for as we go through the policy.

CHAIR HOPPIN:  I know we are going to roll through the rest of them in short order.

MR. BISHOP:  I am sure we will.  Okay, so the next section is the section on Track 1 and Track 2.  And if I can get myself in there, okay.  We had essentially three amendments suggested on this section.  I think that the way
to do it is to just do them one-by-one. Michael? Okay, we
had a suggestion to change the facility as a whole to a
unit-by-unit basis. Do I hear anyone that would like to
propose that as an amendment? Is there any discussion on
it?

MS. SPIVEY-WEBER: So moved.

MS. DODUC: Second.

MR. BISHOP: Okay, do we –

CHAIR HOPPIN: Does anyone have any comments on
this? All those in favor of the unit-by-unit basis change,
signify by “aye.”

(Ayes.)

Unanimous.

MR. BISHOP: Any opposed?

CHAIR HOPPIN: No.

MR. BISHOP: Okay, so that will be added to the
list. Number 2, we had the removal of the 90 percent in the
comparison between Track 1 and Track 2, that is in two
places, it is here on your screen at 2.B.2, it is also on
the next page. 2.A.2., excuse me, and 2.B.2.

CHAIR HOPPIN: Do we have comments on this
proposed change?

MS. DODUC: I will move it.

CHAIR HOPPIN: Any other comments. Do we have a
second.
MS. SPIVEY-WEBER: Well, second.

CHAIR HOPPIN: Well, we could not have a vote going in a second draft.

MS. SPIVEY-WEBER: Right. I second it.

MR. LAUFFER: For the record, you actually do not need a second if you want to move straight to a vote, but –

CHAIR HOPPIN: Really?

MS. SPIVEY-WEBER: You tell us.

MR. LAUFFER: I will send the memo back around.

CHAIR HOPPIN: I have got that memo somewhere. All those in favor of the proposed amendment, signify by “aye.”

(Ayes.)

Any opposed?

MR. PETTIT: No.

MR. BISHOP: So we had, I know, two opposed. How many ayes, I am sorry?

MS. DODUC: Aye.

MR. BISHOP: Charlie?

CHAIR HOPPIN: I slurred my words on that one. I am going to vote no.

MR. BISHOP: Okay, so that one does not add to the list.

MS. DODUC: Jonathan, I am sorry, you missed one, I think.

MR. BISHOP: No, I have not gotten to it yet.
MS. DODUC: In Track 1?

MR. BISHOP: Yeah.

MS. DODUC: Because Mr. Baggett made the motion about the feasibility.

MR. BISHOP: Where was that?

MS. DODUC: Well, it would be at the beginning of this, right?

MR. BAGGETT: Right.

MS. DODUC: Art, didn’t you – yeah.

Mr. BAGGETT: Track 1 does not have to be feasible, right?

MR. BISHOP: We did not get that.

MR. LAUFFER: Yeah. I think what was happening, we had a discussion about this and the way that the conversations played out. If the 90 percent reduction was removed, I think that, from staff’s perspective, there was not a need to have the feasibility off-ramp, because they would have essentially been identical reductions. So given that the vote just occurred two to three, and it failed to go to the 90 percent reduction, I think at this point in time it makes sense to consider whether or not feasibility should be restored to off-ramp from Track 1, which was what Mr. Baggett’s suggestion was.

MR. BAGGETT: Yeah.

MR. BISHOP: Okay. I lost the – am I going the
wrong way? Okay.

MS. DODUC: It would be in 2.A.2.

CHAIR HOPPIN: You are going a little faster than I can read, I can tell you that.

MR. LAUFFER: There is not going to be any language up to reflect it at this point, and that is the problem.

MR. BISHOP: Yes, but I will get the old language.

MS. DODUC: And how would we propose ensuring consistency in this feasibility determination by the regional boards? Well, would we --

MR. BISHOP: It would not be by the regional board, it would be by the state board.

MS. DODUC: Yeah, okay.

MR. GREGORIO: So the thing that was removed originally was on page 4 under Track 2, and while Jon is looking it up there to potentially insert this, I will just read it. This was the way it was originally stated in the previous version: “The owner or operator of an existing power plant, if the owner or operator of an existing power plant demonstrates to the,” in this case, it was, “...to the regional board’s satisfaction that compliance with Track 1 is not feasible, the owner or operator must reduce...” And then there was a definition that we had in the definition section that defined what “not feasible” was. Did you find
MR. BISHOP: I am sorry, I do not have that version.

MR. LAUFFER: What Dominic is referring to is, if the Board members pull out their redline version of the document, on page 4, and this is for members of the audience who are following, what corresponds to page 4 on the redline is now up on the screen. The redline has been accepted, though, on a clean version up top, and so the redline people are seeing is the staff changes that were based on the Board members' comments a moment ago. And what Dominic is proposing is that, what you see at the top of this page will go back to the language that was in the November 23rd, 2009 draft of the policy, with the revision being that, instead of it being the regional water board that would make the satisfaction or the not feasible determination, would now be the State Water Board. And so what you would see on the screen up there where it says Track 2, it would now read, “If an,” and then you would strike the word “the,” “…owner or operator of an existing power plant,” and then inserts, and again, this is just restoring language from the November 23rd draft, “…demonstrates to the State Water Board’s satisfaction that compliance with Track 1 is not feasible, the owner or operator,” and then you would pick up with what is on the screen, “…must reduce impingement mortality,
entrainment to marine life of the facility, on a unit-by-
unit basis, to a comparable level of that which would be
achieved under Track 1.” And then, what Dominic is
indicating is that you would restore the definition of “not
feasible” from the November 29 draft. And that definition,
which would appear for the Board members, if you flip to
page 18 of your redline, it would read, “Not Feasible.
Cannot be accomplished because of space constraints or the
inability to obtain necessary permits due to public safety
considerations, unacceptable environmental impacts, local
ordinances, regulations, etc. Cost is not a factor to be
considered when determining feasibility under Track 1.” So
that was original staff proposal back on November 29th –
pardon me, November 23rd, 2009.

CHAIR HOPPIN: Mr. Baggett.

MR. BAGGETT: That is fine.

MS. SPIVEY-WEBER: I second.

CHAIR HOPPIN: We do not need to second.

MS. SPIVEY-WEBER: Oh, that is right.

CHAIR HOPPIN: All those in favor, signify by

“aye.”

(Ayes.)

Any opposed:

MR. BISHOP: Okay, so that is added to the –

MS. TOWNSEND: Excuse me, member Baggett, did you
motion that?

MR. BAGGETT: Yes.

MS. TOWNSEND: Thank you.

MR. BISHOP: Okay, the next item in this section is the proposal to change in terms of design flow to as compared to average actual flow for the corresponding months from 2000 to 2005.

MR. GREGORIO: During the section of this meeting before the break, we were asked to explain the difference between actual and design. Do you want us to do that now?

MS. SPIVEY-WEBER: Yes, I do.

MR. GREGORIO: Okay. So we, as staff, had originally favored using the actual, and by “actual” to “average,” depending on whatever that period is determined to be, instead of “design.” And the reason is because it is stricter, it is more protective. And so I would be the first one to admit that. But, as we were going through the process, it became clear to us that, if we were to make Track 1 and Track 2 comparable, which was our general instructions, to try to make that comparable, but the only way to really do that was to use “design flow.” Now, by going back to “actual,” it will make it stricter. On a fleet-wide basis, in other words, all the power plants combined, it is only marginally more protective. And I think I have a graph that we threw together, that maybe...
Jeanine could bring that up as I am talking here, we do not have to wait, but when she brings it up, I will talk about it.

CHAIR HOPPIN: Dominic, you know, “threw together” is kind of like skiing and some of those other phrases we use around here, that we need something that sounds a little bit more substantial than “threw together,” okay? It affects people’s lives here and things in the ocean’s lives.

MR. GREGORIO: Right, so maybe it was a bad choice of words. But, anyway, “we put this together on the fly,” and what it shows you – sorry about that, it is late – we did it as best we could – and so what is shown here on number 1, you see this is a column chart, and number 1 shows the comparison between the design flow and the 7 percent of design flow, so under Track 1, design cut down to 7 percent, the little red section down there, that little red column represents 7 percent, ignore number 2 for now, go to number 3. Number 3 represents the actual flow, and then cutting that down to 7 percent. And this would be in the scenario where a plant decides to have compliance based strictly on flow reduction, so this is basically the way we are showing it here. Now, the one in the middle, number 2, all it does is it takes the red column from number 1, and the red column from number 3, and it puts it next to each other. And so this is just to illustrate that there is a marginal
reduction, but it is not a really huge difference when you consider it on a plant basis. But there is one caveat, and that is that, on an individual plant basis, it could make a big difference. There are some power plants where changing it from “design” to “actual” could make it a big difference. And I think Ms. Sikich mentioned those power plants during her presentation. So that is just a really quick explanation of the comparison.

CHAIR HOPPIN: I think Art has a question for you.

MR. BAGGETT: I am trying to – I think I understand this now. So if you have a plant that is only peaking 7 percent of the year, so under design flow, on number 1, you have got enough water, right? Because you are running at 93 percent, you ignore it, so over a year you have enough water running at 7 percent of total yearly design flow, but if it is a peaker plant, it is running at 100 percent capacity for two days in August. It cannot do it because it can only get the proportional percent of that 7 percent for two days a year, and that is the problem, it cannot run at full capacity for two days, it can only run at 7 percent of full capacity for two days, which makes it like – why would you turn it on? I think that is the problem with these small peakers, it is not the yearly entrainment, but the way this is set up, if you do that averaging, you basically might as well – they cannot run because they are
running at such a small amount for two days a year, and so 
you have got a black-out coming, and you have got 110 degree 
temperatures in L.A. and they need this full peaker on for 
two days only. But because we now have changed it to actual 
flow, they can only run it at 7 percent capacity for two 
days, not at 100 percent capacity for two days, and maybe 
there are brighter minds here, but there has got to be a 
way, because I do not think there is an argument between – 
maybe there is with the NGOs – but I do not think that is 
the intent. The intent would be to run it for those two 
days full blast, maybe, and then not run it for the rest of 
the year. But the way this is written now, that could not 
happen. That is the way –

MR. BISHOP: I think you are correct, member 
Baggett. The point, when you change it to actual flow, what 
you are saying is that you cannot run that on a once-through 
cooling basis.

MR. BAGGETT: Right.

MR. BISHOP: But that is the point of the policy, 
that is what you will be saying with this policy is you do 
not want to run it on a once-through cooling basis.

MR. BAGGETT: But yet you could run it all year at 
7 percent capacity for 365 days, and take the same volume of 
water over the year, and then, so you can shred everything 
by 7 percent a day all year round, instead of the same
amount of water for two days.

MS. JENSEN: Our policy specifies –

MR. BAGGETT: So it is the same effect as the ocean, potentially –

MS. JENSEN: They do not get to average over a year, they only get to average over a month, so they cannot – during the winter time when they are not running, they cannot use that as a credit for the summer time. Because we did want them to cut back.

MR. BAGGETT: Yeah, go it.

CHAIR HOPPIN: Fran.

MS. SPIVEY-WEBER: In terms of design capacity, is it design capacity as a baseload plant? Or design capacity as a peaker plant? What is – when we say “design capacity,” what do we mean?

MR. GREGORIO: Well, it is essentially what the plant was originally designed to do, and many of the permits, existing regional board permits, actually have the permitted flows that are identical to the design flows. Even though some of those plants are being used as peakers now, you know, they are not anywhere near their design capacity, many of them are still permitted for that higher level. And so the design just refers to what it was originally designed to do, regardless of what its current use is.
MS. JENSEN: It is pretty much the most it can pump. The pump has a certain capacity and that is the maximum they are able to pump physically.

CHAIR HOPPIN: Tam.

MS. DODUC: In the interest of moving this along, I will make a motion to –

CHAIR HOPPIN: Walt has got a comment.

MR. PETTIT: Yeah, I was trying to think through this thing on an operational basis and I think Mr. Gregorio and Art have both hit it, if there is a reason to keep these plants on standby and ready to go, in any case, well, then that reason is probably going to be that we are going to want them turned on full time for short periods of time, so if we go to actual flows, I think that defeats the whole purpose, and so I would not favor this amendment.

MR. BAGGETT: Comment. And they would still have to do the screens and all the other requirements of this policy, right? I mean, all the other requirements in this policy still apply, this is limited only to flows.

MR. GREGORIO: That is right. This is just the way to calculate the compliance.

MS. DODUC: I can see where this is heading, but I will go ahead and make the motion to approve the change from “design flow” to “average actual flow” from 2000 to 2005.

MS. SPIVEY-WEBER: I guess I still have another
question, and that is, in terms of this policy being a technology forcing policy, so that is one reason for going—you know, getting the numbers down quite low, so that there is an incentive to switch, or do something that gets you out of the once-through cooling approach. Now, the issue that Walt raised was that some of these facilities are going to be needed for grid reliability. And it is my understanding that we are using the schedule to figure out when they are going to evolve into something else that fits this design flow. Is that—am I getting the two things mixed up? I wanted to get a sense, if you—

MR. BISHOP: If the plant is needed for grid reliability and they cannot meet the compliance date, and went through this monthly average from 2000 to 2005, and that would mean they could not come into compliance, but they were needed for grid reliability, the policy has a number of places in it that would allow them to get a continuation, to continue operating, while they were needed for grid reliability. The difference is that, if we went to—say we went to design flow and they could meet design flow, but they could not meet annual average, it would not matter if they were needed for grid reliability, they would be able to operate for that period of time. So you would be changing the emphasis. One emphasis in this is you only keep those old power plants on as long as they are needed.
for grid reliability, the other is that you would be saying that, as long as on an annual average you are not causing more of an impact, then they could stay on. So they are both policy calls, they are just a different emphasis.

MR. BAGGETT: I understand that, and I think there is probably a way to work this out, but we are not going to do it at ten until six today with all this before us. I think there has got to be something – we have to timeline it into the policy so we know when plants are going to be retired, unless there is some extraordinary measure and some energy crisis, which could modify those. But if you put these numbers in an NPDES Permit –

MR. BISHOP: They would only go into place at the timeline that is at the end of the policy, they do not go into place before that. This would mean when that date in the policy of 2015, or 2017, or 2020, they would have to meet this. It does not mean it between now and then. I would suggest that you take a vote on this.

MR. BAGGETT: I think there has got to be a way to fix it, but I do not see it.

MR. GREGORIO: If I may, just one quick explanation. Before you vote, just, again, it is worth knowing about, the period that we use, which as I said earlier today, was very difficult to get that information, we managed to get it, the 2000 to 2005 period,
some, including some of the folks in the energy agency, the Energy Commission, for example, that do not feel that is necessarily a representative period. I just wanted to mention that because it is just something to consider. And using a different period is problematic also because of having to collect all that information – which would be basically the responsibility of the power companies, but still it would be an effort.

MR. BISHOP: So, Board member Doduc has –

MS. DODUC: Has tried to move this item.

MR. BISHOP: -- has moved it. Is there a second?

MS. DODUC: We do not need a second.

MR. BISHOP: All in favor?

MS. DODUC: Aye.

CHAIR HOPPIN: Aye. All those opposed?

MR. BAGGETT: I oppose.

MR. PETTIT: No.

MR. BISHOP: Fran, I am sorry, I did not get –

MS. SPIVEY-WEBER: Aye. I am sorry.

MR. BISHOP: So, now I think we are on to the combined cycle. There were a number of issues related to combined cycle and so what we tried to do is figure out a path and provided some credit for the past changes that the combined cycle plant put in place, but did not provide for a variance or a direct compliance for all combined cycle, and
we did not propose to put in credit in there from past mitigation. So what we propose here to try and address the numerous concerns was to, under D here, was to essentially remove the “choose one of the following compliance options,” and then delete those two sections that follow that. What that does is give, in the sections above, the credit for past changes in flow for the combined cycle, but does not give it for the mitigation, and does not find them deemed in compliance. That is not exactly what anyone asked for, but it was what we could work towards, I think.

MR. BAGGETT: Wait, so you are on page 5. I have got my old marked up copy, which has all kinds of notes, so you are looking at D, leaving the first part of D on there, and then erasing everything below it? D(i) where it goes, “The owner or operator may count prior reductions?” You are keeping that sentence?

MR. BISHOP: Yes.

MR. BAGGETT: With the asterisks behind it, but not the end of that sentence?

MR. BISHOP: Wait one second – no, all we are keeping is above that, where it is the whole section about the owner or operator may count prior reductions in impingement,” that section, and then it explains how it is done with the maximum permitted discharge.

MR. BAGGETT: Got it.
MR. BISHOP: And then both those sections on that maximum permitted discharge, and then deletes everything following.

MR. LAUFFER: And I would just add, to make it crystal clear for all the Board members, there is a lot being balanced in here, one of the changes is that you will see that there is a sentence in the middle of what was (i) that is eliminated so that it is now basically – you are not looking to the entire plant, you are looking at the units.

MR. BAGGETT: We already did that.

MR. LAUFFER: And we did that below. And then, in addition, there was a change that Dynegy had requested, that the reductions should be broad-based, not just the reductions in entrainment, and so we have accepted that change of Dynegy’s on Dynegy’s suggestion, and that is based on the record we had from the Moss Landing facility.

CHAIR HOPPIN: Any questions of staff? MR. BAGGETT. Is that a motion?

MR. BAGGETT: Yes.

CHAIR HOPPIN: We have a motion from Mr. Baggett to accept the language as amended. All those in favor, signify by “aye.”

(Ayes.) Any opposed? It carries.

MR. BISHOP: Okay, the next section is dealing with the suspension language in the SACCWIS. There are a
couple of changes here. I will jump through this one first because it deals with the idea of serial 90-day suspensions or consecutive 90-day suspensions. We looked at a number of options for this and we think that, by just adding a sentence that says, in B, this is for the longer than 90-day suspension, or for consecutive less than 90-day suspensions, would not require coming to a hearing of the Board. We did not choose the option that the environmental folks put forward that Member Doduc asked us to look at because the logic, at least that we had, is that if you ask for less than a 90-day suspension, and we eliminate the ability for them to be consensual, the end of that 90 days is they are in compliance, and so they could not have another one in that year, they would never have another one for that facility because they would either be in a longer than 90-day suspension, or they would be in compliance. And both of those would come to the Board for a hearing, so that is why we chose this. This, I think, closes that gap.

MS. DODUC: The other part of that language was that suspension would not be allowed more than three times per facility. I think under this language –

MR. BISHOP: You only get one suspension before you come to the Board for a hearing, and then the hearing would set the timeframe. You would not keep coming back for 90-day suspensions if you had one –
MS. DODUC: Okay.

MR. BISHOP: -- and then you come back.

CHAIR HOPPIN: Jonathan, what if they had three consecutive 30-day under the less than 90-day suspensions?

MR. BISHOP: We would allow three consecutive 30 days as long as it was less than the 90 days.

MS. DODUC: I am fine with this and move for approval.

CHAIR HOPPIN: Any other discussion. Those in favor signify by saying “aye.”

(Ayes.) Any opposed? It carries.

MR. BISHOP: Okay, the next issue is the issue of your authority and the authority of the SACCWIS and the CAISO, and this idea of making it an overriding consideration. I am not going to be as elegant as Michael is on this, but what we thought about is that, instead of requiring you to make some finding of overriding consideration, and not asking CAISO to make some sort of demonstration, but that you would listen to what they say and give them grave significant weight, afford significant weight to them, is a balance between the idea of requiring them to make a demonstration to you, or you make a demonstration of overriding consideration. This is what we thought was in the middle. And did you want to mention anything else? Okay, so that is the proposed language to
deal with that issue.

CHAIR HOPPIN: I can tell you are just dying to move the motion there, Francis.

MS. SPIVEY-WEBER: I am. Well, no, I think because – it was my understanding that because we now are taking over NPDES responsibilities, that are enormous, this is – it makes it more palatable for some to reduce the, you know, to not have this overriding consideration language because –

CHAIR HOPPIN: If you were not so much younger than I am, you could have been my wife with a statement like that.

MS. SPIVEY-WEBER: I am sorry, so I do move.

CHAIR HOPPIN: All those in favor of the amendment, that does help temper the original language proposed that I was horribly uncomfortable with –

(Ayes.)

MR. BISHOP: Okay.

MS. DODUC: Yes, that was an aye.

CHAIR HOPPIN: It was somewhere below my tonsil.

MR. BISHOP: Okay, the next deals with the interim mitigation measures and there were two issues related to that. The first is that we had – we have got it on two pages, so I am really going to have a difficult time here – that we had delegated or proposed delegating to the Division
of Water Quality the authority to evaluate alternate methods
for the habitat mitigation. This would delegate that back
to the State Board.

MR. BAGGETT: But we gave that to a Division
Chief.

MR. BISHOP: Any time you want it, but right now,
the request was to have that come back to the State
Board, and so that is the change.

MR. BAGGETT: Okay, that is fine.

MR. BISHOP: Anyone like to make a motion on that?

MS. SPIVEY-WEBER: Move.

MR. BAGGETT: Second.

CHAIR HOPPIN: All those in favor, signify by
“aye.”

(Ayes.) Any opposed? Thank you.

MR. BISHOP: Okay, the second issue has to do with
making sure that any mitigation projects are actually
addressing increasing some marine life, and that they are in
the geographic region of the facility. This one is here and
it is also in another place, which is under the nuclear
facilities. It mirrors the same language, I can show you
that in a second, but I will get lost because I am not good
at this.

MR. BAGGETT: I move.

MS. SPIVEY-WEBER: Yes, I move – no, actually, Art
CHAIR HOPPIN: All those in favor, signify by “aye.”

(Ayes.) Any opposed?

MR. BISHOP: Okay, then we have a small change in the nuclear-fueled power plant section, which was to reinsert the word “safety” into this. In the past, we originally had “safety,” we removed it in this last version, and there was a request to consider inserting it back in.

MS. DODUC: I would move it, but I would also add “safety” to the third line up from the bottom, so it reads, “results in a conflict with the Commission’s safety requirements.” So I would add “safety” there, as well.

MR. BISHOP: Okay. So there is a proposal to add “safety” in two places.

MS. DODUC: Thank you.

MR. BISHOP: Any discussion on this?

MR. PETTIT: I guess I am comfortable with the change because my guess is, well, more than a guess, that probably anything that the NRC touches with respect to those plants, they consider a safety issue, so I think that is a pretty broad term.

CHAIR HOPPIN: With that being said, all those in favor signify by “aye.”

(Ayes.) Any opposed?
MR. BISHOP: Okay, thank you. Under the issue of SACCWIS, we have the two items here under Item 5, the first is the overriding concerns and replacing that with “affords significant weight.” I would say that, since we already did that earlier, that it would make sense in this instance to do the same thing, but that is up to you.

MR. LAUFFER: And just for purposes of clarity, what Jon is suggesting is that there are multiple changes that the Board may see up on the screen, and members of the public may see, Jon is solely dealing with the first issue, which is to add “affords significant weight” to the recommendation, and the striking of the rest of that sentence, unless the State Water Board finds that there is completing evidence not to make the recommended modifications, and makes the finding of overriding considerations, we will address the next issue separately.

MR. BISHOP: Yeah, I am sorry, I should have been clearer.

MS. DODUC: So moved.

CHAIR HOPPIN: Any discussion? All those in favor, signify by “aye.”

(Ayes.) Any opposed?

MR. BISHOP: Okay, the next issue here is the issue of providing a two-year period of suspension or extension based on the ability of a facility to get a permit. The
recommendation is to just strike this section. It does not constrain you in any way to have this removed, you can provide extensions. What it means is that you are not limited under that specific item, but when it is a permit that you have to give a two-year extension.

MR. BAGGETT: So moved. That is what we do in water rights all the time.

CHAIR HOPPIN: Any discussion? All those in favor, signify by saying “aye.”

(Ayes.) Any opposed?

MR. BISHOP: Okay, we get to the special studies for the nuclear power plant. There is a proposal to insert into it “that special studies will be conducted by an independent third party” and add in “with engineering experience with nuclear power plants.” We would have done that anyway, but –

MR. BAGGETT: This is Steve Fleischli memorial language.

CHAIR HOPPIN: All those in favor of the amendment, signify by saying “aye.”

(Ayes.) Any opposed? Thank you.

MR. LAUFFER: Quickly, to run through –

MS. SPIVEY-WEBER: No, no –

MR. LAUFFER: Yeah, I am going to describe these because these were actually –
MS. SPIVEY-WEBER: Are you going to A or to B?

MR. LAUFFER: I am going to actually present both of these together because Board member Baggett had raised this as an issue that he saw them sort of inextricably intertwined. These are issues that both the environmental groups objected to D, and the nuclear facilities, as well, to a certain extent the environmental groups, expressed reservations about the mixing of the various factors that are under Paragraph 7, that included both economic cost considerations, as well as consideration under Paragraph 7B and C that concerned both feasibility and other environmental impacts. And considering the direction from Mr. Baggett, and also the requests from both the nuclear facilities to specifically identify where the costs were identified, we have one consolidated staff recommendation, which is to staff any other relevant information under Paragraph 7 and then revised Paragraph 8, it is actually an amalgam of the proposal from SCE and PG&E, and it would now read as you see it up on the screen, “The wholly disproportion, or wholly out of proportion costs, we will look at the costs identified in the Tetra Tech California’s Coastal Power Plants Alternative Cooling Systems Analysis, February 2008 Report,” so there is crystal clarity on that. And then the other alternative that could potentially result in the nuclear facilities having alternative requirements is
that compliance is wholly unreasonable based on the factors in Paragraphs 7B and 7C.

MS. DODUC: Michael, I noticed you eliminated Track 2 from this section. There was a lot of discussion, I think Mr. Baggett, in particular, asked several parties about the enviros’ suggestion to delete Track 2 from 7B and 7C, as well.

MR. LAUFFER: Yeah, and I actually think that is probably an error on our part. Jon may be able to correct me. I think in paragraph 7B and 7C, you should also see Track 2 stricken there.

MS. DODUC: Okay.

MR. LAUFFER: So the Track 2 will be gone from the whole discussion of the alternative requirements, the variance option that is available for nuclear facilities. And I want to underscore that they are still going to have to go through the process of proving this up.

MR. BAGGETT: I would move it with those two additions.

CHAIR HOPPIN: All those in favor of the modification, signify by “aye.”

(Ayes.) Any opposed? Thank you.

MR. BISHOP: We are getting close.

MR. LAUFFER: Very.

MR. BISHOP: Okay, this is that second item, I do
believe we dealt with this already, I am just showing it to
you as we go through on the geographic regions. We had
three changes that I would go through, just individually
because it is easier to deal with it that way. Humboldt Bay
Power Plant, changing from one year after the effective date
of the policy to 12/31/2010, you should realize that when we
drafted the policy and put it out in December, we thought we
were going to adopt it in December, and so this would have
been the one year after the effective date.

CHAIR HOPPIN: You said the wrong December.

MR. BISHOP: Yeah.

MS. DODUC: I will move it.

MR. BAGGETT: Jonathan, on the Potrero Plant -
MR. BISHOP: I am just doing the Humboldt first.

MR. BAGGETT: Okay.

(Ayes.)

MR. BISHOP: Okay, the next one is the Potrero
Plant, Chair Hoppin.

CHAIR HOPPIN: I can see that the next one is the
Potrero Plant, but thank you for that explanation. There
was a comment made earlier in the day that they had
unresolved alternative transmission issues in the Bay. What
happens if we put this date on here and they are still
throwing sparks underneath the Golden Gate Bridge a year
from now?
MR. BAGGETT: What happens is that, if this comes up, and they still need this plant for grid reliability, you will get a 90-day suspension from the CAISO, and if it is needed for longer than that, you will get a request for an amendment to this policy. So we have a procedure if it is still –

CHAIR HOPPIN: I assumed that is what you were going to say, but I mean, clearly in this case we have parties that are doing their due diligence, but they have an unexplained mechanical wardrobe malfunction of sorts.

MS. DODUC: If I may, Mr. Chair, my objective in suggesting some of these dates be moved forward is, I guess, the hope that we would set these dates obviously with the expectation that, should any unexpected, unforeseen problems come up, it would be addressed through SACCWIS and, you know, a request of suspensions to us, but that we should, I guess, send the signal to the power plants and others interested in this item that the Board is committed to the addressing the BTA issue and doing so as quickly as possible. And for these plants, you know, there is enough information, at least for me, anyway, to recommend moving the dates up, understanding, of course, that we have also put in place a process which would then revise the dates, if necessary.

CHAIR HOPPIN: Fran, did you have a comment?
MS. SPIVEY-WEBER: I wanted to ask about the process because this is troubling from my perspective. We have set up a process that assures the State that we will be taking advice from the power companies and from the people that will eventually be the SACCWIS. And we will take that advise. Right now, I do not know if, for Potrero, for example, that is the advice that we are getting from our group. And, you know, I do not oppose this, but once we start making these decisions about dates on our own, we have essentially veered from the process, at least that is how it feels to me, because I am kind of worried about that.

MR. BISHOP: Well, I understand that, and that is why I just ran over to get the copy of the proposed schedule from the three power agencies that they gave us, which indicated that this would be completed by the first quarter of 2010.

MS. DODUC: So it is within –

MR. BAGGETT: Yeah. PG&E is here, I mean, they should know.

MS. DODUC: And I would also add, I appreciate Fran’s comment. I think one of the reasons we made the changes that we did recently is that, yes, we obviously will give great weight to the recommendation from the energy agencies, but we also need to take under consideration other issues, as well, in particular with Potrero and South Bay,
there is a significant environmental justice issue for those
two communities, in particular, and they have raised
significant concerns that I think, at least from my
perspective, that I would support these earlier dates, given
those concerns, and given the fact that we have been
providing some assurance that they could be met, and allow
for the caveat of changes later on through the appropriate
process.

CHAIR HOPPIN: You can add clarifying information.

MR. BEATTY: It is clarifying information, I
think. Sean Beatty with Mirant. And you know, we have an
agreement with the City and County of San Francisco to get
this thing closed as soon as possible. There is new
information that comes to light that contradicts the
information Mr. Bishop just had, which is the Transbay Cable
is not online and that was supposed to happen in the first
quarter of 2010. My concern is, if you look at the timeline
of the compliance framework you guys are considering, that
to get the regulation or policy approved and invalid or
effective, could take several months. There are three
months for the SACCWIS to get formed, and I am concerned as
a plant operator that, with the 2010 deadline, that the
process really will not be in place if we need an extension,
and I am hopeful that by 12/31/2010, Unit 3 will be offline,
but based on the fact that the Transbay Cable is not
operative at this point, there is a possibility, and it is
being discussed with the ISO, that this plant may have to
run over into 2011. It is possible, it is not the preferred
outcome, certainly, for our employees who have a tremendous
amount of uncertainty as to what is happening at this plant.
We would like to have some certainty. But the reality is it
looks to us like it is a possibility this will go beyond
2010.

MS. DODUC: So are you ruling out the possibility
that it will not go beyond 2010?

MR. BEATTY: I am sorry, I did not understand the
question.

MS. DODUC: Are you telling the Board that you
will not be able to accomplish it in 2010?

MR. BEATTY: No, I do not know the answer to that
question.

MS. DODUC: Exactly, so -

MR. BEATTY: The only point I was making, and I do
not mean to extend beyond my rights here as the record being
closed, is just from a procedural perspective, if we
determine, say in November, even October, that it is not
going to be possible to turn off, there is no process in
place -

MR. BISHOP: No, our understanding is that, if you
needed a short term extension, there is the CAISO would be
for grid reliability, they could automatically get the 90-day extension.

MR. BEATTY: Okay, well, I guess I am advising the Board that it does not look to me exactly like we know for sure that the end of 2010, if the representation is that we might be able to get an extension of the policy before it is even effective, then you know, I guess based on that representation, so be it. But given the uncertainty surrounding this plant, and the fact that this is the first time we have heard of the change in the policy, where previously it was going to be one year from the effective date of the policy, we really have not been engaged on the issue, so there is a tremendous amount of uncertainty that causes some consternation here.

MS. DODUC: I appreciate that, but I will still go ahead and move for approval of this change.

CHAIR HOPPIN: Mr. Bishop, are you comfortable that we have the extension mechanism, I mean, this is somewhat of an unusual situation that has been laid out in real life in front of us. And they could always turn the damn thing on and kill everything within two square miles of this cable that would be shorting out, I guess, and show us.

MR. BISHOP: Since you are asking for my opinion, I will lay it out for you. I am uncomfortable with the idea that we set compliance dates that are within six to seven
months of the time that we adopt a policy. If we do not get this policy through OAL, Office of Administrative Law, by December 31st, they will kick it back, because this date is not feasible. You asked, I tell you, I would prefer to keep it as one year, but I do not think in reality – I think we have the mechanisms in place that allow us to provide the extensions, too.

CHAIR HOPPIN: That being said, we have a motion in front of us to adopt Ms. Doduc’s proposal. All those in favor, signify by saying “aye.”

MS. DODUC: I guess I better vote for it.

CHAIR HOPPIN: There might be one.

MS. DODUC: I know.

CHAIR HOPPIN: All those opposed?

(Ayes.)

MR. DODUC: That nay was an “aye.”

MR. BISHOP: I understand. It took me a minute, but…. And then there was the last date issue was for the South Bay Power Plant, the change would be from 2012 to 2011, the end of the year.

MS. DODUC: And I suggested 2011 and not 2010 as Assembly member Salas and others had recommended, because we heard, I believe, from the CAISO representative, both in December and today, that they are meeting to consider whether or not this plant will be needed for 2011. So I
CHAIR HOPPIN: Any comments on this particular issue? All those in favor of the motion, signify by “aye.”

(Ayes.) Any opposed. Carried.

MR. BISHOP: Okay, I do believe there is one more issue, the 12-month to 36-month timeframe for monitoring, there are two places where that is being proposed. I skipped by the first one, I think. There it is.

MS. DODUC: So moved.

CHAIR HOPPIN: Discussion? All those in favor, signify by saying “aye.”

(Ayes.) Any opposed? Are you done, Jonathan?

MR. BISHOP: I think that covers all of the changes. There was one issue that I think you ought to at least see, is every place that we changed State Board to Regional Board. Do we need to go through that, Michael?

MR. LAUFFER: For the record, I think it was adequately described. Everywhere where there is a decision, is a decision point at this time, it now is the State Water Board as opposed to the Regional Water Board, and that was pretty clear when the motion was made.

MR. BISHOP: Okay. Okay, so now what we need to do, Michael, right, is to read through the changes and vote on the package. Is that correct?
MR. LAUFFER: For clarity sake, you know, I would feel more comfortable just quickly running through it. By my count, there were 17 motions that carried, you know, I want to be clear that everything that you all have heard so far is clearly within the scope of all of the discussions earlier today. I think all the parties did a very good job laying out markers different ways on the various issues, and it is certainly within the scope of the consideration that your staff had already done with respect to preparing the Substitute Environmental Document. I mean, all of these issues are analyzed. In many respects, these are fine tuning policy calls that the Board is making in terms of how the implementation would carry out. So I think it I has been pretty clear what the Board has voted on so far, and I would feel comfortable if the Board wanted to go forward adopting it today. I do want to be clear, you always do have the option to either continue the proceeding, or go on, but everything I have heard, we did not hear any new environmental issues today, in fact, the only issue that we heard from an environmental perspective in terms of the Substitute Environmental Document was just somebody reiterating that they did not feel the Response to Comments were adequate, but they did not articulate how they thought they were deficient. The changes that I have, and they are all reflected up on the board here are, first of all, that
the State Water Board would be issuing the NPDES Permits.

MR. BAGGETT: So you are going to go through what the consensus was?

MR. LAUFFER: Yeah, well, I am going to go through what I counted as the 17 motions that carried, just so that it is clear what the Board would be voting on.

MR. BAGGETT: I appreciate that.

MR. LAUFFER: The first would be that the State Water Board issues the permits, the NPDES permits for these facilities; the second is that we now would be taking it to unit-by-unit, and that carried, as well; the third amendment was for Track 2, that there would have to be a not feasible determination made by the State Water Board before somebody could avail themselves of Track 2; the fourth was to go to average monthly flow; fifth was the package of changes associated with the combined cycle facilities.

MS. DODUC: I am sorry, Michael, could you go back and clarify that was average monthly flow from 2000 to 2005?

MR. LAUFFER: Right. In this case, I am trying to encapsulate what the motion was, but it was the language that was up for the Board’s consideration.

MR. BAGGETT: So it was not the language proposed by the NGO’s?

MR. LAUFFER: There was a slight variation, I believe, from their language.
MR. BAGGETT: It was actual flows, which we have in the record, not the most current flows.

MR. LAUFFER: Right, it is from 2000 and 2005.

When I describe the average monthly, I am just trying to encapsulate what the motion was. The language was the language that was presented up for the Board at the time and approved the motion. As I said, the fifth change was the package of changes associated with combined cycle facilities; the sixth change was the consecutive 90-day suspensions, and foreclosing the option for consecutive 90-day suspensions without getting a hearing from the State Water Board; the seventh change was with respect to the State Board giving significant weight to the recommendations of CAISO; the eighth change was that it was going to be the State Water Board’s determination, not the Division of Water Quality’s Determination, obviously at a future date you could delegate that if you so chose; the ninth change was the package of changes to reflect the geographic proximity to the facilities and the fact that the mitigation had to be for enhancements to marine life; the 10th change was the addition of the two nuclear safety requirements from the Nuclear Regulatory Commission, so, in other words, “safety” became the modifier for the both the requirements; the 11th change had to do with using the significant weight test to the joint recommendations of the energy agencies, from the
SACCWIS, when making proposals to modify the policy for grid reliability purposes; the 12th change was to eliminate the two-year extension provision for an ability to obtain permits; the 13th change was the requirement that the independent third party selected by the Executive Director be somebody with engineering experience in nuclear facilities; the 14th change had to do with the package of changes to clarify, to remove Track 2 from the Special Studies for the nuclear facilities and to clarify how the nuclear facilities could avail themselves of the variance; the 15th change was the date modification for the Humboldt facility; the 16th change was the date clarification or modification for the South Bay facility; and the last two changes, the 17th change, had to do with getting 36 months worth of monitoring data. And those were all the motions that had been carried by a majority of the Board. And so, at this time, a motion to move that entire package of changes to the staff proposal would be in order.

MS. DODUC: So moved.

MS. SPIVEY-WEBER: Second.

CHAIR HOPPIN: Any further discussion?

All those in favor, signify by “aye.”

(Ayes.) Any opposed?

MR. BISHOP: Thank you very much.

MS. DODUC: Thank you, staff.
MS. SPIVEY-WEBER: Thank you.

CHAIR HOPPIN: Thank you.

MR. BISHOP: I think it would be appropriate to close the meeting.

(Whereupon, at 6:31 p.m., the meeting was adjourned.)

--o0o--