

CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION  
ENERGY EFFICIENCY COMMITTEE

WORKSHOP  
EL SEGUNDO MODERNIZATION PROJECT  
APPLICATION FOR CERTIFICATION  
DOCKET 00-AFC-14

CITY COUNCIL CHAMBERS  
EL SEGUNDO CITY HALL  
350 MAIN STREET  
EL SEGUNDO, CALIFORNIA

MONDAY, SEPTEMBER 20, 2004

10:04 a.m.

REPORTED BY:

JAMES A. RAMOS

Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairperson and Presiding Member

James D. Boyd, Committee Member and Associate  
Member

Michael Smith, Commissioner Adviser

Scott Tomashefsky, Commissioner Adviser

STAFF PRESENT

Garrett Shean, Hearing Officer

James W. Reede, Jr., Project Manager

David F. Abelson, Senior Counsel

Darcy Cook, Commissioner Boyd's office

Rick Buckingham, Commissioner Keese's office

Mike Monosmith, Public Advisor's office

ALSO PRESENT

John McKinsey, Esq., Counsel for Applicant

Tim Hemig, El Segundo Power

Brian Chesney, National Marine Fisheries Service

Dwight Sanders, California State Lands Commission

Scott Valor, Santa Monica Bay Restoration

Commission

Bill Fass, California Department of Fish and Game

Craig Schuman, Heal The Bay

Laurie Jester, city of Manhattan Beach

Tom Luster, Coastal Commission

ALSO PRESENT (continued)

Antonio Rizk, Regional Water Quality Control Board

Blythe Ponek-Backarowski, Regional Water Quality  
Control Board

Michelle Murphy, Intervenor

Bob Perkins, Intervenor

Nick Nickelson, Intervenor

Tracy Egoscue, Santa Monica Baykeeper

Bill Paznokas, Department of Fish and Game

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## P R O C E E D I N G S

1  
2 COMMISSIONER KEESE: Good morning,  
3 ladies and gentlemen. I'm Bill Keese, the  
4 Presiding Member of the El Segundo AFC Committee.  
5 With me this morning is Commissioner Jim Boyd, to  
6 my left and second Committee Member; Scott  
7 Tomashefsky, my Adviser; Mike Smith, Commissioner  
8 Boyd's Adviser; and since we only have room for  
9 five of us up here, Darcy Cook of Commissioner  
10 Boyd's office and Rick Buckingham of my office are  
11 in the back of the room.

12 I will say that Mr. Mike Monosmith of  
13 our Public Advisor's Office is standing in the  
14 back row, in his t-shirt because his bags didn't  
15 arrive this morning on Southwest. And, rather  
16 than the blue cards we usually use he has found  
17 some nice bright yellow ones as a substitute. So  
18 should you wish to submit your name of comment  
19 later -- testimony -- feel free to check with  
20 Mike.

21 PROJECT MANAGER REEDE: Excuse me,  
22 Commissioner Keese, can the people in the back  
23 hear? Okay, well --

24 COMMISSIONER KEESE: Is that better? Is  
25 that --

1 PROJECT MANAGER REEDE: Test, test, can  
2 you hear us in the back? Okay.

3 COMMISSIONER KEESE: On my far right is  
4 Garrett Shean, our Hearing Officer on this case,  
5 who will be assisting us as we go through it.

6 We are here for a committee workshop on  
7 the El Segundo AFC. As you probably know, the  
8 Applicant filed materials on August 23rd, 2004,  
9 which suggested a revision to the Bio 4 Condition,  
10 which appeared in the Revised Presiding Member's  
11 Report.

12 The Committee decided that the  
13 Applicant's suggestion warranted a public  
14 workshop to discuss, in a larger context, the  
15 impending renewal cycle of the existing NPDES  
16 permit for intake number one by the Regional Water  
17 Board, and the Energy Commission's responsibility  
18 to address potential project impacts.

19 Consequently, the Committee served a  
20 notice for this workshop, which included five  
21 questions which we would like to be addressed. In  
22 addition, the Committee has communicated with the  
23 agencies dealing with aquatic biology, requesting  
24 their attendance and input at this workshop.

25 We have received a number of written

1        comments in accordance with the notice. We expect  
2        to have some supplementary and responsive comments  
3        during the workshop. We intend that this be an  
4        informal proceeding, thus there will be no formal  
5        testimony and no cross-examination of other  
6        party's representatives.

7                The Committee is also interested in  
8        determining whether the passage of time, or the  
9        recently adopted federal EPA Phase Two  
10       regulations, have changed circumstances  
11       sufficiently that the previously highly contested  
12       issue is more susceptible of agreement among the  
13       parties and agencies.

14               We hope that this workshop will provide  
15       that opportunity to seek such agreement.  
16       Otherwise, the Committee will fully consider the  
17       existing record and determine what conditions of  
18       certification, if any, are needing to be altered,  
19       deleted or added. And as we indicated in our  
20       notice, it is our desire to promptly schedule this  
21       case for decision at the Energy Commission after  
22       this workshop.

23               I think we'll defer having parties  
24       formally introduce themselves at this time, but  
25       what we will do is ask you to introduce whomever

1       you may have that you'd like to introduce as you  
2       make your presentation.

3               We'll start with the Applicant, and we  
4       have, obviously, your submittal. Is there  
5       anything the Applicant would like to add in the  
6       context of your submittal and the comments that  
7       were made on your submittal and, looking  
8       particularly at what this Committee seeks to get  
9       out of this workshop, which I hope we've made  
10      reasonably clear.

11             MR. MCKINSEY: I'd like to see if my  
12      microphone is working or not.

13             COMMISSIONER KEESE: Not real well.

14             MR. MCKINSEY: The light is on, it just  
15      doesn't sound very loud. so I'll just try to  
16      speak loudly enough to be heard, for James and I  
17      that's usually not a problem.

18             There's a lot of things I'd probably  
19      like to say, but I get I think the thrust of this  
20      workshop, which is to attempt to get an idea if  
21      there's a way that --

22             COMMISSIONER KEESE: Yes, and let me  
23      just clarify that we're not going to limit, we're  
24      not going to have cross-examination, but we hope  
25      to get as far as the committee can get today. So

1 it well may be that we talk to you again before  
2 the day's workshop is over.

3 MR. MCKINSEY: And, I think I'm going to  
4 be turning over the microphone to Tim Hemig from  
5 NRG and West Coast Power and El Segundo Power to  
6 kind of give a quick overview of what we've  
7 proposed in Bio 4.

8 Obviously I think that's the event  
9 that's triggered this workshop, so what I wanted  
10 to do, maybe this is one of those occasions where  
11 I do a lot less of the talking than someone else,  
12 which will probably be a relief for a lot of  
13 people in this room that are probably tired of  
14 hearing me talk.

15 I will say that there's one important  
16 point that I wanted to make, and in reading the  
17 comments that you've received prior to this  
18 workshop I realize the importance of saying this  
19 again -- and we mentioned it briefly in our  
20 comments but we didn't overemphasize it -- and  
21 that was that, I think we understand that the  
22 position the Committee is at is that they have  
23 reviewed the record, they have issued a Proposed  
24 Decision and a revised Proposed Decision, and in  
25 both of those they have already evaluated the

1 testimony and the evidence regarding the effects  
2 of this project, the effects of the cooling  
3 system, the need for a study on the cooling  
4 system, and reached very specific conclusions.

5 And that what you face today is not a  
6 science or an impact issue, but a political issue,  
7 which we've obviously made our position very clear  
8 on involving the Coastal Commission and its role.

9 Our goal is not to solve or to win that  
10 battle over what we think a particular agency's  
11 role is, and in fact we would much prefer to stay  
12 out of interagency wrangling and simply make sure  
13 that we get a fair decision based on the law that  
14 applies.

15 And so I'm emphasizing this to say that  
16 a lot of the comments that we saw did continue to  
17 discuss whether or not this project will have a  
18 significant adverse effect on the environment,  
19 whether or not a study is needed to determine  
20 that, and as the Regional Water Quality Control  
21 Board has made clear, as the past studies have  
22 made clear, and I think as the Committee's  
23 proposed and revised proposed decisions made  
24 clear, that's not the issue here.

25 We do understand the operation of this

1 cooling system, the fact that it's an operational,  
2 permitted cooling system, that it's been that way  
3 for a long time, that it's been studied quite a  
4 bit, tells us a lot of the operational system.  
5 And instead, the issue that you're trying to  
6 grapple with is another agency apparently  
7 disagrees with that conclusion and feels that a  
8 study is needed.

9 We took that to heart, and we proposed  
10 the enhancements to Bio 4 as an attempt to try to  
11 give you, as the Committee, yet an even stronger  
12 means to resolve this project, without having to  
13 settle that legal issue of the role of the Coastal  
14 Commission.

15 And we think that the enhancements that  
16 we've added to Bio 4 do just that. They go  
17 further towards allowing you to be very  
18 comfortable that you have gone to the maximum  
19 extent possible if you took the interpretation  
20 that the Coastal Commission has submitted, a  
21 30413D report.

22 And so, that's why I'm going to actually  
23 turn over and allow Mr. Hemig to explain Bio 4, so  
24 that you'll completely understand what our intent  
25 was. But I'd like you to understand that this

1 wasn't an effort at, for instance trying to  
2 concede that the Coastal Commission was correct,  
3 or to concede that a study was needed.

4 But nevertheless, it's an attempt to do  
5 everything we can do to attempt to allow the  
6 Committee to move forward on the project.

7 MR. HEMIG: As John mentioned, my name  
8 is Tim Hemig with El Segundo Power. And I'd like  
9 to try and walk you through Bio 4. And I'd like  
10 to use this overhead, let's see if it's going to  
11 work? Yes.

12 Generally I'm going to -- I have three  
13 goals in mind by presenting this to you. First of  
14 which, Bio 4 provides for a set schedule to  
15 conduct a new study. And we believe that that new  
16 study will demonstrate that the Phase II 316(b)  
17 requirements do require a new impingement in the  
18 entrain and characterization study.

19 And that there is a set schedule by  
20 which that needs to be done, and that is to  
21 conform to the new regulation and not to any  
22 requirement under this proceeding. In this manner  
23 we can accomplish a single comprehensive study  
24 that we think can also then apply the knowledge  
25 and requirements necessary to walk us through what

1 is necessary to modify the cooling water system,  
2 and that will demonstrate that the 60 and 80  
3 percent reductions that we're talking about in Bio  
4 4 -- 60 percent being from the entrainment side,  
5 and 80 percent from the impingement side -- will  
6 reduce any possible impacts to below any of the  
7 baseline conditions that we've been talking about,  
8 the zero baseline, the PMPD baseline, or the El  
9 Segundo Power 2 baseline.

10 And then thirdly I'm trying to  
11 demonstrate that Bio 4 meets, to the maximum  
12 extent feasible, all the party's concerns, and we  
13 can still build a power plant that not only is  
14 buildable economically, is technically feasibly  
15 buildable, and still can contain these  
16 environmental benefits that we've been talking  
17 about. So I'm going to walk you through each of  
18 those right now.

19 So what do we say in proposed changes to  
20 Bio 4. Well, it's actually fairly simple. There  
21 are three things that we need to do in the form of  
22 submittals. The first one is a compliance  
23 schedule that we will submit to the Los Angeles  
24 Regional Water Quality Control Board.

25 And that schedule is a mandatory

1 requirement of Phase II 316(b), and it walks  
2 through the timelines by which two new documents  
3 will be submitted. The first is a Proposal for  
4 Information Collection, or the PIC. And that, in  
5 Bio 4 what we laid out is a protocol for a new  
6 one-year impingement entrainment study.

7 And it has a set schedule by which the  
8 PIC would be submitted. And that PIC requires  
9 consultation with the various agencies, and not  
10 only is that something that's been requested by  
11 various parties in the various documents and  
12 comments to Bio 4, but it's also required by Phase  
13 II 316(b).

14 The PIC, thirdly, will describe  
15 technology, operational controls or restoration  
16 measures by which a facility might employ to try  
17 and achieve these impingement and entrainment  
18 standards.

19 And this is something that's been  
20 discussed as well, and I think the Coastal  
21 Commission brought it up recently in their letter  
22 is we'd like to see a description of the options  
23 at the facility. Well, this PIC requires that we  
24 lay out how we're going to analyze those various  
25 options and then come to a decision on what we

1 will install or change at the facility.

2 COMMISSIONER KEESE: Excuse me, did you  
3 indicate that that study is required by Phase II  
4 regulations?

5 MR. HEMIG: Yes, we're required to do an  
6 impingement and entrainment characterization  
7 study, which can utilize historical information,  
8 and it can utilize new information that's  
9 collected.

10 And in Bio 4 we propose that -- and I  
11 guess we'll emphasize the word "new" -- that we  
12 are offering in Bio 4 that we're going to do a new  
13 one-year study.

14 The third thing that's required in Bio  
15 4, in the form of a submittal, is the  
16 comprehensive demonstration study. And we were  
17 careful to use the exact terms and definitions as  
18 they apply in Phase II 316(b).

19 I believe you're hearing a theme from me  
20 right now, and that is that these things are  
21 already required by the new regulation, and we  
22 believe that's the most appropriate way to handle  
23 this issue, is to harmonize the new requirements,  
24 make sure the data is collected, and take action  
25 if necessary.

1           So those are accomplished ultimately in  
2           the CDS, this final document. And we've laid out  
3           a schedule by which that would be submitted to the  
4           Regional Water Quality Control Board. And it  
5           addresses the specific technology, operational  
6           measures, or restoration measures that we're going  
7           to employ to meet the standard, and that standard  
8           being 60 to 90 percent entrainment reduction, and  
9           80 to 95 percent impingement reduction at the  
10          facility.

11          So this is a critical document by which  
12          we've already made up our minds what we're going  
13          to go with in the form of these three options, and  
14          we've laid out a final schedule by which we're  
15          going to implement those changes, and compliance  
16          is dependent on us meeting this schedule.

17          So that lays out the three documents  
18          that we're going to submit. But Bio 4 also  
19          includes some additional things that, again,  
20          harmonize Phase II 316(b). And those are  
21          summarized there as as 60 percent reduction in  
22          entrainment and 80 percent in impingement.

23          Those are, by the way, minimum  
24          standards. Those are the bottom range of the  
25          standard -- I mentioned earlier there is a range.

1 These are the bottom part of the range.

2 The third item that we put in Bio 4 is  
3 \$7 million entered into trust when the project is  
4 50 percent complete. 50 percent complete came to  
5 mind because that is consistent with, in alliance  
6 with, when the study would be completed under the  
7 schedule. So you'll have a nice smooth schedule  
8 by which information will be collected in a  
9 fashion by which it can be utilized the best.

10 The \$7 million is to be used for  
11 implementation of technology, operational  
12 controls, or the restoration measures. We, at  
13 this point, don't know which of those three or  
14 what combination of those three, we're going to  
15 use, because there's a lot of technology  
16 evaluation that still needs to be done.

17 And if you're wondering about the \$7  
18 million, and where that number came from, it's  
19 basically a calculation based on EPA's estimates  
20 for facilities that they conducted when they  
21 developed the regulation. And EPA estimated  
22 compliance cost at every facility that's subject  
23 to the rule.

24 However, they did leave out a few of the  
25 facilities, and unluckily, El Segundo was one of

1 those. So EPA did not conduct specific cost  
2 estimates at El Segundo. However, they did  
3 estimate costs at the Huntington Beach facility,  
4 which has a similar offshore intake structure,  
5 with the velocity cap already in place, just like  
6 El Segundo, intake number one.

7 And EPA provides for specific  
8 calculation methodology on how you can adjust  
9 their cost estimates for a different flow rate.  
10 So using those formulas and taking the Huntington  
11 Beach cost estimates, we can calculate the EPA's  
12 estimates for El Segundo under their approved  
13 procedures.

14 And I conducted that calculation. The  
15 Huntington Beach capital cost was approximately \$6  
16 million for achieving a feasible installation of a  
17 technology that would be able to meet the  
18 standards under EPA's own judgment and assessment.  
19 Converting that to the El Segundo flow rate, which  
20 is a lower flow rate than Huntington Beach's  
21 intake structure, comes to a capital cost of 4.5  
22 million.

23 That cost estimate omits a couple of  
24 things, like pilot study costs, and revenue loss  
25 costs that might occur due to the downtime while

1 the technology is being implemented and  
2 constructed. Nonetheless, it is still a number  
3 that is lower than the \$7 million.

4 So applying kind of a conservative  
5 approach, and saying that there are some  
6 additional costs that EPA did not consider, and  
7 also an environmental benefit component, we raised  
8 that \$4.5 million up to \$7 million, which we think  
9 it a sound estimate to the best of our ability  
10 today, recognizing that this is EPA's estimate for  
11 feasible technology that could be built at such an  
12 intake structure.

13 If in fact, when we determine through  
14 the comprehensive demonstration study what the  
15 ultimate technology is to be installed, and it  
16 costs less than \$7 million, then the additional  
17 money between what it actually costs and the \$7  
18 million goes to the Santa Monica Bay Restoration  
19 Commission for environmental benefit projects, to  
20 be determined by that board, by that commission.

21 if in fact the costs are higher than \$7  
22 million we get to spend that money, because we  
23 have to ultimately achieve Phase II 316(b). So \$7  
24 million is not a cap, in fact it's more of a  
25 minimum with assurances of additional

1 environmental enhancements if the costs come out  
2 to be lower.

3 These are costs that are necessary to  
4 achieve the standards -- I don't know if you can  
5 see all this, let me try and widen it up a little  
6 bit -- what we believe are the cost estimates to  
7 meet the 60 percent entrainment reduction as well  
8 as the impingement reduction.

9 If you look at this at kind of a pot of  
10 water that we can use annually, you see that we  
11 have the maximum permitted flow -- this is for the  
12 entire facility -- it's a little bit out of focus,  
13 hopefully you can still see it.

14 But at the very top, this is our pot of  
15 maximum flow. You see in the red lines are the  
16 three different flow caps or baseline that have  
17 been laid out in various documents.

18 First of all, the original cap at 138.7  
19 billion gallons per year, the revised PMPD at  
20 126.78, and then the staff's zero baseline  
21 proposal at 101. You take any of those into  
22 consideration and you apply a 60 percent reduction  
23 from the maximum permitted flow, you see that,  
24 we're below even the bottom line flow cap.

25 So in any event, in any of these three

1 options, additional offsetting of entrainment.  
2 And someone might say that, well how do yo know  
3 what entrainment is, this is just flow? But in  
4 various proceedings before the Energy Commission  
5 previously, as well as by USEPA's own discussion  
6 in the preamble to the Phase II 316(b) regulation,  
7 entrainment is proportional to flow. And I think  
8 that makes a lot of sense both logically as well  
9 as biologically.

10 So using that as an assumption, that is  
11 correct, you will se tat reducing entrainment will  
12 achieve more than just maintaining the status quo.

13 I'd like to walk now through the Bio 4  
14 and how it achieves the recommendations and  
15 comments from various parties. First of all, CEC  
16 staff's fully mitigated option, which requests a  
17 variety of things.

18 Generally, I'm just generalizing, but  
19 annual and monthly flow caps, full certification  
20 entrainment study, and feasible funds to be placed  
21 in the trust. Well, we think Bio 1 through 4  
22 cover each of these.

23 First of all, the interim flow cap,  
24 which has been determined by the committee to be  
25 the five year average flow rate, or average volume

1 per year, that was historically circulated prior  
2 to the filing of the AFC, and that's the 128  
3 billion.

4 It has a schedule for a new one year  
5 study, a set study by which protocols would be  
6 submitted and a study would be conducted. And it  
7 has the \$7 million for achieving the 60 percent  
8 standard, and that is what we believe is  
9 consistent with Phase II 316(b).

10 Regarding the Coastal Commission's  
11 comments, they generally ask, in a multitude of  
12 documents -- and I reread every one of those --  
13 and to the best of my understanding there's three  
14 general topics that they continue to request.  
15 There's a pre-construction entrainment study;  
16 appropriate mitigation of the impacts, as  
17 determined by the study; and the requirement to  
18 enhance, maintain and restore as feasible.

19 We believe that Bio 4, as well as the  
20 existing Bio 1, 2, and 3, accomplish those  
21 recommendations. First again, the schedule for  
22 the new study. This is a schedule which we  
23 believe is as expeditious as possible, which is  
24 one of the standards by which we must employ when  
25 we send a schedule into the water board, it must

1 be as expeditious as possible.

2 When I send that schedule into the water  
3 board it's going to be the same as the schedule in  
4 Bio 4, because I believe that is meeting that  
5 standard. It has the \$7 million, which as I  
6 showed before will meet a 60 percent reduction  
7 level, which goes beyond just maintaining, it has  
8 extra environmental benefits built into it.  
9 Certainly, if the costs are lower than the \$7  
10 million you get extra money towards additional  
11 enhancements.

12 There's an additional \$1 million, which  
13 we previously offered up to the Santa Monica Bay  
14 Restoration Commission, which is -- I want to make  
15 sure we don't forget about it because that is just  
16 purely an extra amount of money to be used for  
17 environmentally beneficial projects.

18 And then, while we're waiting and while  
19 we're doing the study and implementing these  
20 standards, we have an interim flow cap which is  
21 equivalent to the baseline conditions, and that  
22 will be effective until the 60 percent reduction  
23 is achieved.

24 So in conclusion, we believe that what  
25 we have proposed not only meets LORS, they meet

1 requirements that are coming in the future as  
2 well, like Phase II 316(b). It also meets the  
3 principles of the staffs' fully mitigated option.

4 It meets the Coastal Commission's  
5 requests and recommendations in their documents,  
6 and recognizing that there's additional  
7 enhancements like the additional \$1 million and  
8 possible additional benefits associated with it if  
9 actual costs are less than \$7 million.

10 I think that actually goes beyond what  
11 both Energy Commission and Coastal Commission have  
12 requested. And I think, most importantly, Bio 4  
13 is consistent with Phase II 316(b), which the  
14 Regional Water Control Board must evaluate our  
15 documents, they must approve documents, we must  
16 submit them, we have no choice, that is a federal  
17 law, so if there's anything we can do to harmonize  
18 the conditions under an Energy Commission license,  
19 we're going to have a streamlined compliance,  
20 we're going to have minimum administrative burden,  
21 and I think we'll have maximum environmental  
22 benefit.

23 We would really hate to be doing two  
24 studies within months of each other. There are  
25 some impacts associated with the study itself, so

1 we'd like to streamline these and coordinate them.

2 What I think I've presented is that Bio  
3 4, as well as Bio 1, 2, and 3, they clear the path  
4 for prompt Energy Commission approval. We believe  
5 as early as the October 28th Business Meeting.  
6 This, as John mentioned earlier, is a way to  
7 harmonize the requests and requirements of all  
8 parties, meet Phase II 316(b), and get a project  
9 built that we think is much needed.

10 It's in the load, it has environmental  
11 benefits, it meets all of the things that we're  
12 hearing Energy Commission, CAL-ISO say, CPUC say--  
13 - even under the recent Integrated Energy Policy  
14 Report -- this is a power plant that can do a lot  
15 of things that we think everybody wants, and still  
16 achieve environmental benefits.

17 So, in conclusion, we hope that we can  
18 persuade you to take that to your hearing in  
19 October.

20 MR. MCKINSEY: I'd like to add a couple  
21 of things that I either didn't mention or --  
22 wonder where the button is for this one? I think  
23 I can be heard anyway, I'll just talk loud again.

24 One thing that I think might have kind  
25 of been missed a little bit in there is that one

1 of the substantial differences between what was in  
2 the CEC decision prior to this, and what will be  
3 in it with these Bio 4 enhancements is, instead of  
4 a flow cap that was interim pending the outcome of  
5 a study, this is a permanent reduction in  
6 entrainment and impingement, and it mirrors what  
7 is going to be required from this facility under  
8 the Phase II 316(b) regulations, but it is now  
9 incorporated into this decision.

10 Meaning that, instead of those interim  
11 red flow caps, instead what you have is a  
12 permanent 60 percent reduction, and that's the  
13 minimum reduction in entrainment that's required  
14 by the 316 regulations. It could be as upwards as  
15 90 percent, 316(b) specify a range of 60 to 90  
16 percent reduction in entrainment, and a minimum of  
17 80 percent reduction in impingement. We're  
18 ignoring the impingement issue because that has  
19 never been an issue in this project.

20 Second point, I can anticipate a couple  
21 of things the CEC staff will point out. The CEC  
22 staff called for monthly flow caps year-round, and  
23 we're not trying to suggest that we're agreeing  
24 with that. We have maintained a position very  
25 strongly that monthly flow caps do not provide any

1 environmental benefit and at the same time  
2 severely constrain the ability of the plant to  
3 respond to California's demand.

4 And for that reason we have been highly  
5 resistant to them. We propose flow caps for three  
6 months when we expect the project to have the  
7 least demand, thinking that we would somehow be  
8 able to come through, and as you will remember,  
9 we've actually withdrawn our support of those,  
10 even though we've indicated that that's not going  
11 to cause us to back off of this project.

12 What's in the record now is an annual  
13 flow cap that's interim, and three months as  
14 interim flow caps during quieter periods, and it  
15 doesn't meet the staff's call for the full. And  
16 the other thing I think the staff will point out  
17 is where we've said it needs to be the maximum  
18 extent feasible and not just some dollar amount  
19 that we can come up with and commit.

20 We have no idea of knowing what that  
21 amount is until we've opened the record, take  
22 testimony as to how much you can afford to pay.

23 And our position on that is that we  
24 don't think that the law calls or requires that,  
25 first of all. But second of all, we're already

1       pretty confident that what the regulations are  
2       going to require us to do is going to push us  
3       right on the envelope of what is feasible.

4                In fact, that's the thrust of the Phase  
5       II 316(b) regulations, to mandate across the  
6       nation mandatory reductions in impingement and  
7       entrainment that were about as much as plants could  
8       occur. The reason why they specify 60 to 90 is  
9       that they recognize that in some cases there will  
10      not be a need to reduce more than 60, and that 60  
11      would probably be a very high price to pay as it  
12      is.

13               And I'd kind of finish with emphasizing  
14      once more time that we've offered this up because  
15      we think that this enhancement, which we can offer  
16      in part because they're what we're obligated to do  
17      under the Regional Water Quality Control Board's  
18      implementation of the new Phase II 316(b)  
19      regulations.

20               We think that by incorporating these  
21      enhancements to Bio 4 into your decision you can  
22      completely avoid an estate having to grapple with  
23      what could otherwise be a fairly highly  
24      contentious issue regarding the Coastal  
25      Commission's role in the Energy Commission

1 process.

2 We certainly don't want to have to  
3 continue that fight, and we think that this will  
4 allow you to escape it.

5 PROJECT MANAGER REEDE: See, I haven't  
6 lost my mind either.

7 COMMISSIONER KEESE: A simple technical  
8 fix.

9 PROJECT MANAGER REEDE: It's called  
10 turning the switch on.

11 MR. MCKINSEY: And that's all.

12 COMMISSIONER KEESE: Let me ask you a  
13 question. Is the Applicant willing to see an  
14 untraditional requirement for the study?

15 MR. MCKINSEY: Yes, that's our intent  
16 forward, is to make it clear that they're not  
17 obligated to --

18 COMMISSIONER KEESE: There will be a  
19 study period?

20 MR. MCKINSEY: Yes.

21 COMMISSIONER KEESE: And you're  
22 suggesting that the party -- you suggested a list  
23 of parties, including the Energy Commission, the  
24 Coastal Commission, and Regional Water -- who  
25 would be involved in the work that leads up to

1 that study?

2 MR. MCKINSEY: Correct. The Phase II  
3 316(b) regulations obligate us to consult with  
4 many agencies that it even mentions specifically  
5 in the CEC modifications. But in the CEC proposed  
6 changes to Bio 4 we specifically mention the  
7 Coastal Commission and the Energy Commission  
8 because those are the two parties that have been  
9 very active in this and have authority of taking  
10 quite a bit of consideration on the record and on  
11 the nature of this project.

12 And so this would provide the Energy  
13 Commission the means of ensuring, through their  
14 compliance phase, that those two agencies -- CEC  
15 and the Coastal Commission -- their participation  
16 in the development and implementation of the  
17 studies and its conclusions was adequate enough.

18 Because separate with satisfying the  
19 Water Board, this condition would require us to  
20 satisfy the Energy Commission that we have met the  
21 requirement that the CEC staff and the Coastal  
22 Commission also participate in this study.

23 COMMISSIONER KEESE: Second question  
24 here, this draft here suggests that a 60 percent  
25 entrainment equates to a reduction in the use of

1 water, ocean water. And I would agree that the  
2 use of the water and the entrainment of  
3 microorganisms they're talking about are quite  
4 directly related, but you're not suggesting a new  
5 cap of water, you're suggesting one way or another  
6 of getting there?

7 Because as I looked at some of your  
8 earlier statements, ones that I could look up and  
9 be absolute, like the 60 percent reduction, if  
10 it's not feasible to do it there you would do it  
11 through alternative means, you're leaving that  
12 door open?

13 MR. MCKINSEY: Yes, I think what I was  
14 trying to communicate was that the interim cap,  
15 until you've achieved the 60 percent reduction,  
16 would assure that, or maintain the baseline. And  
17 then once you've achieved the 60 percent, just by  
18 the visual itself, is more than reducing below the  
19 baseline, and if it's not feasible to achieve the  
20 60 percent, that part of the question, that is  
21 still the minimum standard in the regulation.

22 COMMISSIONER KEESE: You will get the 60  
23 percent entrainment reduction, and whether or not  
24 that number on the left for water use?

25 MR. MCKINSEY: Yes, we wouldn't propose

1 a flow cap, but we would be achieving an overall  
2 reduction that effectively gets it to the same  
3 place.

4 COMMISSIONER KEESE: Thank you. Mr.  
5 Smith, do you have questions?

6 MR. SMITH: Just to clarify, on what  
7 basis then are you defining the unmitigated level,  
8 which I think is part of the language in the Phase  
9 II 316(b) regulations? On what basis are you  
10 defining it, under your current MPES permit?

11 MR. MCKINSEY: We -- and that's why I  
12 changed the words in your original Bio 4, was  
13 changing it to be consistent with Phase II 316(b).  
14 And the terminology there is the "calculation  
15 baseline", and that is the standard by which we  
16 must demonstrate reduction. Calculation baseline  
17 can be the permanent flow, it can be something  
18 lower, but if it's lower, your reduction is lower.

19 So, I think the worst case scenario is  
20 how I tried to picture it here is, 60 percent of  
21 the highest flow rate is still below -- in fact  
22 about 13 billion gallons per year -- below the  
23 lowest of the year baselines that we could  
24 calculate.

25 MR. SMITH: Just to be clear then, for

1 purposes of the Phase II 316(b) study and  
2 compliance with Phase II regulations, you are  
3 defining the unmitigated levels as the current  
4 MPDS permitted flows?

5 MR. MCKINSEY: I think that, I'm saying  
6 that it's going to be consistent with the  
7 calculation baseline, which has not yet been  
8 determined. And the reason is, calculation  
9 baseline takes into consideration the impingement  
10 and entrainment characterization studies, so we  
11 have to follow the appropriate steps before we can  
12 determine calculation baseline.

13 I'm suggesting that the worst case of  
14 those is 220.8 billion gallons a year for the  
15 entire facility.

16 MR. SMITH: So, after you calculate  
17 then, the unmitigated level could be less than  
18 220.8?

19 MR. MCKINSEY: Maybe I, I think I know  
20 where you're -- you know, the term "unmitigated  
21 levels" is not something that comes up in the  
22 context of the 316(b) regulations, I think you're  
23 asking that from the perspective of the CEQA  
24 evaluation that the Energy Commission staff is  
25 tasked with accomplishing?

1 MR. SMITH: No, I believe the 60 to 90  
2 percent reduction level is based on unmitigated.

3 MR. MCKINSEY: Okay, --

4 MR. SMITH: Are you suggesting then  
5 that, the worst case, the unmitigated level is  
6 going to be no more than 220.8?

7 MR. MCKINSEY: Oh, okay.

8 MR. SMITH: So 60 to 90 percent from  
9 that level.

10 MR. MCKINSEY: Yes, we would not suggest  
11 a larger number as a calculation baseline.

12 COMMISSIONER KEESE: Are you suggesting  
13 that the 88 might go down? If the 220 goes down  
14 then the 88 might go down?

15 MR. HEMIG: That's what it says to me.  
16 Yes, and we're using calculation baseline. IT  
17 needs to be consistent, and it's variably defined  
18 in my opinion in Phase II 316(b), it's a long  
19 definition.

20 We need to have that consistency,  
21 because we have to meet that standard. Rather  
22 than have a different standard, we're trying to  
23 make Bio 4 and Phase II say the same thing.

24 MR. MCKINSEY: And from the concern that  
25 the CEC might have, what we've presented is, from

1 an environmental perspective your worst case is  
2 that the baseline is our permitted flow.

3 So we're showing that the mandatory  
4 minimum 60 percent reduction in entrainment, even  
5 if we get the full permitted flow as our baseline,  
6 that it's still going to be a reduction to the  
7 low, even the CEC staff's zero baseline  
8 correction.

9 COMMISSIONER KEESE: Any other  
10 questions? Thank you very much. Staff?

11 MR. ABELSON: Thank you. Good morning  
12 Chairman Keese, Commissioner Boyd, advisers, and  
13 Officer Shean. My name is David Abelson, and I am  
14 the attorney representing the Energy Commission  
15 staff in this matter.

16 I'd like to begin by thanking the  
17 Committee for affording all of us this opportunity  
18 to present comments on the questions phrased in  
19 the September 3 workshop notice.

20 We on the staff fully realize that the  
21 Committee is striving to resolve this case in a  
22 timely manner that will achieve three essential  
23 and coincident goals.

24 The first of these goals is to provide  
25 for the future energy needs of California. The

1 second goals is to protect the valuable marine  
2 resources of Santa Monica Bay. And the third goal  
3 is to fully comply with all of the requirements of  
4 both federal and state law.

5 Staff shares these Committee goals  
6 completely, and our comments today, as in the  
7 past, are sincerely intended to ensure that each  
8 of these goals, these three different goals, is  
9 fully met when the Energy Commission issues its  
10 final decision in this case.

11 Regarding the Committee's first  
12 question, concerning the Applicant's recently  
13 proposed biological resources conditions, as  
14 indicated in the written comments we filed on  
15 Friday, staff has a number of serious legal and  
16 practical concerns with the conditions that are  
17 now being presented to you by the Applicant for  
18 adoption.

19 In essence, the Applicant's proposed  
20 conditions would essentially do three specific  
21 things. Namely: one, transfer all decision  
22 making responsibility concerning marine resources  
23 in this case to -- and I'm quoting from the  
24 Applicant's decision -- "the sole discretion of  
25 the Los Angeles Regional Water Quality Control

1 Board."

2 The second thing that Applicant's  
3 proposed condition would do is identify procedural  
4 timelines, but absolutely no substantive  
5 technological, operational, or restoration  
6 measures for the El Segundo Project's entrainment  
7 and impingement impacts whatsoever.

8 The third thing that Applicant's recent  
9 proposal would do is minimize the Applicant's  
10 financial obligations in this case at a level --  
11 (auditory interruption)

12 COMMISSIONER KEESE: Uh, do we have --  
13 can you check this please.

14 PROJECT MANAGER REEDE: Uh, the people  
15 on the speaker phone, would you please put your  
16 phone on mute if you're not talking at this time.  
17 And who is on this speakerphone, on the conference  
18 call? Would you please identify yourselves?

19 VOICE: Terry O'Brien.

20 PROJECT MANAGER REEDE: Okay, and who  
21 else? Terry O'Brien is Deputy Director of the  
22 Energy Commission for facility siting.

23 COMMISSIONER KEESE: Thank you,  
24 continue.

25 MR. ABELSON: Thank you, Chairman. So

1 just, very briefly, to recap what I was saying,  
2 the Applicant's proposed conditions, which staff  
3 has serious legal and practical concerns about,  
4 would do three things.

5 The first thing it would do is transfer  
6 all decision making responsibilities concerning  
7 marine resources to "the sole discretion of the  
8 Los Angeles Regional Water Quality Control Board."

9 Second, the proposed condition would  
10 identify procedural timetables, but absolutely no  
11 substantive technological, operational, or  
12 respiration measures for the El Segundo Project's  
13 entrainment impacts whatsoever.

14 And third, the proposal would minimize  
15 the Applicant's financial obligations, in this  
16 case at a level that is far below that feasibly  
17 provided by all other once through cooling  
18 projects that have recently received licenses in  
19 California.

20 As we've explained the detail in our  
21 written comments, the applicant's proposed  
22 biological conditions should be rejected by the  
23 Committee and the Commission because, in our  
24 judgment they would unlawfully transfer to the  
25 Regional Board responsibilities that are the legal

1 obligation of the Energy Commission and the  
2 Coastal Commission.

3 In addition, the proposed transfer of  
4 responsibilities would not fully protect the  
5 marine resources of Santa Monica Bay for both  
6 technical and legal reasons which we've explained  
7 in considerable detail, both in these written  
8 comments and in prior written comments that we've  
9 submitted in this case.

10 Finally, the Applicant's proposed \$7  
11 million trust fund would not ensure tat the  
12 resources of Santa Monica Bay are "enhanced and  
13 restored to the extent feasible", as required  
14 under Public Resources Code Section 30231, nor  
15 would this trust fund meet various other  
16 requirements of law, such as "minimizing where  
17 feasible the effects of entrainment."

18 Regarding the Committee's questions 3,  
19 4, and 5, concerning the sufficiency, the timing,  
20 and the oversight of the Phase II 316(b) study  
21 itself, our written comments fully acknowledge, as  
22 staff always has, that the Los Angeles Regional  
23 Water Quality Control Board has primary  
24 responsibility for compliance with the provisions  
25 of the federal Clean Water Act Section 316(b)

1 regs.

2 But the Energy Commission had additional  
3 legal obligations, under the Warren-Alquist Act,  
4 under the California Environmental Quality Act,  
5 and under the California Coastal Act, and thus --  
6 and this is very important for us to emphasize --  
7 compliance with Phase II 316(b) alone, which is  
8 essentially what the Applicant is proposing in its  
9 most recent recommendation -- is required for LORS  
10 compliance, but it is not sufficient legally for a  
11 license to be issued by the state Energy  
12 Commission.

13 For the many reasons detailed in our  
14 written comments, staff continues to urge this  
15 Committee to require the Applicant to conduct a  
16 scientifically reliable, site-specific entrainment  
17 study, under the control of the Energy Commission,  
18 as has been done or has been required in every  
19 other once through cooling case receiving a  
20 license from this Commission.

21 Finally, with regard to the Committee's  
22 question number 2, concerning staff's so-called  
23 "fully mitigated option", which we all can refer  
24 to also as the "three-legged stool", please recall  
25 that this option would do essentially three

1       legally required things.

2               First, through specific annual and  
3       monthly cooling water volume caps, leg one of the  
4       option would ensure that the El Segundo Project in  
5       fact maintains existing entrainment impingement  
6       conditions, rather than increasing by almost 25  
7       percent the harm that is currently going on at that  
8       site, as the Applicant would propose.

9               Second, leg two would ensure that a  
10       scientifically reliable site-specific entrainment  
11       study, under the Energy Commission's jurisdiction,  
12       is completed well before commercial operation of  
13       the project begins, thereby providing absolutely  
14       essential information needed to determine what  
15       must be done under the California Coastal Act to  
16       restore and where feasible enhance the marine  
17       resources of Santa Monica Bay.

18              The third leg or condition of staff's  
19       fully mitigated option would ensure that all funds  
20       needed to feasibly restore and enhance Santa  
21       Monica Bay are identified prior to licensing of  
22       this project, and then are placed in trust at or  
23       shortly after the time that a license is granted in  
24       this proceeding.

25              In summary, and in closing, staff wishes

1 to emphasize that it has proposed the fully  
2 mitigated option not as some tactical or strategic  
3 litigation position, but because we sincerely  
4 believe as scientists, we sincerely believe as  
5 lawyers, that other than the Hyperion wastewater  
6 cooling alternative, which the Committee has  
7 determined is infeasible, this is the only option  
8 that can actually satisfy the three goals of the  
9 Committee and the staff which we both share.

10 Namely, number one, licensing the  
11 project so that it can provide needed energy  
12 resources to the state of California; number two,  
13 providing necessary protection for the marine  
14 resources of Santa Monica Bay; and number three,  
15 meeting all legal requirements contained in both  
16 federal and state law.

17 With that summary, I will turn briefly  
18 to certain points that were presented in the  
19 Applicant's presentation, if that pleases the  
20 Committee, or I can reserve that for later?

21 COMMISSIONER KEESE: No, I would  
22 appreciate if you would be responsive to them.  
23 Did I -- I think I heard you just suggest that  
24 this study has to be completed before licensing.

25 MR. ABELSON: No, that's not, it has

1 never been our position, it is not currently our  
2 position.

3 COMMISSIONER KEESE: I thought I just  
4 heard those words.

5 MR. ABELSON: Well, let me restate. Our  
6 position has been that if we get leg number one,  
7 which is the proper annual and monthly caps, if we  
8 get all feasible funds placed into a trust fund,  
9 that under those circumstances, while it is  
10 unorthodox in our judgment to do it this way, it  
11 is legally acceptable to do the study after the  
12 fact, after the license, and then use the  
13 information from that to determine how the funds  
14 that are in the trust will be spent.

15 Or, if it turns out they've been over-  
16 committed, rebated back to the Applicant, because  
17 indeed the harm was not as great as we had  
18 anticipated.

19 COMMISSIONER KEESE: Okay, and let me  
20 just ask one question before you respond also.  
21 The regional water permit is a five-year permit,  
22 generally speaking?

23 MR. ABELSON: I believe it is renewed  
24 every five years, yes.

25 COMMISSIONER KEESE: And every five

1 years it's up to the Regional Water to decide  
2 again what mitigation has to take place in order  
3 for, its reasonable to permit, is  
4 that --?

5 MR. ABELSON: It's up to the Regional  
6 Board to determine whether the project that is  
7 before them every five years is in compliance with  
8 the currently applicable federal Clean Water Act.

9 COMMISSIONER KEESE: Yes, which is, is  
10 the federal version of best technology --

11 MR. ABELSON: Well, and there may be  
12 other requirements as well, but that's certainly  
13 the primary one that we've all been discussing in  
14 this particular case.

15 COMMISSIONER KEESE: Okay, thank you. I  
16 would like a dialogue here. If you would comment  
17 on --.

18 MR. ABELSON: Well, I'd like to start  
19 out by saying that if something sounds too good to  
20 be true it probably is. And I have been very  
21 impressed with the way Applicant and their  
22 consultant have presented their proposal today.  
23 It sounds very compelling, it sounds like they're  
24 striving in every way to meet the concerns of the  
25 staff, the Marine Resources Fishery Service, the

1 Department of Fish and Game, the Coastal  
2 Commission, the environmental intervenors have.

3 But unfortunately it doesn't meet any of  
4 those concerns. And that's because the devil is  
5 profoundly in the details of what a 450 page  
6 single spaced set of regulations about section  
7 316(b) mean or don't mean.

8 What we've basically been told is, we'll  
9 comply with 316(b) to the extent the Water Board  
10 tells us to. Well, I think we all understand that  
11 that's a given. The question is, what does that  
12 have to do with meeting the requirements of the  
13 California Warren-Alquist Act, the California  
14 Environmental Quality Act, the California Coastal  
15 Act, etc.

16 The Applicant has said on several  
17 occasions today, and in their written filings,  
18 that they are going to reduce their entrainment  
19 impacts, the number varies, sometimes you hear 60  
20 percent, sometimes you hear 90 percent, sometimes  
21 you hear 80 percent.

22 But they use numbers in that range,  
23 while ignoring what they actually say in their Bio  
24 4 condition, which is "at the sole discretion of  
25 the Los Angeles Regional Water Quality Control

1 Board."

2 The Water Board has a legal obligation  
3 to enforce the Phase II 316(b) regulations, and  
4 nothing more. Those regulations are 450 pages  
5 long. And the question, for example, of what it  
6 means to reduce 60 percent, or 80 percent or 90  
7 percent is a profoundly unclear question at this  
8 point.

9 It appears to staff, to our scientists  
10 who have sat in on many discussions regarding the  
11 regulations -- which by the way were only  
12 finalized about two months ago -- it appears to  
13 staff that this 60 to 90 percent reduction is to  
14 be determined based on a theoretical, completely  
15 uncontrolled facility operating and withdrawing  
16 water immediately at the shoreline of the water  
17 body in question.

18 That is not facts in this case, that is  
19 not where El Segundo currently withdraws water.  
20 El Segundo itself is not completely uncontrolled.  
21 so we have stated in our comments, in a footnote -  
22 - and I would ask you all to take some note of  
23 this, I was asked actually by one of my staff  
24 members to move it up into the body and foolishly  
25 I resisted that, I now wish I had put it in the

1 body.

2 But our scientists believe that, for  
3 example, if this theoretical, uncontrolled  
4 shoreline facility were found in Santa Monica Bay  
5 to be killing ten billion marine organisms a year,  
6 and you then went out and took a measurement of  
7 what the damage is a half mile offshore, where the  
8 Applicant's intakes actually exist, with some  
9 controls, and you found that that particular  
10 facility was killing one billion marine organisms  
11 a year, the simple, straightforward math would  
12 suggest the Applicant has no obligation to do  
13 anything under 316(b).

14 It's killing 90 percent less than the  
15 calculated base case under 316(b). So it is  
16 nothing it has to do, at all.

17 The second aspect that is completely  
18 unclear is the question of when, under 316(b),  
19 parties are going to be required to impose  
20 controls, assuming there is actually some harm  
21 given the unusual and unclear test being used as  
22 to what harm may be.

23 The regulations are, as you said a  
24 moment ago, Chairman, primarily a best available  
25 control technology set of regulations. In fact,

1 that's so apparent that it has become a major bone  
2 of contention in the courts, where the regulations  
3 that appear to allow for offsite mitigation have  
4 been challenged and found to be illegal in the  
5 case of new facilities, and an identical challenge  
6 has now been lodged with regard to the Phase II  
7 existing facilities regulations.

8 With regards to the technology piece of  
9 it, the regulations are constrained by requiring  
10 no more technology than is cost-effective,  
11 essentially, given the harm that's occurring. It  
12 doesn't require all feasible technology, it  
13 requires cost-effective technology.

14 If it turns out that the only way you  
15 can reduce the inflow at the facility was to put  
16 in dry cooling, which our staff has already  
17 testified is not feasible in this case, if it  
18 turned out that was the only technological way you  
19 could do it, and the Water Board happened to share  
20 our staff's conviction that it was infeasible,  
21 that's the end of the technology fix, there isn't  
22 any other technology fix.

23 So then you go to offsite restoration,  
24 which may or may not be legal, and is now being  
25 challenged in the courts, but is completely legal

1 under the California Coastal Act, under the  
2 California Environmental Quality Act, under the  
3 Warren-Alquist Act, even if it is upheld for  
4 existing facilities, which we won't know probably  
5 for months and perhaps years to come.

6 Even if it's upheld, it's going to be  
7 constrained to this 60 to 90 percent of the  
8 theoretical base case, which I just gave you the  
9 example of the facility killing ten billion  
10 critters, and this facility turns out to be  
11 killing one billion, you don't have to do any  
12 offsite restoration.

13 It's going to be constrained to cost-  
14 effectiveness. So that, if the answer is that in  
15 order to compensate for this you have to spend  
16 more money than the critters are worth, in some  
17 consultants view, you may not have to do  
18 restoration. Whereas, under the Coastal Act, you  
19 have to do it if it's feasible.

20 So I want to be very, very clear, that  
21 legally and practically it is not sufficient to  
22 simply wash the Energy Commission's hands of this  
23 issue and send it to the Water Board for  
24 compliance with 316(b).

25 The Applicant has stated a couple of

1 other things that I wanted to comment on briefly,  
2 and then I'll be happy to try to answer any  
3 questions you may have or just to listen to other  
4 comments that other folks have on the procedure.

5 I thought it was telling that Mr. Smith  
6 picked up on Mr. Hemig's presentation about what  
7 level the cap was going to be at. Mr. Hemig  
8 basically told you "if we have to, we'll take this  
9 thing down to 88 billion gallons a year", and then  
10 backtracked when he was asked whether that was  
11 really what he meant.

12 That's not what he's saying. But what  
13 we are suggesting, that it should be 101 billion  
14 gallons a year, is that that is more than enough  
15 water to run the new facility 24 hours a day,  
16 seven days a week, duct fire -- which no one is  
17 going to do, but there's more than enough water to  
18 do that.

19 And there is enormous volumes of  
20 residual water still available to run the  
21 remaining units three and four on an intermediate  
22 and baseload level. What I want to come back to,  
23 and I think it's important as you all move towards  
24 the final decision, is that this is a legal  
25 process. We have evidence in the record to

1 support what I just said. This is not simply  
2 argument of counsel. These are the undisputed  
3 facts in the record.

4 if we thought that there was a problem  
5 to this we would provide exceptions, and we did.  
6 We provided two exceptions. We said that if the  
7 study, which this Applicant has refused to do for  
8 four years, if that study is finally ordered by  
9 this Commission and reveals that the cap we've  
10 recommended is unnecessarily strict, we are more  
11 than willing to accept having the conditions  
12 amended to loosen the cap. That is in our  
13 condition.

14 We have also said that if there is a  
15 crisis, an energy crisis, an emergency, and the  
16 amount of residual water available for the backup  
17 units turned out to be insufficient, the Applicant  
18 can seek and receive a variance from the Energy  
19 Commission during the period of that crisis.

20 So I would say, as a matter of law, the  
21 record in this case mandates that this Committee  
22 and this Commission impose the stricter annual and  
23 the stricter monthly caps that we have required.  
24 Not only because they actually reflect what we  
25 believe is the proper baseline under CEQA, given

1 that this facility has not operated legally for  
2 over two years, and by the time that they finally  
3 turn the new facility on it will probably be  
4 closer to five years that they will not have  
5 operated.

6 But also because you have an obligation  
7 under the California Coastal Act to minimize the  
8 effects of entrainment to the extent feasible. The  
9 evidence in the record shows that it is feasible  
10 to do what staff is recommending. There is no  
11 evidence in the record, no evidence in the record,  
12 to show that it is not feasible.

13 Finally, the Applicant seems to be  
14 concerned about the, what I believe is a red  
15 herring, of doing two studies. The staff has  
16 never sought to have two studies done in this  
17 case.

18 Staff believes, based on everything we  
19 know from almost a half dozen once through cooling  
20 cases that this Commission has licensed, that this  
21 study can be put together under the control of the  
22 Energy Commission with a high level task force  
23 involving representatives from the Water Board,  
24 from the Coastal Commission, from Fisheries  
25 Services, etc.

1           And that the study that is performed  
2 will then be profoundly relevant to the 316(b)  
3 determination the Applicant has to make. The  
4 reverse is not true. In fact, it isn't even clear  
5 that the Applicant will have to do an entrainment  
6 study under 316(b), because there are five  
7 different extremely complex options that are  
8 afforded to folks seeking to comply with 316(b).

9           So what I want to say is that, in asking  
10 that we do a study under Energy Commission control  
11 we are following precedent, we have experience  
12 with it, we know what we need, the Water Boards  
13 themselves are still determining what they need,  
14 we don't know what will happen when there's a  
15 split between one region and another, whether the  
16 state Water Board will have to reconcile it, or  
17 whether the courts will have to reconcile it, or  
18 how that's going to be reconciled.

19           The study that we are going to require  
20 will absolutely without question provide  
21 information relevant to 316(b), and we can get on  
22 with it.

23           So, in summary I guess I would like to  
24 say one more time that we on staff sincerely share  
25 three objectives that we believe the Committee is

1 seeking. Number one, to issue a license for this  
2 project so that the energy can be provided for the  
3 state. Number two, to protect the marine  
4 resources of Santa Monica Bay. And number three,  
5 to meet fully all federal and state laws that are  
6 relevant to this case.

7 We believe the fully mitigated option,  
8 other than the hyperion wastewater treatment  
9 alternative, is the only way that you can do that.  
10 The remaining choice, in our judgment, would be to  
11 deny the license, as Coastal Commission and others  
12 have recommended, until such time as the study  
13 actually is completed. Thank you.

14 COMMISSIONER KEESE: Thank you. Mr.  
15 Boyd?

16 COMMISSIONER BOYD: Thank you. Mr.  
17 Abelson, a very eloquent presentation, but I want  
18 to hear everybody out before saying too much. But  
19 one of the issues that you have raised, and as it  
20 has been raised repeatedly, is the amount of money  
21 that's on the table. And the staff's concern that  
22 you convey about funding necessarily to be sure  
23 that all feasible restrictions and enhancement  
24 affects are fully funded.

25 The Applicant today offered a rationale

1 for their number, but I struggle to find a  
2 rationale for putting a number on the line that  
3 staff has drawn as necessary. Can you help us at  
4 all today with any kind of rationale, formula,  
5 index, or what have you that would be the staff's  
6 basis for its argument?

7 MR. ABELSON: Right. Well, I can remind  
8 all of us of some information that is in the  
9 record and is in the evidence in this case, and  
10 that I believe is helpful to the question that  
11 you're asking.

12 Before I do, let me just say that with  
13 regard to the rationale that the Applicant  
14 provided for the \$7 million, it ignores the fact  
15 that the proposal is a cap over both intake one  
16 per units one and two, and intake two for units  
17 three and four.

18 In NRG's own presentation, about a month  
19 and a half or two months ago, to a whole host of  
20 folks, including our folks down here, about how  
21 316(b) would work, they did indeed come up with an  
22 approximate \$7 million annualized cost for intake  
23 one.

24 But what Mr. Hemig ignored is that they  
25 also came up with approximately a \$16 million

1 annualized cost for intake two. So put those two  
2 together and you actually have a number that's  
3 more like \$23 million, just based on something the  
4 Applicant provided to a whole host of folks about  
5 a month and a half ago. And I simply want you to  
6 be aware that the volumes they're proposing to  
7 bring in are not going to come simply through  
8 intake one. They're going to come through both  
9 intakes.

10 With regard to staff's position, I think  
11 that the question is a challenging one, because  
12 normally in the ideal situation what we have  
13 normally is a study in progress, a good study, a  
14 reliable study.

15 We have the information, perhaps there  
16 is some argument about how significant the impacts  
17 really are or not, but at least the Committee  
18 policymakers have in front of them the number of  
19 critters that are being killed, the extent of the  
20 impacts that are being expected from the facility.

21 And from that one goes off into, well,  
22 that's the number that are going to die, what we  
23 need to do to either avoid that entirely  
24 technologically through dry cooling, or wet/dry  
25 cooling, or through sewage treatment plant or

1       whatever. Or alternatively what do we need to do  
2       to compensate through offsite restoration or fish  
3       hatcheries or other non-site specific tools that  
4       this has used extensively when it was necessary to  
5       do so to mitigate harm.

6               In the current case the information in  
7       the record is very clear. The Santa Monica Bay  
8       restoration folks have indicated that costs in  
9       excess of \$50 million have been provided and  
10      required for offsite mitigation to repair the  
11      damage from some power plants in the Santa Monica  
12      Bay, that's in the record.

13              The record is clear that in the most  
14      recent case that this Commission decided after a  
15      long period of deliberation, the Morro Bay case,  
16      the Applicant in that case proposed \$37.5 million  
17      in feasible cooling water-related costs. And  
18      those \$37.5 million included the study itself,  
19      \$12.5 in offsite mitigation, and another \$5  
20      million in offsite monitoring.

21              So that basically the restoration alone  
22      was over \$20 million. And the cooling related  
23      costs were closer to \$37.5 million, and this is in  
24      the record.

25              In the case of Moss Landing, cooling

1 water-related costs that the Applicant feasibly  
2 proposed to undertake, and eventually was  
3 committed to undertake by the decision that was  
4 issued, was \$67 million.

5 So we know that dry cooling, for  
6 example, typically can run as high as \$35 million.  
7 And it wasn't found infeasible in this case  
8 because it was too costly, that was not the issue.  
9 Applicant never said it was too costly, staff  
10 never said it was too costly. There is not  
11 evidence to suggest dry cooling is too costly.

12 What we said was that it's site  
13 constrained, and the noise and other problems make  
14 it physically impossible to put that type of  
15 mitigation at this facility.

16 I believe we had provided some estimate,  
17 but I would offer this last number subject to  
18 check, because I'm not 100 percent convinced that  
19 we have this in the record. But I believe that we  
20 offered some evidence to the effect that, if the  
21 hyperion wastewater cooling option -- which from  
22 staff's perspective really is the ultimate win/win  
23 in this situation, and we're very disappointed  
24 that that doesn't appear to be the solution that's  
25 going to be required -- but when we were

1 evaluating that, and I have with me today Mr. Jim  
2 Schoonmaker, who's a 30 year licensed engineer who  
3 operated all of these plants for Edison for 30  
4 years and he did much of our technical work on  
5 this.

6 When we did an assessment of what that  
7 option might cost as a capital matter, we found  
8 that the pipes and the pumps and the miscellaneous  
9 costs related to that were probably in the order  
10 of \$12 to \$15 million a year operational cost for  
11 getting the water and pumping the water from the  
12 sewage plant and back, were on the order of a  
13 million dollars a year.

14 So I don't know if this answers your  
15 question as well as you would like, it is a  
16 difficult question given that we don't have the  
17 study in front of us, but these are the sorts of  
18 numbers that this Commission has accepted, has  
19 found feasible, and has ordered in a number of  
20 other cases, and that's, I guess, the best that I  
21 can do with your question.

22 COMMISSIONER BOYD: Okay, I thank you.  
23 I'm not sure it clears the air a lot, particularly  
24 with respect to the other two plants that the  
25 staff has used as kind of base cases in my mind,

1 and people can correct me if I'm wrong, but that  
2 those were fairly unique in that they were the  
3 only major entity drawing water from the water  
4 body in question, and here we have a very large  
5 bay that's shared by many people.

6 So that just complicates the view of, at  
7 least I have, of sharing the burden of damage and  
8 what-have-you, and therefore sharing the burden of  
9 mitigation that may be necessarily.

10 MR. ABELSON: Mr. Boyd, you said one  
11 thing on that last point. One of the reasons that  
12 we have emphasized, and what we're proposing in  
13 leg three, is a trust fund. It's because there is  
14 uncertainty, and it will not be something we can  
15 answer with any degree of precision until that  
16 study gets completed.

17 And what we have continually offered and  
18 said and mean is that, if the money is placed in  
19 trust, if the study is done, and if it turns out  
20 the amount that we are suggesting is commensurate  
21 with other cases turns out to be too high for the  
22 reasons you've mentioned or for other reasons that  
23 are relevant, then those funds should properly be  
24 rebated back to the Applicant.

25 And this is the best we can do with a

1 messy situation, given that we have not been able  
2 for four years to get the study from the Applicant  
3 we've been asking for.

4 COMMISSIONER BOYD: Thank you.

5 HEARING OFFICER SHEAN: Mr. Abelson, do  
6 I understand from the staff's comments that you  
7 see the \$7 million in the Applicant provided Bio 4  
8 to be a cap?

9 MR. ABELSON: It is not clear what the  
10 Applicant is proposing, given the statements that  
11 were made today, which are not consistent with the  
12 statements in the condition. The condition says  
13 \$7 million and that's it, and that would cover the  
14 study itself, it would cover any technological  
15 requirements that the Water Board might have, and  
16 any offsite restoration that might be offered in  
17 lieu of that, and then if there's any left over  
18 after that the Applicant is offering to basically  
19 commit that to additional restoration.

20 What I heard the Applicant say today was  
21 that they had picked that number based on a  
22 calculation of the compliance cost for unit one,  
23 and if indeed those compliance costs -- which no  
24 one knows what they're actually going to be, they  
25 may be none, there may be none.

1           But if they turn out to be more, what I  
2           heard the Applicant say today, or his  
3           representatives say, was that they would pay more,  
4           that's what they would do. So I, you know, I only  
5           know what the words appear to say on the paper,  
6           that's all they're offering in our proceeding, so  
7           it looks like it is a cap, as far as I can see.

8           HEARING OFFICER SHEAN: Okay, and you  
9           said there's some language in here that said \$7  
10          million and that's it. Could you actually look at  
11          the proposed condition and attempt to find that  
12          for us?

13          MR. ABELSON: Well, you know, I'd like  
14          to reserve the right to get back to you because  
15          this is a two-page single-spaced document, but  
16          basically on page two the Applicant is proposing  
17          to place \$7 million into an escrow account when  
18          construction is 50 percent complete, as determined  
19          in terms of the requirements of the Water board.

20          I don't see any other number, I don't  
21          see anything suggesting it can be more, i just see  
22          the number 7 and the suggestion that it may  
23          actually be less if the Water Board requires it to  
24          be less. And again, I obviously didn't anticipate  
25          your specific question, Mr. Shean, and I'd like to

1       reserve the right to look at this, you know, in a  
2       moment when I can actually focus on it in greater  
3       detail.

4                 HEARING OFFICER SHEAN: All right. Let  
5       me go now to page two of your staff response. In  
6       paragraph B, which goes under the heading "no  
7       substantive impact reduction measures are  
8       provided."

9                 At the bottom of that paragraph, in  
10       highlighted italicized type, the staff states  
11       "however, it is important to recognize that  
12       Applicant's proposed Bio 4 contains no specific  
13       technological, operational or restoration measures  
14       to reduce the once through cooling impact of the  
15       El Segundo Project, nor does it provide any date  
16       certain by which substantive measures will be  
17       undertaken, if ever."

18                Then on pages A1 and A2 are all of the  
19       staff's fully mitigated option conditions. Can  
20       you tell me, does staff provide in any of those  
21       conditions the specific technological, operational  
22       or restoration measures to reduce impacts of once  
23       through cooling, or any date certain by which  
24       those measures will be taken?

25                MR. ABELSON: I think the answer to your

1 question rests in reading the conditions as a  
2 whole. And what they basically say is we don't  
3 have the study so we can't order anything specific  
4 until we have that. When we have that it will be  
5 constrained by the amount of dollars that were  
6 feasibly placed in the trust fund, and will then  
7 be devoted appropriately to restoration and  
8 enhancement accordingly, and/or rebate if it turns  
9 out an excess amount was placed there.

10 HEARING OFFICER SHEAN: So if we convert  
11 that to a yes or a no --

12 COMMISSIONER KEESE: Mr. Shean -- it  
13 won't be limited to \$7 million if they have to do  
14 it to comply with the Regional Water Quality  
15 Control Board?

16 You're suggesting that if they put the  
17 \$7 million in, then Regional Water can't require  
18 them to do more than \$7 million?

19 MR. ABELSON: Uh, no, I'm not saying  
20 that. I'm saying --

21 COMMISSIONER KEESE: Well, the book --

22 MR. ABELSON: No, I asked, Mr. Shean  
23 asked me specifically what their words were in  
24 their document, and I quoted their words to them,  
25 which is that they're offering \$7 million.

1           Today they said, which i believe is  
2 probably correct, that if the Water board imposes  
3 a higher obligation on them in terms of 316(b)  
4 they're going to be confronted with a choice.  
5 They're either going to have to pay that or  
6 they're not going to have their MPDS permit. And  
7 they suggested that they may pay that.

8           But what I'm saying is that, in terms of  
9 our proceeding, the conditions being proposed to  
10 us, they're basically putting in \$7 million as the  
11 amount that they're committing for this project.

12           COMMISSIONER KEESE: That's going into a  
13 trust, that's one issue. And then what they're  
14 going to pay for it is another issue.

15           HEARING OFFICER SHEAN: Okay, if I may  
16 return to my question, because if I understood you  
17 correctly, the answer is there is no specific  
18 technological, operational or restoration measures  
19 to reduce once through cooling impacts identified  
20 in the staff's proposed conditions, but from the  
21 three conditions that you do propose it can be  
22 inferred?

23           MR. ABELSON: Yes, I think that's  
24 correct, and let me explain what I mean by that.  
25 In the Applicant's proposal, basically what

1 they're saying is that they will comply with  
2 316(b). And 316(b), as I attempted to explain a  
3 moment ago, may or may not require them to do  
4 anything, in reality. Nobody knows, okay?

5 Our requirements absolutely will A,  
6 place a cap on them; B, require them to place all  
7 feasible money into a trust fund; and then C,  
8 spend such money as is necessary from that trust  
9 fund to restore and enhance to the extent feasible  
10 the environment of Santa Monica bay consistent  
11 with the study that we are having done.

12 HEARING OFFICER SHEAN: You say that it  
13 expresses that they will do that restoration? Can  
14 you find that language under A1 or A2?

15 MR. ABELSON: It would be basically a  
16 derivative of essentially, of A3.

17 HEARING OFFICER SHEAN: Not expressed  
18 but inferred, again, is that correct?

19 MR. ABELSON: Again, if you read our  
20 various comments it's clear that the trust fund is  
21 intended, basically, to provide funds necessary to  
22 restore and enhance to the extent feasible. We  
23 obviously don't know what that is because we don't  
24 have the study yet. But if your point is should  
25 we add a sentence or two to make that clear on Bio

1 3, then we'd be happy to add that sentence, if  
2 that's your point.

3 MR. ABELSON: I'm just trying to make  
4 sure that you're as critical of what you write as  
5 you are of what the Applicant writes.

6 MR. ABELSON: Yeah, with respect to --  
7 it's not a question of being critical one way or  
8 the other, the issue that I'm concerned --

9 HEARING OFFICER SHEAN: Well, maybe it  
10 needs a different word then, precise.

11 MR. ABELSON: Yeah, I mean, --

12 PROJECT MANAGER REEDE: Excuse me, but  
13 Hearing Officer Shean, the operational controls  
14 are clearly stated in our Bio 1 in the form of  
15 flow cap. That is an operational control. it is  
16 not inferred, it is clearly delineated.

17 MR. ABELSON: And Officer Shean, what  
18 I'm trying to get at is, I take your point as an  
19 editing matter and I accept that criticism, but I  
20 want on a substantive level for the Committee to  
21 understand the difference in what we're proposing  
22 versus the criticism that we're raising with  
23 regard to the Applicant's proposal.

24 At a substantive level, what we're  
25 saying is the Applicant has not proposed anything

1 substantive in the way of technology, operations,  
2 or offsite restoration. And the very nature of  
3 316(b) is such that, by the time the dust settles,  
4 there actually may be nothing required at all.  
5 That's actually, potentially, true.

6 By contrast, what staff is proposing is  
7 the trust fund that will be used to restore and  
8 enhance to the extent feasible. If we've done a  
9 poor job of draftsmanship I accept your comment in  
10 that regard. But I do believe there is that  
11 substantive difference.

12 HEARING OFFICER SHEAN: is there a  
13 substantive requirement under the Warren-Alquist  
14 Act with regard to this? You've stated on several  
15 occasions here that, insofar as the Clean Water  
16 Act, that that is a matter that the project must  
17 comply with, and it also must comply with the  
18 Warren-Alquist Act, the Coastal Act, and CEQA.

19 Now, we understand the provisions that  
20 are in the Coastal Act. With respect to the  
21 Warren-Alquist Act is there a substantive  
22 requirement for environmental review and  
23 mitigation of potential impacts in the Warren-  
24 Alquist Act that is distinct from CEQA?

25 MR. ABELSON: The answer I believe is

1       yes. First of all, just on the CEQA part, as I  
2       think we all recognize, we are the lead agency for  
3       CEQA. But above and beyond that, there is the  
4       provision that was so extensively debated in the  
5       Morro Bay case, the 25323(b), which basically  
6       requires this Commission to adopt what the Coastal  
7       Commission recommends, unless it finds it  
8       infeasible or would require greater environmental  
9       harm.

10               The Coastal Commission, in this case,  
11       has clearly indicated it wants a study done, it's  
12       clearly indicated that the Coastal Act  
13       requirements require restoration and enhancement  
14       to the extent feasible. As indicated, the Coastal  
15       Act requirements require minimization of  
16       entrainment impacts to the extent feasible.

17               So basically we become the surrogate, if  
18       you will, for the Coastal Commission pursuant to  
19       25323(b).

20               HEARING OFFICER SHEAN: Your reference  
21       to the Warren-Alquist Act is to that section?

22               MR. ABELSON: Among others. There may  
23       be others, but that's certainly an obvious one  
24       that relates to incorporating the Coastal Act  
25       provisions.

1 HEARING OFFICER SHEAN: All right.

2 Thank you.

3 COMMISSIONER KEESE: I do have some more  
4 questions, but in trying to get the parties  
5 together here, I think it would be appropriate to  
6 hear from one of the other parties at this time.  
7 And we have a choice of whether we want to hear  
8 everybody put down their marker before we hear  
9 from Regional Water, but I really would like to  
10 suggest that we take Regional Water at this time.

11 PROJECT MANAGER REEDE: Chairman Keese,  
12 might I ask you, through the Chair, to identify  
13 the other public agencies that are here, because I  
14 believe we have the State Lands Commission and  
15 there are others.

16 COMMISSIONER KEESE: That probably is a  
17 good point that the Chair muffed on its first  
18 option. This is a good time then. James, can you  
19 get them on the record?

20 Could we have -- well, at this time it's  
21 informal. Can we announce who they're with, and  
22 if they're going to speak on this issue?

23 MR. CHESNEY: Brian Chesney with  
24 National Marine Fisheries Service.

25 MR. SANDERS: Dwight Sanders, California

1 State Lands Commission.

2 MR. VALOR: Scott Valor, Santa Monica  
3 Bay Restoration Commission.

4 MR. FASS: Bill Fass, California  
5 Department of Fish and Game.

6 MR. SCHUMAN: Craig Schuman of Hills  
7 Bay.

8 MS. CHESTER: Lori Chester, city of  
9 Manhattan Beach.

10 MR. LUSTER: Tom Luster, Coastal  
11 Commission.

12 MR. RIZK: Antonio Rizk, State Regional  
13 Water Quality Control Board.

14 MS. PONEK-BACKAROWSKI: Blythe Ponek-  
15 Backarowski, Regional Water Quality Control Board.

16 MS. MURPHY: Michelle Murphy and Bob  
17 Perkins, Intervenors.

18 MR. NICKELSON: Nick Nickelson,  
19 Intervenor.

20 MS. EGOSCUE: Tracy Egoscue, Santa  
21 Monica Baykeeper.

22 COMMISSIONER KEESE: Okay. And we will  
23 formally get you on the record when we go forward.  
24 Regional Water, please.

25 MR. RIZK: Good morning, Chairman Keese.

1 My name is Tony Rizk, I'm with the Regional Water  
2 Quality Control Board, and I serve as the Case  
3 Manager of the El Segundo Power Plant.

4 Most of you know me.

5 In preparation for this workshop Dr.  
6 Reed had made a request that senior management  
7 from the Regional Board attend this meeting. For  
8 this meeting I'm honored to present the Chief of  
9 the Watershed Regulatory Section at the Los  
10 Angeles Regional Water Quality Control Board.

11 A little background, this section is  
12 responsible for federal and state permitting of  
13 over 650 facilities that are located in Los  
14 Angeles and Ventura County. Mrs. Bacharowski is  
15 our Chief. And with that I will be sitting and,  
16 thank you.

17 COMMISSIONER KEESE: Thank you. And I  
18 think you've gotten the flavor of what has been  
19 put before us, and I thought maybe you could shed  
20 some light on this.

21 MS. PONEK-BACHAROWSKI: I do, and I  
22 think, again it's Blythe Ponek-Bacharowski of the  
23 Regional Board. I thought maybe I'd put it into a  
24 context and give you kind of an idea of where our  
25 pathway is, as far as the NPDS permitting of the

1 El Segundo Power Plant.

2 We're sort of outside your track, but  
3 the NPDS currently for El Segundo expires in May  
4 of next year. That puts the obligation of El  
5 Segundo to cement what we call a report of waste  
6 discharge, by November of this year.

7 And that report of waste discharge will  
8 have to contain the documents expressing what the  
9 compliance will be with the 316(b) rules. So that  
10 we can make the conditions of the NPDS permit.

11 It's anticipated that our board will  
12 probably consider that in March of next year,  
13 although with all the interest I foresee that  
14 we'll probably have some type of workshop inviting  
15 all interested parties as well as the resource  
16 agencies, to solicit and hear their comments as  
17 regards to the permit.

18 We are indeed the lead agency as far as  
19 the 316(b), and the Regional Board will make the  
20 final and ultimate decision, but I just want to  
21 assure you that the Regional Board, our meetings  
22 are very public, and a lot of times very  
23 contentious, but our Regional Board is very open  
24 and very interested in the comments made, so that  
25 the NPDS incorporates all the relevant comments of

1 all the interested parties.

2 The permit is a five-year permit.  
3 However, we do provide reopeners in that permit,  
4 so the permit can be reopened at the Regional  
5 Board, make any changes that they see necessary,  
6 and it's an iterative process because down the  
7 line there may be some other decisions that have  
8 to be made.

9 Also, the NPDS permit allows for a  
10 compliance schedule, and as you know there's some  
11 very rigorous due dates and deliverables in the  
12 316(b). And that will all be part of the  
13 provisions of the NPDS.

14 So I suppose that's kind of an overview  
15 of where we're at right now, and if you have  
16 specific questions I'd be more than happy to  
17 answer them.

18 COMMISSIONER KEESE: In your view, will  
19 there be a study? Would you have the option of  
20 not requiring a study?

21 MS. PONEK-BACHAROWSKI: The Applicant is  
22 going to suggest to us in their report of waste  
23 discharge how they're going to comply with 316(b).  
24 I don't have the details, we have not seen  
25 anything yet, so it's very possible there will be

1 studies.

2 There's going to be a whole slew of  
3 deliverables in this report of waste discharge for  
4 the Board to consider, you know, how to progress  
5 and how actually comply with 316(b).

6 So at this point in time I have not seen  
7 anything, we have not seen the report of waste  
8 discharge. It sounds to me that it's probably  
9 going to be delivered very soon. It is due by  
10 November.

11 COMMISSIONER KEESE: Okay, and then at  
12 that time you will look at what they submitted and  
13 suggest revision if it doesn't meet your needs,  
14 look at the time schedule, and you said their  
15 permit expires in May?

16 MS. PONEK-BACHAROWSKI: That's correct.  
17 First of all, what we do, we need to have all the  
18 information. So if the report of waste discharge  
19 or any documents or any work plans that the  
20 Applicant submits is not complete we will ask for  
21 additional information to make that as complete as  
22 possible, and it's envisioned that we will then  
23 write -- whatever the provisions are, if we  
24 require study, you know, whatever it is, we will  
25 have that part of the NPDS permit, it will be an

1 enforceable order for all these deliverables or  
2 all these completion of studies or whatever that  
3 the board deems necessary.

4 COMMISSIONER KEESE: On the discussion  
5 that took place on the assumption, it seems on the  
6 part of the Applicant that there will be a 316(b)  
7 study under your jurisdiction, and staff  
8 suggesting that there must be a 316(b) life study  
9 under the Energy Commission's jurisdiction for  
10 validity.

11 Do you have any feeling on how we do two  
12 studies together? Would the Regional Water accept  
13 an Energy Commission 316(b) life study?

14 MS. PONEK-BACHAROWSKI: The Regional  
15 Board is going to make the decisions on the  
16 adequacy of any study. You need to do whatever  
17 you need to do to fulfill your, you know, your  
18 oversight.

19 However, it seems to me that it would be  
20 a waste of resources, both agency resources as  
21 well as resources of the operator would be better  
22 put down the line for restoration I think.

23 It seems to me that would be a  
24 tremendous waste of resources to have two separate  
25 studies going by. And again you can see the

1 timetable is, we are right on the same ballpark  
2 with y'all on this, and we'll have some idea of  
3 what's submitted to us by November.

4 And I would suggest that staff, your  
5 staff are -- we're more than willing to have y'all  
6 come in, discuss this. I think you know, or maybe  
7 you don't know, that we've already had a series of  
8 316(b) stakeholder meetings to discuss a lot of  
9 issues about how we see the baseline, how we see  
10 things are going to be determined, how we  
11 interpret 316(b) rules and that type of thing.

12 So we're open to having discussions with  
13 staff, whoever would like to come in, resource  
14 agencies as well as the environmental groups.

15 COMMISSIONER KEESE: The suggestion here  
16 that -- and I'll approximate that Applicant  
17 suggests that if the baseline is probably the  
18 currently permit from which the 60 percent minimum  
19 reduction is probably required, 220 is the number  
20 that jumps to my mind, I don't know --.

21 Has that come up in the workshops you've  
22 had, that the number might be higher than that?

23 MS. PONEK-BACHAROWSKI: We've talked  
24 about -- and again I'm here because I'm  
25 management, so I haven't been, you know, privy to

1 all of the details and stuff, although I've been  
2 attending most of those meetings.

3 it seems like that's the starting point,  
4 that as we get additional information and that  
5 being changed, but that is the starting point, and  
6 I believe it's 208, 208.

7 COMMISSIONER KEESE: 208. Well, I guess  
8 my question is, in the workshops that you've  
9 conducted, has anybody suggested that it should be  
10 250 or 300 or 350?

11 MS. PONEK-BACHAROWSKI: I have not heard  
12 such a discussion, no.

13 COMMISSIONER KEESE: That fair? Okay.  
14 Any other questions here? Mr. Smith.

15 MR. SMITH: When the report of waste  
16 discharge is submitted in November, what, how will  
17 the board determine if a 316(b) study is required?

18 MS. PONEK-BACHAROWSKI: Well, one of the  
19 things --

20 MR. SMITH: If the, excuse me, if the  
21 Applicant says, you know, they're not proposing a  
22 316(b) study? How would the board determine that  
23 a 316(b) study would be needed?

24 MS. PONEK-BACHAROWSKI: Again, our staff  
25 will look at this and solicit comments from all

1 the other agencies and interested parties, and  
2 make a best professional judgment on the, you  
3 know, adequacy of what's submitted to us, and the  
4 board will act on that, and then consider, at that  
5 second point in time, then consider all other  
6 information, all other testimony.

7 If someone thinks that whatever the  
8 Regional Board or staff has proposed in the  
9 tentative permit, if somebody doesn't like it they  
10 can come up and make suggestions to the Regional  
11 Board, and the Regional Board will consider it.

12 COMMISSIONER BOYD: A comment, Mr.  
13 Chairman, and thank you for your testimony. Lord  
14 knows I've worked on enough state agencies over  
15 enough years to appreciate what it is you face.  
16 But one comment you made is that we're all in the  
17 same ballpark.

18 The only comment I would make is that  
19 we've been playing this game for many, many years,  
20 and you're a later entry. And we both face  
21 dilemmas of the perpetual motion machine until we  
22 get to deal with it here.

23 Anyway, just a comment, so that you can  
24 appreciate our pain a little bit, as we appreciate  
25 yours.

1 MS. PONEK-BACHAROWSKI: Your point is  
2 well taken. I was actually referring to the time  
3 schedule.

4 MR. SMITH: One more question. Is  
5 there, at a previous hearing here in El Segundo,  
6 there was mention about the possibility of a  
7 single 316(b) for more than one power plant NPDS  
8 permit rule. Is that a possibility, or have you  
9 had discussions along those lines?

10 MS. PONEK-BACHAROWSKI: I don't think  
11 that's as much of a possibility, for example, I  
12 think you're referring to maybe a blanket kind of  
13 an order. But the one thing the Regional Board  
14 can do and has done in the past with many of the  
15 bite studies that were done, and some of the  
16 coastal monitoring that's been done, is that they  
17 will be put a provision in the permit to, you  
18 know, work with the other, you know, entities that  
19 are discharging.

20 And either singularly come up with some  
21 plan, or work together as a group to come up with  
22 some plan. So that has been done in the past in  
23 other types of permits. It's a possibility in  
24 this case.

25 MR. SMITH: Do you think that in this

1 case, with respect to multiple power plants, a  
2 single 316(b) is an effective way of assessing  
3 impacts, when you've got outlines that may be tens  
4 of miles apart?

5 MS. PONEK-BACHAROWSKI: Uh, Tony, you  
6 want to? I'll let Tony answer that.

7 MR. RIZK: Hello again, back on the hot  
8 seat. This is one of the main reasons we have  
9 gone through the lengthy process of having the  
10 316(b) workshops that we have been holding. And  
11 we're having the fourth one I think next week.  
12 And staff have attended at least one of those.

13 What we're trying to do is find common  
14 ground, so that without sacrificing the quality  
15 and the reliability and the applicability of the  
16 data, find ways to be cost-effective, and find  
17 ways to get the most information we can from these  
18 studies.

19 Now, will it be blanket -- based on the  
20 historical evidence of the previous 316(b) studies  
21 that were done in the 70's and the 80's -- what  
22 was done at that time, there was a bit of lumping  
23 of hydrologic sub-units within which a power plant  
24 exists.

25 For example, El Segundo Power Plant and

1 Scattergood, which is owned and operated by the  
2 Los Angeles Department of Water and Power, were  
3 treated in that study as one unit. And so, to  
4 cover all nine coastal power plants within our  
5 region.

6 Now, the logic that went back to the  
7 1970's and 80's to realize those studies under  
8 that framework would be one of the cases we're  
9 going to be looking at, see if that reasoning  
10 still stands and has merits or no, it doesn't have  
11 merits.

12 And based on that, as Mrs. Bacharowski  
13 pointed out, the Regional Board can require single  
14 study per facility, or even numerous or long-term  
15 studies per facility, as well as an integration of  
16 facilities that are within those subjects.

17 I hope I answered the question? I'd  
18 like to make one quick comment. I realized, I saw  
19 in the written testimony and also in the minutes  
20 from the April 23rd hearing, as well as in the  
21 proposals, a statement about the expiration of the  
22 NPDS permit being on June 29th, 2005.

23 The way our procedure is, when a permit  
24 is adopted, the permit expires on the 10th of the  
25 month prior to the adoption. And that's the

1 reason the El Segundo Power Plant NPDS permit  
2 expires May 10th, 2005. And we'd appreciate the  
3 correction in the record on that. Thank you.

4 COMMISSIONER KEESE: thank you. Is this  
5 the first facility that's coming up under the new  
6 regs?

7 MS. PONEK-BACHAROWSKI: Yes.

8 COMMISSIONER KEESE: Is there any  
9 suggestion that as you understand the new regs  
10 that you may be looking at the permits for other  
11 facilities, under this reopener clause, or  
12 whatever, for consistency?

13 MS. PONEK-BACHAROWSKI: Actually, all  
14 the power plants are scheduled for next year. All  
15 the ones that would be subject to 316. And our  
16 plan is to have them done by the end of next year.

17 COMMISSIONER KEESE: All of them.

18 MS. PONEK-BACHAROWSKI: Yes. And I  
19 might just add to that, we're soliciting help from  
20 USEPA contractors to help us with some of these  
21 permits. We're lucky enough to have some experts  
22 that were actually, that actually had to do with  
23 the promulgation of the 316 back in Washington,  
24 so --.

25 COMMISSIONER KEESE: Thank you. Thank

1 you very much. And thank you, sir.

2 PROJECT MANAGER REEDE: Excuse me,  
3 please. There's a couple of questions that might  
4 help the Committee if the Water Board could answer  
5 them for the benefit of the Committee, that as  
6 staff working with us for the past four years that  
7 we're aware of, that you need to be aware of.

8 And that first question is, was there  
9 any site-specific study ever done in the past at  
10 El Segundo on the affects of entrainment, or do  
11 you have any data on any entrainment study that's  
12 been done at El Segundo?

13 MS. PONEK-BACHAROWSKI: I'm going to  
14 have to ask Tony to --.

15 MR. RIZK: I believe we have addressed  
16 this question numerous times. The Applicant has  
17 listed all the studies that's been used in Santa  
18 Monica Bay. We have also provided staff the  
19 ability to see all of what's in our file, as well  
20 as all of our semi-annual surveys that we do, that  
21 we require each facility to do.

22 Now, I would like toward the future.  
23 Dr. Reed is, until July 9, 2004, the rights were  
24 not published. We have made it clear repeatedly  
25 in written communications to start -- to the

1 Energy staff as well as to the Applicant -- the  
2 Regional Board have deemed it reasonable and  
3 prudent and judicious to wait until the Phase II  
4 rules were published before proceeding with  
5 requiring additional studies.

6 Now, looking toward the future, Phase Ii  
7 rules have been published, there is a road map,  
8 our regional board has directed us to hold these  
9 workshops, which we have been doing. Our staff  
10 have, my bosses have directed us to simply proceed  
11 expeditiously, to attempt to bring all of these  
12 power plants into compliance under 316(b) rules,  
13 and that's exactly what we intend to do. Thank  
14 you.

15 COMMISSIONER KEESE: And do you  
16 understand those rules as requiring a 60 percent  
17 reduction? Is that --? Minimum 60 percent  
18 reduction?

19 MR. RIZK: Yes sir. We have been  
20 following those rules since the initial  
21 preliminary draft was published, almost three  
22 years ago now, two and a half years ago. And I  
23 have read them, and I know several of my  
24 associates have read them. We have got a good  
25 understanding, we have the evolution of that draft

1 rule.

2 When the draft rule was published it had  
3 a certain format. There were so many cries from  
4 the community on both sides of the aisle that  
5 there was a notice of data availability that was  
6 published, which kind of added additional insight.

7 And then the final, the preliminary  
8 rules were published and the final rules were  
9 published. So we have been following the  
10 evolution. We fully understand the 60 to 90  
11 percent game.

12 What we are really and most importantly  
13 interested in is, our charter, which is by the  
14 Basin Plan, under the --, is clear and simple.  
15 Implement the existing laws and regulations,  
16 protect and enhance our aquatic environment.

17 The protect is simply we implement the  
18 existing rule. The enhance is to take it to the  
19 next step over of looking for ways to better  
20 utilize community resources, to better have  
21 integration among the similar types of  
22 dischargers, whether it be in geographical  
23 proximity or in the type of the industry that's  
24 operating, in order to go beyond the protect  
25 version and to really enhance our region.

1           And Lord knows, we've got too many  
2       issues. The Santa Monica Bay Area Commission has  
3       done an awesome job through the years of  
4       documenting and tracking the state of the Bay.  
5       And you've heard things about the Santa Monica  
6       bites. These are just one tip of this iceberg of  
7       data collection and studies that have been  
8       extensively done through this region.

9           Having said all of that, I wish there  
10       was a one-handed biologist in this world. Because  
11       that's the reality.

12           MR. SMITH: all we needed was a yes or  
13       no answer there.

14           COMMISSIONER KEESE: I appreciate --  
15           I think the Committee is aware of the  
16       nature of the studies. The Committee is aware  
17       that this plant has been operating under a valid  
18       permit issued by a board that's valid, and I don't  
19       think we need to delve into the history as to who  
20       challenged that permit when it was granted five  
21       years ago.

22           But it's a valid permit under which this  
23       plant is operating. Did you have something to  
24       add?

25           MS. PONEK-BACHAROWSKI: I don't, I

1 just -- I assumed there was more than one  
2 question, so --.

3 COMMISSIONER KEESE: No, we're really  
4 not going to get into cross-examination.

5 MR. SMITH: this is a pretty  
6 straightforward question. In fact I'll ask it to  
7 you and you can decide whether to put it to them  
8 or not. And that is, given that we're telling you  
9 that we want to do a study, and with the  
10 assumption that what we submit to the water board  
11 says we want to do a study, and we've obligated  
12 ourselves to the Energy Commission to do a study,  
13 is that going to have weight in the staff's  
14 recommendation to the board as to whether or not  
15 we should do a study for our project?

16 COMMISSIONER KEESE: And you're likely  
17 to ask staff.

18 MR. SMITH: That's what I would like to  
19 ask them, the weight to which we're asking them to  
20 do is going to weigh in on their directions to the  
21 board on what to do.

22 COMMISSIONER KEESE: You're asking,  
23 okay,  
24 you're --

25 MR. SMITH: to the water board staff.

1                   COMMISSIONER KEESE: Are you willing  
2 to --?

3                   MS. PONEK-BACHAROWSKI: Well, now that I  
4 know what the game plan is, we're going to get  
5 this thing in our report of waste discharge, and  
6 we're going to consider it. The only thing I  
7 might say is that we may find there's something  
8 lacking in that that you thought was okay but we  
9 think it should go a little further, because of  
10 water quality. That would be my answer.

11                   COMMISSIONER KEESE: thank you. All  
12 right, I think that we've been quite productive so  
13 far. thank you for -- Mr. Smith?

14                   MR. SMITH: I'm sorry. Before you sit  
15 down? Almost made it.

16                   COMMISSIONER KEESE: Mr. Luster, you can  
17 almost get ready.

18                   MR. SMITH: Just a couple of clarifying  
19 questions about the report of waste discharge,  
20 which is due in November.

21                   MS. PONEK-BACHAROWSKI: That's correct.

22                   MR. SMITH: Would you expect in that  
23 report, you heard earlier that the Applicant is  
24 proposing that the uncontrolled level of flow --  
25 and earlier I used the phrase unmitigated level,

1       which is incorrect -- but the uncontrolled level  
2       of 220 at peak, are you expecting to see that  
3       figure in the report of waste discharge in  
4       November?

5               MS. PONEK-BACHAROWSKI: I don't know  
6       what we're going to see. Actually, they're  
7       operating on 208 right now, 208 MGD.

8               MR. SMITH: Oh, 208, here I thought the  
9       charge said 220. Okay, 208, let's just assume 208  
10      is the number.

11              MS. PONEK-BACHAROWSKI: Yeah, I don't  
12      know what we're going to see in the report of  
13      waste discharge.

14              MR. SMITH: Okay, so then would you  
15      expect to see the 88 million gallon figure that  
16      Applicant proposed earlier?

17              MR. RIZK: You know, again, it's a bit  
18      of -- from where we're sitting it's a bit  
19      premature to try and make determinations. Because  
20      we haven't received a package from the Applicant  
21      yet, and ultimately, as Blythe pointed out, it is  
22      the board that makes the decision.

23              But what we can tell you is, based on  
24      historical performance, things we have seen from  
25      our board, usually when you do have a flow, we

1 never go above that. So if the theoretical  
2 baseline that the facility comes up with -- and by  
3 the way, I take serious issue with Mr. Abelson's  
4 presumption of ten billion creatures.

5 It goes back to engineering school, on  
6 these issues. You don't get that wide variation  
7 between uncontrolled and limited controls. But  
8 let's say the unlimited controls is 250 actually,  
9 which may not be unlikely when you take away the  
10 velocity tab, you take away some of the  
11 constraints, our board would have issues with  
12 increasing from 208 to 250. So, again that's  
13 based on historical.

14 MS. PONEK-BACHAROWSKI: And they would  
15 also be subject, that is, the discharge subject to  
16 anti-degradation analysis because to go above that  
17 they would have to submit an additional document  
18 to us for board consideration.

19 MR. SMITH: I guess my question is --

20 MR. RIZK: Now, you asked about whether,  
21 does this mean automatically are we going to go to  
22 88 MGD per day, or whatever that number was, 60  
23 percent reduction in the volume. That is --

24 MR. SMITH: No, I'm sorry, no, that's  
25 not -- let me re-ask, just to clarify.

1 MR. RIZK: Okay. Thank you.

2 MR. SMITH: It's actually a little more  
3 procedural than your suggesting. In the report of  
4 waste discharge, which I think was described  
5 earlier as the report that the Applicant submits  
6 to you folks describing how they're going to  
7 comply with the existing regulations, excuse me,  
8 with the regulations in effect.

9 I'm presuming that in that report  
10 they're going to tell you how they're going to  
11 comply, and in describing how they're going to  
12 comply they're going to present you with the flow  
13 rates they're going to propose, that they propose  
14 to offer you, correct?

15 MS. PONEK-BACHAROWSKI: Yes, that's part  
16 of the --

17 MR. SMITH: So, whether it's 88 or any  
18 other number, it's in that report that they will  
19 identify their proposed flow rate, correct?

20 MS. PONEK-BACHAROWSKI: That's correct.

21 MR. SMITH: Okay. For purposes of Phase  
22 II regulations, is it in that report also that the  
23 term uncontrolled level is qualified. will the  
24 Applicant say "in compliance with Phase II  
25 regulations, here's what we think the uncontrolled

1 flow is?"

2 MR. RIZK: Uh, we have very wide  
3 latitude in our jurisdiction of what we require  
4 the Applicant. And what the Applicant may  
5 recommend or may request -- I don't mean to sound  
6 hardheaded here -- may turn out to be irrelevant,  
7 really. Because by the time it goes to the board  
8 it is the board's decision, and staff is simply  
9 serving at the pleasure of the board.

10 Now, will there be a reduction in  
11 volume, or will there be offset mitigation? Well,  
12 actually it's even premature to that, because  
13 what's going to be submitted is really preliminary  
14 collection. They are trying to collect data,  
15 which may include different studies with different  
16 depth and breadth, but it is those that will  
17 actually end up coming up with what's naturally  
18 falling out of this, and that is what is a good  
19 mitigation that will secure compliance, will allow  
20 the operator to continue to operate, and if they  
21 have to change their operation, so be it.

22 But we are, it is too premature right  
23 now. Let's get this information request first, go  
24 through it -- and by the way, our procedure always  
25 dictates soliciting other agency's input, and any

1 and all interested parties input. This is no  
2 exception. And everybody's going to have a full  
3 chance to complain and want to make changes in it,  
4 and to, we will consider.

5 MR. SMITH: Okay, let me ask the  
6 question one more time. And forgive me for not  
7 being clear here. I'm trying to separate the  
8 decision, which is clearly the board's  
9 prerogative, from the act of submitting an  
10 application, and all the information that goes  
11 along with that.

12 In our proceedings, Applicants submit  
13 AFC's. And in those AFC's they submit data that  
14 describes how they want to operate the plant.  
15 Now, whether that's exactly what the Energy  
16 Commission adopts is up to deliberations of a  
17 year, or four, in length.

18 The issue of uncontrolled flow, putting  
19 aside what the board will ultimately decide.  
20 Where do you think, or where do you expect, given  
21 that you've had a series of 316 stakeholder  
22 meetings to try and sort through all these new  
23 regulations and what they mean and procedurally  
24 and so on.

25 Where would you expect that the

1       quantification of uncontrolled levels first  
2       appears, not what the ultimate decision will be,  
3       but where will it first appear, where will the  
4       public get a chance to know what either the  
5       Applicant or somebody believes the uncontrolled  
6       level at the El Segundo plant is, so they can  
7       respond to it and react to it.

8               MR. RIZK: You know, you bring up the  
9       issue of uncontrolled. From where we're sitting,  
10      there's already a permitted volume that's a lot.  
11      Now, if the uncontrolled is less than that  
12      permitted volume, then that will become the new  
13      baseline, the uncontrolled through the Phase ii  
14      rules.

15             If the uncontrolled is higher than the  
16      208, this is where we go back to anti-degradation.  
17      See, you are only looking at the intake issue.  
18      When we are looking at this we look at intake and  
19      discharge. You guys have one without the other.

20             So, the fact that, not the fact, the  
21      presumption, that, let's say the intake, the  
22      uncontrolled intake is 250. That also means the  
23      discharge is going to be 250, and you're going to  
24      have additional pollutant loadings, which is not  
25      going to be allowed.

1           So, from where we're sitting, 208, as it  
2 stands today, is the baseline. if the  
3 uncontrolled come out to be less than 208, then  
4 that would become the new baseline.

5           MR. SMITH: Thank you.

6           MS. PONEK-BACHAROWSKI: Just from a  
7 procedural, I think you are also asking this. If  
8 we're going to bring this to the board in March of  
9 2005, which -- that's what we're aiming for, a  
10 tentative permit would be out. We probably will  
11 give 60 days before the board hearing, so, to  
12 solicit comments.

13           So that's where you'll first see these  
14 numbers and first staff's recommendation. So  
15 that's probably around the first of the year.  
16 thank you.

17           COMMISSIONER KEESE: Thank you. Mr.  
18 Luster?  
19 And as you come forward i will thank you for -- I  
20 don't mean to single you out as the best, but  
21 thank you for sharing the filing of this  
22 proceeding that has come before us here.

23           MR. LUSTER: Thank you for having me  
24 here today. I hope this workshop has the results.  
25 I think most of us are looking forward to getting

1 through this difficult review we're in the midst  
2 of.

3           However, at this point in the AFC  
4 review, you need the results of a recent and  
5 credible entrainment study to allow you to make a  
6 determination of project impacts and the necessary  
7 mitigation measures. Any certification without  
8 those results would be illegally flawed, and would  
9 fall far short of your obligations under the  
10 Warren-Alquist Act, CEQA, Coastal Act, and other  
11 state requirements.

12           You have my filing, and the Coastal  
13 Commission's been involved in this for quite some  
14 time, so you have plenty of reading material from  
15 us. I'll just go over a couple of points very  
16 briefly and await your questions.

17           Regarding the Applicant's proposed Bio  
18 4, basically it invites legal challenge and  
19 ongoing uncertainty for the proposed project.  
20 What the Applicant has expressed today was far  
21 more certainly than is evident in the proposed  
22 language of the condition, about future  
23 requirements, future costs, and the results of any  
24 studies, if they occur, what those results will  
25 be.

1 I certainly don't have that degree of  
2 certainty about what the Applicant is proposing,  
3 what the outcome may be. It sounds like from the  
4 Regional Board it's hard to have any degree of  
5 certainly of what to expect as far as the  
6 Applicant's proposals there, or the final regional  
7 board decision.

8 COMMISSIONER KEESE: I guess, it's in  
9 this Committee's purview to accept in our process,  
10 some of the absolutes the Applicant has made here.  
11 So if you're saying that you heard an absolute or  
12 a commitment from the Applicant, it certainly is  
13 in the realm of the decision that Mr. Boyd and I  
14 will make as to what to send forward to  
15 incorporate those things.

16 So I would think that, to the extent  
17 that the applicant has made their own definitive  
18 statements, I can't imagine that Mr. Boyd and I,  
19 with five good sets of ears here listening to help  
20 us out, haven't heard those commitments, and want  
21 to go in that direction.

22 MR. LUSTER: Okay. if I can clarify, I  
23 did hear commitments, not of a substantive nature.  
24 I don't know what study is going to be required, I  
25 don't know what the calculation baseline is going

1 to be, I don't know if there will be a 60 percent,  
2 an 80 percent reduction of entrainment from some  
3 number. We have no idea of that, and its nowhere  
4 in the record.

5 So, I believe the Applicant has made  
6 commitments, but they are more of a procedural  
7 rather than a substantive nature. And the concern  
8 of the Coastal Commission all along has been the  
9 substance of the project, what affects will it  
10 have on the coastal waters in Santa Monica Bay,  
11 and what mitigation is appropriate.

12 And until we have answers to those  
13 questions, it's very difficult for me to imagine a  
14 legal and credible way for you to move forward.  
15 And from our perspective the route has been to do  
16 the entrainment study.

17 Now, we also made one other  
18 recommendation, that if the Committee chooses to  
19 adopt a certain set of these various proposals,  
20 either by the Applicant or by staff or some  
21 combination perhaps, they could request, if they  
22 thought it might be worthwhile, that the Coastal  
23 Commission weigh in once more, to supplement its  
24 original decision.

25 What the Coastal Commission has said

1       thus far is you need to do the study.  If you  
2       wanted them to revisit, based on the new  
3       information, I think I'd be very happy to get that  
4       in front of the Commission very quickly.

5               I think I'll just hold on other comments  
6       and wait for your questions, and let the written  
7       material speak primarily for the Commission's  
8       position.

9               COMMISSIONER KEESE:  Thank you.

10              HEARING OFFICER SHEAN:  Fairly quickly  
11      would mean what?

12              MR. LUSTER:  I believe I let hearing  
13      Officer Shean know that if we had a new version of  
14      the project from the Committee, with the specific  
15      changes and that sort of thing, that I would get  
16      it to our Commission within 60 days.  And that  
17      would be pushing it, but that's my commitment.

18              COMMISSIONER KEESE:  The problem, as you  
19      know, the more generic problem of trying to  
20      synchronize the administrative roles with the  
21      Coastal Commission, the Regional Water, and some  
22      other bodies that we have yet to hear from here,  
23      State Lands, Fish and Game -- and tying in the  
24      absolute requirement on the Energy Commission that  
25      we do this within one year of the date it's filed,

1       which we've obviously, as a Committee, violated,  
2       and are attempting to get --.

3                It was a much broader issue, and we're  
4       trying to settle it outside this hearing process,  
5       in a totally separate, frankly, from this hearing  
6       process, how we do this and what the role of the  
7       respective agencies are, but I think that both  
8       Commissioner Boyd and I are appreciative of the  
9       fact that you've been able to give us input, and  
10      that the other agencies have been able to give us  
11      input.

12              And ultimately I think that is the  
13      standard by which the Energy Commission has to  
14      make its determination, with the input of all the  
15      agencies. And I think I heard from Regional Water  
16      today that that's their standard -- you do your  
17      thing, taking the input from everybody, and we'll  
18      do our thing, taking input from everybody.

19              Now, there is some acceptance of the  
20      fact, I guess the word enhancement -- there's a  
21      feeling that enhancement is a different term for  
22      each agency, because we're interested in  
23      enhancement, the Coastal Commission is interested  
24      in enhancement, Regional Water's interested in  
25      enhancement, and none of us I guess is going to

1 say "well, you do the enhancement and we'll sit on  
2 our hands."

3 The staff is telling us that we can't  
4 delegate to them. i didn't think we wrote our  
5 decision as delegating, we said we're going to do  
6 our job. And we see some things that are going to  
7 happen no matter what is our burden.

8 I think, other than that, your filing  
9 probably speaks pretty well for itself.

10 HEARING OFFICER SHEAN: Excuse me, can  
11 I--?

12 COMMISSIONER KEESE: Yes.

13 HEARING OFFICER SHEAN: First of all,  
14 let me cover this. If I understand correctly, on  
15 page 9 of your comments you're reviewing the  
16 adequacy of the staff's three-legged stool, or  
17 fully mitigated option proposal. And am I reading  
18 this correctly, the paragraph begins "we  
19 acknowledge the Energy Commission staff" you say  
20 here "any scenario in which the necessary  
21 entrainment study is put off to some unknown  
22 future date, to be done under unknown  
23 circumstances, does not meet the applicable  
24 statutory and legal requirements."

25 Were you speaking in that sentence to

1 the staff's three-legged stool proposal as it  
2 existed at the time you wrote this?

3 MR. LUSTER: Yes, correct.

4 HEARING OFFICER SHEAN: So the staff's  
5 proposal wouldn't make it, and the fundamental  
6 gist of your comments is that the Applicant's Bio  
7 4 wouldn't make it, is that correct?

8 MR. LUSTER: Right. Based on the  
9 Coastal Commission's existing 304 and 3D report,  
10 neither proposal appropriately recognizes the  
11 provision that the Coastal Commission provided.

12 And so until that changes, then a  
13 delayed study wouldn't be acceptable.

14 HEARING OFFICER SHEAN: So unless  
15 there's something different from either of those  
16 two, going back to the full Coastal Commission to  
17 get some additional response from them is going to  
18 get the same response we have today.

19 MR. LUSTER: Well, again, it would be a  
20 staff recommendation based on the proposal, but  
21 it's the Commission's final decision. The other  
22 option of course is to, as part of your decision  
23 now, to have a detailed, thorough entrainment  
24 study written in as part of your decision, rather  
25 than deferred to the Regional Board process.

1 HEARING OFFICER SHEAN: Let me ask you  
2 about this, since you're saying a thorough and  
3 detailed entrainment study, because from what I  
4 read out of the staff's comment before was that we  
5 have the study provided, but we don't have the  
6 followup to the study which is what are the  
7 technological measures, the operational changes,  
8 and maybe the restoration measure identified with  
9 any specificity so we know what would be  
10 implemented in the event some impact is disclosed  
11 by the studies. So, is that information required  
12 in your opinion?

13 MR. LUSTER: Well, what the Coastal  
14 Commission said was do the study, and based on the  
15 results of the study, we will weigh in if  
16 necessary at that point. Now, in other AFC  
17 proceedings, both Moss Landing and and Morro Bay,  
18 the study was done as part of the AFC review. The  
19 study and its results are kind of inseparable, one  
20 essentially leads to the other.

21 There is some variation on how you  
22 determine which results come out of the study, but  
23 you can't do one without the other. A big part of  
24 our concern on this is, you're trying to make a  
25 decision based on very little definitive

1 information.

2 The difficulty with the appropriate  
3 dollar amount for mitigation is based almost  
4 entirely on there being no data about what sort of  
5 impact is occurring due to the power plant  
6 operations. If we had that data it'd be much  
7 easier to say "well, we think it's about 20  
8 million, or 50 million, you know, or 2 million".  
9 Right now that's a completely arbitrary choice.

10 It's essentially a faith-base decision you're  
11 trying to make, based on what people may believe  
12 to be true or not, but there's no evidence to back  
13 that up.

14 HEARING OFFICER SHEAN: Thank you.

15 MR. ABELSON: Chairman, could I just ask  
16 one clarifying question, because there was one  
17 thing I was uncertain of?

18 COMMISSIONER KEESE: if it's a  
19 clarifying question.

20 MR. ABELSON: It is. The way I  
21 understood the e question from Mr. Shean and your  
22 answer was that staff's three-legged stool, or  
23 fully mitigated option, or for that matter the  
24 options newly proposed by Bio 4, neither of those  
25 two proposals meet what the Coastal Commission has

1 currently filed at a time when neither of those  
2 proposals were in play, is that correct?

3 MR. LUSTER: That's correct.

4 MR. ABELSON: And what I understand you  
5 to be saying is that if it were sent back to the  
6 Coastal Commission with either or for that matter  
7 both of those proposals, the Coastal Commission  
8 might choose to take a fresh look at both of those  
9 and decide whether either of them satisfy Coastal  
10 Act requirements. Is that true?

11 MR. LUSTER: That's correct as well. And -- and I  
12 can't speak for the Coastal Commission, but there  
13 could be some way to do a delayed study, if it  
14 came with enough certainty. I can't speak for  
15 them, but that is a possibility.

16 COMMISSIONER KEESE: I thought I heard  
17 the Applicant indicate that, not a bifurcated  
18 proposal, but I thought I heard the Applicant  
19 indicate that they would be submitting to Regional  
20 Water for a 316(b) study. And that they did not  
21 have an objection to the Energy Commission  
22 incorporating its decision in 316(b) life study if  
23 it were the same study.

24 But that it could be in the Energy  
25 Commission's decision, and under the rare

1       circumstances in which Regional Water didn't  
2       require a 316(b) study, it would take place  
3       anyway. That's what I thought I heard. Maybe  
4       this is an appropriate -- I see nods in the  
5       audience that I heard that correctly.

6               MR. LUSTER: And I guess my answer is  
7       not knowing what the Regional Board will require  
8       at this point, given that the 316(b) rule is so  
9       new, and there being five different options,  
10      there's no certainty that no new entrainment data  
11      would be required.

12             COMMISSIONER KEESE: Yes, but aren't you  
13      thrilled that the new 316(b) requires 60 to 80  
14      percent entrainment reductions? I mean, isn't  
15      this a positive step forward under federal law?

16             MR. LUSTER: It very well could be, but  
17      until I know the calculation baseline I don't know  
18      that that number means anything. Plus, having no  
19      certainty about what if any study is going to be  
20      approved that actually measures the loss of marine  
21      organisms due to the power plant operations --  
22      ironically, I think we've all been waiting for  
23      this new federal rule to be published, but now  
24      that it's out here I think we have less certainty  
25      rather than greater certainty.

1           In the past there was this one year  
2           entrainment data collection that was kind of the  
3           standard. It varied by location to some degree,  
4           but you went out and you collected samples every  
5           two weeks, you crunched the numbers at the end of  
6           the year, and you had a pretty good sense of  
7           entrainment losses.

8           Under this new rule that is one of,  
9           that's one subset of five different options. Some  
10          of the other options include no certainty that  
11          there will be any data collection, no sense of  
12          what the real impact is. That's my concern  
13          regarding certainty.

14          COMMISSIONER KEESE: Right. I think I  
15          heard that Applicant is willing to see that the  
16          Energy Commission required data.

17          MR. LUSTER: Well, it will be  
18          interesting to see in November what the  
19          Applicant's submittal is, and I don't know if the  
20          Committee would be willing to wait for that, to  
21          incorporate that into your decision making, but  
22          there's a relatively recent, short upcoming  
23          deadline that may provide valuable information for  
24          you.

25          COMMISSIONER KEESE: Thank you. Thank

1       you for joining us today. I have other  
2       governmental entities that I would like to take at  
3       this time. You've identified yourselves, so I'll  
4       make an opportunity for you to speak at this time.  
5       And since my list starts with State Lands, State  
6       Lands?

7                 MR. SANDERS: My name is Dwight Sanders,  
8       I'm Chief of the Environmental Planning and  
9       Management Division for the California State Lands  
10      Commission, and I regret that we were not able to  
11      submit comments by your deadline.

12                Having said that, if we had submitted  
13      comments they would have reiterated some of the  
14      points that were made in our April 28, 2004 letter  
15      which is in the record. And those numbered  
16      points, if you will -- I guess it is addressed to  
17      one, but -- those numbered points within our April  
18      28th letter that we believe are still applicable  
19      to the current situation are 1, 3, 5, and the last  
20      paragraph of number 6.

21                In the interest of time I certainly will  
22      not read those to you here, and let you read those  
23      again at your leisure. And without any  
24      disrespect, let me betray my age in making this  
25      next comment. If I might characterize the

1 situation that faces all of us, if one is familiar  
2 with the old Popeye cartoons and the character  
3 Wimpy within those cartoons.

4 Wimpy's famous line is "for a hamburger  
5 today I will gladly pay you next Tuesday." We're  
6 trying to understand what that payment might be,  
7 and when it might be made, for something that is  
8 already obtained.

9 There is no distrust intended, but all  
10 of us, we believe, operate better under a  
11 circumstance of certainty. Certainly in the  
12 litigious situations in which we all function.

13 One point that's also been raised, and  
14 if I might reiterate it, at least within the  
15 current context of again addressing your number  
16 one point, the language in the Applicant's  
17 submission, at least at this point, does not  
18 reflect the remark that I believe we heard this  
19 morning, that the \$7 million is a floor rather  
20 than a ceiling.

21 And let me address that in relationship  
22 to the, perhaps the staff's recommendation and  
23 flowing hopefully smoothly on to number two.

24 We can certainly understand, at least as  
25 an agency -- and by the way, we are a responsible

1 agency in this context, particularly in your  
2 formation or your fulfillment of the requirements  
3 of the California Environmental Quality Act. And  
4 of course we are an interested agency within your  
5 process, if you will, under the Warren-Alquist  
6 Act, as amended.

7 I have some empathy with your staff's  
8 inability to give you a credible number for the  
9 trust fund. Generally, any amount of mitigation is  
10 based on either a study, information, data,  
11 results, and so forth, and let me observe that,  
12 really in deference to you folks, we certainly  
13 appreciate your situation here and the  
14 overwhelming responsibility you have under all the  
15 laws in which we function, but this is a matter, I  
16 believe, of law, process, and science.

17 And really, what is being debated here  
18 is the timing of that science. And we have,  
19 again, some empathy -- and we have shown that  
20 empathy in our comments previously -- that more  
21 information front loaded in the process gives each  
22 of us greater certainty as we go through that  
23 process, and that certainly is the issue with  
24 which you're trying to wrestle with here today,  
25 and for the perhaps last four years.

1           And again, by no means of disrespect,  
2           number three, almost the question, the way it's  
3           phrased, my first reaction was "are you still  
4           beating your wife?" You know, the sufficiency of  
5           a study that is countenanced by the Regional Water  
6           Quality Control Board, we can only assume, and we  
7           predicate our assumption on the fact that a sister  
8           state agency will fulfill its obligations under  
9           the law.

10           Not only under the laws in which they  
11           operate, but certainly the more general laws of  
12           the California Environmental Quality Act for  
13           example. One of the things in that regard that  
14           entered my mind upon the timing discussion of the  
15           board staff, I'm presuming that they too are a  
16           responsible agency. And a parenthetical question  
17           might be how can the board meet it's prescribed  
18           schedule in 2005 for the issuance of the new  
19           permit if the lead agency has not yet acted.

20           And again, that's under the presumption  
21           that there are additional deliberations that might  
22           affect the Regional Water Quality Control Board's  
23           process, both not only in terms of the application  
24           they've received and the detail to which the  
25           Applicant addressed the board and other agency's

1 needs within that process.

2 Certainly the project impacts that we're  
3 dealing with today are primarily the impingement  
4 and entrainment, that's well known.

5 And number four, certainly I think, I  
6 infer from the comments of the board staff that  
7 they would welcome participation of other agency's  
8 and helping them in the oversight and design of  
9 the 316(b) study. So too would your staff.

10 So both offers are present in either  
11 circumstance, and from I guess our traditional  
12 point of view and our view of provisions of the  
13 California Environmental Quality Act we have  
14 greater empathy for the timing that is espoused by  
15 your staff, that of the Coastal Commission, and  
16 that of NOAA Fisheries as to the need for the  
17 information up front in the process before the  
18 project goes too far out of your reach.

19 And perhaps I can clarify that remark in  
20 trying to address your number five and winding up,  
21 because I know you have a lot of other things to  
22 hear.

23 Frankly, the 316(b) study is the most  
24 credible and appropriate means to determine the  
25 nature and extent of the impacts and mitigation

1 that may be required as a result of the  
2 determination of those impacts. And whether, you  
3 know, CEQA in its practice generally says in an  
4 order of hierarchical importance first of all, you  
5 avoid the impact.

6 If you're not able to avoid the impact  
7 you mitigate the impact, and within that  
8 mitigation split there is a preference, in a  
9 hierarchical sense, of onsite, in kind mitigation,  
10 in deference to offsite, perhaps either in kind or  
11 if you will out of kind.

12 In other words, if you have one organism  
13 of this type killed over here, your mitigation  
14 might be creation or protection enhancement of two  
15 of this type of organism. that is sort of an in  
16 kind example, rather than -- money, frankly, is  
17 generally the last preference if you will from a  
18 CEQA practitioner's point of view, because it  
19 doesn't, it doesn't directly address what is being  
20 impacted, or it may not, if you will.

21 And I think to some extent, to perhaps  
22 inferentially address a concern raised by Mr.  
23 Boyd, it would seem that if a 316(b) study is done  
24 on the El Segundo facility, in and of itself, in  
25 and of its operating conditions, in and of its

1 environment, that that study ought to reflect that  
2 facility's fair share, if you will, of either the  
3 damage or the enhancement or whatever that might  
4 occur in the function of that particular facility.

5 So, one might argue that there is a  
6 direct relationship between fair share and an  
7 individualized study. I think, a couple of other  
8 points, if I may make an observation, that needs  
9 to be wrestled with by you and the rest of your  
10 colleagues.

11 How is this stipulation going to be  
12 implemented by the Energy Commission? When is it  
13 going to occur? What are the consequences of  
14 either non-compliance or other uncertainties?

15 And frankly, the matter of timing seems  
16 most appropriate. At least to my thinking we have  
17 not heard the relationship, or the  
18 interrelationship, between the results of the  
19 process proposed by the Applicant and very key  
20 points in the project's iteration, if you will.

21 In other words, will the results of the  
22 study as proposed by the Applicant come in prior  
23 to the, if you will, the point of no return. In  
24 other words, the point in the project where  
25 engineering or operational considerations that may

1 need to be made in order to incorporate the  
2 provisions or the results of the 316(b) study,  
3 i.e. avoid impacts, number one, and then number  
4 two, mitigate those impacts, are those points  
5 going to converge.

6 Or are they going to miss one another in  
7 the night, so to speak. And certainly the greater  
8 insurance would be within the context of the  
9 Commission requiring the timing and completion of  
10 such a study before those points of no return, if  
11 it does not wish to require the completion of such  
12 a study prior to its actual, prior to its license,  
13 if you will, the action given in the license.

14 And with that I conclude my remarks, and  
15 certainly will be available for any questions you  
16 might have.

17 COMMISSIONER BOYD: Thank you, Dwight, I  
18 think you helped clear the air, but it's still  
19 murky here.

20 MR. SANDERS: I cannot disagree with  
21 you, Mr. Boyd. I think all of us here are really  
22 looking for the same results. What differs, if  
23 you will, is the timing and the certainty with  
24 which those results are achieved.

25 And at least from our agency's

1 viewpoints, if the problems are solved before we  
2 have to reach a decision on a project from our own  
3 perspective, and we must as a responsible agency  
4 rely on the documentation and the process and the  
5 conclusion of your process, so we have a self-  
6 interest in trying to help you help us.

7 COMMISSIONER KEESE: Let me just mention  
8 one thing that has not been said here, and that is  
9 we are in the fourth year of our process, but when  
10 we started this process we had a brand new  
11 regional water permit, a regional water permit  
12 that had been issued within months of the  
13 application.

14 And in hindsight it would be very nice  
15 if this Committee had all the input from here and  
16 made the decision that that's what we should do at  
17 the front end, before we accepted this  
18 application.

19 As I recall, it wasn't recommended by  
20 staff at that time, and the Committee didn't think  
21 of it. We accepted that filing as saying that the  
22 use of water here has just been approved by the  
23 agency that is responsible for approving it. Now  
24 we look four years down and we're ready for a new  
25 study and there's a feeling that, well, we never

1 should have accepted what they had was based on  
2 baseline studies and lots of cracks come up.

3 But, at the time of filing, there was an  
4 acceptance that we were relying on a sister agency  
5 and it was the proper use of the permitting  
6 process for a plant to continue operating.

7 It's one of the deficiencies when you  
8 get involved in a process where you're supposed to  
9 do it in one year and it takes four. If we'd  
10 have done it within one year, if we'd have  
11 accepted our mandate to do it within 12 months, we  
12 would have done this without the completion of a  
13 study, period, unless it was required before  
14 accepting the filing. Which it wasn't, even  
15 involved at that point. Thank you.

16 MR. ABELSON: Mr. Chairman, clarification  
17 just for the record. Staff's position was not  
18 that the NPDS study was adequate, but that we were  
19 willing to start the clock, with the understanding  
20 that the Applicant will make it adequate. Just so  
21 we're clear on that.

22 COMMISSIONER KEESE: Okay, thank you.  
23 And I wasn't as involved as I am now.

24 COMMISSIONER BOYD: Well, when you  
25 started this process you had a different

1 Commissioner sitting next to you.

2 COMMISSIONER KEESE: Yes, well, I  
3 noticed that the other Commissioner --

4 COMMISSIONER BOYD: You had a fairly new  
5 Commissioner who's term was expired, and you had  
6 me in this for just six months.

7 COMMISSIONER KEESE: Yes, the former  
8 Commissioner is on the service list, of staff  
9 services, so I guess you're praying for relief or  
10 something. Okay. If anybody feels they should go  
11 next? So you are the clarifying agent for our  
12 muddy water?

13 MR. CHESNEY: I will try. As I said  
14 before, my name is Brian Chesney, I'm with the  
15 National Marine Fisheries Service. I've been up  
16 here before. We've provided various letters and  
17 statements throughout this process.

18 And as we've previously mentioned, we  
19 believe the proposed project may adversely affect  
20 what's called the central fish habitat, for a  
21 variety of federally managed fish species, and  
22 that's pursuant to the Magnusen-Stevens Act.

23 Typically when we go through project  
24 approval or at least giving comments pursuant to  
25 the Magnusen-Stevens Act, we would like to know

1 what the impacts are prior to certification or  
2 approval of that project. Thus we repeatedly  
3 recommended that a site-specific scientifically  
4 reliable entrainment study be conducted.

5 I'm encouraged that we're moving towards  
6 an agreement amongst all parties on the need for  
7 such a study. However, based upon the Bio 4 that  
8 I've seen, it seems to defer everything to the  
9 Water board's 316(b) process. And our agency  
10 feels that sole reliance on this process may be  
11 insufficient to adequately safeguard the  
12 environment.

13 For one, it may delay the onset of a  
14 study that we've been asking for for quite some  
15 time. I believe our first recommendation to do so  
16 was back in April of 2002.

17 Secondly, as Mr. Abelson presented  
18 earlier, we might not find a technology fix to get  
19 to the 60 to 90 percent entrainment reduction.

20 And lastly, if we can't find the  
21 technology fix, then we have this restoration  
22 option, but from what I hear that's currently  
23 being challenged in court, so that may not be an  
24 option either.

25 And in addition to the 316(b)

1 requirements there is also these other statutes  
2 and regulations that the Committee has the  
3 opportunity to address now, such as the California  
4 Coastal Act which Tom Luster spoke about earlier,  
5 and the Magnusen-Stevens Act, which NOAA Fisheries  
6 administers.

7 So the agency believes that the  
8 Commission should address all the issues now and  
9 adopt what the staff has put together in what they  
10 call their fully mitigated option.

11 We gave you a letter, I believe on  
12 Friday, which I believe summarizes our general  
13 opinion. If there's any questions I can help  
14 clarify?

15 COMMISSIONER KEESE: Let me jump in at  
16 this point. Can I ask you one question?

17 MR. CHESNEY: Sure.

18 COMMISSIONER KEESE: What is your  
19 baseline from which you make the determination.  
20 Is it the current operation -- are you using the  
21 same baseline for water use that we're using?

22 MR. CHESNEY: That, under the Magnusen-  
23 Stevens Act there's actually no use of the word  
24 baseline. It's a very tricky issue that our  
25 headquarters is tackling as we speak. But general

1 policy within our region has been we evaluate a  
2 project based upon two forecasted conditions.

3 One would be as the project has been  
4 proposed, and the other is that the project isn't  
5 there, didn't exist. And so you'd have, in this  
6 case you'd have a graph, you'd have two lines --  
7 we're talking about aquatic organisms. One would  
8 be without project, and you'd have potentially  
9 higher habitat value. And then with the project  
10 it would be, perhaps, in this case if we're  
11 sticking to a certain baseline it would be a, you  
12 know, horizontal line.

13 We provide recommendations that try to  
14 get between that difference. Is that clear?

15 COMMISSIONER KEESE: If you're saying  
16 that modernization, if a facility was going to be  
17 modernized to use half as much water as it had  
18 previously used you would say, you're looking at  
19 it as a new project that's producing 50 percent of  
20 what the old one did? You're not, you look --

21 MR. CHESNEY: Well, we look at it as --  
22 currently, right now, without official policy  
23 guidance, we look at it as if, we're comparing it  
24 as if there is no project at all. And we're  
25 careful about how we make recommendations, you

1 know, we try to incorporate obvious feasibility  
2 issues.

3 In this case, as we had I think in our  
4 April and our June and October letters, we laid  
5 out generally how we go about providing  
6 recommendations.

7 First we say try to avoid the impact  
8 altogether. Hence we recommended the staff's  
9 option of using the wastewater reclamation option.  
10 But that was deemed infeasible.

11 So the second option would be, well,  
12 figure out what the true impact is through an  
13 entrainment and impingement study, and then  
14 address that appropriately with a mitigation plan.  
15 To date, we don't really know what the impact is,  
16 and that's why we've continually recommended  
17 getting a better understanding of that, so all  
18 agencies, everyone combined, can work together to  
19 come up with an adequate mitigation plan.

20 COMMISSIONER KEESE: Thank you.  
21 Appreciate it. Fish and Game.

22 MR. PAZNOKAS: Good Afternoon,  
23 Commissioner, Chairman, and members of the  
24 Committee. My name is Bill Paznokas, I am a staff  
25 Environmental Scientist with the Marine Regions,

1 Department of Fish and Game, as well as the marine  
2 invasive species coordinator for the department,  
3 in marine waters.

4 We have previously submitted our  
5 comments regarding this process, and we've been  
6 involved with the process for quite a long time as  
7 well. And the thing that I'm here today to  
8 reiterate is our position that the study needs to  
9 happen, we need to have that data, that  
10 information, so that we can determine what those  
11 impacts are from this facility.

12 And the other position that we're here  
13 today is that we want that study done sooner than  
14 later. So whichever mechanism is going to allow  
15 that to happen, we're going to be very supportive  
16 of.

17 One of the things that we have recently  
18 been involved with are other facilities and the  
19 implementation of the 316(b) regulations. And  
20 some of the timing that another regional board has  
21 used, which is allowed in those regulations, gives  
22 up to four years to put together a comprehensive  
23 study. And so we are concerned that that timing  
24 may occur here.

25 So, our recommendation with respect to

1 that is if you folks can get that study done  
2 quicker, then we are going to be supportive of  
3 that. And I think that's appropriate.

4 One of the other things that has been  
5 brought up several times by other speakers as well  
6 as staff is that, since we don't know the impacts  
7 from this facility and that study is going to  
8 provide that information, it's very difficult to  
9 try to put a cap or a floor or any kind of figure  
10 on trying to determine what mitigation will cost  
11 and what that mitigation will be.

12 Now it's a little bit different from  
13 what I received in the Bio, as to what was said  
14 today in terms of the \$7 million. We don't know  
15 what that figure is, and we need to have that  
16 study prior to us coming up with what those  
17 mitigation, or what the new regulations allow,  
18 which is restoration, and what that picture will  
19 be.

20 COMMISSIONER KEESE: Right. And again,  
21 there's some confusion about this, and this trust  
22 fund, and full mitigation. The only advantage I  
23 see to address from is that it guarantees that  
24 that money is in there and it goes to some other  
25 purpose if not --.

1           If it isn't beneficial to have that sum  
2           in there, then the condition should look at just  
3           required mitigation and put no dollar number in,  
4           you know, just to require mitigation. And the  
5           Applicant is going to have to do it no matter  
6           what. But just strike any dollar numbers out.

7           The advantage I've seen in other cases I  
8           handled was, that by putting a number forward, the  
9           Applicant is saying that that money is out there  
10          to be spread in case the study is required.

11          In the worst case that I've heard  
12          suggested somewhere this morning, that if nothing  
13          was done at least the \$7 million would be out  
14          there to the Santa Monica Bay for restoration  
15          costs.

16          MR. PAZNOKAS: Yes, and our concern was  
17          of the cap. The way it was written previously --

18          COMMISSIONER KEESE: I've never seen it  
19          as a cap. It's a cap of what we were requiring  
20          them to put in to a trust fund. And I have  
21          never --

22          MR. PAZNOKAS: And that's different from  
23          what was said this morning, so I agree with you.

24          COMMISSIONER KEESE: Yes, I have never  
25          considered that a cap. Regional Water can go 10,

1 20, 25, 30, they're almost unlimited in where they  
2 can go. So I have never felt that this was a cap,  
3 and if what we should do at the end is just  
4 mitigation, maybe that's what we should strike the  
5 dollars and just look at mitigation.

6 MR. PAZNOKAS: Thank you. Any  
7 questions?

8 COMMISSIONER KEESE: No, thank you.  
9 Manhattan Beach?

10 MS. JESTER: Good morning, my name is  
11 Laurie Jester, I'm with the city of Manhattan  
12 Beach. Our city attorney Robert Wadden could not  
13 be here today, and so I'm filling in for him.

14 We do support the 316 type study. We  
15 would also support having the Energy Commission be  
16 the lead agency with that, for the reasons that  
17 you've already heard from previous speakers. The  
18 cap, we also feel, is very important, as the  
19 Energy Commission staff has indicated. Having the  
20 monthly as well as the annual cap.

21 Our concerns are for a couple of  
22 reasons. One, we share the Santa Monica Bay, as a  
23 city as well as a state. It's a very valuable  
24 resource, and we feel it's very important to  
25 protect that resource.

1           We're also very concerned from a legal  
2 standpoint. We have CEQA, we have Energy  
3 Commission requirements, we have Coastal  
4 Commission requirements. We feel that it's  
5 absolutely necessary to have this study done up  
6 front to identify mitigation measures, to have  
7 adequate funds for those mitigation measures, in  
8 order for this project legally to be approved.

9           And if you have any questions I'll be  
10 happy to answer them.

11           COMMISSIONER KEESE: I'll ask you a  
12 question which I should have asked the previous  
13 speaker.

14           MS. JESTER: I'm not a biologist, by the  
15 way.

16           COMMISSIONER KEESE: Well, and I'm not -  
17 - and I can't answer it, because I'm not either.  
18 But it would seem to me if Regional Water  
19 indicated, as they indicated to us earlier, that  
20 most all the power plants are coming up for their  
21 annual review, and one way or another they and a  
22 number of other facilities in the area all impact  
23 the same bay, more or less.

24           It would seem to me that, rather than,  
25 as Commissioner Boyd suggested in his question

1 earlier that, rather than looking at each little  
2 piece and what did you do and what did you do and  
3 what did you do, that we should be looking at the  
4 whole thing and saying now what are we all doing,  
5 and what is your share of it.

6 Is that, on a political level, would  
7 that be a rational act for Regional Water?

8 MS. JESTER: Unfortunately, or  
9 fortunately depending on how you look at it, I'm  
10 not a politician either.

11 COMMISSIONER KEESE: Well, we'll give  
12 the voters of Manhattan Beach, which includes a  
13 lot of my relatives, a pass on that one. Thank  
14 you.

15 MS. JESTER: You're welcome.

16 COMMISSIONER KEESE: You know, there's a  
17 couple of more groups that I have on my list, and  
18 that's the Intervenors. If they'd care to say  
19 something now, or if they would -- did we have  
20 Heal The Bay and the Baykeepers? Whoever gets  
21 there first gets to go.

22 COMMISSIONER BOYD: It is a workshop, so  
23 it is informal.

24 MS. EGOSCUE: Good morning, my name is  
25 Tracy Egoscue, and I'm the Executive Director of

1 the Santa Monica Baykeeper. Together I represent  
2 both the Baykeeper and Heal the Bay, but Dr. Craig  
3 Shuman would probably like to speak -- yes, he's  
4 behind me and will want to speak after me.

5 My first question really is about  
6 whether or not this is a workshop or a hearing. I  
7 heard this morning that it was a workshop, but  
8 I've also heard repeated references to the record.  
9 So I just want to have on whatever record or  
10 transcript we have today that I consider this a  
11 workshop.

12 COMMISSIONER KEESE: We consider it a  
13 workshop, but we have to base our decision on the  
14 record. So if you want to refer to something on  
15 the record, you're free, but we're trying to  
16 clarify muddy waters.

17 MS. EGOSCUE: Okay, and in that vein, if  
18 this Commission -- and I'm saying we because maybe  
19 we're all trying to come to a consensus -- if we  
20 make some kind of decision that is not supported  
21 by the record, I believe we need to have another  
22 hearing that opens the record for evidence.

23 I want to take you back to the beginning  
24 of the morning when there was a comment made by  
25 the Applicant that this was no longer an issue

1 about the impacts to the Bay, but that it has been  
2 rendered to a political issue.

3 And I just would like to respond to that  
4 by saying that for Santa Monica Baykeeper and Heal  
5 The Bay this is an issue of the ecological  
6 resources that have been severely degraded in  
7 Santa Monica Bay, and this is our opportunity, one  
8 of many, to stop that process that's been ongoing  
9 for some time now.

10 I also want to say that there was a  
11 chart of the baseline and the 60 percent  
12 reduction. Under CEQA, I would argue that the  
13 baseline is not the permitted flow, whether it was  
14 220 or 208, but rather what it is currently, which  
15 I think is around 100.

16 So if you're going to look at it from a  
17 simplified view it would be a 60 percent reduction  
18 from that current baseline.

19 The cost estimates which were used to  
20 determine the amount of money, the \$4.5 million  
21 that were in the EPA regs, I'd like to speak to  
22 those very briefly. Cost estimates are included  
23 in the regulations because that is required under  
24 federal law.

25 When a federal agency promulgates

1 regulations they have to put in cost estimates so  
2 they are not considered to have come to a  
3 conclusion that will basically destroy an  
4 industry. So they have to look at what the  
5 industry will go through as a result of these  
6 regulations, and that is why these are in these  
7 regulations.

8 Any kind of - and I think it speaks to  
9 the Chair's comment -- any kind of arbitrary cost  
10 of \$7 million or arbitrary trust fund amount is at  
11 this point without any support in the record.

12 And another point -- I'm sorry, I'm  
13 responding to comments this morning. I'm letting  
14 our comments speak for themselves. The fact that  
15 the baseline may be different, the fact that the  
16 Regional Board's requirements are completely  
17 different from what this Commission is faced with  
18 with this certification, I believe supports my  
19 point that the power plant licensing laws are  
20 vastly superior to the Clean Water Act in this  
21 instance.

22 A very short comment on the Clean Water  
23 Act, and in particular this permit. This is a  
24 permit that is supposed to speak to the  
25 elimination of the pollutants coming out of the

1 plant. The reason why the 316(b) regs are  
2 attached to it is because this is the permit for  
3 this plant.

4 And I would like -- and I don't know if  
5 the Regional Board representatives are willing to  
6 speak to this -- but in the instance of this  
7 plant, however remote, can remove their discharge,  
8 they don't have this permit any longer.

9 So at that point the 316(b) regs would  
10 have to be taken completely aside and separate  
11 from this permit. And I'm pretty sure I'm reading  
12 the Clean Water Act correctly in that regard.

13 Another thing I wanted to point out, in  
14 terms of the Regional Board and these regulations,  
15 and I'm sorry I'm going on here, but I feel like  
16 I'm -- and if nothing else I'm stuck on this  
17 microphone -- we've had one workshop meeting since  
18 these regs were released. And in that workshop  
19 meeting it was made clear that the four year  
20 timeline for study would be used by this  
21 Applicant.

22 And so the point that I believe  
23 California Fish and Game has made, that they would  
24 like to see a study that was done faster rather  
25 than longer, is a very apropos comment, and I

1 would like to support that as well.

2 I can't move forward on this --

3 COMMISSIONER KEESE: Let me interrupt.

4 And again, I'm not certainly making any judgment  
5 on behalf of Regional Water, but if a one year  
6 study of the impact of this plan, and each of the  
7 other plans can be done, but a comprehensive study  
8 of the impact of all of them on the same day,  
9 would take two years, would you support --.

10 If Regional Water thinks that would be a  
11 better way to go, would you still say that we  
12 should do a one year study on this, on El Segundo  
13 itself, versus a comprehensive two year study of  
14 all the ten or 12 or -- major --?

15 MS. EGOSCUE: Nine that are affected by  
16 this. I'll let Dr. Shuman answer the biological  
17 reasons behind that, but I want to -- your  
18 question is assuming that I agree that the  
19 Regional Board should have jurisdiction over this  
20 study.

21 COMMISSIONER KEESE: Well, they're going  
22 to do a study.

23 MS. EGOSCUE: Yes, but this study that  
24 the Commission is currently discussing for the  
25 certification of this plant, I don't support it

1 being under the jurisdiction of the Regional  
2 Board. And I can go on at length as to why I feel  
3 that your Commission is better suited and more  
4 protective of the resources of our Bay, but I  
5 think that that has been made clear by numerous  
6 entities and comments.

7 But Dr. Shuman will talk to whether or  
8 not we should have one study versus all the  
9 studies.

10 COMMISSIONER KEESE: Good.

11 MS. EGOSCUE: The question about  
12 repetitive administrative procedures. I think it  
13 would be very worthwhile to consider that we do a  
14 site-specific study here under the jurisdiction of  
15 your more than able staff, and then that is then  
16 used by the Regional Board for their purposes.

17 And it has been stated repeatedly when  
18 the Regional Board was being discussed, they have  
19 a wide latitude to consider what they will. And  
20 if there is the study done with the Commission I  
21 believe that would be more than sufficient for  
22 their purposes.

23 And that's it for me in response. I  
24 would like to be open for questions if there are  
25 any, and just reiterate that we have been involved

1 in the extremely long process. There are many  
2 reasons why the Regional Board permit is not  
3 protective, and we can go back in history, but I  
4 think that that is a waste of our time at this  
5 point, and speaking from the environmental groups  
6 that are Intervenors in this case, and our  
7 members, and those that assume while they drive  
8 home at night from their 12 hour jobs and go on to  
9 possibly their second jobs, or just make sure that  
10 they're families are fed, we're standing up here  
11 today to really urge this Commission to take into  
12 account how valuable that stuff is that is sucked  
13 in.

14 It's not just gallons per day and it's  
15 not just a number on a chart, it's really our  
16 playground. Thanks.

17 COMMISSIONER KEESE: Thank you.

18 MS. EGOSCUE: No questions? Thanks.

19 MR. SHUMAN: Good afternoon, I'm Dr.  
20 Craig Shuman, I'm a staff scientist with Heal The  
21 Bay, and thank you for the opportunity to comment  
22 this afternoon.

23 I'm sitting here today, I thought of an  
24 idiom that I learned in my first environmental  
25 management class, that said when you don't know go

1 slow. And that's something I think this Committee  
2 has done, and I think we should continue to do so.

3

4 And I'd like to echo the concerns  
5 expressed by the Coastal Commission, State Lands  
6 Commission, Marine Fisheries, Department of Fish  
7 and Game, and the city of Manhattan Beach, that we  
8 desperately need a study, pre-certification, to  
9 ascertain the impacts of the proposed project.

10 This study should be directed by a  
11 scientific advisory panel, and should be  
12 coordinated with all relevant state, local, and  
13 federal agencies. This study is absolutely  
14 relevant to the study that would be used for  
15 316(b) permanent purposes.

16 Although, as staff pointed out in their  
17 comments, what is needed out of the study is  
18 somewhat different than what is needed for these  
19 proceedings, but the study can be designed such  
20 that it accomplishes both those tasks with one  
21 specific study.

22 An integral component of the study is to  
23 assess cumulative impacts. And that was brought  
24 up today and we appreciate that. It's very  
25 important to know what all the contributing

1 factors are to impairments within Santa Monica  
2 Bay.

3 This is important to tease out the  
4 contribution of this specific project, but also to  
5 determine potential synergistic impacts resulting  
6 in more deleterious impacts to the marine  
7 resources of Santa Monica Bay.

8 I'm not going to harp on the study, I  
9 think we know where most of the agencies and  
10 Intervenors lie with respect to that, but I'd like  
11 to point out the discussion that there's this  
12 minimum 60 percent reduction of the entrainment in  
13 the 316(b) regs,

14 There is actually no guarantee of a  
15 minimum 60 percent reduction in entrainment.  
16 There is loopholes in the law that may provide the  
17 Applicant with a variance to reduce that level of  
18 reduced entrainment. And I don't know if the  
19 Regional Board can speak more to that, we do have  
20 more meetings to discuss that, but it's not  
21 guaranteed that there will be a 60 percent  
22 reduction.

23 Any questions?

24 COMMISSIONER KEESE: Are you  
25 participating in the regional waters at this time

1 on 316(b), I mean your entity?

2 MR. SHUMAN: Yes we are. I'm actually,  
3 I've been volunteered to organize the next  
4 meeting, which will be held next Wednesday.

5 COMMISSIONER KEESE: Um, and, it's not  
6 316(b) as far as El Segundo Power Plant is  
7 concerned. This is the overall implementation of  
8 316(b) in Santa Monica Bay or in the jurisdiction  
9 of the Regional Water Board, is that what we're  
10 talking about?

11 MR. SHUMAN: Correct, we haven't gotten  
12 into any specifics. And we assume that if we talk  
13 about the generalities, then they will apply to  
14 all of the coastal power plants located within the  
15 jurisdiction of the local board.

16 COMMISSIONER KEESE: And you're not  
17 just, are you restricting yourself to power  
18 plants, or are you looking at refineries, if you  
19 have any?

20 MR. SHUMAN: For this meeting it's just  
21 coastal power plants under Phase II.

22 COMMISSIONER KEESE: Okay. All right,  
23 anybody else?

24 MR .ISSEN: This thing seems to go on  
25 and on and on, I've attended some of the first

1 meetings here -- my name is Bill Issen from  
2 Residents for a Quality City, it's a local  
3 Manhattan Beach neighborhood group, and I live,  
4 oh, just a few blocks from the south of the, in  
5 the old portal area of Manhattan Beach near the  
6 site. So I'm personally, directly affected by  
7 what goes on there, the fisheries and all of that.

8 I had previously submitted some letters,  
9 arguing some of the legal points, as to the, you  
10 know, position, so I'm not going to reiterate what  
11 I previously said, but I agree with the previous  
12 speakers that as a matter of law the California  
13 Energy commission, this Commission, can't abrogate  
14 its responsibilities to the Los Angeles Regional  
15 Water Quality Control Board.

16 And I think there's a recent New York  
17 case, the Riverkeeper case, that I think has been  
18 discussed in a number of papers, that -- this case  
19 was in a New York Second Circuit Court of Appeals,  
20 and it expressly held that the regional water  
21 quality control boards under the, do not have,  
22 cannot restrict state environmental laws.

23 And I think that, given that case here,  
24 there's just really no, this board can't here  
25 certainly abrogate its responsibility to the water

1 quality control board.

2 COMMISSIONER KEESE: We were, that was  
3 not our intention.

4 MR. ISSEN: Yeah, I understand, I'm just  
5 reiterating because there's been a lot of, some of  
6 the speakers have suggested that they may want to  
7 do that, and I don't think that --

8 COMMISSIONER KEESE: Then it's a  
9 question of interpretation, but, you know,  
10 recognition of responsibilities of sister  
11 agencies, and appropriate deference is one thing.  
12 And delegating our responsibility to a sister  
13 agency is another thing, so --.

14 MR. ISSEN: Yes, I agree with you on  
15 that point, and I think there certainly can be  
16 cooperation, you know, and input received from  
17 other agencies and what not. And I wouldn't  
18 certainly object if this Committee were to defer  
19 any kind of decision until November, until the  
20 Regional Water Quality Control Board has an  
21 opportunity to maybe look and see what's being  
22 submitted.

23 And what they may require in terms of a  
24 316(b) status so that there's no duplication of  
25 effort. I certainly agree with that.

1 I would like to also say that, of course  
2 my feeling and I think most of the other speakers  
3 would agree with this, that there's no substantial  
4 evidence in the record that the proposed \$7  
5 million fund, proposed fund, be adequate to  
6 mitigate the environmental and impingement  
7 impacts.

8 And I would like to just quote from a  
9 case on that. This is Save Our Peninsula --

10 COMMISSIONER KEESE: Okay, let me try  
11 again. In other words, you're saying we should  
12 not cap the obligation, etc.?

13 MR. ISSEN: No, I'm just saying that --

14 COMMISSIONER KEESE: Are you arguing  
15 that we should not require them to put \$7 million  
16 in a trust fund?

17 COMMISSIONER KEESE: No, what I'm saying  
18 is that this \$7 million trust fund that they're  
19 proposing is not adequate to support the  
20 information in an EIR. And I'll just read you,  
21 just one sentence from the Save Our Peninsula  
22 Committee case. It says "of course a commitment  
23 to pay fees without any evidence that mitigation  
24 will actually occur is inadequate for an EIR  
25 purpose."

1           So it's inadequate for information.  
2           Basically, CEQA requires an EIR, which is an  
3           informational document. and if that document is  
4           not legally adequate, this Commission can't  
5           proceed. And that \$7 million is without evidence.  
6           Any evidence in the record that it can mitigate,  
7           at all, what's going on here is just inadequate,  
8           superfluous. I mean, you can require it, but it's  
9           got no bearing on the adequacy of --

10           COMMISSIONER KEESE: The only relevance  
11           is that it obligates the Applicant to pay.

12           MR. ISSEN: Well, that may be relevant,  
13           I mean, that might be nice to have, that he's  
14           obligated to pay seven million, but I mean it  
15           really doesn't affect the adequacy of the  
16           informational requirement. That's what I'm, you  
17           know, pointing out. And I think everybody agrees  
18           with that.

19           But the other thing is that Save Our  
20           Peninsula case goes into a number of, well, okay,  
21           the other point that I'd like to really make here,  
22           is that we're talking about baseline in the city,  
23           and all these discussions have been talking about  
24           baseline in terms of the volume of water  
25           discharged, okay?

1           And what is the baseline for volume of  
2 water discharged? Well, in some cases that's  
3 absolutely crucial in a baseline determination.  
4 Like Save Our Peninsula committee, they talk about  
5 volume of water being discharged, and they talk  
6 about baseline in terms of volume of water  
7 discharged.

8           But in that case the actual water itself  
9 was the environmental determination, there was no  
10 impact of the discharge on fisheries or anything  
11 else. It was the water itself being crucial to  
12 the people who used the water.

13           So, in pumping water that affects the  
14 water table, it is absolutely crucial to determine  
15 baseline water discharge. But in this case the  
16 real baseline here is the baseline, physical  
17 conditions, of the biological aspects in the Bay.  
18 And we haven't determined that baseline, as far as  
19 what the baseline for the fishery is.

20           That's the baseline that is really,  
21 really important in this particular case, not the  
22 baseline for discharging water. Water, that just  
23 affects the baseline, but that's not the baseline  
24 itself.

25           COMMISSIONER KEESE: I guess I'm hearing

1 that you're not enamored of the Bio 4 submitted by  
2 the Applicant, and you'd be supportive of full --?

3 MR. ISSEN: I am for, absolutely for and  
4 insistent, that this 316(b) site study, site  
5 specific type study, as recommended by the Coastal  
6 Commission, be completed prior to certification.

7 COMMISSIONER KEESE: Prior to  
8 construction, or certification?

9 MR. ISSEN: Ah, well, construction can't  
10 normally proceed without and prior to  
11 certification, that's my understanding. Unless  
12 this board certifies the IR they can't start  
13 construction. That's my understanding, it may be  
14 incorrect, but that's my understanding. And it  
15 should be completed prior to construction,  
16 obviously, because --

17 COMMISSIONER KEESE: Yet we're under an  
18 obligation to license within one year of filing.

19 MR. ISSEN: Yes, and obviously that  
20 hasn't occurred. So, lots of things haven't  
21 occurred. But I'm just saying what my position  
22 is. Now, the -- and of course, and I'll just read  
23 one sentence from the Save Our Peninsula Committee  
24 that I think sums up here, "before the impact of a  
25 project can be assessed and mitigation measures

1 considered, an EIR must describe the existing  
2 environment. It is only against this baseline  
3 that any significant environmental effects be  
4 determined."

5 So we're talking about the baseline of  
6 the physical environment being the condition of  
7 the Santa Monica Bay in the vicinity, as far as  
8 the marine organisms are concerned. That's the  
9 baseline that we're really talking about, and that  
10 must be considered.

11 And since we don't have enough  
12 information, I think most of the speakers say we  
13 don't have enough information to determine that,  
14 you cannot proceed here. And in, proceeding,  
15 issuing a permit or anything based on inadequate  
16 information, is going to be --.

17 Now I'd just like to mention one point  
18 here. There's another sentence in here that says  
19 "if subsequent to the period of public and  
20 interagency review, the lead agency has  
21 significant new information to a new EIR, the  
22 agency must issue new notice and must recirculate  
23 the revised EIR or portions thereof for additional  
24 commentary and consultation."

25 That means, assuming that there's going

1 to be significant findings in this 316(b) type  
2 study. And assuming that that constitutes  
3 significant new information, this Commission is  
4 required to hold new hearings before the public,  
5 and solicit public comment before issuing  
6 certification.

7 COMMISSIONER KEESE: Yes. Right. And  
8 we don't have any intent of doing a new EIR.  
9 Thank you. And -- we'll get to you. But we're  
10 going to take a five minute break here. Thank  
11 you, and we'll be coming back.

12 (Off the record.)

13 COMMISSIONER KEESE: We're back on the  
14 record here. I have the yellow cards submitted  
15 by --

16 PROJECT MANAGER REEDE: Well, we also  
17 have the Santa Monica Bay --

18 COMMISSIONER KEESE: Nicholson, Perkins,  
19 Murphy, Crite, and the, and I knew that the Santa  
20 Monica Restoration Committee would like to speak,  
21 and I see Mr. -- thank you. This is a workshop,  
22 and the Committee has some questions to ask of the  
23 Applicant and the staff and perhaps of Regional  
24 Water, and I see Mr. Lester here -- our timing at  
25 the Committee is that we have to leave here by

1 3:30, so we have another two hours, so if you --

2 We're trying to ask clarifying  
3 questions. So if you wouldn't mind, unless you  
4 have a time constraint and you have to say  
5 something now, but hopefully will clarify this  
6 money situation. The Committee would like to ask  
7 a few questions at this time, and then we'll hear  
8 from you. Is that okay? Thanks.

9 Applicant, do you, you have a time  
10 issue. Do you have a plan on which you might  
11 submit to Regional Water.

12 MR. MCKINSEY: We are on the verge of  
13 submitting our initial request, and proposing a  
14 schedule -- and we're not playing hide the ball  
15 here -- mirrors Bio 4, in terms of the extent it  
16 involves entrapment. Obviously the NPDS permit  
17 involves more than just entrapment and  
18 impingement and thermal effects. There's other  
19 things under the purview of the NPDS Committee and  
20 the Regional Water Quality Control Board that also  
21 arise. And that is literally on the verge of  
22 being submitted.

23 COMMISSIONER KEESE: Okay, and then let  
24 me ask you a four part question. Do you have a  
25 plan as to when you might start construction?

1       Could you give us a date when you're thinking of  
2       starting construction, ending construction,  
3       beginning operations, and the overlying question  
4       is what do you need from Regional Water before you  
5       can meet any of those targets?

6               MR. MCKINSEY:  Okay, let me answer the  
7       last one first.  We don't require anything from  
8       the Regional Water Quality Control Board with  
9       regards to this project.  And that's been one of  
10      our main points all along, is the Regional Water  
11      Quality Control Board does not require us to  
12      complete any new studies or any other evaluations  
13      in order to construct this project.

14             The only thing they required of us was  
15      some evaluation of the thermal effects, which we  
16      completed in the AFC many years ago.  So there is  
17      nothing in the Regional Water Quality Control  
18      Board that holds up this project.

19             What is going on is the normal, cyclical  
20      renewal of the permit for the existing facility,  
21      the NPDS permit, that's this thing that we must  
22      renew, because it's coming up again --

23             COMMISSIONER KEESE:  In order to  
24      continue to operate.

25             MR. MCKINSEY:  In order to continue to

1 operate, as we must every five years. And in this  
2 cycle it's very clear that it's going to  
3 incorporate the new Phase II 316(b) regulations.  
4 And we're actually going out of our way to make  
5 sure it does. Even if this renewal didn't, if  
6 they used their right to reopen, but actually, as  
7 part of our submittal we're saying "here's our  
8 proposal to comply with the new regulations."

9 And then the answer to your other  
10 questions. I'll tell, our biggest uncertainty is  
11 when are we going to finish this process. We came  
12 in along, long time ago hoping to do a six month  
13 permitting process and start construction  
14 immediately. One of the things that makes this  
15 project very challenging is that it's a demolition  
16 of two existing units in a very constraining  
17 location.

18 We did estimates years ago on  
19 construction timelines, and they're pretty solid  
20 and we think that, unlike a normal construction  
21 timeline, this probably you have to add a year on  
22 for demolition at the start which you would not  
23 normally have in a permitting process, you know, a  
24 typical AFC and a typical California power plant.

25 Additionally, we committed in the course

1 of this project significant constraints on when we  
2 can construct and when we can make noise and dust  
3 and constraints on how we can make noise and dust  
4 that will also slow down the demolition and the  
5 construction of the process, in order to avoid  
6 harm and injury to our neighbors.

7 So, it's a long construction period, and  
8 our initial proposal was that it was going to take  
9 three years, and we have not gone back with the  
10 decision to contractors to try to recalculate it,  
11 so then it just becomes a question of when can we  
12 start construction if we just used our three year  
13 period.

14 And that's, once again, where we have  
15 window currently, this year, in which we hope to  
16 get a commitment from a major purchaser for  
17 electricity and/or the state for the electricity  
18 that can be produced in this project. And we're  
19 not alone among any of the other existing  
20 permitted projects that haven't construction are  
21 seeking this.

22 That window will close this year, and  
23 for the last year that's what we've been focusing  
24 on, and as we said before, our steps are very  
25 simple. We need a permit, and when we get a

1 permit we can lock up a certain degree of the  
2 output. That allows us to complete financing and  
3 start construction right away.

4 So, the best we can say is, the most  
5 likely earliest that we can start construction, is  
6 in 2006, and that puts us coming on line in 2009,  
7 as a rough estimate. One of the reasons these  
8 numbers are in my head is because I heard a  
9 question today about the study and whether it  
10 would be preconstruction or not.

11 We would be starting the study under Bio  
12 4 and completing it in 2007, so that the  
13 implementation is committed to in 2007, which  
14 would be after construction had started if we were  
15 on that timeline by about a year, but we would  
16 actually just be finishing demolition, for  
17 instance, we wouldn't actually have been starting  
18 construction but completing demolition of the old  
19 facility.

20 That's, but these are all estimates in  
21 terms of how they may play themselves out. As  
22 we've seen, processes can get delayed, and that's  
23 assuming we get a decision as quickly as we think  
24 we can get a decision from yourself and your  
25 Commission.

1           COMMISSIONER KEESE: Thank you.

2           MR. SMITH: Regarding that NPDS permit,  
3           which the board is supposed to consider in March,  
4           unfortunately the representatives from the  
5           Regional Board left, so I'll pose the question to  
6           you. They will be acting on a permit for which,  
7           under your proposal a 316(b) study is still a year  
8           or two away from completion. How does that work  
9           with the board?

10           MR. MCKINSEY: They will be issuing a  
11           permit that, among other things, would be ordering  
12           us to complete a study, and recommend the steps  
13           that we think should be taken, and that they would  
14           then either approve or disapprove of.

15           So the permit that would be issued would  
16           be among other things to conduct a study, and  
17           complete the study, and recommend to us what steps  
18           are going to be taken to meet the requirements of  
19           the 60 percent entrainment reduction and the 80  
20           percent impingement reduction from uncontrolled  
21           levels. And then we'd have to implement those.

22           And the issuance of the permit is  
23           designed to allow the facility to continue to  
24           operate, and to incorporate these steps that we're  
25           taking, that we're now obligated to by order of

1 law to complete.

2 MR. SMITH: So, let's say 18 months  
3 after the permit is issued, the study's completed,  
4 there are some impacts, and you will recommend to  
5 the board mitigation of those impacts. The board  
6 will then order you, as part of the permit that  
7 was issued 18 months prior, to implement those  
8 litigation measures. Is that the process? I'm  
9 just trying to understand that.

10 MR. MCKINSEY: Well, the focus of the  
11 study is not to determine if there are impacts,  
12 for instance, our specific intent of the study is  
13 to remove any of the remaining ambiguity or  
14 concerns over all the other issues that have been  
15 made about whether there's been a quality  
16 assessment of the entrainment affects of this  
17 facility.

18 In addition, that provides baseline  
19 information to the water board. And from the  
20 water board's perspective, they're mandated not to  
21 eliminate impacts, but to reduce entrainment. We  
22 talked about entrainment, from 60 to 90 percent.

23 And we don't think there's going to be  
24 any ambiguity whatever about the results. The  
25 results are going to show that, once again, very

1 predictably, this is the concentration of micro-  
2 organisms that are flowing by the intake structure,  
3 and this is the number they've been pulling in.

4 The studies presume 100 percent flow.  
5 They don't presume any of the other numbers, they  
6 are worst case. And thus this is your total  
7 entrainment, and thus you need to reduce  
8 entrainment by, let's say you have the minimal  
9 because the effects are minimal, by 60 percent.

10 The ambiguity is over whether that  
11 reduction in entrainment would occur by either A,  
12 a reduction in flow, which is an easy one that we  
13 wouldn't need to do a study at all to calculate  
14 that one, because we can assume proportionality,  
15 and so if they order a 60 percent or 80 percent  
16 reduction in flow we reduce entrainment that much.

17 But they then may also say, well, we  
18 want you to also install the following technology.  
19 And that may get more complicated, in terms of how  
20 effective is screens installed that go across the  
21 intake structure, how effective are they at really  
22 reducing entrainment, and what happens is  
23 entrainment goes out of proportion to flow, but  
24 the end requirement is that, when all is said and  
25 done, we have to reduce entrainment by 60 percent.

1           And that most likely would be a  
2           combination of flows and technology and there's a  
3           third option, and that's this highly talked about  
4           option that you can also do offsite enhancement.  
5           It has to be tied very specifically to this is the  
6           number of organisms you're entraining, therefore,  
7           since you cannot do any of these other features,  
8           the following things will take place, in order to  
9           provide offsetting enhancements to the ability of  
10          those organisms to propagate and produce more,  
11          provide new habitat, etc.

12           What we're going to have to do is we're  
13          going to have to complete the study, and then come  
14          to the board and, under Bio 4 we're ensuring that  
15          there's significance say, by the Energy Commission  
16          and the Coastal Commission in this, here's our  
17          proposal to meet those reduction requirements,  
18          both in impingement and entrainment.

19           And under the entrainment area we may  
20          say we already have committed to and we can  
21          continue to commit to this lowering threshold  
22          which eliminates entrainment by say, 40 or 50 or  
23          who knows what percent, and we've, as part of all  
24          these things we did, we've tested this technology,  
25          and we recommend that you order us to install the

1 following technology to meet other requirements.

2 So there is certainly some uncertainty  
3 about how the reductions are going to occur, but  
4 there isn't any uncertainty about what we have to  
5 accomplish. And those reductions are so much more  
6 than we've thrown out and we've talked about in  
7 this project.

8 That's one of the reasons why we realize  
9 we wanted to incorporate them into the Energy  
10 Commission's process. So that the Energy  
11 Commission can also now be ordering us to  
12 accomplish that, and thus can consider and  
13 conceive of that when they're trying to decide  
14 whether they really need to worry about this  
15 project at all, even taking all the other parties  
16 at their worst case assumptions, that all the  
17 studies that have been conducted on this facility  
18 are erroneous, are erroneous by orders of  
19 magnitude, and that there really is a significant,  
20 existing affect being played out by Santa Monica  
21 Bay by intake number one.

22 And that there has been for the last 40  
23 years, which the studies consistently don't  
24 conclude at all.

25 MR. SMITH: So, the November report, the

1 report of waste discharge, what you will be  
2 proposing in that report is the 316(b) study.  
3 Will you be proposing any additional information  
4 in terms of, as they said, how you're going to  
5 comply.

6 For example, will you be proposing the  
7 88 million gallon figure?

8 MR. MCKINSEY: We're going to -- no, in  
9 fact, what we're going to be submitting is pretty  
10 comprehensive and it goes beyond just entrainment  
11 and impingement. But in that area what we propose  
12 is that these are the steps we need to take in  
13 order to determine what needs to happen, and all  
14 it really does is propose the very specific  
15 schedule, and it follows perfectly what's in Bio  
16 4, that we have to submit our procedures and,  
17 working with the other agencies we're conducting a  
18 study, and that we also have to proposed, as a  
19 result of that study then, all the proposed  
20 possible solutions that could exist.

21 The study will involve more than the  
22 study of entrainment. It could involve, depending  
23 on what the water board orders us, to also  
24 consider technological improvements. One of the  
25 other conditions that exists in this decision is

1 the order to conduct a feasibility analysis for  
2 using aquatic filter barrier technology in this  
3 type of location, an open Bay subject to wave  
4 action, it's an untested environment for aquatic  
5 filter barriers.

6 And so if those studies come back as  
7 highly positive the water board may order us to  
8 complete an application and determine the effects  
9 of installing that, and that could become a  
10 technology.

11 Traveling screens is another technology  
12 that the EPA's regulations describe, and they  
13 describe a facility in Florida that's been using  
14 them. Fine mesh screens that rotate through the  
15 intake flow cap, and then flush off the  
16 microorganisms that they capture so that they can  
17 go on a return flow back into the Bay.

18 I would be dishonest if i didn't say  
19 that there were a lot of people that debate the  
20 effectiveness and challenge the effectiveness of  
21 both of those technologies, and that's part of  
22 what the water board will be doing, is evaluating  
23 whether those things really reduce entrainment.

24 But all we can do right now is go out  
25 and collect data. That's one of the things that

1 we're committing to, and that data includes an  
2 analysis of what technologies would be feasible,  
3 and the issues that they would bring up, so that  
4 the water board, in conducting it's open process,  
5 can make a decision about how they're going to  
6 order us to achieve those mandated reductions.

7 MR. SMITH: Then the November report  
8 will not be specific in any way with respect to  
9 how the Applicant is going to achieve the 60  
10 percent reduction?

11 MR. MCKINSEY: Yeah, that would be very  
12 assumptive.

13 MR. SMITH: Here's the available  
14 universe of options, and that's about as specific  
15 as you're going to be in the November report?

16 MR. MCKINSEY: And that's as specific as  
17 we should be, because that's one of the points of  
18 conducting the data collection, having an open  
19 forum, so all interested parties have the ability  
20 to weigh in and say an aquatic barrier filter  
21 would be a disaster, traveling screens don't work,  
22 it's an open process, and all we're doing is  
23 initiating that process.

24 MR. SMITH: Now, the permit that will be  
25 issued at the first of the year, as the

1 representative has described it, is that a draft  
2 NPDS permit or is that some even more preliminary  
3 document?

4 MR. MCKINSEY: No, it's the renewal,  
5 it's a new NPDS permit to continue the operation  
6 of the facility, and it includes in it a lot of  
7 obligated reporting tasks, in terms of data  
8 collection, about discharges, intake effects,  
9 temperatures.

10 It also, presumably it would also order  
11 us to collect a certain number of data, to engage  
12 in a process to create a protocol for conducting a  
13 study, and then conduct that study, and that would  
14 be the NPDS permit that would operate the plant,  
15 El Segundo Generating Station, for the next five  
16 year period.

17 MR. SMITH: And, in Tim's initial  
18 presentation, during that presentation what I  
19 thought was said is the 88 million gallon figure  
20 would apply to the entire facility, was that said?

21 MR. MCKINSEY: No, that 88 gallon, and  
22 really it's an equivalent entrainment reduction,  
23 if we just say, one way or another under 316(b) we  
24 have to reduce entrainment by 80 percent, if we  
25 did it purely by flow then we can call that a

1 certain number of million gallons per day.

2 That baseline number was based on the  
3 capacity of intake number one, and so looking at  
4 intake number one, which is the intake structure  
5 that would be supplying cooling for this new  
6 facility, that number would have to be the  
7 equivalent in entrainment reduction that has to be  
8 reduced to that threshold.

9 And that could be by flow or it could be  
10 by a combination of technology and flow reductions  
11 and perhaps even habitat enhancement offsite.

12 MR. SMITH: Okay, so the gist of the  
13 presentation this morning seemed to imply that you  
14 were going to define the upper bounds as the  
15 current NPDS permit flow, which was 220, 208,  
16 whichever the number is. So that would be the  
17 upper bounds, the flowing of entrainment reduction  
18 equivalence --

19 MR. MCKINSEY: From an environmental  
20 perspective that's the worst case assumption. And  
21 I don't know how we can come in and say we've got  
22 a facility that runs at 208 or 220 million gallons  
23 per day, and we want to use 250 million gallons  
24 per day as a baseline for reduction purposes.

25 And as he pointed out, basically he's

1       trying to explain the capacity of the system and  
2       say we're going to make the system larger and  
3       after we want that new number to be the baseline.  
4       We're not trying to expand the system, if anything  
5       we're reducing its flows.

6                So, if we got our best case and they  
7       took the capacity of the system as the baseline,  
8       then the 60 percent reduction takes you below even  
9       staff's zero baseline situation. But it's not all  
10      necessarily going to be entirely flow, and that  
11      wasn't intended to suggest that. It's equivalent  
12      in entrainment reduction.

13               Which is the point of reducing flow  
14      anyway, but it could be a combination of flow and  
15      technology and habitat enhancement and other  
16      offsite things.

17               MR. SMITH: What will become of intake  
18      number two?

19               MR. MCKINSEY: Intake number two  
20      supports units three and four. Our general  
21      perception is that when the new facility is  
22      operational, it's the baseline facility. Units  
23      three and four are peaking facilities.

24               That's one of the reasons we took on the  
25      flow cap commitment that we took on, as precarious

1 as it was, we said there's going to be some water  
2 available for us to be able to operate that  
3 facility, and left in that big bucket of water, as  
4 we described in our hearings years ago, to operate  
5 three and four during summer peaking runs.

6 Or perhaps at other times when it's  
7 called into action, but it's anticipated that it  
8 becomes a peaking plant that provide electricity  
9 during high periods of demand. Because it's not  
10 going to be as efficient compared to this new  
11 facility and other newer facilities.

12 MR. SMITH: So using the example from  
13 Tim's presentation this morning, the chart, if  
14 that were taken on, or adopted by the regional  
15 board as the proxy, as the gauge for the  
16 entrainment function, that figure, would that  
17 apply to the entire facility, the new facility  
18 plus units three and four?

19 MR. MCKINSEY: Well, they wouldn't take  
20 on that figure as their model. They see two  
21 separate intake structures at that facility, and  
22 it's not entirely clear how they might choose to  
23 approach. They seem equivalent to them in many  
24 ways, but I can't speak to them in terms of  
25 whether they would want to go to a facility wide

1 focus or whether they would want to create  
2 specific minimum flow requirements for both. But  
3 they've --

4 MR. SMITH: Is that two permits?

5 MR. MCKINSEY: No, it's --

6 MR. SMITH: One permit for two intake  
7 structures, okay.

8 MR. MCKINSEY: And so that's a bigger  
9 question. What they clearly have to accomplish  
10 is, for this facility, a 60 to 90 percent  
11 entrainment reduction, and an 80 percent  
12 impingement reduction.

13 MR. ABELSON: Mr. Smith, just a couple  
14 of clarifying comments on your questions. First  
15 of all, on that chart, as least as I remember it -  
16 - and if I've got it wrong I'm sure Mr. McKinsey  
17 will correct me -- they actually were taking the  
18 total number of gallons per year for intakes one  
19 and two, as permitted currently, which is  
20 something in the order of 220 billion gallons, not  
21 million, this is not MGD, all right.

22 MR. SMITH: Thank you, thank you.

23 MR. ABELSON: Now, number one, we want  
24 to start with that clarification, okay? And the  
25 number that they eventually showed you as 60

1 percent reduction is 88 billion, and staff is  
2 currently recommending about 101 billion for the  
3 annual numbers.

4 The second thing is, I think it's just  
5 absolutely fascinating and indicative of the sort  
6 of problem we're dealing with in this case, that  
7 this Applicant, who hasn't operated anything close  
8 to 220 billion gallons a year, for five, six,  
9 seven years, would say to this Committee with a  
10 straight face "that's the appropriate baseline  
11 from which to do a 60 percent reduction."

12 The Applicant is operating currently at  
13 something like, depending on who's figures you  
14 want to take, either 100 billion gallons a year or  
15 120 billion gallons a year. So 60 to 90 percent  
16 reduction on that will leave you with about 20  
17 billion gallons a year.

18 So just watch what's happening here, in  
19 terms of the sleight of hand that's going on in  
20 terms of the definitions. And the problem that we  
21 have with the water board is not whether or not  
22 they are in good faith, because there's no  
23 question they are, the problem is these are brand  
24 new regulations and absolutely nobody knows what  
25 they're going to use for the reference point.

1           But should they use the 220 billion,  
2 basically you're getting virtually no reduction  
3 over current levels at all, a minimal small  
4 reduction over current levels, no 60 to 90  
5 percent.

6           So I just want to be clear on the way  
7 these numbers are being played out.

8           MR. SMITH: Thanks for the  
9 clarification, I should have paid more attention  
10 to the units of measure.

11           MR. MCKINSEY: Mr. Abelson has made my  
12 main point, which is that, using those numbers it  
13 is below what staff would call the zero baseline,  
14 the 100 billion gallons net per year if we put it  
15 all in one bucket on a yearly basis, it's below  
16 that.           And that's our most important point  
17 out of all this, is that what the EPA has produced  
18 and what the regional board is required to  
19 implement is going to go below the staff's number  
20 of 100 billion gallons a year, using that  
21 calculation which is the worst case.

22           MR. SMITH: Thank you.

23           COMMISSIONER KEESE: Well, we heard back  
24 and forth a lot of discussion today from a number  
25 of people on caps, and the impression that's being

1 given is that there is no number that we can put  
2 as a cap, because regional water has got to do  
3 something on their own.

4 MR. MCKINSEY: You're talking about a  
5 cap of water or a cap of funds?

6 COMMISSIONER KEESE: A cap of funds that  
7 are going to satisfy -- there are people  
8 indicating that there's no dollar number we can  
9 put that meets the legal test of what  
10 mitigation --

11 MR. ABELSON: Well, you know, I've  
12 listened carefully to that, and I think that it  
13 goes to a question that I tried to answer for Mr.  
14 Boyd earlier in this workshop. I mean, I think  
15 it's fair for everyone to say that we cannot  
16 generate that number with the precision that we  
17 normally want, which is the study, data, science,  
18 some debate about the meaning of the science, and  
19 then a direct order that flows from that.

20 "You're damaging 10,000 acres, go buy  
21 10,000 acres at a thousand apiece, we need ten  
22 million bucks, that's the end of the deal."

23 But what I have suggested, and I have  
24 listened very carefully to the presentation to the  
25 Coastal Commission, for example, staff. I'm

1 suggesting that there are numbers, that are  
2 reasonable proxies, that we've used in many cases.  
3 And if we will err slightly on the conservative  
4 side, namely slightly on the high side, and put it  
5 into a trust fund, I sincerely believe that it  
6 will withstand legal muster to say that's the  
7 extent feasible.

8 That's the extent feasible, that's the  
9 out of bounds that we can reasonably impose in  
10 this case, we don't know of any case -- let me  
11 pick a couple of numbers and throw them out to  
12 you.

13 We don't know any case where restoration  
14 has exceeded \$50 million. So we're going to order  
15 \$50 put in trust. Staff has specifically stated  
16 on our comments and on the record, that we're  
17 prepared to accept a surety bond at ten percent or  
18 whatever, so it might be as little as \$5 million  
19 up front, you know, depending on how maturity  
20 bonds work, okay.

21 You put it in the fund, we don't know of  
22 any case, there no record anywhere where  
23 restoration has cost more than that. And I  
24 believe that under those circumstances you can get  
25 the Applicant's surety as to what the outer limit

1 is, and therefore they no what their exposure is.  
2 I believe that we can turn to some of our sister  
3 agencies, who have clearly stated the preferred  
4 position, that we study first and then close the  
5 mitigation.

6 And say look, folks, we've got pretty  
7 much the maximum under any reasonable circumstance  
8 we're likely to need. Can't be "well this is  
9 close enough for government work and let's go  
10 home."

11 And, you know, I can't obviously speak  
12 for the other agencies, I certainly can't speak  
13 for the Coastal Commission, but in listening very  
14 carefully to what Mr. Luster said and to what  
15 other parties said today, I heard a lot of support  
16 for staff's three-legged stool, for the fully  
17 mitigated option.

18 And you've go to figure on that third  
19 leg well, what's the money, because that's the  
20 issue, because that's what's going to fix the  
21 fish. The study's going to kill fish, the money's  
22 going to buy restoration. I mean, let's get real  
23 about that, that's where the rubber hits the road  
24 in terms of the resource, and if we walk out of  
25 here with the statement that we're going to do a

1 study and then in the future we'll figure out how  
2 much we need for restoration or enhancement, I  
3 think it leaves us with two problems.

4 One, it leaves the Applicant of frankly  
5 not knowing what their exposure is in this case.  
6 Secondly, it leaves us as an agency with a legal  
7 problem of having done the study after the fact  
8 with no firm commitment as to how much money we're  
9 going to require.

10 Now we did that one time, in the case of  
11 -- Mr. Shean was the presiding officer, and  
12 properly so in that case -- that was the  
13 Huntington Beach case. it was done under an  
14 emergency exemption under the Governor's order at  
15 the height of the energy crisis. And we said  
16 we're going to give you a temporary permit, we're  
17 going to do the study, and then we're going to  
18 inquire you to impose all mitigation. I don't  
19 think there was a number required.

20 That is an exceptional case under  
21 exceptional circumstances. And that's why i said  
22 earlier, from our standpoint, both technically and  
23 legally, we think you can cover yourselves, issue  
24 this permit, send us all home relatively happy  
25 campers, but you need to pick a number and it

1 needs to be a relatively high number given the  
2 cases that you have had before you over the years.

3 COMMISSIONER KEESE: Given the  
4 practicality that we had asked for mitigation, but  
5 not with a number in it, and Applicant is now  
6 volunteered for the reasons that they stated, to  
7 put the number of \$7 million in, are you more  
8 comfortable with that number in or out?

9 MR. ABELSON: I think that that number  
10 is a number that has absolutely no factual basis  
11 or evidentiary basis of support at all. I think  
12 that's a number that's a complete swag, it's a  
13 half statement of what was even discussed in the  
14 meetings in question, it's way below what was done  
15 in other cases. I would definitely think, and  
16 staff has repeatedly urged, that money be put in.  
17 I think \$7 million is way too low.

18 COMMISSIONER KEESE: Okay.

19 MR. MCKINSEY: I'd like a chance to  
20 respond to part of Mr. Abelson's comments. Our  
21 project is not comparable to Moss Landing and  
22 Morro Bay. It's not really comparable to any of  
23 the other projects because it involves a once  
24 through cooling system of a significantly smaller  
25 daily volume, even at its maximum permitted

1 capacity.

2 It draws water from a tremendously huge  
3 system, and not from a small bay, such as Morro  
4 Bay. it's location is not located at a key  
5 entrance or exit point, such as Morro Bay.

6 And I'm emphasizing this because the  
7 idea that we should lump all once through cooling  
8 projects into a category and assume that they all  
9 have the same significantly high levels of  
10 impingement and entrainment is wrong and  
11 erroneous.

12 The responsibility of this Commission  
13 and this Committee is to determine the effects of  
14 this project. And I say this because we did not  
15 propose this \$7 million as mitigation that's  
16 necessary. And the Committee has also found the  
17 same thing, that this is an operational, permitted  
18 cooling system that studies have very consistently  
19 found very, very, very low levels of entrainment,  
20 below the threshold of significance by orders of  
21 magnitude.

22 And that's why the facility is permitted  
23 to operate, and thus there is no necessary  
24 mitigation. And one of the differences between  
25 staff and us is whether or not we know the effects

1 of that project, and we think we've made it pretty  
2 clear and we think the Committee has made that  
3 very clear they understand that in their proposed  
4 decisions.

5 This is enhancement, this is extra  
6 positive benefits, or from another perspective it  
7 can be looked upon as an insurance policy. And  
8 when you start about it in terms of an insurance  
9 policy then this context of is it adequate enough  
10 or not for mitigation if it comes up.

11 We didn't propose what we think is the  
12 necessary mitigation for this project. We're very  
13 confident that there is absolutely no mitigation  
14 required for this project, that we know exactly  
15 what the entrainment and the impingement effects  
16 of this operating, permitted, and studied cooling  
17 system are, and they're not even close to  
18 significant.

19 And so if it was a question of CEQA,  
20 we're not required to pay a penny for these  
21 things. We're doing these things in an effort to  
22 try to give the Committee more confidence that,  
23 even if you take other arguments on their face  
24 value, that the issues have been thoroughly  
25 addressed, even if you take other parties

1 arguments.

2 But we did not propose the \$7 million as  
3 mitigation, so it would be a fair statement, if  
4 you took Mr. Abelson's assumption, that indeed the  
5 \$7 million would appear to come out of nowhere.  
6 It's because we have a totally different  
7 perspective on where it's coming from.

8 COMMISSIONER KEESE: Thank you. Yes,  
9 Mr. Luster, just consider that we asked you the  
10 same question.

11 MR. LUSTER: Just a couple of comments  
12 before I answer the money question, is that what  
13 you're referring to?

14 COMMISSIONER KEESE: Yes, a lot of  
15 people told us what your position is.

16 MR. LUSTER: Oh, well, then you know it.  
17 I don't know which version of it you know but --.

18 Again, I've got to address the issue of  
19 certainty versus uncertainty. Applicant believes  
20 there are no impacts under CEQA, but there's no  
21 basis for that belief in the record. We have in  
22 Santa Monica Bay or nearby a number of power  
23 plants. Alamitos, the entrainment study that was  
24 done in 1982. And the use that was done at the  
25 Haines power plant, which was done in 1981.

1 El Segundo used Norman Beach, Norman  
2 Beach was done in 1980. Long Beach used the  
3 Haines study, again 1981. Redondo used 1983, used  
4 data from 1978, '79. There's far more.

5 All of the studies were done in the late  
6 70's, early 80's. almost all of them have been  
7 identified as having significant flaws in their  
8 sampling, their data collection. The way that we  
9 do those studies has changed significantly in the  
10 last 20 years.

11 There has not been new requirements by  
12 the regional board to update those studies, in  
13 part because the power plants had not been  
14 upgraded over the last 20 years or so. We're now  
15 faced with retoolings and upgrades, that you're  
16 looking in to.

17 the studies that served any modicum of  
18 certainty are so far out of date, and were done  
19 under systems that seem pretty primitive to us  
20 now, with our more recent understanding of marine  
21 biology and sampling techniques and data analysis,  
22 that they're essentially useless to tell us  
23 anything about what's happening out there today.

24 COMMISSIONER KEESE: Are they useful as  
25 a baseline when the next study takes place?

1           MR. LUSTER: Perhaps as historical  
2           curiosity. They could tell us something about in  
3           1980, you know, this sampling technique gave us  
4           this density of this type of species or genus, a  
5           lot of them weren't even done at the species  
6           level. And in 2004 we have, you know, this  
7           density of that genus.

8           So there may be two snapshots in time  
9           that may be useful, but as far as a baseline for  
10          the AFC in front of you now, no, they don't really  
11          provide that. I think we made an analogy in a  
12          previous filing, it's like using the amount of  
13          traffic at a town 20 miles away to determine  
14          whether a road will be wide enough in your town  
15          right here.

16          I mean, they both measure cars, but one  
17          was done 20 years ago in an entirely different  
18          place. It doesn't really apply to the matter at  
19          hand.

20          One other thing I want to bring up, as  
21          far as uncertainly, not knowing what the regional  
22          board's going to require the Applicants offered  
23          that perhaps that will include a look at the  
24          gunder booms or wet wire screens.

25          In the record, March 8, 2001, the

1 Applicant, in response to a data request, said  
2 that the feasibility of these projects is  
3 improbable, and gave quite a few reasons for why  
4 those aren't considered really worthwhile here in  
5 the Santa Monica Bay environment.

6 I don't know that anything has changed  
7 with the technology, or made it easier to make  
8 those feasible now, so that's kind of a pointless  
9 thing to bring up at this point. They don't  
10 really seem to apply, and it doesn't really give  
11 you any kind of certainty, that even if there were  
12 some benefits to using those techniques that  
13 they'd be put into place.

14 That said, on the money issue, again our  
15 position is pretty much that any figure is  
16 arbitrary. If you do go with the staff's three-  
17 legged stool I would recommend a very high number  
18 that's in the high range of other projects. and  
19 if you want me to take that back to the  
20 Commission, I think, if there's any comfort on  
21 their end, it would have to have, the number would  
22 have to reflect the lack of certainty as to the  
23 impacts.

24 Also, I don't think anyone is comparing  
25 this project with Morro Bay or Moss Landing as far

1 as its setting, but that's not to say the setting  
2 at Santa Monica Bay is less important. In fact, I  
3 know there are some data that suggest that the  
4 currents in Santa Monica Bay do bring quite a bit  
5 of marine life past the near shore area, where a  
6 number of power plant intakes are.

7 And to suggest that they're not causing  
8 a significant impact just because it's a big water  
9 body, again, there's no basis for that statement.  
10 does that help?

11 COMMISSIONER KEESE: Any questions up  
12 here? Thank you. Since I don't see anybody  
13 waving their hand at me, why don't we -- Mr.  
14 Valor.

15 MR. VALOR: I'll be brief.

16 COMMISSIONER KEESE: Sure, and again you  
17 can, you know, we don't, we're not accepting  
18 evidence, we don't need testimony, we know what  
19 the positions are. If you can un muddy the waters  
20 that would be wonderful.

21 MR. VALOR: The Commission asked me to  
22 let you know that we are monitoring this process,  
23 we're actively participating in the 316(b)  
24 workshops and what have you. I testified before  
25 you in the spring, and what they wanted me to

1 reemphasize is that we have what we call our  
2 technical advisory committee.

3           Should there be any type of 316(b)  
4 related study this committee, the technical  
5 advisory committee, is wholly appropriate to help  
6 conduct that study. It's probably a way to help  
7 expedite that. They've studied mitigation from  
8 other development projects and what have you  
9 through the Santa Monica Bay, and because of the  
10 representation of engineers, biologists, folks at  
11 the regional board, and from other local  
12 interests, they are qualified to be able to  
13 produce data for a study, help coordinate the  
14 study, and what have you.

15           So I just wanted to make sure that you  
16 are aware that that is available to you should you  
17 choose to take that route.

18           COMMISSIONER KEESE: All right. Thank  
19 you, thank you very much. All right, just because  
20 it's the order I have, Nick Nicholson please.

21           MS. MURPHY: He had to leave.

22           COMMISSIONER KEESE: Well, you're not  
23 Bob Perkins.

24           MS. MURPHY: My name is Michelle Murphy,  
25 and I live right next door to the plant. And I

1 have a bunch of disjointed things that I'm sure  
2 will only muddy this water, but --.

3 My understanding is the reason why  
4 316(b) is happening is because America, that is to  
5 say the current Congress, which is not known for  
6 its great environmental interest, is really  
7 concerned about America's coastline. That we  
8 think something bad can be happening because of  
9 power plants on our coastline.

10 I think that's what we ought to be  
11 looking at 316. It's not saying "oh good, we can  
12 let this cup pass from our lips, and 316 will take  
13 care of it." We should be saying "oops, there's a  
14 real problem in our coastline, power plants are  
15 hurting marine life." And that's what you ought  
16 to be looking at, not like "okay, it's a way for  
17 us to get out of this."

18 Um, if you let them build this you know  
19 it's going to get used. You guys are in the  
20 energy business, but the Legislature, the people  
21 of California, have created a process here that's  
22 not just all about making energy, it's about the  
23 Coastal Commission being involved, it's about your  
24 staff and Dr. Davis and people being involved,  
25 trying to weigh the balance, the two things, both

1 the fear of the brownouts and blackouts and the  
2 fear of a dead bay with no more marine life in it,  
3 or severely reduced marine life in it.

4 So you need to listen to, not just the -  
5 - I know you want to make the lights go on in  
6 California, but it's your responsibility to listen  
7 to other people and what they're talking about.  
8 Everybody here today is talking about real fears  
9 about the water and what's going to happen to it  
10 if you permit this thing without knowing what's  
11 going on there.

12 I think there's a little bit of  
13 confusion about what's happening here. Four years  
14 ago -- we've been involved for the whole four  
15 years -- there was this fake energy crisis. It's  
16 not a real energy crisis, it was one created by  
17 Applicant and other energy conglomerates that  
18 robbed the people of California of lots of money.

19 And at that time, that was when  
20 Huntington Beach was sort of rushed through,  
21 without any protection for the environment. And  
22 at that time it appeared that that would happen to  
23 us too.

24 Now, I don't know why it took four  
25 years. I have the feeling it was Applicant. I

1 know it wasn't intervenors, but for some reason  
2 this thing dragged on and dragged on. But we're  
3 somehow still -- and the reason why their  
4 application didn't have a study in it at that time  
5 was because there was this fake energy crisis.

6 So therefore we have to hurry, hurry,  
7 hurry. Why we had to hurry and then slow down, I  
8 don't know. I've enjoyed being here these four  
9 years, but I'd have just as soon gotten it done  
10 quicker too.

11 So you're now seeming to say oh, poor  
12 Applicant, he needs to have the permit. Without  
13 knowing what's going to happen, he needs to be  
14 allowed to build the plant without knowing what's  
15 going to happen to the fish in the bay, because  
16 it's been so long, or because he was allowed to  
17 come in without --.

18 Well, they created a fake energy crisis,  
19 and then I think they slowed down the process --  
20 I'm a little bit unclear about that, you might  
21 know better about why the process got so slow.  
22 But there isn't now a need for the energy. We are  
23 not having a fake or real energy crisis. There's  
24 time to look and see what's going to happen to the  
25 fish in the bay before they build this. there's

1 no reason not to.

2 And for the last four years, Applicant  
3 was told over and over, in this room, by Luster,  
4 by Dr. Davis, by many people, that you will have  
5 to do a study. never before have we approved a  
6 building -- I guess the only time being  
7 Huntington, which was happening at the same time -  
8 - have we approved the building of a power plant  
9 without having any idea what's going to happen to  
10 the fish in the bay.

11 That this doesn't happen, it's not going  
12 to happen, and they would come in with some, they  
13 had some little gunder booms kinds of things, and  
14 people would say I don't think so. And I think,  
15 they'd do little things, but they consistently  
16 refused to do the study that they were told over  
17 and over by everybody that you'll have to do.

18 Now it appears that the Energy  
19 Commission is going to say "oh, you don't have to  
20 do it." Because they refused. You're going to  
21 tell new applicants coming in that all you need to  
22 do is hold your breath and turn people and we'll  
23 let you not do what you obviously should be doing.  
24 You should be finding out what's going to happen  
25 when you build the plant before you build it, not

1 after you build it, because once you build it  
2 you're going to use it.

3 Okay, also, this is not just the  
4 ongoing, like the regional water people are going  
5 to do, it's not an ongoing plant, this is a new  
6 plant. They are going to make more energy, they  
7 are going to -- you know, instead of taking in the  
8 water or putting out the pollution that they've  
9 been doing for the last five years they're going  
10 to double it, they're going to be twice the plant  
11 they were.

12 They're going to make a little more  
13 energy too, but -- I mean a little more energy  
14 than they could be making, but they're going to be  
15 using a lot more resources from the bay and making  
16 a lot more pollution and this is your  
17 responsibility as the Energy Commission to look at  
18 this new plant, not the ongoing already permitted  
19 plant, and see if it's what we need to have here,  
20 if it's the best thing for the people of  
21 California.

22 Finally, if you decide -- oh, yeah, the  
23 other thing is, so, they create a fake energy  
24 crisis, they stall for four years, and now  
25 apparently what I'm hearing is they're going to

1 write the 316(b) regulations. That is to say,  
2 they're going to go in with this proposal, which  
3 is how they want to do a study, they are the ones  
4 who will decide how the study is to be done.

5 And then of course the agency and other  
6 people can say no, you know, can dicker with them,  
7 but we're waiting for them to come up in November  
8 for their proposal of how the study is going to  
9 be.

10 Now, for the last four years they've  
11 refused to do a study. I think that's because  
12 they believe in their hearts, even though he says  
13 it's no effect, it's going to show bad effects.  
14 That's why they haven't done a study is because --  
15 it's not the cost of a study, it's because they  
16 know what the study's going to show. It's going  
17 to show that there's going to be serious harm to  
18 the marine life in the bay, that's why they  
19 haven't been doing it.

20 And now they're going to be the ones  
21 that will, at the beginning anyway, write the  
22 regulation about how to do the study. I think  
23 there ought to be, you know, someone from the  
24 Coastal Commission, or someone from the staff that  
25 knows something about it, it should not be

1 Applicant who gets to, who has been avoiding doing  
2 the study for four years and now gets to write how  
3 to do the study.

4 Finally, if you do what I think is  
5 illegal -- and I think may be stopped by the  
6 courts -- and approve this without knowing what's  
7 going to happen to the fish in the bay, you need  
8 to look at monthly caps.

9 First of all, you need to put lots of  
10 money in a trust fund. If you need to put 50  
11 million in, you should put 50 in. And maybe say  
12 ten or 20 of it goes to some restoration project  
13 if you end up not using it, but the rest you can  
14 take back if you don't use it, if Mr. McKinsey's  
15 right and there's no affects at all.

16 But put it in there because, I'm sorry,  
17 you can't trust these people. We've seen it  
18 already, you can't trust them, so require that  
19 they put some money in a trust fund, and a lot of  
20 money.

21 And also you need to have monthly caps.  
22 I'm not a biologist, I'm confused, but from my  
23 understanding from the four years I've been here,  
24 is that biologists don't know and Applicant  
25 doesn't care about the sex life of fish. So that,

1 in the summer when the air conditioning's on and  
2 they're going to be running at 24/7, that could be  
3 the worst time for some species of fish.

4 We don't understand how it works, we  
5 don't know what's going to happen, and if you  
6 don't put monthly caps on it we could be depleting  
7 the bay of something that turns out to be an  
8 important part of the ecosystem. That's all I  
9 have.

10 COMMISSIONER KEESE: Thank you. And  
11 that leaves one more speaker.

12 MR. PERKINS: Thanks for waiting for me.  
13 I'm Bob Perkins, Intervenor. I don't think that  
14 the water is all that muddy, actually. I think  
15 that you can figure out what to do if you kind of  
16 recite the mantra "I'm going to do my job."

17 And Mr. McKinsey was kind enough to tell  
18 you what your job is. It's this Commission's  
19 responsibility, he said, to determine the damage  
20 that will be done to the bay by this power plant,  
21 and to take appropriate remedial measures.

22 So, in order to determine the damage  
23 that's going to be done to the bay, you've got to  
24 do a study. It's not a secret, and it hasn't been  
25 one that's been kept from the Applicant for four

1 years.

2 I've been in this series of events  
3 longer even than the Chairman. I was here in  
4 February of 2000 when we started this process, and  
5 I talked to Mr. McKinsey before that -- excuse me,  
6 with his client, before that -- aw shoot, the  
7 gentlemen who runs the site, and then -- Mr.  
8 Aburg, yes, exactly right.

9 And I can tell you, in fact it was  
10 discussed. You go back and look at your records  
11 and you'll see. They didn't make the Applicant  
12 get the fish study done before they started the  
13 process but your staff told them -- and it wasn't  
14 my issue, my issue had to do with some noise  
15 concerns -- but your staff told them from the  
16 gitgo "you got to do a 316(b) like study."

17 In fact, there was some flailing around,  
18 "well, those studies, they're changing the  
19 regulations, you can't tell them to do that",  
20 "okay, 316(b)-like", and there was flailing around  
21 about the language to be used to produce that  
22 study, but for four years that's been going on.

23 The delay in doing the study is not the  
24 fault of the Commission and it's not the fault of  
25 the staff. if there's fault it's the Applicants.

1 I'm not saying there's fault, it's just something  
2 they ought to do so that you can do your job. And  
3 they should do it before they build it because  
4 after they build it it's too late.

5 And the four year delay is not the fault  
6 of the Commission or the staff. I can tell you,  
7 and it's in the record so you don't have to take  
8 my word for it, that when this process started  
9 they didn't even own the land that they're  
10 building this project on. They owned part, but not  
11 the part where the tank farms sit. They didn't  
12 own that for approximately a year.

13 It isn't hurting the people of  
14 California that it took a little time to get the  
15 right answer in this power plant, there are -- as  
16 Mr. McKinsey told you earlier today -- there are  
17 several power plants permitted and constructed  
18 isn't started. Would theirs be started? Well no,  
19 Mr. McKinsey told you that he hopes to start  
20 construction in 2006 -- I think it was '06, yes.  
21 This is '04.

22 There were many times when the Applicant  
23 did not turn in its answers to questions asked by  
24 the staff, which are part of the permitting  
25 process, in a timely fashion. Or wasn't ready to

1 complete a workshop, so it had to go on. I don't  
2 think you've got a problem with delay. Yes, we  
3 all wish it would have been done sooner. I don't  
4 think you have a problem with delay, you can do  
5 your job.

6 Mr. Shean asked some telling questions  
7 of staff as to why they can't get specific damage  
8 or mitigation numbers, how much to put in the pot.  
9 That's an important question, I think that was a  
10 great question, I appreciate that.

11 And we all know the reason why they  
12 can't. There's no study. The study hasn't been  
13 done. You can require the study. And you can't  
14 get the result you need, you can't do your job, if  
15 you say "oh, we'll let the L.A. Regional Water  
16 Quality Control Board decide that."

17 Because the Regional Board -- and that  
18 is Applicant's proposal, as Mr. Abelson ably  
19 quoted -- their proposal, by '04, says that all  
20 this stuff is in the sole discretion of that  
21 agency, not you. The first problem with that --  
22 if you want to do your job -- the first problem  
23 with that is you're going to be where I am.  
24 They're going to listen with you, they're going to  
25 consult with you, but you're not making the

1 decisions. They are.

2 They'll do their job, their job isn't  
3 your job. That's why there's two boards. So,  
4 unless you want to get where I am, which is  
5 talking and people are being courteous to you but  
6 they don't have to do what you want them to do,  
7 you can't punt. You have to require a study for  
8 yourself.

9 There's no problem -- it may take two  
10 studies. The Water Control Board has different  
11 concerns, they look at more and different things  
12 than you do, they may need their own study. It  
13 may be possible to coordinate them, but that's not  
14 your -- that'd be great, that would be good, save  
15 the Applicant some money, streamline the process,  
16 maybe save some time -- but ultimately that's not  
17 your problem. Your problem is to do your job.

18 To protect the people of California and  
19 where appropriate to license power plants. But if  
20 you give the job to the water control board, I'm  
21 just going to remind you of what your record today  
22 said. Mrs. Backarowski said that their permitting  
23 is "outside your track." She said "it's very  
24 possible there will be a study required" by the  
25 water control board. Not certain, not the study

1 you want, a study possibly.

2 She said "you need to do what you need  
3 to do" because it's not their job to do it for  
4 you. And she said, as to whether the studies  
5 would look exactly like what this body needs, we  
6 have "very wide latitude in our jurisdiction."  
7 I'm sure that's true, they do, they're a powerful  
8 agency, and they'll listen to you but they aren't  
9 you.

10 It makes no sense to permit this plant  
11 without knowing A, what's the damage going to be;  
12 and B, what'll it cost to fix it. You got the  
13 time to do that, these guys aren't going to build  
14 for a year and a half, they aren't even ready to  
15 submit their new NPDS documents for a couple of  
16 months.

17 And I know, I appreciate, they  
18 threatened to sue you. I read Mr. McKinsey's  
19 latest thing where he says "the CEC has placed  
20 ESP2 in a place where it may be necessary to turn  
21 to the court system."

22 Well, all I have to say about that is,  
23 they're not the only guys who might sue. If this  
24 thing goes wrong, goes right, somebody may be  
25 unhappy, somebody may sue, and you'll be in a lot

1 better shape if you'd done the right thing, and if  
2 you'd done your job, and if you'd done what was  
3 recommended by your own staff and by the Coastal  
4 Commission and by the Fish and Game Service and by  
5 the National Marine Fisheries, and incidentally by  
6 some cities and Intervenors who don't count for  
7 very much in these proceedings.

8 Thank you very much. Do you have  
9 questions?

10 COMMISSIONER KEESE: Thank you. I do  
11 have one more speaker on my list here, Ms. C-r-i-  
12 p-e.

13 MR. PERKINS: Uh, Ms. Cripe was here,  
14 had to leave.

15 COMMISSIONER KEESE: Okay. Any final  
16 comments? We started with Applicant. Do you want  
17 to give us anything?

18 MR. MCKINSEY: No, I don't want to  
19 incite a further round of what I think you've  
20 heard many times over the past few years.

21 COMMISSIONER KEESE: Staff? Any  
22 enlightenment?

23 MR. ABELSON: I'd just leave you with  
24 the comments that I tried to emphasize in my  
25 opening statement, which is that we're on the same

1 page with the Committee, we want to license the  
2 power plant so that energy can be provided, we  
3 want to protect the environment as required by  
4 law, and we want to be sure that you folks have a  
5 legally defensible position so that in fact those  
6 two first things actually happen instead of a  
7 lawsuit and everything stalls out.

8 It's been hard for us as staff, because  
9 we've presented evidence over and over again that  
10 the decisions never talk about. The question of  
11 whether or not it's feasible, for example, to use  
12 the tighter caps has not been addressed by Mr.  
13 McKinsey except in argument. The question of why  
14 the study has not been done for four years has not  
15 been addressed in the decision at all, ever.

16 The question of whether or not the trust  
17 fund, which I describe as unorthodox but I believe  
18 a legal way to get out of this box that we're all  
19 in, why it is not legally or practically  
20 acceptable has never been described.

21 So, from the standpoint of staff we just  
22 feel like we keep trying to offer to the Committee  
23 and to the Commission a way out of this situation  
24 that's a win/win -- it'll cost the Applicant more  
25 money than the Applicant wants to pay, but what's

1 new about that, that's what all Applicants are  
2 about is paying as little as they can possibly get  
3 away with.

4 I mean, everybody understands that's the  
5 business model that they work under, and that's  
6 fine, that's what they should be doing.

7 But I guess I would echo the comments of  
8 the last speaker, when he said "that's not the job  
9 of the Energy Commission." And I believe we've  
10 offered you a solution, and I hope that, as we see  
11 the process go forward, perhaps we'll see a way  
12 that might ease the water for all o f us.

13 And thank you very much for listening to  
14 us, we know we try your patience greatly in going  
15 on as much as we do.

16 COMMISSIONER KEESE: Mr. Boyd?

17 COMMISSIONER BOYD: I just want to thank  
18 everybody for attempting to help us with our  
19 decision today, and over the last four years, of  
20 which I've only been involved for the last six  
21 months.

22 I won't, it's unfortunate a lot of other  
23 corners weren't turned a different way in the  
24 past, but I did review the record before I sat  
25 down here, for the last hearing, and for the

1 record I think the actions that were taken up  
2 until that point in time, even though I think some  
3 of them were unfortunate.

4 Over the long haul, where maybe society  
5 will be better off but people didn't do their  
6 homework or get the record straight or what have  
7 you. That's not been done, and I thank everybody  
8 for helping us try to find a resolution to this  
9 issue.

10 I think it is our job to -- as many  
11 speakers have said -- to protect the people as  
12 well as find the energy. And I just know that  
13 we'll do absolutely the best we can. It probably  
14 won't satisfy some, it will satisfy others, or if  
15 it doesn't satisfy anybody maybe it's the right  
16 thing to do after all.

17 But I appreciate the efforts folks have  
18 made, and I really appreciate the fact that more  
19 state agencies have come together today to deal  
20 with this with us, or at least see what it is we  
21 have to deal with, because the people out there  
22 expect that their government gets their stuff  
23 together and works on some of these issues  
24 together, and I think perhaps we're doing a little  
25 better job of that now, and it may help

1       policymakers in the future who may choose to work  
2       on the system, to achieve better ways to improve  
3       the system.

4                So, I thank everybody, and I know that  
5       Chairman Keese and I and staff will ponder what  
6       we've heard today and try to see what we can do to  
7       sort things out.

8                COMMISSIONER KEESE: Thank you all.  
9       (Thereupon, the workshop concluded at 2:37 p.m.)

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## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September, 2004.

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